



Supreme Court of the Philippines

**OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS
COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES**

in cooperation with the

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DEPARTMENT OF FOREIGN AFFAIRS OF THE PHILIPPINES (DFA)
ASEAN LAW ASSOCIATION (ALA)
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Preliminary report of the Special Rapporteur

1. Bilateral aid for education
2. Public expenditure on education in relation to GNP
3. Primary education: specific human rights guarantees
4. Gender imbalance in net enrolment in primary school
5. Percentage of primary school teachers who are female
6. Compulsory education

Introduction

1. The mandate of the Special Rapporteur on the right to education was defined by the Commission on Human Rights in its resolution 1998/33 of 17 April 1998 as follows:

"(i) To report on the status, throughout the world, of the progressive realization of the right to education, including access to primary education, and the difficulties encountered in the implementation of this right, taking into account information and comments received from Governments, organizations and bodies of the United Nations system, other relevant international organizations and non-governmental organizations;

"(ii) To promote, as appropriate, assistance to Governments in working out and adopting urgent plans of action, wherever they do not exist, to secure the progressive implementation, within a reasonable number of years, of the principle of compulsory primary education free of charge for all, bearing in mind, inter alia, levels of development, the magnitude of challenge and efforts by Governments;

"(iii) To take into account gender considerations, in particular the situation and needs of the girl child, and to promote the elimination of all forms of discrimination in education;

"(iv) To make his or her reports available to the Commission on the Status of Women whenever they concern the situation of women in the field of the right to education;

"(v) To develop a regular dialogue and discuss possible areas of collaboration with relevant United Nations bodies, specialized agencies and international organizations in the field of education, inter alia, United Nations Educational, Scientific and Cultural Organization, United Nations Children's Fund, United Nations Conference on Trade and Development, and United Nations Development Programme and with international financial institutions, such as the World Bank;

"(vi) To identify possible types and sources of financing for advisory services and technical cooperation in the field of access to primary education;

"(vii) To ensure, to the extent possible, coordination and complementarity With the work carried out in the framework of Sub-Commission resolution 1997/7, in particular the working paper on the right

to education by Mr. Mustapha Mehedi. "

2. This preliminary report covers the first four months of the Special Rapporteur's work, (August to December 1998). Due to this limited time, the Special Rapporteur did not deem it useful to solicit information from Governments through some type of general request for information or a questionnaire. She thought that a great deal of time and effort would be saved if she surveyed the information already available within the United Nations system, included the findings in her progress report, and then sought feedback in the form of additional information, comments and suggestions from Governments and other actors identified by the Commission.

3. The Special Rapporteur has started analysing the nature and scope of the right to education in this preliminary report by focusing on the corresponding governmental obligations. Her approach is to discuss these obligations on two levels: on the level of individual States as is customary, and also on the level of intergovernmental structures within which Governments act collectively. The latter raises important and, as yet, unanswered questions about the status of human rights within policies and practices of international development finance agencies and, in a broad sense, within international economic and fiscal policies. Her preliminary analysis of educational strategies focuses on the identification and elimination of obstacles - especially financial - to the realization of the right to education. She plans to deepen and broaden this analytical approach in her progress report. Her objective is to mainstream human rights by integrating the right to education into educational strategies and monitoring mechanisms.

4. The Commission emphasized the need to collaborate with the organizations and bodies of the United Nations system involved in the field of education and regional organizations as well as non-governmental organizations. The Special Rapporteur has therefore started contacting all relevant actors with a view to establishing collaboration.

5. The Special Rapporteur had planned to attend the Symposium on Human Development and Human Rights in Oslo on 2-3 October 1998 but was unfortunately prevented from participating and could only submit a written contribution. She attended a part of the 1998 - Innocenti Global Seminar on Education: Basic Education: A Vision for the 21st Century held at the UNICEF International Child Development Centre, Florence, on 27-30 October 1998, and took part in the general discussion on the right to education by the Committee on Economic, Social and Cultural Rights on 30 November 1998. That was followed by her consultations with the Office of the United Nations High Commissioner for Human Rights on 2-3 December 1998. She will report on her subsequent activities at the Commission's fifty-fifth session.

6. The Commission attached priority to primary education, with the explicit objective to contribute to the attainment of compulsory primary education free of charge for all as required by international human rights law. This preliminary report deals only with primary education. The Special Rapporteur plans to include in her subsequent reports also secondary and tertiary education and, if the Commission so wishes, also pre-primary education, maintaining the focus on primary education.

7. Human rights education has been explicitly addressed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the context of the Decade for Human Rights Education, including in the working paper by Mr. Mustapha Mehedi. / Sub-Commission on Prevention of Discrimination and Protection of Minorities, "The realization of the right to education, including education in human rights" (E/CNA/S/ub.2/1998/10 of 3 June 1998). Working Paper presented by Mr. Mustapha Mehedi. / In order to prevent duplication of anything that is already being done, the Special Rapporteur is not addressing issues dealt with therein and plans to take part in the follow-up to this Sub-Commission's initiative so as to ensure coordination of efforts.

8. This preliminary report begins with a brief overview of the work carried out within the United Nations system to enhance access to primary education. An emphasis is on the differences in terminology and underlying concepts and approaches, and the consequent need for the articulation and mainstreaming of the human rights approach to education. The overview ends by highlighting the increasing recognition of the financial obstacles to access to primary education, which serves as a link to the second part of the report, which presents a scheme for the analysis of governmental human rights obligations. One important dimension of education is singled out in the third part: the

requirement to make primary education compulsory has been translated into domestic law by many more States than the right to education. Compulsory education, even if all-encompassing, does not necessarily translate into the realization of the right to education, however, a simple but crucial question - what does full realization of the right to education entail? – will thus orientate the work of the Special Rapporteur.

9. Gender considerations have been singled out by the Commission to merit particular attention and the Special Rapporteur has followed the Commission's emphasis by incorporating gender considerations into the body of the report rather than adding them as a separate section at the end.

I. WORK ON EDUCATION WITHIN THE UNITED NATIONS SYSTEM

10. As one person, the Special Rapporteur cannot possibly replicate even a small part of the work done by large international actors like UNESCO or UNICEF or the World Bank. She has interpreted her mandate to be intended to summarize for the Commission results of their work from the human rights perspective and to contribute to their work by furthering the clarification of the right to education so as to encourage their involvement in its further promotion.

11. The Special Rapporteur has established contacts with relevant bodies within the United Nations to familiarize herself with their on-going work as a basis for planning future collaboration. She is planning meetings with UNESCO in January 1999 and with UNICEF, UNDP and the World Bank in February 1999 so as to be able to supplement this report orally at the Commission's 55th session.

A. Creating a common language

12. The substantive mandate of the Special Rapporteur requires a regular dialogue with relevant United Nations bodies. Its implementation constitutes a considerable challenge because dialogue is impossible without a common language, while such a common language needs to be created. Linguistic variety prevails in the field of education and seems to be increasing. Working towards standardization of educational terminology and statistics on the basis of the right to education will constitute an important part of the Special Rapporteur's work, with the aim to develop strategies and indicators for the realization of the right to education.

13. The prevailing linguistic variety reflects different visions of what education should be. Education can be treated as a means for increasing the individual's earning capacity or for lowering women's fertility rates. Human rights law specifies the purpose and objective of education, increasingly calling for the mainstreaming of human rights throughout the contents and process of education. From the human rights viewpoint education is thus an end in itself rather than merely a means for achieving other ends. Some economists may, however, define education as efficient production of human capital and classify all its human rights dimensions as externalities. A definition of people as human capital obviously differs from defining people as subjects of rights. The contrast between the human rights and human-capital approaches is best illustrated by taking children with physical and learning disabilities as an example. The former may be excluded from school because providing wheelchair access, for example, might be deemed too expensive; the latter may be excluded from schooling because meeting their learning needs is deemed not to yield a sufficient marginal return on investment. This type of reasoning obviously challenges the very assumption of human rights, namely the equal worth of all human beings. The Special Rapporteur therefore attaches a great deal of importance to emphasizing differences between education and the right to education so as to create a background for advocating changes within education aimed at conformity with the human rights requirements.

14. Among economists, some might classify governmental funding for education as expenditure, others as investment. Both economists and lawyers may, explicitly or implicitly, define education as