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

SUMMARY

In accordance with 181 EX/Decision 28, the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education submits to the Executive Board a report on its tenth meeting.

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

The financial or administrative implications of the reported activities fall within the parameters of the current C/5 document.

Action expected of the Executive Board: Decision in paragraph 15.

1. The Joint Expert Group UNESCO (CR)/ ECOSOC (CESCR) on the monitoring of the right to education held its tenth meeting at UNESCO Headquarters on 8 May 2009 on the theme: "Multilingualism, mother tongue and the right to education", focusing on the legal framework.¹ The issue of languages has been addressed within UNESCO on several occasions, including during a thematic debate of the Executive Board, and the Joint Expert Group considered it appropriate to focus on the legal framework of language in education. Indeed, increasing consideration is being given to languages as a vehicle for transmitting culture and to the need to respect the richness of linguistic diversity in today's globalized world. Imparting education in the mother tongue, in official or national languages and through multilingual education have become subjects of critical

¹ The members of the Joint Expert Group, Ms Virginia B. Dandan and Mr Eibe Riedel (members of the United Nations Committee on Economic, Social and Cultural Rights (CESCR)), and Professor Brian Figaji (member of UNESCO's Committee on Conventions and Recommendations (CR)), participated in the meeting. Ambassador Ortigao, former Permanent Delegate of Portugal to UNESCO and member of the Joint Expert Group, could not attend the meeting. The meeting was also attended by Ms Linda King, Director a.i. Division of Basic Education, UNESCO, Mr Kishore Singh (Secretary of the Joint Expert Group), Ms Noro Andriamiseza, Ms Rolla Moumné, Ms Delphine Dorsi, Division of Basic Education, UNESCO and Ms Carolin Schleker of the Office of the High Commission for Human Rights (OHCHR). Representatives from the Permanent Delegations of Portugal, the Republic of Korea, Madagascar, and Hungary to UNESCO also attended the meeting as observers. A more comprehensive version of the report is available on the UNESCO Education Sector's website at: http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/ED/ED/pdf/righteducation_JEG/Report8.doc.

reflection. The Joint Expert Group recognized that when reflecting on these questions, the “legal framework” – at the international as well as the national level – is of crucial importance, particularly as it has not yet been examined holistically and adequately. In view of this, the Secretariat prepared a set of documents for the meeting in consultation with the members of the Joint Expert Group.

International legal instruments

2. The Joint Expert Group emphasized that the principle of non-discrimination, enshrined in the UNESCO Convention against Discrimination in Education and the International Covenant on Economic, Social and Cultural Rights, is key in addressing language issues in education from a legal perspective. It is a legal obligation of Member States to respect the principle of equality of opportunity and not to discriminate on the basis of language in the public education system.²

3. The Expert Group underlined the significance of a broad understanding of the “legal framework”. The key issues are to advance the legal framework and address the legal obligations of States parties. Such a framework should be the basis for the formulation of strategies, policies and programmes. It was pointed out that the States Parties’ reports submitted to the CR and CESCR are not sufficiently critical concerning languages. Given the importance of education in mother tongue and multilingual education, both bodies should be used more effectively.

4. The Joint Expert Group suggested sharing the document on the international legal framework on this topic with Member States of UNESCO, CESCR, other United Nations human rights treaty bodies and all relevant partners. It also took note of the UNESCO preliminary study (181 EX/14) of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages.

5. The members considered cultural, ethnic and linguistic minorities as beneficiaries of the right to education in international human rights law.³ They recalled the importance of ensuring that the rights of minorities to education are given effect in a way that promotes integration and social cohesion in the context of education for all (EFA).⁴ They also discussed the concept of “minority rights” as regards the right to education. In addition, the Joint Expert Group considered the Recommendations of the United Nations Forum on Minority Issues: the Right to Education (December 2008).⁵

² General Comment No. 20 on non-discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2) of CESCR (E/C.12/GC/20), paragraph 21.

³ The normative bases of the right to education of cultural, ethnic and linguistic minorities are laid down in the Convention against Discrimination in Education. Article 5 (1 C) of the Convention provides that minorities have the right to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language; the exercise of this right by the members of minorities should be respectful of the culture and language of the community as a whole and should not be prejudicial to national sovereignty.

⁴ In this regard, the Recommendations of the Forum on Minority Issues to the effect that “[a] minority community should not be denied the right to education because of being a minority as regards access to a nation’s public education establishments. The minorities have the duty to respect culture and language of the country as a whole while having the right to establish and manage their own educational institutions” was recalled. Report of the Independent expert on minority issues, Recommendations of the Forum on Minority Issues: the right to education (15 and 16 December 2008), Human Rights Council, 10th session, Geneva, 5 March 2009, A/HRC/10/11/Add.1 (para. 9).

⁵ Report of the independent expert on minority issues, Recommendations of the Forum on Minority Issues (15 and 16 December 2008), Human Rights Council, tenth session, Geneva, 5 March 2009, A/HRC/10/11/Add.1 (para. 16), notably that “[S]tates should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue”. They also highlighted the recommendation that “[s]chool language regimes for the initial stages of education in State schools should ideally employ the language of the child as the predominant medium of instruction, with a gradual introduction of the State language or dominant local language, if different from that of the child, at a later stage” (para 59).

National normative setting

6. The members of the Joint Expert Group discussed the constitutional and legal bases of the right to education and language of instruction.

7. Mother tongue: The members reflected on the mother-tongue-related obstacles encountered in different countries.⁶ Many families are multilingual. Problems also exist in relation to written languages versus non-written languages. The Joint Expert Group considered it important that the CR and CESCR develop a common approach to deal with the issue of mother-tongue education.

8. The Joint Expert Group reiterated the Operational Definition of Basic Education,⁷ which provides that “Basic education is provided in the mother tongue, at least in its initial stages, while respecting the requirements/needs of multilingualism”.

9. Multilingualism: During discussions on multilingualism, reference was made to the UNESCO Education Position Paper on education in a multilingual world (2003), which sets out three basic principles that were considered to be pertinent in terms of policy formulation.⁸ The Joint Expert Group is of the view that in our globalized world, it is important to promote multilingualism for educational exchange, business, general communication and for the broader strategy of EFA. However, there is no international legal framework that requires States to provide multilingual education as part of the right to education. While UNESCO promotes mother-tongue-based multilingual education in the context of EFA, education is needed in CESCR on this subject.

Enforcement and justiciability

10. Analysis of case law on the right to education and language was presented, demonstrating how different countries have enforced this right. The Joint Expert Group acknowledged the need to use such cases as practical examples for raising greater awareness about how this right might be claimed in various countries. To date, no such analysis has been carried out.

Institutional collaboration between the CR and CESCR

11. The Joint Expert Group reviewed the monitoring mechanisms, reporting procedures and *modi operandi* of both committees and emphasized that existing state reporting mechanisms must be made more effective in the spirit of the EFA strategies for promoting mother-tongue-based multilingualism.

12. The members also discussed the possible implications for the collaboration of the CR and CESCR if the optional protocol to the International Covenant on Economic, Social and Cultural Rights adopted in 2008 enters into force.

13. The Joint Expert Group considered it important that, when the nomination of members of the CR to serve as members on the Joint Expert Group is being considered, the need for continuing membership of the Group should be borne in mind. This can be achieved by selecting one member

⁶ The experience was cited of Madagascar, where many parents prefer their children to learn in English or in French rather than in their mother tongue, as education in the Malgasi language can lead to social disadvantage. The approach in Kenya was also cited: the first language at school is English even if the mother tongue is Swahili. Moreover, Rwanda has recently adopted a policy to make English the official language of instruction.

⁷ The Operational Definition of Basic Education was developed by the Experts' Consultation on the Operational Definition of Basic Education organized on 17 and 18 December 2007 at UNESCO Headquarters. This was in response to the recommendation by the Joint Expert Group for the development of an operational definition of basic education that could be universally accepted and recognized.

⁸ (i) UNESCO supports mother tongue instruction as a means of improving educational quality by building upon the knowledge and experience of the learners and teachers; (ii) UNESCO supports bilingual and/or multilingual education at all levels of education as a means of promoting both social and gender equality and as a key element of linguistically diverse societies; (iii) UNESCO supports language as an essential component of intercultural education in order to encourage understanding between different population groups and ensure respect for fundamental rights.

of the CR Committee who has two years more to serve on the Executive Board and one who has a period of four years to serve on the Executive Board. It is hoped that regional groups will nominate Member States to the CR whose representatives have had previous experience in this field, and it was suggested that a member of the Joint Expert Group from CR should convey this suggestion in writing to the Chairperson of the CR.

14. Finally, the members took note of the decision adopted by UNESCO's Executive Board at its 181st session (181 EX/Decision 28) as regards the overall activities undertaken by the Joint Expert Group; they emphasized the importance of preparing a document that presents a comprehensive overview of such activities and the overall work accomplished by the Joint Expert Group.

Action expected of the Executive Board

15. In the light of the foregoing, the Executive Board may wish to adopt the following draft decision:

The Executive Board,

1. Recalling 162 EX/Decision 5.4, 171 EX/Decision 27, 172 EX/Decision 26; 175 EX/Decision 29, 177 EX/Decision 37, 179 EX/Decision 24 and 181 EX/Decision 28,
2. Having examined document 184 EX/23,
3. Expresses its appreciation of the work of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the monitoring of the right to education;
4. Recognizes the key importance of the theme it addressed at its tenth meeting;
5. Requests the Director-General to consider the suggestions and recommendations made by the Joint Expert Group in document 184 EX/21 for follow-up action;
6. Invites the Joint Expert Group to continue its consultations related to the examination of key issues within its broad mandate regarding the monitoring of the right to education in all its dimensions and to report to it at its 186th session.