CHAPTER TWELVE

STRENGTHENING EDUCATION AS A HUMAN RIGHT, AND IMPROVING THE SUPERVISION OF ARTICLE 13 OF THE ICESCR UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. Introduction

This final Chapter will focus on two related issues: Firstly, it will demonstrate that education needs to be strengthened as a human right. Secondly, it will make suggestions on how to improve the supervision of article 13 ICESCR under the ICESCR.

Improvements in the supervision of the ICESCR must coincide with a strengthening of education as a human right. Improving the supervision of the ICESCR alone does not suffice to convince states to realise the right to education. The first part of the discussion will address this matter. On the one hand, the discussion will stress that the currently dominant ideology, in terms of which education merely serves a human capital-producing function, must clearly be renounced. It will also emphasise that education must not merely be seen as a commodity which may be traded against a price, in other words, that the principle of free trade should not generally extend to education services. On the other hand, the discussion will argue that education must be strengthened as a human right by recognising that the right to education covers not only internal, but also external state obligations. This has a bearing on the conduct of states concerning the granting of bilateral assistance to education, and on their conduct within the framework of intergovernmental organisations, to the extent that these are engaged in providing multilateral assistance to education. The implications of the right to education for both bilateral and multilateral assistance to education will be dealt with. Regarding intergovernmental organisations, attention will specifically be given to the responsibility of states for ensuring that the policies of the World Bank duly respect the right to education.

The second part of the discussion then suggests improvements in the supervision of article 13 ICESCR under the ICESCR. It will be argued that the system of state reports has distinct strengths and should, therefore, be retained. It must, however, be sought to enhance the effectiveness of the system, by improving the quality of state reports, by developing the
use of indicators by the CESCR, and by encouraging the active participation of UNESCO and other UN organs and Specialised Agencies in the supervisory system. But, it will also be argued that there are limits to the system of state reports. It will be shown that the limits involved may be effectively addressed by adopting an Optional Protocol to the ICESCR, providing for individual and group complaints in relation to the rights of the ICESCR, including article 13, to be considered by the CESCR. When deciding such complaints, a “violations approach” to ESCR needs to be adopted. The meaning of a “violation” of an ESCR will be clarified, and an attempt will be made to identify “violations” of the right to education—particularly, in the form of a failure to comply with the core content of the right to education.

It should, finally, be noted that the suggestions on how to improve the supervision of article 13 ICESCR under the ICESCR are applicable mutatis mutandis to the supervision of articles 28 and 29 CRC under the CRC. This is true for the suggestions related to enhancing the effectiveness of the system of state reports, and for those related to adopting an Optional Protocol, providing for individual and group complaints.

2. Strengthening Education as a Human Right

It has been observed that “[t]he definition of education as a human right does not guide many international or domestic education strategies; the recent emergence of a focus on education as a means for creating human capital and the prospect of education being purchased and sold as service create a great challenge for reaffirming education as a human right and as a public good”.1 Another challenge for education as a human right is that a commitment to the right to education is often lacking where states act at the global level in a bilateral or multilateral context. The bilateral assistance community and intergovernmental organisations, such as the World Bank, are often not convincingly committed to incorporating a human rights perspective into their development policies. This may constrain the ability of individual states to guarantee the right to education. For this reason, states should accept that the right to education also entails external states obligations. The following section addresses these issues.