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Ad hoc Advisory Group on Education for Democratic Citizenship and Human Rights (ED-EDCHR)

Feasibility Study on Framework Policy Documents on Education for Democratic Citizenship (EDC) and Human Rights Education (HRE)

Martin Eaton
formerly Chair of CDDH and member of CAHCIT

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SUMMARY

- I Terms of reference for the study.
- II Background and context: summarises the relevant developments and political declarations of recent years, in the Council of Europe and elsewhere, which have led to the commissioning of this study.
- III What is a framework policy document?: proposes a definition for the purposes of this study.
- IV Need for European framework policy documents in this field: examines the need for new documents in EDC/HRE from the points of view of Member States, education practitioners and civil society respectively.
- V Origins of EDC/HRE: stresses the importance of the basic rights to education in the ECHR and UDHR and traces the development of references to EDC/HRE aims in UN human rights treaties and the Vienna Declaration of 1993.
- VI Overview of existing framework policy documents: summarises the content and describes the legal character of the main existing documents on EDC and HRE in the Council of Europe, the United Nations and other organisations.
- VII Gaps and shortcomings: lists deficiencies of the existing documents.
- VIII Value added: suggests the value a new document could add, especially in level of commitment, monitoring and comprehensiveness.
- IX Subsidiarity: draws attention to the importance of any new instrument taking account of national variations in educational structures and allowing room accordingly for discretion in obligations undertaken and implementation.
- X Form of a new document: examines binding and non-binding options, and examples of framework conventions and a la carte conventions.
- XI Scope of a new document: options as to participation and subject-matter.
- XII Content of a new document: outline suggestions for content of preamble, definitions, objectives and principles, undertakings and monitoring.
- XIII Conclusions.

I Terms of reference

1.1 This Study aims to fulfil the terms of reference given, namely to:

(i) Examine the need for European framework policy document(s) in the field of Education for Democratic Citizenship and Human Rights (EDC/HRE);

(ii) Provide an overview of the existing framework documents and implementation mechanisms within the Council of Europe (CoE) and other international institutions outlining gaps and shortcomings;

(iii) Advise on the added value and requirements of new potential framework policy documents;

(iv) Advise the Steering Committee for Education and the Secretariat on the potential scope and options for the format and basic content of the framework policy document(s).

1.2 The Study was prepared in consultation with an informal group of experts from several countries. The group included educational specialists and representatives of international youth organisations appointed by the Directorate of Education and the Directorate of Youth and Sport, whose considerable contribution is gratefully acknowledged.

II Background and context

2.1 This section aims to answer the question, “how did we get to the point of such a study being commissioned?”, by listing the relevant developments and political decisions of recent years in this field. Of course, the origins go much further back, to the provisions on the right to education in international treaties and declarations; those will be looked at later in this study.

2.2 The most important stages in the process may be summarised as follows:

October 1997	At the Second Summit of the Council of Europe in Strasbourg the Heads of State and Government decide to “launch an initiative for education for democratic citizenship with a view to promoting citizens’ awareness of their rights and responsibilities in a democratic society”.
May 1999	The Committee of Ministers adopts a Declaration and programme on EDC.
October 2002	The Committee of Ministers adopts Recommendation (2002)12 to Member States on EDC.
October 2004	The Parliamentary Assembly recommends that a European framework convention on education for democratic citizenship and human rights is drafted by the Committee of Ministers (Recommendation 1682 (2004) Education for Europe).

- December 2004 The “Wroclaw declaration” adopted by the Ministers responsible for culture, education, youth and sport from the States Parties to the European Cultural Convention states that “the Council of Europe should strengthen its role as a centre of excellence for policies to equip people with the knowledge, skills and attitudes for life in democratic societies...To this end, consideration should be given to the setting of European standards by means of appropriate conventional mechanisms...”
- December 2004 The 2005 European Year of Citizenship through Education is launched in Sofia. The declaration adopted by the participants emphasises that appropriate conventional mechanisms as suggested in the Wroclaw Declaration are instrumental for the sustainability of EDC/HRE beyond 2005.
- May 2005 At the Third Summit of the Council of Europe in Warsaw, the Heads of State and Government call for “increased efforts of the Council of Europe in the field of education for all young people across Europe, improving its quality and promoting, inter alia, comprehensive human rights education”.
- September 2005 At their 7th conference, the European Ministers responsible for Youth encourage the preparation of a draft recommendation from the Committee of Ministers to the Member states on human rights education with young people, including provisions for strengthening cooperation on violence prevention.
- October 2005 The Steering Committee on Education adopts the Council of Europe Programme of activities on EDC/HRE for 2006-9 (“Learning and Living Democracy for All”) which provides for the preparation of a “study on the feasibility of a reference framework for EDC/HRE (appropriate conventional mechanisms)”.

2.3 The above political declarations are all from the Council of Europe, which is the immediate and most important context. But global developments particularly in the United Nations are also relevant. In particular the World Programme for Human Rights Education, approved by the General assembly on 10th December 2004 sets ambitious targets for strengthening and developing HRE, in the first phase in primary and secondary Schools at national level. Regionally, the UN’s partner in Europe is the Council of Europe, and the expectation is that it will be through Council action that Member states of the UN in Europe will achieve the aims of the World Programme.

III What is a framework policy document?

3.1 None of the political declarations actually defines the term. Several speak of “appropriate conventional mechanisms”, which suggests an instrument with binding treaty (convention) status but is general enough to embrace other types of instrument.

3.2 For the purposes of this study the term is taken to mean **an international instrument (binding or non-binding), addressed to states and containing agreed standards and policies to follow in the field of EDC/HRE.**

IV The need for European framework policy documents in the field of EDC/HRE

For Member States

4.1 The political declarations summarised in 2.2 above demonstrate a political will, including at the highest level, for sustained and increasing activity on EDC/HRE, and specifically for new framework policy documents, or at least serious consideration of them. They also show an expectation that it will be the Council of Europe that assumes the leading and facilitating role in promoting EDC/HRE. It is a role that falls naturally to the Council, given its core mission to promote human rights, democracy and the rule of law. The constant practice of the Council in every field of common interest and action by its Member States (human rights, national minorities, social policy, counter-terrorism etc) has been to conclude framework policy documents in various forms, which provide a focus and spur for action at national level and a way of disseminating good practice and raising standards throughout Europe. The success of this practice in other fields argues strongly for its application to EDC/HRE.

4.2 The political will stems primarily from a recognition of the importance of human rights and the value of teaching them for its own sake, but it also has a basis in the contribution that EDC/HRE can make to meeting real and pressing social needs. Democracy and respect for human rights cannot be taken for granted. Education is needed to maintain and strengthen them both. This point was made forcefully by the Secretary General in a recent (June 2006) speech on "Higher Education and Democratic Culture":

"Education is paramount to change in society and plays a primary role in defending and extending sustainable democratic societies. Democratic culture must be renewed and developed by every successive generation. If we want our democracies to work, we need individuals whose personality and mindset, whose knowledge, competences and skills, whose attitudes towards each other, towards society as a whole and towards knowledge and the acquisition of knowledge allow and empower them to act democratically."

4.3 Shared problems across Europe, like falling rates of traditional forms of participation in public and political life, evidenced for example in lower voter turnouts, demonstrate the need for EDC/HRE. So do inter-communal mistrust and violence, terrorism, xenophobia and social exclusion, which greatly reduce the enjoyment of human rights. EDC/HRE is able to contribute towards improving behaviour, fostering dialogue, combating all forms of discrimination and discouraging violence.

4.4 A key need of states met by Council of Europe conventions is for monitoring mechanisms, which encourage implementation and provide valuable expert input to improve quality and performance. There is hardly any such mechanism in the field of EDC/HRE at present (see section VI below). Its focus would be not so much on looking for deficiencies as on encouraging positive action. Monitoring is not a blaming exercise but a supporting one.

For education practitioners

4.5 There remains a significant gap between policy declarations and practice in EDC/HRE. Education practitioners- teachers and school leaders, youth organisations and youth leaders etc- are often required to provide EDC/HRE without being given the necessary resources and support. Under a framework policy document, governments would undertake to put in place progressively the conditions required for effective EDC/HRE. Practitioners also often feel “left alone”, especially in contexts where EDC/HRE is more tolerated than supported, not to mention the cases where their work is openly criticised or discouraged. A policy document would give them motivation, political support and a framework upon which to base their activities.

For civil society

4.6 Non-governmental organisations are key players in EDC/HRE, especially in education outside the structured, formal school and university systems, where youth organisations play a particularly important role. They also provide valuable impetus to government action by raising public awareness and lobbying. Their main need is for recognition of their work and its value. A framework policy document would help to supply this by sending a powerful message about the importance of EDC/HRE. It could also be used by NGOs as an additional lobbying tool and assist them in gaining political and financial support.

V Origins of EDC/HRE: rights to education in international law

5.1 Any framework policy document in this field needs to recognise and establish its roots in the basic rights to education. For a Council of Europe document the primary source has to be the **European Convention on Human Rights**, which states in Article 2 of Protocol 1:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

5.2 This basic right has been interpreted and elaborated over the years by a rich case law of the Court of Human Rights, some of it highly relevant to EDC/HRE. For example the Grand Chamber of the Court emphasised, in its judgment of November 2005 in the case of Leyla Sahin v Turkey, the fundamental importance of the right to education, which it considered indispensable to the furtherance of human rights in a democratic society. The Court has also said that “education of children is the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young” (judgment of February 1982 in Campbell and Cosans v UK).

5.3 In this field, however, the United Nations instruments are even more relevant. Article 26.2 of the **Universal Declaration of Human Rights**, adopted in 1948, says:

“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”

5.4 Later UN instruments expand on this language. The **International Covenant on Economic, Social and Cultural Rights**, adopted in 1966, says in Article 13 (1):

“The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial ethnic and religious groups, and further the activities of the UN for the maintenance of peace.”[emphasis added]

This language, and particularly the words underlined, is the foundation of EDC/HRE.

5.5 The **Convention on the Rights of the Child**, adopted in 1989, goes even further in the same direction in Article 29(1):

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

- a. ...
- b. the development of respect for human rights and fundamental freedoms...
- c. ...
- 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.” [emphasis added]

5.6 Thus a child has a right to education which develops respect for human rights and prepares him or her for responsible life in a free society. This is not necessarily a right to EDC/HRE as a discrete component of the curriculum. As to that the closest the international community has come is in the **Vienna Declaration and Programme of Action of the World Conference on Human Rights** 1993. At paragraph 33, the Conference:

“...reaffirms that States are duty bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. [It] emphasises the importance of incorporating the subject of human rights into education programmes and calls upon States to do so....Therefore education on human rights should be...integrated in the educational policies at the national as well as international levels.”

In paragraph 79 the Conference:

“...calls upon all States and institutions to include human rights, humanitarian law, democracy and the rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.” [emphasis added]

There is debate among the human rights and educational communities whether there is a right to human rights education. It is submitted that these paragraphs, except where they quote from the obligations set out in the UDHR and ICESCR, do not impose legal obligations on States to include HRE in curricula or create any corresponding enforceable right, **but they do constitute a very strong political commitment to do so.**

VI Overview of existing framework policy documents

(1) Council of Europe

(a) EDC

Recommendation Rec(2002) 12 of the Committee of Ministers to Member States on education for democratic citizenship

6.1 This recommendation, which like all recommendations is not legally binding, is the culmination of a process begun at the second summit of the Council of Europe (see the first declaration quoted in paragraph 2.2 above). In 2000 the European Ministers of Education adopted a resolution on the EDC project to date, which endorsed its results and called for a Committee of Ministers Recommendation.

6.2 The Recommendation is confined to EDC, with only passing references to human rights. It does not actually define EDC but says that it “should be seen as embracing any formal, non-formal or informal educational activity, including that of the family, enabling an individual to act throughout his or her life as an active and responsible citizen respectful of the rights of others”. This broad scope is one of the key strengths of the recommendation.

6.3 In light of what was said above (paragraph 4.2) about the needs met by instruments on EDC/HRE, it is significant that the Ministers declare that “education for democratic citizenship is a factor for social cohesion, mutual understanding, intercultural and inter-religious dialogue and solidarity...”. They also declare that EDC, in its broadest possible sense “should be at the heart of the reform and implementation of educational policies”.

6.4 The recommendations themselves are to make EDC a priority objective, to encourage and support initiatives for EDC, to be actively involved in the European Year of Citizenship through Education and to be guided by the principles set out in the Appendix. In all this however it is recognised that States’ constitutions, national and local situations and educational systems will need to be respected (see below on subsidiarity). The Appendix is lengthy and comprehensive, including lifelong learning, using EDC as a tool to encourage dialogue and reduce violence, the importance of democratic school governance and teacher training etc. The whole of the Appendix sets out policies and principles to be encouraged and adopted, i.e. it is descriptive rather than prescriptive.

6.5 The European Year of Citizenship through Education held in 2005 has produced numerous valuable documents, notably the Concept Paper and the Declaration adopted by the Evaluation Conference which took place in Sinaia, Romania in May 2006, but none satisfies

the criteria adopted in paragraph 3.2 above for a framework policy document. Nor does the Council of Europe programme on EDC for 2006-9, which is a programme for the organisation rather than the Member States. But all these documents contain useful material for possible inclusion in a future framework policy document.

(b) HRE

6.6 Recommendation Rec(1985)7 of the Committee of Ministers on Human Rights Education This twenty-year-old, non-binding document recommends that Member States, "having regard to national education systems" (subsidiarity again), encourage teaching about human rights in schools in line with the "suggestions" contained in the Appendix, and draw the attention of persons and bodies concerned with school education to the text. So it is confined to formal, primary and secondary school education. The Appendix contains many good principles, all couched in a "should" form, but due to its age it has been superseded by other texts. The recommendation is in a very weak form and is also narrow in scope.

6.7 There are two more recent and relevant Parliamentary Assembly (PACE) recommendations, which do not satisfy the criteria because they are addressed to the Committee of Ministers rather than States, but are nonetheless important. **PACE Recommendation 1346(1997)** asks the Committee to call on Member States to include HRE in all school curricula and in training for officials dealing with the public: police, prison staff and those dealing with refugees and asylum-seekers. **PACE Recommendation 1401 (1999)** is about education in the responsibilities of the individual. It repeats the recommendations of Rec1346 and adds recommendations for the adoption of programmes of education in citizens' responsibilities.

6.8 Recommendation Rec (2003)8 of the Committee of Ministers to member States on the promotion and recognition of non-formal education/learning of young people, again non-binding, recommends that States reaffirm that non-formal education constitutes a fundamental dimension of the lifelong learning process, and sets out a whole series of measures to encourage, support and develop lifelong learning in non-formal ways, through training, research and information and through incorporation of non-formal learning in national policies on youth and education.

6.9 Recommendation Rec (2004)4 of the Committee of Ministers to Member states on human rights in university education and professional training (again non-binding) is a very different type of recommendation, narrower in scope but very focussed and specific, and, for the first time in this field, with a significant monitoring component. It recommends that States include training in the ECHR and its case law in all university law courses (and political and administrative science courses where appropriate), and in professional training for judges and lawyers and for officials in law enforcement: police, prison officers and immigration officials etc. In this it fulfils in part the call of the Assembly in Rec (1346)1997. By a Decision of the Committee of Ministers adopted shortly afterwards, the implementation of this recommendation is subject to regular monitoring by the Steering Committee of Human Rights (CDDH) and its subsidiary procedure committee (DH-PR). The first round of monitoring by country reports has already taken place and a report has gone from the CDDH to the Committee of Ministers.

6.10 The **COMPASS Manual** on youth programmes in HRE is not a framework policy document, being addressed to practitioners as a practical tool rather than to States, but it

contains excellent definitions of key concepts, e.g. those of formal, informal and non-formal education, and much other valuable material on principles, methods etc, which could find inclusion in a future framework policy document.

(2) United Nations

(a) EDC

6.11 Though UNESCO has a long history of initiatives in EDC, and has worked with the Council of Europe on the production of tools of EDC for practitioners, notably that on Quality Assurance of EDC in schools, it does not have a framework policy document in this field.

6.12 UNESCO does however administer the **UN Decade of Education for Sustainable Development 2005-14**, whose vision is “a world where everyone has the opportunity to benefit from education and learn the values, behaviour and lifestyles required for a sustainable future and for positive societal transformation”. In his report on the Decade of 11 August 2005 the Director-General of UNESCO states the aim of UNECE in Europe to “encourage UNECE members [who include all Council of Europe Members] to develop and incorporate education for sustainable development (ESD) into their formal education systems, in all relevant subjects, and in non-formal and informal education”. The key objective is to train teachers to weave ESD issues into the curriculum. The report says that ESD “is part of preparing for responsible citizenship, committed to the ideals of a sustainable world, a world that is just, equitable and peaceable, in which individuals care for the environment to contribute to intergenerational equity”. So ESD has clear similarities in aims and methods to EDC and HRE but its roots are, as the report itself says, in the environmental movement within the UN.

(b) HRE

6.13 The **Recommendation concerning education for international understanding, co-operation and peace and education relating to human rights and fundamental freedoms** was adopted by the General Conference of UNESCO in November 1974. Like the Council of Europe recommendations, it is not legally binding. In 1995 it was updated by the **Integrated framework of action on education for peace, human rights and democracy**. Both documents contain objectives, strategies and policies and lines of action, only some of which relate directly to HRE. Monitoring of States’ implementation of both documents is by way of country reports. The first reporting cycle took place in 2001, when a limited number of States responded. A further cycle is planned in 2007.

6.14 As already noted (paragraph 2.3 above), the **World Programme for Human Rights Education 2005-ongoing** was approved by the UN General Assembly on 10 December 2004 and the Council of Europe is the regional partner of the UN for the implementation of the programme. The first phase of the programme aims to develop and strengthen HRE in primary and secondary schools at national level. UN Member States are encouraged to take at least the minimum specified action: analysis; setting of priorities and development of the national implementation strategy; and initial implementation of planned activities, within the first phase (2005-7). Implementation of the programme is monitored by an inter-agency co-ordinating committee. Subsequent phases will expand the scope of the activity.

(3) EU

6.15 The EU has no framework policy document yet in place in these fields. It is working towards a set of indicators for active citizenship.

(4) OSCE

6.16 The OSCE has no framework policy document yet in place in these fields, but it is running projects on human rights education and has recently completed a study on the teaching of human rights in its member states.

VII Gaps and shortcomings

7.1 Low level of commitment

None of the framework policy documents surveyed is legally binding. Mostly the actions proposed are very generally expressed and whether they are implemented by states fully, partially or at all is entirely up to them, with few checks.

7.2 Lack of monitoring

None of the Council of Europe documents has any system of monitoring save one, Rec (2004)4 on Education and Training in the ECHR for judges, lawyers etc, which is not surprising as it is the most recent document and the one with the narrowest focus and most specific provisions.

7.3 No comprehensive instrument

All the instruments cover either EDC or HRE, or specific aspects of one or other. No instrument covers both. Yet the two are now commonly, at least in the Council of Europe, treated as inextricably linked.

7.3 Out of date

Many of the documents are old and dated in their language, concepts and approach. This is particularly true of the Council of Europe documents on HRE relating to formal primary and secondary schooling. The newer documents are narrower in scope. None covers the entire field.

7.4 Weak and general formulations

The actions to which states commit themselves (politically) are mostly expressed in very weak and general language. Of course states need to be allowed discretion, given the differences in national systems, but that does not preclude specificity and precision, it just means that states need options to choose from.

7.5 Lack of definitions

There are no clear and precise definitions of key concepts (eg EDC and HRE themselves) in any of the framework policy documents. Rec (2002) 12 comes closest, but it is a statement of what EDC includes rather than what it is. The tools for practitioners, like COMPASS contain much clearer formulations, which could be borrowed.

7.6 Instruments are lagging behind state practice

From, inter alia, the country reports to the Evaluation Conference of the European Year of Citizenship through Education in Sinaia in May 2006, it is evident that state practice (and NGO practice) has moved beyond the weak formulations of the existing framework policy documents.

7.7 The picture is no better outside the Council of Europe

The only other international organisation with existing framework policy documents in this field is the United Nations. Despite, however, the seminal importance of the UN Treaty obligations on education and of the Vienna Declaration of 1993, the framework policy documents are, like their Council of Europe counterparts, expressed in weak and general terms and the monitoring is weak and patchy. Even the recently adopted World Programme on HRE is currently narrowly focussed on formal primary and secondary school education and expects very little of states.

7.8 Gap between rhetoric and reality

Not only is there the frequently observed gap between policy and practice, there is a similar gap between both policy and practice and real life. In other words, whatever states say and do, there often remains relatively little to show for it on the ground. This is not to deny the undoubted improvements and good practice that exist, but they are patchy.

VIII The value added by a new framework policy document(s)

8.1 High Commitment

To a large extent the potential value to be added by a new document or documents is the mirror image of the gaps and shortcomings just identified. Firstly, it could, especially if binding, establish a higher level of commitment among Member States. It is one thing for the Committee of Ministers to call on States to take action on EDC/HRE; it is quite another for the States to bind themselves to do so. It would send a message of the political importance of the subject and provide concrete evidence of commitment to bridge the gap between policy and practice identified in surveys conducted as part of the preparations for the European Year of Citizenship through Education.

8.2 Monitoring

Experience in other Council of Europe conventions with strong follow-up mechanisms through monitoring suggests this would be one of the greatest plusses. The point of monitoring is to provide an incentive and encouragement to States to implement the obligations they have undertaken, giving them support and expert help where needed. It is a way of exercising peer pressure in a good way, to improve quality, spread good practice and assess actual impact, and thus help to remedy the patchy application noted in paragraph 7.8. It would also give NGOs, teachers' organisations and civil society in general the opportunity to be involved in the monitoring process and assist in ensuring that commitments given are honoured. As noted before, monitoring does not have to be a blaming exercise; it can, and should, be a positive and supportive one.

8.3 Comprehensive and up to date instrument

The new document could be the first to cover both EDC and HRE, and to do so in all the contexts where they are practised and relevant: formal, non-formal and informal education and lifelong learning. It would give the opportunity to bring up to date the existing formulations and incorporate the latest theory and practice, drawn particularly from the great

advances in the implementation of EDC/HRE made in recent years since the call at the Second Summit in 1997, and from all the experience gained by states, NGOs, practitioners and the Council Secretariat during the European Year of Citizenship through Education.

8.4 Definitions and detail

A new document could incorporate clear definitions of key terms drawn from the good examples in the tools for practitioners. It could also provide focussed and specific actions to be taken, to replace the often woolly and general formulations in the present documents. At the same time it could recognise the variations in state practice and allow for flexibility in application.

8.5 Recognition and support for NGOs and practitioners

An instrument recognising the importance of what they do would be the clearest boost to the morale and effectiveness of people already working in this field in the Member States. This includes not only teachers and school leaders but NGOs and particularly youth organisations. It would be for them not just an educational tool, but one for lobbying and advocacy, and a means of attracting financial resources from private sources as well as the state.

8.6 Standard-raising for the future

A new document would provide the opportunity to set and develop standards and practices across Europe and, possibly, identify indicators and benchmarks for the future. There could be a commitment to research and development in this area.

8.7 Wider international effect

Because of its relative cohesiveness and shared values, and the experience developed over fifty years of standard-setting conventions, the Council of Europe is often able to take a lead in the international community. This is particularly so in the current climate of political uncertainty and instability afflicting many other regions of the world. As in other fields, especially human rights, other organisations like the UN, EU and OSCE, as well as other states, can derive inspiration and encouragement from Council of Europe instruments, which show the way in terms of greater commitment and more effective follow-up. EDC/HRE is another area where that could be true, making a positive difference not just in the Council of Europe Member States but far beyond. This could be true in a very direct way if any new instrument were opened for signature and ratification or accession by non-Member States, as is the case with several Council of Europe conventions.

IX Subsidiarity

9.1 A key issue in deciding whether and how far to move on a new framework policy document is subsidiarity. Education has always been treated, nationally and internationally, as a classic case of the application of subsidiarity, ie as a subject where decisions should be taken and policy made at the lowest efficient level. So, in many states, education is a local or regional, not a national responsibility, and the political and administrative structures are organised accordingly. Even in states where there is a more centralised system, there is a marked resistance at local or school level to being told what to teach and how to teach it by central authority. That also holds true for internationally agreed policies on education.

9.2 The existing documents recognise this. For example, paragraph 3 of Rec (2002)12 recommends that the governments of Member States "with respect for their constitutional

structures, national or local situations and education systems, as well as curricula and teaching methods make EDC a priority objective etc” (emphasis added). Similarly, all the practices recommended are put in the form of suggestions to be taken into account, rather than prescriptions to be followed to the letter.

9.3 Despite this there is also an evident and growing appetite, shown throughout the EDC project from 1997 onwards, for internationally agreed principles, standards and policies on EDC/HRE, which can be applied nationally and locally in ways appropriate to the national/local situation, thus respecting subsidiarity. Provided that the instruments leave sufficient discretion to states as to their application, the competing desires for international standards and national, regional and local freedom can be reconciled. That means that the choice of legal format for any new instrument is very important. Fortunately, there already exist good precedents among Council of Europe conventions which allow just the sort of flexibility needed in this case, and do so in different ways, offering several options for consideration, which are discussed in the next Section (paragraphs 10.5 and following).

X Options for the form of a new framework policy document

Binding or non-binding?

10.1 The first choice is whether to choose a binding or non-binding form. If non-binding, the instrument could follow the existing documents and take the form of another Committee of Ministers’ Recommendation. There could be significant value added, for example in comprehensiveness, up to date formulations, definitions of key terms and monitoring (cf the monitoring mechanism in Rec(2004)4), but the advantages of extra commitment, support for NGOs and practitioners and the wider international effect would either be absent or very much reduced by comparison with a binding instrument. There are other non-binding formats which could be chosen, for example guidelines (like the Guidelines on Human Rights and the Fight against Terrorism 2002) or a non-binding charter (like the Revised European Charter on the Participation of Young people in Local and Regional Life 2003). These formats carry advantages of greater visibility and perhaps imply a somewhat greater commitment than a Recommendation, but their non-binding nature means that the limitations on the value added are very much the same. This study will therefore concentrate on binding formats, which offer far more added value.

Options for binding formats

10.2 The title is not critical (see the Vienna Convention on the Law of Treaties). The normal term used in the Council of Europe is “convention”, but it could be called a “charter” (cf the European Charter for Regional or Minority Languages 1992). The key is the intention to create binding legal obligations, which is expressed by the language chosen. In English this is usually indicated by the use of the auxiliary “shall” (in French the present indicative) for the verbs, but there are other techniques, like saying “the Parties agree to...”, or “undertake to...”.

10.3 The main choice is between “traditional” conventions and “framework” conventions. Traditional conventions contain a set of provisions fixing precise obligations for the parties, including positive obligations, which may be directly applicable and may also create personal rights for individuals. Framework conventions contain mostly programme-type provisions,

setting out objectives which the parties undertake to pursue. This is particularly important when the new instrument is intervening in a field in which countries may need to follow different approaches, more respectful of their own specificities, while aiming at a common objective. The provisions of such conventions, which are not directly applicable, leave the states concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, which they do through national legislation and government policies. Given the sensitivities of policy on education considered in Section IX above, a framework convention has clear advantages over a traditional one.

10.4 There is, however, another way of achieving the necessary flexibility, which is to have a convention with a set of core provisions which all parties have to accept, plus a series of optional provisions from which parties may select, according to their systems or the stage of readiness they have reached, subject to acceptance of a minimum number of obligations. The parties may then accept more obligations later when they are ready to do so. This is sometimes known as an "a la carte" type of convention. This model may also have attractions for a new instrument on EDC/HRE.

Examples of binding formats

10.5 To assist the choice it is worth looking at examples of the two types, "framework" and "a la carte": the **Framework Convention on National Minorities** (FCNM) adopted on 1 February 1995, and the **European Charter for Regional or Minority Languages** (ECRML) adopted on 5 November 1992. Both contain monitoring provisions which are also useful precedents and offer options for an instrument on EDC/HRE.

Framework conventions

10.6 The **Framework Convention on National Minorities** is binding but programmatic, setting out principles which the parties undertake to put into practice rather than detailed obligations. Thus the typical formulation is not "The parties shall do x", but "The parties undertake to guarantee/adopt/promote x", or "shall encourage xyz policies". The final preambular paragraph explains how the convention works legally:

"Being determined to implement the principles set out in this framework convention through national legislation and appropriate government policies"

So each state implements the convention in its own way, through different structures, methods and legislative and administrative techniques.

10.7 The monitoring system is a key part of the convention. By Article 25 the Parties undertake to provide the Committee of Ministers with regular information on implementation, and by Article 26 the Committee is to be assisted by an advisory committee of experts, whose composition and procedure are to be later determined by the Committee. The advisory committee was set up by Resolution (1997)10 of the Committee of Ministers which establishes the election procedure for a committee of 18 experts chosen from lists of at least two candidates submitted by the States Parties. As a result the experts have independence from the governments of the states from which they come. The states submit regular reports on their implementation of the Convention, on which the committee, in its turn, prepares a report for the Committee of Ministers. Both the states and the committee are encouraged to consult other sources, so, for example, shadow reports by NGOs are taken into

consideration, and there is a possibility for the committee to make visits to the country concerned. After the state has had a chance to comment before the reports are made public. There are no sanctions; the idea is dialogue rather than blame. It is widely recognised that the independent and effective advisory committee has been the strength of the Convention, helping to ensure that its often somewhat imprecise provisions can be given a consistent and meaningful effect in the widely differing situations of the States Parties.

10.8 Another example of a similar technique is the **Framework Convention on the Value of Cultural Heritage for Society**, adopted in October 2005. The parties again undertake to promote the policies set out and to develop a monitoring system which is outlined for future development by the Committee of Ministers, which may nominate a new committee or specify an existing one to maintain an overview of how commitments are being met, give advisory opinions etc. Consistent with the less politically sensitive subject matter than the FCNM, the monitoring envisaged is lighter.

“a la carte” conventions

10.9 The **European Charter for Regional and Minority Languages** exemplifies a different approach. Part I contains definitions, undertakings and practical arrangements. The undertakings relate to Part II, where each party must specify a minimum number of the specific provisions of Part III, to which it will apply the provisions of Part II. Part II contains the core obligations: to base policies, legislation and practice concerning minority languages on specified objectives and principles; to eliminate unjustified distinctions on the use of languages; to promote mutual understanding between linguistic groups etc. The parties can then choose which of the specific undertakings in Part III (Articles 8-17) they will apply, subject to the minimum requirement.

10.10 The provisions in Part III are mainly arranged as a series of alternative obligations in a descending order of stringency. So, for example, states may undertake to make all secondary education available in the relevant regional or minority languages; or only a substantial part of it available; or provide for the teaching of those languages as part of the curriculum; or apply any of the first three options only on family request or where there is sufficient demand. Parties can choose the level of obligation they can accept in the areas they are able to accept it, such as education, judicial proceedings, administration, media, cultural activities, economic and social life etc. Many of the individual paragraphs are quite precise, but the parties have a choice as to which they accept, a choice which they can vary later on by accepting obligations in different areas or at a higher level. Other provisions are less precise and allow quite a lot of leeway in implementation. So this is a different way of giving states discretion in a field where the doctrine of subsidiarity applies. It allows the individual provisions to be quite focussed and specific because the state can choose, within limits, whether to accept them or not.

10.11 The Charter also, like the FCNM, relies on an independent, elected expert committee to achieve effective monitoring, which is based on dialogue with the Parties. The committee examines the reports from the Parties, organises on the spot visits (to talk to NGOs, nurses, headmasters, judges and other authorities so that as many perspectives as possible are taken into account), after which it prepares its own report to the Committee of Ministers, which adopts a recommendation and makes the report public. In addition, the Secretary General makes a two-yearly detailed report to the Parliamentary Assembly on the application of the Charter. So, again, an active and expert committee and a system of reports and dialogue,

involving civil society as well as the government, have been key to achieving the effectiveness of the instrument.

10.12 The Charter is not the only Council of Europe instrument to make use of the “a la carte” technique. The **European Social Charter (Revised)** adopted in May 1996 is also in that form, like its predecessor of 1961, which has proved an effective instrument for many years. Part I sets out the policy aims, “the attainment of the conditions in which the following rights and principles maybe effectively realised” and lists the rights. Part II then lists a series of undertakings in the form “With a view to ensuring the effective exercise of the right to..., the Parties undertake to provide or promote...” The parties may choose the obligations they accept, subject again to a minimum, including at least six of the most important articles. The ESC also relies on a monitoring system using an independent expert committee and reports from the Parties.

XI Scope of a new framework policy document

11.1 As to the extent of participation, a new document could be open not only to Council of Europe Member States but also to non-member states by invitation of the Committee of Ministers. This is the case for many Council of Europe conventions, including both the main examples considered in the previous section, the Framework Convention on National Minorities and the Charter on Regional and Minority languages. As noted above, it would be another way of achieving value added, in spreading the international influence of the standards adopted within Europe.

11.2 As to the subject matter, it is clear that EDC and HRE would now be treated together, as distinct but very closely linked topics (see further paragraph 12.6 below), that comprehensiveness being another aspect of added value. What is less clear is the place, if any, for education for sustainable development in such a document. As noted in paragraph 6.12 above, there are many similarities in aims and method between ESD and EDC/HRE, but the origins and concerns of ESD are primarily about taking care of the planet and the natural environment, whilst those of EDC/HRE are about respect for human rights and strengthening democracy. To make ESD a prime subject of the instrument as well would therefore be to introduce a different kind of educational aim and risk complicating and confusing the text. A better, if less ambitious, option might be to include ESD as one of the available choices in an “a la carte” instrument, or as one of the principles in a framework type instrument, to be implemented in a way appropriate to national needs and methods.

11.3 Other topics which may need to be considered for inclusion in the scope of the document are intercultural education and global education. Intercultural education is one of the key means of protecting democracy and fostering human rights, through the development of the knowledge, competences, skills and attitudes necessary for mutual understanding and respect in multicultural societies . Global education is a term used in the context of the North/South dialogue to refer to education for global citizenship. Both of these topics fall within the overarching concept of EDC/HRE, so the best way to accommodate them may again be to include them as options in an “a la carte” instrument, or as one of the principles in a framework type instrument, to be implemented in a way appropriate to national needs and methods.

XII Content of a new framework policy document

12.1 If it is agreed to initiate the process of preparation of a new draft instrument, the detailed negotiation of the content will, on past experience, take a substantial amount of time and expert input. What follows is only an outline of elements suggested for inclusion.

Preamble

12.2 The preamble (which typically is left to the end of a negotiation when the substantive content has been agreed) is the place to establish the context of the document, its origins and purpose. It would be appropriate to refer to some of the seminal political declarations listed in Section II above, and to the established state practice in the field. It could also be the place to refer to the origins of EDC/HRE in the rights to education in the ECHR and the global human rights instruments as well as the commitment to human rights education in the Vienna Declaration of 1993. The overall aims of the parties in concluding the instrument can also be included here, which does not prevent a more detailed statement of objectives later in the body of the document.

Definitions

12.3 Definitions of the key concepts: EDC, HRE, formal, informal and non-formal education and lifelong learning (at least) are indispensable. There are quite a number of definitions in the existing documents, but most are too descriptive, too long and too full of jargon for a binding international instrument, where a definition needs to be succinct, in commonly understandable words and comprehensive, not just saying what the term includes but what it means.

12.4 A definition of EDC used in conjunction with the European Year of Citizenship through Education is a good starting point:

“Education for democratic citizenship is a set of practices and activities for equipping young people and adults to play an active part in democratic life and exercise their rights and responsibilities in society”

This is essentially a definition in terms of the outcome expected or competences acquired from EDC. A similar definition is used in the Council of Europe and UNESCO Tool on Quality Assurance in EDC.

12.5 A definition of HRE which satisfies the criteria in 12.3 above is harder to find. That suggested in the Plan of Action for the World Programme on HRE, Section I paragraph 3 is a full paragraph long with six sub-paragraphs! The opening words alone, however, leaving out all the illustrations, may serve as a starting point:

“Human rights education is education, training and information aiming at building a universal culture of human rights”

The main definition in the COMPASS manual is also too long and illustrative:

“[HRE means] educational programmes and activities that focus on promoting equality in human dignity, in conjunction with other programmes such as those promoting intercultural learning, participation and empowerment of minorities”

A shorter one, also found in COMPASS, is better:

“[HRE means] education that aims to establish a culture where human rights are understood, defended and respected”

Another definition, favoured by many practitioners, is:

“[HRE means] education about, for and through human dignity.”

This has the merit of brevity, but is perhaps a little too concise, needing some thought to unpack its meaning rather than being clear on its face.

12.6 Given that EDC and HRE are now so closely linked, any definition will need to clarify the link. The terms of reference for this study, with all respect, rather duck the issue by linking the two simply with an oblique stroke! They overlap, because the rights important to citizenship, eg the right to vote, to free speech and to freedom of assembly, are classic human rights which are as much the proper field of HRE as they are of EDC. There is no hierarchy between the two in the sense of one subsuming the other; they each have a distinct but linked function. It is not for this study to resolve this issue, just to draw attention to it as something to be addressed in the negotiations should it be decided to proceed to draft a new instrument.

12.7 The COMPASS manual offers definitions of formal, informal and non-formal education which, if rather too long, would be a good starting point:

“Formal education means the structured education system that runs from primary school to university and includes specialised programmes for technical and professional training.

Informal education means the lifelong process, whereby every individual acquires attitudes, values, skills and knowledge from the educational influences and resources in his or her own environment and from daily experience (family, neighbours, market place, library, mass media, work, play etc)

Non-formal education means any planned programme of personal and social education for young people designed to improve a range of skills and competences, outside the formal educational curriculum.”

12.8 The Compass definitions have some shortcomings, for example that the lifelong learning concept applies as much to formal and non-formal education as to informal, yet it is only mentioned in the latter. Other definitions exist, developed by the European Youth Forum and by UNESCO, which could also be used to develop a suitable text for a new framework document.

Objectives and Principles

12.9 The section on objectives and principles could be modelled on Article 7 of the European Charter on Regional and Minority Languages, i.e. prefaced by language such as:

“The Parties shall base their policies, legislation and practice on the following objectives and principles:”

12.10 The objectives and principles to be listed could include the goal of EDC and HRE for all; the lifelong learning perspective; recognition of the value of non-formal education; recognition of the contribution made by civil society and an aim to make full use of it as an important provider of EDC/HRE; an approach that is flexible as to the structures used to deliver education, e.g. centralised or decentralised systems; a learner-centred (as opposed to educator-centred) approach; teaching and learning practice which itself respects human rights principles; the promotion of social cohesion; a goal of supplying the skills and understanding to decrease mistrust and increase dialogue and understanding between differing ethnic and faith groups etc.

Undertakings

12.11 This section would contain, in whatever form the negotiators chose, the substantive obligations assumed by states, in such a way as to allow sufficient discretion to enable states with differing systems and capacity levels to assume obligations at appropriate levels with flexibility as to their implementation. The obligations should be based, as far as possible, on existing state practice, but also contain the vision and potential to carry standards to higher levels.

12.12 The undertakings could relate, for example, to:

- including EDC/HRE in the curriculum in formal education, at different levels;
- specific undertakings relevant to higher education;
- promoting and supporting EDC/HRE in non-formal education;
- setting standards and indicators;
- strategy on evaluation and quality assurance;
- training of teachers and youth leaders as well as their respective trainers;
- learning and training resources;
- democratic governance in educational institutions as a practical means of learning democracy;
- research on EDC/HRE, inter alia to establish what changes are occurring and provide states and NGOs with comparative data to help them monitor their effectiveness;
- promotion of and support for international cooperation and exchange of experience and best practice;
- support for the involvement in EDC/HRE of youth organisations, other NGOs and civil society in general.

Monitoring

12.13 The first stage of monitoring would be an obligation on Parties to report at regular intervals on their implementation of the undertakings assumed. Those reports would go to the Committee of Ministers which would need assistance in evaluating them. It would be for decision whether the instrument itself set up an expert committee, like the Framework Convention on National Minorities or left it to later decision of the Committee of Ministers whether to appoint a new committee or use an existing one, as in the Framework Convention on Cultural Heritage. Cost implications are likely to play a role in the decision. What is clear is that the independent expert committees monitoring existing conventions, like the FCNM and the Charter on Regional and Minority Languages have played a major role in the success of those instruments and it is doubtful if they would have had such good effect without those committees.

12.14 Whichever body is chosen to assist in the monitoring process, it will be important to ensure that it is empowered to accept reports from other sources than just the government, e.g. NGOs, and to undertake country visits where the views of all actors in the process of implementation can be gathered. Similarly the final report, after input from the government and reconsideration by the Committee of Ministers, should be made public to encourage dialogue within the state concerned. All of this process should, however, be structured so as to emphasise the dialogue between monitoring body and states, and the provision of support and encouragement rather than a blame culture.

12.15 To assist the monitoring process it will be important to develop indicators to judge the effectiveness of implementation, focussing as much as possible on practical impact at various relevant levels (local, regional and national) rather than simply numbers of training courses run, teachers trained or hours of EDC/HRE taught etc. The aim is to avoid simply formal state responses to monitoring, which do not give a full picture of what is happening.

XIII Conclusions and recommendation

13.1 The following conclusions can be drawn from the above:

(1) Recent declarations have demonstrated an increasing political will to commit to obligations on EDC/HRE which will consolidate and build on the growing state practice in the field.

(2) As well as being valuable and worthwhile in itself, for building a democratic culture among the population EDC/HRE can help to address ills in society like mistrust and violence.

(3) There are sound legal underpinnings for new instruments on EDC/HRE in the rights to education in the ECHR and UDHR, as developed in later UN treaties and the Vienna Declaration.

(4) Existing framework policy documents in this field, whether Council of Europe or United Nations, exhibit serious gaps and shortcomings.

(5) A new binding instrument could offer substantial added value.

(6) There are good Council of Europe precedents for binding instruments in legal forms which allow the necessary flexibility in this field of education, where subsidiarity is so important.

13.2 The consensus in the expert group set up to facilitate the preparation of this study, which is fully shared by its author, is that, while a more comprehensive non-binding instrument in a stronger form, like a charter, would represent a step forward, a new binding instrument would be the better option, offering significantly greater added value; and that the best format for a binding instrument in this field is the "a la carte" model. Among other advantages, it would permit states to accept only those obligations appropriate to their present capabilities (subject to an irreducible core of obligations), while offering them the opportunity to upgrade those obligations as and when they were able. It would allow states with decentralised education systems to tailor their obligations to fit those systems. And it would allow the inclusion of related concepts, like education for sustainable development, intercultural education and global education, without requiring them to be part of the main subject-matter of the instrument. This, however, is only a viewpoint: the decisions on these issues are for the member states of the Council of Europe to take.

13.3 Accordingly it is recommended that a decision of principle to move to negotiation of the form and content of a new framework policy document in this field would be appropriate.