

## **IV. OTHER PROCEDURES WITHIN THE UN SYSTEM**

The description of human rights procedures would be incomplete without some details about the work of two specialized organizations of the UN, namely the UN Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organization (ILO).

### **IV.1 THE UNESCO PROCEDURES**

#### ***Introduction***

Under Article 1, para. 1, of its Constitution UNESCO's purpose is "to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations". In the sixty-two years since the adoption of the Universal Declaration of Human Rights (see annex VI.2), UNESCO has undertaken a wide number of activities to achieve its full implementation. Besides a comprehensive programme of teaching and of research and publications, the Organization's standard-setting activities resulted in over seventy conventions, declarations and recommendations. A large number of these instruments is linked directly or indirectly with those human rights which are within UNESCO's fields of competence.

Those instruments envisage the monitoring of their implementation. UNESCO's Constitution provides that each Member State shall submit to the Organization reports on laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action upon recommendations and conventions (Articles VI, para. 4, and VIII). Sometimes, specific provisions are also included in the conventions. For instance, Article 7 of the 1960 Convention against Discrimination in Education provides that the States parties shall give information on the legislative and administrative provisions which they have adopted for the application of the Convention in their periodic reports to the General Conference of UNESCO. Article 6 of the Convention stipulates that the General Conference of UNESCO may adopt subsequent recommendations defining the measures to be taken against the different forms of discrimination in education and for the purpose of ensuring equality of opportunity and treatment.

#### ***The Committee on Conventions and Recommendations (CR)***

UNESCO has set up the Committee on Conventions and Recommendations (CR) as a subsidiary organ of its Executive Board which is responsible for examining the reports of Member States since 1965. In addition to the task of considering all questions relating to the implementation of UNESCO's standard-setting instruments entrusted to it by the Executive Board, since 1978 the Committee is entrusted with a second main task: to examine communications relating to cases and questions concerning the exercise of human rights in UNESCO's fields of competence.

Furthermore, the Committee fulfils the following tasks:

- (a) to examine the reports of the Joint ILO-UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (see also section IV.2); and
- (b) to examine the reports of the Joint Expert Group UNESCO (CR) / ECOSOC (CESCR) on the Monitoring of the Right to Education.

As a subsidiary organ of UNESCO's Executive Board, which is presently composed of 58 Member States, the Committee consists of representatives from 29 Member States. They do not serve as experts in their personal capacity as it is in the case of the members of the UN human rights treaty bodies.

Meetings of the Committee take place usually immediately before every ordinary session of the Executive Board, that is twice a year for normally three days.

### ***States Reporting System***

Within the framework of its first task, the Committee monitors the implementation of three conventions, namely:

- the 1960 Convention against Discrimination in Education ratified by 93 States;
- the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ratified by 118 States; and
- the 1989 Convention on Technical and Vocational Education ratified by 17 States.

In addition, the Committee monitors the following 11 recommendations:

- the 1960 Recommendation against Discrimination in Education;
- the 1966 Recommendation concerning the Status of Teachers;
- the 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms;
- the 1974 Recommendation on the Status of Scientific Researchers;
- the 1976 Recommendation on the Development of Adult Education;
- the 1978 Revised Recommendation concerning the International Standardization of Educational Statistics;
- the 1980 Recommendation concerning the Status of the Artist;
- the 1993 Recommendation on the Recognition of Studies and Qualifications in Higher Education;
- the 1997 Recommendation concerning the Status of Higher-Education Teaching Personnel;

- the 2001 Revised Recommendation concerning Technical and Vocational Education; and
- the 2003 Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace.

In 2007, the Executive Board adopted a multi-stage procedure for the monitoring of the implementation of UNESCO conventions and recommendations (see chart 20). In the case of conventions, the Secretariat will submit a summary of the reports. With regard to recommendations, the Secretariat will submit a consolidated report. The debates and work of the Committee and the Executive Board will take place in public meetings.

In both cases, the Committee exams synoptic documents drawn up by the Secretariat on the periodic reports, without scrutinizing carefully the national reports by the States parties or engaging in dialogue with the countries concerned, as other UN treaty bodies do, such as the UN Committee on Economic, Social and Cultural Rights (CESCR; see III.1). This indicates the strategic importance of the role of the Secretariat. The States reports are based upon guidelines elaborated by the Secretariat and approved by the Executive Board. Due to the fact that the information of the single States reports is aggregated, the monitoring process necessarily leads to a loss of information.

In the past, low response rates and an often extremely general nature of replies could be observed. There exists a far-reaching consensus that this first aspect of the terms of reference relating to the monitoring of the implementation of UNESCO's standard-setting instruments must be strengthened. Low ratification rates as well as low response rates of the States parties in the case of the three conventions are a major challenge to the Organization. Whether the specific multi-stage procedure for the monitoring of the implementation of conventions recently adopted by the Executive Board will increase the effectiveness of the monitoring process remains to be seen (see chart 20).

### ***Individual Complaints Procedure***

Alongside the procedures laid down in UNESCO Conventions, in 1978 the Executive Board of UNESCO adopted a confidential procedure for the examination of individual communications (complaints) received by the Organization concerning alleged violations of human rights in its fields of competence, namely education, science, culture and information (see chart 21). This procedure is set out in 104 EX/Decision 3.3 of the Executive Board. Between 1978 and 2009, due to this procedure out of 551 cases recognized admissible 352 cases were settled (see chart 22).

Individuals, groups of individuals and NGOs may submit complaints to UNESCO concerning violations of human rights, whether the authors of these communications are themselves victims of such violations or whether they deem to have reliable knowledge of such violations (see document 8).

The rights falling under UNESCO's competence are essentially the following

(each Article mentioned below refers to the Universal Declaration of Human Rights as reprinted in annex VI.2; the rights concerned also appear in the two UN Covenants of 16 December 1966):

- the right to education (Article 26);
- the right to share in scientific advancement (Article 27);
- the right to participate freely in cultural life (Article 27);
- the right to information, including freedom of opinion and expression (Article 19).

These rights may imply the exercise of others, the most noteworthy of which are:

- the right to freedom of thought, conscience and religion (Article 18);
- the right to seek, receive and impart information and ideas through any media and regardless of frontiers (Article 19);
- the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production (Article 27);
- the right to freedom of assembly and association (Article 20) for the purposes of activities connected with education, science, culture and information.

The victims of human rights violations are normally teachers, students, researchers, artists, writers, journalists, in short intellectuals who, by virtue of their position, come under UNESCO's fields of competence, or any other person on account of having exercised one or other of the rights set out above.

Communications intended for handling should be sent to the

Director of the Office of  
International Standards and Legal Affairs of UNESCO  
7 place de Fontenoy  
F - 75352 Paris 07 SP,  
France  
Fax: xx 33-1-456 85575  
E-mail: [sec.cr@unesco.org](mailto:sec.cr@unesco.org)

The letter containing a concise statement of the allegations must be signed and drafted in one of the Organization's working languages (English or French). The Secretariat will then send to the author of the letter a form to be completed (see document 8) which constitutes his/her communication and which will be transmitted to the government concerned and examined by the Committee on Conventions and Recommendations responsible for

implementing the procedure. In other words, the initial letter to the Organization is not considered to be the communication formally examined by UNESCO; it is only after the return of the form to UNESCO that a communication is formally deemed to exist.

The Committee examines communications in private session. In the first instance, it examines the admissibility of the communications. There are ten conditions governing admissibility which are set out in paragraph 14(a) of 104 EX/Decision 3.3; if one of them is not met, no further action is taken on the communication. Thus, for a communication to be admissible, it must, among others, meet the following conditions:

- the communication must not be anonymous;
- the communication must not be manifestly ill-founded and must appear to contain relevant evidence;
- the communication must be neither offensive nor an abuse of the right to submit communications;
- the communication must not be based exclusively on information disseminated through the mass media (the press, television, radio, etc.);
- the communication must be submitted within a reasonable time limit following the facts which constitute its subject matter or within a reasonable time limit after the facts have become known;
- the communication must indicate whether an attempt has been made to exhaust available domestic remedies with regard to the facts which constitute the subject matter of the communication and the result of such an attempt, if any.

Once the Committee is satisfied that the conditions of paragraph 14 (a) have been fully met, a communication is normally declared admissible and the merits are considered at the next session. The Committee notifies both the author of the communication and the government concerned of its decision on admissibility.

The Committee then proceeds to examine the substance of the communications. For this purpose and in order to establish a dialogue, the representatives of the governments concerned are invited to provide information or answer questions asked by members of the Committee on either the admissibility or the merits of the communication. Deliberation on the content of the decision to be taken for each decision takes place after the representatives of the State concerned left. Also, members of the Committee representing countries about which a communication has been raised will not be present for the private discussion leading to a decision. Since the Committee is not an international tribunal, it endeavors to resolve the problem in a spirit of international co-operation and mutual understanding. In search for an amicable solution, the Committee works in strictest confidentiality, which is seen vital to the success of its action. The aim of the Committee's work is not to condemn the government concerned, but to improve the situation of the alleged victim.

After the session during which a communication was examined by the Committee, its author and the government concerned are informed of the Committee's decision, which is not subject to appeal. However, the Committee may agree to re-examine a communication if it receives additional information or new facts.

Chart 22 gives an overview about the number of communications considered since 1978 and specifies the development over the last decade 1999-2009. The different categories mentioned there are victim-defined; they offer some insights about the issues taken up in the Committee. The difference of 551-352=199 remaining cases concern communications that are inadmissible or whose examination has been suspended or is under way. A look at the number of communications annually received shows a declining tendency (see chart 23). It is for that reason that the Committee will discuss the issue of improving the visibility of the "104 procedure" in Spring 2010.

### ***How to Improve the Individual Complaints Procedure***

Given the fact that the UNESCO procedure was not established pursuant to a specific convention, but is based rather on the inherent constitutional authority of UNESCO, this procedure, at the time of its adoption, had several advantages vis-à-vis other UN procedures such as, for instance:

- wide access to individuals, groups, and nongovernmental organizations (NGOs);
- ability of NGOs or individuals to complain on behalf of victims;
- separate handling of each case individually throughout the procedure, rather than merging cases into a "situation" as in the case of the UN Human Rights Council (see section II);
- consideration of individual "cases" of human rights violations as well as "questions" of mass and flagrant violations;
- consideration of human rights violations of governments of UNESCO Member States that have ratified no or only a few human rights treaties; and
- the Committee's ability to use other sources of information when considering cases.

However, it has been criticized that the UNESCO procedure has not progressively evolved the way other UN procedures have. It functions almost as a top-secret affair and therefore lacks public pressure, as is the case of other procedures.

WEISSBRODT/FARLEY made several recommendations, among others, that

- the Committee should be made less political and smaller in size in order to function as an expert body;
- UNESCO should also consider to allow authors of cases to attend the meetings of the Committee offering them the opportunity to respond directly to replies of the Member States;

- the Committee should consistently verify the replies of the Member States with authors before closing cases;
- the Committee must use the ability of the Director-General of UNESCO to appoint fact-finding missions to examine "questions" of large-scale human right violations – an option which has never been used so far;
- the Committee should develop a systematic information policy concerning the results of the UNESCO procedure; otherwise, its effectiveness cannot be fully evaluated.

Since 1999, the Committee dealt with those and other related issues and decided to keep its individual complaints procedure unchanged. In fact, there exist several advantages vi-à-vis UN treaty-based procedures such as

- the procedure is not based upon a convention and/or an optional protocol to be ratified by States parties; communications can be submitted against each UNESCO Member State within the fields of competence of the Organization;
- the goal of the procedure is not to judge against a government, but to search for a friendly solution in order to improve the situation of the alleged victim (“humanitarian approach”);
- each case is handled separately throughout the procedure;
- each case is treated confidentially which allows a dialogue and close cooperation with the majority of governments concerned;
- although the alleged victims are asked to inform about the steps they have taken to exhaust domestic remedies, the procedure can take place without the exhaustion of all available domestic remedies; and
- because of the unique character of the non-judicial procedure the Committee can also examine cases within UNESCO’s competence when they are being examined by UN treaty bodies.

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## ***E-Resources***

General:

<http://www.unesco.org/new/en/unesco/>

Standard-Setting Instruments:

[http://portal.unesco.org/en/ev.php-URL\\_ID=12024&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12024&URL_DO=DO_TOPIC&URL_SECTION=201.html)