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**B. Nineteenth session, 30 November 1998
The right to education (articles 13 and 14 of the International
Covenant on Economic, Social and Cultural Rights)**

I. Introduction

462. On 30 November 1998, the Committee held a day of general discussion on the right to education, as enshrined in articles 13 and 14 of the Covenant (see E/C.12/1998/SR.49 and 50). The Committee had decided, during its eighteenth session, to devote its day of general discussion to the right to education, in connection with the recent inclusion of this question on the agenda of the SubCommission on Prevention of Discrimination and Protection of Minorities as well as of the Commission on Human Rights. Indeed, at its forty-ninth session in August 1997, the Sub-Commission adopted resolution 1997/7 in which it requested one of its experts, Mr. Mustapha Mehedi, to prepare a working paper on the right to education with the purpose of explaining “the content of the right to education, taking account, in particular, of its social dimension and the freedoms it includes and of its dual civil and political rights and economic, social and cultural character”. This document was submitted to the SubCommission at its fiftieth session in August 1998 (E/CN.4/Sub.2/1998/10). The Commission on Human Rights, at its fiftyfourth session, decided to appoint a Special Rapporteur, whose mandate will focus on the right to education (resolution 1998/33). Following this decision, in September 1998 Ms. Katarina Tomasevski was named to this post.

463. Participants in the day of general discussion included:

- Ms. Ruth Bonner, International Baccalaureate Organization;
- Ms. Annar Cassam, Director, UNESCO Liaison Office in Geneva;
- Mr. Fons Coomans, Maastricht University (Netherlands), Department of Public Law;
- Mr. Bertrand Coppens, Regional Representative and Director a.i., European Office, UNDP;
- Mr. Alfred Fernandez, Director General, International Organization for the Development of Freedom of Education;
- Ms. W. Gordon, Director, Section for Primary Education, Division of Basic Education, Education Sector, UNESCO;
- Mr. Paul Hunt, University of Waikato (New Zealand);
- Mr. George Kent, University of Hawaii (United States of America);
- Mr. Miloon Kothari, Habitat International Coalition, Geneva;
- Mr. Mustapha Mehedi, Member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;
- Mr. Patrice Meyer-Bisch, University of Fribourg (Switzerland);
- Ms. Mercedes Moya, American Association of Jurists;
- Ms. Bilge OgunBassani, Deputy Director, Regional Office for Europe, UNICEF;
- Ms. Conchita Poncini, International Federation of University Women;
- Ms. Kaisa Savolainen, Director, Department of Education for a Culture of Peace, Education Sector, UNESCO;
- Ms. Katarina Tomasevski, Special Rapporteur of the Commission on Human Rights on the right to education.

464. The Committee had before it the following background papers:

- (a) State obligations, indicators, benchmarks and the right to education by Paul Hunt (University of Waikata, New Zealand) (E/C.12/1998/11);
- (b) The right to quality education by George Kent (University of Hawaii, United States of America) (E/C.12/1998/13);
- (c) Right to education: survey and prospects by Alfred Fernandez, director-general, and JeanDaniel Nordmann, principal adviser, International Organization for the Development of Freedom of Education (E/C.12/1998/14);
- (d) The right to education by the World University Service (E/C.12/1998/15);
- (e) The right to education as a human right: an analysis of key aspects by Fons Coomans (Maastricht University, Netherlands) (E/C.12/1998/16);
- (f) The right to education in the context of cultural rights by Patrice MeyerBisch (University of Fribourg, Switzerland) (E/C.12/1998/17);
- (g) The right to education by Katarina Tomasevski, Special Rapporteur of the Commission on Human Rights (E/C.12/1998/18);
- (h) Violations of the right to education by Audrey Chapman, Director and Sage Russell, Senior Programme Associate, Science and Human Rights Programme, American Association for the Advancement of Science, Washington D.C. (E/C.12/1998/19);
- (i) The right to education and programmes to remedy inequalities by Ferrán Ferrer (Autonomous University of Barcelona, Spain) (E/C.12/1998/20);
- (j) Considerations on indicators of the right to education by Zacharie Zachariev (E/C.12/1998/21);
- (k) How to measure the right to education: indicators and their potential use by the Committee on Economic, Social and Cultural Rights by Isabell Kempf, Programme Management Officer, United Nations Commission for Latin America and the Caribbean (E/C.12/1998/22);
- (l) Comparative analysis of the right to education by José L. Gómez del Prado (E/C.12/1998/23).

II. Opening remarks

465. The Chairperson of the Committee, Mr. Alston, opened the day of general discussion by welcoming the appointment of Ms. Tomasevski as Special Rapporteur of the Commission, on the right to education, as well as Mr. Mehedi's working paper on the right to education.

466. The Chairperson reiterated his concern about the persistent lack of recognition of economic, social and cultural rights, including the right to education, as human rights, not only at the national level but also in various international entities. At best, they are considered economic and social goals, not rights. He emphasized in particular the lack of visibility of the provision contained in article 14 of the Covenant. Recalling the unique character of this provision (which has no equivalent in other international human rights instruments enshrining the right to education), he deplored that so far not one State party had reported on its implementation.

467. Referring to the numerous calls by the Secretary-General and the United Nations High Commissioner for Human Rights for increased collaboration in the field of human rights among United Nations organs, specialized agencies and the various parts of the Secretariat, Mr. Alston stressed the need to build up a genuine partnership aiming at realizing the right to education as embodied in articles 13 and 14 of the Covenant. This applied equally to the various treaty bodies.

468. The Chairperson also welcomed the forthcoming publication by UNICEF of *The State of the World's Children, 1998*, devoted this year to education. He emphasized that UNICEF was one of the only global bodies that consistently and correctly characterized education as a human right.

III. Education as a human right and the right to education in the context of the indivisibility of human rights

469. The representatives of UNESCO underlined that for 50 years UNESCO had been acting in favour of the realization of the right to education, which was actually its *raison d'être*. Two main dimensions could be identified in its efforts: the work geared towards guaranteeing access to school and the efforts to create an environment conducive to the realization of the right to education. While significant progress had been achieved in relation to the first dimension, many obstacles still had to be overcome in many parts of the world to create a positive school environment. "Factors of resistance" related to the lack of teachers' education, the absence of an "environment to learn", the insufficient number and limited access to textbooks, the gap between the children's own experiences and formally structured education (between "home and school"), the teaching methods, etc. Ms. Gordon emphasized that today the production and distribution of textbooks were currently serious problems in many countries: the private sector considered it not to be profitable and even the World Bank and the IMF had expressed reluctance to provide funding. Moreover, in many poor countries, the book industry in general was hardly ever considered a priority investment area. And beyond textbooks, the publishing industry provided little literature of any type to encourage reading among children.

470. Ms. Gordon noted that fragmentation of approaches and efforts constituted a major obstacle to the full realization of the right to education. She called upon the Committee to explore ways to overcome the problem.

471. Mr. Coppens explained that though UNDP, unlike UNESCO or UNICEF, did not have a particular responsibility or mandate for education, it saw it as a privileged means, along with other social services, to eradicate poverty.

472. In a recent policy document entitled *Integrating human rights with sustainable development*, UNDP had undertaken to address all aspects of its work from a human rights perspective. It was currently endeavouring to translate those principles into practical action at field level, although that at times generated some strains at the government level.

473. UNDP policy on the right to education was contained in its objective of sustainable human development, in the follow-up to the 1990 World Conference on Education for All and in the rightsbased approach to development. The Human Development Report 1997 had included a statistical measure of poverty, the Human Poverty Index, that set the right to education at the centre of the sustainable human development process and provided an insight into the nature of poverty that income measures alone failed to provide. The report had determined that poverty eradication could not be achieved by relying solely on economic growth and macroeconomic stability and concluded that poverty in itself was also a denial of human rights, a statement that had generated some strong opposition.

474. UNDP's poverty eradication programmes focused on the structural inequalities in society and, in the educational field, aimed at free and compulsory education for all. UNDP

considered that education did not necessarily have to be provided through formal schooling, and gave considerable attention to education outside the traditional school setting, which could last throughout life. One vehicle for the delivery of education was the “20/20 initiative” calling for the assignment of 20 per cent of national budgets and 20 per cent of development assistance to the social sector, including education.

475. Success in education programmes was dependent on understanding the reasons why a person lacked schooling and determining the responsibilities of the various partners in the education process. UNDP's financial assistance to basic education was directed to primary education and alternative programmes, early childhood development, basic education for youth and adults, and education through traditional and modern media and social action. Special attention was paid to linking education with sustainable livelihoods, health care and related services, and community development. The education of women and girls remained a central theme of UNDP's support.

476. Ms. OgunBassani introduced her statement by recalling that the right to education was central to the enjoyment of all other human rights; yet, the world had about 850 million illiterate people. Presenting UNICEF's strategy for the realization of the right to education, as contained in the 1998 Annual Report focusing on education, Ms. OgunBassani emphasized that UNICEF wished to focus on clear, limited objectives. The top priority remained the 130 million children who were not now attending any kind of educational establishment. Efforts should concentrate where results could realistically be expected. Immediate action in the five countries where half of the 130 million children lived (India, Bangladesh, Pakistan, Nigeria and Ethiopia) could help to resolve a large part of the problem.

477. UNICEF had defined its goals with respect to the realization of the right to education as follows:

- (a) By the year 2005, eliminate gender disparity in primary education and achieve a second enrolment rate of 80 per cent;
- (b) By the year 2010, have 90 per cent of children in school and ensure that they learn what they need to learn;
- (c) By the year 2015, have all children enrolled in school and remaining there until at least grade 5.

478. While proximity and affordability remained two major obstacles to the enjoyment of the right to education of many children of the world, the lack of political will was the first problem to be overcome.

479. Ms. OgunBassani also mentioned that UNICEF would shortly be launching a political mobilization campaign among the industrialized nations with the aim of creating public awareness about the need for basic education and to bring public pressure to bear to supplement national resources in the poorest developing countries. Financial resources and technical cooperation should be mobilized for the strict fulfilment of the identified goals and targets.

480. Ms. Tomasevski pointed out that the Committee was very well placed to examine indivisibility, resource allocation and non-discrimination in the context of the right to education in a manner that avoided the fragmentation of the existing debate, which was largely a reflection of the diversity of the instruments underpinning that right.

481. Reacting to the introductory statements by the specialized agencies, several members of the Committee expressed the opinion that the responsibility for the realization of the right to education lay primarily with national Governments, emphasizing that many States violated their obligation to devote a sufficient portion of the national budget to education. Members stressed the need for the Committee to take a stand on this issue.

482. Mr. Meyer-Bisch stressed that if a country did not enjoy the necessary financial resources to implement the right to education for all, it had the obligation to accept assistance from partners. He emphasized, though, that it was mainly the political price of the right to education for all, rather than resource mobilization, that frightened many Governments, since implementing the right to education presumed the provision of other, concomitant cultural rights, such as linguistic freedom, minority rights, cultural identity and access to cultural properties. The right to education could not be ensured without taking into consideration its important cultural dimensions. The right to education could be implemented more efficiently only by adopting more complex approaches than was currently the case, based on the recognition of all cultural rights.

483. Other experts and representatives of specialized agencies reaffirmed the need to recognize cultural rights and to relate them to the education system. Addressing Mr. Sadi's concern about the impact of globalization on the content of the textbooks and the curricula taught in public schools, Mr. Hunt said that a distinction needed to be made between rights being uniform in their application ("flattening out diversities") and rights being universal ("incorporating universal values"). Article 15 of the Covenant could serve as an important antidote to the tendency to homogenize and iron out differences and diversity.

484. Mr. Kent noted that highly centralized funding structures tended not to accommodate diversity. Conversely, if the centres of decision-making were diversified, more possibilities would exist for accommodating diverse cultures and other diverse interests.

IV. Cooperation among United Nations organs and specialized agencies, including the human rights treaty bodies: partnership for the realization of the right to education

485. In view of the current fragmentation of efforts aimed at the realization of the right to education, most representatives of specialized agencies and experts called for increased cooperation among the specialized agencies and the human rights treaty bodies, as well as with other partners (such as individual experts and non-governmental organizations). Emphasis was put on the urgent need to strengthen collaboration at the national level. Several participants urged the Committee to take the lead and/or act as a catalyst for exploring ways to develop further such cooperation.

486. A number of concrete proposals were formulated by participants, including:

- (a) To build up institutional mechanisms to ensure full cooperation between the Committee and its possible partners, by exploring ways suggested by the Covenant itself (e.g. in arts. 11, 18 and 23) (Mr. Hunt);
- (b) To examine the goals and targets established by UNICEF to see how and where they might be used in the Committee's ongoing dialogue with States parties (Ms. Ogun-Bassani);
- (c) To focus on collaboration at the national level to implement article 14 of the Covenant (Ms. Miller);

- (d) To set up adequate cooperation mechanisms for identifying relevant indicators and benchmarks to monitor the right to education;
- (e) To increase cooperation with the Committee on the Rights of the Child, including by inviting a member of the Committee on the Rights of the Child for the next day of general discussion (if the theme was of common interest), by drafting a joint general comment on the right to education, and by setting up a small working group, composed of members of both Committees, to revise and harmonize the guidelines for the drafting of States parties' reports with respect to the right to education (Mr. David);
- (f) To set up a working group composed of members of various human rights treaty bodies to harmonize the guidelines for the drafting of States parties' reports, as far as matters of common competence were concerned (Mr. Kent);
- (g) To undertake a study aiming at the integration of the various views adopted by other treaty bodies on the issue of discrimination in the enjoyment of the right to education (Ms. Tomasevski).

V. Relevance of the normative approach

487. Mr. Alston explained that this part of the debate was about the question whether education had to be considered as a human right or a fundamental objective of economic and social policies and the difference which the use of the respective terminology could make.

488. Whereas Ms. Tomasevski noted that the World Declaration on Education for All (Jomtien Declaration) 9 contained no human rights wording, the representatives of UNESCO emphasized that the Jomtien Declaration had contributed to defining the content of the right to education. Ms. Savolainen noted that the normative approach had been interpreted as a “top-down” process, from which a certain distance was taken nowadays.

489. The Chairperson underlined that this was one possible interpretation, but that it should be borne in mind that all human beings, in particular children, were the subjects of the human right to education, which entitled them to claim its realization. He added that he felt, along with Ms. Tomasevski, that the “Jomtien approach” could not be qualified as a human rights approach, even if there were a mention of the phrase right to education towards the end of the Declaration.

VI. Core content of the right to education

490. There was general agreement with Mr. Coomans, according to whom four elements made up the core content of the right to education as enshrined in article 13 of the Covenant; violation of one or more of those elements by a State would entail the right losing its material and intrinsic value.

491. First, the essence of the right to education meant that no one shall be denied a right to education. In practice, this meant an individual right of access to available education or, in more concrete terms, the right of access to the existing public educational institutions on a non-discriminatory basis.

492. A second element would be the right to enjoy basic (primary) education in one form or another, not necessarily in the form of traditional classroom teaching. This would include basic education for adults (literacy courses, basic professional training). Primary education must be compulsory and free. This core element would also mean that no one, for example

parents or employers, could withhold a child from primary education. A State had an obligation to protect this right from encroachments by third persons.

493. A third element was free choice of education without interference by the State or a third person, in particular but not exclusively with regard to religious or philosophical convictions.

494. The fourth element would be the right of national, ethnic or linguistic minorities to be taught in the language of their choice, in institutions outside the official system of public education. This, according to Mr. Coomans, did not imply that a State must allow the use of this language as the only medium of instruction, nor that the State had the obligation to fund those institutions.

495. Mr. Riedel and Mr. Alston emphasized that, while they agreed with such core content, it could not be interpreted as a standard inferior to the content of article 13, paragraph 2, of the Covenant, which was not limited to primary education.

496. Mr. Mehedi expressed the wish to see academic freedom added to the core content as defined above, insofar as primary, secondary or tertiary education was concerned.

497. Ms. Tomasevski said that it was of paramount importance to overcome the reluctance of parents to send their daughters to school and that she would add an element dealing explicitly with non-discrimination based on gender. She would even go further, by providing that the State should subsidize girls' education and take positive actions in that respect. In poor countries, girls' education should not only be free, but should also be supported by incentives to parents.

VII. Nature of State obligations, indicators and benchmarks

498. Mr. Hunt pointed out that there remained considerable uncertainty about the precise nature and extent of some of the legal obligations arising from the Covenant. These doubts persisted for a number of reasons, one being the wording of article 2, paragraph 1, which included some notoriously elusive phrases and concepts, two of which had particular relevance to indicators and benchmarks: States parties undertake to “achieve progressively” the full realization of the enumerated rights to “the maximum of their available resources”. Both phrases had two crucial implications. First they implied that some (but not necessarily all) States parties' obligations under the Covenant might vary from one State to another. Second, they implied that, in relation to the same State party, some (but not necessarily all) obligations under the Covenant might vary over time. These variable elements of States parties' obligations under the Covenant contributed to the sense of uncertainty which remained a feature of international economic, social and cultural rights.

499. However, an examination of the Covenant and of the Committee's jurisprudence disclosed three interrelated and overlapping dimensions to States parties' legal obligations:

(a) Obligations applying uniformly to all States parties. These obligations were not subject to notions of progressive realization and resource availability; they applied uniformly around the world to all States parties whatever their stage of economic development. They included, for example, the principle of nondiscrimination. Thus, if a State party excluded girls from any State school, it breached the Covenant;

(b) A minimum core content for each right. According to the Committee, it was incumbent upon every State party to ensure the satisfaction of, at the very least, minimum essential

levels of each right set out in the Covenant. Without minimum core obligations, the Covenant was largely deprived of its *raison d'être*. Much work still had to be done to define the minimum core content of each right. Once defined, however, it should apply to all States parties whatever their stage of economic development. In other words, the minimum core content would not be subject to the notions of progressive realization and resource availability;

(c) The variable dimension. Because of the progressive realization and resource availability provisions of article 2, paragraph 1, the precise content of at least some State obligations was likely to vary from one State to another and over time in relation to the same State.

500. Human rights indicators and benchmarks could help all interested parties identify and monitor these variable or shifting State obligations.

501. There was a consensus among the members of the Committee on the urgent need to set up a working group that would make use of all available expertise to formulate such indicators and benchmarks. Several participants stressed that such an exercise should take full account of all aspects of the indivisibility principle. Once identified, the indicators and benchmarks should be adequately incorporated into the Committee's guidelines for the drafting of States parties' reports. Mr. Texier emphasized that due consultation with all interested parties, in particular with the specialized agencies, was of paramount importance, since it would be disastrous for various United Nations organs and agencies to use different parameters to monitor the realization of the right to education. Ms. Poncini requested that NGOs be included in the working group on indicators and benchmarks.

502. It was felt by some participants that Ms. Kempf's written contribution was particularly valuable as a starting point for the technical work on indicators and benchmarks.

503. Ms. Ogun-Bassani explained that UNICEF considered that monitoring the achievement of its goals for the realization of the right to education would be fairly simple. Basically, 4 of the 18 indicators identified during the World Conference on Education for All would be used, namely:

- (a) The net enrolment ratio (NER), i.e. the enrolment in primary education of the official primary school age group as a percentage of the corresponding population;
 - (b) The NER gender breakdown;
 - (c) The percentage of pupils having reached at least grade 4 of primary schooling who mastered a set of nationally defined basic learning competencies;
 - (d) The survival rate to grade 5, i.e. the percentage of the cohort actually reaching grade 5.
- She added that such data would be collected in all States and made available by electronic means, including the Internet, within two years.

504. Ms. Gordon emphasized that traditional indicators should not be the only focus of the Committee. All factors of progress should be taken into account when measuring the realization of the right to education. These should include, for example, the existence and the success of school health programmes, the availability and affordability of educational materials, teachers' conditions of service, the quality of curricula, the access of minorities to education consistent with their human rights, the enrolment of disabled children, etc.

505. Ms. Tomasevski said that the Committee could play a pioneering role in creating human rights indicators by formulating questions that would generate data that did not currently exist. One such area was the freedom of choice within national education systems. Another

related to data on children who should be at school but were excluded, often as a result of the application of internationally prohibited grounds of discrimination: girl children, minority and indigenous children and children of asylum seekers. Available enrolment data also failed to capture children over the age of 11, whose right to primary education, provided for under the Covenant, clearly should extend beyond that age.

VIII. Financial aspects

506. Most of the participants reaffirmed that the State had a primary responsibility to provide for free and compulsory primary education and that no compromise to this principle was acceptable. The State, however, could decide to comply with its obligations in partnership with other institutions.

507. As regards higher levels of education, members of the Committee emphasized that the basic standard was the one of progressive introduction of free education, as provided for in article 13 of the Covenant. This would imply that any step back taken by a State, for example by substantially increasing tuition fees or by introducing fees in public schooling institutions so far free of charge, would constitute a violation of the Covenant.

508. Ms. Tomasevski stressed the need to design a human rights strategy adapted to the process of resource allocation at the macro level, suitable for influencing investment in education as well as distribution within the education sector. In that regard, the combination of liberalization, privatization and globalization which characterized the economic policy of the 1990s had prevented the emergence of sustained political pressure in favour of investment in primary education, mainly because it was a model that aimed at achieving sustained economic growth without relying on human resources. Furthermore, resource allocation was a political process, an exercise of political rights from which primary schoolchildren and their parents were excluded. In contrast to primary schoolchildren, who exercised no political rights, students and lecturers in higher education were concentrated in capitals and main cities and constituted an articulate militant political constituency, which ensured that their interests were given high priority. The allocation of educational resources clearly reflected that situation. Thus, there was scope for the Committee to shift the debate on the right to education by focusing on the indivisibility of rights in the context of the interplay between the economic and political rights of different groups.

509. Ms. Ogun-Bassani said that according to research conducted by UNICEF and the World Bank, it would cost approximately US\$ 70 billion to get the 130 million children deprived of education into primary schools. In relative terms, that was not a very large sum of money - more or less the equivalent to what European countries spent on ice cream in 10 years. The international community had the collective responsibility to convey the message that such a goal was easily attainable. At present, a maximum of 4 per cent of official development assistance was allocated to basic education. Perhaps, in the catch-up phase, the developed world might consider increasing that percentage.

510. Ms. Cassam suggested that the Committee, because of its prestige and its independence, could play a specific role in calling for increased resource mobilization, especially from the World Bank and IMF, for countries facing acute difficulties such as the highly indebted countries and those undergoing the strictest structural adjustment measures. Some countries currently had to allocate more resources for their debt service than for education and health together. She deplored the fact that resource allocation and financial decisions were

sometimes motivated by ideological choices which were opposed to the principle of universal, free and compulsory education even at the primary level.

511. Mr. Hunt noted that one of the biggest challenges to the realization of economic, social and cultural rights today related to the attitude of international financial institutions with regard to the respect of international human rights obligations. Two dimensions of accountability should be taken into consideration in this respect: that of State parties, as far as their participation in those institutions was concerned, and that of the institutions themselves.

512. There was a consensus that the new design for primary education as a private investment proposed by Mr. Kent in his background paper (E/C.12/1998/13) could be detrimental to the rights protected under the Covenant and should only be seen as an additional means of financing education, beyond the threshold of free primary education to be provided by the State. Mr. Texier commented that education could not and should not be treated as a commodity. Furthermore, Mr. Kent's proposal was based on the assumption that State education was necessarily of poor quality whereas experience had so far attested to the good quality of education in most countries.

IX. Conclusion

513. Concluding the discussion, Mr. Alston stressed the two main recommendations addressed to the Committee by participants: first, the need to explore ways and means to reinforce cooperation with all interested partners, especially the United Nations organs, specialized agencies and treaty bodies, with a view to avoiding overlap and to promote cross-fertilization; second, the need to develop concrete proposals to use article 14 of the Covenant as a basis to translate such cooperation into practice.

514. The Chairperson also pointed out that the discussion had provided an opportunity to shed light on a number of aspects of the right to education, especially as far as it related to the principle of the indivisibility of human rights.