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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Joint written statement\* submitted by Istituto Internazionale Maria Ausiliatrice (IIMA), the International Volunteerism Organization for Women, Education, Development (VIDES), the Association Points-Cœur, Edmund Rice International, the International Federation of University Women (IFUW), the International Catholic Child Bureau (ICCB), the Dominicans for Justice and Peace (Order of Preachers), Organisation internationale pour le droit à l'éducation et la liberté d'enseignement (OIDEL), Associazione Comunità Papa Giovanni XXIII, Apprentissages Sans Frontières (ASF), the Teresian Association and the Marist International Solidarity Foundation (FMSI), non-governmental organizations in special consultative status; the Soka Gakkai International (SGI) and Mouvement contre le Racisme et pour l'Amitié entre les Peuples (MRAP), non-governmental organizations on the roster**

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 May 2013]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## The justiciability of the right to education

We welcome the latest report of the Special Rapporteur on the Right to Education dedicated to the justiciability of the right to education.

The effective implementation and the full enjoyment of the right to education for all requires Member States to proactively take necessary actions as well as refrain from interfering with appropriate exercise of this right.

We uphold the view that the right to education should be justiciable through judicial and quasi-judicial mechanisms at national level for which Member States are accountable in their fulfilment of applicable international obligations regarding the implementation of the right to education.

International and national case law have demonstrated that judicial systems can play an important role in monitoring the progressive realisation of the right to education, and also in ensuring remedies for victims of violations. The Treaty Bodies, such as the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC)<sup>1</sup> have always sustained the justiciability of economic, social and cultural rights and the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights attests to this viewpoint, allowing individuals to resort to the complaint procedure. Prior to the adoption of the aforementioned Optional Protocol, in its contribution submitted at the 1993 Vienna World Conference on Human Rights, the CESCR observed as follows:

“States Parties should, *inter alia*, “establish appropriate national and local mechanisms by which they and other relevant actors can be called to account in relation to situations in which the enjoyment of economic, social and cultural rights is clearly being denied. It has often been suggested that these rights are not justiciable, by which it is meant that they are lacking in any elements which might be susceptible to determination by the courts. It is clear, however, that many and perhaps all of the rights do have at least some elements which are already, in the law and practice of some States, justiciable. [...]”<sup>2</sup>.

Moreover, the CESCR has clearly affirmed and reiterated in its recommendations to States Parties<sup>3</sup> the justiciability of economic, social and cultural rights in which the right to education is included.

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<sup>1</sup> See, CRC General Comment No.5, “Enjoyment of economic, social and cultural rights is inextricably intertwined with enjoyment of civil and political rights. [...] the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable” (para.6) and “as noted in paragraph 6 above, the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable. It is essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective” (para.25).

<sup>2</sup> UN Doc., A/ CONF.157/PC/62/Add.5 (March 26, 1993) World Conference on Human Rights, Preparatory Committee Fourth Session, 19-30 April 1993, “Status of Preparation of Publications, Studies and Documents for the World Conference” (paras.16-17).

<sup>3</sup> E.g., UN Doc., E/C.12/POL/CO/5 (2 December, 2009), Committee on Economic, Social and Cultural Rights, Forty-third session, “Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights, Poland”, para.8, “The Committee is deeply concerned that the State party still views the Covenant as programmatic, aspirational and not justiciable. The Committee remains concerned that the State party has not yet taken the necessary measures to ensure that the Covenant is given full

The first concrete step to take is to formulate the definition of State's obligations and establish clear criteria and indicators to identify violations of the right to education. The vagueness of the legal framework regarding the right to education at national level is a major factor in the judicial difficulty of determining whether a violation of the right to education has occurred.

We call upon Member States to ensure at national level that the right to education is admitted as justiciable in the jurisdiction of existing courts and that additional judicial or quasi-judicial mechanisms are established if they are needed. We recognise that introducing the justiciability of the right to education in certain legal systems would be a challenging effort in many countries, particularly in those where this would be a novelty, in terms of interpretation and application in judicial and quasi-judicial proceedings at the domestic level. In order to properly address challenges that justiciability might imply, we encourage Member States to put in place integrated efforts involving lawyers, judges and academics and for their expertise and counselling to be provided to judicial courts in dealing with alleged violations of the right to education.

General Comments and recommendations issued by the CESCR should primarily be taken into account in these domestic efforts of interpretation and application of the right to education. The entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the consequent work of the CESCR to consider individual complaints on alleged violations will constitute a precious opportunity for clarification on the scope of the right to education as enshrined in the international human rights legal framework. In this regard, the provision of a specific training for lawyers, judges and professionals involved in judicial and quasi-judicial proceedings to address violations of the right to education needs to be integrated in their pre-service and in-service training process in order to ensure effective and adequate enforcement of the right to education.

While recognising the importance of establishing judicial and quasi-judicial systems for addressing violations of the right to education, we underline that this measure alone is not sufficient to ensure the justiciability of the right to education. There are several factors that might discourage victims of violations from bringing their cases before a judicial or quasi-judicial competent body. Ignorance of the existence of such possibility, general distrust in the rule of law and a lack of financial resources are some of the most common obstacles hindering in practice legal recourse to enforce the right to education, especially among vulnerable groups. States should, therefore, pay special attention to develop adequate awareness and disseminate relevant information in order to enable victims to seek and access judicial or quasi-judicial remedies. In this regard, civil society actors including NGOs have a vital role to play in helping implementing the right to education and its justiciability.

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effect in its domestic legal order, especially in the light of the decision of the Supreme Court in 2000 to the effect that the Covenant provisions could not be invoked by individuals before national courts. The Committee reiterates its position that all the Covenant rights are fully justiciable and urges the State party to take the necessary measures, in line with its general comment No. 9 on the domestic application of the Covenant, to ensure that the provisions of the Covenant are made justiciable and that effective remedies are available to victims of violations of economic, social and cultural rights".

In many forms of human rights violations and injustices, poverty is often a surrounding factor of such violations or the injustice itself. Therefore, free and public legal aid should be ensured to victims belonging to the most vulnerable and marginalised sectors of society<sup>4</sup>.

In conclusion, the judicial enforcement of human rights is fundamental. A right without a remedy may not make it a right in the first place. While the judicial enforcement is not the only way of protecting the right to education, it has a clear role in providing judicial remedies in cases of evident violations. Ensuring the right to education for all is a foundation of national development and the prevention of human rights violations. Taking necessary measures for this both within the international human rights standards and in the national justiciable framework is now essential in all countries.

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<sup>4</sup> See, the report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, submitted in accordance with Human Rights Council resolution 17/13, in UN Doc., A/67/278 (9 August 2012).