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**REPORT ON THE THIRD MEETING OF THE JOINT EXPERT GROUP
UNESCO (CR)/ECOSOC (CESCR) ON THE MONITORING
OF THE RIGHT TO EDUCATION (2005)**

SUMMARY

By 171 EX/Decision 27 adopted at its 171st session in April 2005, the Executive Board requested the Committee on Conventions and Recommendations “to examine the reports of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education once a year”.

In this document, the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) presents its report on its third meeting, held at UNESCO Headquarters on 2 May 2005.

The meeting focused on the foundation of the right to education in national legal systems as the overarching theme, in line with 167 EX/Decision 5.8. The report contains recommendations and suggestions by the Joint Expert Group, bearing in mind recent decisions adopted by the Executive Board (171 EX/Decision 28 and 171 EX/Decision 27).

Taking into account the suggestions and recommendations put forth in the report, the Committee may wish to provide further guidance to the Group with regard to its future work.

1. The Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (herein after referred to as Joint Expert Group)¹ held its third meeting at UNESCO Headquarters on 2 May 2005. In line with the priorities mentioned in 167 EX/Decision 5.8 adopted by UNESCO's Executive Board at its 167th session in October 2003, and the recommendation by the Joint Expert Group in its report on its previous meeting that the foundations of the right to education in national legal systems was of highest priority, the working document prepared for the meeting by the Secretariat centred around this theme and served as the basis for the discussions. A series of reference documents were made available to the experts.

2. Welcoming the members of the Joint Expert Group on behalf of the Director-General of UNESCO, Mr Qian Tang, Director, Executive Office of the Assistant Director-General for Education, complimented the Joint Expert Group for its valuable work. UNESCO, which is in the process of finalizing the work plans for the next biennium 2006-2007, is looking forward to its recommendations. In his opening address (Annex I), Mr Davidson Hepburn, Chairperson, UNESCO's Committee on Conventions and Recommendations (CR), apprised the Joint Expert Group of developments related to making its working methods more effective. He also underlined the importance attached to the Joint Expert Group in the discussions of the 171st session of the Executive Board. He evoked a series of issues to be addressed in the context of importance accorded to national legislation in the strategic objectives for Education for All (EFA) and the legal foundations of the right to education as the overarching theme of the meeting. Ms Virginia B. Dandan, Chairperson of CESCR, in her opening remarks, considered the right to education as being imperative for EFA (Annex II).

3. The meeting was presided over by Professor Eibe Riedel, Vice-Chairperson, CESCR. Recalling that the Joint Expert Group has been historic and path-breaking for the United Nations system, he stated that working on the basis of trust and finding ways of cooperation and complementarity is its endeavour. Ms A. T. Ndong Jatta, Director, Division of Basic Education, UNESCO, in her introductory remarks stated that the meeting was very timely in the context of the recent debate in the Executive Board at its 171st session on the progress made towards EFA. It would provide direction and help UNESCO to monitor more effectively the implementation of the right to basic education for all.

4. The meeting focused on the foundation of the right to education in national legal systems. The experts addressed key issues in universalizing access to primary education in the context of Education for All (EFA) as a priority. They examined questions related to the seventh consultation of Member States on the implementation of the Convention and Recommendation against Discrimination in Education (1960) as a follow up to 171 EX/Decision 28. The discussions emphasized the importance of synergy in the methods of work of CR and CESCR (171 EX/Decision 27) as well as the role of and contribution by the National Commissions for cooperation with UNESCO in the implementation of the right to education.

5. The foundations of the right to education in national legal systems were analysed as regards the legal framework which establishes the right to education. It was stated that the constitutional provisions, legal and administrative practices, as well as judicial pronouncements in the field of education, have tremendous effect on the implementation of the right to education, and education programmes should be embedded in legal systems. The legal aspects of analysing data are an important dimension of the foundation of the right to education in national legal systems, and of

¹ The Joint Expert Group, established by Decision 5.4 adopted by UNESCO's Executive Board at its 162nd session in October 2001, is at present composed of four members: Ms Virginia B. Dandan, Chairperson of CESCR and Mr Eibe Riedel, Vice-Chairperson of CESCR, representing CESCR; and Mr Cornelis Pigot and Mr Klaus Huefner, members of CR, representing CR.

evaluating progressive measures towards its realization. While requesting reports from States on the implementation of the right to education, it is not a question of asking them for figures, but of information on instances of how the principle of non-discrimination and equality of educational opportunity are incorporated in the constitution and in laws, how they are applied and what discrimination in fact means?

The experts suggested that:

- it should be a priority to look into the provisions on the right to education in constitutions and laws; and then to their implementation, and benchmark to measure the implementation;
- there is need for undertaking analytical studies and dissemination of the knowledge on the constitutional and legislative bases of the right to education. Practical aspects of measures taken by States to make the law effective are crucial.

6. The experts expressed concern that implementation of the EFA agenda was falling behind, mainly because of lack of funding and international assistance. Experience of EFA shows the need for greater awareness about the right to education. The vision for basic education should embrace the right to education as central to the EFA agenda. UNESCO should strengthen its activities for policies and legislation and capacity-building in Member States. Technical assistance and advisory services are being provided by UNESCO to Member States in the process of modernizing/developing national legislation as part of the EFA process. These are critically important.

7. The discussions on the foundations of the right to education covered issues in universalizing primary education and ensuring that it was free, in line with the objective set at the World Education Forum (2000), and the Millennium Development Goal. There is a huge stake in Asia in the field of primary education. Moreover, in many African countries, there has been regression of the right to free universal primary education. This is where the Joint Expert Group could make a difference. In this context, the importance of the General Comment No. 11 on the Article 14 of the International Covenant (Right to Education), elaborated by CESCR was underlined.

The experts underlined the need for:

- interpreting legal obligations to coincide with other recommendations in the field of education for a critical review of EFA in national legal systems, while analysing data and measures for making universal primary education a priority in law and in fact; with a role for the UNESCO Institute for Statistics, within the framework of its mandate;
- putting an end to the process of weakening the right to education and restoring and defending this right as provided for in the International Covenant (Articles 13 and 14) and UNESCO's Convention against Discrimination in Education;
- emphasizing the importance of standards that have to be met in primary and basic education, with practical examples from countries in which laws reflect EFA.

8. The Joint Expert Group discussed questions related to the follow-up to the Guidelines for the preparation of reports for the seventh consultation of Member States on the implementation of the Convention and the Recommendation against Discrimination in Education (1960), as approved by UNESCO's Executive Board during its 171st session in April 2005 on the recommendation of CR. In this context, the experts were apprised of the Informal Information Meeting with the States Parties to the Convention against Discrimination in Education, to be organized on the sidelines of

the General Conference at its 33rd session in October 2005 (171 EX/Decision 28), to which these Guidelines will be presented. The Joint Expert Group expressed its appreciation for the Guidelines, especially for the innovative approach of soliciting data from Member States in tabular form. Substantial and long-term concerns and monitoring mechanisms, and dialogue with the State Parties for impact prediction is important. The members of the Joint Expert Group considered the Informal Information Meeting to be useful, given the lack of capacity in States to respond. They were encouraged to participate in the Meeting to raise awareness about the significance of State reporting.

The experts recommended that:

- the Guidelines should be used as a checklist for States Parties, with the understanding that they do the maximum possible;
- Member States should be requested to supply in their reports data in time-series, on a three-year basis, and these reports should capture the reality on the ground;
- the significance of the equality of educational opportunities especially for vulnerable groups deserves to be brought into focus;
- during the Informal Information Meeting, categories in the table annexed to the Guidelines and the conceptual basis to present information should be explained;
- the ratification campaign of the Convention against Discrimination in Education should be intensified; CR and CESCO should work together to promote ratification.

9. The experts were informed about the importance given to the Joint Expert Group during the debate of CR on its methods of work and 171 EX/Decision 27 adopted by UNESCO's Executive Board during its 171st session in April 2005.² In order to strengthen and improve the monitoring of the implementation of UNESCO's standard-setting instruments, this decision requests the CR "to examine the reports of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education once a year", and "to propose new procedures specifically for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided".

The experts suggested that:

- both CESCR and CR should report respectively to ECOSOC and UNESCO's Executive Board on the work of the Joint Expert Group on a regular basis;
- CR and CESCR should regularly develop a system of reciprocal exchange of information, with feedback mechanisms;
- disseminating information about the Joint Expert Group and conveying its views to CESCR and CR was significant.

10. The Concluding Observations which CESCR adopts after examining reports should reflect assistance which UNESCO could provide, bearing in mind difficulties encountered by States in giving follow-up to them. UNESCO should report back to CESCR on the assistance provided. The Joint Expert Group should specify necessary steps as to how, in practical terms, such assistance can

² Examination of the Methods of Work of the Committee on Conventions and Recommendations and the Report of the Committee thereon (171 EX/21 and Add. and Corr. and 171 EX/61) and 171 EX/Decision 27.

be provided to States as follow-up to the Concluding Observations. The Joint Expert Group was informed that the UNESCO Secretariat has initiated work for preparing country profiles on the right to education.

11. The question of periodicity in reporting (six years for CR, State reporting in CESCO on an individual basis) was discussed. In this context, Mr A. Yusuf, Director of UNESCO's Office of International Standards and Legal Affairs, informed the Joint Expert Group that CR has now decided to elaborate specific procedures for the monitoring of the implementation of conventions and recommendations.³ These specific procedures will cover questions related to reporting cycles and periodicity of consultations with Member States, the preparation of reports and follow-up measures. Input on the specific procedures may be solicited from the Joint Expert Group.

12. The experts dwelt at length on the role of the National Commissions for cooperation with UNESCO in examining and strengthening the legal foundations of the right to education. They recognized the need for capacity-building in Member States and emphasized the critical importance of the fulfilment of the obligations of States: the obligations to respect, the obligations to protect and the obligations to fulfil. The National Commissions are the best source of confirming/assessing meaningful data and a clear understanding of their role in the implementation of UNESCO's Convention against Discrimination in Education and the International Covenant (Articles 13 and 14 on the right to education) is necessary. The Joint Expert Group made a proposal for more substantial contribution by the National Commissions in monitoring the implementation of the right to education, including the organization of training programmes. It would be important to explore the possibility of obtaining from the National Commissions regularly the data and information on the foundation of the right to education in national legal systems; and to seek their active participation as regards national-level action for follow-up to the Concluding Observations adopted by CESCO as well as decisions adopted by UNESCO's Executive Board.

The Joint Expert Group recommended:

- to give greater consideration to the role of and contribution by the National Commissions in the implementation of the right to education, including the organization of training programmes;
- to explore the possibility of obtaining from the National Commissions the data and information on the foundation of the right to education in national legal systems on a regular basis;
- to seek their active participation as regards national level action for follow-up to the Concluding Observations adopted by CESCO as well as decisions adopted by UNESCO's Executive Board.

13. The experts underlined the significance of the World Conference on the Right to and the Rights in Education, organized by the European Association for Education Law and Policy (ELA)

³ UNESCO's General Conference at its 32nd session in October 2003 adopted 32 C/Resolution 77 revising the Rules of Procedures Concerning Recommendations to Member States and International Conventions – Article IV, Paragraph 4 of the Constitution of UNESCO. Section VI of the Rules of Procedures as amended is entitled: *Procedures for Promoting Member States' Acceptance and Application of Conventions and Recommendations adopted by the General Conference.* (171 EX/Decision 27).

in cooperation with UNESCO⁴ in November 2004, in facing the crucial challenges that education in general and the right to education in particular face today. They recognized that the follow-up to the Amsterdam Declaration on the Right to and the Rights in Education, adopted at the Conference, should be given high consideration, especially as the Declaration recognizes the importance of UNESCO's work in this field. It was suggested that ELA and other similar professional bodies could be considered as centres of excellence for research and analytical studies on constitutional bases of the right to education and comparative analysis of national laws. Moreover, it would be important to organize regional conferences in the field of the right to education as a follow-up to the World Conference. Besides, the indicators for compiling information by UNESCO's National Commissions could be derived from the General Comments of CESCR and the Amsterdam Declaration.

14. The Joint Expert Group considered the resolution 2005/21 adopted by the Commission on Human Rights at its 61st session in 2005.⁵ 'Promoting' the right to education is part and parcel of monitoring. Besides, the mandate of the Special Rapporteur on the Right to Education and the report submitted by him to the Commission are also relevant.

15. Finally, the Joint Expert Group discussed questions related to the enforcement and the justiciability of the right to education and deemed it necessary to address these questions as a priority concern. It recommended that this should be the theme for its next meeting, to be organized on the occasion of the 35th session of CESCR in Geneva in November 2005, for which the experts outlined the conceptual framework. This would be very relevant in the context of the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The following meeting of the Joint Expert Group, to be organized at UNESCO Headquarters in May 2006, would be on universal primary education. Besides, questions related to indicators and benchmarks should be discussed in forthcoming meetings subsequently.

16. It was decided that the report of the meeting shall be presented as a document by the Chairperson of CR to its forthcoming session in September 2005, and by the Chairperson of CESCR to the 35th session of CESCR in November 2005. Professor Riedel, in his closing remarks, enumerated general conclusions. On behalf of the Joint Expert Group, he as well as Mr Davidson Hepburn, Chairperson of CR, commended the secretariats of both UNESCO and CESCR for the excellent preparation and organization of the meeting. The Chairperson of CR expressed appreciation of the work being accomplished by the Joint Expert Group and of its future agenda as discussed in the meeting.

⁴ The opening address at the World Conference was given by Mr Mohammed Bedjaoui, Member, Executive Board of UNESCO, and Professor Virginia B. Dandan, Chairperson of CESCR and member of the Joint Expert Group, who addressed the World Conference during the deliberations on Equality of Educational Opportunity. Besides the members of the professional bodies in education law, dignitaries, notably several Ministers of Education as well as chief justices and judges of Supreme Courts from different countries and eminent experts in the area of the right to education, actively participated in the World Conference.

⁵ Resolution 2005/21 on the Right to Education, adopted by the Commission in April 2005, recognizes the importance of the work of the Joint Expert Group and "Welcomes the second meeting of the Joint Expert Group of the United Nations Educational, Scientific and Cultural Organization and the Committee on Economic, Social and Cultural Rights on the Monitoring of the Right to Education, held in May 2004, to continue discussions on how collaboration between the United Nations Educational, Scientific and Cultural Organization and the Economic and Social Council in monitoring and promoting the right to education could be further strengthened, and encourages continued collaboration between these two bodies".

ANNEX I

Opening Address
by
Mr Davidson HEPBURN

Chairman
Committee on Conventions and Recommendations
Executive Board, UNESCO

Distinguished Members of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR)
on the monitoring of the right to education,

On behalf of the Chairperson of UNESCO's Executive Board, and on my own behalf as Chairperson of the Committee on Conventions and Recommendations, it is a great pleasure for me to extend a hearty welcome to you to the third meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR). Professor Virginia Dandan, Chairperson of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) and Professor Riedel, Vice-Chairperson of CESCR are with us today for this meeting as the members of this Joint Expert Group – and I am especially pleased at their presence here and to have this opportunity to personally interact with them. I greet my colleague, Mr Pigot, who, as a member of the Joint Expert Group from CR, has been playing a very active role in the debates in CR.

As Mr Tang, Director, Executive Office of the Assistant Director-General for Education mentioned, the third meeting of the Joint Expert Group which is taking place today is indeed very opportune. We can draw upon the debates in CR during the 171st session of the Executive Board which has just concluded, and discuss further matters, bearing in mind the common objectives and shared concerns of the Joint Expert Group and CR. It is with a sense of great satisfaction and pleasure that I would like to apprise you briefly of the matters covered in the debate in CR and the consideration given to the role and importance of the Joint Expert Group.

The conventions and recommendations in the field of education occupy an important place in the debate in CR on the more effective implementation of UNESCO's normative instruments, for, at present five out of six instruments whose monitoring is entrusted to CR by the Executive Board, pertain to education – four recommendations, and the Convention against Discrimination in Education – as listed in 165 EX/Decision 6.2, taken by the Executive Board at its 165th session in October 2002. The Education Sector indeed has a big potential and a key role in contributing to promoting UNESCO's normative action, especially in the field of the right to education which is an integral part of its constitutional mission and central to the Education for All (EFA) process. The Executive Board in 170 EX/Decision 6.3 adopted at its 170th session in October 2004, as well as 171 EX/Decision 28 which has just been adopted at its 171st session, has recognized the Convention against Discrimination in Education as a key pillar to EFA. In the General Comment on Article 13 – Right to Education of the International Covenant on Economic, Social and Cultural Rights – CESCR has also interpreted the scope of this right in a way that reflects basic education.

In its recent sessions, CR has discussed questions related to making its working methods more effective, while emphasizing the importance of complementarity with the work of the United Nations treaty bodies, especially CESCR. During the 171st session of the Executive Board, we devoted considerable time to discussing the working methods of CR. The need for more importance to be given to the Joint Expert Group was recognized during the debate. The Final Report on the

second meeting of the Joint Expert Group, held in Geneva in May 2004 was circulated as an information document (171 EX/INF.17), in view of its relevance in the context of the debate on this agenda item. Mr Pigot and Mr Huefner, members representing CR on the Joint Expert Group, mentioned the pertinence of the work of the Joint Expert Group. As a result of the debate, the reports on the work of the Joint Expert Group would be presented on a regular basis to CR for discussion.

On the recommendation of CR, the Executive Board approved the Guidelines for the Preparation of Reports for the Seventh Consultation of Member States on the Implementation of the Convention and the Recommendation against Discrimination in Education (1960) and I would like to thank the members of the Joint Expert Group for their contribution to the process of elaboration of these Guidelines by the Secretariat.

In the context of our agenda and discussions foreseen during this meeting, I would like to refer to the recommendations with respect to a matter of overriding concern for us, which figures in the reports on your work on your previous meetings, both in 2003 and 2004 – legal foundations of the right to education. This is indeed of highest priority as stated in the report on the second meeting of the Joint Expert Group, which was held in May 2004. I must congratulate the Joint Expert Group for according this matter highest priority. The working document before us also focuses on this. We have to address a series of issues – How do we promote the normative action in a way that reflects the fundamental principles and norms, such as equality of educational opportunities into constitutions and laws? How are these laws applied? What is the situation in law and in fact? The rights-based approach (rights protected in the Convention), reflected in the Guidelines, and mentioned during the course of the debate in CR, has great pertinence for the foundations of the right to education in national legal systems.

In the context of follow-up to the implementation of the Guidelines, we need to discuss how best the Joint Expert Group could contribute to the organization of an informal information meeting with the State Parties to the Convention and Recommendation against Discrimination in Education and with other Member States on the sidelines of the General Conference in October 2005. In this, the emphasis will have to be on making Member States better aware of the significance of their reporting obligations. Considerations pertaining to the foundations of the right to education in national legal system will be important – what is the situation as regards the implementation of the Convention and Recommendation against Discrimination in Education – both in law and in fact and how this could best emerge in reports Member States will prepare?

I have no doubt that these critical issues will have as much interest for the Joint Expert Group and CESCR as for CR.

I am also pleased to note from the working document the importance that is accorded to national legislation in the strategic objectives for EFA, as mentioned in the document 171 EX/8, which was prepared for the 171st session of the Executive Board and which has also just been debated. This provides additional strength to our task for we need to support and encourage UNESCO's ongoing activities for providing technical assistance to Member States in the process of modernizing/developing national legislation in the spirit of EFA. It is especially noteworthy that the concept of basic education as a fundamental human right is reflected in the laws in the field of education in some countries, notably Indonesia and Nigeria, who have developed new legislation, and for which UNESCO had provided technical assistance. As you know, one of the major priorities of UNESCO is the realization of the right to Education for All (EFA). To this end, activities of the Organization aim at more effective implementation of the standard-setting instruments relating to the right to education, on the one hand, and strengthening the constitutional and legal bases of this right, on the other.

We have before you a very heavy agenda, established within the framework of the mandate and the working document, centred around the foundations of the right to education in national legal systems. I am sure, we will be able to deliberate on the substance of these important issues in a very timely manner. I can assure you that it will be my privilege to report the recommendations and suggestions resulting from your deliberations to CR and to the Executive Board for follow-up action.

I would like to take this opportunity to thank Mr Kishore Singh, Secretary of the Joint Expert Group and his team for the hard work they have done in preparing the documents for the meeting and in organizing it.

Thank you.

ANNEX II

Opening remarks
by
Ms Virginia B. DANDAN

Chairperson
United Nations Committee on Economic,
Social and Cultural Rights (CESCR)

Mr Hepburn, Chairperson of UNESCO's Committee
on Conventions and Recommendations,
Dear Colleagues,

I would like, first of all, to express on behalf of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) our thanks to UNESCO for inviting us to the Third Meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education, being organized today at UNESCO Headquarters. I wish also to thank you, Mr Davidson Hepburn, for your opening address in which you have apprised the Joint Expert Group of the discussions in UNESCO's Committee on Conventions and Recommendations (CR) during the 171st session of the Executive Board which took place just a few weeks back and of developments related to making the working methods of CR more effective. These are very useful for our deliberations. It is indeed very encouraging that CR attaches so much significance to the work of the Joint Expert Group, and to the complementarity with CESCR. You have evoked a series of issues to be addressed in the context of the strategic objectives for Education For All (EFA). I would like to compliment you for the emphasis you have laid upon the legal foundations of the right to education in law and in fact. The right to education is enshrined in many instruments of UNESCO and the United Nations. More effective implementation of these standard-setting instruments, especially the Convention against Discrimination in Education and Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights is indeed our prime concern. Laws must reflect international legal obligations and are essential in providing a framework for the right to education. Entrusted as we are with the monitoring of the implementation of the right to education, we need to appraise critically the situations in law and in fact. The right to education is indeed imperative for achieving EFA. This deserves to be given highest consideration.

I would like to refer to the recent World Conference on the Right to and the Rights in Education organized in the Netherlands in November 2004 in cooperation with UNESCO. I was pleased that the working document prepared by the Secretariat for our meeting provides us information on this Conference with a view to the follow-up. I had the privilege to give the opening address at the Conference on the theme of universal access to education and equal educational opportunities. The Amsterdam Declaration on the Right to and the Rights in Education, adopted at the Conference, appeals to States to adhere to international conventions and treaties in the field of education and to take measures with a view to incorporating their international legal obligations into the domestic legal order. It contains a huge number of dimensions to the right to education. It reflects a whole approach from which a flood of follow-up actions could emerge.

As regards the work of the Joint Expert Group, let me just mention that it is rather regrettable that it meets only once a year. This is not the way to go if we want to do justice to the broad mandate of the Joint Expert Group which covers the right to education in all its dimensions. There

are a number of important issues which need to be addressed in achieving EFA as a fundamental human right, to which UNESCO accords such a high priority.

I would like to go back to the Amsterdam Declaration again and the importance it has for both UNESCO and CESCR. The contents of this Declaration, especially its concluding part, are valuable in enriching the General Comment on Article 13 – Right to Education – of the International Covenant, elaborated by CESCR in collaboration with UNESCO. The diverse approaches that the Declaration expresses could be further developed and deserve to be borne in mind in the course of monitoring the implementation of the right to education.

Thank you.