

**Intervention at the UN Forum on Minority Issues, 15-16th
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Topic: Right to Education

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Madame Chair, thank you for giving me the word.

I work for the Right to Education project, housed with ActionAid International and in partnership with the Global Campaign for Education and Amnesty International. Through a website (www.right-to-education.org), research and a wide network we try to promote social mobilisation and legal accountability on education rights.

The following thoughts are offered in my personal capacity as invited expert to the Forum on Minority Issues.

My reflections on Professor Thornburry's very fine Draft Recommendations will be three-fold, all 3 at a slightly more general level.

My first point: A grateful acknowledgement that the recommendations reflect the highly useful framework of the 4 As. Namely: Availability, Accessibility, Acceptability and Adaptability. And this is quite clear if you read through them. However, I would encourage, if possible, to go further and to frame even more systematically and rigorously the issue in the language of these 4 As. As done in for example General Comment 13 from the CESCR. This should go both for these recommendations themselves, and for what action these recommendations recommend: i.e new laws and policies at the national level. The 4 As are simply the best way of cutting the cake. And specifically in the case of education and minority issues,

the latter 2 As, Acceptability and Adaptability, are extremely useful as entry points.

My second point, slightly more contentious: Is an encouragement to further highlight the existing international legal frameworks around the right to education. These Recommendations must clearly list the legal and normative tools we have, must clearly say that these are the tools we need and that we *do not need any more*, but that we must be better at interpreting them and at using them and their mechanisms.

Apart from the laws and constitutions at the national level and the ILO and UNESCO conventions for normative inspiration, these existing legal frameworks that I primarily refer to are those that has:

- a proven record of working
- a clear, transparent, useful and non-politicised mechanism of complaint and examination in public, and
- a large base of ratification, in the case of the international framework.

We all know who these are! Principally the two Covenants, plus CEDAW, CERD, CRC and 3 existing regional frameworks, all 3 of which has courts (noting that the remaining regions has none: the Arab HR Charter gives no serious guarantees and the Asia-Pacific region has no mechanism at all – an issues which we as civil society must continue to pressure the involved governments about).

How do we get better at using them? By testing them in the national, regional and international courts, thus challenging governments. We, as the UN, as NHRI and as civil society must play that role. And use the results, in campaigning around litigation, in naming and shaming, for judicial review and for coming together around shadow reporting to the above committee procedures and to the new Universal Periodic Review(UPR) process.

I say this for two reasons:

- First: because the right to education (as perhaps opposed to other ESC right) is fairly easily justiciable in these courts, using these

national, regional and international instruments. We must therefore also use these opportunity that this affords directly in the specific cases of education and minority issues (be it segregation, language (though here, eg CRC art. 30, still lacking in provisions on the language of instruction), textbooks, identity, cultural heritage, life opportunities and dignity etc etc).

- My second reason for saying this: because the right to education (and non-discrimination) is far far more developed than that of minority rights. Minority rights have few serious binding conventions. If anyone harbours ideas that the present recommendations or other such documents in time should lead to a more binding convention, then I should like to question these ideas at the outset.

This is primarily, and arguably, because it will not be possible to get good new legislation on an issue as contentious as minority rights – our efforts are much better used other where! There may be many (well-meaning) declarations and bodies in for example Europe, with the Council of Europe and others, but these will not easily be translated into other geographic settings, even if they ideally should be. Simply because few governments would agree to it.

Thus, we will not reap the benefits of this justiciability if we produce more law. We only get there by producing more *case* law.

Therefore, and although these draft recommendations do not contradict this view, I believe it should

- more systematically list existing key instruments and articles; [Esp.: ICCPR art 27; ICESCR art 2(2), 13 and 14; CRC art 28 and 29 and in particular art 30 (though it fails to mention the right to be taught in your own language). Additionally, the following should be listed: Latin American San Salvador protocol art 13 (5); the two African charters, articles 17 and 11 respectively; the

European Convention, art 14 and art 2 of the First protocol].

- and more loud and clear speak to the treaty body committees
- all present here today – to give further importance to this issue in their engagement with states and in their examination of state reports and ensuing concluding recommendation.

The new Optional Protocol to the Covenant on ESC-Rights is a brilliant new opportunity in this regard, and we must press for its universal ratification as soon as possible.

A third point is that these recommendation could perhaps reflect further the well-documented role of esp. the IMF (and World Bank) in hindering the enjoyment of the right to education: when public wage bill caps and other conditionalities are imposed, no new teachers can be hired and adequately trained, which of course affects the education of minorities much harder: they are often those on the outskirts of the system already and they need bi-lingual and other more specialised teachers. In general it is very important that binding budget allocations (as in the case of Brazil and Indonesia etc) are written into national constitutions and national law to become justiciable as well.

THANK YOU

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