

Identifying the Key Elements of the Right to Education: A Focus on Its Core Content

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1. The concept of a core content of economic, social and cultural rights

In this paper, I intend to make some general observations on the concept of a core content of economic, social and cultural rights, and illustrate these observations by identifying some elements of the core content of the right to education.

Generally speaking, proper discussion of the core content of individual rights has started only some fifteen years ago.¹ The concept of a 'core content' of human rights is a tool for identifying those elements of the normative content of a human right that contain minimum entitlements. In other words, the term 'core content' is to be regarded as a useful means or instrument in helping to analyze and clarify the normative content of economic, social and cultural rights, which are often described as vague and open-ended, with a view to assessing the conduct of states in this field in general, and to identify violations in particular. The UN Committee on Economic, Social and Cultural Rights (UNCESCR) referred to the concept in its General Comment no. 3 on Article 2(1):

'(...) the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, or essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*'.²

The Committee has also used the concept in general comments on substantive rights, such as on food and education.³ In a recent Statement on reviewing the obligation of States to take steps to the maximum of available resources under a future Optional Protocol to the ICESCR, the Committee again referred to the concept of core content. It said that in assessing resource constraints invoked by states as an explanation for any retrogressive measures, it would consider whether a particular situation 'concerned the enjoyment of the minimum core content of the Covenant'.⁴ In the academic literature, Alston has argued in favor of the use of the term 'core content', postulating that 'each right must (...) give rise to an absolute minimum entitlement, in

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¹ For a more extensive discussion of these developments see, F. Coomans, Exploring the Normative Content of the Right to Education as a Human Right: Recent Approaches, in: 50 *Persona y Derecho* [Pamplona, Spain] (2004), p. 61-100, at 72-78.

² The nature of States' parties obligations (Article 2, paragraph 1 ICESCR), UNCESCR General Comment no. 3 (1990), UN Doc. E/1991/23, Annex III, § 10.

³ See UN Doc. E/C.12/1999/5 and UN Doc. E/C.12/1999/10. I will deal with elements of the core content of the right to education as elaborated by the Committee in this General Comment later on.

⁴ UN Doc. E/C.12/2007/1, § 10.

the absence of which a State party is to be considered to be in violation of its obligations'.⁵ In my view, the core content of a right must be understood as meaning its essence, *i.e.* that essential element without which a right loses its substantive significance as a human right.⁶ In fact, therefore, the core content embodies the intrinsic value of each human right. It is a non-variable element of a substantive right.

The core content of a right should be universal; a country dependent core would undermine the concept of the universality of human rights. The question is of course whether the core content of a right should be general and abstract or detailed and concrete. My answer would be that a workable definition should be somewhere in between. In general terms the core of a right should be the same everywhere. However, it should be 'translated' or operationalized at the national or regional level, taking into account national or regional characteristics and circumstances and the specific needs of individuals and groups. However, from a conceptual point of view, the needs of the people and the available opportunities in a state should not determine the core of a right. It should rather be the other way around, starting from the normative content of a right.

In case the core of a right has been realized in a rich state without much difficulty, that would not mean that such a state may lean back and argue that it is complying with its treaty obligations. On the contrary, the task would then be to implement the peripheral part of the scope of a right. In other words, starting point for a core content approach would be, in my view, the concept of human dignity which underlies all human rights. The core of a right is to be considered as an expanding floor (not a fixed ceiling), or a bottom from which governments should endeavor to go up, trying to reach higher levels of realization. This also creates a link to the idea of progressive realization contained in Article 2(1) ICESCR that embodies a dynamic element, meaning that realization does not stop when a certain level has been reached.

Complying with obligations which relate to the core of a right should not be dependent upon the availability of resources. In other words, when a government is facing policy dilemmas as a result of limited or insufficient financial resources, priority should be given to the realization of the core of a right. In this respect it is interesting to note here that the UNCESCR has qualified core obligations as non-derogable.⁷ In conclusion, the content of a right determines the nature of state obligations, not the other way round. Indeed, the individual right (the norm) should be central. The norm, including its core, gives rise to state obligations, part of them relating to the core (core obligations). Core obligations may be negative as well as positive (See further below in relation to the right to education).

2. Elements of the Core Content of the Right to Education

⁵ Ph. Alston, *Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social and Cultural Rights*, 9 *Human Rights Quarterly*, (1987), p. 332-381, at 353.

⁶ See F. Coomans, *De Internationale Bescherming van het Recht op Onderwijs* (The International Protection of the Right to Education), Ph.D Thesis, Maastricht University, Leiden, 1992 at 38-39. See also The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986), UN Doc. E/CN.4/1987/17, Principle no. 56, also published in the 9 *Human Rights Quarterly* (1987), p. 122-135.

⁷ UNCESCR General Comment no. 14 (2000) on the right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, § 47 and UNCESCR, Statement on Poverty and the ICESCR, UN Doc. E/C.12/2001/10, § 18.

First the scope of the right to education needs to be identified as encompassing all those elements of the right covered by human rights treaty provisions. That does not only include provisions dealing explicitly with the right to education, such as in the ICESCR (Articles 13 and 14) and the CRC (Articles 28 and 29), but also overlapping elements of other rights. Examples include the right to non-discrimination, rights of the child as a separate category, freedom of religion (respect for the religious convictions of parents concerning the choice of education for their children), freedom of association (freedom to establish schools), right to privacy (free choice of education, without interference by the state), cultural rights of minorities and indigenous groups, right to work (for teachers and the right to vocational training) and protection from economic exploitation and child labour (Article 32(1) CRC and Article 7 ILO Convention on the Worst Forms of Child Labour).

Some of the elements which make up the core content of the right to education are stipulated in Articles 13 and 14 ICESCR. Other elements may be inferred from these provisions. There is a clear relationship with elements of the four “a”-scheme identified by the former UN Special Rapporteur on the Right to Education.⁸ This scheme distinguishes between four interrelated and essential features of education, namely:⁹

- a) **availability**: functioning educational institutions and programs have to be available in sufficient numbers in a country, through a public educational system and allowing private parties to establish non-public schools;
- b) **accessibility**: educational institutions and programs have to be accessible to everyone, without discrimination on any ground, also including physical and economic accessibility;
- c) **acceptability**: the form and substance of education, including curricula and teaching methods, has to be relevant, culturally appropriate and of good quality and in accordance with the best interests of the child; this includes a safe and healthy school environment;
- d) **adaptability**: education has to be flexible, so that it can adapt to the needs of changing societies and communities, and respond to the needs of students within their specific social and cultural context, including the evolving capacities of the child.

Access to education on a non-discriminatory basis (Accessibility)

First, the essence of the right to education means that no one shall be denied a right to education. In practice, this means an individual right of access to the education available, or in more concrete terms, the right of access to the existing public educational institutions on a non-discriminatory basis.¹⁰ An example of a violation of this right is restricting access of people belonging to a specific ethnic, linguistic or religious group to the existing public educational institutions, for example the practice in some European countries of discriminating against Romani children in getting access to certain types of education.¹¹ In addition, education provided

⁸ This scheme has been used for the first time by the then UN Special Rapporteur on the right to education, Katarina Tomasevski, in her preliminary report, see UN Doc. E/CN.4/1999/49, chapter II. See also, K. Tomasevski, *Education Denied – Costs and Remedies*, London & New York, Zed Books, 2003, p. 51-52. See also, K. Beeckman, *Measuring the Implementation of the Right to Education: Educational versus Human Rights Indicators*, 12 *The International Journal of Children's Rights* (2004), p. 71-84.

⁹ See also UNCESCR, General Comment no. 13, § 6.

¹⁰ Compare Article 2(2) and 3 ICESCR, Article 26 ICCPR, Article 2 CRC and Limburg Principles at 35 and 37.

¹¹ See, F. Coomans, *Discrimination and Stigmatisation Regarding Education: The Case of the Romani Children in the Czech Republic*, in: J. Willems (ed.), *Developmental and Autonomy Rights of Children: Empowering Children, Caregivers and Communities*, Antwerpen, Intersentia, 2002, p. 225-250.

for by the state should be of the same quality for all groups in society; girls, for example, should not be given education of an inferior standard compared to boys.¹² Another (extreme) example was the situation in Afghanistan where the Taliban regime banned girls and women from all types of educational institutions.¹³ A more subtle case relates to the rule and practice in schools in some African countries to force female students to disclose their pregnancy and leave the school once the pregnancy has been discovered. This has been found discriminatory against women in a case before the Botswana Court of Appeal.¹⁴ Accessibility includes two other dimensions: physical accessibility – education has to be within safe physical reach for children, and economic accessibility – education has to be affordable to all.¹⁵

The right to enjoy free and compulsory primary education (Availability)

A second element of the core content of the right to education is the right to enjoy primary education in one form or another, not necessarily in the form of traditional class-room teaching. Primary education is so fundamental for the development of a person's abilities that it can be rightfully defined as a minimum claim. For example, the Supreme Court of India has held the right to (primary) education to be implicit in the right to life because of its inherent fundamental importance.¹⁶ International law on human rights does not define the term 'primary education', but guidelines for using this concept and others have been developed within the framework of international organizations, such as UNESCO.¹⁷ Primary education relates to the first layer of a formal school-system and usually begins between the ages of 5 and 7 and lasts approximately six years, but in any case no fewer than four years.¹⁸ Primary education includes the teaching of basic learning needs or basic education. The term 'basic education' is nowadays often used, for example within the framework of international conferences on education, such as the World Declaration on Education for All (Jomtien, Thailand 1990 and Dakar 2000), but it is not part of international human rights law. Basic education relates to the content of education, not to the form (formal or non-formal schooling) in which it is presented. Basic education within the context of the right to primary education as an element of the core content of the right to education would include literacy, arithmetic, skills relating to one's health, hygiene and personal care, and social skills such as oral expression and problem solving. In addition, basic education must also include some teaching of concepts and values as have been laid down in Article 29(1) Convention on the Rights of the Child, including respect for human rights. One very important precondition for primary education as a core element is that education should respect the rights of minorities and indigenous populations in the sense that it should recognize their cultural

¹² See Article 1(1) UNESCO Convention Against Discrimination in Education (1960) and Article 10 CEDAW.

¹³ See Human Rights Watch, *1999 World Report* at <http://www.hrw.org/worldreport99/women/women3.html>. See also the report of the UN Secretary-General on the situation of women and girls in Afghanistan, UN Doc. E/CN.4/Sub.2/2000/18.

¹⁴ See on this case, E.K. Quansah, *Is the Right to Get Pregnant a Fundamental Right in Botswana?*, in: 39 *Journal of African Law*, (1995), p. 97-102.

¹⁵ UNCESCR General Comment no. 13, § 6.

¹⁶ *Unni Krishnan and Others v. State of A.P. and Others*, 4 February. 1993, (1993) 1 SCC 645.

¹⁷ See, for example, UNESCO's Statistical Yearbook and the Revised Recommendation concerning the Standardization of Educational Statistics (1978).

¹⁸ See the Preliminary Report of the Special Rapporteur on the Right to Education, U.N. Doc. E/CN.4/1999/49, paras.75-79 and A. Melchiorre, *At what age?...*, 2nd ed., 2004, available at www.right-to-education.org.

identity, plight and heritage. An example would be the teaching of literacy in the child's first language.¹⁹

Providing secondary and other forms of education would not belong to the core of the right. These levels of education have less priority from the perspective of the essence of acquiring basic educational qualifications.

Primary education as a core element would also mean that no one, for example parents or employers, can withhold a child from attending primary education.²⁰ A state has an obligation to protect this right from encroachments by third persons. The obligation of the state to provide for primary education may be characterized both as an obligation of conduct and an obligation of result. When seen from the perspective of Article 14 ICESCR it is an obligation of conduct, because it requires a state to set up and work out a plan of action, within two years after becoming a Party to the Covenant, for the progressive implementation of compulsory primary education free of charge for all within a reasonable number of years. On the other hand, it is also an obligation of result in terms of meeting basic learning needs which may be complied with through a variety of delivery systems (*e.g.* formal or non-formal) and means, providing specific levels of knowledge and skills will be realized.

According to Articles 13(2a) ICESCR and 28(1a) CRC, primary education shall be **compulsory**. Usually the starting age for compulsory primary education is at six or seven, but the length between countries varies considerably. Worldwide there is a trend to lengthen compulsory schooling beyond primary schooling. The ratio for a minimum length of compulsory schooling beyond eleven years of age is that it should last at least to the minimum age of employment.²¹ Obviously it is not sufficient that primary education is compulsory by law. What is also necessary is an official state inspection service to supervise and enforce this duty with respect to parents, schools, employers and pupils themselves.

Articles 13(2a) ICESCR and 28(1a) CRC also stipulate that primary education shall be **free**. The rationale of free primary education should be understood on the basis of entitlement, rather than ability to pay.²²

“The human rights obligation of Governments to adequately fund education exists so that children would not have to pay for their schooling or remain deprived of it when they cannot afford the cost. Children cannot wait to grow, hence their prioritized right to education in international human rights law. The damage of denied education while they are growing up cannot be retroactively remedied.”

The degree to which primary education is really free is determined by a number of direct and indirect costs, such as school fees,²³ expenses for textbooks and supplies, costs for extra lessons,

¹⁹ See about these aspects F.P. Dall, *Children's Right to Education: Reaching the Unreached*, in: J.R. Himes (ed.), *Implementing the Convention on the Rights of the Child - Resource Mobilization in Low-Income Countries*, Martinus Nijhoff & UNICEF, The Hague, 1995, p. 143-183, at 153, 158-163. See also p. 8 below.

²⁰ See also, UNCESCR General Comment no. 11, § 6.

²¹ See the Progress report submitted by Katarina Tomasevski, UN Special Rapporteur on the Right to Education, UN Doc. E/CN.4/2000/6, § 46 and Table 3. See also, A. Melchiorre, *At what age?...*, 2nd ed., 2004, available at www.right-to-education.org.

²² Report submitted by the Special Rapporteur on the right to education, UN Doc. E/CN.4/2004/45, § 8.

²³ According to the U.N. Special Rapporteur on the Right to Education, ‘school fees represent a form of regressive taxation. Their justification routinely points to the inability (or unwillingness) of a Government to generate

expenses for meals at school canteens, expenses for school transport, school uniforms or other items of clothing and footwear, medical expenses and boarding fees, where applicable.

Primary education must have priority in resource allocation, because it deals with the fundamental basis for a person's development and the development of society as a whole.²⁴ This would be in line with the idea of a core content of rights which should be seen as a bottom or floor from which states should endeavor to go up. It is the responsibility of the state to provide for primary education and maintain educational services. A government cannot waive that responsibility by giving more room to the private sector, or stimulating public-private partnerships for financing the educational infrastructure.²⁵ With respect to the right to education in the European Convention, the Strasbourg Court held that a State cannot absolve itself from responsibility by delegating its obligations to private school bodies.²⁶ UNICEF has emphasized that 'only the State (...) can pull together all the components into a coherent but flexible education system'.²⁷ In its General Comment on Article 13 ICESCR, the UNCESCR has stressed that 'Article 13 regards States as having principal responsibility for the direct provision of education in most circumstances'.²⁸ It has also stressed that States have an immediate duty to provide primary education for all.²⁹ For those States that have not yet realized compulsory and free primary education, there is an 'unequivocal obligation' to adopt and implement a detailed plan of action as provided for in Article 14.³⁰

Special facilities for persons with an educational back-log (Availability)

Related to the aspects discussed above is another element of the right to education which, in my view, would belong to its core content. This concerns the obligation for the State to take special measures or provide special facilities for those persons who are faced with an educational back-log, or who would otherwise have no access to education at all without those special facilities. One can think of girls in rural areas, street and working children, children and adults displaced by war or internal strife and disabled children.³¹ The type of education to be given to these people should be geared for their specific educational needs and will often require specially trained teachers.

Quality of education (Adaptability)

sufficient revenue through general taxation. Payment for primary schooling ruptures the key principle of taxation whereby people who cannot contribute to public services that are meant for all are not required to do so'. UN Doc. E/CN.4/2000/6, para. 52. See also UNCESCR, General Comment no. 11, § 7.

²⁴ See also in this respect, UNCESCR General Comment no. 13, § 51: 'States parties are obliged to prioritise the introduction of compulsory, free education'.

²⁵ In a number of African countries, state monopoly on education is coming to an end. In addition, there is a tendency to involve the private (business) sector in the funding and building of schools. The privatization of education is supported, and sometimes even imposed, by the IMF and the World Bank within the framework of structural adjustment programs. See about this development, *UNESCO Sources*, no. 102, June 1998, p.12-13. See also K. Tomasevski, *Education Denied – Costs and Remedies*, Zed Books, London & New York, chapter 5.

²⁶ *Case of Costello-Roberts v. UK*, Judgment of 25 March 1993, *Publ. Court Series A*, Vol. 247-C, § 27.

²⁷ UNICEF, *The State of the World's Children 1999*, p. 63.

²⁸ UNCESCR General Comment no. 13, § 48.

²⁹ UNCESCR General Comment no. 13, § 51.

³⁰ UNCESCR General Comment no. 11, § 9.

³¹ Compare Article 3 Jomtien Declaration. See also the Statement to the World Conference on Human Rights on behalf of the Committee on Economic, Social and Cultural Rights, UN Doc. A/CONF.157/PC/62/Add.5, Annex I.

Another core element of the right to education which is less concrete and consequently more difficult to assess is a certain quality of education for each separate educational level. In fact, the right to education implies the right to quality education, that is education that is available, accessible, acceptable and adaptable to the needs of learners. A State party is under an obligation to provide and maintain this quality level, otherwise attending classes would be meaningless. When assessing this quality, a State should take into account various factors, such as measurable learning outcomes of pupils and students, the efforts and training-level of teachers, the availability and quality of teaching materials, the condition of school buildings, a sound and safe school environment, including one that is free from corporal punishment,³² school health, preventive education against HIV/AIDS and drug abuse and science and technology education etc.³³ The quality level of education should also encompass standards regarding the purposes of education as defined in Article 13 (1) ICESCR and Article 29(1) CRC. The level of quality is to be determined by the national educational authorities and supervised by an independent educational inspection unit.

Free choice of education (Acceptability)

Still another element of the core content of the right to education is free choice of education without interference by the State or a third person, in particular, but not exclusively with regard to religious or philosophical convictions. This element would be violated in case a State fails to respect the free choice of parents with regard to the religious instruction of their children. This means, in practice, that a state must ensure an objective and pluralist curriculum and avoid indoctrination.³⁴ This is important, because public education entails the danger of political goals, *i.e.* the most influential ‘philosophy of life’ will be promoted by the State.³⁵ However, it should be realized that in many countries there is only limited or no opportunity to attend education of one's own choice: either there is only state-controlled education, or in a mixed system, private education is too expensive for parents.³⁶ On the basis of international human rights law, there is no obligation for a State to provide financial support to private educational institutions. If it does, however, it should do so on a non-discriminatory basis.³⁷

These core elements undoubtedly constitute the very essence of the right to education as a human right. Violation of one or more of these elements by the State would entail that the right would lose its material and intrinsic value as a human right.

³² See CRC, General Comment no. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, UN Doc. CRC/C/GC/8.

³³ See UN Commission on Human Rights res. 2003/19, § 6 *c* and *d*.

³⁴ Case of *Kjeldsen, Busk Madsen and Pedersen*, (1976), Judgment of the European Court of Human Rights, Series A, Vol. 23, at 26, 27. The Court emphasized that Article 2 of the First Protocol should be interpreted in the light of Article 8 (right to privacy), Article 9 (freedom of conscience and religion) and Article 10 (freedom to receive information) of the European Convention on Human Rights.

³⁵ Compare Article 17(3) African Charter on Human Rights and Peoples' Rights which states: ‘The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State’.

³⁶ Private education means: educational institutions established and run by private individuals or organizations. These private institutions may be partially or fully funded by the State, or alternatively, receive no financial contributions from whatever local, regional or national public authority.

³⁷ See the views of the Human Rights Committee in the case of *Arieh Hollis Waldman v. Canada* (1999), UN Doc. CCPR/C/67/D/1996.

The right to be educated in the language of one's own choice (Acceptability)

A more controversial question is whether the right to be educated in the language of one's own choice is part of the core content of the right to education. In the *Belgian Linguistic Case*, the European Court on Human Rights stated that 'the right to education would be meaningless if it did not imply, in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be'.³⁸ This means that it is the State that determines whether a specific language is to be the national or official language as a medium of instruction in education. In addition, the Court stressed that an individual cannot claim a right to State-funded education in the language of his own choice. The Court rejected positive state action for rewarding such a claim.³⁹

On the other hand, it is submitted that a State must respect the freedom of individuals to teach, for instance, a minority language in schools established and directed by members of that minority. This does not imply, however, that a State must allow the use of this language as the only medium of instruction; this would be dependent on the educational policy of the State. As a minimum, however, states must not frustrate the right of members of national, ethnic or linguistic minorities to be taught in their mother tongue at institutions outside the official system of public education. However, there is no state obligation to fund these institutions. This right of members of minorities is solidly established in international law.⁴⁰ It used to be a cornerstone of the minority protection system established under the auspices of the League of Nations. Moreover, the right of minorities to establish, for their own account, educational institutions in which they are entitled to use their own language, was characterized by the Permanent Court of International Justice as 'indispensable to enable the minority to enjoy the same treatment as the majority, not only in law but also in fact'. The Court considered these institutions as 'suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics'.⁴¹ It is in this sense that the right to be educated in the language of one's own choice belongs to the core content of the right to education. It is one of the elements of a State's obligation to respect that right.

³⁸ *Belgian Linguistic Case* (1968), Judgment of the European Court of Human Rights, Series A, Vol. 6, at 31.

³⁹ Compare the critical observations of the Committee on Economic, Social and Cultural Rights when it discussed the periodic report of Mauritius on the implementation of the ICESCR. The Committee noted with concern that Kreol and Bhojpuri, the only languages spoken by the large majority of the population, are not used in the Mauritian educational system. See U.N. Doc. E/C.12/1994/8, § 16.

⁴⁰ See, for example, Article 27 International Covenant on Civil and Political Rights, Paragraphs 32-34 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), and Article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly Res. 47/135 (18 Dec. 1992)). See also, within the context of the Council of Europe, Article 8 of the European Charter for Regional or Minority Languages (1992) and Articles 12-14 of the Framework Convention for the Protection of National Minorities (1994). However, there is no right to education in a minority language when a state refuses to accept international human rights obligations in this area, such as France; see, for example, the views of the Human Rights Committee in the case of *Herve Barzhig v. France*, Communication 327/1988, Views of 11 April 1991.

⁴¹ Permanent Court of International Justice, *Minority Schools in Albania*, Advisory Opinion of 6 April 1935, Series A/B No. 64; text in: Hudson, *World Court Reports*, Vol. 3 (1938), p. 484-512, at 499, 496.

3. Minimum Core Obligations Resulting from the Right to Education

It may be argued that specific elements of the core content of the right to education give rise to concrete obligations. These obligations may be characterized as minimum core obligations, as defined by the UNCESCR in its General Comment on the nature of States parties obligations.⁴² Such obligations are not limited to cost-free (negative) obligations to respect, but also include positive obligations to protect and to fulfil. Minimum core obligations resulting from the core content of the right to education apply irrespective of the availability of resources.⁴³ It is interesting to note that the UNCESCR also briefly refers to the core content concept in its General Comment on Article 13, but framed in terms of core obligations for the state, echoing the wording of General Comment no. 3 on the nature of states' obligations. According to the Committee, the minimum core obligation with respect to the right to education includes an obligation: 'to ensure the right of access to public educational institutions and programs on a non-discriminatory basis; to ensure that education conforms to the objectives set out in Article 13(1); to provide primary education for all in accordance with article 13(2)(a); to adopt and implement a national educational strategy which includes provision for secondary higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with "minimum educational standards" (article 13(3) and (4))'.⁴⁴ There is clearly overlap with the core elements I discussed above, but there are also differences, such as the reference to the objectives of education mentioned in Article 13 (1), an element which I left out, because in my view it would be covered by the quality level of education. The UNCESCR clearly decided to retain the 'obligations' language used in General Comment no. 3. In practical terms, however, there seems to be little difference between the core content approach on the one hand, and the core obligations approach on the other, because core elements of rights of individuals need to be translated into core obligations for the state. However, it may be argued that it is crucial to retain as a point of departure the right of the individual, rather than the obligations of the State, because the latter derive from the former, at least from a human rights perspective.

June 2007

⁴² UNCESCR General Comment no. 3, § 10.

⁴³ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 20 *Human Rights Quarterly*, (1998), p. 691-704, para. 9. See also V. Dankwa, C. Flinterman, S. Leckie, Commentary to the Maastricht Guidelines on Economic, Social and Cultural Rights, 20 *Human Rights Quarterly*, (1998), p. 705-730, at 717.

⁴⁴ UNCESCR General Comment no. 13, § 57.

ANNEX:

Recommendations:

When examining state reports and drafting new General Comments on economic, social and cultural rights, the Committee on the Rights of the Child should:

- 1)** Use the concept of a ‘core content’ of human rights as a helpful tool for identifying those elements of the normative content of a human right that contain minimum entitlements and for assessing states’ compliance with their obligations.
- 2)** Confirm that the core content of a right should be universal; a country dependent core would undermine the concept of the universality of human rights.
- 3)** Confirm that minimum core obligations resulting from the core content of a right apply irrespective of the availability of resources.