



Swiss Initiative to Commemorate the 60th Anniversary of the UDHR

Protecting Dignity: An Agenda for Human Rights

RESEARCH PROJECT ON PREVENTION:

“Prevention is Better than Cure: The UN and Human Rights Education”

By Paula Gerber, Monash University, Australia

JUNE 2009

The year 2008 marked the 60th Anniversary of the Universal Declaration of Human Rights. To commemorate this occasion, and in order to make a meaningful contribution to the protection of human rights, the Swiss Government decided to launch "An Agenda for Human Rights". The initiative aims to explore new ways of giving human rights the weight and place they deserve in the 21st century. It is designed as an evolving and intellectually independent process.

The text *Protecting Dignity: An Agenda for Human Rights* was authored by a Panel of Eminent Persons, co-chaired by Mary Robinson and Paulo Pinheiro. This *Agenda* and the Swiss Initiative are designed to achieve two objectives: firstly, to set out some of the main contemporary challenges on the enjoyment of human rights, and secondly, to encourage research and discussion on a number of separate topics linked to the *Agenda*. These include: Human Dignity – Prevention – Detention – Migration – Statelessness – Climate Change and Human Rights – the Right to Health – and A World Human Rights Court.

The project is sponsored and financed by the Swiss Federal Department of Foreign Affairs. The Ministry of Foreign Affairs of Norway and the Ministry of Foreign Affairs of Austria have actively supported the project. The Geneva Academy of International Humanitarian Law and Human Rights is responsible for the coordination and organisation of the Initiative.

WWW.UDHR60.CH

Prevention is Better than Cure: The UN and Human Rights Education

Research Project for the Geneva Academy of International Humanitarian Law and Human Rights

October 2009

Submitted by:
Dr Paula Gerber
Deputy Director
Castan Centre for Human Rights Law
Law Faculty
Monash University
Australia



Abstract

For over 60 years, human rights education (HRE) has been a focal point of the UN's efforts to promote respect for human rights. It seems that the UN recognises the potential for HRE to play a significant role in the prevention of human rights abuses. This paper examines the methods adopted by two UN bodies to monitor and promote HRE. In particular, the approach of a treaty committee (the Committee on Economic, Social and Cultural Rights), is contrasted with the approach of an inter-governmental body (the new Human Rights Council), to determine whether the tactics of these different UN organs are consistent or conflicting. The paper concludes with some recommendations about how the UN might reform its practices regarding the promotion of HRE in order to more effectively use HRE as a preventive tool.

Table of Contents

		Page
Chapter 1	Prevention is Better than Cure	1
Chapter 2	Provenance of HRE within the UN	9
Chapter 3	Human Rights Education and the UN Committee on Economic, Social and Cultural Rights	20
Chapter 4	Human Rights Education and the UN Human Rights Council	41
Chapter 5	Conclusion and Recommendations	64

Chapter 1 – Prevention is Better than Cure

- 1. Introduction**

- 2. The UN’s view of HRE as a Tool for Preventing Human Rights Abuses**
 - 2.1 General Comment No. 1 from the Committee on the Rights of the Child**

 - 2.2 Plan of Action for the UN Decade for Human Rights Education**

 - 2.3 Plan of Action for the First Phase of the World Programme for HRE**

- 3. Conclusion**

*'If you are thinking a year ahead – plant seeds.
If you are thinking 10 years ahead – plant a tree.
If you are thinking 100 years ahead – educate the people.'*¹

1. Introduction

The Medical profession has long recognised that 'prevention is better than cure'² as reflected in the development of vaccinations for a wide range of diseases, and the advocating of a healthy diet and exercise as one of the best ways of preventing diabetes and coronary problems. Much money is spent on research into prophylactic treatments designed to fend off diseases, and as a result there have been significant breakthroughs, e.g. Ciprofloxacin for persons who may have been exposed to Anthrax;³ Chloroquine for those going into malaria prone areas;⁴ and Heparin for patients at risk of blood clots.⁵ Similarly, doctors and governments know that it is much cheaper and easier to prevent people smoking than to treat lung cancer, and as a result invest significant sums in programs designed to help people quit smoking.⁶

It seems the United Nations (UN) similarly recognised that prevention is better than cure when it advocated, over 60 years ago, that "Education shall be directed to ... the strengthening of respect for human rights".⁷ The founders of the UN realised that it is far better to prevent human rights abuses occurring, than to try and 'cure' the problem, for example, by sending in peacekeepers after human rights atrocities have been committed.

Unfortunately, the lofty ideals of the drafters of the Universal Declaration of Human Rights (UDHR), that human rights education (HRE) could help prevent massive human rights violations, like the Holocaust they had just witnessed, have not become reality. Notwithstanding that it has been more than six decades since the concept of HRE first entered the lexicon of international law, it is readily apparent that HRE has not succeeded in preventing widespread human rights abuses. Words like 'Rwanda', 'Srebrenica' and 'Darfur' immediately bring to mind examples of our failure to prevent catastrophic human rights violations, and a cursory glance of any newspaper reveals smaller scale human rights abuses

¹ Kuan-Tzu (4th - 3rd Century BC) China.

² Dutch humanist, Desiderius Erasmus (1466-1536). Accessed at <http://jmm.aaa.net.au/articles/13076.htm> on 1 August 2008.

³ See Food and Drug Administration, U.S. Department of Health and Human Services *Approval of Cipro® for use After Exposure to Inhalational Anthrax*, 31 August 2000. Accessed at <http://www.fda.gov/bbs/topics/answers/ans01030.html> 4 May 2009.

⁴ See www.traveldoctor.co.uk/tables.htm accessed 4 May 2009.

⁵ Goldhaber, Samuel Z. and Grasso-Correnti, Nicole 'Treatment of Blood Clots' (2002) 106 *Circulation* 138.

⁶ See for example *Quit Victoria* (www.quit.org.au) a joint initiative of the Cancer Council Victoria, the Department of Human Services, the National Heart Foundation and Vic Health.

⁷ *Universal Declaration of Human Rights*, General Assembly Resolution 217 A (III), 10 December 1948, Article 26(2).

occurring around the world on a daily basis. Thus, it appears that the UN's attempts to use prophylactic measures to combat human rights violations have not been as successful as the medical profession's use of prophylactics to combat diseases.

This research is the first attempt to undertake an in-depth analysis of the role that select UN bodies have played, to date, in promoting HRE as a preventative tool, and offers the first micro-analysis of the way in which two UN organs are addressing States' HRE obligations. It maps the UN's HRE activities and approaches within the Committee on Economic, Social and Cultural Rights and the Human Rights Council.⁸

These entities have been chosen because one is an expert body responsible for monitoring States' implementation of the HRE obligation in Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁹ and the other is an inter-governmental body with an explicit mandate regarding HRE.¹⁰ Thus, these two entities have specific obligations regarding HRE, and provide a useful means of comparing the approach taken by a UN body comprised of human rights experts, with the approach taken by a political body made up of government representatives. It provides a unique opportunity to expose any dissonance between the HRE interpretations and activities of the different UN bodies, both expert and inter-governmental. If different human rights bodies within the UN are adopting inconsistent or conflicting approaches to the realisation of international HRE norms, this may shed light on why the UN has not been successful in promoting HRE as a preventative human rights tool. Thus, this paper is the first piece of scholarship to adopt a formal, systematic and analytical approach to the UN's HRE activities and provides new insight into the UN's role in advancing HRE.

Before evaluating the role the UN has played in promoting HRE, it is important to analyse:

- (i) why the UN considers HRE to be important; and
- (ii) what role the UN sees HRE playing in the prevention of human rights abuses. What is the UN's vision for HRE, and what does it hope to achieve by the various initiatives it has embarked upon over the past few decades?

⁸ The time available to undertake the research for this project did not permit other UN human rights organisations to be analysed. The HRE work of the Committee on the Rights of the Child, General Assembly, Office of the High Commissioner for Human Rights, the Economic and Social Council and the Secretariat will be analysed in a monograph that has been commissioned by Edward Elgar Publishers to build on this research.

⁹ Adopted by General Assembly resolution 2200A (XXI) on 16 December 1966, entered into force on 3 January 1976.

¹⁰ General Assembly Resolution A/RES/60/251, dated 3 April 2006, provides that the Human Rights Council's shall "promote human rights education" (para 5(a)).

Answering these questions provides a framework for the analysis. Knowing and understanding the UN's motivation and philosophy regarding HRE provides both context and meaning for this research. The answers to these questions are, in effect, the skeleton upon which the meat of this research is attached, and this chapter seeks to expose the skeleton.

2. The UN's view of HRE as a Tool for Preventing Human Rights Abuses

There is an inextricable link between HRE and the realisation of human rights. As one notable human rights education expert described it, HRE is about "empowering the individual to both recognize human rights abuses and to commit to their prevention."¹¹ Thus, a core part of HRE is the strengthening of respect for human rights.¹²

There are a number of UN documents that shed light on the UN's vision for HRE, and the three most significant ones are analysed in this chapter, namely:

- (a) General Comment No. 1¹³ entitled the 'Aims of Education' published by the Committee on the Rights of the Child;
- (b) Plan of Action for the UN Decade for Human Rights Education;¹⁴ and
- (c) Plan of Action for the First Phase (2005-2009) of the World Programme for Human Rights Education.¹⁵

The UN's vision for HRE is also exposed through an examination of how HRE came to be incorporated into various human rights instruments, and this analysis is the subject of the next chapter which explores the provenance of HRE in international law.

2.1 General Comment No. 1 from the Committee on the Rights of the Child

Human rights treaty bodies within the UN publish their opinions on the content of human rights treaties in the form of General Comments. These General Comments "provide persuasive interpretations of the treaty provisions"¹⁶ and have been referred to as being 'distinct juridical instruments'¹⁷ similar to 'advisory

¹¹ Tibbitts, Felisa 'Understanding What We Do: Emerging Models for Human Rights Education' (2002) 48(3-4) *International Review of Education* 159, 166.

¹² Plan of Action for the United Nations Decade for Human Rights Education (1995-2004), Appendix to A/51/506/Add.1, 12 December 1996

¹³ CRC/GC/2001/1, 17 April 2001.

¹⁴ Appendix to A/51/506/Add.1, 12 December 1996.

¹⁵ A/59/525/Rev.1, 2 March 2005.

¹⁶ Ibid, 13.

¹⁷ Buergenthal, Thomas quoted in Steiner, Henry J. and Alston, Philip *International Human Rights in Context: Law, Politics, Morals* (2nd ed, 2000) Oxford University Press, Oxford, 732.

opinions' of international tribunals.¹⁸ Thus, General Comments expose the thinking of the expert bodies on specific issues.

The first General Comment produced by the Committee on the Rights of the Child (CRC) is entitled *The Aims of Education*¹⁹ and sheds light on how this body sees HRE as a tool for preventing human rights abuses. It seeks to unpack the content of Article 29(1) of the Convention on the Rights of the Child which provides:

States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

There are several aspects of General Comment No. 1 that highlight the preventative aims of HRE. For example the CRC observes that:

Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A *reliable and enduring antidote* to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice. ... Such teaching can effectively contribute to the *prevention and elimination* of racism, ethnic discrimination, xenophobia and related intolerance.²⁰ [emphasis added]

¹⁸ Ibid.

¹⁹ General Comment No. 1, above n 2.

²⁰ Paragraph 11.

Similarly, there are references to the need for children to learn life skills that enable them to resolve conflicts in a non-violent manner,²¹ and to educational programs being used as tools to prevent violence and conflict.²² In addition, General Comment No. 1 talks about children learning to respect difference, and the importance of promoting a culture which is infused by appropriate human rights values²³ Thus, HRE is seen as playing a prophylactic role; to sow the seeds of harmonious relationships among all people, thereby helping to prevent the outbreak of violent conflicts and related human rights violations.²⁴

Although much of General Comment No.1 is devoted to *how* to implement Article 29(1) of CROC, rather than the *rationale* for the norm, it is nevertheless helpful to elucidate the meaning of Article 29(1), to expose why HRE is perceived as important by the UN, and to shed light on the purpose of a mandate for HRE.

2.2 Plan of Action for the UN Decade for Human Rights Education

The 1993 World Conference on Human Rights resulted in the production of the Vienna Declaration and Programme of Action (Vienna Declaration), the purpose of which was to create a framework to facilitate the achievement of “substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity.”²⁵ One of the outcomes of the World Conference was a recognition that HRE is “essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace”,²⁶ and the Vienna Declaration includes a recommendation that the General Assembly proclaim a “United Nations decade for human rights education in order to promote, encourage and focus these educational activities should be considered.”²⁷

In due course, the General Assembly proclaimed such a Decade,²⁸ pursuant to which the High Commissioner for Human Rights prepared a Plan of Action for its implementation.²⁹ This Plan of Action provides another window into how the UN perceives HRE as a preventive tool.

The Plan of Action is predominantly about the ways of promoting HRE at the international, regional, state and local levels, but it also sets out that HRE is:

²¹ Paragraph 9.

²² Paragraph 16.

²³ Paragraph 2.

²⁴ Baxi, Upendra, ‘Human Rights Education: The Promise of the Third Millenium?’ Chapter in Andreopoulos, George J. and Claude, Richard Pierre (eds) *Human Rights Education for the Twenty-First Century* (1997) University of Pennsylvania Press, Philadelphia, 146.

²⁵ *Vienna Declaration and Programme of Action*, A/CONF.157/23, 12 July 1993, Preamble.

²⁶ *Ibid*, paragraph 78.

²⁷ *Ibid*, paragraph 82.

²⁸ Resolution 49/184, 23 December 1994.

²⁹ Appendix to A/51/506/Add.1, 12 December 1996.

aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes and directed to:

- (a) The strengthening of respect for human rights and fundamental freedoms;
- (b) The full development of the human personality and the sense of its dignity;
- (c) The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- (d) The enabling of all persons to participate effectively in a free society;
- (e) The furtherance of the activities of the United Nations for the maintenance of peace.

Although there is no specific mention of HRE as a preventive tool, the references to strengthening respect for human rights and maintaining peace go hand-in-hand with the idea of HRE as a means of preventing human rights abuses, i.e. where there is peace, and a culture of human rights, there is less likelihood of human rights violations. Although, the role of HRE as a preventive tool is implicit in the Plan of Action, it would have been preferable for the Plan of Action to make explicit mention of this. The failure to expressly refer to the link between HRE and the prevention of human rights violations arguably weakens the Plan of Action.

Another omission of the Plan of Action is its failure to make any reference to General Comment No. 1 on HRE published by the CRC a few years earlier. Although the Plan of Action makes fleeting mention of Article 29 of CROC,³⁰ the absence of any reference to General Comment No. 1, which is, by any measure, a significant pronouncement on HRE, is unfortunate, and suggests a lack of coordination and collaboration between the different bodies working on HRE within the UN. Making express links to the assorted HRE efforts taking place within the UN, demonstrates an interconnectedness that reinforces each of the initiatives and would strengthen the UN's overall HRE message.

2.3 *Plan of Action for the First Phase of the World Programme for HRE*

When the UN Decade for HRE came to an end in late 2004, the General Assembly decided that the efforts to promote HRE needed to continue, and therefore adopted the World Programme for Human Rights Education (2005 – ongoing) (World Programme) as the vehicle through which to continue the focus on human rights education.³¹ The World Programme operates in phases, with

³⁰ Paragraph 1.

³¹ Resolution 59/113 of 10 December 2004.

each phase concentrating on a different aspect of HRE. The first phase, from 2005 - 2009 is directed at HRE in primary and secondary schools.³² The Plan of Action for the First Phase (WP Plan of Action) was prepared by the Office of the High Commissioner for Human Rights, and transmitted by the Secretary-General to the General Assembly.³³

Unlike the Plan of Action for the Decade, the WP Plan of Action explicitly comments on the preventative role that HRE performs. Indeed, in the very first paragraph, it is noted that HRE “contributes to the long-term prevention of human rights abuses and violent conflicts”, and later there is reference to one of the benefits of HRE being “social cohesion and conflict prevention.”³⁴ Thus, the prophylactic function of HRE is recognised and commended in the WP Plan of Action.

Again, in contrast to the Plan of Action for the Decade, the WP Plan of Action, makes specific reference to General Comment No. 1 from the CRC,³⁵ and quotes with approval various aspects of that document.³⁶ It is perhaps not surprising that the WP Plan of Action draws so heavily on General Comment No. 1, since both relate to the education of children about human rights. Nevertheless, the effort to connect these two instruments concerning HRE is commendable, and the two documents reinforce each other to create a consistent and unified approach to HRE.

3. Conclusion

There is no doubt that the drafters of the UDHR perceived HRE as an important tool in creating a culture where human rights are respected, and in preventing future human rights abuses. The above analysis demonstrates that several bodies within the UN continue to see HRE in this way, and have articulated this view, albeit sometimes more clearly than others.

All of this suggests that the time is ripe for HRE to come to the forefront of international consciousness, and to fulfil its intended role as a preventive tool. This research aims to play some small part in facilitating this, by providing comprehensive and meaningful empirical research that exposes, warts and all, the way in which the UN has sought to advance HRE in the sixty years since it was first propounded by the drafters of the UDHR, and by suggesting how the UN might work more effectively in this area.

³² Initially, the 1st phase ran from 2005-2007, but this was subsequently extended to 2005-2009. see Human Rights Council Resolution 6/24, 28 September 2007.

³³ Plan of Action for the First Phase (2005-2007) of the World Programme for Human Rights Education, A/59/525/Rev.1, 2 March 2005.

³⁴ Ibid, paragraph 19.

³⁵ It is referred to six times. See paragraphs 10, 15 and 16 and endnotes 3, 5 and 6.

³⁶ See endnotes 3, 5 and 6.

Chapter 2 Provenance of HRE within the UN

- 1. Introduction**
- 2. Universal Declaration of Human Rights**
- 3. International Covenant on Economic, Social and Cultural Rights**
- 4. Convention on the Rights of the Child**
- 5. Conclusion**

*Where, after all, do universal human rights begin?*¹

1. Introduction

Eleanor Roosevelt famously answered the above question with the words: “In small places, close to home - so close and so small that they cannot be seen on any maps of the world”.² This chapter seeks to answer a similar question – “Where, after all, did the international law mandate regarding human rights education begin?”. The answer is very different from that given by Eleanor Roosevelt. The directive that States educate their people about human rights did not emerge in small places, close to home, but rather within the amorphous body known as the United Nations.

This chapter seeks to identify exactly where, within the organs, committees, bodies and agencies that make up the UN, the idea of mandating HRE was developed; what the motivation was, and how it has been developed and embellished since that time. This goal is achieved by tracing HRE developments through the drafting of a number of international instruments, namely:

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights; and
- Convention on the Rights of the Child.

By analysing the provenance of HRE through these sources, a clear picture begins to emerge of the UN’s aims and ambitions regarding HRE.

2. Universal Declaration of Human Rights

Prior to 1948, HRE was the exclusive domain of domestic legal and educational systems, as human rights were not considered a concern of the international community, let alone human rights education. However, following the Holocaust, the international community was no longer willing to accept that human rights were matters solely within the domestic jurisdiction of sovereign States. Indeed,

¹ Eleanor Roosevelt . Accessed at www.un.org/rights/50/carta.htm on 2 February 2009.

² Ibid.

the instrument establishing the UN expressly provides that one of the purposes of the UN is to promote and encourage respect for human rights.³

The UDHR contains two provisions relating to HRE, and it is important to consider how each of these came to be included. The drafting of this instrument was undertaken by a committee established by the now defunct Commission on Human Rights, and took place over two years from 1947-48.⁴ The drafting committee was initially made up of representatives from three States, but quickly expanded to include delegates from eight States, namely, Australia, Chile, China, France, Lebanon, the United Kingdom, the United States and the USSR.

The drafting committee delegated responsibility for preparing the first draft to John Humphrey, a Canadian lawyer and newly appointed Director of the UN Secretariat's Division on Human Rights. The draft outline prepared by Humphrey became the first official UN draft of the UDHR, and the base document from which all additions and deletions were debated and negotiated.⁵

The final paragraph of the Preamble to the UDHR provides that:

Every individual and every organ of society, keeping the Declaration constantly in mind, shall strive by *teaching and education* to promote respect for these rights and freedoms.
[emphasis added]

This is quite different from the Preamble in Humphrey's draft, which consisted only of the enunciation of the "four freedoms" - freedom of speech, freedom of religious belief, freedom from fear and freedom from want⁶ and made no mention of the promotion of human rights through teaching and education. This language came from proposals made by representatives from the UK and Lebanon, who expressed the view that the 'Declaration's main importance would be as an educational instrument'.⁷ The UDHR, being a non-binding declaration, could not effectively compel States to enact legislation or otherwise require States to domestically realise the rights espoused in the document, and the Preamble makes it clear that it is not States, but rather 'every individual and every organ of society' that has responsibility for using HRE to promote respect for human rights. As one scholar has noted, this effectively means that 'education on

³ Article 3(1) of the *Charter of the United Nations*, signed at San Francisco on 26 June 1945, entered into force 24 October 1945.

⁴ Parts of this chapter have previously been published in Gerber, Paula *From Convention to Classroom: The Long Road to Human Rights Education* (2008) VDM Publishers, Germany, Chapter 5.

⁵ E/CN.4/AC.1/3 dated 4 June 1947. Officially this document was known as the 'Secretariat Outline'. However, this is somewhat of a misnomer, since what Humphrey produced was far more substantial than a mere outline.

⁶ As proclaimed by President Franklin Roosevelt in his 1941 address to Congress.

⁷ SR.49/P.8.

human rights should no longer be an issue left to governments to attend to when they can finally manage to get around to it.⁸ Others can, and should, take initiative to educate about human rights.

The Humphrey draft consisted of 48 Articles, none of which contained any reference to HRE.⁹ There was a provision to the effect that everyone has the right to education, but it made no reference to the content of such education.¹⁰ The French representative on the Drafting Committee, René Cassin, used Humphrey's document as the basis for two further drafts of the Declaration, and these also failed to include any reference to the content or purpose of education.¹¹ When Cassin's drafts were first discussed by the committee, Charles Malik, the delegate from Lebanon, 'objected that this article made no reference to the content of education [which] he felt should be stressed by stating the principles of the Charter; otherwise there was [a] possibility of abuse.'¹² For reasons that are not apparent, Cassin did not act on this suggestion when preparing a revised draft. The issue of the content of education was only taken up after Alex Easterman, a British journalist representing the World Jewish Congress,¹³ stated that:

The Article on education provided a technical framework but contained nothing about the spirit governing education which was an essential element. Neglect of this principle in Germany had been the main cause of two catastrophic wars.¹⁴

This view was endorsed by the UNESCO delegate, Pierre Lebar, who added that:

[In] Germany, under the Hitler regime, education had been admirably organized but had, nevertheless, produced disastrous results. It was absolutely necessary to make clear that education to which everyone was entitled should

⁸ Aka, Philip C. 'Education, Human Rights, and the Post-Cold War Era' (1999) 15 1999 *New York Law School Journal of Human Rights* 421, 446.

⁹ E/CN.4/AC.1/3, 4 June 1947.

¹⁰ *United Nations Yearbook on Human Rights for 1947*, Lake Success, 1949, 484.

¹¹ E/CN.4/AC.1/W.1 and E/CN.4/AC.1/W.2

¹² E/CN.4/AC./SR.14.

¹³ Non-Government Organisations (NGOs) were invited to participate in the drafting process, and the World Jewish Congress was one of the many NGOs which accepted the invitation to be involved in the development of this landmark instrument.

¹⁴ SR.8/p.4.

strengthen respect of the rights set forth in the Declaration and combat the spirit of intolerance.¹⁵

Thus, it was the Holocaust that was the catalyst for a norm on HRE being included in the UDHR. Easterman proposed the following provision, which the representative of Panama sponsored:¹⁶

This education shall be directed to the full development of the human personality, to strengthen respect for human rights and fundamental freedoms and shall combat the spirit of intolerance and hatred against other nations or racial or religious groups everywhere.¹⁷

However, the inclusion of a provision about HRE was not without debate and dialogue, in particular, the UK and India¹⁸ wanted only civil and political rights included in the UDHR, and resisted all attempts to include economic, social and cultural rights, including Article 26.¹⁹ To the extent that there was to be an article about education, they wanted it kept to a minimum, and proposed that it simply provide that ‘everyone has a right to education.’²⁰ Not surprisingly, UNESCO vehemently opposed this suggestion and cogently argued for the inclusion of a provision regarding the content of such education. The Preamble to the UNESCO Constitution declares that: ‘Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed’,²¹ and UNESCO saw Article 26(2) as playing an important part in achieving this mission.²² Because of the UK and Indian opposition, a special subcommittee was formed to consider the issue and that subcommittee initially proposed that Article 26(2) read as follows:

Education shall be directed to the full development of the human personality, to the strengthening of respect for

¹⁵ SR.67/p.12.

¹⁶ Although NGOs were allowed to attend the drafting sessions, any suggested amendments to the drafts had to be sponsored by a State representative.

¹⁷ E/CN.4/AC.2/SR.8/p.4 – December 1947.

¹⁸ It is perhaps not surprising that these two States were in agreement since British rule in India only ended in August 1947.

¹⁹ 99/p.8.

²⁰ Ibid.

²¹ *Constitution of the United Nations Educational, Scientific and Cultural Organization*, Adopted in London on 16 November 1945.

²² As discussed in Chapter 3, education about peace is an integral part of HRE. Peace is specifically referred to in Article 29(1)(d) of CROC, and education about peace is mentioned several times in General Comment No. 1.

human rights and fundamental freedoms and to the promotion of international goodwill.²³

However, the subcommittee ultimately adopted a Chinese version which was essentially the proposal above, with the addition of the words ‘and to the combating of the spirit of intolerance and hatred against other nations or religious groups.’²⁴

The draft UDHR was next considered by the Third (Social and Humanitarian) Committee of the General Assembly (Third Committee). The Third Committee meetings provided an opportunity for States not represented on the Commission to have input. It was at this time that the Mexican and United States’ delegations jointly proposed the following alternative language for Article 26(2):

Education shall be directed to the full development of the human personality, to the strengthening of respect for human rights and fundamental freedoms and to the promotion of understanding, tolerance, and friendship among peoples, as well as the activities of the United Nations for the maintenance of peace.²⁵

This represented a shift from using the negative language of the Chinese draft – ‘combating intolerance and hatred’ – to positive language – ‘promoting tolerance and friendship’. This was a significant shift in the focus of the Article, turning it from a provision that was about combating the causes of conflict and wars, to one that was about upholding and encouraging attitudes and practices that are essential for a peaceful society that respects human rights.

This language represents the first articulation of HRE in international law, and has become the foundation on which all subsequent proclamations regarding HRE have been built.

3. International Covenant on Economic, Social and Cultural Rights

The UDHR, being a declaration, rather than a treaty, is not strictly speaking binding on States, and thus it was decided that the provisions of the UDHR should be incorporated into legally binding treaties. In the result, Article 26(2) of the UDHR was transformed into Article 13 of the International Covenant on

²³ SR.69/p.2.

²⁴ Ibid, 9.

²⁵ A/C.3/356.

Economic, Social and Cultural Rights (ICESCR). Three minor changes were made to the text, namely:

1. The addition of a requirement that HRE include the development of a sense of dignity;
2. A call for individuals to receive an education that enables them to participate effectively in a free society; and
3. The inclusion of a reference to ethnic groups in addition to racial and religious groups.

The reference to 'dignity' in Article 13(1) of ICESCR appears to be a recognition that HRE must make individuals aware of their own inherent worth and of the human rights which accrue to them on this basis.²⁶ Although, in recent times, scholars have written a great deal about the link between human rights and human dignity,²⁷ there has been no attempt to actually define the term 'dignity' in any international instrument.²⁸ A detailed discussion of the implication of this reference to dignity is beyond the scope of this paper, suffice it to say, that dignity has been equated with a recognition of the intrinsic worth of every person, and includes respect for individuals with their own distinct identities and choices.²⁹

The addition of a requirement that education should enable a person to participate effectively in a free society requires that education not only be theoretical, but also practical, that is, HRE should teach students how to satisfy their practical needs in life.³⁰ It has been noted that "capacity to participate fully and responsibly in a free society can be impaired or undermined ... by a failure to promote an understanding of the values" recognised in Article 13(1).³¹ Thus, the

²⁶ Beiter, Klaus Dieter *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights* (2006) Martinus Nijhoff Publishers, Leiden, 95.

²⁷ See, for example, Chaskalson, A. "Human Dignity as a Foundational Value of Our Constitutional Order" (2000) *South African Journal on Human Rights*; Goodman M. D., "Human Dignity in Supreme Court Constitutional Jurisprudence" (2005) 84 *Nebraska Law Review*; Mégret, Frédéric *The Potential of 'Human Dignity' as a Framework or Vulnerable Groups* (Nov. 2008) Preliminary Report for the Geneva Academy of International Humanitarian Law and Human Rights, Swiss Initiative to Commemorate the 60th Anniversary of the Universal Declaration of Human Rights; and Donnelly, Jack *Human Dignity and Human Rights* (Nov 2008) Preliminary Report for the Geneva Academy of International Humanitarian Law and Human Rights, Swiss Initiative to Commemorate the 60th Anniversary of the Universal Declaration of Human Rights.

²⁸ Schachter, Oscar 'Human Dignity as a Normative Concept' (1983) 77(4) *American Journal of International Law* 848, 849.

²⁹ *Ibid*, 849-850.

³⁰ Beiter, above n 12, 95.

³¹ *General Comment No. 1, Aims of Education*, Committee on the Rights of the Child, CRC/GC/2001/1 17 April 2001, paragraph 14.

education implemented pursuant to this provision must be practical i.e. it must instil in the recipient not only knowledge and understanding about human rights, but also the skills to realise, assert and respect those rights.

Finally, the addition of the word ‘ethnic’ reflects the fact that discrimination occurs on more grounds than just race and religion, and thus ethnicity needed to be added.³² Overall, the differences between Article 26(2) of the UDHR, and Article 13(1) of ICESCR are not overly substantive and amount to little more than a ‘fleshing out’ of the norm relating to HRE.

To fully understand Article 13 of ICESCR it is necessary to also have regard to Article 2. It provides that a State party is required to take steps to realise the rights set out in the ICESCR only to the *maximum of its available resources* and with a view to *progressively* fulfilling its obligations. Thus, State Parties are not required to immediately fulfill their obligation to provide HRE in accordance with Article 13, and non-compliance will be excused if it is due to budgetary constraints.³³ This is in stark contrast to State Parties’ obligations under the corresponding provision in the International Covenant on Civil and Political Rights (ICCPR) which requires State Parties to *immediately* “respect and ensure” the rights set out in the ICCPR, with no scope for progressive realisation.

The Committee responsible for monitoring State Parties’ compliance with ICESCR published a General Comment regarding Article 13.³⁴ This General Comment addresses the content of HRE, and is analysed in the next chapter. However, it also discusses the impact of Article 2 on State Parties’ obligations to provide HRE. While acknowledging that the obligation to implement Article 13(1) is progressive rather than immediate, State Parties are required to at least *take steps* to give effect to this norm. General Comment No. 3 elaborates on what “take steps” means, and notes that “such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant”.³⁵ Thus, although States are not required to immediately achieve HRE in accordance with Article 13, they are required to take action towards achieving that goal.

Many State Parties lack the resources to implement the HRE obligation in Article 13(1). The Committee on Economic, Social and Cultural Rights (ESCR

³² There is little detailed information available about what occurred during the drafting of Article 13 of ICESCR, in particular, who proposed these changes, and why. The leading texts on the drafting of ICESCR and Article 13 are silent when it comes to these changes, see Craven, Matthew *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (1998) Oxford University Press, USA.

³³ For further discussion on the meaning and application of Article 2 of ICESCR see General Comment No. 3 *The Nature of States parties’ Obligations*, 14 December 1990, E/1991/23.

³⁴ The Right to Education (Art.13), E/C.12/1999/10, 8 December 1999.

³⁵ Committee on Economic, Social And Cultural Rights, E/1991/23, 14 December 1990, paragraph 2.

Committee) addresses this by noting that *all* States, international organisations and NGOs must play a role in ensuring world-wide realisation of the right to HRE. In particular, the ESCR Committee refers to the need for a coordinated effort from “civil society, UNESCO, the United Nations Development Programme, UNICEF, ILO, the World Bank, the regional development banks and the International Monetary Fund”.³⁶ Thus, the ESCR Committee recognised that many States lack the financial and technical ability to provide HRE, and called on members of the international community to assist these States to give effect to the HRE norm in Article 13(1).

Article 13(1) of ICESCR, read in conjunction with General Comment No. 13, provides a clear mandate for HRE that the 160 State Parties³⁷ are required to comply with, albeit in a progressive, rather than immediate manner. It translates Article 26(2) of the UDHR into a binding legal obligation, and provides a solid legal foundation for later HRE initiatives.

4. Convention on the Rights of the Child

The International Year of the Child in 1979 was the impetus for creating the Convention on the Rights of the Child (CROC).³⁸ While it took only two years to draft the UDHR, it took ten years to finalise CROC.³⁹ This reflects the fact that CROC was drafted during the height of the Cold War, when there was significant tension between East and West which made agreement on the final text difficult.

CROC was preceded by two earlier declarations on children’s rights, namely, the 1924 Geneva Declaration on the Rights of the Child,⁴⁰ and 1959 UN Declaration on the Rights of the Child,⁴¹ but unlike CROC, neither of these declarations dealt with education about human rights. Article 29(1) of CROC provides that:

States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

³⁶ General Comment No. 13, paragraph 60.

³⁷ As at 5 May 2009. Accessed at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en.

³⁸ Detrick, Sharon *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires* (1992) Martinus Nijhoff Publishers, Norwell, MA, 19.

³⁹ The drafting of CROC spanned a decade from 1979 to 1989.

⁴⁰ *Geneva Declaration of the Rights of the Child* of 1924, Adopted 26 September 1924, League of Nations O.J. Spec. Supp. 21, at 43.

⁴¹ General Assembly Resolution 1386(XIV) of 20 November 1959.

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

The first thing to note about Article 29(1) is that the opening language is very weak. States do not *undertake* to provide HRE, nor are they required to *ensure* that children receive HRE; all that is required of States is that they *agree* that education should cover the matters set out in paragraphs (a) – (e). Thus, on the face of it, Article 29 does not compel States to provide HRE. Furthermore, just like Article 2 of ICESCR, Article 4 of CROC provides that States need only *progressively* implement Article 29 to the maximum extent of their available resources. Despite these weaknesses, Article 29(1) nevertheless makes a useful contribution to the international legal framework pertaining to HRE. For example, it expands on previous articulations of HRE by adding a requirement that HRE include education about respect for the environment. This is no doubt a reflection of an increased concern about environmental degradation (something that was not a significant issue when the UDHR and ICESCR were drafted in the 1940s), and recognition of the interconnectedness of human rights and the environment.⁴²

Article 29 of CROC is arguably the most significant international treaty provision relating to HRE because it is the one that binds the greatest number of States. This is because all States, with the exception of the United States and Somalia, have ratified CROC. As a result there are 193 States that have agreed to be bound by this provision pertaining to HRE.⁴³

⁴² See for example Sachs, A. and Peterson J. A. 'Eco-Justice: Linking Human Rights and the Environment' (1995) Worldwatch Paper 127, Worldwatch Institute, Washington D.C.; Maggio, Greg and Lynch, Owen 'Human Rights, Environment, and Economic Development: Existing and Emerging Standards in International Law and Global Society' (1997) accessed at www.cedha.org.ar/docs/ENG38.doc on 23 July 2008; and a new journal devoted to this topic – *Journal of Human Rights and the Environment*, the first issue of which is due to be published in early 2010.

⁴³ As at 5 May 2009. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

It is worth noting that only two States have made reservations relating to Article 29. Both of these relate to the State Parties interpreting and applying Article 29 (and a number of other Articles in CROC) in accordance with their constitutions.⁴⁴ Initially, three States ratified with reservations relating to Article 29, but Thailand subsequently withdrew its reservation. It can therefore be said that HRE, as articulated in this treaty, enjoys broad international acceptance.⁴⁵

5. Conclusion

Human rights education enjoys a history that is almost as old as the United Nations itself. It is a concept that has been part of the international legal framework for over 60 years and is a part of numerous international instruments.⁴⁶ Although the Holocaust was the catalyst for incorporating HRE into the UDHR, the nature, extent and purpose of HRE has since grown to encompass much more than just ensuring that the world never again witnesses human rights atrocities on the scale of the Genocide committed during World War II. Human rights education has evolved, and now embraces education about such diverse issues as valuing the environment, and children respecting their parents.

Having provided some background and context for the international law provisions relating to HRE, it is now appropriate to evaluate how the UN is endeavouring to secure State Parties' implementation of these mandates, and what steps are being taken to increase the levels of compliance. This evaluation is undertaken through an analysis of three UN bodies, each of which has been delegated with some degree of authority regarding States' observance of HRE norms. Each of the next three chapters analyses one UN body, beginning with the oldest – the ESCR Committee, and ending with the newest – the Human Rights Council.

⁴⁴ Indonesia and Turkey ratified CROC with specific reservations concerning Article 29.

⁴⁵ See <http://www2.ohchr.org/english/bodies/ratification/11.htm> accessed on 21 August 2008.

⁴⁶ Although only the provisions in the UDHR, ICESCR and CROC have been analysed in this chapter, HRE is also included in the following treaties *Convention on the Elimination of All Forms of Discrimination Against Women* Adopted by General Assembly Resolution 34/180 on 18 December 1979, entered into force 3 September 1981 (Article 10); *Convention on the Elimination of All Forms of Racial Discrimination* (CERD) Adopted by General Assembly Resolution 2106 (XX) on 21 December 1965, entered into force 4 January 1969 (Article 7) and *UNESCO Convention against Discrimination in Education* adopted on 14 December 1960, and entered into force on 22 May 1962 (Article 5)

Chapter 3 – HRE and the UN Committee on Economic, Social and Cultural Rights

- 1. Introduction**
- 2. HRE Activities of the ESC Committee**
 - 2.1 General Comments**
 - 2.2 Commenting on State Parties' Reports**
 - 2.2.1 Low levels of reporting by State Parties and minimal comments from the Committee**
 - 2.2.2 Lack of detail regarding HRE in State Parties' reports**
 - 2.2.3 Inconsistency in the way in which the ESC Committee comments on HRE**
 - 2.2.4 Lack of specificity in comments from the Committee**
 - 2.2.5 Lack of encouragement by the Committee when a State Party has reported on a significant investment in HRE**
- 3. Observations Regarding the ESC Committee's Approach to HRE**
- 4. Conclusion**

*'A committee is a cul-de-sac
down which ideas are lured
and then quietly strangled'¹*

1. Introduction

Within the UN organisation, treaty bodies play a particularly important role in promoting and protecting the human rights set out in the core human rights treaties. There are currently eight human rights treaty bodies,² being committees of independent experts that monitor States' implementation of core human rights treaties. There are two treaty bodies that are especially relevant to HRE, namely the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

Most of the UN committees that monitor State Parties' implementation of human rights treaties are established pursuant to a mandate in the treaty itself. For example, the Committee on the Rights of the Child was established pursuant to Article 43 of the Convention on the Rights of the Child, and the Human Rights Committee was established pursuant to Article 28 of the ICCPR. However, the Committee on Economic, Social and Cultural Rights (ESC Committee) which monitors State Parties' implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) was only established in 1985, by virtue of a resolution of the Economic and Social Council (ECOSOC), almost 20 years after the UN General Assembly adopted ICESCR.³ Prior to the ESC Committee being established, responsibility for monitoring State Parties' compliance with ICESCR fell on ECOSOC pursuant to Part IV of ICESCR. The objections to establishing a monitoring committee as part of ICESCR were diverse, and included States not wanting to develop a multiplicity of organs, and a concern that States would not be willing to submit themselves to examination of their efforts to implement ESC rights by a quasi-judicial body.⁴ Ultimately, the ESC Committee was created and now consists of 18 experts, who meet twice a year for three weeks at a time.

Article 13(1) of ICESCR provides that education shall:

strengthen the respect for human rights and fundamental freedoms.
... [and] enable all persons to participate effectively in a free

¹ Sir Barnett Cocks. Accessed at <http://quotationsbook.com/quote/7189/> on 18 May 2009.

² Human Rights Committee; Committee on Economic, Social and Cultural Rights; Committee on the Elimination of Racial Discrimination; Committee on the Elimination of Discrimination Against Women; Committee Against Torture; Committee on the Rights of the Child; Committee on Migrant Workers; and Committee on the Rights of Persons with Disabilities.

³ ECOSOC Resolution 1985/17, 28 May 1985.

⁴ Arambulo, Kitty *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights* (1999) Intersentia, Antwerp.

society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Thus, one of the ESC Committee's responsibilities in monitoring State Parties' implementation of ICESCR is to assess the extent to which this provision is being complied with by States. The ESC Committee is therefore one of the plethora of UN bodies that share responsibility for promoting HRE, and its work in this area is analysed in this chapter.

2. HRE Activities of the ESC Committee

The work of the ESC Committee relating to HRE can be divided into two separate categories. First is the Committee's attempt to clarify and explain the nature of the HRE obligation in ICESCR via General Comment No. 13 on the Right to Education,⁵ and second, is the Committee's observations regarding HRE made in response to State Parties' reporting, or lack thereof, on steps taken to comply with the HRE set out in Article 13. Both of these activities are examined below.

2.1 General Comment No. 13

Just as the Committee on the Rights of the Child published a General Comment on HRE (analysed in Chapter 1), so too did the ESC Committee publish a General Comment on the Right to Education. Unfortunately, only three of the 60 paragraphs that make up this General Comment, specifically relate to HRE,⁶ and these three paragraphs use vague, general language that does little to assist State Parties in understanding exactly what Article 13(1) of ICESCR requires of them, or guide them on how they can successfully give domestic effect to this international norm.

The HRE component of Article 13 of ICESCR constitutes approximately a quarter of that Article, so using even that simplistic measure, one could expect that a quarter of the General Comment would be devoted to elaborating on the HRE requirements of Article 13, rather than the one twentieth that is actually dedicated to this topic. The fact that the ESC Committee addressed the HRE aspect of Article 13 in such a minimalistic and superficial manner suggests that it did not perceive it to be a priority area. The Committee on the Rights of the Child did not publish its General Comment on HRE until 2001, so the ESC Committee's General Comment No. 13, published in 1999, was the first opportunity for a UN

⁵ The Right to Education (Art.13), E/C.12/1999/10, 8 December 1999.

⁶ Paragraphs 4, 5 and 49 are devoted to Article 13(1), while paragraphs 6(c), 29, 57 and 59 make mention of Article 13(1).

treaty body to make an authoritative statement on HRE. It was an opportunity that was not embraced. The ESC Committee did no more than:

- (i) highlight how the HRE requirements of Article 13(1) differ from Article 26(2) of the UDHR;
- (ii) identify the UN's HRE initiatives that have been undertaken subsequent to the adoption of ICESCR in 1996 and how these differ from Article 13(1);⁷ and
- (iii) specify that State Parties are required to ensure that the curriculum is directed to the objectives set out in Article 13(1) and maintain a system for monitoring whether education is in fact being directed to these objectives.

The message that General Comment No. 13 sends to State Parties is that the HRE component of Article 13 is not of great importance, and indeed, is not even of equal importance with the other three sections of Article 13. The cursory manner with which Article 13(1) is dealt with by the ESC Committee in this General Comment suggests that it is not a priority, or major focal point of the ESC Committee. The next section provides an opportunity to observe whether the perfunctory manner in which the ESC Committee dealt with HRE in this General Comment is reflected back to the Committee in State Parties' periodic reports regarding compliance with Article 13(1), and in the Committee's concluding observations.

2.2 Concluding Observations on State Parties' Reports

State Parties to ICESCR are required to submit periodic reports to the ESC Committee every five years⁸ "on the measures which they have adopted, and the progress made in achieving the observance of the rights" set out in the covenant.⁹ The submission of periodic reports by State Parties is not merely "a procedural matter designed solely to satisfy each State Party's formal obligation to report",¹⁰ but rather has specific objectives. The ESC Committee, in its first General Comment set out seven distinct objectives the reporting procedure serves, including to ensure that:

⁷ The ESC Committee points out two differences, namely the addition of references to gender equality and respect for the environment which it says are implicit in a modern interpretation of Article 13(1).

⁸ The period for submitting reports was changed to every five years by ECOSOC Resolution 1988/4 in order to make compliance less burdensome on State Parties and the ESC Committee's job of reviewing such reports more manageable.

⁹ Article 16(1) of ICESCR.

¹⁰ General Comment No. 1, Reporting by State Parties, UN Doc E/1989/22, 24 February 1989.

- (i) a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant;
- (ii) State Parties monitor the actual situation with respect to each of the rights on a regular basis, and are thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within their jurisdiction;
- (iii) State Parties demonstrate that they have clearly stated and carefully targeted policies, including the establishment of priorities;
- (iv) There is public scrutiny of government policies with respect to ESC rights;
- (v) There is an effective evaluation of the extent to which progress has been made towards the realisation of the obligations contained in the Covenant, including the setting of benchmarks and goals;
- (vi) State Parties themselves develop a better understanding of the problems and shortcomings encountered in efforts to realise ESC rights; and
- (vii) the Committee, and the States Parties as a whole, can exchange information to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures which might be taken to promote effective realisation of ESC rights.

It can therefore be said, that in the context of Article 13(1) of ICESCR, one of the objectives of the reporting and review process is to encourage State Parties to improve compliance with Article 13(1) by implementing appropriate HRE programs. The analysis in this chapter suggests that the ESC Committee is doing little to give effect to this objective.

In order to get a clear picture of the way in which the ESC Committee has addressed State Parties' compliance, or non-compliance, with Article 13(1), the work of the Committee over a period of approximately a decade is analysed. By looking at the activities of the ESC Committee over the period 1997-2008, we can see the extent to which initiatives from other UN bodies, for example, the UN Decade for Human Rights Education (1995 - 2004) and the UN World Programme for Human Rights Education (2005 - ongoing) are reflected in the ESC Committee's comments and recommendations. Ideally, one would like to see cooperation and coordination regarding HRE initiatives and activities within the various UN organs.

For the period 1997 to 2008 there were 133 State Party reports and 128 concluding observations.¹¹ Within these State Party reports, HRE was mentioned by 48 States which means that only 36% of the State Parties referred to HRE.

The ESC Committee mentioned HRE in relation to 51 State Parties which equates to 40% of the States. Of these:

- 16 were in response to a State Party mentioning HRE;
- 35 were references to HRE where State Parties had not referred to HRE in their report;
- 8 were the ESC Committee commending a State Party for its HRE programs;¹² and
- 43 were the Committee encouraging a State Party to improve its HRE programs.

Overall, HRE was mentioned by *both* a State Party and the ESC Committee on only 16 occasions (13%). It was far more common that HRE was mentioned by neither the State Party, nor the committee (44 incidences, which amounts to 35% of the State Parties).

The table below sets out the extent to which HRE was addressed by either State Parties, or the ESC Committee, in each year, and reveals that there is little consistency in the extent to which HRE is addressed from year to year. Thus in 2006, there was a relatively high incidence of HRE being referred to by either a State Party or the Committee (70%), but in the following year a staggering 90% of State Parties failed to mention HRE, and the ESC Committee referenced it with respect to only two States (20%).¹³

Year	No. of reports	HRE reference by State Party	HRE reference by C'ttee	HRE comment by <i>both</i> State Party and C'ttee	HRE comment by <i>neither</i> State Party or	HRE comment by <i>either</i> State Party or C'ttee

¹¹ Concluding Observations for the last 2008 session were not available at the time of writing.

¹² Russia in 1997, Cyprus in 1998, Argentina in 1999, Bulgaria in 1999, Denmark in 1999, Morocco in 2000, Italy in 2004, and Costa Rica in 2007. Curiously, only two of these States went into any detail regarding their HRE programs (Morocco and Italy). For the other six State Parties one can only assume that the Committee received information about that State's HRE activities from another source, for example a NGO.

¹³ The States that were members of the committee did not change during this time, but the individuals representing some States did. In particular the delegates from China, Switzerland and India changed.

					C'ttee	
1997	11	3 (27%)	4 (36%)	2 (18%)	5 (45%)	4 (36%)
1998	9	2 (22%)	2 (22%)	0	5 (55%)	4 (44%)
1999	10	2 (20%)	6 (60%)	1 (10%)	3 (30%)	6 (60%)
2000	14	5 (35%)	2 (14%)	1 (7%)	7 (50%)	6 (43%)
2001	19	8 (42%)	9 (47%)	4 (21%)	5 (26%)	10 (53%)
2002	10	3 (30%)	8 (80%)	2 (20%)	0	8 (80%)
2003	11	4 (35%)	6 (54%)	2 (18%)	2 (18%)	7 (64%)
2004	10	5 (50%)	5 (50%)	2 (20%)	2 (20%)	6 (60%)
2005	9	4 (44%)	4 (44%)	1 (11%)	2 (22%)	6 (67%)
2006	10	5 (50%)	2 (20%)	0	3 (30%)	7 (70%)
2007	10	1 (10%)	2 (20%)	1 (10%)	8 (80%)	1 (10%)
2008	10	3 (30%)	1 (out of 4) (35%)	0 (out of 4)	2 (out of 4) (50%)	2 (out of 4) (50%)
Total	133	45	51	16	44	67
Avg		34%	41%	12%	35%	58%

Table 1: Breakdown of the ESC Committee's work on HRE by year.

A micro-analysis of the ESC Committee's sessions and the extent to which either State Parties or the Committee addressed HRE exposes some interesting trends, including:

- 1 low levels of reporting by State Parties and minimal comment by the Committee;
- 2 lack of detail regarding HRE in State Party reports;
- 3 inconsistency in the way in which the ESC Committee comments on HRE;
- 4 lack of specificity in comments from the Committee; and
- 5 lack of encouragement by the Committee when a State Party has reported on a significant investment in HRE.

Each of these is analysed in more detail below.

2.2.1 Low Levels of Reporting about HRE by State Parties, and Minimal Comment by the Committee

The degree of reporting on HRE by State Parties can only be described as low. During the period analysed, only 45 out of 133 State Parties reported on their efforts to implement Article 13(1) of ICESCR. This amounts to only 34% of State Parties. The ESC Committee's response to this low level of reporting seems to

have been largely to ignore the problem, as evidenced by the fact that the Committee commented on HRE with respect to only 51 of the 133 State Parties being reviewed (41%). Even more damning is the statistic that HRE was addressed by *both* the State Party and the ESC Committee on only 16 occasions (12%). While the ESC Committee failed to comment on HRE to a greater degree (41%) than State Parties (34%), both these figures are shamefully low.

Overall HRE was ignored much more than it was considered. The low level of interest shown by the ESC Committee in considering HRE sends a message to State Parties that HRE is not a priority for the Committee, and therefore should not be a priority for the State. Similarly when a State Party made no reference to HRE in their periodic report, and the ESC Committee let that omission pass without comment, it suggests that the Committee does not see this lack of reporting on HRE as a problem.

The ESC Committee should use every opportunity to improve State Parties' reporting practices. When a State Party fails to give details regarding its efforts to comply with a specific provision of ICESCR, e.g. Article 13(1), and the ESC Committee ignores this omission, it indicates to the State Party involved, and all others who may observe the process, that HRE is not a priority for the Committee, and the obligation to report on it can be ignored without fear of negative repercussions.

2.2.2 Low Levels of Detail provided in State Party reports

When State Parties did include information in their reports about efforts to fulfil their obligations under Article 13(1), it tended to be of a very general character, discussing how HRE forms part of the *aims* of their education system. In approximately half the reports where a State Party did discuss HRE, they did not go into specific details about how this aim is actually transformed into concrete educational programs. Reports tended to include statements such as:

Article 9 of the *Education Act* defines the main task of the educational system as the development of individuals with profound and varied knowledge, skills, practical training, great culture, a feeling of responsibility, a progressive world outlook, and a spirit of humanism and respect for human rights and liberties.¹⁴

While this kind of reporting at least shows that a State Party is considering its obligation to provide HRE under Article 13(1), it offers very little practical evidence that the State is actually implementing these obligations. General

¹⁴ Azerbaijan's report, E/1990/5/Add.30, para.169.

statements about educational aims are encouraging, but it would be helpful to the promotion of HRE if the ESC Committee called on State Parties to not only outline their aims, but also report on material steps they are taking to realise these aims.

There were 20 occasions (44%) when a State Party went beyond reporting on just the “aims of education” and provided details about how they were actually incorporating HRE into their education systems. Of these 20 State Party reports which did provide further detail, the report tended to focus on how HRE is included in specific subjects in schools, and at what level it is included. Set out below are details of the 20 States that provided real and tangible evidence of implementation of HRE, together with a summary of their initiatives:

- **Canada** (1998) - Lesson plans and visual aids for teachers to use in classrooms.¹⁵
- **Ireland** (1999) - basic training of police officers,¹⁶ and lectures on human rights for police officers.¹⁷
- **Finland** (2000) - ESC rights training for judges.¹⁸
- **Morocco** (2000) - “Education on Human rights” project, still in preparatory phase but to be included in a sample group of schools.¹⁹
- **Egypt** (2000) - International human rights instruments are basic subjects taught in faculties of law, police academies and specialised national centres.²⁰
- **Algeria** (2001) - Human rights are taught at the National Judicial Training Institute, Police Training School and National Prison Administration Training School.²¹
- **Colombia** (2001) - A program was developed to train teachers in ethical values, peaceful co-existence and the defence of human rights.²²

¹⁵ E/1994/104/Add.17, 20 January 1998, para 1356.

¹⁶ E/1990/5/Add.34 26 september 1997, para 7.

¹⁷ Ibid, para 9.

¹⁸ E/C.12/4/Add.1, 9 December 1999, para 5.

¹⁹ E/1990/6/Add.20, 9 January 1999, para 165.

²⁰ E/1990/5/Add.38, 30 June 1998, para 39.

²¹ E/1990/6/Add.26, 28 July 2000, para 32.

²² E/C.12/4/Add.6, 31 August 2000, para 424.

- **Sweden** (2001) & (2008) - The government allocated funds for courses on human rights at the Stockholm School of Theology,²³ and undertook a study on how human rights are incorporated into degree programs where education about human rights can be presumed to be of great significance to a graduate's future professional practice.²⁴
- **China (Hong Kong)** (2001) - schools provide "civic education" which covers human rights.²⁵ In addition, teachers receive training about human rights through seminars and in-service teacher training programs²⁶.
- **China (Hong Kong)** (2005) - provides "morals and civic education" subjects in schools.²⁷
- **Czech Republic** (2002) - has summer schools for teachers on the subject of tolerance.²⁸
- **United Kingdom** (2002) - Citizenship education will be introduced in UK schools and will include human rights. Students already learn about the UN Charter and the UDHR.²⁹
- **Moldova** (2003) - at junior high level, human rights is addressed in "universal history" and "Marriage and family"³⁰; while at senior school it is part of "civic education".³¹
- **Guatemala** (2003) - UNESCO provided a grant of 100,800 quetzales (approx US \$12,000) to fund teacher training and curriculum alterations regarding human rights.³²
- **Italy** (2004) - A special issue of the official review of the Ministry of Education was dedicated to the issue of rights and distributed to all Italian

²³ E/C.12/4/Add.4, 8 August 2000, para 300.

²⁴ E/C.12/SWE/5, 6 September 2006, para 486.

²⁵ E/1990/5/Add.43, 20 September 1999, para 567.

²⁶ E/1990/5/Add.43, 20 September 1999, para 571, 572.

²⁷ E/1990/5/Add.59, 4 March 2004, para 742.

²⁸ E/1990/5/Add.47, 25 May 2001, para 598.

²⁹ E/C.12/4/Add.8, 28 February 2001, para 13.41.

³⁰ E/1990/5/Add.52, 14 April 2003, para 546.

³¹ Ibid, para 547.

³² E/1990/6/Add.34, 26 July 2002, para 15(i).

- schools³³. Furthermore, civic education is part of the teaching of history and related subjects.³⁴
- **Uzbekistan** (2005) - A course entitled “Human Rights” is included in the curricula at higher levels of secondary school.³⁵ There are also teacher training seminars on the rights of the child and training of legal specialists in the Ministry of Justice.³⁶ In addition, pamphlets and posters are distributed to primary and secondary school children by the National Human Rights Centre.³⁷
 - **Liechtenstein** (2006) - Human and children’s rights are included in “people and their environment”.³⁸
 - **Mexico** (2006) - Human rights have been made an essential part of courses such as ethical and civics training at grade 1 and 2 in primary school³⁹, and human rights subjects form a part of a variety of subjects and degrees at university level.⁴⁰
 - **Nepal** (2007) - School textbooks have a chapter on human rights, and HRE has also been included in the curriculum of the LLB and LLM degrees.⁴¹

These 20 Periodic Reports are the only ones where there was any effort made to provide detail about HRE initiatives that had been undertaken. The depth of reporting by these State Parties is still minimal, but at least demonstrates a good faith attempt to report on *actual* levels of HRE rather than mere aspirational goals.

Overall, only 34% of the State Parties commented on HRE in their reports. Of these only 44% went on to provide detailed information (as opposed to aims) in their report. This means that only 15% of State Parties are including details about how they are actually implementing HRE. The inadequate level of detail on HRE in State Parties’ reports, linked with the low level of overall reporting on HRE

³³ E/C.12/4/Add.13, 21 May 2003, para 267.

³⁴ Ibid, para 268.

³⁵ E/1990/5/Add.63, 24 June 2004, para 78.

³⁶ Ibid, para 81, 82.

³⁷ Ibid, para 85.

³⁸ E/1990/5/Add.66, 27 October 2004, para 192.

³⁹ E/C.12/4/Add.12, 25 February 2005, para 1202.

⁴⁰ Ibid, para 1234.

⁴¹ E/C.12/NPL/2, 7 August 2006, para 252.

begins to paint a picture of an ICESCR human rights norm that is not a high priority for State Parties.

2.2.3 Inconsistency of Comments by the ESC Committee

Overall there appeared to be very little logic in how the ESC Committee chose to comment on HRE. No discernable pattern emerged from the data that explained the Committee's approach to HRE. For example, one could not say that the ESC Committee was more likely to make an observation about HRE if a State Party included it in its report, than if a State Party did not. When, or how, the ESC Committee chose to address HRE in its Concluding Observations appears to be almost random, as illustrated by the following three examples.

- In 2003, Moldova was the only State Party to include any detail at all on how it intended to include HRE in its education system.⁴² This was met by complete silence from the ESC Committee. Yet Yemen, which merely included a reference to HRE as an educational aim,⁴³ received the most extensive and personalised comments from the ESC Committee. In addition, Israel, Luxembourg, Brazil, New Zealand and Iceland all failed to comment on HRE, and were all met with an almost identical comment, namely "The Committee encourages the State party to continue to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials and the judiciary."⁴⁴ The basis for the ESC Committee encouraging these State Parties to 'continue' to provide HRE is not apparent, since from the reports there is no evidence that they were doing anything in the area of HRE to begin with. Furthermore, there seems to be very little reason why the Committee chose to make this observation for these five State Parties, but not for Guatemala and the Democratic Republic of Korea which similarly failed to include HRE in their periodic report.

⁴² E/1990/5/Add.52, 14 April 2003.

⁴³ E/1990/5/Add.54, 17 May 2002, para 151.

⁴⁴ Israel - *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, 12/1/Add.9023/05/2003, para 44; Luxembourg - *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/1/Add.86.. 23/05/2003, para 44; New Zealand - *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/1/Add.88 23/05/2003, para 36; Brazil - *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, 23/05/2003, para 42; and Iceland - *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/1/Add.89, 23/05/2003, para 29.

- In the previous year, 2002, the ESC Committee made an almost identical recommendation six times. However there was no discernable logic as to when, or why, they chose to make this recommendation. Thus, it was used when a State Party:
 - made no reference to HRE;
 - reported on their HRE efforts; and/or
 - made only general comments concerning their educational system being a force for social change.

Georgia, Poland, the Solomon Islands, Estonia, and Trinidad and Tobago, all made no reference to HRE in their periodic reports, but all received a recommendation from the ESC Committee that they ‘improve’ HRE. The use of the term ‘improve’ suggests that a State has made an effort to provide HRE, but it could do more. However, there was no evidence in the periodic reports, that these State Parties had a HRE system to improve. It would have been more reasonable for the Committee to recommend that a State Party ‘provide’ HRE, as they had done on other occasions, rather than to ‘improve’ something that may not yet be in existence.

- In 2001, the ESC committee included in its concluding observations regarding Germany, a comment that “the committee also requests that the State party provide up-to-date information in its next periodic report on the extent of HRE in the German education system”.⁴⁵ Like many other State Parties, Germany had not provided any information about its HRE programs. There is no readily apparent explanation as to why the ESC Committee made this request of Germany, but not the many other State Parties who similarly provided no information on their HRE programs.

This inconsistent approach is seen across all the years analysed. One possible interpretation of this is that it is evidence of a lack of concern about HRE on the part of the ESC Committee. Rather than engaging in a genuine dialogue with State Parties about the state of HRE within their jurisdiction, they take the easier option of inserting a ‘one size fits all’ recommendation to improve HRE, regardless of the actual educational circumstances that exist. Such an approach sends a clear message to State Parties that the ESC Committee does not take the obligations under 13(1) seriously.

2.2.4 Lack of specificity when the ESC Committee does comment on HRE

In cases where the ESC Committee did make an observation regarding HRE, their comments tended to be vague, lacking in specific detail and generally offered little guidance to the State Party. For example, in the 2006 reporting year, the ESC Committee used phrases such as:

⁴⁵ E/C.12/1/Add.68, 24 September 2001, para 47.

- Monaco
 - *The Committee encourages the State party to ensure that human rights education is provided in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials and the judiciary.*⁴⁶
- Albania
 - *intensify efforts to promote ethnic tolerance; and*⁴⁷
 - *Re-asses curricula... to promote respect for human rights.*⁴⁸
- Macedonia
 - *intensify its efforts to promote respect for cultural values of ethnic communities and the right of everyone to take part in cultural life in order to enhance understanding, tolerance and mutual respect among the different ethnic groups in the State party.*⁴⁹

While these comments certainly cannot be faulted in their aims, they offer very little guidance to the State Party about how the Committee would like to see HRE included in their educational system. Certainly it is not the role of the ESC Committee to write school curricula, but the reporting process may have more impact on State Parties if there are some concrete projects that they can show they have implemented in the next reporting period, even if it is as simple as something like “the Committee encourages the State Party to ensure that there is a minimum of 20 hours of HRE per year for all students 14 years and older, and invites the State Party to report on the implementation of this in its next periodic report”. While this is just an example thought up by the author, something like this would give a State Party something to focus on by the next reporting period.

A very disappointing example of the ESC Committee’s lack of specificity was seen in 2002, when six of the 10 concluding observations contained the exact same quote, namely: *“the Committee encourages the State party to provide HRE in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among state officials and the judiciary”*⁵⁰ and

⁴⁶ E/C.12/MCO/CO/1, 13 June 2006, para 27.

⁴⁷ E/C.12/ALB/CO/1, 24 November 2006, para 49.

⁴⁸ Ibid, para 67.

⁴⁹ E/C.12/MKD/CO/1, 24 November 2006, para 48.

⁵⁰ Slovak Republic – *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/1/Add. 81, 19/12/2002, para 34; Poland - *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/1/Add.82, 19/12/2002, para 56; Solomon Islands- *Concluding Observations of the Committee on Economic, Social and Cultural Rights* E/C.12/1/Add.84, 19/12/2002, para 31; Estonia - *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/1/Add.85, 19/12/2002, para 58; Czech Republic - *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/1/Add.76, 05/06/2002, para 45; Trinidad and

a very similar quote was used once “*The committee also recommends that HRE in the State party be improved and that adequate human rights training be provided to the judiciary and government officials.*”⁵¹ By simply repeating the same quote with no consideration to the different circumstances of these State Parties the Committee is giving the clear impression that HRE reporting is not very high on their priority list, and as such they are devoting very little time to considering it. There is no way that a single sentence can sum up the HRE experiences of Poland, the Slovak Republic, the Solomon Islands, Estonia, the Czech Republic and Trinidad and Tobago. It is suggested, that by repeating this statement ad nauseum, the ESC Committee is wasting its own time, as well as the time of the State Parties.

2.2.5 Lack of encouragement by the ESC Committee when a State Party has made a significant investment in HRE

There were instances where a State Party had devoted a lot of attention to implementing HRE and reporting on those efforts to the ESC Committee. Regrettably, the Committee does not always seem to recognise this commitment to HRE by the State Party. Set out below are three examples of this:

- **Ireland** (1999) included extensive and specific information regarding its HRE program in both schools and for prison/police officers.⁵² The ESC Committee made no comment on this at in its Concluding Observations.
- **Italy** (2004) went into detail about how it was including HRE at a number of levels within its education system, providing specific details about legislation, publications and curriculum projects which were initiated.⁵³ Once again, the ESC Committee made no reference to this in its Concluding Observations.
- **China (Hong Kong)** (2001) and (2005) in both these reports there were very specific detail about programs of HRE for schools, teachers and the public.⁵⁴ In 2001, the ESC Committee made no comment on HRE education at all, and in 2005, stated in the concluding observations that they “*encouraged HKSAR to ensure that HRE is provided in schools at all levels and to raise awareness of HR, in particular economic, social and cultural rights, among state officials and the judiciary*”.⁵⁵ This seems to be

Tobago- *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/1/Add.80, 05/06/2002, para 55.E/1990/5/Add.49, 11 July 2001.

⁵¹ E/C.12/1/Add.83, 19 December 2002, para 29.

⁵² E/1990/5/Add.34, 26 September 1997.

⁵³ E/C.12/4/Add.13, 21 May 2003.

⁵⁴ E/1990/5/Add.43, 20 September 1999; E/1990/5/Add.59, 4 March 2004.

⁵⁵ E/C.12/1/Add.107, 13 May 2005, para 102.

an entirely inappropriate comment given the great deal of information that had been provided regarding HRE in Hong Kong.

It is reasonable to expect that where a State Party makes an effort to establish HRE systems and report on them to the ESC Committee that they would be commended for their efforts, and even promoted as a role model for other State Parties to follow. By essentially ignoring positive efforts to comply with Article 13(1) of ICESCR, the ESC Committee risks State Parties forming an opinion that there is little point in focusing on HRE, either in practice, or in their reports, since it is not something that is valued by the Committee. Rather than encouraging State Parties to be leaders in the field of HRE, the ESC Committee is sending State Parties a message that HRE is something that they do not have to pay attention to.

Observations Regarding the ESC Committee's Approach to HRE

When analysing the data pertaining to HRE from the ESC Committee over a period of approximately a decade, a number of interesting points emerged. The first relates to the type of HRE that the ESC Committee seems most interested.

While HRE in schools was consistently mentioned, the largest HRE focus was on the judiciary and other government officials, as evidenced by the data set out in the table below.

	Schools	Police	Judiciary/ legal profession	Government officials	General Public
1997	1		1	1	2
1998	1				
1999	3	2	4	3	1
2000	1		1		
2001	1				
2002	1		8	8	
2003	1	2	6	5	
2004	3	2	4	2	1
2005	1		1	1	1
2006	2		1	1	
2007	2				
2008	1		1	1	1
TOTAL	18	6	27	22	6

Audience for HRE referenced by the ESC Committee in its concluding observations.

Of the 79 references to HRE made by the ESC Committee, 55 related to HRE for the judiciary, legal profession, government officials or the police. This translates to almost 70%. However the consideration of this audience was not as evenly spread as the consideration of schools. Thus, in every year the ESC Committee specifically mentioned HRE in schools, whereas there were three years when the Committee did not mention HRE for the judiciary, lawyers, government officials or the police at all. Furthermore, the results from 2002 and 2003, where the Committee made the identical comment about HRE and the judiciary in relation to almost every State Party under review, has resulted in a larger number of references to the judiciary and state officials than may have otherwise been the case.

If there was a coordinated effort within the UN to promote HRE, one would expect that from 2005 onwards there would be an increase in the references to HRE in schools. This is because in 2005 the General Assembly proclaimed the World programme for HRE with the focus of the first phase being HRE in schools. The concluding observations from the ESC Committee over the last four years give no indication it is aware of this initiative from the General Assembly, let alone engaging in a dialogue with State Parties about how the World Programme could be used to support and promote HRE within their schools.

Preceding the World Programme for HRE was the UN Decade for HRE (1995 – 2004). As the activities of the ESC Committee have not been analysed for the period before the Decade it is not possible to unequivocally say that there was no increase in the attention paid to HRE by the Committee as a result of the proclamation of the Decade. However, the fact that the Decade was only referred to by the ESC Committee three times over a period of eight years (1997-2004) suggests that it was not a focus of the Committee's work. The three times when the Committee did make reference to the Decade were:

- **Azerbaijan** (1997): "The Committee encourages the Government to reflect the spirit of the United Nations Decade for Human Rights Education in its educational curricula and to submit information in this regard to the Office of the United Nations High Commissioner for Human Rights".⁵⁶
- **Luxembourg** (1997): "In light of the United Nations Decade for Human Rights Education, the Committee encourages the State party to include HRE in school curricula".⁵⁷
- **Colombia** (2001): "The Committee strongly recommends the implementation of the national action plan for education on human

⁵⁶ E/C.12/1/Add.20, 22 December 1997, para 39.

⁵⁷ E/C.12/1/Add.22, 12 December 1997, para 25.

rights, proposed by the High Commissioner for Human Rights within the framework of the United Nations Decade for Human Rights Education (1995-2004).”⁵⁸

It is unclear why these three State Parties were singled out for comments about implementation of the Decade for HRE. It once again demonstrates an inconsistency in the responses of the ESC Committee to State Parties’ HRE efforts.

Another observation on the work of the ESC Committee regarding HRE relates to the lack of anything more than a superficial analysis of State Parties’ HRE efforts. Thus, the ESC Committee appears to accept State Parties’ reporting on HRE as an *aim* of their education system, without requiring them to provide detailed information on how these aims are actually being *implemented*. For example, in 1999, Mexico outlined how its constitution provides that education:

shall contribute to a more harmonious coexistence... through its efforts to sustain ideals of fraternity and equality of rights of all mankind.⁵⁹

The Committee did not comment on the fact that Mexico did not indicate anywhere in its report, what steps it was taking to ensure that the provisions in the Constitution were implemented. Instead, the Committee included in its concluding observations, a variation of their oft used statement recommending that a State Party take “the necessary measures to ensure that the provisions of the Covenant are widely disseminated, through human rights education in all curricula, among all sectors of society, particularly among the judiciary and administrative authorities”.⁶⁰ Thus, the ESC Committee once again issued a *pro forma* generic response that failed to adequately deal with the specific issues of the State Party under review.

Another observation regarding the ESC Committee’s work, relates to its failure to embrace HRE as a preventive tool in these times of increasing conflict. It might have been expected that the ESC Committee’s focus on HRE would have increased in response to changes in global circumstances. For example, the terrorist attacks in September 2001, and the escalation in religious conflicts since that time, could have acted as a catalyst to increase the focus on HRE as an antidote to these problems. However, that has not been the case. Human rights education is rarely discussed by the ESC in the context of the war on terror or religious persecution. Rather, it tends to be addressed in the context of

⁵⁸ E/C.12/1/Add.74, 30 November, 2001, para 51.

⁵⁹ E/1994/104/Add.18, 27 January 1998, para 410.

⁶⁰ E/C.12/1/Add.41, 8 December 1999, para 46.

combating racism or discrimination against women. For example the ESC Committee made the following comments:

- **Greece** (2004): “recommends that the State party continue its efforts to train police officers on international human rights standards and to raise awareness of the dimensions of discrimination against the Roma among local authorities.”⁶¹
- **Switzerland** (1998): “the Committee further emphasises the importance of educational campaigns to develop awareness of the problem of discrimination and recommends that all possible measures be taken, in particular at the social infrastructure level, to make it easier for women who wish to work outside the home to do so.”⁶²
- **Uzbekistan** (2005): “the Committee calls upon the State party to adopt a law on gender equality, and to take all effective measures, including through the use of media and education, to overcome the traditional stereotypes regarding the status of women in the public and private spheres.”⁶³

These recommendations demonstrate that the ESC Committee does recognise the role that HRE can play in the prevention of human rights abuses. It would be useful if this recognition extended to HRE as an antidote to a broader range of human rights violations than just racism and sex discrimination.

Conclusion

The above micro-analysis of the ESC Committee’s work in the field of HRE over the past ten years leads to the conclusion that this UN body does not place a high value on State Parties’ implementation of HRE. The Committee rarely gives any detailed feedback on a State Party’s levels of compliance with Article 13(1) of ICESCR, and makes no recommendations regarding exactly what changes it would like to see a State Party make to improve its implementation or reporting of HRE. The Committee’s comments are usually limited to encouraging a State Party to improve its HRE, without any examples as to how they should do that, or specific reference to the situation within the state under review. For example:

⁶¹ E/C.12/1/Add.97, 7 June 2004, para 32.

⁶² E/C.12/1/Add.30, 7 December 1998, para 31.

⁶³ E/C.12/UZB/CO/1, 24 January 2006, para 43.

- **Armenia** (1999) – “human rights education should be ensured in curricula at all levels of education, as well as in relevant public institutions such as the judiciary, administrative bodies and the police force.”⁶⁴
- **Malta** (2004) – “The Committee encourages the State party to ensure that human rights education is provided in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials and the judiciary.”⁶⁵

Such generic statements do not provide the State Party with any specific guidance as to how to achieve what the Committee recommends. Concrete examples of how other States have successfully implemented HRE programs, or details about what the Committee expects the State Party to do following the report, would be useful additions to the concluding observations. All the Committee is currently doing is reiterating what is already expressed in Article 13(1) of ICESCR, rather than providing any useful guidance on how to *implement* this provision.

Overall, the approach of the ESC Committee to HRE over a period of a decade is disappointing. They frequently failed to acknowledge positive achievements in the area of HRE, and similarly failed to engage with State Parties who made little, or no, effort when it came to implementing Article 13(1). The practice of including, in the concluding observations, a generic statement encouraging a State Party to do more regarding HRE gives the impression that the ESC Committee is merely paying lip-service to HRE. The laissez-faire approach of the Committee has sent a clear message to State parties that implementing Article 13(1) of ICESCR is not a priority of the Committee, and as a result, the majority of State Parties pay scant attention to HRE in their reports.

It remains to be seen whether the other UN treaty body with responsibility for monitoring HRE implementation by States, has adopted a similar approach. The next chapter analyses the extent to which the Committee on the Rights of the Child focused on State Parties’ compliance with Article 29(1) of CROC, over a similar ten-year period. In other words, is the ESC Committee’s casual attitude towards HRE symptomatic of UN expert bodies generally, or is it unique to that particular committee?

⁶⁴ E/C.12/1/Add.39, 8 December 1999, para 21.

⁶⁵ E/C.12/1/Add.101, 14 December 2004, para 43.

Chapter 4 HRE and the Human Rights Council

- 1. *Introduction***
- 2. *Background to the HRC***
- 3. *HRE Activities of the HRC***
- 4. *HRE Activities of the Advisory Committee***
- 5. *HRE as part of the Universal Periodic Review***
- 6. *Conclusion***

*'This Council represents a great new chance for the United Nations, and for humanity, to renew the struggle for human rights'*¹

1. Introduction

Unlike the treaty body examined in the previous chapter, the Human Rights Council (HRC) is an inter-governmental body, made up of state representatives, not independent experts. Thus, it is revealing to examine whether there are any similarities between the way states perceive and prioritise HRE in a political body, such as the HRC, and the way HRE is perceived and prioritised by experts on a treaty committee, such as the Committee on Economic, Social and Cultural Rights.

After reviewing the structure of the HRC, and its mandate regarding HRE, this chapter focuses on three separate aspects of this body's HRE work, namely: the efforts of the HRC as a whole; the work of the subsidiary Advisory Committee; and the monitoring undertaken pursuant to the Universal Periodic Review (UPR). Examining the HRE activities taking place in these distinct facets of the HRC provides a comprehensive picture of the way in which states are addressing HRE in this forum.

2. Background to the Human Rights Council

In 2006, the UN abolished the discredited Commission on Human Rights, and established, in its place, the Human Rights Council (HRC).² The reasons for this reform have been analysed in depth elsewhere,³ and thus are not re-visited here. What is important to this research, is the structure and working of the HRC.

It is a body made up of 47 members comprising:

- 13 from Africa;
- 13 from Asia;
- 8 from Latin America and the Caribbean States;
- 7 from Western Europe and other States; and
- 6 from Eastern Europe.⁴

¹ Secretary-General's address to the UN Human Rights Council, 19 June 2006. Accessed at <http://www.un.org/apps/sg/sgstats.asp?nid=2090> on 18 May 2009.

² General Assembly Resolution 60/251, 3 April 2006.

³ See for example Gerber, Paula 'The Hitch Hiker's Guide to the New UN Human Rights Council' (2007) 10(2) *Flinders Journal of Law Reform* 241; Gerber, Paula 'Human Rights Reform in the United Nations: The Good, the Bad and the Ugly' (2006) 31(2) *Alternative Law Journal* 88; and (2007) 7(1) *Human Rights Law Review* 1 – 273 (a special issue devoted entirely to the reform of the UN Human Rights machinery).

⁴ <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm>, accessed 31 August 2009.

Compared to the old Commission, this represents a shift in membership. In particular, there are six fewer members, and a greater proportion of African and Asian states with a corresponding reduction in Western states.

The General Assembly resolution establishing the HRC specifically provided that the Council shall “promote human rights education and learning”.⁵ Thus, from the outset, the HRC has been directed to focus on increasing HRE. In some respects, this is similar to the ESC Committee which has a specific responsibility to promote HRE through monitoring State Parties’ compliance with Article 13 of ICESCR. The HRC’s activities over the past few years are thus measured against this specific mandate regarding HRE.

3. HRE Activities of the Human Rights Council

The HRC has noted that “enhanced efforts to promote human rights education would represent a major contribution of the Human Rights Council”.⁶ Thus the HRC appears to see HRE as an issue where it can make a difference. Evidence of the HRC’s commitment to this issue is demonstrated by its decision to develop a new human rights instrument focusing specifically on HRE, namely a Declaration on Human Rights Education and Training. It has requested those who will be undertaking the drafting of the declaration to consult widely regarding the content of the declaration, and to present a draft to the HRC at its session in March 2010. The process of developing the declaration is analysed in-depth in the next section.

The HRC has also been involved in the World Programme for HRE. The First Phase of the World Programme focused on HRE in primary and secondary schools, and comes to an end in December 2009. The HRC has responsibility for determining the focus of the Second Phase. In March 2009, it requested the United Nations High Commissioner for Human Rights (UNHCHR) to consult with governments, national human rights institutions and NGOs about possible target sectors and thematic areas for the Second Phase.⁷ The UNHCHR submitted its report in late August 2009. It appears from discussions within the HRC on 18 September 2009, that the Second Phase of the World Program will focus on HRE in the higher education sector and for school teachers and educators, together with civil servants, law enforcement officials and the military at all levels. However, as yet there is no formal resolution. Once a resolution to this effect is passed, the next step will be preparation of a Plan of Action for the Second Phase.

⁵ Ibid, paragraph 5(a).

⁶ Resolution 6/10, 28 September 2007.

⁷ HRC Resolution 10/3, 25 March 2009.

Further evidence of the HRC's commitment to HRE can be seen in its resolution regarding voluntary human rights goals, which the HRC sees as reinforcing existing human rights obligations and commitments.⁸ Specifically, the HRC encourages states, to accomplish progressively the realisation of a number of human rights voluntary goals, including:

Adoption and implementation of programmes of human rights education, such as the World Programme for Human Rights Education, in all learning institutions, including capacity-building programmes for law enforcement professionals, in order to advance a culture of respect for human rights.⁹

In its relatively short history, the HRC has taken significant steps to promote HRE consistent with the General Assembly resolution setting out the HRC's mandate.¹⁰ In particular, it has proposed the adoption of a UN Declaration on HRE, identified the target sector for the Second Phase of the World Programme for HRE, and included HRE in its voluntary human rights goals. The HRC has maintained a continuous focus on this issue, and is likely to do so into the future, with the establishment of the 'Informal Platform for Human Rights Education and Training' within the Council;¹¹ a group whose aim is "to keep human rights education and training on the Agenda of the Council."¹²

The balance of this chapter is devoted to an in-depth analysis of two specific aspects of the HRC's activities, namely the HRE work of the Advisory Committee, and the extent to which HRE has been addressed within the UPR.

4. HRE Activities of the Advisory Committee

Whereas, the Commission on Human Rights was supported in its work by the Sub-Commission on the Promotion and Protection of Human Rights, the HRC is supported by the Human Rights Council Advisory Committee (Advisory Committee). This body consists of 18 experts, and was established to function as a think-tank for the Council and to work at its direction.¹³ The members of the Advisory Committee are required to have recognised competence and experience in the field of human rights; be of high moral standing; and be

⁸ A/HRC/9/L.11, 24 September 2008, page 47.

⁹ Ibid, page 48, paragraph (f).

¹⁰ A/RES/60/251, 3 April 2006, paragraph 5.

¹¹ The Informal Platform consists of Costa Rica, Italy, Switzerland, Slovenia and Morocco.

¹² A/HRC/10/NGO/112, 27 February 2009, page 2.

¹³ Human Rights Council Resolution 5/1, dated 18 June 2007. *Institution-building of the United Nations Human Rights Council*, para 65.

independent and impartial.¹⁴ Although the Advisory Committee is made up of experts rather than government representatives, there is still a requirement that those experts represent different geographic regions.¹⁵ Thus, in many ways the Advisory Committee is similar to the ESC Committee in that it is made up of 18 experts from different geographic regions who meet twice a year, albeit the ESC Committee meets for a total of six weeks a year, whereas the Advisory Committee has been allocated just 10 days a year.

A notable difference between the ESC Committee and the Advisory Committee is their mandate. Whereas the ESC Committee is charged with monitoring State Parties' compliance with ICESCR, the Advisory Committee's role is to provide expertise to the HRC through studies and research-based advice on thematic issues pertaining to the mandate of the HRC.

The HRC has delegated the drafting of the proposed Declaration on Human Rights Education and Training to the Advisory Committee. Pursuant to this directive, the Advisory Committee has taken three significant steps, namely:

1. established a Drafting Group on human rights education and training;
2. developed questionnaires for stakeholders on possible elements of a Declaration on HRE; and
3. organised a workshop for participants to reflect further on the possible content of a Declaration on HRE.

Drafting Group

A decision was made at the very first session of the Advisory Committee (August 2008) to establish a Drafting Group to undertake preparatory work on a Declaration on HRE. The Drafting Group is made up of six members of the Advisory Committee.¹⁶

In the Advisory Committee's most recent report to the HRC, it requested that a representative of the Drafting Group be invited to participate in the meeting of treaty bodies to be held in December 2009, so that formal consultations regarding the proposed Declaration may be undertaken.¹⁷ This is a useful

¹⁴ Ibid, paragraph 67.

¹⁵ Five from Africa; 5 from Asia; 2 from Eastern Europe; 3 from Latin American and Caribbean States; and 3 from Western Europe and other States. Ibid, paragraph 73.

¹⁶ Emmanuel Décaux (France), Hèctor Felipe Fix Fierro (Mexico), Vladimir Kartashkin (Russian Federation), Purificacion V. Quisumbing (Philippines), Dheerujlall Seetulsingh (Mauritius) and Halima Embarek Warzazi (Morocco). (Ms. Warzazi is the Chair and Mr. Décaux is the Rapporteur).

¹⁷ A/HRC/AC/3/CRP/4/Corr.1, 10 August 2009, para 8. Accessed 9 September 2009.

initiative for several reasons. First, it will raise awareness about the proposed Declaration on HRE with the members of treaty bodies who are charged with monitoring State Parties' HRE efforts, for example, the ESC Committee, pursuant to Article 13 of ICESCR and the Committee on the Rights of the Child, pursuant to Article 29 of the Convention on the Rights of the Child. Second, it will enable the Drafting Group to hear the views of experts who are likely to have been involved in evaluating State Parties' HRE performance for several years, and will therefore have useful insights from this experience. Third, a meeting between the Drafting Group and the treaty bodies will increase communication and cooperation regarding HRE within the UN system. As discussed more fully in the next chapter, the lack of a coordinated approach to HRE within the UN human rights framework appears to be one of the reasons why the UN has not been more successful in its efforts to promote HRE. The UN's HRE initiatives over the past several years appear to be *ad hoc*, and it is suggested that a coordinated and consistent approach is desperately needed, if the aim of widespread HRE is to be achieved.

The Drafting Group has been, and continues to, work diligently on developing a preliminary draft of the Declaration on HRE, and the specific steps it has taken are considered below.

Questionnaires

The Drafting Group developed four separate questionnaires relating to HRE, which were targeted at governments, national human rights institutions, civil society and NGOs, and international and regional organisations. In order to maximise the response rate, the questionnaires were kept to one page and each consisted of no more than five questions. The questions related to such matters as:

- I. Is there a right to HRE in your national system?
- II. If yes, what is the legal basis for it, e.g. international law, national legislation, constitution, etc?
- III. What are the HRE priorities, challenges, prospects for the future etc?
- IV. In the absence of an explicit right to HRE, what HRE is taking place?
- V. For NGO and international/regional organisations – is HRE part of their program/activities?

There was a high rate of return of completed questionnaires, suggesting that there is a significant amount of interest in the further development of HRE

principles and standards. The Advisory Committee received 149 responses, being:

- 57 from governments;
- 14 from international organisations;
- 30 from national human rights institutions;
- 43 from NGOs and civil society; and
- 5 from academics and individuals.¹⁸

Somewhat surprisingly, the highest number of completed returns came from governments. Human rights, and in particular, human rights education, is something that is perceived as being important to human rights NGOs, more so than governments. That so many governments did complete and return the questionnaire, suggests that perhaps HRE is gaining greater resonance with governments. However, there were some very notable omissions from the list of government responses, including the United States of America, Australia,¹⁹ New Zealand,²⁰ and South Africa. These are all wealthy, developed OECD countries that one might have expected would have something to say on the issue of HRE in their country.

Each questionnaire concluded by asking for comments and ideas on possible new elements for a future Declaration on HRE. The suggestions received included that the Declaration:

- contain a clear definition of HRE, including its relationship to values education, citizenship education etc...;²¹
- specify that HRE is an autonomous obligation, not dependent on resources;²²
- invite treaty bodies to pay greater attention to HRE in their Concluding Observations following a review of a State Party's Periodic Report;²³
- identify the substance of states' responsibilities regarding HRE i.e. their role as duty-bearers;²⁴

¹⁸ Accessed at <http://portal.ohchr.org/portal/page/portal/AdvisoryCommittee/Final%20table%20with%20replies%20-%20EKT-%2028%20July%202009.doc> on 8 September 2009.

¹⁹ Although the Australian Government did not complete a questionnaire, the Australian Human Rights Commission did, albeit it chose not to answer the final question about proposed content of a declaration on Human Rights Education and Training.

²⁰ Like Australia, the New Zealand Human Rights Commission, returned a questionnaire while the Government did not.

²¹ Irish Human Rights Commission, 16 March 2009.

²² International Training Centre on Human Rights and Peace Teaching, 14 July 2009.

²³ International Training Centre on Human Rights and Peace Teaching, 14 July 2009.

²⁴ Amnesty International, 29 July 2009.

- highlight the roles of various UN organs regarding the promotion of HRE;²⁵
- establish an effective monitoring system to ensure implementation;²⁶
- recognise the important role that civil society plays in the delivery of HRE;²⁷
- recognise the important role that national human rights institutions play in the provision of HRE;²⁸
- emphasise the centrality of teachers to HRE, and the importance of their levels of knowledge about human rights;²⁹
- stress that HRE should cover both civil and political rights, as well as economic, social and cultural rights;³⁰
- be based on the principles of participation, equality and non-discrimination, and ensure that HRE is included in ALL learning environments, not just formal education in schools;³¹ and
- take a global approach to HRE which is action-oriented.³²

The text of the preliminary draft declaration is analysed in-depth below, but it is readily apparent that the bulk of these proposals have not yet been taken into account. There will be a lot of disappointed governments and organisations if it turns out that the majority of suggestions regarding the content of the Declaration on HRE are not taken on board. However, as the drafting process is still ongoing, it is too early to be rushing to judgment about what will be in the final version of the Declaration, and in particular, whether the suggestions provided in the responses to the questionnaire are adopted.

Workshop

A 2-day workshop was organised by the Informal Platform on Human Rights Education, in Marrakech, Morocco, in July 2009. It was attended by 94 individuals who represented governments, international organisations and civil society. The delegates attended sessions that focused on aspects of HRE, such as:

- Analysing the responses to the questionnaires;

²⁵ Lawyers Rights Watch Canada.

²⁶ Soka Gakkai International.

²⁷ Soka Gakkai International.

²⁸ Canadian Human Rights Commission, 31 December, 2008.

²⁹ Irish Human Rights Commission, 16 March 2009.

³⁰ Netherlands' Government, 20 March 2009.

³¹ Amnesty International, 29 July 2009.

³² Interdepartmental Centre on Human Rights and the Rights of People, University of Padua, Italy.

- principles and general overview of the proposed Declaration on HRE;
- obligations and role of States;
- role of other stakeholders; and
- role of the UN mechanisms.

The workshop facilitated a significant exchange of information and ideas about HRE. For example, it included presentations by a member of the ESC Committee about the HRE work of treaty committees,³³ and by a representative of the OHCHR about the promotion of HRE within the UPR.³⁴ This level of dialogue about HRE needs to become a permanent feature of the UN's operations in this field. It represents a useful model for the sharing of knowledge and ideas regarding HRE. As discussed in the next chapter, the UN is unlikely to succeed in its efforts to promote HRE as a preventative tool, unless and until, all organs within the UN start to address HRE in a consistent, collaborative and coordinated way, with each body fully aware of, and supportive of, HRE initiatives being undertaken by other facets of the UN.

Draft Declaration

The result of these three undertakings by the Advisory Committee (establishing a Drafting Group, developing questionnaires and organising a workshop) has been the production of a preliminary draft UN Declaration on Human Rights Education and Training.³⁵ The draft Declaration currently consists of:

- a Preamble (8 paragraphs);
- Part 1, headed 'Rights and Obligations' (13 paragraphs);
- Part 2, headed 'Implementation and Follow-up' (23 paragraphs); and
- Part 3, headed 'Additional Provisions' (currently only one paragraph).

The Preamble begins by acknowledging the UN's HRE efforts to date, including Article 26 of the UDHR, various human rights treaty provisions, the Vienna Declaration and Programme of Action, the Decade for HRE and the subsequent World Programme. The first substantive paragraph asserts that HRE is a fundamental right and lays the justification, or basis, for that right, namely that HRE is "inherent to human dignity and intimately linked to the effective enjoyment of all human rights". This reinforces the UN's attitude that HRE is a preventative tool, albeit that rather than expressing the idea in negative terms (to combat human rights violations), it is articulated in positive terms (to enable effective enjoyment of human rights). That this philosophy is addressed in the first

³³ Virginia Bonoan-Dandan from the Philippines.

³⁴ Laura Dolci-Kanaan, NGO Liaison Officier, OHCHR.

³⁵ Annex 2 to A/HRC/AC/3/CRP/4/Corr.1, 10 August 2009. This document is an informal English translation of the original draft, which is in French. Accessed 9 September 2009.

substantive paragraph of the draft declaration emphasises the importance of this role that HRE performs, and reinforces the legal underpinnings of HRE.³⁶

As to be expected, the draft Declaration underscores that HRE must be premised on equality and non-discrimination, particularly with respect to race, sex, language or religion.³⁷ While it is important to highlight the importance of non-discrimination in the access to, and delivery of, HRE, it is regrettable that the Drafting Group has chosen to single out only these four discriminatory grounds to the exclusion of many others, such as sexual orientation, nationality and age.³⁸ Later in the Declaration, there is reference to ensuring access to HRE by vulnerable groups such as the disabled, nomads, refugees and Indigenous people.³⁹ It is suggested that it would be more powerful to link this reference to vulnerable groups, to the equality/non-discrimination provision. Furthermore, if the drafters are going to specify vulnerable classes of people, it would be preferable that such a list be exhaustive. To include some groups and omit others, potentially reinforces and/or justifies the exclusion of other marginalised groups, such as sexual minorities, and people with health issues, such as HIV positive individuals and those with mental health conditions.

One of the obstacles to widespread HRE is a lack of teachers trained in the content and pedagogy of HRE.⁴⁰ For example, secondary school teachers have commented that:

- The next step is to train teachers so that they're comfortable teaching this [human rights]... teachers aren't going to teach it unless that have the skills.
- I'm not doing a lot with it [HRE], but I'm probably doing more than a lot of teachers. And I still struggle with it because I'm not really clear, and I haven't been taught about it. Teachers tend to teach what they're familiar with and how they were taught and the information they were taught, and I didn't really get any of this in college.⁴¹

³⁶ A/HRC/AC/2/L.8, 3 February 2009, Report of the Advisory Committee on its Second Sessions, paragraph 10.

³⁷ Paragraph 5.

³⁸ For a comprehensive discussion of the various grounds of discrimination see General Comment No. 20 published by the UN Committee on Economic, Social and Cultural Rights, E/C.12/GC/20, 10 June 2009.

³⁹ Paragraphs 12 and 13.

⁴⁰ Gerber, Paula *From Convention to Classroom: The Long Road to Human Rights Education* (2008) VDM Publishers, Germany.

⁴¹ *Ibid*, 242-243.

It is therefore encouraging that the draft declaration emphasises the training of trainers as a key component of the right to HRE.⁴² However, further guidance on this issue would be useful, for example, that states explicitly recognise that instruction about human rights is a mandatory part of all teacher education programmes, as well as ongoing professional development for teachers, and even that satisfactory completion of HRE training be a prerequisite for all teachers seeking teaching accreditation/licence.

In recognition of the important role that information technology plays in many people's lives, the draft Declaration acknowledges that HRE "must integrate the perspective of the digital age in order to encourage the development of new teaching space and facilitate digital solidarity". While one cannot ignore the powerful influence of computers and the internet in modern education, it would be useful for the Declaration to also acknowledge, that for those living in the poorer parts of the world, accessing HRE in this way is unrealistic and unachievable, at least in the short to medium term.

Part Two of the draft Declaration addresses the responsibility of states to respect, protect and implement HRE. It recognises that the right to HRE will not be realised without political will, a national strategy, with precise activities and concrete objectives, and the mobilisation of both human and financial resources.⁴³ This is another illustration of where the draft Declaration is light on specific guidance that would be useful for states seeking to implement an HRE strategy. While including examples of activities and objectives may not be feasible in a declaration, the drafters could indicate where examples of best practice in this regard, could be accessed, and how states with limited financial resources can nevertheless take non-fiscally demanding steps to promote HRE.

The Declaration includes specific reference to the need for HRE to be sustained and have long-term objectives. Furthermore, for HRE to be effective, it must "start from the bottom up and aim for the participation of everyone".⁴⁴ This is an important acknowledgment of the right of participation, and that HRE is unlikely to achieve its aims if it is imposed from the top down, with little input from rights-holders. To be successful, any HRE must ensure that the participants have ownership of the program, which is why the draft declaration encourages local initiatives.⁴⁵

It is interesting to note that the draft Declaration emphasises the need "coordination, coherence, synergy and interdependence"⁴⁶ between international,

⁴² Paragraphs 6 and 10.

⁴³ Paragraph 18.

⁴⁴ Paragraph 20.

⁴⁵ Paragraph 20.

⁴⁶ Paragraph 23.

regional, national and local HRE efforts. The previous chapter highlighted the fact that the ESC Committee rarely, if ever, referred to the UN Decade for HRE or the World Programme for HRE, when commenting on State Parties' levels of compliance with Article 13 of ICESCR. There is strong evidence that there is currently little coordination, coherence synergy or inter-dependence in the way the various organs of the UN address HRE. Indeed, the lack of coordination between different UN bodies is arguably one of the reasons why the UN's efforts to promote HRE have not enjoyed more success. In order to increase credibility, the UN should internally embrace the message of coordinating HRE efforts, before advocating such an approach to others.

The draft Declaration recommends that treaty bodies should systematically emphasise HRE in their questions to State Parties, and in their Concluding Observations.⁴⁷ A similar message is directed at the Human Rights Council when that body is undertaking its review of states' human rights practices as part of the Universal Periodic Review.⁴⁸ If these UN bodies adopt these recommendations, it would significantly increase the amount of dialogue that is taking place at the international level regarding states' efforts to implement HRE, and have the potential to make states more accountable for any failures to genuinely realise the right to HRE.

The Declaration provides that "a standing assessment of actions undertaken is essential for the effectiveness of the right to human rights education and training, through the implementation of roadmaps, concrete targets and quantitative and qualitative indicators."⁴⁹ The use of the passive voice in this statement is likely to seriously impact on its usefulness. While the sentiment expressed in this paragraph is admirable, it is unlikely to become reality unless there is an assignment of responsibility for the carrying out of such assessments. It is unclear whether it is intended that it be states, the UN, national human rights institutions, NGOs or some other entity that has accountability for these tasks. Clarification of this provision would be useful.

The Preamble to the draft Declaration provides that one of the objectives of the declaration is to encourage HRE through the provision of consistent and precise guiding principles.⁵⁰ The current text does not appear to achieve this aim. There are numerous statements about the *aim* of HRE, but a lack of real guidance as to *how* states and other key stakeholders can, and should, realise those aims

Another stated aim of the draft Declaration is to mobilise HRE efforts by states and other key stakeholders. Certainly, a Declaration on this topic is likely to

⁴⁷ Paragraph 30.

⁴⁸ Paragraph 31.

⁴⁹ Paragraph 27.

⁵⁰ Paragraph 8.

increase the profile of HRE, which may in turn provoke states and other key stakeholders to increase their efforts in this regard.

In addition to what has been included in the draft Declaration, it is worth noting what has not been included. For example, a coalition of 356 NGOs urged the Drafting Group to include a clear definition of HRE that explicitly references all human rights i.e. including economic, social and cultural rights.⁵¹ To date no such definition has been included. In addition, the NGO coalition argued for clarification of the obligation of duty-bearers regarding HRE.⁵² As discussed above, there is a tendency for the draft Declaration to use the passive voice rather than unequivocally assigning responsibility and accountability for HRE. The NGO coalition also recommended that the Declaration include benchmarks and indicators to assist existing UN monitoring bodies (treaty committees and the HRC) in examining states' HRE efforts. No such standards have yet been included in the draft Declaration.

The high level of HRE activity undertaken by the Advisory Committee indicates that this new body has embraced the task of drafting a Declaration on HRE. While there is room for improvement in the current draft, this is not surprising, given that it is still a working draft, with the final draft not required to be submitted to the HRC until its session in March 2010.

5. *Universal Periodic Review*

One of the criticisms of the HRC's predecessor, the Commission on Human Rights, was that States actively sought membership on the Commission in order to shield themselves from scrutiny of their human rights record. To combat this, the General Assembly decided that the HRC should undertake a review of the human rights records of all states, starting with its own members. Thus, the resolution establishing the HRC provides that it shall:

undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal

⁵¹ A/HRC/10/NGO/112, 27 February 2009, page 3.

⁵² Ibid.

periodic review mechanism within one year after the holding of its first session.⁵³

Given that the HRC is itself a political body, it is perhaps not surprising, that the process of agreeing on a model for the UPR was also very political. There were proposals for the review to be undertaken by independent experts, while others insisted that it be a *peer review*, i.e. an inter-governmental process rather than an independent one. In the end, the agreed process involves a Troika (three members of the HRC from different geographical regions selected by lot) acting as rapporteurs, with the actual review undertaken by a Working Group consisting of all 47 members of the HRE. However, any state can take part in the dialogue. The review lasts three hours and culminates in the Troika preparing a written report for the HRC. There is a limited role for NGOs who are allowed to be in attendance and make written submissions, but are not permitted to actually participate in the dialogue.

Before considering the extent to which the UPR is a useful tool for promoting HRE, it is necessary to understand the way the UPR works in practice. Prior to the interactive dialogue, the Troika receives three documents, namely:

- (1) a report from the state under review, which should be prepared after “a broad consultation process at the national level with all relevant stakeholders”,⁵⁴
- (2) a compilation report prepared by the Office of the High Commissioner for Human Rights (OHCHR) consisting of information from the Concluding Observations of treaty bodies and other relevant official UN documents;⁵⁵ and
- (3) a summary, prepared by the OHCHR, of credible and reliable information provided by other relevant stakeholders, e.g. NGOs and national human rights institutions.⁵⁶

These documents are provided six weeks in advance of the review in order to give the reviewers an opportunity to consider them ahead of the interactive discussion.

There has been much debate about the structure and working of the UPR and in particular whether it is a useful addition to the monitoring of states’ human rights

⁵³ General Assembly Resolution 60/251, 3 April 2006, paragraph 5(e).

⁵⁴ HRC Resolution 5/1, paragraph 15(a).

⁵⁵ HRC Resolution 5/1, paragraph 15(b).

⁵⁶ HRC Resolution 5/1, paragraph 15(c).

practices that is already being undertaken by the treaty committees.⁵⁷ This chapter aims to contribute to this dialogue by using states' performance in the area of HRE as a lens through which to analyse the efficacy of the UPR.

The first thing to note about the UPR is that there is no mechanism in place for a methodical and orderly analysis of human rights. For example, there is no human rights index that is being used to uniformly evaluate states' human rights performance. Rather, it is intended that States' human rights practices will be broadly evaluated against:

- The UN Charter;
- UDHR;
- Human rights instruments that the state has ratified;
- Any voluntary pledges or commitments; and
- Applicable international humanitarian law.⁵⁸

Thus, each state is purportedly being measured against a combination of universal standards and state-specific benchmarks. The effect of this is that all states' HRE practices should be considered pursuant to Article 26(2) of the UDHR, and Article 29(1) of CROC (except for the United States and Somalia which have not ratified CROC). The majority of states' HRE practices should also be measured against Article 13(1) of ICESCR, which has been ratified by 160 states. The UPR could also take into account the Decade for HRE and the World Programme for HRE as examples of voluntary pledges and commitments in the case of states which have participated in these UN initiatives.

This section analyses the first four sessions of the UPR from April 2008 to February 2009 to determine whether HRE is a pertinent and serious component of the UPR. Sixteen states are reviewed at each session of the UPR, which allowed for an in-depth examination of how the UPR considered the HRE practices of 64 States. The structure of this examination is to consider the extent to which HRE is addressed in:

- (i) the three categories of written documentation submitted as part of the UPR; and
- (ii) the Working Group report which is presented to the HRC for adoption.

⁵⁷ See for example, Redondon, Elvira Dominguez 'The Universal Periodic Review on the UN Human Rights Council: An Assessment of the First Session' (2008) 7 *Chinese Journal of International Law* 721; Abebe, Allenhon Mulugeta 'Of Shaming and Bargaining: Africa States and the Universal periodic Review of the United Nations Human Rights Council' (2009) 9(1) *Human Rights Law Review* 1; and Gaer, Felice D. 'A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System (2007) 7(1) *Human Rights Law Review* 109.

⁵⁸ HRC Resolution 5/1, paragraphs 1-2.

Analysing these two aspects of the UPR provides a clear indication of whether the UPR is being used as a tool for increasing attention on HRE.

Human Rights Education in the Written Documentation

The written documentation analysed here is limited to the National Reports and the OHCHR Compilation Report which summarises the treaty bodies' Concluding Observations/Recommendations.⁵⁹ Examining these two categories of documents provides a comprehensive picture of the extent to which HRE is being presented to the Working Group as an important issue.

National Reports

Within the National Reports, HRE tended to be addressed in one of three ways. First, in the context of the *institutional framework for human rights*, i.e. states identified institutions responsible for coordinating or undertaking HRE measures either in general terms or more specifically directed at a particular human rights issue – depending on the institution and its purpose. References to HRE measures in the National Reports within this category tended to be very broad.

Second, some states addressed HRE as *an issue unto itself*, i.e. they provided a dedicated section on HRE.⁶⁰ In general, this meant that significant detail was provided about the measures that had been adopted by a state to disseminate human rights, either through training of relevant officials, public awareness campaigns of a general or specific kind, and/or the incorporation of human rights education in school curricula.

Third, HRE arose as *a measure aimed at addressing a particular human rights problem*. States indicated that they used HRE to address issues such as: women's rights, children's rights, anti-corruption and HIV/Aids. The level of specificity provided about the use of HRE in these circumstances varied enormously, from vague statements that such stratagems were being pursued, to details about the precise measures adopted, for example disseminating brochures and pamphlets or specific training programs.

A fourth category should also be mentioned, namely those states that raised HRE in their National Report as an area in which they needed financial and/or technical assistance from the international community if they were to pursue further.⁶¹

⁵⁹ Time did not permit the analysis of the summary of reports from stakeholders such as NGOs and human rights institutions.

⁶⁰ See for example, the National Report of the Netherlands, A/HRC/WG.6/1/NLD/1, 7 March 2008, Section 4.2.2, page 18.

⁶¹ See for example Barbados' National Report (A/HRC/WG.6/3/BRB/1, 16 September 2008), paragraph 66.

It is also worth noting, that while the term ‘human rights education’ was not that commonly used by states in their national reports, this is not an indicator of the extent of attention given to HRE related measures. Other terms were regularly used to describe what essentially amounts to HRE, including ‘awareness raising’, ‘training’ and ‘dissemination of human rights’.

Not only was there significant diversity in the breadth of HRE within National Reports, there was also considerable variety in the *depth* in which this issue was reported on. In some states’ reports HRE constituted *the* dominant or central theme⁶² with details of specific HRE measures that had been adopted, while in other National Reports, HRE was not even mentioned.⁶³ Overall, the attention given by states to HRE in their National Reports, tended to fall somewhere between these extremes, with HRE a relatively constant theme across the National Reports. However, it tended to be addressed in general terms, and as an aim, rather than as specific concrete achievements.

OHCHR Compilation of Treaty Body Documents

The OHCHR compiled information about the state under review from the latest available treaty body reports. It notes at the front of each report that “lack of information or focus on specific issues may be due to non-ratification of a treaty and/or to a low level of interaction or cooperation with international human rights mechanisms.” To this could be added “or low levels of engagement with the issue by the treaty body”. As was seen in the last chapter, the ESC Committee regularly failed to include any reference to HRE in its Concluding Observations even if the issue was dealt with comprehensively by a State Party in its periodic report.

The OHCHR reports are limited to a maximum of 20 pages, and adopt the following format:

1. *Background and Framework*
 - A. Scope of international obligations
 - B. Constitutional and legislative framework
 - C. Institutional and human rights infrastructure
 - D. Policy measures

2. *Promotion and Protection of Human Rights on the Ground*
 - A. Cooperation with human rights mechanisms

⁶² See for example Azerbaijan’s National Report (A/HRC/WG.6/4/AZE/1, 4 November 2008); Japan’s National Report (A/HRC/WG.6/2/JPN/1, 18 April 2008) and the Republic of Korea (A/HRC/WG.6/2/KOR/1, 9 April 2008).

⁶³ See for example the Russian Federation (A/HRC/WG.6/4/RUS/1, 10 November 2008) and Cuba (A/HRC/WG.6/4/CUB/1, 4 November 2008).

B. Implementation of international human rights obligations

3. *Achievements, Best Practices, Challenges and Constraints*
4. *Key National Priorities, Initiatives and Commitments*
 - A. Pledges by the State
 - B. Specific recommendations for follow-up
5. *Capacity-Building and Technical Assistance*

The following are examples of how HRE has been included in the OHCHR's Compilation Report:

- Japan – it was noted that the Committee Against Torture (CAT) had recommended that “all categories of law enforcement personnel, as well as judges and immigration officials, should be regularly trained in the human rights implications of their work”⁶⁴ while the Committee on the Elimination of Racial Discrimination (CERD Committee) recommended that Japan use education to address discrimination against Koreans living in Japan.⁶⁵
- Malaysia – the Committee on the Rights of the Child recommended that the Malaysian Government “include human rights education, including the rights of the child, in the curriculum.”⁶⁶
- Germany – “In 2004, the Human Rights Committee welcomed the progress made in the area of human rights education, in particular for police officers, soldiers and youth. In 2008, the CRC regretted, however, that human rights education and peace education are not elements of the curricula of all schools at all levels.”⁶⁷
- Benin – “In 2004, the HR Committee noted the efforts made by Benin to increase public awareness of human rights but was concerned that these efforts have been limited. It recommended that, as expressly stipulated in article 40 of the Constitution, Benin integrate human rights education in the primary, secondary, higher and vocational education curricula.”⁶⁸

⁶⁴ A/HRC/WG.6/2/JPN/2, 8 April 2008, paragraph 6.

⁶⁵ Ibid, paragraph 11.

⁶⁶ A/HRC/WG.6/4/MYS/2, 20 November 2008, paragraph 10.

⁶⁷ A/HRC/WG.6/4/DEU/2, 25 November 2008 paragraph 4.

⁶⁸ A/HRC/WG.6/2/BEN/2, 7 April 2008, paragraph 4.

These examples demonstrate that the OHCHR made an effort to include treaty committees' comments about HRE in the compilation report. Having this information readily accessible to the Troika should have facilitated the addressing of HRE as part of the UPR. However, when the Working Group's Reports of these four states are examined, they reveal little engagement with HRE.

- Japan – numerous states praised Japan for the importance it had placed on HRE,⁶⁹ but there was no reference to the Concluding Observations of the CAT and CERD Committee, and no recommendations relating to HRE.
- Malaysia – There was no discussion of the Committee on the Rights of the Child's recommendation about HRE being incorporated into the curriculum. However, there was a recommendation, based on Jordan's comment, that Malaysia "Provide and improve training programmes on human rights for the judiciary, law enforcement personnel and lawyers" and generally enhance its HRE⁷⁰
- Germany – there was no discussion that corresponded to the Human Rights Committee's observations about the lack of HRE and peace education in the school curricula. However, there was a recommendation, based on New Zealand's observation, that sexual orientation and gender identity should be included as part of students' education.⁷¹
- Benin – While China and Italy made comments about Benin's HRE efforts,⁷² HRE did not form part of the Working Group's recommendations.

These four examples illustrate that, when it comes to HRE, there is a complete lack of congruity between the Concluding Observations of treaty bodies and the UPR Recommendations. It appears that the Working Group completely ignored the information in the OHCHR's Compilation Report regarding other UN bodies' concerns regarding HRE implementation.

It should also be noted, that there were several examples of the OHCHR's Compilation Reports containing no references at all relating to HRE, including Canada,⁷³ France⁷⁴ and the United Kingdom.⁷⁵ Perhaps not surprisingly, there

⁶⁹ A/HRC/8/44, 30 May 2008, see for example paragraphs 12 (numerous delegations), 43 (Ukraine) and 57 (Pakistan).

⁷⁰ A/HRC/11/30, 3 March 2009, Recommendation 9.

⁷¹ A/HRC/11/15, 4 March 2009, Recommendation 22.

⁷² A/HRC/8/39, 28 May 2008, paragraphs 12 and 46.

⁷³ A/HRC/WG.6/4/CAN/2, 17 December 2008.

⁷⁴ A/HRC/WG.6/2/FRA/2, 10 April 2008.

were also no recommendations relating to HRE in the Working Group's Reports for these three states.⁷⁶

Overall, the lack of any correlation between the HRE content of the Compilation Reports, and the HRE content of the Working Group's Reports, leads one to question the efficacy of the OHCHR amassing this data. In theory, the Compilation Reports represent an opportunity for the UPR to make connections with the work of the treaty bodies, rather than operate in isolation. However, in the area of HRE, this appears to be a missed opportunity.

Working Group Reports

The Working Groups Reports are divided into three distinct sections, namely:

- I. Summary of the Proceedings of the Review Process
 - A. Presentation by the State under Review
 - B. Interactive Dialogue and Responses by the State under Review
- II. Conclusions and/or Recommendations
- III. Voluntary Commitments of the State under Review

Just as there was little congruency between the OCHCR Compilation Reports and the Working Group Reports, so too is there little correlation between the National Reports and the Working Group Reports. The following are illustrative of this:

- *Bahrain*, in its National Report, stated that it “is currently examining the idea of drafting a national action plan on human rights education as soon as possible”,⁷⁷ reported on its civics curriculum, which includes “fundamental human rights principles and standards, [being] taught at all stages of basic education”,⁷⁸ and recognised the importance “of supporting a culture of human rights by all available means, including through education”.⁷⁹ While the Working Group Report contains references to Bahrain's HRE efforts in the summary of proceedings,⁸⁰

⁷⁵ A/HRC/WG.6/1/GBR/2, 27 March 2008.

⁷⁶ Canada (A/HRC/11/17, 3 March 2009); France (A/HRC/8/47, 3 June 2008); and the UK (A/HRC/8/25, 23 May 2008). Note however, that some states did comment positively on the UK's HRE initiatives, based on the coverage of this issue by the state in its National Report.

⁷⁷ A/HRC/WG.6/1/BHR/1, 11 March 2008, page 11.

⁷⁸ *Ibid*, page 24.

⁷⁹ *Ibid*, page 25.

⁸⁰ A/HRC/8/19, 22 May 2008, paragraphs 15, 17, 34 and 50.

there is no mention of HRE in the Report's Conclusions and Recommendations, which is arguably the most important part of the entire document, and the part of the report that the state under review (and NGOs) are likely to focus on.

- *Finland's* National Report included a section devoted to HRE,⁸¹ which suggested a strong commitment to HRE. There were two references to HRE in the summary of proceedings,⁸² but the conclusions and recommendations only touched upon HRE in requesting that Finland increase "anti-discrimination training activities for the grounds of sexual orientation and disability".⁸³

Not only do the Working Group Reports not reflect the consideration given to HRE in the National Reports, but when HRE is mentioned it tends to be a platitude. For example:

- (i) *Ecuador:* Italy "noted the importance of human rights education at all levels."⁸⁴
- (ii) *Netherlands:* Ghana suggested the Dutch Government should focus on "intensifying human rights education."⁸⁵

There were also examples of more specific targeted comments on HRE by states that were noted in the section summarizing the proceedings, but did not make it into the final recommendations. The likely impact of these remarks is therefore questionable. As stated above, the key component of the Working Group Report is the recommendations and conclusions, not the synopsis of the three-hour interactive dialogue.

There were some positive examples of HRE forming part of a specific recommendation by the Working Group, including:

- (i) *Bahamas:* "To continue to develop a national strategy for human rights education in the school system at all levels, in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education, including the review and revision of curricula and textbooks, the training of

⁸¹ A/HRC/WG.6/1/FIN/1, 18 March 2008, Paragraphs 102-104.

⁸² A/HRC/8/24, 23 May 2008, paragraphs 27 and 31.

⁸³ Ibid, Recommendation 7.

⁸⁴ A/HRC/8/20, 13 May 2008, paragraph 43.

⁸⁵ A/HRC/8/31, 13 May 2008, Paragraph 50.

teachers and the practice of human rights in the school community (Italy)”⁸⁶

- (ii) *Cameroon*: “intensify efforts to educate and train police, prison staff, law enforcement personnel and judges on all aspects of human rights”.⁸⁷
- (iii) *Djibouti*: “Seek assistance from the international community and request OHCHR to positively respond to its expressed needs in the area of capacity-building and provision of the needed human, financial and technical resources and to provide the necessary training to officials in the various concerned departments and ministries and to the National Human Rights Institution and to provide assistance in the area of human rights education so as to spread a culture of human rights in Djibouti within the framework of the national strategy of the Government for the promotion and protection of human rights.”⁸⁸

It was very difficult to detect a trend as to what influenced HRE being included in the final recommendations emanating from the UPR. Overall, there was a lack of uniformity in the treatment given to HRE within the UPR. There were examples of states paying a great deal of attention to HRE in their National Reports, and sometimes this was acknowledged in the Working Group Report, and other times it was ignored. The UPR approach to HRE seems to be largely *ad hoc*, although on the whole HRE tended to be addressed more often in the UPR than by the ESC Committee, albeit often in very general terms.

6. Conclusion

*Whereas most three year olds can talk and walk,
the Council at three does a lot of talking,
but it is yet to start to walk.*⁸⁹

The Human Rights Council is the only UN body with a specific mandate to promote HRE. It is also a relatively young entity, and thus is still motivated and

⁸⁶ A/HRC/10/70, 7 January 2009, paragraph 53(3).

⁸⁷ A/HRC/11/21, 3 March 2009, Recommendation No. 24.

⁸⁸ A/HRC/11/16, 3 March 2009, Recommendation No. 31.

⁸⁹ Sidoti Chris ‘*The UN Human Rights Council - The story so far*’ Paper presented at the Castan Centre Annual Conference, 17 July 2009, accessed at www.law.monash.edu.au/castancentre/events/2009/conference-09.html on 19 September 2009.

enthusiastic about its tasks, rather than having become jaded and dysfunctional as can happen to organisations that have been around for some time.⁹⁰ In light of these two factors, it is perhaps not surprising that the HRC has exhibited a greater commitment to HRE than the other UN body examined as part of this project. However, there is still significant room for improvement; or as the above quote suggests, more walking and less talking.

The jury is still out on the draft declaration on HRE, and judgement must be reserved until the text is finalised. However, it can be said, that the consultative process used to develop the declaration appears sound, provided that the views expressed in the completed questionnaires, and by participants at that Marrakech workshop are ultimately taken on board, and not routinely ignored.

The UPR represents the single greatest opportunity, in modern times, for the monitoring of states' HRE practices. While there are positive examples of states reporting on HRE activities, and the Working Group specifically responding to these HRE initiatives in their recommendations, there are still too many examples of the Working Group completely ignoring HRE in their observations and recommendations. The process of addressing HRE as part of the UPR is too *ad hoc*, and appears very much dependent on which states are participating in the review, with countries such as Italy, Costa Rica, Switzerland and Morocco regularly raising HRE during the interactive dialogue.

Before the HRC becomes too set in its ways in terms of how it conducts the UPR, some reforms should be introduced. More concrete guidelines are needed regarding the precise way in which states' human rights practices are to be evaluated. In particular, levels of HRE should be identified as an explicit benchmark that states must speak to in their national reports, and the Working Group respond to in their reports. States should also be directed to consider how HRE can be utilised to address other human rights concerns, i.e. the UPR should be used as an opportunity to highlight the linkages between HRE and the prevention of human rights violations.

⁹⁰ This is arguably what happened with the HRC's predecessor, the Commission on Human Rights.

Chapter 5 Conclusion and Recommendations

- 1. *Introduction***
- 2. *Recommendations***
- 3. *Conclusion***

1. Introduction

The research undertaken for this project concludes that the international community continues to struggle with the problem of how best to promote and encourage HRE. The research findings indicate, very clearly, that there is significant room for improvement in the way the UN promotes HRE. This is particularly true when it comes to monitoring states' HRE efforts, and engaging in constructive dialogue with governments about how they might effectively implement HRE within their jurisdiction.

This project began by seeking to understand whether there was consistency or discrepancy, between the ways a body, made up of independent human rights experts, addresses HRE, compared with a body comprised of government representatives. The conclusion reached is that the make up of the membership appears to have little significance in the way HRE is monitored. In neither the ESC Committee nor the UPR, did the members seek to positively engage a state in a genuine dialogue about their HRE efforts. States were neither praised for having made significant progress with implementing HRE, not criticised for not having taken steps to comply with international law mandates pertaining to HRE. Both the ESC Committee and the HRC (through the UPR) missed opportunities for individual discourse with states about HRE within their jurisdiction, opting instead for standard, non-state specific statements to 'try harder'.

The one body where there are encouraging signs is the Advisory Committee, the subsidiary body to the HRC, which is comprised of independent experts. This body appears to have enthusiastically embraced its mandate to develop a draft declaration on HRE, and the task is progressing in a timely manner. This is being achieved with significant NGO involvement; a large number of NGOs having responded to the Advisory Committee's invitation to actively participate in the drafting process through completing questionnaires, and attending the two-day drafting workshop in Marrakech.

The enthusiasm with which the Advisory Committee (and in particular, the Drafting Group) has embraced its HRE mandate may be due to the relative newness of this body (its inaugural meeting was in August 2008), or because it has been given the exciting task of developing a new human rights instrument, as opposed to examining numerous reports in order to evaluate states' human rights records. Whatever the reason, there is little doubt that, within the UN, it is the Advisory Committee that is most engaged with HRE. However, this body, on its own, will struggle to achieve any real change in the way the UN promotes HRE. Only a strategic plan that coordinates the HRE work of all relevant UN bodies, will bring about the systemic changes that are necessary for the UN to effectively motivate states to use HRE as a preventative tool.

2. *Recommendations*

The following five specific recommendations would enhance the UN's efforts to encourage states to increase their commitment to HRE and take more concrete steps to implement the HRE norm, first articulated in the UDHR over 60 years ago.

Although members of treaty bodies are human rights experts, this does not necessarily mean that they have any specific knowledge or skills relating to HRE. Human rights education is a vast and complex area of human rights law that many human rights experts may not be intimately familiar with. Indeed, it has been noted that the term 'human rights education' is too often used in a way that greatly oversimplifies its connotations.¹ It is suggested that implementation of Recommendation No. 1 below, will equip treaty committee members with the skills necessary to effectively monitor State Parties' compliance with HRE provisions, as well as motivate them to encourage State Parties to improve the HRE efforts. Members of the HRC should also be offered such training, since they, too, should engage with states about their HRE practices as part of the UPR.

Recommendation No. 1

Members of relevant treaty committees and the HRC receive training from HRE experts in relation to the detailed nature and scope of HRE and best practice when it comes to practically implementing the same. This should form part of members' initial induction, as well as be part of an ongoing education and training program.

It is recognised that the UN operates under tight financial constraints. However, it is suggested that employing a full-time HRE Director to coordinate all the UN's HRE efforts would represent a cost-saving, because of a reduction in the duplication of efforts, and a corresponding increase in efficiencies in developing and delivering HRE programs. The research undertaken for this project demonstrates that there is little or no cooperation or coordination between different UN bodies when it comes to HRE. For example, the ESC Committee, when monitoring State Parties' implementation of Article 13 of ICESCR, made no reference to how the UN Decade for HRE, or World Programme for HRE could be used to facilitate compliance with this provision of the Covenant.

¹ General Comment 1: The Aims of Education, Committee on the Rights of the Child, 17 April 2001, CRC/GC/2001/1, paragraph 19.

The position of HRE Director would need to be a senior position with adequate administrative resources to enable the person filling this role to have credibility and authority when engaging with disparate entities such as treaty committees, the HRC, NGOs and other international organisations working in this field, including, for example, UNESCO.

Recommendation No. 2

Appoint a full-time UN HRE Director with responsibility for educating and coordinating the different entities working on HRE, both within the UN, and external to the UN.

Notwithstanding all the UN's various initiatives relating to HRE, it remains an area where there is lots of talking, but not much walking. One way of increasing states' levels of HRE, may be to establish a system where States specifically undertake to implement HRE and to having their efforts periodically monitored by an independent body. This happens to a degree with existing human rights treaties that contain HRE provisions. However, as this research has demonstrated, it is easy for a state's HRE performance, or lack thereof, to be ignored, with the limited time available for review being devoted to the state's compliance with other rights within those treaties. A convention devoted solely to HRE, with its own treaty monitoring body, is one way of achieving this. A treaty, and treaty body, devoted to HRE would ensure that this issue gets appropriate attention. It would give strength to the UN's vision of HRE as a preventative tool and build on past *ad hoc* programmes such as the UN Decade for HRE and World Programme for HRE and the current draft Declaration on HRE. It would represent a long-term approach to HRE that recognises the challenges that states face in making HRE a reality. This recommendation may be premature, given that the UN Declaration on HRE has not yet been finalised, but history tells us that drafting a treaty can be a long, slow process – CROC took a decade – and it is therefore worth considering such a proposal sooner, rather than later.

Recommendation No. 3

Explore the possibility of developing a UN Convention on Human Rights Education to build on the Declaration of Human Rights Education and Training.

The UN does not currently have a dedicated HRE site on its web page. States wanting to implement a human rights education program would therefore struggle to find guidance from the UN resources. States could repeat the methodology adopted for this research project, i.e. examine each State Parties' report to the ESC Committee to look for examples of successful implementation of HRE that they could adapt, but that is a time-intensive and inefficient way for a state to access such information. The OHCHR web page does have some documentation relating to the Decade for HRE² and World Programme for HRE³ including suggested strategies for implementing an HRE Action Plan. Alas it lacks examples showing how states that have successfully implemented HRE programs. The information seems to be mainly directed at how teachers can incorporate HRE into their activities, rather than how a government can put a national HRE strategy into practice.

Recommendation No. 4

Increase accessibility to HRE best practice models and positive examples of overcoming challenges to implementing HRE through a thematic web page dedicated to HRE.

One has only to look at the UN's response to terrorism to see how this international organisation can dedicate resources and rally around an issue, when it considers it sufficiently important. Examples of the UN's efforts to combat terrorism include:

- Sixteen universal instruments against international terrorism;
- Numerous General Assembly resolutions;
- Security Council resolutions and the establishment of subsidiary bodies (e.g. Counter-Terrorism Committee);
- A dedicated UN web page devoted to counter-terrorism;
- Adoption of a global counter-terrorism strategy and plan of action which includes a common strategic and operational framework to fight terrorism;
- The holding of a World Summit on Terrorism;
- The creation of a 24 member UN Counter-Terrorism Implementation Task Force;
- The organisation of a global Symposium on Supporting Victims of Terrorism;

² <http://www2.ohchr.org/english/issues/education/training/decade.htm> accessed 21 September 2009.

³ <http://www2.ohchr.org/english/issues/education/training/programme.htm> accessed 21 September 2009.

- The appointment of a Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism; and
- The establishment of a Counter-Terrorism Secretariat within the Department of Political Affairs to catalyse and mobilize counter-terrorism efforts of the various UN entities and to assist states in implementing the Strategy. The UN Office of Legal Affairs has prepared publications and conducted seminars and training programs to disseminate information regarding the universal counter-terrorism instruments and to encourage State participation in these treaty regimes; and
- The publication of UN Counter-Terrorism Online Handbook.⁴

One can only imagine how much more successful the UN might be in the area of HRE, if it devoted the energy and resources to HRE, that it has devoted to counter-terrorism. The UN's approach to terrorism is almost the opposite of its approach to HRE; it is strategic rather than ad hoc; systematic rather than uncoordinated; and well resourced rather than chronically under-funded. The final recommendation is therefore that the UN model its HRE efforts on its counter-terrorism measures.

Recommendation No. 5

Increase UN leadership regarding HRE by dedicating more resources – financial and human – to HRE, in line with resources and efforts devoted to counter-terrorism, to not only increase knowledge about HRE, but also motivate states to implement HRE measures.

3. Conclusion

If future international HRE efforts are to be successful in preventing human rights abuses, it is essential that we learn from past experience. This research has sought to analyse the UN's past HRE practices in order to identify why it has not been more successful in promoting widespread HRE in accordance with Article 26 of the UDHR.

It has concluded that the many attempts to promote HRE, including the UN Decade for HRE, the World Programme for HRE, the monitoring by treaty bodies, and the HRC's UPR, have not been effective in motivating states to implement HRE, because they have lacked cohesion. This is nowhere more evident, than in the General Assembly's proclamation that the year commencing 10 December 2008 will be the International Year of Human Rights Learning, during which time

⁴ <http://www.un.org/terrorism/> accessed on 22 September 2009.

states should intensify their HRE efforts.⁵ The UN does not need more short-term initiatives such as a designation of a year of HRE. It is likely to be no more successful than the UN Decade for HRE. The UN should focus on developing policies that have a sustained, long-term outlook, rather than temporary schemes that quickly pass with no lasting impact.

It is unfortunate that the General Assembly chose to call the initiative the ‘International Year for Human Rights *Learning*’, rather than the ‘International Year for Human Rights *Education*’. Human Rights Education has started to gain resonance around the world as a stand alone human right. To introduce different terminology is likely to lead to confusion and uncertainty. It is acknowledged that education and learning are different concepts, as is training. However, it would have been preferable for the General Assembly to use all the terms, rather than to chose ‘human rights learning’ over the more widely used and understood ‘human rights education’.

In conclusion, the UN needs to develop a single overall strategy for HRE that is embraced by all the disparate UN organs. It needs a common vision shared by all the expert committees and inter-governmental bodies within the UN. When it comes to the promotion of HRE by the UN, it is undoubtedly true, that the whole is greater than the sum of the parts; what the UN could achieve if it had a unifying strategic plan relating to HRE, is significantly more than what the ESC Committee and HRC have been able to achieve by operating in isolation.

⁵ A/RES/62/171, 18 December 2007.