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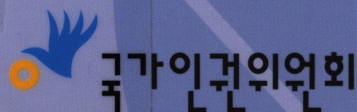
**THE ASIA PACIFIC FORUM**  
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# 아시아·태평양 국가인권기구포럼 제 11차 연례회의 참가보고서

The 11<sup>th</sup> Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions

2006. 7. 31 ~ 8. 3  
피지 수바

2006. 9







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**2006.7.31 - 8. 3**  
**피지 수바**

# **아시아 · 태평양국가인권기구포럼 제11차 연례회의 참가보고서**

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of the National Human Rights Institutions

2006.9



**국가인권위원회**

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제11차 연례회의  
2006.7.31-8.3, 수바 피지

# APF 제11차 연례회의 자료 MEETING PAPERS





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2006.7.31-8.3, 수바 피지

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제11차 연례회의  
2006.7.31-8.3, 수바 피지

## 2. APF 제11차 연례회의 일정(국/영문)



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### 3. 위원장 연설문 (국/영문)





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2006.7.31-8.3, 수바 피지

#### 4. ACJ 잠정 보고서(국/영문)



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2006.7.31-8.3, 수바 피지

## 5.ACJ 배경문서 제1장(국/영문)

배경문서 전문은 아래 웹페이지 참조:

<http://www.asiapacificforum.net/jurists/references/education/background.htm>



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## 6. 참가자 명단



# 아·태 국가인권기구포럼 제11차 연례회의 참가보고

## - 보고서 목차 -

- I. 참가배경
- II. APF 제11차 연례회의 개요
- III. 회의 주요 내용
- IV. 회의 평가 및 향후 추진 계획
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  - 1. APF 제11차 연례회의 최종선언문(국/영문)
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  - 3. 위원장 연설문(국/영문)
  - 4. ACJ 잠정보고서(국/영문)
  - 5. ACJ 배경문서(교육권관련)(국문-제1장 부분/영문)
  - 6. APF 제11차 연례회의 자료(영문)

## ■ 참가배경

- 아태지역 국가인권기구 포럼(The Asia Pacific Forum of National Human Rights Institutions)은 지역협력을 통해 아태지역의 인권 보호 및 증진을 위한 국가인권기구의 설립 및 발전을 지원하는 아태지역 국가인권기구들의 조직체로서 매년 회원 국가인권기구별로 돌아가면 연례회의를 개최함
- APF는 현재 아태지역의 17개 국가인권기구로 구성
  - 정회원(13개): 호주, 뉴질랜드, 인디아, 인도네시아, 필리핀, 스리랑카, 피지, 네팔, 몽골리아, 말레시아, 대한민국, 태국, 아프카니스탄
  - 후보회원(1개): 동티모르
  - 준회원(3개): 팔레스타인, 요르단, 카타르
- 우리 위원회는 부의장 기구 및 회원기구 자격으로 참가
  - ※ 현재 피지 인권위원회가 APF 의장기구로 활동 시작함

## ■ APF 제11차 연례회의 개요

- 일 시 : 2006. 7. 31(월)-8. 3(목)
- 장 소 : 피지 수바, 홀리데이 인 호텔
- 참석자 : APF 회원기구 대표, 유엔인권고등판무관실 대표, 법률가자문위원회(ACJ) 위원 및 시민사회 대표 등
- 위원회 참가자: 위원장, 사무총장, 이명재 홍보협력팀장, 정상영 비서실장, 황성룡 사무관, 민정 에디터
- 주요행사 일정(※ 세부일정은 참고자료 'APF 제11차 연례회의 의제 초안' 참조)

일자	시간	내용
제1일차(7.31, 월)	오전	포럼활동 보고, 법률가자문위원회(ACJ) 2007년 위임사항, ICC 가입승인소위 2006년 보고, 제8차 세계인권기구대회 논의, APF 신임의장 및 부의장 선출
	오후	고위 사무처 간부(SEO) 회의
	오후	개막식, 라투 조니 마드라위위 피지 부통령 연설
제2일차(8.1, 화)	오전	아태지역 협력 및 APF 회원기구 보고
	오후	태평양지역에서의 인권, 아태지역 정부 및 지역 NGO 보고
	저녁	<b>필리핀 인권위원장과 의 회의</b>
제3일차(8.2, 수)	오전	ILO, 국제노동기준 및 감독체계
	점심	<b>인도 인권위원과의 회의</b>
	오후	이주 및 인신매매와 국제노동기준
	저녁	리셉션
제 4 일 차(8.3, 목)	오전	인권옹호가들에 관한 비정부기구 토의, 국가인권기구와 교육권
	오후	법률가자문위원회(ACJ): 2007 위임사항 결정 및 현안 이슈에 관한 국가인권기구 보고, 최종선언문 작성 회의
	저녁	최종선언문 작성 회의 계속

## ■ 회의 주요 내용

### 1. APF 전략계획(2007-2009)

- 미션 선언: 지역내 인권기구들은 지역적 조정이 아태지역의 인권을 보호 및 증진시키는데 필수적이라는 것을 확신한다. APF를 통해서 국가인권기구들의 종합적 노력은 이들 각각의 임무를 효과적이고 효율적으로 증진시키는 것을 지원하고 파리원칙에 완전히 부합하는 새로운 국가인권기구의 설립 및 강화를 지원하는 것에 초점을 맞춘다.
- 비전 선언: APF는 다음과 같이 행동함으로써 아태지역내의 탁월한 지역



인권기구가 되도록 한다.

- 회원기구들의 대표자 및 이들의 필요에 부응
- 인권 보호 및 증진을 위해 회원기구의 역량강화
- APF 활동을 위한 충분한 재정의 확보
- 동류의 기구중 최고로 운영되는 조직체

○ 목표 및 목적

- 실제적 지원 프로젝트를 통해 회원기구의 요구에 부응
- 파리원칙에 완전히 부합하는 지역내 국가인권기구의 설립 및 강화를 지원
- 지역적·소지역적 협력 및 조정을 증진
- APF 활동의 조직, 참가 및 이행의 분야에서 지역 대표가 됨
- 증가하는 회원기구들의 요구에 부응하기 위한 APF의 역량 강화
- APF의 미션 및 비전을 달성하기 위한 충분한 수준의 재정 확보
- 조직 및 활동의 효과적 운영을 확보함

○ 향후 운용계획

- 현재 APF의 업무는 크게 다음과 같은 범주에서 운용되었음
  - . 회원기구들이 그들의 국가적 임무를 보다 효과적으로 달성하게 하기 위하여 이들의 역량강화
  - . 파리원칙에 포함된 최소기준에 부합하는 국가인권기구를 설립하고 강화하기 위한 정부 및 시민사회에 대한 지원
  - . 인권사안에 관한 지역적 협력 증진
- 향후 2007-2009년에는 다음의 7개 분야로 구분되어 짐
  - . APF 연례회의
  - . 일반적 자문서비스
  - . 법률가자문위원회
  - . 정보 및 홍보
  - . 국제법 발전
  - . 역량강화 프로젝트
  - . 전략적 경영

○ 회원기구들은

- APF의 전략계획이 유엔 인권고등판무관실의 계획과 조화되고 협력할 수

있기를 희망

- 회원기구 직원의 역량강화도 중요하며 이를 위한 직원교류도 중요할 것임.
- 사무국은 10.1까지 회원기구의 의견을 수렴하여 이 전략계획 초안을 다시 회원기구에 제출하고, 11.1까지 확정하고 2007년부터 이행

## 2. 법률가자문위원회(ACJ, Advisory Council of Jurists)

### (1) 2006년 위임사항(교육권)

※ 기타 자세한 사항은 참고자료 참조

#### ○ 배경문서 내용

##### <기본 주요 내용>

※ 교육권과 일할 권리의 관계:

많은 인권기구와 전문가들은 교육의 장점이 단순하게 경제적인 측면에서 측정되지 말아야 하고, 인권을 기반으로 한 교육적 접근이 중요하다는 것을 계속 강조한다.

※ 교육권은 모든 인권의 상호연관성과 상호의존성의 원칙을 담고 있다

※ 교육권의 최소핵심 내용

- ① 기본교육수준은 모두에 대한 의무, 무료여야 한다.
- ② 교육권에 관한 국가 계획/전략이 반드시 채택되고 이행되어야 한다.
- ③ 모든 개인은 국제인권법에서 인정되는 금지된 차별사유를 근거로 교육에서 비차별로부터 보호받아야 한다.
- ④ 국가는 교육관과 관련된 자유를 존중하고 증진시켜야 한다.

##### <국제적, 지역적 문서들에 나타난 교육권의 규범적 기준>

- ① 모든 이를 위한 무상, 의무 기본교육, 발전된 수준의 교육 및 기술교육  
-기본/초등교육은 모두 이용할 수 있도록 우선시되어야 함  
-중등, 직업/기술훈련은 일반적으로 이용가능하고 접근 가능해야 함

- 더 높은 수준의 교육이 “모든 이들에게 평등하게 접근 해야 함
- ② 평등하고 차별당하지 않은 권리는 교육권의 핵심요소를 구성함
- ③ 인권교육: 교육을 통하여 인권을 보장 받을 권리
- ④ 편견과 차별에 대한 치환 도구로써 정보권(right to information)의 중요성을 강조함
- ⑤ 교육권의 인정, 향유 및 행사는 아동을 우선으로(best interest)고려 하여야 함
  - 부모는 아동의 교육기관을 선택할 자유가 있지만 아동의 교육권을 방해할 때 국가는 개입할 의무가 있다.
- ⑥ 교육권과 관련된 자유
  - 학문기관을 선택하고 설립할 자유
  - 표현의 자유와 학문의 자유
  - 문화적 다양성 존중
- 교육권의 4A: 이용가능성 (availability)- 입학뿐만 아니라 특수한 상황 /아동 등 포함
  - 접근성 (accessibility)- 물리적 접근성, 경제적 접근성, 차별금지 포함
  - 수용성 (acceptability)- 지속적인 기준과 질에 의거하여 운영해야함
  - 적응성 (adaptability)- 사회적, 문화적 맥락 내에서 교육 내용

### <국가의무>

- ① 교육권 존중, 보호, 이행관련 국가의무는 특별하지 않고, 일반 의무에 열거되어 있음
  - 존중: 교육권의 완전한 향유와 연계된 자유를 인정하고, 해당 권리의 행사를 방해하는 것을 삼가야 한다.
  - 보호: 제3자의 교육권 침해를 방지하고, 금지시키고 구제하기 위한 조치를 취할 것
    - 예: 적절한 법률, 효과적인 진정메커니즘, 적절한 구제조치, 포괄적 정책, 일관성이 있는 행동, 지속적인 모니터링, 등등
  - 이행: 교육권의 실현을 위해 법률, 행정, 예산, 사법 및 기타 적절한 조치를 취할 것



- 유용하게 함 (facilitate): 효과적이기 위해서는 교육권 향유를 용이하게 할 목적을 가진 조치는 각 맥락에 접합해야 함
  - 제공함 (provide): 모든 유형과 수준의 교육이 관할권 내에 제공되도록 확인할 의무 있음
  - 증진시킴 (promote): 교육권과 관련된 국제인권기준을 증진시킬 의무가 있음
- ② 즉각성의 의무(obligations of immediacy)는 국가에게 재량권을 거의 부여하지 않고 즉각적으로 이행되어야 함.
- 교육에서 비 차별과 평등
    - 성 평등(gender parity)
    - 기타 차별받는 계층에 대한 교육권 확정 (특히, 비 국적자에게)
    - 최저 법적연령과 교육권간의 상호작용: 의무적인 초·중등 교육이행은 아동 결혼을 막고, 아동이 노동력에서 제외되고, 젊은 성인들에게 미래의 고용기회를 제공하는데 중요함.
- ③ 점진적 실현의무: 국가는 모든 이를 위한 교육의 실현을 보장할 의무가 있음
- “최대 가용자원”을 이용하고, 조치를 취할 의무
  - 지속적으로 상황을 개선시키고 역행하는 조치를 의도적으로 취하지 않을 의무
- ④ 국제지원과 협력을 제공할 국가의무
- 선진국은 전문성을 제공하고, 금전적 지원을 약속함
  - 개도국은 최저수준의 교육을 제공하기 위해
    - . 국제단체들로부터 적극적으로 지원을 요청할 수 있음
    - . 국제단체들이 주도한 노력을 용이하게 하거나 최소한, 방해하지 말아야 함
    - . 사회내에서 가장 취약하고 불리한 계층의 교육요구사항에 최우선을 뒤야 함

#### <비 국가행위자들의 교육권 증진 및 보호 의무>

- 교육권의 실현을 위해서는 (i) 개인, 그의 가족, 그리고 지역사회, (ii) 민간분야, 매스미디어, 종교단체를 포함한 시민사회, (iii) 행정부, 사법부, 입법부를 포함한 중앙정부와 지방정부의 모든 기구들, (iv) 지역단체 및 국제기구를 포함한 국제단체, (v) 초국적 기업, NGO 및 기타

단체 사이에 조화로운 노력이 필요함.

**<효율적인 교육권 이행을 위해 고려해야 할 기타 요소들>**

- ① 3D 장애물 제거: 장애(disability), 애로사항(difficulty), 불리한 점(disadvantage)
- ② 점진적 실현을 보장하기 위해 취한 조치들의 영향평가에 대한 7개 원칙
  - 명시적인 인권 기본 틀 이용
  - 인권의 점진적 실현에 목표를 둠
  - 과정과 정책에서 비차별과 평등 증진
  - 모든 이해당사자들의 의미있는 참여 보장
  - 정보를 제공하고 자유롭게 의사를 표현할 권리 보호
  - 국가가 책임을 지는 메커니즘 수립
  - 인권의 상호의존성 인정
- ③ 사법심사가능성: 교육권은 국내, 지역, 국제적 차원에서 소송대상이 될 수 있다.

**○ 잠정보고서(자세한 내용은 붙임문서 참조)**

- 이 보고서에는 19개 항목의 권고문이 담겨 있음.
- 다음과 같은 내용 등임
  - ① NI는 정부가 교육권을 정의하고, 증진시키고, 제공하며 모니터링하는 데 지원하는 중요한 역할을 한다. 초등교육은 무상, 의무여야 하고, 중등교육, 직업교육 또는 기술훈련은 일반적으로 모든 이들에게 접근가능해야 함.
  - ② NI는 각 정부에게 최대가용자원을 배정해서 교육권의 목표를 실현시키도록 독려해야 함.
  - ③ NI는 최 단기 내에 합리적으로 달성할 수 있도록 교육권을 점진적으로 실현시키도록 정부를 독려해야 함
  - ④ NI는 국가의 계획이 비차별과 실질적 평등이 확보되도록 하여야 함
  - ⑤ NI는 UNESCO와 UNICEF가 개발한 지표들을 검토함으로써 2015년까지 모든 이를 위한 교육(Education for All) 목표를 위해 점진적 검토를 하는 각국 정부를 지원해야 함

- ⑥ NI는 자국 정부와 협력하여 교육권의 점진적 실현을 모니터하기 위하여 자료를 수집, 편집, 분석해야 함.

(2) 2007년 위임사항

- 포럼이사들은 법률가자문위원회(ACJ)의 2007년 위임사항(자문의뢰)을 '환경권에 대한 인권차원의 고찰'로 하기로 함.

3. 국제조정위원회(ICC) 승인소위원회 APF 대표

- 우리 위원회가 현재 피지 인권위가 맡고 있는 국제조정위원회 승인소위원회(Accreditation Sub-committee)의 APF 대표를 승계하기로 함.
  - ※ 현재 승위소위원회는 캐나다(의장), 덴마크, 나이지리아, 피지 인권위가 맡고 있음
- 피지 인권위는 10월로 예정된 제8차 세계국가인권기구대회에서 재승인 절차에 관한 논의를 마무리한 후 우리 위원회에 인계
- 재승인 절차의 핵심은 ICC 승인절차를 실질적으로 강화하여, 국가인권기구의 ICC 승인이 국제적 승인과 동등한 자격으로 인정되어야 하고, 현재 승인된 ICC 회원국들에 대해서는 5년째 되는 해에 재승인 받도록 하자는 유엔 사무총장의 제안임.
  - ※ 재승인 일정(안)에 따르면 한국은 지난 2004년에 승인되었기 때문에 2008년 재심사 대상임.

4. ICC 절차규칙 개정

- ICC 위원장 및 부위원장 선출관련 ICC 절차규칙의 개정 필요성이 제안됨. 개정 내용의 핵심은 위원장·부위원장 직책을 4개 대륙별로 돌아가며 수행하자는 것임.
- 개정안의 세부내용은 다음과 같음
  - 현재 ICC 절차규칙 제6조는 다음과 같이 규정하고 있음.

- (a) 이 규칙의 채택이후, 첫 회의에서 현 ICC 회원들은 회원들 중 하나를 의장, 다른 하나를 부의장으로 선출해야 한다.
- (b) 의장과 부의장의 역할은 그들이 대표로 선출된 NI의 대표역할에 부가된다.
- (c) 의장과 부의장은 1년의 임기를 가지며 임기 말에 재선될 수 있다.

- 제6조에 대해 다음과 같은 개정안이 제안됨

- (a) 현 ICC 회원들은 회원들 중 하나를 의장, 다른 하나를 부의장으로 선출하여 이들 임기가 ICC의 4개 지역그룹에서 돌아가면서 할 수 있도록 보장해야 한다.
- (b) 의장과 부의장의 역할은 그들이 대표로 선출한 NI의 대표역할에 부가된다.
- (c) 의장과 부의장의 임기는 2년이어야 한다.
- (d) 의장과 부의장 선출은 임기의 연속성을 보장하기 위하여 격년으로 이루어져야 한다.

- 이 개정안이 채택되면, ICC는 의장과 부의장의 선출을 번갈아가며 할 수 있도록 하기 위해, 의장이나 부의장의 임기와 관련하여 과도기적 조정(transitory arrangement)에 관해서도 합의도 해야 할 필요가 있을 것임

## 5. ICC 대표 선출

- ICC 대표로 호주, 인도, 뉴질랜드 인권위를 새롭게 선출하고 우리 위원회는 유입함.
- 이전의 ICC 대표는 우리 위원회를 비롯하여 필리핀, 네팔, 피지 인권위였음.

## 6. APF 회원자격 신청(사우디 아라비아 국가인권기구 협회, National

## Society for Human Rights of Saudi Arabia)

- 사우디 국가인권기구 협회가 APF 가입 신청을 했음. 이 협회는 왕령으로 2004. 3 설립하여 임무를 수행하고 있음. 본부와 3개의 지역사무소를 두고 있으며 총회를 포함하여 5개의 하부조직으로 구성되어 있음. 총회의 구성원중 1/4은 여성으로 구성
- 왕령은 이 협회가 '그 활동에 있어, 코란과 예언자 모하메드의 가르침을 적용하고 헌법 제26조의 "국가는 이슬람법에 따라 인권을 보호한다"라는 규정을 달성하기 위해 도움을 준다'는 근거로 설립을 허가했음.
- 이 협회 헌장 제2조에 규정된 임무는
  - 이슬람법에 저촉되지 않는 한, 코란과 예언자의 가르침에 기초한 사우디 아라비아 왕국의 헌법과 아랍연맹, 이슬람회의 기구 및 유엔 및 그 기관 과 전문위원회에 의해 발표된 선언과 인권규약을 포함하여 응용된 규정에 따라 인권을 보호하기 위해 노력
  - 동일한 영역에서 활동하는 국제기구와 협력
  - 비정의, 학대, 폭력, 고문 및 불관용에 대한 대항
- 이 협회의 가입신청에 관해 포럼 이사들은 이 협회가 한 국가의 국가인권기구로서 자격을 가지고 독립성에 근거해서 제반업무를 수행할 수 있는가에 관해 강한 의구심을 표시함.(사적단체이거나 NGO 가 일정한 자격신청을 국가에 하여 인허를 받은 것 같음)
- 따라서 이런 제반사항과 현 ICC 승인소위에 가입신청이 계류중임을 고려하여 APF에 대한 가입신청을 보류함. 하지만 APF는 이 협회가 파리 원칙에 부합할 수 있도록 기술적 지원을 하기로 함.

## 7. APF 제12차 연례회의

- APF 제12차 연례회의는 2007년 호주 인권 및 기회균등 위원회가 개최하기로 함.

- 피지 인권위가 의장기구로 몽골리아 인권위 및 호주 인권위가 각각 부의장 기구로 선출됨

## 8. 위원장 발표

- 위원장은 회원기구 활동보고에서 5분간 발표함
- 발표내용은 붙임참조

## 9. 인권옹호가(Human Rights Defenders)와 국가인권기구

- 발표자: 샤론 바그윈 롤스(Ms. Sharon Bhagwan Rolls, FemLink Pacific), 크리스 시도티(Mr. Chris Sidoti, International Service for Human Rights)
- 인권옹호가의 범주
  - NGO 등 시민사회
  - 여성 인권활동가
  - 사회운동 및 조직체
  - 국가인권기구
  - 직업적 단체(변호사, 선생, 언론인 등)
  - 피해자 자신
- 인권옹호가로서 국가인권기구의 중요성
  - 국가인권기구는 인권옹호가의 옹호가
  - 국내적 및 국제적 인권체계간의 전략적 매개체
  - 정부와 NGO의 연계적 기초
- 인권옹호가가 처한 현실
  - 국가 및 비국가행위자로부터의 편견, 사회적 배적 및 공적 비난에 노출
  - 특히, 여성 인권옹호가의 경우 성에 기초한 언어적 폭력에서 성적학대

나 강간에 이르기까지의 성 특수성에 기인한 위험에 노출

○ 발제자 제안

- 인권옹호가에 관해 논의할 수 있는 장을 국가인권기구들과 형성
- 인권옹호가 보호를 즉각적 행동
- 인권옹호가 선언을 국내입법화
- 인권옹호가의 인권침해에 관한 조사 및 불처벌 종식
- 국가인권기구와 유엔사무총장 특별대표자 및 인권옹호가간의 지속적 협력
- APF 연례회의에서 지속적 의제채택
- APF 사무국에 접촉창구 마련
- 국제조정위원회의 인권옹호가에 관한 지침 개발
- ACJ 자문의뢰사항으로 채택

10. 국가인권기구와 교육권(유네스코 활동)- 자세한 사항은 참고자료 참조

○ 발표자: 셸돈 쉐퍼(Mr. Sheldon Shaefer)

○ 교육권의 본질

- 교육은 인권 자체이며, 또 다른 인권을 행사할 수 있도록 불가결의 수단
- 교육없이 개인은 시민·정치적·경제적·사회적 권리 행사하기 힘들

○ 교육관련 국제인권문서

- 세계인권선언-제26조(1948)
- 교육상의 차별금지에 관한 UNESCO협약(1960)
- 인종차별철폐협약-제5조(1965)
- 경제적·사회적·문화적 권리에 관한 국제규약-제13조(1966)
- 취업의 최저연령에 관한 ILO협약-제7조(1973)
- 여성차별철폐협약-제10조(1979)
- 아동권리협약-제28, 29조(1989)
- 장애인권리협약(안)-제24조

- 법적 책임과 현실의 괴리
  - 1억1천3백만명의 초등학생어린이는 퇴학하고 (60%이상이 여학생), 아직 70개국은 2015년까지 EFA(모든이를 위한 교육, Education for All)를 완수하기에 부족함이 많다.
  - 7억7천만명의 어른 문맹인: 64% 여성이며 67% 아시아·태평양지역에 거주
  - 교육권관련 2005년 성별동등목표는 149개국중 94개국이 미달
  
- 권리를 기초로한 교육제도 수립을 위한 핵심원칙
  - 책임성 (accountability): 적합한 법, 정책, 관행 및 장치 등의 실현 등의 이행
  - 권한부여 (empowerment): 자기의 삶에 영향을 미칠 수 있는 권한 및 능력 부여
  - 참여 (participation): 절차, 정보 및 기관에 대한 접근성에 주목
  - 비차별 (non-discrimination): 평등, 공평성, 약자집단의 상황에 관해 특별히 주의
  
- 정부의 의무(4A)
  - 이용가능성 (availability)
  - 접근성 (accessibility)
  - 수용성 (acceptability)
  - 적응성 (adaptability)
  
- UNESCO 및 인권교육 전략
  - 국내 인권교육 프로그램을 교육의 모든 수준, 종류, 수단에 포괄적으로 강화하여 UN 인권에 대한 교육을 위한 세계프로그램의 실천계획을 지지
  - 교육제도에 인권을 도입하려는 정부들을 지지
  - 지역 국가인권기구들의 인권교육 프로그램 사업지지
  - 인권교육현황을 검토하고 조사한 몇 국가의 국내연구지지
  - 특히 인권교육에 대한 역량강화에 주의하여, APF의 새로운 국가인권기구를 설립을 지지



## 11. 위원장과 필리핀 및 인도 인권위 대표와의 회의

### (1) 필리핀 인권위원장과 회의

- 필리핀 참석자: 푸리피카시옹 퀴숨빙(Dr. Purificacion Quisumbing) 위원장, 호메로 매튜 루시아나(Homero Matthew Rusiana) 사무국장
- 회의내용
  - 설립역사의 장·단의 특성을 가진 위원회 간의 협력 및 ICC 회원기구로서의 공동 경험을 가진 위원회로서의 상호간 협력은 매우 유익함
  - 위원회의 위원이나 직원간 교류(필리핀은 교육분야 희망)
  - 이주노동자 등의 분야에서 공동 프로그램 진행. 예컨대, 이주노동자 관련하여 핫라인(hot line)을 설치하여 운영하는 방안, 한국 관광객들도 활용할 수 있을 것임(필리핀)
- 회의결과: 금년내 NI간 교류협력 차원에서, 필리핀 인권위의 고위급 직원을 초청하기로 함

### (2) 인도 인권위원과의 회의

- 인도 참석자: 시바라즈 V. 파틸 (Justice Dr. Shivaraj V. Patil) 인권위원, 아루나 샤마(Ms. Aruna Sharma) 사무총장
  - ※ 파틸 인권위원은 고등법원장 및 대법원 판사 역임
- 회의내용
  - 위원회의 위원 및 직원 간 교류
- 회의결과: 금년내 NI간 교류협력 차원에서, 필리핀 인권위의 고위급 직원을 초청하기로 함

## 12. 일본 국가인권기구 설립지원

- 금년 중 위원회, APF, 호주 인권위 대표 등으로 구성된 대표단을 구성하여, 일본 방문하여 법무부, 일본 변호사연맹, 시민사회의 관계자와의

## 회의 추진

### ■ 회의 평가 및 향후 추진 계획

#### 1. 평가

- 우리 위원회가 APF 부의장기구로서 연례회의에 참석 아태지역내 국가인권기구간 협력을 달성함으로써 위원회 위상을 제고
- 위원장은 위원회 활동보고를 통해 활동 위원회 활동, 향후 중점활동 및 위원회 의지를 아태지역 및 국제사회에 홍보
- 위원회는 국제조정위원회(ICC) 아태지역 대표(4인 대표 중 1인)직을 유지하고, 현재 피지 인권위가 맡고 있는 국제조정위원회 승인소위원회(Accreditation Sub-committee)의 APF 대표를 승계하기로 함. 향후 세계국가인권기구대회 기간 중 열리는 ICC 회의 등에 참가하여 아태지역 뿐 아니라 유럽, 아프리카, 미주지역의 다른 국가인권기구들과 함께 세계 인권현안에 관한 위원회 의견 표명 및 국가인권기구의 승인절차에 참여할 수 있는 계기 마련
- 위원장은 필리핀 및 인도 인권위 대표와의 회의를 통해 인원을 교류하기로 함. 이를 통해 국가인권기구간 협력 및 경험 공유의 계기 마련
- 사무총장은 고위사무처간부회의에 참석하여 회원기구 사무총장들과 인권관련 업무 수행 정보 및 업무에 대한 전문성 공유와 상호협력 방안 논의
- 위원회는 국가인권기구의 APF 가입신청 심사, 아태지역 국가인권기구들의 활동, 국가인권기구와 노동권, 고문방지, 사형제도 등의

인권 현안에 관한 발표 및 토론에 참여함으로써 국가인권기구 간 의견 교류 및 협력 달성

- APF 연례회의에 정부대표가 참석하여 정부의 인권보호 및 증진 의지 표명하는 것이 바람직함
- 위원회는 2005년 APF 의장기구로서의 성공적 임무 달성을 통해 아태지역 내에서의 위상 및 자신감이 제고된 바, 이를 통해 다양한 인권관련 국제회의 및 현안에 관한 관련을 제고할 필요 있음

## 2. 향후 추진 계획

- 금년 10월 예정인 제8차 세계국가인권기구 대회 이후 승인소위원회 직책의 승계에 따른 위원회 역할의 중요성 증대 및 이에 대한 대비
- 필리핀 및 인도 인권위원회와의 인원교류 이행
- 일본 국가인권기구 설립 지원에 관한 실무적 준비
- APF의 회원기구 역량강화 프로그램으로 위원회 역량강화를 위한 위원회/APF/APT 공동 주관 '고문방지 관련 워크숍' 개최 준비
- 다양한 인권관련 국제회의 및 현안에 관한 관련도 제고를 위해 연례회의에서 논의 및 결의된 사항에 관한 이행 및 관심제고

## ■ 참고자료

1. APF 제11차 연례회의 최종선언문(국/영문)
2. APF 제10차 연례회의 회의일정(국/영문)
3. 위원장 연설문(국/영문)
4. ACJ 잠정보고서 (국/영문)
5. ACJ 배경문서(교육권관련) 제1장(국/영문)
6. APF 제11차 연례회의 자료(영문)-별첨



# 아·태지역 국가인권기구 포럼(APF) 제11차 연례회의

2006년 7월 31일-8월 3일  
수바, 피지

## 최종 선언문

### 서론

1. 아·태지역 국가인권기구포럼(이하 APF)은 피지, 아프가니스탄, 호주, 인디아, 인도네시아, 요르단, 말레이시아, 몽골리아, 네팔, 뉴질랜드, 팔레스타인, 필리핀, 카타르, 대한민국, 스리랑카, 태국 및 동티모르의 국가인권기구로 구성되어 있으며, 제11차 연례회의를 2006년 7월 31일부터 8월 3일간 수바, 피지에서 개최됨.
2. APF의 이사들(Forum Councillors)는 주최측인 피지국가인권위원회 또한 유엔고등판무관실 및 포럼 기부자에 재정지원에 감사 표시함. APF의 이사들은 피지국가인권위원회 관계자 및 APF 사무국 직원들의 연례회의 개최를 위한 노고에 감사 표명함.
3. APF는 법률가자문위원회(Advisory Council of Jurists)의 참여를 특별히 환영하고 법률가자문위원회의 중요한 업무활동에 대해 감사 표명함. APF는 회의에 참관인 자격으로 참석한 몰디브 및 사우디 인권기구; 57개의 국제, 지역별 및 국가별 NGO; 호주, 피지, 인디아, 인도네시아, 말레이시아, 뉴질랜드, 파키스탄, 필리핀, 남아공, 투발루, 영국 정부; 유럽연합, 태평양 도서 포럼(Pacific Islands Forum), 대만, 인권고등판무관실, ILO, UNDP, UNESCO 및 WHO 대표를 환영.
4. 연례회의 개막식에서 Ratu Joni Madraiwiwi 피지 부통령, Walter Rigamoto 전 피지국가인권위원회 위원장, Richard Dictus 유엔 주재 협력관(Resident Coordinator)은 개회사를 통해 연례회의를 공식적으로

개회함. 이들은 인권에 대해 국가인권기구의 역할이 중요함을 강조하고 아·태지역 특히 태평양지역의 정부들에게 국가인권기구를 설립하고 강화하여 파리원칙을 준수함을 확보하기를 요구함.

5. APF는 피지 및 지역의 타 국가 정부, 사법부, 의회 및 기타 고관의 참석, 참여 및 지지에 대한 감사 표명하고 이들의 APF에 대한 지속적인 관심과 지지를 장려함.

6. APF는 참석한 미디어 구서원들에게 감사를 표명하고 인권 증진과 보호에 그들의 지지와 참여를 환영함.

7. APF는 APF의 이사에게 따뜻하고 전통적인 환영식을 베풀어준 수바 및 타마부아지방의 장로들에게 특별히 감사 표시 전달.

## 결론

APF는 이번 연례 업무회의에서:

8. APF의 연간보고서를 발표하고 APF사무국의 노고에 감사 표명. 또한 APF의 이사(Forum Councillor)는 APF의 재정 및 행정을 검토하고 2006년 3월 31일 종료된 사무국장의 재정 및 결산 보고서를 승인함. APF의 이사는 다음 기관이 자금 지원을 함에 대해 감사 표명:

(가) 회원기구

(나) 호주, 인디아, 뉴질랜드, 대한민국, 태국, 스웨덴, 미국 정부

(다) 브루킹스 연구소 (Brookings Institution), 맥아더 재단 (MacArthur Foundation) 및 미 국립 민주주의 기금 (National Endowment for Democracy)

(라) 유엔 기관을 포함한 국제기구

9. APF의 2007-2009년간 전략계획(안)을 고려하고, 2006년 11월1일까지 계획을 완성시키기 위해 초안에 대해 의견제시 혹은 제안추가를 하기

로 함. 또한, APF의 이사들은 주요 이해관계자 및 정부, 시민단체와 국제기관의 대표로부터 의견 및 제안 제시함을 환영함.

10. 유엔 조약기구에 대한 새로운 실무그룹을 형성하기로 동의하고 현재의 실무그룹 (가) 유엔 인권이사회, (나) 장애인권리협약 실무그룹에게 중요한 업무활동 지속함과 APF의 이사가 심의와 결정을 할 제안을 하도록 요구함. APF의 이사는 현 실무그룹의 노력에 대한 감사 표명하고 APF회원기구를 대표하여 옹호하는 그들의 지지를 높이 평가함.

11. 국제조정위원회의 승인소위원회 (accreditation sub-committee of ICC)의 APF 대표인 피지국가인권위원회의 보고서를 환영하며, 이 대표의 업무에 감사 표명함. APF의 이사는 피지 대표가 2006년 10월에 재승인 기준을 완성될 때 까지 국제조정위원회의 승인소위원회에 위원으로 맡기를 요청함. 이후, 대한민국 국가인권위원회가 국제조정위원회의 승인소위원회에서 APF 대표의 역할을 맡을 것이다.

12. APF의 이사는 호주, 인디아, 뉴질랜드 및 대한민국의 국가인권기구를 ICC에서 APF의 대표로 임명함. 뉴질랜드 국가인권기구는 피지국가인권위원회의 임기종료 후 그의 역할을 맡을 것이다. APF의 이사는 ICC의 위원장 및 부위원장의 선거관련 ICC의 절차규칙에 대해 개정을 제안함.

13. 국가기구의 조직 및 책임은 파리원칙에 부합해야함을 재확인. APF의 이사는 ICC의 승인기준을 강화하는 제안을 환영하고 ICC의 승인기준을 완성한 후, APF의 회원가입 절차에 대해 검토할 것을 권고함. 따라서 APF의 이사는 사우디아라비아 국가인권협회 (National Society for Human Rights)의 회원가입 신청을 위 진행사항이 마칠 때까지 연기하기로 결정함. 이와 관련, APF의 이사는 사무국이 이 사우디협회에게 파리원칙 준수관련 기술적 협력과 지원 제공을 요청함.

14. 법률가자문위원회(Advisory Council of Jurists)가 환경권에 대한 인

권차원에 관해 고찰하는 것을 자문의뢰 하기로 결정하고 APF 사무국에게 자문의뢰사항 초안을 작성하여 APF의 이사의 심의 및 승인 받도록 요청.

15. 국가기구들이 효율적이고 능률적인 실행에 위해 지원을 한 고위사무처간부들의 노력을 치하함. APF는 고위사무처간부가 지속적으로 협력을 확대시키고 제12차 연례회의 때 업무활동 및 협력사업에 대한 보고서 제출을 요청함.

16. 만장일치로 피지인권위원회를 (금년 APF 연례회의 주최국으로서) APF 의장직으로 선출함. 또한 몽골리아 국가인권위원회(작년 APF 연례회의 주최국으로서)와 호주 인권 및 기회균등 위원회(Human Rights and Equal Opportunity Commission) (내년 APF 연례회의 주최국으로서)를 만장일치로 부의장직으로 선출함.

17. 중동의 분쟁사태로 인해 불참한 팔레스타인 시민권리독립위원회(Palestinian Independent Commission for Citizens Rights)에 대한 우려를 표명함. 무조건으로 즉각 휴전하여 모든 행위자에게 인권침해 중단을 촉구한 유엔 사무총장의 요구를 지지함.

*APF는 이번 공개 총회에서,*

18. APF와 지속가능한 협력(sustainable partnership)을 강화하려는 유엔 인권고등판무관실의 헌신에 감사 표명. 양 기관의 활동계획에 있어서 상호 협력방안 모색하기 위해 연말 전에 APF와 회의를 개최하자는 인권고등판무관실의 제안을 환영함. 또한, APF는 파리 원칙 의거하여 국가인권기구를 설립 및 강화를 위한 아시아지역 국가들 회의를 2006년 중 개최하자는 인권고등판무관실의 제안을 환영함. APF의 이사는 태평양지역에도 APF와 태평양 도서 포럼(Pacific Island Forum)간 협력관련 비슷한 회의가 개최되기를 요청. APF의 이사는 APF의 국가인권기구들의 참여를 확보하기 위해 이러한 회의개최에 따른 고등판무관



실 및 APF사무국과의 밀접한 업무협력을 요구함.

19. APF 회원기구 및 관련 기구의 전년도 활동보고를 환영함. APF의 이사는 몰디브 및 사우디아라비아 대표부의 참여를 환영함. 특히, 몰디브 기구가 파리원칙에 대한 준수를 강화하려는 계획을 환영함.

20. 국가들이 인권 보호 및 증진을 위해, 국가인권기구 지지를 포함한 활동에 관한 정부 및 국회의원들의 보고를 환영함. APF의 이사는 국가인권기구를 설립하고자하는 파키스탄 정부의 제안을 환영하며, 파리원칙에 완전히 부합하여 설립될 필요성을 강조함. APF는 이 목적으로 기술적 지원을 제공하였음.

21. 비정부기구들의 보고서를 환영함. APF의 이사는 APF의 업무수행에 비정부기구들의 건설적·협동적 역할의 중요성을 감사 표명함. 또한 비정부기구들이 제출한 자료, 집단적 참여 및 옹호를 감사하며, 비정부기구들의 실제적 협력의 중요성을 강조함.

22. 태평양 지역에 국내적 및 지역적 인권체계(human rights mechanism), 특히 국가인권기구를 설립하자는 계획을 논의함. APF의 이사는 피지 및 뉴질랜드 국가인권기구가 지역내에서 태평양 도서 포럼과 공동으로 학수한 계획을 환영함.

23. 태평양지역에 환경권관련 피지 국가인권위원회의 계획을 논의하고, 태평양 도서 국가들의 환경권에 관한 깊은 논의를 시작하자는 투발루 정부의 발언을 격려함.

24. 인도네시아, 말레시아, 필리핀 및 태국의 국가인권기구들이 인권에 관한 ASEAN 체계를 설립하기 위해 협력을 강화하려는 과정들을 환영함.

25. 국제노동기구의 역할과 특히, 국제노동기구의 협약 및 선언이 국가

인권기구의 인권보호 및 증진 기능의 관련성을 고려함. APF의 이사는 사무국이 실제적인 협력 프로그램 개발을 국제노동구기와 협의할 것을 요청함.

26. 국제, 지역 및 국내 비정부기구 대표로부터 인권 옹호자들의 권리에 대한 발표를 경청. APF의 이사는 인권의 옹호자이며 인권옹호자 자신으로서 국가인권기구 및 비정부기구의 보충적 역할을 확인함. 국가인권기구의 인권옹호자에 대한 그리고 이와 정반대의 특정한 책임을 인정함. 사무국에게 APF 회원기구가 지역 및 국내 차원에서 인권옹호자의 권리보호 및 증진을 더욱 효과적으로 할 것인가를 연구하도록 요청

27. 국제기관, 전문가 및 비정부기구의 견해, 법률가자문위원회의 임시 보고를 포함하여 교육권에 관한 쟁점을 검토함. APF는 법률자문위원회의 전문성과 포괄적인 범위의 보고서에 특별히 감사. APF 회원기구는 차기 회의때까지 이행에 관한 법률자문위원회의 권고 및 보고서를 신중히 검토할 것임. APF의 이사는 법률가자문위원회의 효과적이고 효율적인 역할을 확보하기 위해 법률자문위원에게 장래 자문의뢰를 위한 주제별 쟁점 및 행정적 쟁점 모두에 관한 제안을 하도록 요청함.

28. 교육권의 정의, 증진 및 감시하는 국가업무활동을 지원하는 국가인권기구 중요한 역할을 강조하는 발표를 경청함. APF의 이사는 법률가자문위원회 및 연례회의 활동 모두에 UNESCO 대표가 실제로 참여한 것을 환영하며 사무국이 UNESCO와 협의하여 APF 회원기구 교육권 보호 및 증진을 위한 실제적 프로젝트 개발 및 법률자문위원의 권고 이행방안 모색하도록 요청함.

29. 사형제도, 아동 포르노그래피, 인신매매, 테러 및 고문관련 법률가자문위원회의 보고서의 권고의 이행에 대해 보고함 많은 APF 이사들은 법률가자문위원회의 권고의 성공적 이행을 특정적으로 언급함.

30. 호주 인권 및 기회균등 위원회가 2007년 제12차 APF연례회의를 개최하겠다는 제안에 감사로서 수락함.

연례보고서는 APF 홈페이지에 참조  
[www.asiapacificforum.net](http://www.asiapacificforum.net)

# ELEVENTH ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

31 July to 3 August 2006, Suva, Fiji

## CONCLUDING STATEMENT

### Introduction

1. The Asia Pacific Forum of National Human Rights Institutions (the Forum), consisting of the National Human Rights Institutions of Fiji, Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor-Leste, held this Eleventh Annual Meeting in Suva, Fiji from 31 July to 3 August 2006.
2. The Forum Councillors expressed their gratitude to the Fiji Human Rights Commission for hosting the meeting, to the Office of the High Commissioner for Human Rights (OHCHR) for its co-sponsorship and to all the Forum's donors for their financial support. The Forum Councillors expressed their appreciation for the efforts of the Commissioners and staff of the Fiji Human Rights Commission and the secretariat of the Forum for their work in the organisation of the meeting.
3. The Forum particularly welcomed the participation of the Advisory Council of Jurists and thanked them for their important work. The Forum also welcomed representatives, as observers, from the institutions of the Maldives and Saudi Arabia, fifty seven international, regional and national non-governmental organizations, the representatives of the governments of Australia, Fiji, India, Indonesia, Malaysia, New Zealand, Pakistan, Philippines, South Africa, Tuvalu, United Kingdom, the representatives of the European Union, Pacific Islands Forum, Republic of China and the OHCHR, ILO, UNDP, UNICEF, UNESCO and WHO.
4. H.E. Ratu Joni Madraiwiwi, Vice-President of the Republic of the Fiji Islands and Roko Tui Bau, Mr Walter Rigamoto, immediate past Chairperson, Fiji Human Rights Commission and Mr Richard Dictus, United Nations Resident Coordinator, addressed the inaugural session and formally opened the annual meeting. The speakers stressed the importance of human rights and the role of national human rights institutions and called upon States in the Asia Pacific region, and in particular the Pacific, to establish and strengthen national human rights institutions and ensure their full compliance with the Paris Principles.
5. The Forum noted with appreciation the attendance, participation and support of a number of senior members of the government, judiciary, parliament and other dignitaries from the Republic of Fiji and other States in the region and encouraged their continued engagement and support of the Forum.
6. The Forum noted with appreciation the attendance of members of the media and welcomed their participation and advocacy in the promotion and protection of human rights.
7. The Forum conveyed their special thanks to the elders of the villages of Suva and Tamavua who offered a warm traditional welcome to the Forum Councillors.

## Conclusions

*The Forum, during its annual business meeting:*

8. Noted the annual activity report of the Forum and expressed their appreciation for the work of the secretariat. Forum Councillors also reviewed the Forum's finances and administration and approved the Director's Financial and Audit report of the Forum for the period ending 31 March 2006. Forum Councillors highly appreciated the financial contributions made by (i) member institutions; (ii) the governments of Australia, India, New Zealand, Republic of Korea, Thailand, Sweden and the United States; (iii) donor institutions, including the Brookings Institution, MacArthur Foundation and the National Endowment for Democracy; and (iv) international agencies, including United Nations agencies.
9. Considered the Forum's draft strategic plan for the period 2007 to 2009 and agreed to submit comments and/or additional proposals on the draft with a view to finalising the plan by 1 November 2006. The Forum Councillors also welcomed input from other key stakeholders and invited representatives of governments, civil society and international agencies to submit comments and/or proposals.
10. Agreed to form a new working group on United Nations treaty body reform and requested that the existing working groups on (i) the United Nations Human Rights Council and (ii) Disability, continue their important work and submit proposals for the consideration and decision by Forum Councillors. Forum Councillors expressed their appreciation for the efforts of the members of these working groups and expressed their strong support for the advocacy on behalf of all members of the Forum.
11. Welcomed the report of the Fiji Human Rights Commission, the Forum's representative to the accreditation sub-committee of the International Coordinating Committee of National Institutions (ICC), and thanked the Forum's representative for her work. The Forum Councillors requested that the Fiji representative continue to serve on the ICC accreditation sub-committee until the finalisation of the ICC re-accreditation criteria which is scheduled to occur in October 2006. The national institution of the Republic of Korea will then assume the role as the Forum's representative on the ICC accreditation sub-committee.
12. Forum Councillors nominated the national human rights institutions of Australia, India, New Zealand and the Republic of Korea to be the Forum's representatives to the ICC. The national human rights institution of New Zealand will assume its role after the completion of the Fiji Human Rights Commission's term. Forum Councillors also proposed amendments to the rules of procedure of the ICC with regard to the election of the ICC's Chairperson and Deputy Chairperson.
13. Reaffirmed that the structure and responsibilities of national institutions should be consistent with the Paris Principles. Forum Councillors welcomed proposals to strengthen the accreditation guidelines of the ICC and recommended that, following the finalisation of the ICC accreditation guidelines, the Forum's own membership procedures be reviewed. Forum Councillors therefore resolved that the application for membership from the National Society for Human Rights of Saudi Arabia be deferred until these processes are finalised. In doing so, Forum

Councillors requested that the secretariat offer technical cooperation and assistance to the Society regarding compliance with the ‘Paris Principles’.

14. Decided to make a reference to the Advisory Council of Jurists on exploring the human rights dimension to the right to environment and requested that the secretariat develop draft terms of reference for the consideration and approval of Forum Councillors.
15. Commended the efforts of the Senior Executive Officers to assist in the effective and efficient functioning of national institutions. The Forum requested that the Senior Executive Officers continue to increase their cooperation and requested that they provide a report to the 12<sup>th</sup> Annual Meeting of the Forum on their activities and cooperation projects.
16. Unanimously elected the Fiji Human Rights Commission (as the current host institution of the annual meeting) to the position of Chairperson of the Forum. The National Human Rights Commission of Mongolia (as the host institution for the last annual meeting) and the Australian Human Rights and Equal Opportunity Commission (as the host institution for the next annual meeting) were also elected unanimously to the two positions of Deputy Chairpersons.
17. Expressed their deep concern that the representatives of the Palestinian Independent Commission for Citizens Rights could not attend the meeting due to the conflict in the Middle East and supported the UN Secretary General’s call for an immediate and unconditional ceasefire for all actors to end the human rights violations.

*The Forum, during its open plenary sessions:*

18. Expressed appreciation for the commitment of the OHCHR to strengthen sustainable partnerships with the Forum and welcomed the OHCHR’s proposal to meet with the Forum prior to the end of 2006 to jointly explore how this may be realised in the context of the strategic plans of both organisations. The Forum also welcomed the proposal of the OHCHR to hold a meeting of Asian States in 2006 to encourage the establishment and strengthening of national human rights institutions in compliance with the Paris Principles. Forum Councillors requested that a similar meeting also be held for the Pacific in association with the Forum and the Pacific Islands Forum. Forum Councillors called upon the OHCHR to work closely with the Forum secretariat in the planning and implementation of these meetings so as to ensure the active participation of Forum national institutions.
19. Welcomed the reports of Forum members and relevant institutions on their operations over the preceding year. Forum Councillors welcomed the participation of the representatives from the Maldives and Saudi Arabia and particularly welcomed initiatives to strengthen the institution in the Maldives towards compliance with the Paris Principles.
20. Welcomed the reports of governments and parliamentarians on the activities undertaken by States to protect and promote human rights including support for national human rights institutions. Forum Councillors welcomed the proposal of the Government of Pakistan to establish a national human rights institution and

reinforced the need for it to be established in full conformity with the Paris Principles. The Forum offered its technical support for this to occur.

21. Welcomed the reports of non-governmental organisations. Forum Councillors appreciated the constructive and coordinated contribution of non-governmental organisations to the work of the Forum. Forum Councillors thanked non-governmental organisations for their submissions, collective participation and advocacy at the meeting and stressed their commitment to furthering practical cooperation.
22. Discussed initiatives for the establishment of both domestic and regional human rights mechanisms in the Pacific, especially national human rights institutions. Forum Councillors welcomed the initiatives of the Fiji and New Zealand national institutions in this area undertaken in association with the Pacific Islands Forum.
23. Discussed initiatives of the Fiji Human Rights Commission to work in the Pacific on the right to environment and was encouraged by the Government of Tuvalu statement to enter into further dialogue on the right to environment in the Pacific Islands States.
24. Discussed and welcomed the progress of the national human rights institutions of Indonesia, Malaysia, Philippines and Thailand to strengthen their cooperation towards the establishment of an ASEAN mechanism on human rights.
25. Considered the relevance of role of the International Labour Organization (ILO), and in particular specific ILO Conventions and Declarations, to the protection and promotion functions of national human rights institutions. Forum Councillors requested that the secretariat explore with the ILO the development of practical cooperation programs.
26. Heard presentations from representatives of international, regional and national non-governmental organisations on the rights of human rights defenders. The Forum Council affirmed the complementary roles of national institutions and non-governmental organisations as defenders of human rights and as human rights defenders themselves. It recognised the particular responsibilities of national institutions towards human rights defenders and visa versa. It requested the secretariat to explore how the members of the Forum can protect and promote the rights of human rights defenders more effectively at regional and national levels.
27. Considered the issue of the right to education, including the views of international agencies, experts and non-governmental organisations, and the interim report of the Advisory Council of Jurists. The Forum warmly thanked the jurists of the Advisory Council for their expertise and the comprehensive scope of their report. Forum member institutions would carefully consider their recommendations and report on their implementation to the next meeting of the Forum. Forum Councillors also invited proposals from the jurists concerning both thematic issues for possible future references and administrative issues to ensure the effective and efficient functioning of the Council.
28. Heard presentations underlining the important role of national human rights institutions to assist the work of their governments in defining, promoting and monitoring the right to education. Forum Councillors welcomed the substantive

participation of representatives of UNESCO both in the activities of the Advisory Council of Jurists and the annual meeting and requested that the secretariat explore with UNESOC the development of practical projects to assist Forum members protect and promote the right to education and the implementation of the recommendations of the jurists.

29. Reported on their implementation of the recommendations of the Advisory Council of Jurists' reports on the death penalty, child pornography, trafficking, terrorism and torture. A number of Forum Councillors specifically cited the successful implementation of the Advisory Council's recommendations.
30. Gratefully accepted the kind offer of the Australian Human Rights and Equal Opportunity Commission to host the Twelfth Annual Meeting in 2007.

A report on the meeting will soon be available on the Forum website.  
[www.asiapacificforum.net](http://www.asiapacificforum.net)



11차 APF 연례회의  
2006년 7월 31일~8월 3일  
피지 수바  
홀리데이 인 호텔  
프로그램 최종  
(2006. 7.29 기준)

회의 1일째      2006년 7월 31일 월요일

8:00~8:30      포럼이사와 회원의 업무회의  
등록 (포럼 회원 및 법률가자문회의(ACJ))  
Room: Holiday Inn Foyer

8:30~9:15      피지 전통 환영식  
Room: Lali Room

9:15~2:00pm      포럼 회원 연례회의- 일반사항  
Room: Lali Room

의장: 몽골리아 인권위원회

1. 의제 선택 (의장)
2. 참석 확인 (의장)
3. 포럼운영에 대한 보고 (사무처)
4. 전략 계획 (사무처)
5. 논의: 11차 연례회의 (사무처)
  - 의제와 연사 확인
  - 최종성명
6. 법률자문가회의 (ACJ) (의장)

- 2007년 수입사항

7. 최근 NI활동과 아태지역 “기본 틀(“framework)” 과정 업데이트에 대한 OHCHR의 보고 (OHCHR)

8. ICC

-조약기구개혁에 관한 ICC 실무그룹에 관한 보고(한국)

-인권이사회에 관한 APF/ICC 실무그룹에 관한 보고(인도)

-2006년 ICC 가입승인소위원회에 대한 승인절차에 관한 ICC 실무그룹에 관한 APF 대표 보고 (피지)

-ICC 의장과 부의장 선출에 관한 절차규칙 수정제안 (사무처) 과 승인규칙에 관한 기타사항 (피지)

-ICC의 4개 지역대표 선출과 ICC 가입승인소위원회에 1개 지역대표 선출 (사무처)

-2006년 10월 볼리비아 세계인권기구대회 업데이트 (OHCHR)

9. 가입신청 (의장)

10. 유엔 장애협약 안 (의장)

11. 12차 연례회의 개최지 (사무처)

13. 신입의장 및 부의장 선출

14. 일반사항

2:00-3:00

**점심**

메모: 사무처 간부(SEO)회의는 업무회의가 12시 넘어서 진행될 경우 동시에 개최될 예정.

1:00-2:30pm

**사무처 간부(SEO) 회의**

Room: 법무장관 회의실

의장: Mr. Kitione Radrodro

피지인권위원회 부 국장 (deputy director)

**문화 프로그램 및 리셉션**

3:00pm

**3:10pm 정각까지 착석요망.**

3:15pm

개막연설

Room : Lali Room

기조연설

소개: Ms. Shamima Ali

피지 인권위원회 위원 (추후 확정)

H.E. Ratu Joni Madraiwiwi

피지군도 부통령

Mr. Richard Dictus

유엔 상주 코디네이터 겸 UNDP 상주대표

4:00

**리셉션 및 문화프로그램**

6:00

1일째 회의 종료

## 회의 2일째

**2006년 8월 1일 화요일**

공개회의

포럼이사와 등록 옵서버

8:00

등록

Room: Holiday Inn Foyer

9:00-9:30

**아태 지역협력**

Room: Lali Room

의장: Mr. Sevuloni Valenitabua (10분)

피지 인권위원회 위원

OHCHR 관무관 연설 (10분)

Mr. Paulo David

OHCHR 지역 대표

업무 회의 보고 (10분)

Mr. Kieren Fitzpatrick  
APF 사무처장

APF 회원 보고 (각 5분)  
의장: Mr. Sevuloni Valenitabua  
피지 인권위원회 위원

- 메모 1: APF 회원은 2006년 7월 21일 금요일까지 APF 사무처에 서면보고서를 제출한다.
- 메모 2: 연설자는 5분이 경과한 후 제지 당한다.

-아프가니스탄  
-호주  
-피지  
-인도  
-인도네시아  
-요르단  
-말레이시아  
-몽골리아  
-뉴질랜드  
-필리핀  
-카타르  
-대한민국  
-스리랑카  
-태국  
-동티모로 (Timor-Leste)

11:00~11:30

아침 차

11:30-12:00

**기타 NI의 보고** (각 5분)  
의장: Mr. Sevuloni Valenitabua  
피지 인권위원회 위원  
-몰디브  
-사우디 아라비아

12:00-12:30

공개 토론 -질의 응답

12:30-2:00	<b>점심</b>
2:00-2:30	<p><b>태평양지역의 인권</b></p> <p>Mr. John von Doussa 호주 인권 및 평등기회위원회 위원장</p> <p>Ms. Andie Fong-Toy 정치&amp;안보 프로그램 매니저 태평양군도 포럼사무처</p> <p>Ms Rosslyn Noonan 뉴질랜드 인권위원회 고위 위원 (chief commissioner)</p> <p>Dr. Shaista Shameem 피지 인권위원회 국장(Director)</p>
2:30-2:45	공개 토론 -질의 응답
2:45-3:15	<p><b>아태지역 정부 보고 (각 5분)</b></p> <p>Mr. John von Doussa 호주 인권 및 평등기회위원회 위원장</p> <ul style="list-style-type: none"> <li>-호주</li> <li>-피지</li> <li>-인도네시아</li> <li>-말레이시아</li> <li>-뉴질랜드</li> <li>-파키스탄</li> <li>-필리핀</li> <li>-중국</li> <li>-대한민국</li> <li>-투발루</li> </ul>
3:15-3:30	공개 토론 -질의 응답

3:30-4:00	오후 차
4:00-4:05	Paul Hunt, 유엔 건강권에 관한 특별보고관 메시지(5분)
4:05-4:30	지역 NGO 보고 Mr. John von Doussa 호주 인권 및 평등기회위원회 위원장
4:30-5:00	공개 토론 -질의 응답
5:00	2일째 회의 종료

**회의 3일째                    2006년 8월 2일 수요일**

8:30-10:00	ILO, 국제노동기준 (ILS)과 감독메커니즘, 기본원칙에 대한 선언, 직장에서의 권리와 후속조치  의장: Ms. Rosslyn Noonan 뉴질랜드 인권위원회 선임위원(Chief Commissioner) Room: Lali Room  발표자: Mr. Temesgen Samual ILO 동남아시아와 태평양 소지역사무소 수석 전문가
10:00-10:30	ILO 정보출처 (Information Sources)
10:30-11:00	아침 차
11:00-11:30	ILO 정보출처 (Information Sources) 계속.
11:30-12:30	노동조합과 고용자단체와의 파트너십
12:30-1:30	점심

1:30-2:30            **ILS의 국내법 통합**  
Dr. Sima Samar  
아프가니스탄 인권위원회 의장

2:30-3:00            **대표적 사례 발표**

3:00-4:00            **이주와 인신매매, 그리고 ILO 기준들**

4:00                    호텔에서 퍼시픽 항구로 출발

5:30pm                리셉션, 문화프로그램& 저녁  
피지 인권위원회 주최

9:30pm                3일째 회의 종료

**회의 4일째**            **2006년 8월 3일 목요일**

9:00-10:00            **인권운동가에 대한 NGO 논의**  
Room: Lali Room  
의장: Ms. Sharon Bhagwan Rolls  
FemlLink Pacific

Mr. Chris Sidoti  
Director, International Service for Human Rights

Ms. Topou Vere  
Pacific Concerns Resource Centre

Mr. Done Dakuvula  
Citizens Constitutional Forum and Pacific People Building Peace

	NI와 NGO간의 상호토의
10:00-10:30	아침 차
10:30-11:30	<b>NI와 교육권</b> Room: Lali Room 의장: Antony Gates (판사) 피지 ACJ 회원  <i>법률자문가(ACJ)의 보고</i> ACJ 대표들- 발표와 패널 토의
11:30-12:00pm	공개 토론 -질의 응답
12:00-12:30pm	<b>NI와 교육권 계속</b> 의장: Dr. Purification Quisumbing 필리핀 인권위원회 위원장  셸던 샤퍼 (Mr. Sheldon Shaffer) (20분) 지역국장 유네스코 (방콕)  Ms. Lamis Nasser (10분) 평의회 (Board of Trustees) 위원 요르단 인권센터  Tunku Nazihah Rus (10분) 말레이시아 인권위원회
12:40-1:00pm	공개 토론 -질의 응답
1:00-2:00	<b>점심</b>
2:00	<b>법률자문회의(ACJ)-2007 위임사항과 APF 회원의 보고</b> 의장: Sri Shivraj Patil



	<p>인도 인권위원회 위원</p> <p>a) ACJ의 위임사항 결정</p> <p>b) 현안에 대한 APF 회원의 보고</p> <p>-고문</p> <p>-테러리즘</p> <p>-인신매매</p> <p>-사형제도</p> <p>-아동 포르노그래피</p> <p>c) 현안에 대한 NGO의 보고</p>
3:15-3:30	공개토론 - 질의응답
3:30	<b>오후 차</b>
4:00	<p><b>비공개 세션 (포럼 회원)</b></p> <p>최종성명 초안 작성</p> <p>Room: Banyan Room</p> <p>의장: Mr. Sevuloni Valenitabua</p> <p>피지 인권위원회 위원</p>
4:00	<p><b>피지 인권위원회 업무</b></p> <p>Mr. Usaia Ratuveli</p> <p>피지 인권위원회 수석 법무담당관</p>
5:00	<p><b>최종 성명</b></p> <p>최종성명 및 권고안 채택</p> <p>Room: Lali Room</p> <p>의장: Mr. Sevuloni Valenitabua</p> <p>피지 인권위원회 위원</p>
6:00pm	<b>11차 연례회의 종료</b>

**메모:** 법률가자문회의는 마지막 날 회의 참석 전에 별도로 모임을 가질 예정임.

# ELEVENTH ANNUAL MEETING OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

**31 July – 3 August 2006**

**Holiday Inn Hotel  
Suva, Fiji Islands**

DRAFT PROGRAM #10

*(Last updated 25.7.06)*

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## **Day 1                      Monday 31 July 2006**

### **Annual Business Meeting of Forum Councillors and Members**

8:00 – 8:30                      Registration (Forum members and ACJ)  
Room: Holiday Inn Foyer

8:30 - 9:15                      **Traditional Fijian Welcoming Ceremony**  
Room: Lali Room

9:15 – 2:00                      **Forum Members Meeting – General Business**  
Room: Lali Room

Chair: Mongolian Human Rights Commission

1. Adoption of Agenda (Chairperson)
2. Confirmation of Attendance (Chairperson)
3. Report on Forum Operations (Secretariat)
4. Strategic Plan (Secretariat)
5. Discussion re: Eleventh Annual Meeting (Secretariat)
  - Confirmation of agenda and speakers
  - Concluding Statement
6. Advisory Council of Jurists (Chairperson)
  - 2007 Reference
7. OHCHR report on recent NHRI activities and an update on the Asia Pacific 'framework' process (OHCHR)
8. International Coordinating Committee
  - Report on ICC working group on Treaty Body Reform (South Korea);
  - Report on the APF/ICC working group on the Human Rights Council (India);
  - Report of the APF representative to the ICC Accreditation Sub-Committee on its 2006 session and on the ICC working group on Accreditation Procedures (Fiji);

- Proposed amendments to the ICC rules of procedure concerning the election of the Chairperson and Deputy Chairperson (Secretariat) and other aspects relating to accreditation rules (Fiji);
- Election of four regional representatives to the ICC and one regional representative to the ICC accreditation sub-committee (Secretariat);
- Update on the International Conference of NHRIs to be held in Bolivia, October 2006 (OHCHR).

9. Membership Applications (Chairperson)

10. Proposed UN Convention on Disability (Chairperson)

11. Location of the Twelfth Annual Meeting (Secretariat)

12. Election of new Chairperson and Deputy Chairpersons

13. General Business

2:00 – 3:00            **Lunch**

Note: the meeting of the SEO's will be run as a 'parallel' meeting if the Business meeting runs beyond 12:00pm.

1:00 – 2:30            **Meeting of Senior Executive Officers**  
 Room: Attorney General's Conference Room  
 Chair: Mr Kitione Radrodro  
 Deputy Director, Fiji Human Rights Commission

**Opening Ceremony, Cultural Program and Reception**

3:00pm                Please be seated by 3:10pm sharp

3:15pm                **Opening Ceremony**  
 Room: Lali Room

Keynote Speeches

Introduction by Ms Shamima Ali  
 Commissioner, Fiji Human Rights Commission (TBC)

H.E. Ratu Josefa Iloilovatu Uluivuda, CF, MBE, JP  
 President of the Republic of the Fiji Islands

Mr Walter Rigamoto  
 Immediate past Chairperson, Fiji Human Rights Commission

Mr Richard Dictus  
 United Nations Resident Coordinator & UNDP Resident Representative  
 United Nations

4:00pm                **Reception Cocktail and Cultural Program**

6:00pm                End of evening

## **Day 2                      Tuesday 1 August 2006**

### **Open Session – Forum Members and Registered Observers**

8:00

#### **Registration**

Room: Holiday Inn Foyer

9:00 – 9:30

#### **Asia Pacific Regional Cooperation**

Room: Lali Room

Chair: Mr Sevuloni Valenitabua (10 minutes)

Commissioner, Fiji Human Rights Commission

Address of the United Nations High Commissioner for Human Rights (10 minutes)

Delivered by Mr Paulo David

OHCHR Regional Representative

Report from Business Session Meeting (10 minutes)

Mr Kieren Fitzpatrick, Director – Secretariat

Asia Pacific Forum of National Human Rights Institutions

9:30 – 11:00

#### **Reports from APF Members** (5 minutes)

Chair: Mr Sevuloni Valenitabua

Commissioner, Fiji Human Rights Commission

- Note 1: APF members to submit written report to APF Secretariat by Friday 21 July 2006
- Note 2: Speakers will be stopped after 5 minutes

- Afghanistan
- Australia
- Fiji
- India
- Indonesia
- Jordan
- Malaysia
- Mongolia
- New Zealand
- Philippines
- Qatar
- Republic of Korea
- Sri Lanka
- Timor-Leste
- Thailand

11:00 – 11:30

Morning Tea

11:30 – 12:00

#### **Reports from other Human Rights Institutions** (5 minutes)

Chair: Mr Sevuloni Valenitabua

Commissioner, Fiji Human Rights Commission

- Maldives
- Pakistan
- Saudi Arabia

12:00 – 12:30

Open Discussion – Questions and Answer Session

12:30 – 2:00

#### **Lunch**

2.00 – 2:30

#### **Human Rights in the Pacific**

Chair: Mr John von Doussa  
President, Australian Human Rights & Equal Opportunity  
Commission

Ms Andie Fong-Toy  
Manager, Political & Security Programme, Pacific Islands  
Forum Secretariat

Presenter  
New Zealand Human Rights Commission (TBC)

Dr Shaista Shameem  
Director, Fiji Human Rights Commission

2:30 – 2:45 Open Discussion – Questions and Answer Session

2:45 – 3:15 **Reports from Asia Pacific Governments** (5 minutes)  
Chair: Mr John von Doussa  
President, Australian Human Rights & Equal Opportunity  
Commission

- Australia
- Fiji
- Indonesia
- New Zealand
- Philippines
- Republic of China
- Thailand
- Tuvalu

3:15 – 3:30 Open Discussion – Questions and Answer Session

3:30 – 4:00 Break

4:00 – 4:05 **Message from Professor Paul Hunt, UN Special  
Rapporteur on the Right to Health** (5 minutes)

Delivered by Dr Shaista Shameem  
Former Special Rapporteur and current member of the UN  
Working Group on the use of Mercenaries as a means of  
violating human rights and impeding the exercise of the  
right of peoples to self-determination

4:05 – 4:30 **Reports from Non-Governmental Organisations**  
Chair: Mr John von Doussa  
President, Australian Human Rights & Equal Opportunity  
Commission

4:30 – 5:00 Open Discussion – Questions and Answer Session

5:00 End of Day 2

### **Day 3                      Wednesday 2 August 2006**

8:30 – 10:00 **ILO, International Labor Standards (ILS) and the  
Supervisory Mechanism, the ILO Declaration on**

## **Fundamental Principles and Rights at Work and its Follow-Up**

Chair: Ms Rosslyn Noonan  
Chief Commissioner, Human Rights Commission of New Zealand  
Room: Lali Room

Presenter: Mr Temesgen Samuel  
Senior International Labour Standards Specialist  
Sub-regional office for South East Asia and the Pacific

10:00 – 10:30	<b>ILO Information Sources</b>
10:30 – 11:00	Morning Tea
11:00 – 11:30	<b>ILO Information Sources cont.</b>
11:30 – 12:30	<b>Partnerships with Trade Unions and Employer Organizations</b>
12:30 – 1:30	Lunch
1:30 – 2:30	<b>Incorporation of ILS into National Codes</b> Dr Sima Samar Chairperson, Afghanistan Independent Human Rights Commission
2:30 – 3:00	<b>Presentation of Selected Cases</b>
3:00 – 4:00	<b>Migration and Trafficking and ILO Standards</b>
4:00	Depart hotel to travel to Pacific Harbour
5:30pm	<b>Reception, Cultural Program &amp; Dinner</b> Hosted by Fiji Human Rights Commission
9:30pm	End of evening

## **Day 4      Thursday 3 August 2006**

9:00 – 10:00	<b>NGO Discussion on Human Rights Defenders</b> Room: Lali Room Chair: Ms Sharon Bhagwan Rolls FemLink Pacific  Mr Chris Sidoti Director, International Service for Human Rights  Ms Topou Vere Pacific Concerns Resource Centre  Mr Jone Dakuvula Citizens Constitutional Forum and Pacific People Building Peace
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	Interactive Dialogue between NHRIs and NGOs
10.00 – 10.30	Morning tea
10:30 – 11:30	<p><b>National Human Rights Institutions and the Right to Education</b>  Room: Lali Room  Chair: Justice Anthony Gates  Member for Fiji, Advisory Council of Jurists</p> <p><i>Report from the Advisory Council of Jurists</i>  Representatives, Advisory Council of Jurists - Presentation and Panel Discussion</p>
11.30 – 12.00	Open Discussion – Questions and Answers
12:00 – 12:30	<p><b>National Human Rights Institutions and the Right to Education cont.</b>  Chair: Dr Purificacion Quisumbing  Chairperson, Philippines Commission on Human Rights</p> <p>Mr Sheldon Shaeffer (20mins)  Regional Director  UNESCO (Bangkok)</p> <p>Ms Lamis Nasser (10mins)  Member, Board of Trustees  Jordan National Centre for Human Rights</p> <p>Commissioner Tunku Nazihah Rus (10mins)  Human Rights Commission of Malaysia</p>
12:40 – 1:00	Open Discussion – Questions and Answers
1:00 – 2:00	<b>Lunch</b>
2:00	<p><b>Advisory Council of Jurists - 2007 Reference and Report from APF Members</b>  Chair: Justice Sri Shivraj Patil  Member, National Human Rights Commission of India</p> <p>a) Decision on the 2007 Reference to the Advisory Council  b) Report from APF Members on Standing Issues</p> <ul style="list-style-type: none"> <li>• Torture</li> <li>• Terrorism</li> <li>• Trafficking</li> <li>• Death Penalty</li> <li>• Child Pornography</li> </ul> <p>c) Reports from NGOs on Standing issues</p>
3:15 – 3:30	Open Discussion – Questions and Answers
3:30	<b>Afternoon tea</b>
4:00	<p><b>CLOSED SESSION (Forum Members)</b>  Final Drafting of the Concluding Statement  Room: Banyan Room</p>

Chair: Mr Sevuloni Valenitabua

4:00                    **The Work of the Fiji Human Rights Commission**  
Mr Usaia Ratuveli  
Principal Legal Officer, Fiji Human Rights Commission

5:00                    **FINAL CONFERENCE STATEMENT**  
Adoption of Statement of Conclusions and  
Recommendations  
Room: Lali Room

Chair: Mr Sevuloni Valenitabua  
Fiji Human Rights Commission, Chairperson, Asia Pacific  
Forum of National Human Rights Institutions

6.00pm                **End of Eleventh Annual Meeting**

**Note: The Advisory Council of Jurists will meet separately before joining the proceedings of the last day.**



**위원장님 연설문**  
**(회의 둘째날, 8.1(화) 오전 09:30-11:00, 5분간)**

존경하는 의장님, APF 포럼이사 그리고 참석해주신 귀빈 여러분,

우선, 한국국가인권위원회를 대표하여 피지 인권위원회가 주최한 제 11차 APF 연례회의에 참석하게 된 것을 영광으로 생각합니다.

국가인권위원회는 2001년 11월 설립된 이래로, 지난 6월 30일 2만 번째 진정을 접수하였습니다. 이는 우리위원회 설립 이래 우리 사회 각 영역에 잠복해 있던 인권사안들이 국가인권기구의 출범과 함께 급격히 분출했다는 것과 함께, 우리 위원회가 국민 속에서 권리구제기관으로 자리잡아가고 있음을 보여주고 있습니다.

우리 위원회는 2005-2007년 제2기 기간에 사회적 약자 및 소수자의 인권보호 강화, 국제적 수준의 인권제도 및 관행의 구축, 권리구제의 접근성 및 실효성 제고, 인권의식 함양을 위한 인권교육 강화, 위원회 전문역량 강화를 5대 목표로 설정하고 현재 적극 추진 중입니다.

이 기간동안 우리 위원회는 특히 사회권 분야에 더욱 집중하고 장애인, 시설생활자, 정신질환자들의 인권보호, 그리고 인권교육 강화에 주력하고 있습니다.

이를 위해 지난 1월 조직 개편을 단행해 인권교육본부를 신설하면서 인권교육 분야의 인력을 기존의 3배로 크게 늘렸습니다. 또한 위원회에 대한 접근성을 높이고 지역 인권현안에 신속히 대응하기 위해 작년 10월 대한민국의 대표적인 지역도시인 부산과 광주에 지역사무소를 설치하였습니다.

우리 위원회는 지난 제10차 APF 연례회의 이후 현재까지 여러가지 인권현안에 대해 중요한 결정들을 내렸습니다.

먼저, 올 1월에는 국가인권정책기본계획 권고안을 마련해 이의 구체적인 실행계획을 수립할 것을 정부에 권고했습니다. 이 국가인권정책기본계획은 대한민국 인권정책의 청사진으로서 향후 인권과 관련된 법, 제도, 관행의 개선에 크게 이바지할 것이라 확신합니다.

지난달 24일에는 우리위원회가 지난 3년반 동안 성안작업을 해온 차별금지법안 권고안을 의결하고 이에 기반해 차별금지법의 입법을 추진할 것을 국무총리에게 권고했습니다. 20개 차별사유에 관하여 규정하고 있는 이 법안은 여성차별철폐협약, 인종협약 등 차별금지를 규정하고 있

는 국제협약의 정신과 내용을 우리 국내에서 이행하기 위한 것으로, 차별금지에 관한 종합적인 법이 될 것입니다.

작년 12월에는 양심적 병역거부권과 관련하여, 양심적 병역거부가 우리 헌법과 ‘시민적·정치적 권리에 관한 국제규약’ 상의 양심의 자유 등의 보호 범위 내에 있다고 판단해 양심적 병역거부권과 병역의무가 조화롭게 공존할 수 있는 대체복무제도를 도입하도록 정부에 권고하기도 했습니다.

테헤란 기본틀의 4대 요소중 하나이기도 한 인권교육 부문에서는 인권교육법의 성안을 추진하고 인권교육종합계획을 수립하고 있습니다. 또한 인권옹호집단인 사회복지사, 사회복지관련 공무원, 언론인, 기업 등을 대상으로 한 인권교육을 계획하고 있습니다.

독립적이며 통합적인 국가인권기관으로서 우리 위원회는 ‘사람이 사람답게 사는 세상’을 구현한다는 비전을 가지고 국민적 기대와 신뢰 속에 맡은 바 사명을 수행하고 있습니다. 이러한 사명을 다하는 데 있어서 국제적인 경험의 공유와 협력은 매우 큰 힘이 될 것이라 생각하며 이 점에서 아태지역 국가인권기구와 더욱 긴밀한 협력 관계를 맺어나가려고 합니다.

금년도에 외국전문가 및 NI 직원 초청예산을 대폭 확보해 초청사업을 추진하고 있는 것도 이의 일환입니다. 우리위원회의 역사가 아직 짧지만 우리 위원회의 인권 보호와 증진 활동의 경험이 아태지역 및 범세계적 인권기구간에 많이 공유돼 다른 나라의 국가인권기구의 설립과 발전에 도움이 되기를 바랍니다. 많은 관심과 교류를 기대합니다.

앞서 말씀드린 NAP 권고안 등 우리 위원회의 활동에 대한 좀더 자세한 자료는 회의장 앞에 비치했으니 참고해주시기 바랍니다. 감사합니다.

## Speech by President of the NHRCK at the 11th APF Meeting

Honorable Chairperson, Distinguished Director of the APF, Esteemed Guests, Ladies and Gentlemen,

It is my honor to participate in the 11th APF Meeting here in Suva hosted by the National Human Rights Commission of Fiji.

Since its establishment in November of 2001, the National Human Rights Commission (NHRC) of Korea has received a total of 20,000 petitions up to June 30th, 2006. This is very significant in that it is evidence of the fact that many human rights issues, once hidden in Korean society, have risen to the surface to be dealt with openly. And at the same time it is a clear sign that the general public is heavily dependent on our Commission for remedying their human rights violations.

For its second term from 2005 through 2007, the Commission aims to achieve the following five goals: 1) strengthen human rights protection of the socially weak and minorities 2) set up human rights norms and practices in compliance with international standards 3) enhance access to remedies and ensure their efficiency 4) expand human rights education to raise public awareness of human rights issues and 5) further develop the Commission's capacity. We also plan to strengthen the protection and promotion of economic, social and cultural rights.

During this period, our Commission in particular is making strenuous efforts to protect the human rights of individuals with physical and mental disabilities and those living in facilities while conducting a series of targeted human rights education .

To this end, the Commission reformed its structure in January of this year, establishing the Human Rights Education Department and tripling personnel involved in that area. And in October of last year, we opened regional offices in two major cities, Busan and Gwangju, to enable access to our Commission by local communities and to quickly respond to regional human rights issues.

Allow me to highlight some of the important decisions the Commission has made in regard to human rights issues since the last APF annual meeting.

First of all, in January 2006, we recommended the government to establish the National Action Plan (NAP) for the promotion and protection of human rights based on our Commission's NAP version. Since the draft will serve as a blueprint to establishing Korea's human rights policy, I firmly believe that the NAP will contribute to improving human rights laws, standards and practices.

Recently last month, the Commission recommended the government that it legislate the draft bill on anti-discrimination that was under development by the Commission for the last three years. This bill would be a comprehensive one on anti-discrimination prescribing 20 grounds of discrimination and will be a standard for the implementation of international conventions that deal with the prevention of discrimination.

In addition, in regard to the right to conscientious objection to military service, our Commission concluded in December of last year that the right was protected under the Constitution and the International Covenant on Civil and Political Rights. Accordingly, we made a recommendation to the government to introduce a new draft system that could harmonize the duty to serve the country and the alternative system.

Let me now turn your attention to our human rights education, which is one of the four pillars of the Teheran Framework. We are pushing ahead with developing a human rights education law and setting up a comprehensive plan on human rights education. We also intend to expand human rights education to social workers, public officials in charge of social welfare, journalists and corporations.

As the sole independent institution dedicated to human rights issues in Korea, the Commission is carrying out our mandate with the vision of creating "a world where all human beings can live in dignity." We aim to meet the high expectations of the public in the human rights area and fortify their trust in our institution. As such, I'm firmly convinced that cooperation among national institutions in the Asia Pacific region will be of great help to protecting and promoting human rights, a universal value.

To this end, we also have secured a substantial budget allocated to invite international experts and staff from national institutions from around the world to the Commission this year. Although it has only been a short time since the founding of the Commission, our hope is to build a network of human rights institutions across the globe with which we can share our experiences and contribute to the establishment and development of national human rights organizations. Therefore, I would like to encourage your continued support and interest in our Commission.

For more detailed information on the Commission, please check out the materials that we have set up outside of this meeting room. Thank you very much.

ACJ  
교육권 위임사항  
2006.7.31-8.3  
수바, 피지

잠정보고서

위임사항

2005년 8월에 몽골리아에서 개최된 제 10차 APF회의에서, 포럼이사들은 사회권 이행에 관한 국가의 법적 의무에 대해 ACJ에 신규위임사항을 마련하기로 하고, 사무국에 APF의 심의와 승인을 위한 위임사항 초안을 마련할 것을 요청하였다. 이미 사회권 관련한 충분한 업무의 측면을 고려하여, 위임사항의 범위를 좁히고, 사무국은 위임사항이 구체적으로 교육권 초점을 두어야 한다고 권고하였다.

2006년 2월, 위임사항 초안이 APF 회원들에게 논평을 위하여 회람되었다. APF 회원들이 채택한 위임사항은 다음과 같다.

APF는 ACJ에 사회권 중에 특히, 교육권 이행을 위한 국가의 법적의무에 관련된 국제법, 국제규약 및 기준에 대해 자문하고 권고할 것을 맡겼다.

특히, ACJ는 다음의 사항을 고려토록 요청받았다.

- (i) 국제법, 기준 및 메커니즘이 교육권을 존중하고, 보호하며 증진시키고, 이행할 국가의 의무를 포함하여 “교육권”을 어떻게 정의할 것인가.
- (ii) 법적 조치와 역행적 조치를 피하기 위한 요건 등의 모든 적절한 수단을 이용하여 조치를 취할 수 있는 의무의 성격과 범위. 상호연관되어 있고, 필수적인 교육권에 관한 이용성(availability), 접근성(accessibility), 수용성(acceptability), 적응성 (adaptability)를 특히 고려한다. ACJ는 고용, 결혼, 법적 의무에 관한 최저 연령을 포함한 기본적인 이슈들을 인지하도록 요청받았다.
- (iii) 교육권의 사법심사가가능성 문제
- (iv) 모든 이를 위한 의무 및 무상 초등교육의 도입을 우선시하고, 중등 및 고등교육, 그리고 기본교육을 점진적으로 완전하게 실현시킬 의무의 성격과 범위
- (v) 국가가 최대 가용자원을 이용할 의무의 성격과 범위
- (vi) 외국인(non-nationals), 난민, 국내실향민(IDPs), 장애인 및 소수자를 포함하여 모든 이의 교육권 접근에서 비차별적이고 평등한 기회를 보장할 의무의 성격과 범위



- (vii) 남녀평등(gender parity and gender equality)을 보장할 의무의 성격과 범위
- (viii) 학교와 여타 교육기관 내에서 종교의식 및 문화적인 관습을 존중할 의무의 성격과 범위
- (ix) 양질의 교육을 제공하고, 최저 교육기준과 그러한 기준을 감시할 수 있는 효과적이고 투명한 시스템 확립할 의무의 성격과 범위
- (x) 교육권의 맥락에서 모든 이를 위한 인권교육의 실현을 보장하기 위한 국가 의무의 성격과 범위
- (xi) 학문의 자유와 교육기관의 자율을 보장할 의무의 성격과 범위
- (xii) 부모와 법적 후견인이 교육기관과 교육프로그램을 자유롭게 선택할 수 있는 의무를 존중할 의무의 성격과 범위
- (xiii) 국제지원과 협력을 받고 제공할 국가의무의 성격과 범위
- (xiv) 국제금융기관과 초국적 기업 등의 비국가 행위자의 교육권 보호와 증진 의무의 성격과 범위

관련 국제협약에는 다음을 포함하지만, 여기에 제한되지는 않는다.

- (i) 세계인권선언
- (ii) 경제적, 사회적, 문화적 권리에 관한 국제협약
- (iii) 모든 형태의 인종차별 철폐에 관한 국제협약
- (iv) 아동권 협약
- (v) 교육에서 차별금지 협약
- (vi) 1973년 최저연령 협약
- (vii) 1999년 최악의 형태의 아동노동 협약

ACJ는 다음을 심의하기를 원한다.

- (i) 경제적, 사회적, 문화적 권리에 관한 위원회의 일반논평 3: 당사국 의무의 성격
- (ii) 경제적, 사회적, 문화적 권리에 관한 위원회의 일반논평 13: 교육권
- (iii) 경제적, 사회적, 문화적 권리에 관한 위원회의 일반논평 10: 경제적, 사회적, 문화적 권리의 보호에 있어서 국가인권기구의 역할
- (iv) 아동권 위원회의 일반논평 1(2001): 교육의 목표
- (v) 모든 형태의 인종차별 철폐에 관한 위원회의 일반권고 3 (1987)
- (vi) 경제적, 사회적, 문화적 권리에 관한 국제협약의 이행에 관한 림버그 원칙
- (vii) 경제적, 사회적, 문화적 권리 침해에 관한 마스트리히트 가이드라인
- (viii) UN 새천년계획
- (ix) 다카르 행동 기본틀 (Dakar Framework for Action)
- (x) 행동을 위한 아태지역 기본 틀: 모두를 위한 교육
- (xi) 기술교육과 직업교육에 관한 수정된 권고안

- (xii) 비엔나 선언과 행동계획
- (xiii) 세계 인권교육(A/59/525/Rev.1)의 1단계 행동계획 (2005-2007): 초등, 중등교육제도 내의 인권교육 통합

ACJ는 다음의 지역적 인권규약을 심의하기를 원한다.

- (i) 인간과 인민에 관한 아프리카 헌장 (1981)
- (ii) 미주 인권협약의 경제적, 사회적, 문화적 권리분야의 추가의정서 (산 살바도르 의정서) (1988)
- (iii) 유럽 사회헌장 (1996년 개정)과 추가의정서

## Part A

### 결론과 권고

1. NI는 정부가 교육권을 정의하고, 증진시키고, 제공하며 모니터링하는 데 지원하는 중요한 역할을 한다. 국제기준을 준수하면서, 초등교육은 의무여야 하고, 모든 이에게 무상으로 제공되어야 한다. 중등교육, 직업교육 또는 기술훈련은 일반적으로 모든 이들에게 이용가능해야 하고, 접근가능해야 한다. 이 수준에서 무상교육의 도입이 점진적으로 이루어져야 한다. 고등교육도 모든 이에게 평등하게 접근될 수 있어야 한다.
2. NI는, 자국의 정부가 교육이 개인발전과 경제성장 모두에 핵심권리라는 것을 인정하도록 해야 한다. 이를 위해서, NI는 각 정부에게 최대가용자원을 배정해서 교육권의 목표를 실현시키도록 독려해야 한다.
3. 모든 교육에 관련된 권리의 완전한 실현이 즉각적으로 달성될 수 없는 경우에, NI는, 최대기준에 부합하고, 최 단기 내에 합리적으로 달성할 수 있도록 교육권을 점진적으로 실현시키도록 정부를 독려해야 한다.
4. NI는 국가의 EFA 계획과 여타 교육분야전략이 권리를 바탕으로 한 접근법을 따르면서 고안되고, 모니터 되고, 이행되도록 보장해야 한다. (비차별과 실질적 평등, 4A (availability, accessibility, acceptability, availability))
5. NI는 권리를 바탕으로 한 지표들, 특히 최근에 UNESCO와 UNICEF가 개발한 지표들은 검토 시에 활용될 것을 보장함으로써 2015년까지 모든 이를 위한 교육 (Education for All) 목표를 위해 점진적 검토를 하는 각국 정부를 지원해야 한다.
6. NI는 자국 정부와 협력하여 기존의 모순점을 파악하고 강조하며, 교육권의 점진적 실현을 모니터하기 위하여 자료를 수집하고, 편집하여 분석해야 한다. 이 과정은 지속적으로 이루어져야 한다.
7. ESCR, CRC와 여타 관련협약에 관한 명시적 수임사항을 보유한 NI는 교육권 침해에 대해서 조사하고 보고하며, 교육권 이행을 모니터해야 한다.
8. NI는 모든 국가기관(사법부, 입법부, 행정부)이 교육분야에서 국제의무와 국내의무

를 인정하기 위하여 구체적인 조치를 개발함으로써 교육권을 증진시키도록 해야 한다.

9. NI는 자국의 정부가 국민 개개인의 가능성의 완전한 개발과 이들의 모든 권리가 완전하게 향유될 수 있도록 하는 방식으로 교육의 질을 향상시킬 정책들과 전략들을 수정하도록 독려해야 한다.
10. NI는 모든 인권의 보편성, 불가분성, 상호의존성의 개념을 증진시키고, 특히, 교육권과 밀접한 관련이 있는 일할 권리, 표현의 자유에 관한 권리, 정보권, 건강권을 유기적으로 통합해야 한다.
11. NI는 자국 정부가 법안과 그에 따른 정책적 조치를 통하여 교육권을 인정하도록 독려시켜야 한다.
12. NI는 자국 정부가 국내실향민, 난민, 외국인, 소수인종, 특별한 도움이 필요한 사람들을 포함한 소외계층, 취약계층의 점진적인 교육권의 실현을 보장하기 위한 전략들을 마련하고, 채택하여 이행하도록 독려해야 한다.
13. NI는 교육권 침해, 특히 가장 취약한 계층의 학습자들과 특별한 도움이 필요한 사람들에게 영향을 미치는 침해를 방지할 적절한 메커니즘을 권고하여 증진시켜야 한다.
14. NI는 효율적인 교육권 이행을 모니터하는 조약기구위원회와 여타 국제메커니즘에게 지속적으로 정보를 제공해야 한다.
15. NI는 ICESCR 선택의정서 증진을 고려해야 한다. 선택의정서 초안절차가 시작되면, 선택의정서에 대한 공개 실무그룹(open-ended working group)에 NI가 포함되어야 한다.
16. NI는 교육권 증진, 이행, 그리고 존중에서 사회 전 분야와 국제사회의 협력을 증진시켜야 한다. 또한, 민간기관이 교육권이 특히나 개인의 권리가 차별받지 않도록 하는데 있어서 자신의 역할을 이해하도록 해야 한다.
17. NI는 자국 정부가 세계인권교육계획의 행동계획을 증진시키고, 교육제도 특히 종교적, 문화적, 언어적 다양성을 증진시키는 인권교육을 기획하고, 이행하고, 평가하는데 지원해야 한다.
18. NI는, 자국 정부가 교육권이 (1) 인격, 재능, 능력의 완전한 개발과 (2) 인권의 증진과 존중이라는 두 가지 요소가 있다는 것을 인식하도록 확인해야 한다. 후자와 관련하여, NI는 사회 전체가 보편적인 인권을 이해하고 존중하게 하기 위해서 국민의 인식, 정보, 교육 캠페인을 개발하는 데 할 수 있는 역할이 있다. 이들 캠페인들은 적절한 자금지원을 받아야 한다.
19. NI는 권고안을 수행할 구체적인 계획을 마련해야 한다.

## Part B

### 위임사항 관련 요청에 대한 응답 요약

(i) 국제법, 기준, 그리고 메커니즘이 교육권 존중, 보호, 증진 및 이행 등 교육권을 어떻게 정의할 것인가.

- 국제규약상에서 교육권은 두 가지 측면으로 구성된다.
- 개인발전
- 인권존중 증진
  
- 교육은 완전한 인격과 존엄성을 발전시킬 수 있게 한다.
- 교육은 개인이 평화와 관용을 이해하는 정신으로 자유사회에 완전하고, 효과적이며, 책임감있게 참여할 수 있는 역량을 강화시킨다.
- 교육은 가족, 문화정체성, 언어, 가치관을 존중할 수 있게 해준다. 즉, 개인이 살고 있고, 태어난 곳, 그리고 자신과 다른 문명의 가치관을 키울 수 있게 해 준다.
- 교육은 모든 유형과 수준을 의미하며, 교육의 접근, 교육의 수준과 양질의 교육, 그리고 특정 교육상황을 포함한다. 교육은 이용성, 접근성, 수용성, 적응성이라는 4가지 기준에 부합해야 한다.

#### *불가분성과 상호의존성*

- 교육권은 인권의 보편성, 불가분성, 상호의존성이라는 원칙을 구현한다. 교육권은 특히 일할 권리, 건강권, 표현의 자유, 정보권과 밀접한 관계가 있다.
- 모든 사람은 인종, 민족(ethnicity), 성별, 연령, 국적, 종교, 사회경제적 조건, 건강상태, 능력, 성적 지향과 관계없이 평등하고 교육권을 누릴 권리가 있다.
- 개인은 교육권을 행사함으로써 사회권과 자유권 등 여타 권리를 누릴 수 있게 된다.

#### *교육권을 존중하고, 보호하고, 이행시킬 의무*

- 교육권을 존중하고, 보호하고, 이행시킬 의무에는 행동과 결과(conduct and result)의 의무가 포함된다. 국가는 교육권 행사를 실현시키기 위해 모든 합리적인 행동을 취하고, 구체적이며 적절한 목표(targets)를 달성하기 위해 행동해야 한다. 또한, 국가는 교육권을 증진시킬 의무가 있다.

### 존중할 의무

- 존중할 의무는 국가에게 교육권을 포함한 사회권 향유를 최소한 개입할 것을 요구하고 있다. 여기에는 아래에 설명된 조치들이 필요할 것이다.
- 국가는 법적 조항을 삭제하거나 수정하고, 교육에서 차별과 관련된 행정적 관행을 바로잡을 의무가 있다.
- 국가는 필요할 경우에는 법으로 학생의 교육기관 입학 시에 차별이 없도록 보장해야 한다.
- 국가는 공공기관이 능력이나 필요사항, 또는 역사적 불리한 경우를 제외하고는 등록금, 장학금, 그리고 기타 형태의 지원 등 교육기회와 관련하여 국민 개개인을 다르게 대우하지 말아야 한다.
- 국가는 국내에 거주하는 외국인들에게도 자국민과 마찬가지로 동일한 교육적 접근을 제공해야 한다.

### 보호할 의무

- 보호할 의무는 국가에게 제 3자의 교육권 침해를 방지하고, 금지시키고 구제할 긍정적 조치를 취할 것을 요구하고 있다.
- 국가는 위대한 사회적, 전통적 관행이 여아나 여성, 장애학생 등 소수 그룹의 교육 접근을 방해하지 않도록 해야 한다. 국가가 취할 수 있는 조치에는 다음이 있다.
- 적절한 법안 채택
- 지속적이며 조정된 정책의 성안 및 이행
- 효과적인 진정메커니즘 발전 및 이행
- 적절한 구체조치 마련
- 관계된 제 3자의 행동 감시

### 이행할 의무

- 대부분의 경우에 직접적으로 교육을 제공할 1차적 의무가 국가에게 있는 상태에서, 이행의무는 국가에게 교육권의 완전한 실현을 위해 법적, 행정적, 예산, 사법 및 기타 조치들을 적절하게 취할 것을 요구하고 있다.
- 이행할 의무의 일부로, 국가는 개인이 각 국가의 특정상황에 맞게 적절하고 수용할 수 있는 맥락 내에서 교육권을 행사할 수 있도록 지원하는 조치의 채택을 용이롭게 해야 한다.
- 또한, 국가는 모든 개인이 교육권을 행사할 수 있는 모든 교육 유형과 수준을 제공할 의무가 있다.

### 증진시킬 의무

- ICESCR 13(2)조에 따르면, 교육권의 구성요소는 다음과 같다.
  - 초등교육은 의무이고, 모든 이에게 무상이어야 한다.
  - 기술교육과 직업교육을 포함한 중등교육은 가능한 모든 수단으로 특히, 무상교육의 점진적인 도입으로 모든 이에게 일반적으로 이용가능하고, 접근가능하도록 해야 한다.
  - 고등교육이나 3차 교육은 능력을 바탕으로 모든 적절한 수단, 특히 무료교육의 점진적인 도움으로 평등하게 접근가능해야 한다.
  - 기초 또는 기본교육은 1차 교육기간동안 교육을 받지 못했거나 이수하지 않은 이들에게 독려되거나 강화되어야 한다.
  - 모든 차원에서 학교시스템 발전은 적극적으로 추구되어야 하고, 적절한 장학금 제도가 확립되고, 교직의 중요한 업무조건도 지속적으로 개선되어야 한다.
- 이들 조치는 아동권 협약 28(1)조에도 포함되어 있다. 아동권 협약은 국가에게 모든 아동에게 접근가능하고 이용할 수 있는 교육정보와 직접 정보를 제공하고, 자퇴율을 낮추기 위해 출석율을 높일 수 있는 조치를 취하도록 요구하고 있다.
- 현재 국가는 조기 아동발전프로그램과 취학 전 교육에 대해서 양질의 교육을 이용하고 접근할 수 있도록 조치를 취해야 한다는 잉그반적 합의가 있다.

(ii) 법적 조치와 역행적 조치를 피하기 위한 요건 등의 모든 적절한 수단을 이용하여 조치를 취할 수 있는 의무의 성격과 범위. 상호연관되어 있고, 필수적인 교육권에 관한 이용성, 접근성, 수용성, 적응성을 특히 고려한다. ACJ는 고용, 결혼, 법적 의무에 관한 최저 연령을 포함한 기본적인 이슈들을 인지하도록 요청받았다.

### 즉각적이고 점진적인 의무

- 국가가 즉각적으로, 점진적으로 교육권을 제공할 책임이 있다.
- 모든 국가는 즉각적인 의무 측면에서, 실질적인 평등성 원칙에 따라, 교육권이 모든 이를 포함하고 비 차별적인 방법으로 행사될 수 있도록 법안을 마련하고 강행시켜야 한다.
- 또한, 국가는 학문적 자유를 보호할 조치를 포함하여, 표현의 자유와 정보권을 존중하고 증진시키도록 즉각적인 조치를 취해야 한다.
- 국가는 해당 국가에서 교육의 현재 기준과 이용성에 직간접적으로 해롭게 영향을 미칠 역행적 조치를 피해야 한다.

- 만약, 충분한 가용자원이 있다면, 국가는 ICESCR의 13(2)항과 아동권협약의 29(1)조에 규정된 모든 의무들을 이행할 즉각적인 의무가 있다. 이미 존재하지 않는다면, 모든 수준에서 교육권을 보장하는 법안이 통과되어야 한다.
- 만약, ICESCR의 13(2)항과 아동권협약의 29(1)조를 즉각적으로 달성할 가용자원이 충분치 않다면, 국가는 가능하면 합리적으로, 최 단기간에 이들 목표를 달성할 계획을 마련해야 한다. 이 계획을 마련할 때, 국가는 다른 수준의 교육을 불필요하게 해하지 않고, 의무 및 무료기초교육 제공에 우선순위를 두어야 한다.
- 이들 계획은 모든 위를 위한 교육(National Education for All, EFA)을 보완해야 한다. 이 계획들은 모든 이용가능한 법적, 행정적 조치를 통해 이행되고, 정기적으로 검토되어야 한다.

### 모니터링

- 교육권 실현을 위한 진행사항 모니터링은 조직적으로, 지속적으로 이루어져야 한다. 수집된 자료는 성별, 지역, 인종, 언어, 사회경제적 위치를 기준으로 분류되어야 한다.
- 2015년 EFA의 목표 진행사항을 가늠할 특정권리를 기반으로 한 지표들이 EFA 계획과 달성의 지속적인 검토를 위하여 UNESCO와 UNICEF에서 채택되었다. 국가는 이들 지표들을 적용하고 이용하여, 교육권 실현 진전사항을 모니터링할 수 있다.
- 또한, 국가는 4A (이용성, 접근성, 수용성, 적응성)를 바탕으로 한 국제적으로 수용된 기본 틀에 의하여 교육권 목적의 실현에 대한 진전상황을 모니터링해야 한다.

### 이용성

- 이용성은 교육기관과 프로그램의 역량이 그러한 프로그램이 필요한 학생들의 수와 일치될 것을 요구한다. 여기에는 충분한 예산배정이 있어야 한다.
- 이용성에는 교육기관 입학 뿐만 아니라 해당 교육제도 내에 학생의 보유도 고려되어야 한다.
- 교육은 취약계층 및 소외계층에 특별히 초점을 맞추면서 비 차별적으로 그리고, 모든 이를 포함하는 방식으로 제공되어야 한다.
- 이용성에는 부모와 아동이 문화와 종교적 신념을 따르는 교육기관과 프로그램을 선택할 수 있는 것도 포함되며, 이들의 언어도 고려되고 있다. 아동을 우선으로 하고, 최저 교육의 질적인 수준을 이행하는 것도 이

선택에 고려되어야 한다.

### 접근성

- 접근성에는 학생의 교육참여, 특히 초등교육수준 참여에 (직간접적인) 모든 장애물을 제거하는 것이 요구된다.

### 수용성

- 수용성은 교육에 안전하고 교육적으로 적절한 시설이 제공되는 것이 요구된다. 아동은 교내에서만 아니라 등, 하교에서 폭력과 괴롭힘에서 자유로워야 한다.
- 학교폭력에서 자유로울 권리에는 차별에서 자유로울 권리가 포함된다. 필요한 경우에, 아동을 중심으로 한 형태의 긍정적인 징계가 이용되어야 한다. UNESCO는 긍정적인 징계에 대한 모듈을 포함한 모든 이를 포함한 학습자 위주의 툴킷(tool kit)을 개발했다.
- 또한, 수용성은 최저교육수준에 부합할 것을 요구하고, 적절하게 훈련 받은 충분한 수의 교사들에 의해 교육이 제공될 것을 요구하고 있다. 교육프로그램은 학습자 중심이어야 하고, 영구적 또는 일시적 성격에 상관없이 특별한 도움이 필요한 학생에게 적절해야 한다.

### 적응성

- 교육은 탄력성이 있어야 변하는 사회와 기술 및 과학 발전에 맞출 수 있다.
- 교육은 특정한 사회적, 문화적 맥락 내에서 학생들의 요구사항을 맞춰야 한다. 또한, 학생의 학습스타일과 특별한 요구사항을 수용해야 한다.
- 지속적인 개선의 문화가 조성되어야 한다.

### 최저연령

- 중등교육까지 이루어지는 의무, 무상교육의 목적은 다른 권리들과 조화되어야 한다. 특히, 경제적 사정이나 문화, 또는 종교적 영향 때문에 일찍 취업을 하거나 결혼해야 하는 아동은 자신들의 교육권을 완전하게 행사할 수 없을 것이다.
- 국가는 최저 고용연령, 결혼, 법적 책임 등 학생이 자신의 교육권을 행사하는 데 존재하는 모든 장애물을 파악하고 해결해야 한다.
- 국가는 최저고용연령을 정하여 학생이 자신의 초등, 중등교육, 기술 또는 직업교육을 마칠 수 있게 한다. ILO는 최저고용연령이 의무교육 수료연령 또는 15세 이상이 되어야 한다고 권고하고 있다.



- 여아와 남아 모두 초등 및 중등교육을 마칠 수 있고, 특히 여아가 조혼이나 어린 나이에 산모가 되지 않도록 최저결혼연령이 정해져야 한다.
- 국가는 아동이 형사법을 위반할 수 없다고 추정되는 최저연령을 정해야 한다. 범죄로 기소되거나 유죄판결을 받을 해당 연령기준 이상의 아동은 존엄성 있는 존재로 대우받아야 하고, 아동의 인권을 존중하고 다른 이들의 기본적인 자유를 강화하는 방법으로 대우받아야 한다.
- 아동의 연령과 사회 재편입 증진도 고려되어야 한다. 특히, 교육과 직업훈련이 지속적으로 이들에게 제공되어, 이들이 미래사회에서 더 건설적인 역할을 맡을 수 있게 해야 한다.

(iii) 교육권의 사법심사가능성 문제

- 교육권의 사법심사가능성은 차별을 받지 않을 권리와 정보권과 같은 다른 권리들의 사법심사가능성과 분리될 수 없다.
- 국가는 교육기준과 정책에 대한 헌법, 국가 및 지방 법을 검토하여, 이들이 교육권과 일관성이 있도록 검토하고, 이행시키고/또는 이들을 수정하여 교육권의 핵심적인 특징을 반영해야 한다.
- 국가는 교육권의 확인과 강행성을 위해 행정, 사법적 메커니즘을 제공함으로써 교육권과 관련된 법적 의무에 효력을 발생시켜야 한다.
- 그러한 메커니즘의 역할은 다음과 같다.
  - 교육권을 명확히 하고, 그 내용을 제공한다.
  - 국제인권 규약과 기준을 준수하면서 권리를 해석하고 적용시킨다.
  - 적절한 제재를 부과하고,/또는 해당권리 위반의 경우에는 구제책을 제공한다.
    - NI는 다음을 적극적으로 모니터링하는 데 핵심역할을 해야 한다.
      - 교육권을 보장하는 정책과 행정조치의 적절성
      - 교육권을 강행시키는 데 있어서 행정기관 및 사법기관의 역할
      - 교육권 위반의 정도와 성격
      - 가능한 제재와/또는 구제책의 효율성

(iv) 모든 이를 위한 의무 및 무상 초등교육의 도입을 우선시하고, 중등 및 고등교육, 그리고 기본교육을 점진적으로 완전실현시킬 의무의 성격과 범위

초등교육

- 국가는 4A에 부합하는 양질의 무상, 의무교육에의 접근과 교육이수를 보장할 의무가 있다. 국가, 부모, 법적 후견인 그 어느 누구도 해당 아동이 초등교육에 접근해야 하는 지 여부에 관한 결정을 선택적으로 할

수 없다.

- 국가는 자국의 법, 정책, 관행이 아동의 초등교육 접근을 금지시키거나 못하게 하지 않도록 해야 한다.
- 공립교육에서 초등교육은 무료로 이용할 수 있도록 하는 의무가 있다. 재정적 상황 때문에 아동이 초등교육에 접근하지 못하는 경우에는, 해당 아동의 가족에게 재정지원을 하여, 아동이 교육권을 행사할 수 있도록 해야 한다.
- 국가는 적절한 재정자원을 배정하거나, 그에 상응하는 제도를 마련하여 교육권이 완전히 이행되도록 해야 한다.
- 국가는 등록금을 없앨 의무가 있다. 자발적 활동에 대한 비용을 지불하지 못하는 능력 때문에 아동이 그러한 활동에 참여하지 못하면 안 되므로, 필요한 경우에 국가는 재정지원을 해야 한다. 재정적 필요라는 것이 아동이 과외활동에 참여할 수 없다는 것이라면, 이는 초등교육을 받을 권리를 완전하게 향유하지 못한다는 것을 의미한다.
- 국가는 학생, 부모, 또는 법적 후견인에 부과되는 간접비용을 최소화하고, 가능한 경우 이 비용을 모두 없애야 할 의무가 있다.
- 국가는 초등교육의 직간접 비용에 영향을 줄 수 있는 구조조정프로그램과 긴축예산에 대해서 권리를 바탕으로 한 접근법을 채택해야 한다.

#### 기본 또는 기초교육

- 국가는 초등교육을 받지 않았거나 이수하지 않은 개인들에게 기초교육의 이용성을 보장할 의무가 있다.
- 또한, 기본교육을 받을 권리는 필요한 학습, 특히 문해능력(literacy)을 만족시키지 않은 개인들에게 확장된다.
- 기능적 문해(functional literacy)는 여야, 여성, 소수언어계층, 장애인 등 종종 배제되는 계층에게 특히 중요하다.
- 기본교육은 성인교육과 평생학습에 중요한 요소이며, 아동, 십대, 성인에게까지 확대된다. 국가는 모든 연령의 학생들에게 적합한 기본교육 커리큘럼과 교육프로그램을 개발할 의무가 있다.

#### 중등교육, 기술 또는 직업교육

- 국가는 모든 수단을 이용하여, 특히, 무상교육의 점진적 도입에 의하여 모든 사람이 양질의 중등교육을 이용하고 접근할 수 있게 할 의무가 있다. 여기에는 기술 또는 직업적인 중등교육이 포함된다.

#### 고등 또는 3차 교육

- 국가는 능력을 바탕으로 하여 모든 적절한 수단으로 3차 교육을 모든 사람에게 접근가능하게 할 의무가 있다.
- 3차 교육은 탄력적인 커리큘럼과 다양한 이행시스템을 보유해서 각기 다른 사회적, 문화적 배경에서 학생들의 요구사항에 부합할 수 있어야 한다.
- 국가는 취약계층에게 재정지원과, 적절하다고 판단되는 경우에 특별입학프로그램을 통하여 3차 교육의 접근성을 보장할 의무가 있다.

#### 행동계획

- 국가는, 다양한 교육지원제도를 제공할 수 없는 경우에, 이들 제도들의 점진적 이행을 위한 세부적 행동계획을 개발하고 이행해야 한다.
- 국가는 모든 이를 위한 의무, 무상 초등교육의 도입에 우선순위를 두어야 한다. 하지만, 행동계획은 무상, 의무 중등교육의 점진적 실현에 대한 의지도 포함되어야 한다.
- 행동계획을 개발하고 이행할 의무는 지속적이어야 한다. 행동계획에는 정기적 검토를 위한 수단과 이행상황을 모니터하고 평가할 수 있는 책임성도 포함되어야 한다. 또한, 합리적인 기간 내에 달성될 수 있는 목표를 세워야 한다.
- 국가가 행동계획을 개발하고 이행시킬 재정적 자원과/또는 기술적 전문성을 보유하지 않는 경우에는, 개발기구와 선진국은 이를 돕고 협력해야 한다.

#### (v) 국가가 최대 가용자원을 이용할 의무의 성격과 범위

- 국가는 모든 자원을 교육에 배정할 의무는 없다. 국제적으로 권고된 수준의 자금은 국가예산의 20% 또는 GNP의 6%이다. 국가는 이 자원을 다른 권리의 점진적 실현에 부정적인 해를 끼치지 않으면서 효율적으로, 효과적으로, 공정하게 배정해야 한다.
- 교육권과 관련하여 국가의 의무를 이행시키기 위해 가용자원이 충분히 있는 경우에, 국가는 국제적인 협력과 지원을 구해야 한다. 모든 국가가 자원의 부족 때문에 EFA에 목표달성을 회피하지 않는다는 의지를 보인 2000년 다카르 기본 틀 48항에 관심을 기울여야 한다.
- 국가는 국제적 자금지원을 구하고 확보할 때, 교육권을 이행할 의무에 타협해서는 안 된다. 교육 전용 국제지원기금은 일시적이더라도 다른 용도로 전용되어서는 안 된다.
- 극도의 자원제약의 시기를 포함하여 경제후퇴, 구조조정, 또는 다른 요인, 그리고 경제발전수준에 관계없이, 국가는 여전히 교육권을 보호할

의무를 갖는다.

- 재정적 제약이 있는 시기에는 초등교육을 우선순위로 두어야 한다 (중등, 기술, 직업, 3차 교육에 불필요한 해를 입히지 않고). 특히, 국민 중 가장 취약하고 불리한 위치에 있는 계층에 관심을 기울여야 한다. 국가는 특히 최대한 많은 학생들에게 다가가는 혁신적이고 창의적인 저비용의 프로그램 개발을 통하여 효율적인 자원배정을 보장해야 한다.

(vi) 외국인, 난민, 국내실향민, 장애인 및 소수자를 포함하여 모든 이의 교육권 접근에서 비차별적이고 평등한 기회를 보장할 의무의 성격과 범위

- 국제법은 국가로 하여금 모든 이에게 비차별적인 방법으로 교육을 제공할 것을 요구하고, 교육권이 차별로부터 자유롭도록 법적 효력을 발생시키고, 이를 강행시킬 것을 요구하고 있다.
- 국가는 국내실향아동과 아동난민에게 적절한 교육을 제공해야 한다. 그러한 교육은 이들 아동들에게 정신적 충격 상담, 언어훈련, 그리고 사회에서 이들이 완전하고 건설적인 역할을 하는 데 필요한 기술훈련 등의 특별한 요구사항을 고려해야 한다. ‘
- 국가는 아동권협약 23조를 준수하면서 장애아동의 특별한 요구사항에 부합해야 한다. 이는, 장애아동의 특별한 요구사항을 받아들이기 위해 프로그램과 시설들이 변경되어야 한다는 것을 의미한다. 그러한 프로그램은 해당 아동이 가능한 완전하게 사회에 편입하고, 자신의 문화 및 정신적 발전을 포함한 개인의 발전을 달성할 수 있도록 고안되어야 한다.
- 국가는 특별한 요구사항이 필요한 국민에게 (가용자원 한도 내에서) 접근을 제공하는 방법으로 교육서비스를 적용하는 정책을 발전시키기 위하여 법을 성안하고, 이를 명확히 해야 한다.

(vii) 남녀평등을 보장할 의무의 성격과 범위

평등성

- 여아와 여성교육은 사회정의, 민주주의, 개발 증진과 불가분하게 연관되어 있다.
- 여성과 여아는 평등하게 교육권을 향유할 권리가 있고, 국가는 교육제공에 있어서 남녀평등을 보장할 의무가 있다.
- 국가는 모든 교육수준에서 남성과 여성에게 동일한 입학 기준을 적용해야 한다. 하지만, 입학기준은 기존의 경제, 사회, 문화, 성별의 불평을 고려해야 한다.
- 국가는 소수계층의 입학을 증진시키고 독려하고, 학문적 준비

(academic preparation)와 이 소수계층의 학업을 증가시킬 수 있도록 지원해야 한다.

- 모든 학생들을 위한 커리큘럼은 평등성과 비 차별을 증진시키고, 사회의 남성과 여성의 역할을 전형적인 개념을 없애야 한다. 이를 달성하기 위하여 교과서는 개정되고, 교수법도 변경되어야 한다.
- 국가는, 교사양성기관 교사채용과 졸업에 양성평등을 개선시키도록 보장해야 한다. 또한, 남녀 교사 양성과정의 측면에 양성평등의 측면을 포함시키고, 남녀교사들에게 성평등 관련 훈련프로그램을 개발해야 한다.

### 장애물

- 국가는 관습, 전통, 그리고 여타 사회, 문화적 용인이 교육기관에서 남녀를 평등하게 대우하는 데 방해가 되는 정도를 파악하고, 이러한 장애물을 제거할 조치를 취해야 한다.
- 국가는 차별과 재정적 불리함을 포함하여 교육권의 완전한 향유에 있어서 여아와 여성에게 부과되는 장애물을 파악하고, 이를 해결할 수 있는 질적, 양적 지표들을 개발하고, 적용시켜야 한다.
- 국가는 가정에서 아들만 교육을 받지 않도록 보장해야 한다. 이러한 조치에는 정보와 인식증진 캠페인, 그리고 여성이 교육을 받지 못하게 하는 장애물을 제거하는 데 필요한 행동들이 포함되어야 한다.
- 국가는 남아와 여아 모두 교육기관, 특히 중등, 고등교육기관에서 돈이 없어서 자퇴하는 일이 없도록 조치를 취하고, 이를 인식해야 한다.

### 안전

- 국가는 등, 하교 시에 아동, 특히 여아의 안전을 보장해야 한다.
- 국가는 모든 아동에게 안전한 학교환경을 제공해야 한다. 국가는 남녀 학생 모두 교내에서 따돌림을 당하거나, 성적 괴롭힘, 그리고 폭력(체벌 포함)을 당하지 않도록 보장해야 하고, 특히, 여학생은 비밀리에 자신이 겪은 사실을 신고하고, 그로 인한 부정적 영향에서 안전할 수 있는 메커니즘을 제공해야 한다.
- 국가는 교육기관 내에 여학생을 위한 사적 위생시설을 제공해야 한다.

### 참여

- 국가는 남학생과 마찬가지로 여학생이 뛰놀거나 스포츠활동을 할 수 있는 물리적 장소를 충분히 보장해야 한다.
- 국가는 여학생과 여성이 자신의 교육적, 사회적, 문화적 필요사항을 파

약하는 데 적극적으로 참여할 수 있게 해야 한다.

### 건강과 임신

- 국가는 여아의 교육이 방해받지 않거나 조혼 또는 어린 나이에 산모가 되는 것으로 인해 교육이 중단되지 않도록 조치를 취해야 한다.
- 특히, 임신이나 산모가 되어 학교에 가지 못하거나, 학교를 그만둔 여아와 여성들을 위해 교육프로그램이 마련되어야 한다. 임신한 여아와 여성, 그리고 산모는 지속적으로 학교를 다닐 수 있도록 독려해야 하고, 지원시설은 특별한 도움(음식과 적절한 아동보육 포함)이 필요한 학교 환경에 우호적으로 제공되어야 한다. 이들의 가족도 자식의 교육을 지원하도록 독려받아야 한다.
- 교육기관은 여아와 여성을 임신이나 어려서 산모가 되었다는 이유만으로 정식교육제도에서 여아나 여성을 제외시키지 말아야 한다.
- 국가는 가족 전체의 건강과 복지를 위해 남녀 모두에게 보건과 위생사항에 관한 교육접근을 제공해야 한다. 여기에는 가족계획에 대한 정보와 자문 접근도 포함된다.

### (viii) 학교와 여타 교육기관 내에서 종교의식 및 문화적인 관습을 존중할 의무의 성격과 범위

- 국가는 학생의 종교와 문화적 정체성이 교육프로그램과 교육기관 내에서 존중받도록 해야 한다. 이 목적은 교육권에 대한 국가행동계획(NAP) 그리고/또는 EFA에 관한 국가행동계획에도 포함되어야 한다.
- 모든 교육기관은 해당 학생의 종교, 문화 전통, 관습, 관행을 존중하고 수용해야 한다.
- 모든 교육기관은 종교적, 문화적 관용을 증진시켜야 한다. 이는 아동들이 자신의 것과 다른 종교교리와 문화를 알게 하는 종교적, 문화적 관용을 증진시키는 데 선결조건이다.
- 문화적 정체성을 존중하는 것은 개인의 언어를 존중하는 데 중요한 요소로 포함된다. 그에 따라, 아동은 모든 교육기관에서 자신의 모국어로 의사를 표현할 권리가 있어야 한다.
- 적절한 자원에 따라, 아동은 뚜렷한 관행적 장애물(자국의 언어로 배우기를 원하는 특정기관의 아동의 제한된 숫자 등)이 있는 경우를 제외하고는, 공립기관에서 자신의 모국어로 문해력을 습득할 수 있는 기회가 주어져야 한다.
- 모국어로 우선 글을 배운 아동은 현재 자신이 사는 국가의 국어를 성공적으로 배울 수 있는 기회를 부여 받아야 한다. 하지만, 가능하면 이들

은 지속적으로 모국어를 배울 수 있는 기회를 가져야 한다.

- 공립 여부에 상관없이, 모든 교육기관은 차별해서는 안 되는 사유로 하지 말아야 한다. 하지만, 여학생과 남학생, 또는 종교, 언어로 특별히 분리된 학교의 입학은 선택적인 경우에 한해서만 차별적이라고 간주되고, 해당 학교는 국가가 규정한 최저기준을 준수해야 하고, 이 계층에 속하지 않는 아동을 위해서 유사한 양질의 주류기관이 있어야 한다.

### (ix) 양질의 교육을 제공하고, 최저 교육기준과 그러한 기준을 감시할 수 있는 효과적이고 투명한 시스템 확립할 의무의 성격과 범위

#### 질 (quality)

- 모든 수준에서 양질의 교육은 경제, 사회발전에 중요하기 때문에, 국가적 책무이다.
- 국가는 학습자중심의 커리큘럼 내용과 과정을 채택해야 한다. 교육프로그램은 다양한 학습요구사항과 능력, 그리고 학생의 인지적, 사회적, 정서적 발달 단계에 맞춰야 한다.
- 커리큘럼은 더 복잡하고 기술이 발전된 사회의 학습요구에 부합할 수 있도록 변경되어야 한다. 지식, 기술, 태도의 발전은 독립적인 학습을 하는 데 필요하고, 문제해결이 핵심이다.
- 평가전략은 커리큘럼의 목적에 적합해야 하고, 개별학생의 학습요구와 일치해야 한다. 적절한 학습자원에 접근이 중요하다.

#### 최저기준

- 모든 사람, 특히 취약계층의 사람들은 사람에 중점을 주고 개별적 요구에 맞출 수 있는 최저의 양질의 교육을 받을 권리가 있다.
- 국가는 모든 교육수준에 대한 적절한 양질의 기준을 파악하고, 이들을 정기적으로 검토하고 업데이트해야 한다.

#### 교사의 핵심역할

- 교사와 교습(teaching)가르친다는 것에 대한 대중의 이해는 향상되어야 하며, 훌륭한 교사를 찾아, 이들을 채용하고, 보유할 인센티브가 제공되어야 한다. 국가는 모든 수준의 학생들을 위하여 자격있는 교사를 제공하도록 노력해야 한다.
- 기존교사들을 지속적으로 훈련시키고, 유급 휴가(paid study leave) 등 직업적 발전을 지원해야 한다.
- 교사는 매력있고, 더 많은 이를 포함하고, 학생을 환영하는 학습환경을

만들기 위해 훈련받아야 한다. 교육기관은 이러한 노력을 뒷받침해야 한다.

### 모니터링

- 국가는 대응적이고, 참여적이고, 책임있는 교육행정 및 관리 시스템을 개발해야 한다.
- 국가는 국가 자신과 개별교육기관이 적절한 교육목적을 달성하고 있는지 여부를 모니터링하는 투명하고 효율적인 시스템을 확립하고 유지시켜야 한다. 국가는, NAP와/또는 EFA 계획의 실현을 위해 이루어진 상황에 대해 적어도 매년 양적, 질적 자료를 수집하여 보관하고, 업데이트하며 출간해야 한다.
- NI는 국가 EFA계획에 보완적인 교육권 관련 NAP를 개발하고, EFA를 권리중심의 접근법에서 수정하는 데 지원해야 한다. 또한, NI는 교육권 침해를 문건화하고, 교육권 실현을 위해 취해진 점진적 조치를 모니터링하는 데 핵심적인 역할을 할 것이다.
- 투명성 측면에서, 국가는 자국의 NI, 특별보고관, 조약기구 및 기타 UN 기구에게 교육통계와 자료를 감사받을 수 있도록 준비하고, 이를 허용해야 한다.

### (x) 교육권의 맥락에서 모든 이를 위한 인권교육의 실현을 보장하기 위한 국가 의무의 성격과 범위

- 세계인권선언 26(2)항에 따르면, 교육은 인격의 완전한 발전과 인권과 기본적 자유의 존중 강화라는 두 가지 목적이 있다. 이 주제는 ICESCR과 여타 국제규약과 논평집(commentaries)에도 잘 나타나 있다.
- 1994년 12월 23일 유엔총회결의안에서 언급된 바와 마찬가지로, 유엔 인권교육 십년 계획은 다음을 선언하고 있다.
  - 인권교육은 정보 제공 이상을 포함해야 하며, 모든 발전과정에 있고, 사회 각기 각층에 있는 사람들이 다른 이의 존엄성을 존중할 수 있도록 배우고, 그 존중을 보장할 수단과 방법을 배우는 평생과정이어야 한다.
  - 인권교육은 아동, 선주민, 소수계층, 장애인 등 사회의 다양한 계층을 고려하는 모든 연령대의 여성과 남성의 존엄성과 일치하는 발전개념에 기여한다.
- 인권교육은 인권의 촉진에 대한 국내 및 국제적 결의를 강화시켜야 하고, 모든 개인이 효과적으로 사회에 참여할 수 있도록 마련되어야 하고, 자신과 다른 이들을 인권침해로부터 보호할 수 있도록 해야 한다.
- 아동권협약위원회는 아동인권교육이 아동, 아동이 속한 지역사회, 그리



고 가족의 매일매일 삶에서 인간적 가치관을 반영하는 것으로 시작해야 한다고 언급한 바 있다.

- NI는 인권교육을 제공하고, 다른 이들(국가 포함)이 인권교육을 제공할 수 있도록 독려하고, 세계 인권교육 프로그램 3개년 계획 (2005-2008)을 이행시키는 데 핵심적인 역할을 한다.

(xi) 학문의 자유와 교육기관의 자율을 보장할 의무의 성격과 범위

*학문의 자유*

- 교육권은 모든 교육 유형과 수준에 관련되어 있는 직원과 학생들의 학문적 자유가 있어야만 완전히 향유될 수 있다.
- 학계의 회원들은 조사, 연구, 교습, 토의, 문건화, 개발(creation), 집필, 출판을 통하여 개별적으로, 그리고 단체로 지식과 아이디어를 추구하고, 개발하며 배포할 자유가 있어야 한다.
- 학문의 자유를 인식하는 국가는 자유롭고 독립적인 수단(media)을 지원하고, 학문 집필과 의견을 발간하고 배포하도록 독려해야 한다.
- 학문의 자유의 향유는 다른 이의 학문의 자유를 존중하고, 다른 의견을 공평하게 배포하며, 금지된 사유로 이를 차별하지 않을 의무 등을 수반한다.

*자율*

- 교육기관은 학문작업, 기준, 관리 및 기타 관련된 자유와 관련하여 적절한 정도의 자율이 있어야 한다.
- 기본교육을 제공하는 기관들의 자율은 국가기준과 커리큘럼 기본 틀을 준수하는 범위 내에서 이루어져야 한다. 학교제도는 학습자, 부모, 지역 사회에 책임을 져야 한다.

(xii) 부모와 법적 후견인이 교육기관과 교육프로그램을 자유롭게 선택할 수 있는 의무를 존중할 의무의 성격과 범위

- 아동(연령과 성숙도에 따라), 부모, 법적 후견인은 교육프로그램, 교육기관, 또는 서비스를 자신의 신념과 확신에 따라 선택할 권리가 있다.
- 이 선택은 적절한 양질의 교육과 최저교육기준을 보장하는 등 아동의 이익을 증진시킬 의무가 우선시되어야 한다.
- 교육기관의 입학정책은 (주거자격 포함) (viii)에서 기술된 바와 마찬가지로 비 차별적이어야 한다.
- 국가는 해당종교의 회원들이 설립한 학교에서 종교적 가르침을 제공하

기 위하여 개인의 자유를 존중해야 한다.

- 국가는 특정 언어그룹이 학교를 설립하여, 자신의 언어를 학교에서 사용할 때 이들의 권리를 존중할 의무가 있다.
- 부모, 법적 후견인, 그리고 아동 (연령과 능력에 따라) 특별한 학습도움이 필요한 아동을 위한 특수학교 또는 주류학교 중에 하나를 선택할 수 있어야 한다. 국가는 이들의 특수한 필요사항을 지원하고, 해당 아동이 자신의 완전한 잠재력을 실현시킬 수 있도록 적절한 시설과 프로그램 (그리고 보조교사 등의 추가지원)을 제공할 책임이 있다.

(xiii) 국제지원과 협력을 받고 제공할 국가의무의 성격과 범위

- 국가는 교육권과 관련하여 자신의 의무를 실현시키기 위한 충분한 자원이 없을 경우에는 국제지원과 협력을 구할 의무가 있다.
- 국제지원을 받는 국가는 자원 배정에 있어서 가장 취약한 계층과 불리한 계층에 우선순위를 두어야 한다.
- 국제적으로 인정받는 원칙 들에 따르면, 국제사회는 교육권 실현을 지원하고 이에 협력할 의무가 있다. 여기에는 기술전문성과 자원 등 자금 지원과 전문성 제공이 포함된다. 국제사회는 개도국들이 교육권을 방해하거나 침해하는 정책을 채택하여 이행하지 않도록 해야 한다.

(xiv) 국제금융기관과 초국적 기업 등의 비국가 행위자의 교육권 보호와 증진 의무의 성격과 범위

- 교육권 실현에는 개인, 가족, 지역사회, 그리고 민간영역, 매스미디어, 종교단체 등의 공동의 노력이 필요하다. 국제단체, 국제기구, 종교단체들도 초국적 기업과 단체들, NGO 등과 마찬가지로 중요한 역할을 한다.
- 국가는 해당 국가의 관할 내에서 어느 누구도 교육권을 침해하지 않도록 하기 위한 법과 메커니즘을 마련해야 한다.

# ADVISORY COUNCIL OF JURISTS

By Fiji

## Reference on the Right to Education

31 July – 3 August 2006  
Suva, Fiji Islands

### INTERIM REPORT

3 August 2006

## **The Asia Pacific Forum of National Human Rights Institutions**

The Asia Pacific Forum of National Human Rights Institutions ('APF') is an independent non-profit organisation that supports, through regional cooperation, the establishment and development of national institutions in order to protect and promote the human rights of the peoples of the region.

Established in 1996, the APF is comprised of independent national human rights institutions that have been established in compliance with the minimum standards of the United Nations General Assembly-endorsed 'Principles relating to the status of national Institutions' ('the Paris Principles').

The APF plays a unique role in developing human rights dialogue, networks and practical programmes of support. With its member institutions the APF is well positioned to directly influence the development of human rights law and practice in the Asia Pacific.

### **The Advisory Council of Jurists**

The Advisory Council of Jurists ('ACJ') advises the APF Forum Council on the interpretation and application of international human rights standards. The ACJ is comprised of eminent jurists who have held high judicial office or senior academic or human rights appointments.

The establishment of the ACJ reflects the Forum Council's recognition of the need for access to independent, authoritative advice on international human rights questions and to develop regional jurisprudence relating to the interpretation and application of international human rights standards. The ACJ has considered five references: torture (2005); anti-terrorism legislation and the rule of law (2004); trafficking of women and children (2002); the death penalty (2000) and the regulation of child pornography on the internet (2000).

Further information about the ACJ is available at: [www.asiapacificforum.net/jurists/](http://www.asiapacificforum.net/jurists/)

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MEETING OF THE ADVISORY COUNCIL OF JURISTS

SUVA, FIJI ISLANDS

31 JULY - 3 AUGUST 2006

This is the interim report of the Advisory Council of Jurists after its meeting to consider the Forum Council's reference on the issue of the right to education.

The members of the Advisory Council of Jurists are:

- Justice Anthony Gates (Fiji), Chairman of the Meeting
- Dr Qasim Hashimzai (Afghanistan)
- Associate Professor Andrea Durbach (Australia)
- Mr Fali S Nariman (India)
- Professor Jacob E Sahetapy (Indonesia)
- Dato' Mahadev Shankar (Malaysia)
- Mr Jugnee Amarsanaa (Mongolia)
- Hon Mr Daman Nath Dhungana (Nepal)
- Justice Susan Glazebrook (New Zealand)
- Mr Sedfrey A Ordoñez (Philippines)
- Professor Kyong-Wham Ahn (Republic of Korea)
- Mr Rajendra KW Goonesekere (Sri Lanka)
- Professor Vitit Muntarbhorn (Thailand)

#### ACKNOWLEDGEMENTS

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The Jurists would like to express their sincere gratitude to Ms Maria Herminia Graterol, Visiting Research Associate, Australian Human Rights Centre of the University of New South Wales and Mr Stephen Clark, Project Manager, APF Secretariat, for the background paper provided to the Council for its consideration. Valuable assistance was also provided by Mr Kieren Fitzpatrick, Director, and Mr John K Johnson, Columbia Law School Scheuer Fellow, APF Secretariat.

The Jurists were greatly aided at the meeting in its deliberations and analysis by Dr Sheldon Shaeffer, Director, UNESCO's Asia and Pacific Regional Bureau for Education; Mr Johan Lindberg, Associate Expert, Education and Human Rights, UNESCO (Thailand); Mr Stephen Clark, APF Secretariat; Mr John K Johnson, Columbia Law School and Mr Robert Hesketh, Director, Office of Human Rights Proceedings, New Zealand.

The Jurists also wish to acknowledge the able and expert assistance of the staff of the Fiji Human Rights Commission, including Mr Usaia Ratuveli, Ms Deveena Sudhakar-Herman, Ms Sova Colavanua and Ms Vanessa Chang.

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## TERMS OF REFERENCE

At the Tenth Annual Meeting of the APF held in Mongolia in August 2005, Forum Councillors decided to formulate a new reference to the ACJ on the legal obligations of States for the implementation of economic, social and cultural rights and requested the secretariat prepare draft terms of reference for the consideration and approval of the APF.<sup>1</sup> In the interests of narrowing the scope of the reference and in light of the substantive work already conducted on this issue, the secretariat recommended that the terms of reference focus specifically on the right to education.

In February 2006, draft terms of reference were distributed to APF members for comment. The terms of reference adopted by APF members were as follows:

The Asia Pacific Forum of National Human Rights Institutions refers to the Advisory Council of Jurists to advise and make recommendations as to international law, instruments and standards relevant to the legal obligations of States for the implementation of economic, social and cultural rights, with respect to the right to education.

In particular, the Advisory Council of Jurists is asked to consider:

- (i) how international law, standards and mechanisms define the 'right to education', including with reference to the obligation to *respect, protect, promote and fulfil* the right to education.
- (ii) the nature and scope of the obligation to undertake steps by all appropriate means, including legislative measures, and the requirement to avoid retrogressive measures. Consideration should be given to the following interrelated and essential features of the right to education: *availability, accessibility, acceptability and adaptability*. The Advisory Council of Jurists is asked to be mindful of fundamental issues including the minimum age of employment, marriage and criminal responsibility.
- (iii) the question of the justiciability of the right to education;
- (iv) the nature and scope of the obligation to prioritise the introduction of compulsory and free primary education for all and to achieve progressively the full realisation of secondary, higher and fundamental education;

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<sup>1</sup> 'Concluding Statement', Tenth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, 26-28 August 2006, Ulaanbaatar, Mongolia  
[http://www.asiapacificforum.net/activities/annual\\_meetings/tenth/concluding.htm](http://www.asiapacificforum.net/activities/annual_meetings/tenth/concluding.htm)

- (v) the nature and scope of the obligation of the State to use the maximum of its available resources;
- (vi) the nature and scope of the obligation to ensure non-discrimination and equality of opportunity in access to education, including access to education for non-nationals, refugees, internally displaced persons, people living with disabilities and other minorities;
- (vii) the nature and scope of the obligation to ensure gender parity and gender equality in education;
- (viii) the nature and scope of the obligation to respect religious and cultural practices within schools and other educational institutions;
- (ix) the nature and scope of the obligation to provide quality education and to establish minimum education standards and an effective and transparent system to monitor such standards;
- (x) the nature and scope of the obligation of the State, within the context of the right to education, to ensure the realisation of the right to human rights education for all;
- (xi) the nature and scope of the obligation to ensure academic freedom and the autonomy of educational institutions;
- (xii) the nature and scope of the obligation to respect parents and legal guardians' freedom of choice of educational institution and educational program;
- (xiii) the nature and scope of the obligation of States to receive and to provide international assistance and cooperation;
- (xiv) the nature and scope of the obligation of non-state actors, including international financial institutions and trans-national corporations, to protect and promote the right to education.

Relevant international instruments include but are not limited to:

- (i) Universal Declaration of Human Rights;
- (ii) International Covenant on Economic, Social and Cultural Rights;
- (iii) International Convention on the Elimination of All Forms of Racial Discrimination;
- (iv) Convention on the Elimination of All Forms of Discrimination Against Women;
- (v) Convention on the Rights of the Child;
- (vi) Convention Against Discrimination in Education;
- (vii) Minimum Age Convention 1973
- (viii) Worst Forms of Child Labour Convention 1999

The Advisory Council of Jurists may wish to consider:



- (i) General Comment No. 3 of the Committee on Economic, Social and Cultural Rights: The nature of States parties obligations;
- (ii) General Comment No. 13 of the Committee on Economic, Social and Cultural Rights: The right to education;
- (iii) General Comment No. 10 of the Committee on Economic, Social and Cultural Rights: The role of national human rights institutions in the protection of economic, social and cultural rights;
- (iv) General Comment No. 1 (2001) of the Committee on the Rights of the Child on the aims of education;
- (v) General recommendation No. 3 (1987) of the Committee on the Elimination of All Forms of Discrimination Against Women;
- (vi) Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights;
- (vii) Maastricht Guidelines on Violations of Economic, Social and Cultural Rights;
- (viii) The UN Millennium Development Goals;
- (ix) The Dakar Framework for Action;
- (x) The Asia and Pacific Regional Framework for Action: Education for All;
- (xi) Revised Recommendations concerning Technical and Vocational Education;
- (xii) Vienna Declaration and Programme of Action;
- (xiii) Plan of Action for the first phase (2005-2007) of the World Programme for Human Rights Education (A/59/525/Rev.1), dedicated to the integration of human rights education within the primary and secondary school systems.

The Advisory Council of Jurists may wish to consider the following regional human rights instruments:

- (i) African Charter on Human and Peoples' Rights (1981)
- (ii) Additional Protocol in the Area of Economic, Social and Cultural Rights to the American Convention on Human Rights (Protocol of San Salvador) (1988)
- (iii) European Social Charter (revised 1996) and the Additional Protocol thereto.

## INTRODUCTION

The ACJ notes that the progressive development of a framework for the realisation of the right to education has advanced over the last decade. In particular, the ACJ commends the preamble of the *Asia and Pacific Regional Framework for Action: Education for All*, adopted by the Asia-Pacific Conference on EFA 2000 Assessment in Bangkok in January 2000:

Education is a fundamental human right of all people – of value in itself, for improving the quality of life, and as essential part of social and human development. Provision of basic education, whether it be formally or non-formally delivered, is a core responsibility of the state with active and genuine collaboration of parents, communities and civil society. All people, especially those most disadvantaged and excluded, must be guaranteed access to a basic education of decent quality.

The ACJ also notes that the right to education is inextricably linked to the full and effective realisation of other human rights and is central to the socio-economic development of States.

The ACJ welcomes and encourages the important work of the APF's member institutions in the protection and promotion of the right to education.

In Part A of the interim report, the ACJ provides a series of conclusions and recommendations for national human rights institutions in relation to the right to education. Part B of the interim report provides a summary of answers to the questions posed by the terms of reference.

The ACJ will prepare a final report on the terms of reference on the right to education with additional discussion on the terms of reference and with specific recommendations for APF member countries.

## PART A

### Conclusions and Recommendations

1. An important role for NHRIs is to assist the work of their governments in defining, promoting, providing and monitoring the right to education. In accordance with international standards, primary education should be compulsory and available free to all. Secondary and vocational or technical training should be generally available and accessible to all. There should be a progressive introduction of free education at this level. Higher education should be equally accessible to all.
2. NHRIs should ensure that their governments acknowledge that education is a right that is vital to both individual development and economic growth. To this end, NHRIs must encourage governments to allocate the maximum available resources to ensure the realisation of the objectives of the right to education.
3. Where the full realisation of all rights to education cannot be achieved immediately, NHRIs must encourage the progressive realisation of the right, to maximum standards and within the shortest period reasonably attainable.
4. NHRIs should ensure that National EFA Plans and other education sector strategies are devised, monitored and implemented in accordance with a rights-based approach (non-discrimination and substantive equality and the four A's; availability, accessibility, acceptability and availability).
5. NHRIs should assist their governments in the review of progress towards the Education For All goals of 2015 by ensuring that rights-based indicators, recently developed by UNESCO and UNICEF, are utilised in the review.
6. NHRIs should work with their governments to collect, collate and analyse data to identify and highlight existing disparities and to monitor the progress towards the realisation of the right to education. This process should be ongoing.



7. NHRIs that have an express mandate on ESCR, CRC and other related Conventions should investigate and report on any breaches of the right to education and monitor compliance with the right.
8. NHRIs should promote the right to education by developing specific measures to ensure that all branches of the State (judiciary, legislature and executive) are aware of the international and domestic obligations in the field of education.
9. NHRIs must encourage their governments to adapt policies and strategies to improve the quality of education in ways that enable the full development of each individual's potential and the complete enjoyment of all of his or her human rights.
10. NHRIs should promote the concepts of universality, indivisibility and interdependence of all human rights and, in particular, articulate the close connection of the right to education with the right to work, the right to freedom of expression and information and the right to health.
11. NHRIs should encourage their governments to recognise the right to education via legislation and accompanying policy measures.
12. NHRIs should encourage governments to devise, adopt and implement strategies to ensure the full realisation of the right to education of marginalised, vulnerable and disadvantaged groups, including internally displaced persons, refugees, non-nationals, ethnic minorities and people with special needs.
13. NHRIs should recommend and promote appropriate mechanisms for the redress of violations of the right to education and, in particular, violations affecting the most vulnerable and disadvantaged learners and those with special needs.

14. NHRIs should continue to contribute information to Treaty Body Committees and other international mechanisms aimed at monitoring the effective implementation of the right to education.
15. NHRIs should consider promoting an optional protocol to the ICESCR. Once the drafting process of any optional protocol begins, representation of NHRIs in the open-ended working group on the optional protocol may be required.
16. NHRIs should promote the involvement of all sectors of society and the international community in promoting, fulfilling and respecting the right to education. They must also ensure that private institutions understand their role in promoting and protecting the right to education and, in particular, the right of individuals not to be discriminated against.
17. NHRIs should ensure that their governments **implement the plan of action of the World Programme on Human Rights Education** and assist in the planning, implementation and evaluation of human rights education in the education system, in particular that promoting respect for religious, cultural and linguistic diversity.
18. NHRIs should ensure that their governments acknowledge that the right to education has two components: the full development of the human personality, talents and ability, and the promotion of and respect for human rights. In relation to the latter, NHRIs have a role to play in developing and promoting national awareness, information and education campaigns to foster an appreciation of and respect for universal human rights across all sectors of society. These campaigns must be adequately funded.
19. NHRIs should devise a plan for the implementation of these recommendations which sets out specific measures that they will undertake with respect to each

recommendation. They should develop key performance indicators against which progress can be measured.

PART B  
SUMMARY OF ANSWERS TO QUESTIONS  
POSED BY THE REFERENCE

- (i) how international law, standards and mechanisms define the 'right to education', including with reference to the obligation to *respect, protect, promote and fulfil* the right to education.
- The right to education in international instruments comprises the dual aspects of:
    - the development of the individual; and
    - the promotion of respect for human rights.
  - Education enables the full development of the human personality and sense of dignity.
  - Education strengthens the capacity of the individual to participate fully, effectively and responsibly and effectively in a free society in the spirit of understanding peace and tolerance.
  - Education fosters respect for family, cultural identity, language and values; for the national values of the country in which the individual is living and the country from which he or she may originate; and for civilisations different from his or her own.
  - Education refers to all types and levels of education and includes access to education, the standard and quality of education and the conditions under which it is given. Education should meet the four key criteria of availability, accessibility, acceptability and adaptability.



#### *Indivisibility and interdependence*

- The right to education embodies the principles of the universality, indivisibility and inter-dependence of all human rights. The right to education has a particularly close connection with the right to work, the right to health and the right to freedom of expression and information.
- Everyone is equally entitled to the right to education irrespective of race, ethnicity, gender, age, nationality, religion, socio-economic condition, health status, abilities and sexual orientation
- The exercise of the right to education enables the individual to experience the benefit of other rights, including both economic, social and cultural rights and civil and political rights.

#### *The obligation to respect, protect and fulfil the right to education*

- The obligation to respect, protect and fulfil the right to education incorporates obligations both of conduct and result. States must take all reasonable actions to realise the enjoyment of the right and must act to achieve specific and appropriate targets. States also have an obligation to promote the right to education.

#### *The obligation to respect*

- The obligation to respect requires States at a minimum to refrain from interfering with the enjoyment of economic, social and cultural rights, including the right to education. This will require measures such as those set out below:
  - States have an obligation to remove or amend statutory provisions and correct administrative practices that involve discrimination in education.
  - States must ensure, by legislation where necessary, that there is no discrimination in the admission of students to educational institutions.



- States must not allow difference of treatment by public authorities between nationals, except on the basis of merit or need, or historical disadvantage, in relation to school fees, scholarships and other forms of assistance or educational opportunities.
- States must provide foreign nationals resident within their territory the same access to education as that given to their own nationals.

*The obligation to protect*

- The obligation to protect requires States to take positive steps to prevent, prohibit and address violations of the right to education by third parties.
- The State has an obligation to ensure that harmful social and traditional practices do not impede the accessibility of education for underrepresented groups such as girls or women and students with special needs. The steps that States can take to meet its obligation to protect could include the:
  - adoption of adequate legislation;
  - development and implementation of coherent and coordinated policies;
  - development and implementation of effective complaints mechanisms;
  - creation of appropriate remedies; and
  - the monitoring of the actions of relevant third parties

*The obligation to fulfil*

- With States having principal responsibility for the direct provision of education in most circumstances, the obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of the right to education.

- As part of the obligation to fulfil, States are required to facilitate the adoption of measures which enable and assist individuals to enjoy the right to education within a context that is appropriate and acceptable to the particular circumstances of the respective State.
- States also have a duty to provide access to all types and levels of education which enables all individuals to exercise their right to education.

*The obligation to promote*

- The obligation to promote is a component of the obligation to fulfil and requires States to promote international human rights standards that relate to the right to education, particularly through human rights education and the protection of the right to information.

*The components of the Right to Education*

- Under Article 13(2) of ICESCR the components of the right to education are:
  - Primary education must be compulsory and available free to all;
  - Secondary education, including technical and vocational education, must be made generally available and accessible to all by every appropriate means, and, in particular, by the progressive introduction of free education;
  - Higher or tertiary education must be made equally accessible to all, on the basis of capacity, by every appropriate means and, in particular, by the progressive introduction of free education;
  - Fundamental or basic education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

- The development of a system of schools at all levels shall be actively pursued, an adequate scholarship system must be established, and the material conditions of teaching staff shall be continuously improved.
  - These measures are also contained in Article 28(1) of CRC. That convention requires States to make educational and vocational information and guidance available and accessible to all children and to take measures to encourage regular attendance at schools and the reduction of drop-out rates.
  - It is now generally agreed that States should also take steps to ensure the wide availability and accessibility of good quality early childhood development programmes and pre-school education.
- (ii) the nature and scope of the obligation to undertake steps by all appropriate means, including legislative measures, and the requirement to avoid retrogressive measures. Consideration should be given to the following interrelated and essential features of the right to education: *availability, accessibility, acceptability and adaptability*. The Advisory Council of Jurists is asked to be mindful of fundamental issues including the minimum age of employment, marriage and criminal responsibility.

#### *Immediate and Progressive Obligations*

- In providing the right to education States have both immediate and progressive obligations.
- All States must, as a matter of immediate obligation, enact and enforce legislation that ensures that the right to education is exercised in an inclusive and non-discriminatory manner according to the principle of substantive equality.



- States must also take immediate measures to ensure the respect for and promotion of freedom of expression and information, including measures designed to protect academic freedom.
- States must avoid all retrogressive measures which directly or indirectly adversely affect the current standard and availability of education in the State.
- If a country has sufficient available resources, it has an obligation immediately to fulfil all of the obligations set out in Article 13(2) of ICESCR and Article 29(1) of CRC. If not already in existence, legislation should be passed guaranteeing the right to education at all levels.
- If a country lacks sufficient available resources immediately to achieve the Article 13(2) and 29(1) rights, it must, as soon as reasonably possible, prepare a plan to achieve those objectives within the shortest time-frame obtainable. In preparing this plan, it must give priority to the provision of compulsory and free primary education without undue detriment of other levels of education.
- These plans should complement the National Education for All (EFA) plans. They must be implemented by all available legislative and executive measures and periodically reviewed.
- The plans should contain specific goals and targets that can be measured both quantitatively and qualitatively on a regular basis, so that progress towards achievement of the plan can be monitored effectively.

#### *Monitoring*

- The monitoring of progress towards the realisation of the right to education should be done systematically and continuously. Data collected should be disaggregated by sex, geographical region, ethnicity, language and socio-economic status.

- Specific rights-based indicators to measure progress towards the Education For All Goals of 2015 have been developed by UNESCO and UNICEF in the context of an on-going review of National EFA Plans and achievements. These can be adapted and used by States to monitor progress towards the realisation of the right to education.
- States should also monitor progress towards the realisation of the goal of the right to education by the internationally accepted framework based on the four A's: availability, accessibility, acceptability and adaptability.

#### *Availability*

- Availability requires the capacity of educational institutions and programmes to be matched to the number of students needing such facilities. This will require a sufficient budgetary allocation.
- Availability should take into account not only enrolment in institutions but also retention of students in the education system.
- Education must be provided in a non-discriminatory and inclusive manner with particular attention focussed on vulnerable, disadvantaged and marginalised groups.
- Availability also includes parental and child choice of an educational institution and programme that conforms to their cultural and religious beliefs and takes their language into account. The best interests of the child and compliance with minimum quality standards should, however, govern this choice.

#### *Accessibility*

- **Accessibility** requires the removal of all obstacles (both direct and indirect) to a student's participation in education, particularly at the primary school level.

### *Acceptability*

- Acceptability requires education to be provided in safe and educationally appropriate facilities. Children must be free from violence and harassment in school and on the way to and from school.
- The right to be free from violence in school includes the right to be free from corporal punishment. If necessary, more child-friendly positive forms of discipline should be employed. UNESCO has developed a toolkit on inclusive learner-friendly environments which includes a module on positive discipline.
- Accessibility also requires education to meet a minimum quality standard and to be provided by appropriately trained teachers who have been fully resourced. Educational programmes must be learner-centred and appropriate to the individual student, in particular, where that student has special needs, whether of a permanent or temporary nature.

### *Adaptability*

- Education must be flexible so that it can adapt to the changing needs of society and communities and to technological and scientific advances.
- Education must respond to the needs of students within their specific social and cultural context. It should accommodate the learning styles and any special needs of all students.
- A culture of continuous improvement must be fostered.

### *Minimum Ages*

- The goal of compulsory free education through to secondary school level requires attention being accorded to other rights. In particular, children forced by economic



circumstances or cultural or religious influences into early work or marriage will not be able to enjoy fully their right to education.

- States must ensure that all barriers to students enjoying their right to education are identified and addressed, including setting minimum ages for employment, marriage, and criminal responsibility.
- States should establish a minimum age for admission to employment which allows students to complete their primary, secondary, technical or vocational education. The ILO recommends that the minimum employment age should be the greater of the age for the completion of compulsory schooling, or 15 years old.
- The minimum age for marriage should be set at a level which allows both boys and girls to complete their primary and secondary education and which ensures that girls, in particular, are not forced into early marriage and motherhood.
- States should establish a minimum age below which children are presumed incapable of violating penal law. Any child above this age accused or found guilty of a criminal offence should be treated with dignity and in a manner which reinforces the child's respect for the human rights and fundamental freedoms of others.
- The child's age and the desirability of promoting the child's reintegration into society must be taken into account. In particular, education and vocational training should continue to be provided to such children, to enable them to assume a more constructive role in society in the future.

(iii) the question of the justiciability of the right to education;

- Justiciability of the right to education is inseparable from the justiciability of other rights, such as the right to non-discrimination and the right to information.
  
- States should review their respective Constitutional, national and local laws relating to educational standards and policies to ensure that they are consistent with the right to education and implement and/or amend laws and policies to reflect the core features of the right.
  
- States must give effect to their legal obligations in relation to the right to education by providing recourse to appropriate administrative and judicial mechanisms for the assertion and enforceability of the right.
  
- The role of such mechanisms is to:
  - clarify and give content to the right to education;
  - interpret and apply the right in conformity with international human rights instruments and standards; and
  - impose appropriate sanctions and/or remedies in the event of a breach of the right.



- • NHRIs should play a key role in actively monitoring:
  - the appropriateness of policies and legislative measures ensuring the right to education;
  - the role of administrative and judicial bodies in enforcing the right;
  - the extent and nature of breaches of the right; and
  - the efficacy of available sanctions and/or remedies.
  
- (iv) the nature and scope of the obligation to prioritise the introduction of compulsory and free primary education for all and to achieve progressively the full realisation of secondary, higher and fundamental education;

*Primary education*

- States have an obligation to guarantee access to and completion of compulsory and free primary education of good quality which meets the four A's. (Neither the State, nor parents or legal guardians, are entitled to treat as optional the decision as to whether the child should have access to primary education.)
- States must ensure that their laws, policies and practices do not inhibit or prevent children from accessing primary education.
- There is an obligation to ensure the availability of primary education in public education institutions without charge to the child, parents or legal guardians. Where financial circumstances would prevent children from accessing primary education, financial assistance must be provided to the families to enable the right to be enjoyed.
- States must allocate adequate financial resources, or make equivalent arrangements, to enable the right to education to be fully enjoyed.

- States are obliged to eliminate school fees. Inability to pay fees voluntary activities should not inhibit children's participation in those activities and, where necessary, financial assistance should be provided by the state to those for whom payment of the fees would cause financial hardship. If financial need means that children cannot participate in extra activities this inhibits their full enjoyment of the right to primary education.
- States have an obligation to minimise, and where possible eliminate, indirect costs imposed on students and parents or legal guardians.
- States should adopt a rights-based approach to any structural adjustment programmes and fiscal austerity measures which may impact upon direct and indirect costs for primary education.

*Basic or fundamental education*

- States have an obligation to ensure the availability of basic education for individuals who have not received or completed primary education.
- The right to basic education also extends to those individuals who have not satisfied their essential learning needs, and, in particular, literacy.
- Functional literacy is especially important for those groups which are often excluded, such as girls and women, members of minority language groups and those with disabilities.
- Basic education is an integral component of adult education and life-long learning and extends to children, youth and adults. States have an obligation to develop basic education curricula and education programmes that are suitable to students of all ages.

#### *Secondary education and technical or vocational education*

- States have an obligation to make secondary education of good quality generally available and accessible to all by every appropriate means and, in particular, by the progressive introduction of free education. This includes technical or vocational secondary education.

#### *Higher or tertiary education*

- States have an obligation to make tertiary education equally accessible to all, on the basis of capacity and by every appropriate means.
- Tertiary education should have a flexible curricula and a variety of delivery systems in order to meet the needs of students in different social and cultural settings.
- States have an obligation to ensure access to tertiary education for under-represented groups, including through the provision of financial support and, where appropriate, special entry programmes.

#### *Plan of Action*

- Where a State has not been able to provide the full range of educational entitlements it must develop and implement a detailed Plan of Action for the progressive implementation of these entitlements.
- States should prioritise the introduction of compulsory and free primary education for all. The Plan of Action should however also include a commitment to the progressive realisation of free and compulsory secondary education.
- The obligation to develop and implement a Plan of Action is a continuing one. The Plan of Action must include a means for periodic review and accountability to monitor and measure the progress of its implementation. It should include and fix targets which can be achieved within a reasonable number of years.



- Where a State does not have the financial resources and/or the technical expertise to develop and implement a Plan of Action, development agencies and developed countries will assist and co-operate.

(v) the nature and scope of the obligation of the State to use the maximum of its available resources

- States are not obliged to allocate all of their resources to education. An internationally recommended level of funding is either 20% of the national budget or 6% of GNP. States must allocate resources efficiently, effectively and equitably and without negatively affecting or impairing the progressive realisation of other rights.
- Where available resources are insufficient to fulfil the State's obligation in relation to the right to education, the State must seek international cooperation and assistance. Attention is drawn to paragraph 48 of the Dakar Framework for Action 2000, where a commitment was made by all nations that no country seriously committed to Education for All will be thwarted in the achievement of their goals by lack of resources.
- States should not compromise their obligation to fulfil the right to education when seeking and securing international financial assistance. International aid funds intended for education should not be diverted to other uses, even temporarily.
- Regardless of the level of economic development, including in times of extreme resource constraints, whether caused by recession, structural adjustment or by other factors, States still have an obligation to protect the right to education.

- In times of financial restraint priority should be given to primary education (but without undue detriment to secondary, technical, vocational or tertiary education). Special attention should be paid to the rights of the most vulnerable and disadvantaged segments of the population. States should ensure the efficient allocation of resources and, in particular, by the development of innovative and creative low-cost programmes that reach as many students as possible.

(vi) The nature and scope of the obligation to ensure non-discrimination and equality of opportunity in access to education, including access to education for non-nationals, refugees, internally displaced persons, people living with disabilities and other minorities;

- International law requires States to provide education in an inclusive and non-discriminatory manner and to give legal effect to and enforce the right to be free from discrimination.
- States are required to provide appropriate education to internally displaced children and child refugees. Such education must take into account any special needs those children have including trauma counselling, language training and any skill training necessary for them to play a full and constructive role in society.
- States are required to meet the special needs of children with disabilities in accordance with Article 23 of the CRC. This means that programmes and facilities should be adapted to accommodate the special needs of these children. Such programmes must be designed to ensure that the child achieves the fullest possible social integration and individual development including his or her cultural and spiritual development.

- States should enact and clarify laws to advance policies that adapt educational services in a manner that provides access to populations with special needs (within the limits of available resources).

(vii) The nature and scope of the obligation to ensure gender parity and gender equality in education

*Equality*

- The education of girls and women is inseparably linked to the promotion of social justice, democracy and development.
- Women and girls have an equal right to the enjoyment of the right to education and States are under an obligation to ensure gender parity and gender equality in the provision of education.
- States must apply the same admission criteria for males and females at all levels of education. The admission criteria may however take into account existing economic, social, cultural and gender inequalities.
- States should promote and encourage the enrolment of members of under-represented groups and provide support to increase the academic preparation and performance of these students.
- Curricula for all students must promote equality and non-discrimination and eliminate any stereotyped concept of the roles of men and women in society. Textbooks should be revised and teaching methods adapted to achieve this.



- States must ensure that teacher-training institutions improve gender parity in teacher recruitment and graduation. They should incorporate a gender perspective in courses for trainee teachers of both sexes and develop gender training programmes for both female and male serving teachers.

#### *Barriers*

- States must identify the extent to which aspects of customs, traditions and any other socio-cultural factors impede egalitarian treatment of girls and women in educational institutions and take steps to eradicate those impediments.
- States must develop and apply qualitative and quantitative indicators to identify and address the barriers to girls' and women's full enjoyment of their right to education, including discrimination and financial disadvantage.
- States must ensure that families desist from giving preferential treatment to boys in education. Measures should include information and awareness raising campaigns, as well as other actions necessary to remove the barriers to female education. Such measures may include financial support to families in need.
- States should be aware of and take measures to prevent both boys and girls from dropping out of educational institutions, in particular secondary and higher institutions, by reason of financial constraints.

#### *Safety*

- States must ensure the safety of children, in particular girls, on their way to and from school.

- States must provide a safe environment at school for all children. States must ensure that both girls and boys are safe at school from acts of bullying, sexual harassment and violence (including corporal punishment) and provide a mechanism to enable girls, in particular, to report in complete confidentiality and security any such acts.
- States should provide private sanitation facilities for girls at educational institutions.

#### *Participation*

- States must guarantee sufficient physical space for girls' play and sport on an equal footing with boys.
- States must allow girls and women to play an active part in identifying their educational, social and cultural needs.

#### *Health and Pregnancy*

- States should take measures to ensure that girls' education is not interrupted or terminated by early marriage and motherhood.
- Educational programmes should be organised for girls and women who have not been able to attend school or who have left school prematurely, particularly through pregnancy and motherhood. Pregnant girls and women and mothers should be encouraged to continue schooling, and support facilities should be provided, preferably in a school environment that can cater to their special needs (including food and adequate child care). Their families should be encouraged to support them in their education.
- Educational institutions should not exclude or expel girls or women from formal schooling solely because of pregnancy or early motherhood.



- States should provide access to education on health and hygiene matters for both sexes to ensure the health and wellbeing of the whole family. This should include access to information and advice on family planning.

(viii) The nature and scope of the obligation to respect religious and cultural practices within schools and other educational institutions

- The State must ensure that the religious and cultural identity of students is respected in educational programmes and institutions. This goal should be included in all National Plans of Action on the Right to Education and/or National Action Plans for Education for All (EFA).
- Every educational institution must respect and accommodate the religious and cultural traditions, customs and practices of its students.
- Religious and cultural tolerance should be promoted by all educational institutions. It is a prerequisite to the promotion of religious and cultural tolerance that children are made acquainted with the tenets of religions and cultures which are different from their own.
- Respect for cultural identity includes as a very important component respect for a person's language. Consequently children should have a right to express themselves in their language in all educational institutions.
- Subject to the availability of adequate resources, all children should be given the opportunity to gain initial literacy in their mother tongue, in State-funded institutions, except where there are significant practical impediments (such as the limited number of children in a particular institution wishing to be taught in that language).

- Children who have been taught initial literacy in their mother tongue should be provided with an opportunity to make a successful transition to the national or official language of the State. However, where possible, they should continue to have the opportunity to study their mother tongue.
- No educational institution, whether State-funded or not, may discriminate on the prohibited grounds. The setting up of special separate schools for girls and boys or for religious or linguistic groups is not, however, deemed to be discrimination as long as attendance is optional, the schools comply with minimum standards set down by the State and there are other mainstream institutions of similar quality for children who do not belong to the group.

(ix) The nature and scope of the obligation to provide quality education and to establish minimum education standards and an effective and transparent system to monitor such standards

*Quality*

- Quality education at all levels is critical to economic and social development and is therefore a national imperative.
- States should adopt curricula content and processes which are learner-centred. Educational programmes must cater for the full range of learning needs and abilities, and the stages of cognitive, social and emotional development of the student.
- Curricula must be adapted to meet the learning needs of a more complex and technological society. The development of knowledge, skills and attitudes required for independent learning and problem solving is essential.

- Assessment strategies must be appropriate to the aims of the curricula and matched to the learning needs of individual students. Access to appropriate learning resources is essential.

#### *Minimum standards*

- All persons, especially those most disadvantaged and vulnerable, have the right as a minimum to receive a good quality basic education which focuses on the whole person and is adaptable to individual needs.
- The State must identify appropriate quality standards for all levels of education and review and update these periodically.

#### *Vital role of Teachers*

- Public perception of teachers and teaching must be enhanced and incentives to identify, attract and retain good teachers must be provided. The State must endeavour to provide suitably qualified teachers for all students at all levels.
- There must be ongoing training of existing teachers and support for professional development, including the provision of paid study leave.
- Teachers must be trained to make learning environments attractive, more inclusive and welcoming to students. Educational institutions must support these efforts.

#### *Monitoring*

- The State must develop responsive, participatory and accountable systems of educational governance and management.



- States must establish and maintain a transparent and effective system which to monitor whether or not proper educational objectives are being met by the State and by individual educational institutions. States must maintain, update and publish at least annually qualitative and quantitative data on the progress towards realisation of the National Plan of Action on the Right to Education and/or the National EFA Plan.
- NHRIs should develop a National Plan of Action on the Right to Education which would be complimentary to the National EFA Plan and should assist in revising the latter from a rights-based perspective. NHRIs will also have a vital role in documenting violations of the right to education and monitoring progressive steps taken towards its realisation.
- As a matter of transparency States should be ready for and permit an audit of educational statistics and data by its NHRI, the Special Rapporteur, Treaty Bodies and other UN Agencies.

(x) The nature and scope of the obligation of the State, within the context of the right to education, to ensure the realisation of the right to human rights education for all

- According to Article 26(2) of the UDHR education is directed to the dual purpose of the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. This theme has been continued in the ICESCR and other international instruments and commentaries.
- As stated by the General Assembly Resolution of 23 December 1994 proclaiming the UN decade for human rights education:

- Human rights education should involve more than the provision of information and should constitute a life-long process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies;
- Human rights education contributes to a concept of development consistent with the dignity of women and men of all ages that takes into account the diverse segments of society such as children, indigenous peoples, minorities and disabled persons.
- Human rights education should strengthen the national and international commitment to the furtherance of human rights, and be directed at enabling all persons to participate effectively in society, and to protect themselves and others from human rights violations.
- The CRC Committee has stated that the human rights education of children should start with the reflection of the human values in the daily life of children as well as their communities and their families.
- NHRIs have a vital role to play in providing human rights education, encouraging others (including the State) to provide human rights education, and implementing the three-year World Programme on Human Rights Education (2005 – 2008).

(xi) the nature and scope of the obligation to ensure academic freedom and the autonomy of educational institutions

*Academic Freedom*

- The right to education can only be fully enjoyed if it is accompanied by the academic freedom of staff and students involved in all kinds and levels of education.

- Members of the academic community, individually and collectively, must be free to pursue, develop and disseminate knowledge and ideas, through research, study, teaching, discussion, documentation, creation, writing and publication.
- In recognition of academic freedom the State should actively support a free and independent media, and encourage the publication and dissemination of academic writings and opinions.
- The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair distribution of contrary views, and to treat all without discrimination on any of the prohibited grounds.

#### *Autonomy*

- There must be an appropriate degree of self-governance by educational institutions in relation to their academic work, standards, management and related freedoms.
- For institutions providing basic education any autonomy must be subject to the compliance with national standards and curriculum frameworks. The school system must be accountable to learners, parents and communities.

#### (xii) the nature and scope of the obligation to respect parents' and legal guardians' freedom of choice of educational institution and educational programme

- Children (subject to their age and maturity), their parents and legal guardians have the right to choose educational programmes, institutions or services which accord with their own beliefs and convictions.



- This choice must be subject to the obligation to promote the best interests of the child, including ensuring a proper quality of education and the meeting of minimum education standards.
- Any admission policies for educational institutions (including those based upon residential qualifications) must be non-discriminatory as described above in Question (viii).
- States must respect the freedom of individuals to provide religious instruction in schools established by members of that religion.
- States have an obligation to respect the right of members of a particular language group to establish a school and to use their language in that school.
- Parents, legal guardians and children (subject to their age and ability) should be able to choose between specialised or mainstream schools for children with special learning needs. The State has an obligation to provide appropriate facilities and programmes (and additional support including, for example, teacher-aides) which cater for their special needs and enable those children to realise their full potential.

(xiii) the nature and scope of the obligation of States to receive and to provide international assistance and cooperation

- States have an obligation to seek international assistance and co-operation if their resources are not sufficient to fulfil their obligations in relation to the right to education.
- Those receiving international assistance should, in allocating funding, give particular priority to the most vulnerable and disadvantaged groups within society.

- According to internationally recognised principles, the international community has an obligation to assist and co-operate in the realisation of the right to education. This could include committing funds and expertise, including technical expertise and resources. The international community must refrain from adopting and implementing policies which obstruct or violate the right to education in developing countries.

(xiv) The nature and scope of the obligation of non-state actors, including international financial institutions and trans-national corporations, to protect and promote the right to education

- The realisation of the right to education requires concerted efforts by individuals, their families and their communities, and the involvement of all of society, including the private sector, the mass media and religious institutions. International organisations and agencies and regional bodies also have a vital role to play, as do trans-national corporations and organisations and NGOs.
- States are required to put in place laws and mechanisms to ensure that no one within the reach of that State's jurisdiction violates the right to education.



# 법률가자문위원회(ACJ) 교육권 배경문서 제1장 국문번역

## 도입

1948년 세계인권선언 (이하 UDHR)은 “모든 사람은 교육받을 권리가 있다”라고 규정하는 국제인권법의 근간을 마련했다. 지난 10년간 교육권 실현 기본 틀의 점진적인 발전이 이루어졌다. 하지만, 동시에 2006년에 최소한 23개국이 2015년까지 최소한의 보편적인 초등교육을 달성시키지 못할 것이다. 따라서, 인권기구가 교육권이 발전해온 방법을 분석하고 교육권 실현에서 인권기구가 할 수 있는 역할을 고려해보는 것은 시의적절하다.

이 배경보고서(background paper)의 목적은 아태 지역 내에서 교육권의 실현에 기여할 수 있는 다양한 인권을 바탕으로 한 접근법을 평가하기 위함이다. 교육권을 강조하는 국제적인 텍스트의 세부분석이 제공된다. 또한, APF를 대표한 국가들의 교육권에 대한 기존업무와 관행에 대한 정보가 포함되어 있다. 이 배경보고서가 인권기구를 도와 교육권에 대한 포괄적인 전략과 관행을 알려주는 데 분석적 도구를 발전시킬 수 있기를 희망해본다.

## 1. 교육권에 대한 국제인권규약 (instruments)

다양한 교육권의 차원을 검토는 데 이용될 수 있는 국제적인 제도와 도구들이 있다. 이 점을 설명하기 위해, 1995년 현재, 교육권을 언급하고 있는 국제조약과 문서들에 대한 개론은 이미 41개의 출처를 열거하였다. 그 이후로, 이 리스트는 계속해서 증가하고 있다.

이 항은 현재 형태로 교육권을 근간을 마련한 주요 제도, 해석적 도구 및 문서를 열거하고 있다. 그럼에도 불구하고, 교육권을 둘러싼 개념적 명확성에 기여하기 위해서 모든 열거된 출처가 분석되지는 않을 것이라는 것을 강조하는 것이 중요하다. 국제인권법에서 교육권에 대한 권위 있고, 법적 구속력이 있는 출처를 검토하는 것이 최우선 순위였다.

### 1.1 국제규약들 (International Instruments)

다음은 포함한 대부분의 국제인권조약들은 교육권을 언급하고 있다. “

- 세계인권선언
- 모든 형태의 인종차별철폐에 관한 국제협약
- 시민 및 정치적 권리에 관한 국제협약
- 경제, 사회, 문화적 권리에 관한 국제협약
- 모든 형태의 여성차별철폐에 관한 국제협약
- 아동에 관한 국제협약
- 이주노동자와 그의 가족들의 권리보호에 관한 국제협약

- 장애인의 권리와 존엄성 보호와 증진에 관한 포괄적이고 통합적인 협약 초안

교육권을 언급하고 있는 여타 국제협약에는 다음이 있다.

- 난민지위에 관한 협약
- 교육차별에 관한 유네스코 협약과 기술훈련 및 직업훈련에 관한 유네스코 협약
- 최저 고용연령에 관한 ILO 협약 (No. 138)
- 최악의 형태의 아동노동금지와 철폐를 위한 즉각적 조치에 관한 ILO 협약 (No. 182)

인권기구들이 APF 회원인 17개 국가의 협약비준 상태는 표 1(table 1)에 나와있다. (교육권과 관련된 주요 인권제도)

## 1.2 지역적 규약

교육권은 다음의 지역적 인권제도에 포함되어 있다.

- 미주인권협약과 경제, 사회, 문화적 권리 분야의 인권에 대한 추가의정서 (‘산살바도르 협약(Pact of San Salvador)
- 인간과 인민의 권리에 관한 아프리카 헌장(African Charter on Human and Peoples’ Rights), 아프리카 여성의 권리에 관한 의정서, 아동의 권리와 복지에 관한 아프리카 헌장
- 인권보호와 기본적 자유의 협약에 관한 협정서, 유럽 사회헌장(개정판), 지역 또는 소수 언어를 위한 유럽헌장 (European Charter for Regional or Minority Languages)

유럽과 아메리카 주 인권메커니즘의 판례법도 교육권의 성격과 범위를 명확히 하는 데 기여해오고 있다.

## 1.3 유엔 조약기구들의 일반논평/권고안

교육권에 대한 일반/특별 조항들은 유엔의 인권위원회들이 하는 일반논평/권고안에 의해서 더욱 발전하고 있다. 일반논평과 권고안은 당사국의 보고와 이행과정을 지원할 목적의 국제인권조약들에 포함되어 있는 조항들의 의미에 관한 권위있는 발언이다.

교육권의 의미, 정도와 범위를 분석할 때는 다음의 일반논평/권고안이 심의되어야 한다.

- 경제, 사회, 문화권 위원회(이하 CECSR)의 일반논평 3, 10, 11, 13, 16, 18
- 아동권 위원회의 일반논평 1
- 모든 형태의 여성차별철폐위원회(이하 ‘CEDAW’)의 일반논평 3

#### 1.4 여타 해석적 도구들

국제법 전문가들은 폭넓게 수용되고 광범위하게 언급되어 온 ICESCR의 핵심조항들의 해석에 대한 견해를 마련한 원칙과 지침들을 발전시켜왔다. 다음의 도구들은 ESCR과 관련된 의무의 법적 성격을 이해하는 기본 틀을 제공한다.

- 경제, 사회, 문화적 권리에 관한 국제협약 이행에 대한 림버그 원칙 (이하 ‘림버그 원칙’)
- 경제, 사회, 문화적 권리 침해에 관한 마스트리히트 가이드라인 (이하 ‘마스트리히트 가이드라인’)
- 여성의 경제, 사회, 문화적 권리에 관한 몬트리올 원칙 (이하 ‘몬트리올 원칙’)

#### 1.5 추가 출처

다양한 정부간 단체, 기구와 ESCR을 다룰 수임사항이 있는 인권전문가들이 교육권에 대한 여러가지 측면을 모색해왔다. 가장 중요한 언급은 다음 문서에 포함되어 있다.

- (i) 비엔나선언과 행동계획, (ii) 베이징 선언과 행동강령, (iii) 더반 선언과 행동계획과 같은 유관된 유엔회의의 결과문서
- 교육권에 관한 유엔 특별보고관과 교육권을 더 잘 이해시키는 데 기여해온 유엔 전문가들의 보고서. 특히, (i) “인권교육을 포함한 교육권 실현”에 관한 Mustapha Mehedi의 실무보고서(working paper)와 (ii) ICESCR 선택의정서 초안의 문제에 대한 독립전문가의 보고서.
- 유엔 새천년선언과 새천년개발계획(MDGs)
- 모든 이를 위한 교육에 관한 세계선언과 다카르 행동 기본틀: “모든 이를 위한 교육: 우리의 공동책무(collective commitments) (다카르 행동 기본 틀)
- 기술교육과 직업교육에 관한 수정된 권고안
- 인권교육을 초등, 중등 교육제도에 통합시키기 위한 세계인권교육계획 1단계 (2005-2007) 포함한 유엔 인권교육 행동계획 10년.
- 이슬람의 인권에 관한 카이로 선언, 인권에 관한 아랍헌장

## 2. 교육권과 현재의 국제적 맥락

최근 10년간, 양질의 교육에 접근과 인권발전간의 상관관계가 확인되었다. 그 결과, “모든 이를 위한 인권”을 회복할 수단으로서의 교육권의 모멘텀은 커지게 되었다.

교육권이 “기본적인 학습욕구(needs)”라는 인식을 넘어섬에도 불구하고, 모든 이를 위한 세계 교육선언 제 1조 (1)항은 교육적 절차와 연계된 다양한 이슈/분야의 개괄을 제공한다.

“모든 이-아동, 청소년, 성인-는 기본적인 학습욕구를 맞추기 위한 교육기회로 혜택을 받을 수 있어야 한다. 이들 욕구는 필수적인 학습도구(식자, 구두표현, 수리능력, 문제해결 등)와 기본적인 학습내용(지식, 기술, 태도 등) 모두로 구성되어 있는 데, 이들은 인간이 생존할 수 있고, 완전한 역량을 개발할 수 있고, 존엄성있게 살고 일할 수 있고, 발전에 완전히 참여할 수 있고, 삶이 질을 개선시킬 수 있고, 정보를 바탕으로 한 결정을 내릴 수 있고, 계속 학습할 수 있는 데 필요하다. 기본적인 학습욕구범위와 이 욕구에 어떻게 부합해야 하는지는 개별 국가와 문화마다 다르고, 불가피하게 시간에 따라 변한다. ...”

지식/기술/정보에 대한 욕구는 세계 어디서든 존재하기 때문에, 모든 개인은 교육에 접근하고, 교육의 혜택을 받을 고유한 권리가 있다. 이러한 맥락에서, 교육권을 둘러싼 당대의 논의는 기본적인 교육욕구에 부합하는 것을 넘어선다. 대신에, 절박한 문제는 국가가 어느 정도로 교육권을 제공할 의무가 있어야 하는가 이다. 이러한 맥락에서, 국내이행이라는 도전은 교육권을 보장하는 것이 포괄적이라는 사실과 연계되어 있다. 그에 따라서, 교육권의 점진적인 실현은 모든 인권의 인정, 향유, 그리고 행사와 연계되어 있다.

점점 상호 의존하는 세계에서, 고려해야 할 또 한가지 중요한 측면은 교육권과 일할 권리의 관계이다. 이러한 점에서, 다양한 수준의 정식교육과 직업훈련을 제공함으로써 국가들은 세계시장에서 경쟁하고 경제성장을 추구할 수 있게 한다. 하지만, 많은 인권기구나 전문가들은 교육의 장점이 단순하게 경제적인 측면에서 측정되지 말아야 하고, 인권을 기반으로 한 교육적 접근이 중요하다는 것을 계속 강조한다.

### 3. 교육권과 인권기구

파리원칙은 인권기구의 기본구조와 권한을 마련하고 있다. 가장 중요한 것은, 인권기구가 정부와 정부의 영향력으로부터 독립해야 하고 다음의 권한을 가져야 한다는 것이다.

- 인권침해에 관하여 국가에 보고하고 권고안 마련
- 국내법을 국제의무와 조화롭게 함
- 국제인권제도(instruments) 비준 장려

파리원칙을 철저히 준수하여 설립되고 독립성과 자율성을 향유하는 인권기구는 관련국가 당국의 ESCR(교육권 포함) 보호와 증진을 모니터하고 국가와 협력할 수 있는 고유한 위치에 있다.

국가의 ESCR 이행을 감시하는 데 있어 특수한 인권기구의 역할은 국제 NGO와 다양한 인권기구, 메커니즘 및 기구들의 더 많은 관심을 받고 있는 이슈이다. 이러한 점에서, CESCR은 “인권기구는 모든 인권의 불가분성과 상호보완성을 증진시키고 보장하는 데 잠재적으로

핵심역할을 한다”는 점을 주목하였다. 또한, 인권기구가 적극적으로 인권을 기반으로 하여 ESCR 이행이 접근법이 폭넓게 수용되고 있다.

인권교육에 관하여, 많은 국가에서 인권기구들이 인권기준에 대한 정보의 인식과 이용성을 증대시켜온 국가 홍보를 주도했다는 것을 언급하는 것은 중요하다. 동시에, 인권을 정신학 교제도에 주류화시키려는 노력은 전세계적으로 인권기구에 도전을 제기해왔다.

### 5. 배경보고서(background paper)의 범위

이 배경보고서는 3 부분으로 나뉘어져 있다. 1장은 국제 및 지역합의와 관례법의 특별한 분석을 가진 위임사항에서 제기된 각 문제점을 다룬다. 교육권을 적절하게 분석하기 위하여,, 위임사항에 제기된 문제점은 주제별로 다루어졌다. 2장은 회원기구 국가의 법과 관행의 상태를 설명하고 있다. 결론은 1장과 2장을 기반으로 하여 ACJ가 내릴 수 있는 가능성 있는 결과를 담고 있다. 이들 결과는 지침으로써의 역할이지 ACJ가 할 수 있는 결과에 제한을 두기 위함은 아니다.

이 보고서의 초점은 인권기구가 APF의 회원인 국가들의 법이다. 즉, 아프가니스탄, 호주, 피지, 인도, 인도네시아, 요르단, 말레이시아, 몽골리아, 네팔, 뉴질랜드, 팔레스타인 점령지역, 필리핀, 카타르, 한국, 스리랑카, 태국, 티모르 레스테가 이들 국가들이다.

이 배경보고서와 ACJ가 위임사항 심의 후 마련한 최종보고서에 들어있는 정보로 회원 인권기구가 수임사항, 특히 정부 자문역과 인권옹호라는 수임사항을 이행할 수 있게 도와줄 것이다.

표 1. 교육권과 관련된 주요 국제협약의 비준상태

국가	ICESCR	CERD	CEDAW	CRC	유네스코 교육 차별	ILO NO. 138	ILO NO. 182
아프가니스탄	x	x	x	x			
아르메니아	x	x	x	x	x	x	x
호주	x	x	x	x	x		x
아제르바이잔	x	x	x	x		x	x
바레인		x	x	x			X
방글라데시	x	x	x	x			X
부탄		s	x	x			
브루나이					x	x	
캄보디아	x	x	x	x		X	

중국	x	x	x	x	x	x	x
북 아일랜드				X			
북한	x		x	x			
마이크로네시아			x	x			
피지		x	x	x		x	x
인도	x	x	x	x			
인도네시아	x	x	x	x	x	x	X
이라크	x	x	x	x	x	x	X
이란	x	x		x	x		X
이스라엘	x	x	x	x	x	x	x
일본	x	x	x	x		x	X
요르단	x	x	x	x	x	x	x
카자흐스탄	x	x	x	x		x	x
국가	ICESCR	CERD	CEDAW	CRC	유네스코 교육 차별	ILO NO. 138	ILO NO. 182
키리바티				X			
쿠웨이트	x	x	x	x	x	x	X
키르기스스탄	x	x	x	x		x	X
라오스	x	x	x	x		x	x
레바논	x	x	x	x	x	x	X
말레이시아			x	x		x	x
몰디브		x	x	x			
마셜아일랜드				X			
몽골리아	x	x	x	x	x	x	x
미얀마			x	x			
나우루		s		X			
네팔	x	x	x	x		x	X
뉴질랜드	x	x	x	x	x		X
오만		x		x		x	X
파키스탄		x	x	x			X
팔라우				X			
팔레스타인	N/A	N/A	N/A	N/A	N/A	N/A	N/A
파푸아뉴기니		x	x	x		x	x
필리핀	x	x	x	x	x	x	X
카타르		x		x			X

한국	x	x	x	x		x	x
사모아			x	X			
사우디아라비아		x	x	x	x		
싱가포르			x	x		x	X
솔로몬군도	x	x	x	x	x		
국가	ICESCR	CERD	CEDAW	CRC	유네스코 교육 차별	ILO NO. 138	ILO NO. 182
스리랑카							
시리아							
타지키스탄							
태국							
티모르 레스테							
통가							
투르크메니스탄							
투발루							
아랍에미레이트							
우즈베키스탄							
바누아투							
베트남							
예멘							
총: 59							
조인국							

## 제 1장

교육권에 대한 유엔특별보고관 (이하 ‘UNSRE’)이 주목한 바대로, “교육권은 모든 수준-국제적으로, 국내적으로-에서 인정되고, 증진되고 보호되며, 현재 벌어지고 있는 세계화와 현지화의 이중과정 사이에서 상호작용을 완전하게 반영하고 있다.” 2장에 개괄된 국가적인 노력을 개념화하기 위한 이론적인 기본 틀을 제공하기 위하여, 1장에서는 교육권에 대한 규범적 기준과 의무를 설명하고자 한다. 위임사항에 제기된 각각의 문제점은 국제 및 지역적 규약과 관례법을 구체적으로 분석하면서 다루어진다. 교육권을 적절하게 분석하기 위하여, 위임사항에 제기된 문제점은 주제별로 다루어졌다.

대부분의 사례를 보면, 1장에서 제공되는 분석은 교육권을 강조한 특정협약과 국제적인 텍스트에서 직접 기원을 두고 있다. 협약 등의 중요성 때문에 당사국의 법적으로 구속력을 발생시키는 국제인권규약의 검토는 더 철저하다. 가능한 경우에, 특히 교육권과 관련된 출처는 위임사항에 마련된 일반문제에 대응하기 위하여 이용되고 있다. 덧붙여서, 교육권에 관한 국제법 체계에 대한 언급도 포함된다.

### 1. 국제법에서 교육권

교육분야에서 정부와 정부간 기구들의 노력은 주로 모든 이를 위한 초등교육의 필요성에 중점을 두어왔다. 이러한 맥락에서, 비록 초등교육의 보장이 교육권의 요소이지만, 때때로 이 접근법은 인권을 주류화하는 과정과 일치한다. 사회에서 가장 취약한 아동을 위한 초등교육을 의무적으로 그리고 무상으로 제공하는 것은 중요한 반면에 교육권 실현을 실천하지는 않고 있다. 따라서, 교육권 실현을 위한 단계는 i) 교육권이 무엇을 포함하는가? ii) 교육권을 실현시키기 위해서는 무엇이 필요한가와 같은 개념적인 명확성이 필요하다.

#### 특징, 요소, 기준: 교육권이 무엇을 포함하는가?

##### 1.1. 교육권: 인간의 욕구, 인권

모든 다른 인권들과 마찬가지로, 교육권은 “개인과 국가와의 관계, 그리고 개인들간의 관계에 모두에 있을 수 있다.” 따라서, 교육권이 다른 인권들과 공통점이 있다는 것이 중요하다. 즉,

- **고유성과 불가침성:** UDHR와 다른 텍스트에서 확립된 것과 마찬가지로, 모든 이는 인종, 민족, 성별, 국적, 사회, 경제적 상황, 건강상태 등과 관계없이 인간



이기 때문에 교육권을 보유한다.

- 교육권은 모든 다른 인권들과 연결되어 있으므로, 이들 인권들과 불가분의 관계에 있다.
- 교육권은 모든 이에게 평등하게 적용될 수 있다. 이러한 점에서, 원칙적으로 법이 규정하는 제약이 있기는 하겠지만, 교육권은 **보편적인** 권한이다.

## 1.2 교육권의 목적

한 개의 국제협약에 포함되어 있는 “교육”의 유일한 정의는 교육차별금지 협약(Convention Against Discrimination in Education)에 마련되어 있다. 비록 교육권이 상당히 많은 국제인권규약에 확인되어 있지만, 대부분의 규약들은 교육의 목적에 초점을 두고 있다. 다음은 교육목적의 일반적인 수용을 보여주는 사례들을 포함하고 있다.

UDHR 제 26(2)항은 다음과 같이 나와있다. “교육은 인격의 완전한 발전과 인권 및 기본적 자유에 대한 존중의 강화를 목표로 하여야 한다. 교육은 모든 국가들과 인종적 또는 종교적 집단간에 있어서 이해, 관용 및 친선을 증진시키고 평화를 유지해야 한다.”

ICESCR 제 13(1)항은 이를 재확인하고, 두 가지 요소를 더 첨가한다. “이 규약의 당사국은 모든 사람이 교육에 대한 권리를 가지는 것을 인정한다. 당사국은 교육이 인격과 인격의 존엄성에 대한 의식이 완전히 발전되는 방향으로 나아가야 하며, 교육이 인권과 기본적 자유를 더욱 존중하여야 한다는 것에 동의한다. 당사국은 나아가서 교육에 의하여 모든 사람이 자유사회에 효율적으로 참여하며, 민족간에 있어서나 모든 인종적, 종족적 또는 종교적 집단간에 있어서 이해, 관용 및 친선을 증진시키고, 평화유지를 위한 국제연합의 활동을 증진시킬 수 있도록 하는 것에 동의한다.”

CRC 제 29(1)항은 교육이 유사한 목표를 가져야 한다는 것을 확립하며 이들 목표에 있어 세부적인 방법으로 확장해나간다. 예를 들어, 제 29(1)(a)항은 교육을 “아동의 인격, 재능 및 정신적, 신체적 능력의 최대한의 계발”에 목표로 하는 과정이라고 지칭하고 있다. 또한, 제 29(1)(c~e)항은 다양성-문화, 언어, 종교, 소수인종/인종-뿐만 아니라 성 평등과 환경에 관하여 다루고 있다.

이들 아이디어들이 지역적 인권제도안에서 증진되어온 방법의 사례로써, 산 살바도르협약의 제 13(2)항에는 다음과 같이 나와있다. “이 의정서의 당사국은 교육이 인격과 인간의 존엄성을 최대한 발전시키는 데 목표를 두어야 하며, 인권, 사상적 다원성, 기본적 자유, 정의와 평화를 측면을 강화시켜야 한다는 데 합의한다. 또한, 교육이 모든 사람들이 민주적이고 다원적인 사회에 효과적으로 참여할 수 있게 하고, 만족할만한 존재감(decent existence)을 달성할 수 있게 해야 하고, 모든 국가, 인종, 소수인종, 또는 종교단체간에 관용과 우의를 이해시켜야 하고, 평화유지를 위한 활동을 증진시켜야 한다는 데 합의한다.”

이미 설명한 대로, 대부분의 인권규약들은 교육이 “인격의 완전한 발전을 목표로 삼는다”고

규정하고 있다. 따라서, 이는 교육권이 인간계발의 선결조건이라는 것을 암시한다. 또한, ICESCR에서 표명된 대로, 교육권은 소외된 여성과 아동들이 가난에서 벗어날 수 있고, 지역사회에 완전하게 참여할 수 있는 수단을 습득할 수 있는 수단이다.” 그럼에도 불구하고, 이미 UNSRE에서 설명된 대로, 교육과 빈곤감소사이의 중요한 연계를 고려할 때조차도, 교육법에 대해 권리를 근거로 한 접근법(‘RBA’)은 교육이 “다른 목적을 달성하는 수단보다는 그것 자체로 목적으로써” 고려되어야 한다. 애초에, 교육을 실현하기 위한 RBA는 여러 국제인권조약과 교육차별에 관한 협약에서 정의된 사회배제와 차별에 맞서려는 의지를 내포한다.

또한, 교육의 목적은 다카르 기본 틀과 같은 다양한 정책문건들에서 재확인되어왔다는 것을 주목하는 것이 중요하다.

모든 이를 위한 세계교육인권선언에 따르면, 평생학습은 다음을 포함한다.

- (i) 조기 아동보육(care)과 교육
- (ii) 아동을 위한 무상, 의무, 양질의 교육 접근
- (iii) 청소년과 성인의 욕구를 충족시켜주는 학습 및 삶의 기술프로그램
- (iv) 성인들 간의 식자율 증가 (성평등 고려)
- (v) 성인을 위한 기본교육과 지속적인 교육 보장
- (vi) 교육의 실질적 평등 달성을 통하여 차별철폐

### 1.3 교육권에 대한 규범적 기준

이 항은 유엔과 지역인권규약에서 참고할 수 있는 교육권의 요소들을 개괄하기로 한다.

이러한 점에서, 국제인권법에 포함된 교육권에 대한 모든 규범적 기준의 조합은 이 항에서 논의될 요소들(elements and components)을 명확하게 지적한다.

**교육권**-모든 이를 위한 무상, 의무 기본교육

- 발전된 수준의 교육
- 기술교육 및 직업교육
- 차별금지과 평등
- 인권교육
- 정보권(right to information)
- 아동우선 (best interest of the child)
- 학문기관을 선택하고 설립할 자유
- 학문의 자유
- 문화적 다양성 존중

### 1.3.1 기본수준의 교육은 모든 이를 위하여 의무교육이고 무상이어야 한다.

교육의 목적을 둘러싼 어구가 대부분의 국제인권규약과 일치하는 것과 동일한 방식으로, 모든 이를 위한 의무, 무상교육이어야 하는 최저수준의 교육이 있다는 것은 뚜렷하다. 이러한 점에서, 이는 교육권의 핵심요소들 중이 하나라는 것을 확인하는 것이 가능하다. 따라서, 각 요소에 관한 더 세부적인 분석이 아래에 제공되어 있다.

#### 최저수준의 교육: 초등/기본교육 (Primary and Elementary/Basic/Fundamental)

최저수준의 교육을 향유할 권리는 반드시 정식교육 (즉, 교실이나 인정학문교육기관)에 국한되지 않는다.

그럼에도 불구하고, 최저수준의 교육은 “개인의 능력개발에 매우 기본적인기 때문에 최저요구(minimum claim)로 적절하게 정의될 수 있다.” 나아가, 국제인권조약들의 조항들이 “초등교육과 기본교육(“primary education”, “elementary education”, “basic education”, “fundamental education”)” 이라고 정확하게 정의되지 않았음에도 불구하고, 이들 용어들간에는 밀접한 관계가 있다. 그러므로, 교육권의 점진적 실현은 국가와 사회 전체적으로 모든 개인이 초등교육으로 혜택을 받을 수 있는 조치를 취할 부담을 갖게 된다.

비록 초등(primary/elementary)교육과 기본(basic/fundamental)교육이 보완적이긴 하나, 이들 수준의 교육이 같은 것은 아니다.

- ▶ 초등교육: UDHR에 포함되어 있는 초등교육(elementary education)은 ICESCR/CRC에 포함되어 있는 초등교육(primary education)과 상관관계가 있다고 해석될 수 있다. 대개, 초등교육은 정식초등교육이라는 기본 틀 내에 있는 아동을 목표로 한 것이다. 그에 따라, CESCR은 모든 이를 위한 세계교육선언의 제 5조에 규정되어 있는 정의를 뜻한다. 제 5항은 “가족이 없는 아동의 기본적인 교육을 위한 주요시스템은 초등학교 교육이다. 초등교육은 보편적이어야 하며, 모든 아동의 기본적 학습욕구를 만족시키고, 지역사회의 문화, 욕구 및 기회를 고려해야 한다.”
- ▶ 기본교육: CESCR은 “일반적으로 기본교육은 모든 이를 위한 세계교육선언에 마련된 기본교육과 상응한다”고 규정했다.

ICESCR의 제 13조(2)(d)항에서 규정한 바대로, 기본교육은 “초등교육...을 받지 못하거나 마치지 못한 이들”에게 확장된다. 이러한 맥락에서, 이 요소는 연령, 성별, 인종/소수인종/국적 등을 불문하고 모든 이에게 교육권을 확장시킨다. 더 구체적으로 보면, 기본교육 보장은 즉, 글을 읽을 줄 모르거나, 여성/소녀, 장애인, 노인, 난민이라는 이유로 교육을 받지 못했기 때문에 소외되거나 차별 받거나 또는 사회에서 배제되는 이들에게 확장된다. 또 다른 면

에서는, ICESCR의 제 13(2)(d)항과 산 살바도르협약의 제 13(3)(d)항은 기본교육은 “가능한 폭넓게 장려되거나 강화되어야 한다”고 규정하고 있다. 따라서, 교육권은 특별한 도움이 필요하거나 특수한 상황에 놓여있는 계층은 교육권 이행에 대한 계획의 맥락에서 고려되어야 하는 것을 목표로 하고 있다.

이런 맥락에서 기본교육은 개인에게 폭넓은 교육권의 목적과 연계하여 사회에 참여하고 기여할 수 있는 데 필요한 최저수준의 지식/기술/정보를 제공해야 한다.

### 의무 및 무상교육

다수의 국제 및 지역적 인권규약들은 최저 수준의 “의무 및 무상”교육에 관한 조항들을 담고 있다. 전통적으로, 이들 조항들은 일반적으로 초등교육에 적용된다고 이해되었었다. 흥미로운 것은 고용과 결혼의 최저연령이 높아진 결과 전 세계적으로 초등교육을 넘어 의무교육 연수의 증가되고 있다. 그럼에도 불구하고, 학교제도는 국가마다 다르다는 것을 강조하는 것이 중요하다. 또한, 현실적으로 전 세계의 수백만 명의 아동들 특히 여아들과 특별한 도움이 필요한 아동(장애아동 등)이나 특수한 상황에 놓여있는 아동들(즉, 내부실향 아동 등)은 계속해서 교육에서 제외되고 있다.

이런 점에서, ICESCR의 제 14조는 특히 관계 있다.

“이 규약의 당사국이 되는 때 그 본토나 자국 관할 내에 있는 기타 영토에서 무상으로 초등의무교육을 확보할 수 없는 각 당사국은 계획상에 정해질 합리적인 연한 이내에 모든 사람에 대한 무상의무교육 원칙을 점진적으로 시행하기 위한 세부실천계획을 2년 내에 입안 채택할 것을 약속한다.”

“세부실천계획”을 따르면서 “의무 및 무상” 교육수준에 관한 인권의무의 성격과 범위에 대한 폭넓은 논의 때문에, 이들 요소들을 더 자세히 고려해 봐야 한다.

- 의무(compulsory): 원칙적으로, 그 어느 누구도 아동이 최저수준의 교육으로 혜택을 받지 못하게 해서는 안 된다. CESCR은 이미 다음과 같이 규정하였다: “부모, 후견인, 또는 국가 그 누구도 아동이 초등교육에 접근해야 하는 지 여부에 대한 결정을 선택이라고 할 자격은 없다.” 또한, 교육차별협약은 아동에게서 초등교육에 접근하지 못하게 하는 관행과 정책/법은 차별과 같다고 규정하고 있다.
- 무상(free of charge): 이 측면은 국제수준에서 불협화음을 조성하였고, 어느 정도는 논쟁이 되고 있다. 특히, 국가가 교육비를 감당해야 하는 지 여부를 결정하는 접근법은 다르기 때문이다. 이런 맥락에서, 일부 정부와 국제금융기관들은 사유화가 학교의 재정을 담당할 가장 효과적인 수단으로 고려하고 있는 반면에 그렇지 않다고 고려하는 쪽도 있다. UNSRE에서, “초등교육이 아동에게

는 무상이어야 한다는 요건에는 상당히 큰 합의가 있었지만, 부모를 위한 초등  
교육비용도 무상이어야 한다는 데는 합의가 없다.”

일반적으로, 국제인권법에서 개괄된 교육권 요소들은 CESR이 이 점을 명확히 했다고 고려  
한다. 이런 맥락에서, 일반논평 11의 제 7항은 다음과 같이 설명하고 있다.

“이 요건의 성격은 명백하다. 교육권은 아동, 부모 또는 후견인들에게 무상으로 초등교육을  
이용할 수 있게 하기 위하여 명시적으로 나와있다. 정부, 지방정부가 부담하는 비용과 기타  
직접비용은 교육권 향유를 하지 못하게 하게 하고, 교육권 실현을 위협하게 할 수도 있다.  
또한 이들 비용은 결과적으로 누적되어 상당히 높아진다. 비용제거는 필요한 행동계획으로  
해결되어야 하는 문제이다.”

덧붙여서, 사립학교와 “의무교육” 제공에 있어서 공교육 제도를 보완하기는 하지만, 공교육  
을 대체하지는 않는다. 이러한 맥락에서, 국제 및 지역차원에서 인권메커니즘으로 검토되는  
교육권에 대한 중요한 결정들은 국가가 사립학교보다 공립학교에 보조금을 더 많이 제공할  
수 있다고 주장하였다. 게다가, 국제법에서 규정된 대로, 교육권은 국가가 공립교육기관이나  
서비스에 재정을 배정하는 것이 필요하다. 따라서, 사립학교제도는 공교육제도를 보완하지  
만, 대체하지는 않는다.

- ▶ 행동계획 (plan of action): CRC와 CESCRC는 “무상및 의무” 교육수준 목적의  
포괄적인 국가행동계획을 발전시키는 중요성을 강조하고 있다. 더 구체적으로  
는, 이는 CRC와 ICESCRC의 당사국이 무시할 수 없는 지속적인 의무로 간주되  
고 있다. 게다가, CESCRC는, “계획하는 데 시민사회의 모든 부분의 참여는 중요  
하고, 정기적으로 진전을 검토하고 책임성을 확인할 수단도 중요하다”고 덧붙  
인다. 더군다나, 행동계획 개발이 교육권의 이행과 관련하여 국가의 의도와 접  
근을 보여주기 때문에, 교육권의 이행을 위한 최저요건으로 간주된다.

이 보고서의 3항에 나와있는 것처럼, 정책과 국가행동계획의 모니터링은 투명성, 협의, 의사  
결정 참여 보장에 필수적이다. 이러한 이유로, 교육 행동계획의 이행은 지속적인 피드백과  
영향평가를 받는 메커니즘을 동반해야 한다.

### 1.3.2. 높은 수준의 교육과 기술/직업훈련은 대체적으로 이용가능하고 적절한 수단으로 모 든 이에게 접근 가능해야 한다.

초등교육수준을 현실화시키는 데 어려움이 있는 결과, 많은 인권전문가들과 인권기구들은  
계속해서 중등/고등교육과 기술/직업교육을 “교육권의 주변요건”으로 취급하고 있다. 동시에,  
더 발전되고 특화된 교육수준에 대한 언급이 국제인권법과 맥락을 같이한다는 사실은 간과

되어서는 안 된다.

비록 교육권이 전체적이고 모든 수준과 유형의 교육을 포함하기는 하지만, 일반적인 교육제 공분석은 다음을 보여주고 있다. 즉, (i) 기본/초등교육은 모든 이들이 “이용할 수 있도록” 우선시되어야 하고, (ii) 중등, 직업/기술훈련은 모든 이들에게 일반적으로 이용가능하고 접근 가능해야 하며”, 그와 동시에 (iii) 더 높은 수준의 교육이 “모든 이들에게 평등하게 접근 가능해야” 한다. 이런 점에서, 국가는 최소한, 프로그램/서비스와 기관들의 존재와 기능이 교육권이 목적을 따르면서 보장하기 위하여 중등/고등/기술교육 수준을 정규화할 의무를 갖게 된다는 것이 뚜렷하다.

#### 중등교육과 기술/직업훈련: 의무교육과 무상교육?

ICESCR의 제 13(2)(b)항은 “기술 및 직업 중등교육을 포함하여 여러 가지 형태의 중등교육은, 모든 적당한 수단에 의하여, 특히 무상교육의 점진적 도입에 의하여 모든 사람이 일반적으로 이용할 수 있도록 하고, 또한 모든 사람에게 개방된다.”고 규정하고 있다.

앞서 언급했듯이, 몇 년간 많은 국가들은 중등교육과 기술/직업훈련을 “모든” 아동들에게 “이용가능하고 접근 가능해야 하는” 최저수준의 의무 및 무상교육의 일부로 포함시키고 있다. 이런 점에서 ICESCR에 포함된 어구는 시간이 지나면서 최저수준의 교육수준이 현실화 되면서 중등교육과 직업/기술훈련을 마칠 기회가 모든 아동들에게 확대되어야 한다는 것을 암시하고 있다. 그 결과, 교육에 관한 전향적인 행동계획은 이들 교육수준을 “의무로 그리고, 무상이”여야 하는 기본 패키지의 일부로써 제공할 목적이어야 한다.

#### 고등교육

3차 교육이라고 알려진 고등교육은 “모든 이들에게 평등하게 접근가능”해야 한다.

CESCR은 “만일 고등교육이 다른 문화와 사회적 배경에 있는 학생들의 요구에 대응하는 것이라면, 고등교육은 융통성 있는 커리큘럼을 가져야 하고, 원거리 학습 등 다양한 제공시스템을 가져서, 실제적으로는 중등교육과 고등교육 모두 “다양한 형태”로 이용 가능해야 한다”고 간주하였다. 동일한 방법으로, 위원회 (CESCR)는 기술/직업교육은 이 교육수준의 일부로 고려되어야 한다는 점을 명확히 했다. 이런 점에서, 고등교육이 “재능(capacity)”과 “능력(merit)”을 바탕으로 접근가능해야 한다는 아이디어는 실질적인 평등성의 원칙 측면에서 점진적으로 해석되고 재 심의되었다. 따라서, 차별받는 계층의 권리증진에는 고등교육에 접근할 수 있는 조건들이 생성되어야 한다.

몇 년간, 소외된 계층에 초점을 맞추는 인권메커니즘의 업무는 이러한 이해에 기여해오고 있다. 비록 무상교육이라는 기회는 고등교육에서 제공되어야 하며, 반드시 모든 이를 위하여 무상일 필요는 없다.

더 실제적인 차원에서, 전 UNSRE인 K. Tomasevsky는 공립대학생/기관은 더 효과적으로 시민 및 정치적 권리를 행사할 것이라는 점을 반복적으로 지적했다. 그 결과, 보통 대학은 재정 배정에 있어서 초등/중등/직업학교 시스템보다 더 혜택을 많이 보게 된다.

### 기술/직업교육

UNESCO에 따르면, 기술/직업교육(“TVE”)은 “일반지식과 더불어, 기술과 관련 과학연구, 실제기술, 노하우의 습득, 태도 및 경제 및 사회적 삶에서 직업과 관련된 이해와 관련된 모든 형태의 교육수준과정”으로 구성되어 있다.

ICESCR의 조항들에 들어있는 TVE와 관련하여, 위원회는 TVE가 “교육권과 일할 권리 모두의 일부를 형성하고, ... ‘지속적인 경제, 사회, 문화발전을 달성하고, 완전하고 생산적인 고용을 달성’하는 데 도움을 줄 수 있는 폭넓은 역할을 한다.” 더욱이, CESCR에 따르면, “일할 권리는 당사국이... 개인들이 일할 권리를 향유하는 데 도움을 주고 고용접근을 용이하게 하기 위한 기술/직업교육계획을 이행하기 위한 긍정적인 조치를 취할 것을 필요로 하고 있다.”

마지막으로, 유럽사회헌장은 TVE에 관련하여 가장 세부적인 내용을 담고 있다는 것을 주목하는 것이 중요하다. 이런 점에서 그 안에 들어있는 기준들은 국가행동계획 성안에 유용할 수 있다.

### 1.3.3 교육에서, 그리고 교육을 통한 평등과 차별금지

“명백하거나 숨겨져 있거나 여부와 관계없이... 차별은 아동의 인간적 존엄성을 해치고, 아동이 교육기회로 혜택을 볼 수 있는 재능을 저해시키거나 혹은 파괴할 수도 있다.”

평등하고 차별당하지 않을 권리는 교육권의 핵심요소를 구성한다. 개인에 대한 차별의 영향은 너무 커서 교육에 관한 다수의 국제 및 지역적 자원에서 다루어질 수 있다. 그에 따라서, 교육에서 평등하고 차별당하지 않을 권리에 세 가지 계층이 있으며, 다음의 세 가지는 고려되어야 한다.

- 모든 개인과 단체는 교육권의 인정, 접근, 향유, 행사, 현실화와 관련하여 평등하고 차별당하지 않을 권리를 가진다.
- 교육/학습 기관, 프로그램 및 서비스를 실행하고, 조정하는 모든 개인은 평등을 증진시키고, 차별을 방지할 의무가 있다.
- 국가는 교육에서 평등을 존중하고 보조하며, 증진시키고 이행시킬 의무를 가지며, 그에 따라 국제인권법에 규정되어 있는 인정된 차별요건을 금지할 의무가 있다.

국가들은 개인과 단체가 교육권을 추구하고, 접근하고, 혜택을 받고 권리를 찾는 과정에서 차별되지 않을 것을 확인하는 의무가 있다. 이런 점에서 CEDAW, CERD, 차별금지협약에 들어있는 차별의 정의는 유사한 요소를 가지고 있다. 이들 조약들에 따르면, 차별은 교육권의 평등한 “향유를 손상시키거나 무효화시킬 영향이나 목적을 가진” 열거된 근거들을 바탕으로 교육에서 “구분, 배제 또는 제약”을 뜻한다.

차별의 정의에 따르면, -국가의 대표, 사인, 또는 기관을 포함한- 그 어느 누구도 차별 받는 것을 “허가 받아서”는 안 된다. 이 보고서 후반에 추가적으로 논의되겠지만, 교육에서 차별 금지는 절대적이며 국가의 즉각적인 의무를 형성시킨다.

국제인권조약들은 교육권을 확장시키기도 하는 다음의 차별근거들을 포함하도록 해석되었고 일반적으로 받아들여지고 있다.

- 인종, 피부색, 소수인종
- 성별
- 건강상태
- 육체적, 정신적 장애
- 언어/문화적 정체성
- 종교
- 정치 및 기타 의견
- 국적/시민권
- 사회적 지위 (social origin)
- 경제적 상황

덧붙여서, 다음의 금지된 차별금지 수용을 둘러싸고 일반적이지는 않으나 그렇다고 해서 항상 통합되지 않은 합의가 있다:

- 연령
- 직업
- 빈곤상태
- 성적지향
- 시민권/국적

또한, 교차차별의 복합적인 영향에 대하여 인식이 점점 높아지고 있다. (다수형태의 차별이라고 알려짐) 최근 몇 년간, CERD의 일반논평 25, 더반 행동계획, ICESCR의 일반논평 16은 교차차별은 인정되고 국가차원에서 해결되어야 한다고 인식해야 하는 중요성을 강조한다. 이런 점에서, UNSRE는 여아의 권리에 특히 관심을 기울였고, 교육에서 현실의 교차차별을



노출시켰다. 그 결과, 효과적으로 교육에서 교차차별을 해결할 수 있는 유일한 방법은 교차적 전략을 통하는 것이 명확하다.

교육의 차별금지협약이 “교육의 대우라는 측면에서 평등”을 의미한다는 사실에도 불구하고, CEDAW 위원회가 증진시켜온 기준은 “실질적인 평등”이다.

이런 점에서, 평등의 실질적 모델은 “평등한 접근”과 “평등한 대우”를 넘어서야 하지만, “성격상 양질의 또는 수량적일 수 있는” 평등한 결과에 초점을 맞춘다. 교육권과 관련하여, 때때로 “법, 정책, 그리고 관행은 기존의 경제, 사회, 문화적 불평등을 고려하지 않기 때문에 …… 불평등을 해소시킬 수 없거나 영속시킬 수도 있다.”

#### 1.3.4 교육권의 핵심요소로서의 인권교육

“인권과 기본적인 자유의 존중”이 교육권의 주요목표 중의 하나이기 때문에, 인권교육은 UDHR과 기타 국제문서에 규정되어 있는 가치관/비전을 확인할 수단으로 고려되어야 한다. 교육분야에서, 그리고 교육을 통하여 인권을 보장받을 권리는 주요 국제인권규약에 명시적으로 규정되어 있지 않지만, 내용면에서는 명시되어 있다. CRC 위원회가 표명한 대로, “인권교육은 포괄적이어야 하며, 평생과정이어야 하고, 아동이 살고 있는 지역사회, 아동의 가족뿐만 아니라 아동의 일상생활에서 인간의 가치관을 반영하는 것으로 시작해야 한다.”

인권교육을 개괄하는 가장 포괄적인 자원 중의 하나는 세계인권대회의 결과문건이다. 따라서, 인권교육을 구체적으로 다루는 두 개의 항을 주목할 만한 가치가 있다.

79항은 “국가는 문맹을 뿌리뽑는 데 노력해야 하고, 인격의 완전한 계발을 위해 교육을 해야 하고, 인권과 기본적인 자유 존중을 강화시키는 데 최선을 다해야 한다…”고 언급하고 있다.

80항은 다음과 같다: “인권교육은 인권에 대한 보편적인 결의를 강화시킬 목적으로 공동의 이해와 인식을 달성시키기 위해 국제 및 지역적 인권규약에 마련된 평화, 민주주의 발전, 사회정의를 포함시켜야 한다.”

“유엔 인권교육 10년”을 포함한 지속적인 노력에도 불구하고, 이 교육권의 차원은 지속해서 도전이 되고 있다. K. Tomasevsky가 표현한 대로, 교육을 받을 권리 (right to education)과 교육에서 권리(rights in education)사이의 상호관계의 뚜렷한 비전 없이 인권교육 또는 교육을 통한 인권을 증진시키는 것은 불가능하다”.

#### 1.3.5. 정보권(right to information)

정보권은 종종 함축적인 교육권의 측면을 개괄하고 있다. 그에 따라서, 표현의 자유, 교육적 자유, 국가가 인권과, 이에 상응하는 통보를 받을 권리에 대해 국민에게 통보할 의무 사이의 관계는 명확하다. 이 점에서, ICCPR과 CRC는 정보권의 요소가 무엇인지를 확장시킨다. 예를 들면, ICCPR의 제 19(2)항과 CRC의 제 13(1)항은 시각적으로, 서면으로, 구두로, 예술, 미디어 형태 등 다양한 수단을 통하여 “정보와 모든 종류의 아이디어들을 구하고, 받고, 알릴 자유”를 언급하고 있다.

정보권은 표현의 자유와 사상의 자유의 요소이기도 하기 때문에 중요하다. 또한, 많은 경우에 정식교육제도에 접근할 수 없는 개인과 단체들은 다양한 인권의 측면(즉, 재생산권 (sexual and reproductive health), 영양, 투표권, 노동자의 권리 등)에 대한 정보를 “구하고(seeking), 받아서(receiving)” 기본교육을 받는다.

또한, 일반적으로 대부분의 유엔인권조약기구들은 배우지 않음으로써 생기는 편견과 차별에 대한 치환 도구(transformative tools)로써 정보권의 중요성을 강조해오고 있다는 점을 주목하는 것이 중요하다. 그 예로, 일반논평 3에서, CEDAW 위원회는 국가들에게 “여성의 사회적 평등원칙을 완전히 이행시키는 데 장애물이 되는 편견과 현재 관행들을 제거하는 데 도움이 될만한 교육프로그램과 공공정보 프로그램을 효과적으로 채택할 것을” 촉구하고 있다.

### 1.3.6 아동우선(best interest of the child)

CRC를 준수하면서, 18세 이하의 모든 아동은 동 협약에 다루어진 권리를 보유할 자격이 있다. 덧붙여서, CRC의 제 3조는 교육권을 분석하고 적용시키는 데 “아동을 우선”해야 한다는 원칙을 규정하고 있다. 이 점에서, 제 3(1)항은 “아동과 관련된 모든 행동에서... 아동이 주요고려사항으로 우선시되어야 한다”고 규정하고 있다. 따라서, 이 조항에는 국가와, 비 국가행위자, 개인 또는 기관들간의 구분이 없어서 CRC에서의 이 구분이 너무 광범위하다는 것을 보여주고 있다.

다음의 아이디어들은 CRC, CDESCR, UNSRE에 의해 마련된 국제기준들의 점진적인 해석에서 나온 것이다.

- 한쪽 차원에서, 국가는 부모가 자식의 교육(정식, 비공식 교육)에 기여할 목적으로 학교나 기관을 선택할 자유에 개입하지 못한다. 더구나, 부모들이 자식을 위한 교육을 선택하는 데 자유가 있다 하더라도, 이들 보장사항들은 절대적이 아니다. 국가는 부모의 선택으로 아동이 자신의 교육권을 행사하는 데 제외되지 못하도록 보장해야 한다.
- 또 다른 차원에서는, 국가는 아동을 보호하고, 부모가 아동의 교육권을 방해할 때 개입할 의무가 있다. 교육에서 차별금지협약의 제 1(1)(a)항의 측면에서, “아동 우선”이라는 원칙에 따르면 그 누구도 아동이 교육에 접근할 수 있는 권리를 박탈할

수 없다는 것을 확인하는 것이 가능하다. 앞서 언급한 대로, 이 금지는 의무 및 무상이어야 하는 초등교육수준의 맥락에서 볼 때 더 관련이 있다.

전체적으로, 교육권의 인정, 향유 및 행사는 아동을 우선으로 간주되어야 하는 데 있다. CRC에 따르면, 교육은 “아동중심”이어야 하고, 그에 따라 교육의 내용은 인권의 전체적 목적에 기여해야 한다. 따라서, 아동이 자신의 견해를 표명할 권리를 증진시키고, 아동의 교육과 관련된 결정에 들어가는 정보(input)을 제공하는 것이 중요하다.

### 1.3.7 교육권의 문화 및 사회적 차원

CRC의 제 29(1)(c)는 “아동의 교육은 다음을 목표로 해야 한다”고 규정하고 있다.

“아동의 부모, 문화적 정체성, 언어 및 가치관 그리고 현 거주국과 출신국의 국가적 가치 및 이질문명에 대한 존중의 발전”

이러한 점에서, 아프리카 아동헌장과 산 살바도르 협약은 교육권이 (i) 문화적 다양성과 다원주의의 존중과 (ii) 국가통합과 가치관 증진을 포함하는 것을 명확히 하는 유사한 조항들을 담고있다.

시민권과 사회가 차별/폭력으로부터 자유롭게 하는 데 기여할 수준으로써 교육측면이 뚜렷한 반면에, 교육에서 문화적 다양성을 증진시킬 의무가 요구되는 조치에 대해 지속적인 논의가 있다. 모국어로 교육받을 권리가 국가가 제공해야 하는 무상 및 의무교육의 “핵심” 패키지의 일부로 간주되어야 하는 지 여부에 대하여 합의가 부족하다. 특히 적은 자원 때문에, 이는 한 국가의 “공식”언어를 가르칠 시도에 편견을 가지게 할 수 있다.

유네스코의 문화 다양성 선언(UNESCO Declaration on Cultural Diversity)는 문화적 권리가 “모든 사람은 ... 자신을 표현하고, 특히, 모국어로 자신이 선택한 언어로 일할 권리가 있다. 모든 사람은 자신의 문화적 다양성을 충실하게 존중하는 교육과 훈련에 평등할 권리가 있다...” 따라서, 최소한, 국가들은 (i) 교육권에 대한 국가행동계획은 교육에서 문화적 정체성을 존중할 것을 확인하고, (ii) “개인이 소수언어를 그 소수언어를 쓰는 이들이 설립한 학교에서 가르칠 자유를 존중할” 의무가 있다. 이들 의무들은 교육권의 “적응성(adaptability)”와 관련되어 고려될 필요가 있는 이들의 일부 의무이기도 하다. (다음 항에서 논의하기로 한다.)

### 1.3.8 교육권과 관련된 자유

교육권의 사실상 향유를 위해서는 국가가 일련의 개인의 자유를 보장하는 것이 필요하다. 이들 자유가 교육권의 중요한 요소이긴 하지만, 절대적인 것은 아니다. 그렇기 때문에 교육을 통한, 그리고 교육에서 차별금지가 이들 자유를 완전하게 향유할 수 있는 핵심적인 요건

이다.

### 교육의 자유로운 선택

대부분의 국제 및 지역적 인권규약들은 (국가 또는 비 국가행위자의) 개입없이 교육의 유형과 수단을 자유롭게 선택할 권리를 언급하고 있다. 비록 교육권에 “의무”라는 측면이 있기는 하지만, 개인은 자신의 신념과 확신에 따라 교육프로그램, 기관, 또는 서비스를 선택할 권리가 있다. 이런 측면에서, 다시 한 번 강조하지만, 이들 신념들이, 예를 들어, 여아가 교육을 받지 못하는 결과를 가져오지 않는다는 선결조건이 있어야 한다. 또한, “오늘날 아동이 교육권의 주요한 대상으로 취급되지만, 아동은 교육권 실현을 위한 의사결정의 당사자는 아니다. 국제인권법은 부모와 국가간의 의사결정을 구분하고 있다.”

일례로, 아동의 교육권의 측면에서, UDHR은 “부모는 아동에게 제공되어야 할 교육의 종류를 선택할 더 중요한 권리를 가지고 있다”고 규정하고 있다. ICCPR은 부모-법적 후견인-이 “자식의 종교와 도덕교육이 부모자신의 확신과 일치할 것을 확인할” 권리가 있다고 덧붙이고 있다.

나아가, 유네스코의 교육에서 차별금지협약(제 5.2항) ICESCR의 제 13.3항과 비슷한 요소들을 가지고 있으며, 다음과 같다” “부모의 자유와, 적용할 수 있다면, 법적 후견인의 자유를 존중하고, 우선 공공기관들보다는 자식의 기관들을 위해 선택하면서 능력있는 당국이 설명할 수 있고 허용할 수 있는 최저 교육기준을 준수하며, 둘째로 법의 적용, 부모의 확신에 따라 자식의 종교, 도덕교육과 일치하는 방법으로 보장하는 것이 중요하다...”

UNSRE, UNESCO, 그리고 학자들의 지속적인 업무는 현실적으로 “많은 국가에서 자신의 교육을 선택하는 데 제한이 있거나 교육기회가 없다. 그리고, 공립교육이나 혼합된 방식, 사립교육 비용은 부모에게는 너무 비싸다”는 것을 나타낸다. 또한, 일반적으로 시골과 빈민지역은 교육기관, 프로그램, 서비스의 숫자가 적어서, 선택에 제약을 가져온다.

장애권리의 맥락에서, 각각의 학교에서 물리적 장애아동과 정신적 장애아동을 자발적으로 분리하는 “선택”조항은 논란이 되었다. 따라서, 유엔 장애협약의 텍스트를 논의하는 과정을 통해서, “주류” 공립학교/교육 시스템 내에서 특별한 학습이 필요한 아동을 수용할 수 있는 조치를 취할 정부의 의무를 둘러싸고 합의가 늘어나고 있다. 부모는 특별한 학습이 필요한 아동을 위해 분리된 학교를 강제로 “선택”해서는 안 된다.

### 교육기관을 설립할 자유

ICESCR, 아프리카 아동헌장, 산 살바도르 협약에는 자유롭게 교육기관을 설립할 권리에 관한 유사한 조항이 있다. CDESCR의 제 13(4)항의 의미해석은 이들 모든 조항들에 적용된다.

이러한 점에서 일반논평 13의 제 30항은 “제 13(4)항에 의거하여 비국적자(non-nationals)를 포함한 모든 사람은 교육기관을 설립하고 감독할 자유가 있다. 또한, 이 자유에는 “신체” 즉, 법인이나 개체로 확장된다. 이 자유에는 보육원, 대학, 성인교육기관을 포함한 모든 유형의 교육기관을 설립하여 감독(direct)할 권리가 포함된다. 차별금지, 평등한 기회, 효과적인 사회참여의 원칙을 볼 때, 국가는 제 13(4)항에 규정된 자유가 일부 계층에게 교육기회가 극도로 불평등하지 않도록 할 의무가 있다.”

### 표현의 자유와 학문의 자유

앞서 논의했던 정보권의 주요 요소들은 표현의 자유의 일부이며, 학문의 자유에서 기본적인 요소들 중의 하나이다. 이러한 맥락에서, ICCPR의 제 19조와 CRC의 제 13조는 여기에 초점을 두고 있다. 더 구체적으로, ICCPR의 제 19조는 다음과 같이 규정하고 있다.

- “1. 모든 사람은 간접받지 아니하고 의견을 가질 권리를 가진다.
2. 모든 사람은 표현의 자유에 대한 권리를 가진다. 이 권리는 구두, 서면 또는 인쇄, 예술의 형태 또는 스스로 선택하는 기타의 방법을 통하여 국경에 관계없이 모든 종류의 정보와 사상을 추구하고 접수하며 전달하는 자유를 포함한다.
3. 제2 항에 규정된 권리의 행사에는 특별한 의무와 책임이 따른다. 따라서 그러한 권리의 행사는 일정한 제한을 받을 수 있다. 다만 그 제한은 법률에 의하여 규정되고 또한 다음 사항을 위하여 필요한 경우에만 한정된다.
  - (a) 타인의 권리 또는 신용의 존중
  - (b) 국가안보 또는 공공질서 또는 공중보건 또는 도덕의 보호“

CESCR은 “교육권은” 모든 교육 유형과 수준에 관련된 “직원(staff)과 학생의 학문적 자유를 동반할 때 향유될 수 있다”고 표명되어 있다. 더 구체적으로, 위원회는 다음과 같이 뚜렷하게 규정하고 있다: (i) “개인이나 단체에 관계없이 학계 구성원들은 연구, 교수, 논의, 문서와, 출판, 창작 또는 집필 등을 통하여 지식과 아이디어를 추구하고, 발전시키며 전수할 자유가 있다.” (ii) “학문의 자유의 향유에는 다른 사람의 학문의 자유를 존중하고, 반대되는 견해를 공정하게 배포하고, 차별근거가 되는 사유에서도 차별없이 모든 이를 대우하는 등의 의무들을 수반한다.”

또한, 대학과 기타 고등교육기관들이 압력을 받고, 정치적 견해로 영향을 받기 때문에, 어느 정도의 자율(autonomy)이 필요하다. CESCR에 따르면, “자율은 학문과 관계된 업무, 기준, 운영 및 관련 자유에 대해서 고등교육기관이 효과적으로 의사를 결정하는 데 필요한 자치(self-governance)의 정도이다.”

### **특집: 교육권 실현에 필요한 것은 무엇인가?**

앞서 언급된 바와 마찬가지로, 교육권에 대한 국제인권원칙이 세계적으로 이 권리의 실현을

모니터링하는 과정을 통해서 포괄적이긴 하지만, 그 이행의 격차가 파악되고 있다. 국가들이 국내 법을 준수하면서 교육/학습 우선순위를 마련할 재량의 여지가 있음에도 불구하고, 최근 몇 년간 교육권의 “협상 불가한” 특징들이 파악되었다. 요컨대, 권리를 기반으로 한 교육권 실현의 접근법은 다음의 필요성을 고려해야 한다: (i) 교육권 이행이 다른 권리들의 실현을 위협하게 하지 않아야 한다. (ii) 교육권의 이용성, 접근성, 수용성, 적응성, 그리고 양질에 합당하게 중요성을 부여하는 포괄적 전략을 개발해야 한다. 따라서, 이들 특징들을 충분히 고려할 때에 교육권에 대한 국가정책, 법, 전략과 일관성을 가질 수 있다.

#### 1.4 교육권과 다른 인권과의 불가분성과 상호의존성

많은 국제인권문서, 메커니즘, 그리고 전문가들은 시민권과 사회권의 실현에 전체적인 접근의 중요성을 강조해왔다. 예를 들면, 소수자 차별금지에 관한 유엔 소위원회에서 발표된 보고서에서, ESCR 실현에 대한 특별보고관은 다음과 같이 주장하였다.

“인권은 진공상태에서 존재하지 않는다. 사회 및 경제적 속성을 띠고 있는 권리들을 포함한 모든 권리의 이행은 다양한 경제, 사회, 정치, 역사, 철학, 법적 선택 및 무력에 따라 다르다. 다른 것들과 덧붙여서 각 요소는 이들 권리를 실현하는 데 역할을 할 것이다. 어느 것도 너무 많이 강조되어서도 안되고, 그 어느 것도 잊어서는 안 된다.”

또한, 몇 년간 비엔나 선언에 규정된 원칙들은 국내법원, 독립전문가, 학자 및 국제/지역적 인권 메커니즘의 업무를 통해 세워졌다. 더욱이 중요한 것은 비엔나선언의 제 1부 1항 (Section I, paragraph 5)은 “모든 인권은 보편적이며, 불가분성의 성격을 가지고 있고 상호보완적이며, 서로 연관되어 있다... 국가는 정치, 경제, 문화제도와 관계없이 모든 인권과 기본적인 자유를 보호하고 증진시킬 의무가 있다.”라고 규정하고 있다.

교육권의 명확한 요소들은 어쩔 수 없는 결론에 이르게 된다. 즉, 이 교육권은 모든 인권의 상호연관성과 상호의존성의 원칙을 담고 있다는 것이다. 그에 따라, 교육권은 “교차적인” 권리로써 모든 인권의 측면을 포함하고 모든 사람에게 확장되는 권리로 의미되고 있다. 또한, CESCR은 교육권이 “경제권, 사회권, 문화권으로 다양하게 분류되고 있다. 교육권은 이들 모든 권리이기도 하다. 또한, 교육권은 이들 권리의 완전하고 효율적인 실현에 핵심이기 때문에 많은 측면에서 시민권이기도 하다. 이런 점에서, 교육권은 모든 인권의 불가분성과 상호보완성의 전형이다.”라고 강조했다.”

CESCR과 다른 인권기구들이 이미 주목한 바와 마찬가지로, 개인이 교육권을 향유할 때에는 시민 및 정치권(즉, 표현/의견의 자유, 단체를 조직할 자유, 투표할 자유, 의사결정 참여 자유 등)의 행사를 통하여 다른 권리를 요청할 가능성이 높다. 또한, 많은 국가에서는 소외된 계층이 출생아동을 등록시킬 수 있는 인센티브와 수단을 마련하지 못함으로 해서

교육권에 부정적인 영향을 미쳤다는 점을 강조하는 것이 중요하다. 이러한 “행정적 실패”의 직접적인 결과로 전 세계에 수백만명의 아동들은 교육제도에 접근을 거부당하고 있다.

마지막으로, “인권이 진공상태에서 존재하지 않기 때문에”, 각 권리 이행을 위한 국가행동계획은 서로 관련되어야 한다. 교육권 실현을 위한 조치가 다른 권리 향유에 의도하지 않은 부정적 영향을 미칠 수 있다고 판단될 때에는, 완화조치가 필요할 것이다. 예를 들어서, 아동이 식량을 구입하기 위하여 가족수입에 기여하기 위해 일한다며, 그 아동을 학교에 억지로 가게 하는 것은 가족 전체가 밥을 굶을 수도 있게 된다. 따라서, 이러한 상황에서 국가들은 프로그램들을 채택하여 아동들에게 학교급식을 제공하고, 아동의 가족에게 금전지원을 제공해오고 있다.

#### 1.5 4A: 이용성(availability), 접근성(accessibility), 수용성(acceptability), 적응성(adaptability)

일반논평 13의 제 6항에서, CESCR 위원회는 모든 교육유형과 교육수준의 “상호관련되고 핵심적인 특징들”을 제안한다. 이런 맥락에서, UNSRE는 이러한 특징들을 더 자세하게 성안하고 내용을 덧붙여 이해를 높이기도 했다. 교육의 이용성, 접근성, 수용성, 적응성이라는 4A는 다른 ESCR 에 적용될 수 있기 때문에, 일반적으로 국제인권법에서도 받아들여지고 있다.

##### 1.5.1 이용성

CESCR에 따르면, 교육의 이용성은 “제기능을 하는 교육기관 및 프로그램이 국가 내에서 폭넓게 그리고 충분한 양으로 이용가능해야 한다”는 것과 관련되어 있다. 적절하게 “제기능을 하는 교육기관”이 될 수 있는 요건들은 각 맥락에 따라 다를 것이고, 교사, 학습자, 그리고 가족들의 욕구를 고려해야 한다. “제 기능을 하는”이라는 것은 특별시설 (즉, 교실, 도서관, 체육관 등)이 필요하다는 의미일 수도 있고, 필수사항(즉, 파도림을 발생한 극도의 상황에서 보호, 아동의 음식/영양, 안전한 식수 등)이 필요할 수도 있다. UNSRE의 업무는 “이용성”의 측면에서 고려되어야 할 추가적 측면들을 조명해왔다. 예를 들면,

- 학교는 아동에게 이용가능해야 하며, 의무교육 보장이 학교의 수용능력(최소한 각 초등학교 또는 초등 및 중등학교에서 제공되는 기본교육수준에 관해서)이 교육이 필요한 아동/개인 또는 그 수치와 일치해야 한다는 것을 의미한다.
- 이용성은 입학 enrolment) 뿐만 아니라 여야, 특별한 도움이 필요한 아동, 특수한 상황에 있는 아동을 보유할 역량까지 고려해야 한다.
- 국가들은 정치적인 이유나 “공익”을 보호하는 것을 바탕으로 중등학교와 대학을 폐쇄해서는 안 된다.

### 1.5.2 접근성

접근성의 범위 내에서, 6(b)항은 “국가의 관할권 내에서 교육기관과 프로그램은 차별 없이 모든 이가 접근할 수 있어야 한다”고 규정하고 있다. 게다가, 접근성은 (i) 물리적 접근성, (ii) 경제적 접근성, (iii) 차별금지를 포함하기도 한다.

비록 차별금지원칙의 어떤 측면은 이미 조명되었지만, 이들 측면이 “국제인권의 가장 중요한 원칙”이라는 것을 강조하는 것이 중요하다. 접근성, 차별금지와의 관계와 교육권에 관한 국가의 의무는 명확하고 추가로 다음 항에서 논의하기로 한다. 또한, 많은 경우에 학비와 교육비의 증가로 많은 취약계층과 소외계층들은 교육을 감당하기 힘들게 했다. 따라서, “의무 및 무상”이어야 하는 교육수준이 점진적으로 확장되면서, 저렴한 비용(affordability)을 통한 접근을 보장하는 방법을 개발할 필요성이 더 중요해진다.

### 1.5.3 수용성

교육권의 수용성은 “커리큘럼, 교수법을 포함한 형식과 본질이 학생에게, 그리고 적절한 경우에는 부모에게 수용가능해야 한다(관련성이 있고 문화적으로 적절하고 양질의 수용 등)”는 전제를 의미한다. 이 측면은 교육권의 요소에 따라 설명된 교육에서 문화적 측면과 자유와관련되어 있다. 또한, 이는 어떠한 상황에서도 사회계층을 배제하는 것을 정당화하지 않는 모두를 포함한 교육모델과 관계있다.

나아가, 차별이 어떠한 상황에서도 수용할 수 없기 때문에, “교육권은 그 성격상 지역사회와 개인의 욕구와 자원에 따라서 적절한 시기에 마련될 수 있는 국가의 규정을 요구한다”고 강조하는 것이 중요하다. 따라서, 최소한 국가는 모든 학교와 교육기관들이 지속적인 기준과 질에 의거하여 운영되도록 해야 한다.

정기적으로 당사국은 유엔인권조약기구가 행한 것을 검토하면서, 교육제도 내에서 신체차별과 성적 괴롭힘은 개인의 존엄성을 침해한다고 판단되었다. 점점 더 많은 국내법원들이 교내 체벌을 굴욕적이라는 근거로 금지시키는 법체계를 성안하고 있다. 이런 점에서, 체벌이 CRC조항과 배치되고 있지는 않지만, 많은 국가에서 부모와 법적 후견인의 체벌은 현실적으로 아이들을 교육시키기 위하여 여전히 관행적으로 이루어지고 있다는 점을 인식하는 것이 필요하다.

### 1.5.4 적응성

CESCR은 “교육은 융통성이 있어야 변화하는 사회와 지역의 필요에 적응할 수 있고, 특별한 사회적, 문화적 맥락 내에서 학생들의 요구에 응대할 수 있다”고 간주하고 있다. 그렇기 때문에, 새로운 차별이 드러나고, 사회가 발전하면서, 교육내용이 재평가되고 재검토되고 있다. 일례로, CEDAW, CERD, 그리고 현재 장애협약 초안을 준수하는 국가들은 교육계획, 전략, 및 내용을 수정하여 부정적인 전형을 제거해야 한다.



교육을 인권목표와 인간개발에 맞추어 지속적으로 재조정해야 할 필요성 외에도, 정보기술 및 과학과 같은 빠르게 발전하는 분야의 진보도 고려해 봐야 한다. 나아가, 교육자들이 더 나은 틀과 방법론을 개발하여, 특별교육이 필요한 단체의 학습을 증진시키기 때문에, 교육의 내용과 접근법이 수정될 필요가 있다. (즉, 정신장애 아동, 성인 문맹 등) 또한, 내부실행 상태에 있는 아동, 난민, 그리고 특별한 상황에 있어서 학습욕구는 교육권에 대한 국가계획 개발과정에 고려되어야 할 필요가 있다.

결론적으로, 교육권의 적응성은 전체적으로 “미래의 아동과 성인이 평생 필요할 지식, 기술 및 가치관이 알려져 있지 않을 뿐만 아니라 알 수 없기 때문에 중요하다.

## 2. 국가의무

국제포럼에의 결과물인 행동에 관한 다카르 기본 틀과 기타 결과문건은 교육권 실현을 위한 계획과 조치들을 개괄하고 있다. 비록 전 세계적인 정책의지가 중요하기는 하지만, 이를 행동에 옮기는 데는 국제인권법에 규정된 국가의무의 원칙에 대한 합당한 고려가 필요하다. 마찬가지로, 교육권의 각 요소가 국가의 대응하는 의무를 설명하고 있기 때문에, 책임성이라는 개념은 전 이행단계에서 중요해진다.

UNSRE가 다음과 같이 설명하였다.

“인권접근법의 고유한 장점은 포괄적인 법적 기본 틀, 인권정의, 그에 상응하는 수직적, 수평적 차원의 능력을 다루는 정부의 의무에 있다. 인권과 그 결과에 따른 정부의 책임간의 대칭인 책임성 부여를 연계시키면서 지속성을 보장한다.”

이 항에서 다른 국제인권조약을 언급하는 한편, ICESCR과 CESR에서 개괄된 교육권의 기본 틀에 주로 초점을 맞출 것이다. 이런 점에서, 동 협약의 국가의무의 점진적 해석을 통하여 CESCR은 교육권에 대한 폭넓은 원칙의 의미와 범위를 명확히 하고 있다. 이들 원칙들은 다른 협약들에 포함되어 있는 교육권 조항들에 적용될 수 있다.

마찬가지로, 이 항에서 개괄된 원칙들은 모두를 위한 국제교육정책문건에 개괄된 행동포인트에 포함될 수 있다. 또한, 국가가 교육권이 국제법에 있는 것에서 발생하는 의무/책임을 준수하지 않을 시에는 교육권을 위반한다는 것을 명확히 해야 한다.

### **교육권과 관련된 일반의무의 성격과 범위**

이 하부 항에 설명된 의무들은 교육권과 관련해 특별하지 않고, 모든 ESCR에 일반적이기 때문에 “일반의무(general obligations)” 밑에 열거되어 있다. 지난 10년간, 국가의무 수준의 개념적 이해와 교육권에 대한 각 책임은 점점 복잡해지고 있다. 따라서, 현 단계에서 필

요한 것은 정부들이 이들 원칙들을 준수하면서 교육권을 이행하는 새로운 의지이다.

## 2.1 교육권 존중, 보호, 이행 의무

1990년대 말, CESCR과 다양한 유엔 독립전문가들은 지속적으로 국가의 “3가지”=존중, 보호 및 이행- 기본 틀을 통합하고 완성시키기 시작했다. 또한, 교육권은 이들 수준의 국가 의무를 포함한다. 이러한 국가의무의 3가지 유형이 폭넓게 수용되고 있는 지표는 유엔기구, 인권 메커니즘, 전문가, 국내법원들이 제공하는 분석과 적용에서 얻어질 수 있다.

교육권을 존중, 보호, 이행할 의무는 행위의 의무(obligations of conduct)와 결과의 의무(obligations of result)를 통합시킨다. 따라서, 국가들은 제 1장에 개괄된 교육권의 요소를 바탕으로 실제적인 결과를 실천하고 달성할 의무가 있다.

### 2.1.1 존중

존중할 의무를 준수하는 국가들은 교육권의 완전한 향유와 연계된 자유를 인정하고, 해당 권리의 행사를 방해하는 것을 삼가야 한다. 우선, 국가는 “사립학교를 폐쇄하지 않음으로써 교육의 이용성을 존중해야” 한다.

또 다른 차원에서, 국가는 다음을 해야 한다. (i) 교육에서 그리고, 교육을 통하여 차별적 법률을 집행하지 않는다. (ii) 국가는 가장 취약한 계층의 교육권 행사에 영향을 줄 수 있는 정책을 이행하지 않을 의무가 있다. 또한, “존중”할 의무와 관련된 행위의 의무의 사례가 교육에서 차별금지협약의 1조와 3조에 열거되어 있다. 제 3조를 준수하는 국가들은 다음에 합의한다.

- “(a) 법적 조항과 행정지시를 폐기하고, 교육에서 차별과 관련된 행정관행을 중단한다.
- (b) 필요한 경우 법률에 의거하여 학생의 교육기관 입학 시에 차별이 없게 해야 한다.
- (c) 공공기관이 능력이나 필요의 근거를 제외하고, 수업료, 장학금이나 기타 학생지원 형식과 외국에서 필요한 허가 및 연구시설 사이에 대우차별을 허용하지 않는다.
- (d) 당국이 제공하는 지원형태로 교육기관에게 특정단체에 속하는 학생들만을 근거로 제한이나 특혜를 허가하지 않는다.
- (e) 해당국가 영토 내에 거주하는 외국 국적자들에게 내국민들과 마찬가지로 동일한 교육접근을 제공한다.

### 2.1.2. 보호

보호할 의무는 국가들이 제 3자의 교육권 침해를 방지하고, 금지시키고 구제하기 위한 조치를 취할 것을 요구하고 있다. Coomans는 이 의무는 “국가가 수평적인 관계(개별단체나 개인)에서 교육권 행사를 보장해야 한다”고 덧붙이고 있다.

예를 들면, (i) 국가는 위대한 사회적, 전통적 관행이 소외된 계층(즉, 여성/여아, 장애인 등)의 교육권의 향유를 방해하지 않도록 확인할 의무가 있다. (ii) 국가는 사립교육기관이 비 차별을 바탕으로 하여 입학시험을 개발하고 이행하도록 확인할 의무가 있다.

전체적으로, 이러한 차원의 의무에는 제 3자를 규제하고, 감독할 긍정적인 조치가 필요하다. 예를 들어, (i) 적절한 법률, (ii) 효과적인 진정메커니즘, (iii) 적절한 구제조치, (iv) 포괄적 정책, (v) 일관성있는 행동, (vi) 지속적인 모니터링 등의 조치가 있다.

### 2.1.3 이행

CESCR에 이미 규정된 바와 같이, “제 13조는 국가가 대부분의 상황에서 교육의 직접제공에 가장 큰 책임이 있다는 것이 명확하다”.

이행할 의무에는 국가가 완전한 교육권의 실현을 위하여 법률, 행정, 예산, 사법 및 기타 적절한 조치들이 요구된다.

나아가, Cooman에 따르면, 이러한 차원의 의무는 “계획 의무(programme obligation)으로 특징지어질 수 있고, 장기적 전망을 의미한다. 일반적으로, 여기에는 개인이 할 수 없는 재정적 지원이 필요할 것이다. 또한, 이 의무에는 일반적으로 기본적인 국가책임이라고 간주되고 있는 법률 및 정책 기본틀 지원을 마련하는 것을 포함한다.” 이런 식으로, CESCR은 이행할 의무의 범주에 추가적으로 세 가지가 있다고 설명하였다.

#### 이행 (유용하게 함(facilitate))

“위원회의 일반논평 접근에 따르면, 유용하게 할 의무는 국가가 개인의 교육권을 향유할 수 있고, 이를 지원하기 위한 긍정적인 조치를 취해야 한다는 것을 의미한다.“ 효과적이기 위해서는, 교육권 향유를 용이하게 할 목적을 가진 조치가 각 맥락에 적합해야 한다. 따라서, 채택된 조치들은 국가마다 다를 것이다. ICESCR은 이러한 차원의 의무를 교육의 수용성(acceptability)와 연계된 것으로 의미하고 있다.

#### 이행 (제공함(provide))

국가는 모든 유형과 수준의 교육이 관할권 내에 제공되도록 확인할 의무가 있다. 이러한 차원의 의무는 더 나아가 교육의 적응성(adaptability)과 연계된 조치들과 관계가 있다. 더 구체적으로, 개인이 자신이 통제할 수 있는 범위를 벗어난 이유로 교육권을 행사할 수 없을 때, 국가는 이들의 기본/최저 교육욕구를 충족시켜주어야 한다.

이러한 사례에는 (i) 교육내용이 “변하는 세상에서 공부하는 학생의 현재 욕구를 반영해야 하고, (ii) 청소년 구급시설에 아동이 무료 및 의무교육을 제공받아야 한다”는 것이 포함된다.

## 이행 (증진시킴(promote))

국가는 교육권과 관련된 국제인권기준을 증진시킬 의무가 있다. 더욱 중요한 것은, 인권교육의 요소들과 정보권은 이 범주에 해당된다.

## **2.2 즉각성의 의무 (obligations of immediacy)**

ICESCR의 제 2.1항은 “특히 법률조치의 채택 등의 모든 적절한 수단으로” 수행되어야 하는 교육권과 관련된 의무를 언급한다. 또한, 동 협약의 제 2조와3조에 마련된 의무들은 종종 교육권의 핵심적인 특징과 관련되어 있다는 것이 자명하다. 이들 조치들과 단계들은 즉각적으로 이행되어야 한다. 이와 관련하여, CESCR은 “동 협약이 점진적인 실현을 제공하고 가용자원이 한계 때문에 발생하는 제약을 인정하는 반면에, 즉각적인 효과가 있는 다양한 의무를 부과한다”고 확립하고 있다.

아래 설명된 의무들은 국가에게 재량권을 거의 부여하지 않고 있으며, 즉각적으로 이행되어야 한다.

### **2.2.1 교육에서 비 차별과 평등**

ICESCR의 제 2.2항에 따라, 국가는 “교육권이 어떠한 종류의 차별 없이 행사될 것을 보장한다.”

교육에서 차별금지협약의 제 1.1항은 차별에는 “.. 교육에서 대우에 있어서의 평등을 무효화하거나 손상시킬 목적이 있는 구분, 배제, 제한 또는 우대가 포함한다.”

또한, 이 정의의 요소들은 CEDAW와 CERD에 규정되어있는 요소들과 유사하다는 것을 강조하는 것이 중요하다.

이들 협약의 제 2조는 국가가 “즉각적으로 (without delay)” 차별을 금지시키고 제거할 조치를 취할 것을 요구하고 있다. 덧붙여서, 린버그 원칙은 ICESCR의 제 2.2항이 “당사국을 대신하여 즉각적인 적용을 요구하고, 명시적인 보장을 포함시킬 것을 요구한다”고 규정하고 있다.

또 다른 차원에서, CESCR은 일반논평 3에서 차별금지 법안이 “상당히 바람직하고, 일부 경우에는 필요한 조치를 위한 건전한 법률근거가 부재한 상태에서는 효과적으로 차별을 철폐하기 어렵기 때문에 필수불가결하다”고 규정하고 있다. 나아가, 보완적인 긍정적 조치와 단계들은 교육법, 정책, 계획 (programmes)가 최약계층/차별받는 계층의 상황을 구제하기 위한 수단으로 역할을 할 것을 보장하도록 해야 한다.

성 평등(gender parity)과 교육에서 성 평등(gender equality)

ICESCR의 제 3조는 교육권 향유에 있어서 남녀 평등한 권리를 포함하고 있다. 이런 점에서, CESCR의 일반논평 16, 여성의 사회권에 관한 몬트리올 원칙, 림버그 원칙, 마스트리히트 가이드라인 등은 교육에서 성 평등은 CEDAW 협약 조항들을 근거로 정의되어야 한다는 점을 명확히 하고 있다. 나아가, 성 평등에 대한 이해는 CRC, 인권위원회와 CERD와 여타 조약기구들의 관행에 적용되어 오기도 했다.

CESCR의 일반논평 16의 제 30항은 교육에서 성 평등을 보장하기 위해 요구되는 조치 사례들을 제공하고 있다.

“제 13조와 관련하여 제 3조를 이행하는 데에는 특히, 모든 교육수준에서 남녀 아동의 동일한 입학기준을 보장하는 법률과 정책 채택이 필요하다. 당사국은 모든 교육수준에서 남녀 아동을 위한 동일한 입학기준을 보장해야 한다. 국가들은 특히 정보와 인식고취 캠페인 등을 통하여 가족이 아들을 학교에 보내는 데 특혜를 더 주지 않고, 학교 커리큘럼이 평등과 비 차별을 증진시키도록 확인해야 한다. 당사국은 특히, 여아의 등 하교 시의 안전을 보장할 수 있는 조건(factorable conditions)들을 마련해야 한다.”

더 구체적으로, CEDAW 협약의 제 10조는 국가가 채택해야 하는 일련의 조치들을 열거하고 있다. 교육분야에서 남성과 평등한 권리를 보장하기 위하여 여성차별을 철폐할 조치들의 사례 중 일부에는 다음이 있다.:

“...(c) 이 목적을 달성하는 데 도움을 줄 남녀공학과 모든 수준에서 교육을 특히, 교과서, 학교프로그램, 교수법 적용 등을 수정하는 것을 장려함으로써 모든 교육형태에서 남성과 여성의 역할의 전형적인 개념을 제거하는 것. (d) 장학금과 기타 성적 보조금의 혜택을 동일하게 받을 기회, ... (f) 여학생의 중퇴율 감소와 학교를 중간에 그만둔 여아와 여성들을 위한 프로그램 조직... (h) 가족의 건강과 복지를 보장하는 데 도움을 주는 가족계획에 대한 정보와 자문 등의 구체적인 교육정보에 대한 접근.”

보통, CEDAW 협약의 제 5조는 교육에서 성차별 철폐를 위한 포괄적인 기본 틀의 일부로 간주되어야 한다. 제 5조는 남아선호사상을 강화시키는 사회적, 문화적 가치관을 바꿀 필요성을 다루고 있다. 더 구체적으로, 제 5(1)항은 여아와 여성이 교육에 접근할 때 부딪히게 되는 장벽을 제거하기 위한 정책들을 개발하고, 이들이 교육의 기회에 있어서 평등하게 혜택을 받을 수 있게 해야 한다.

유감스럽게도, 전 세계적으로 교육에서 성 평등 달성은 아직도 요원하다. UNSRE를 역임했던 두 명의 전문가들은 여아가 정식교육에서 배제되는 사항을 지속적으로 제기해오고 있다.

특히, 2006년 UNSRE의 연간보고서는 여아에 초점을 두고, 교육에서 성차별을 막을 수 있는 포괄적인 접근법을 제안하고 있다. UNSRE가 모색하고 있는 한 가지 추가적 분야는 여아가 학교로부터 배제되는 결과를 낳을 수 있는 “징계사유(disciplinary offence)”로 임신문제에 초점을 맞추고 있다. 한편으로는, 여아가 어려서 결혼해야 한다는 사회적 압박이나 기대가 있는 동시에, 부모, 교사, 그리고 지역사회 리더들의 견해는 임신한 여학생을 퇴학시키는 것을 지지하는 경향이 있다. 대부분의 경우 퇴학은 이들 “어린 산모들”을 처벌하고, 십대의 성관계를 금지하는 도덕적 규범을 강화시키는 수단으로써 인식되어왔다. 흥미롭게도, 최근 몇 년간, 콜롬비아 대법원은 “-학교규정을 통한- 임신을 처벌사유로 변경하는 것은 평등권, 사생활권, 인격의 자유로운 계발, 교육권 등의 기본적인 권리를 침해한다”고 판결하였다.

#### 기타 차별받는 계층

전 세계적으로, 많은 개인들이 여전이 “과도한 위험(disproportionate harm)”을 겪고 있으며, 교육권을 침해당하는 경험을 하고 있다. 여성과 여아 이외에도, (i) 교육권의 혜택에서 제외되고, (ii) 불리한 계층에게 혜택을 주기 위해 마련된 교육서비스, 교육기관, 프로그램에서 제외되고 있는 계층들이 있다. 예를 들면, “저소득 계층, 원주민과 부족, 점령지역 거주인, 망명자, 난민, 내부실향민, 소수자, 노인, 아동, 소작농, 장애인, 그리고 노숙자” 등이 있다. 따라서, 교육권의 실현을 위해서는 최대한 빨리 “사실상의 차별(de facto discrimination)”을 해결하고, 종식시킬 필요가 있다.

더 구체적으로, 이미 규정된 바와 마찬가지로, 모든 이를 포함하는 교육은 교육권이 각 개인의 특별한 학습필요사항과 학습상황을 유념하면서 실현될 것을 보장할 목적이다. 따라서, 국가들은 교육의 기본적 보장사항을 모든 이에게 확장시킬 의무가 있다. 이 문건의 3항은 교육권 이행과정에서 고려되어야 할 사항들을 개괄하고 있다.

#### 비 국적자에게 교육권 확장

비록 국제법이 많은 사유들을 근거로 차별을 금지시키지만, 많은 국가들은 교육권이 비 국적자에게까지 확장되지 않아야 한다는 것을 지속적으로 확인하고 있다. 특히, “무국적자”(stateless persons), 이주노동자와 그 가족, 인신매매 희생자, 난민과 자국 내에서 법적인 신분/국적/시민권을 획득할 권리를 행사하지 않았을 이들에게 확장되지 않는다고 확인한다.

이와 상관없이, 많은 인권조약에 포함되어 있는 교육권에 대한 조항들의 일반해석은 당사국의 “관할권 내에서” 모든 이들에게 교육에서 비 차별을 보장할 의무를 지적하고 있다. 이 의무는 비 국적자에게 확대될 것이다. ICESCR 제 2(3)항에 들어있는 예외는 “경제적 권리들”에 제한되어 있기 때문에, 이 예외가 교육권의 맥락에서 적용되지 않는다는 점을 주목해야 한다.

교육권에 대한 조항들을 담고 있는 다양한 조약들은 최소한 교육권과 관련된 최저 보장사항 수준과 보호가 국적자와 비 국적자에게 평등하게 적용되어야 한다는 것을 규정하고 있다. 예를 들면,

- ▶ 이주노동자와 그 가족에 대한 국제협약 제 36조와 45조는 “법적 상태나 고용상태에 있는 정상적인 상태에 있는 이주노동자와 그 가족은 ... 교육기관의 접근에 대하여 국적자와 마찬가지로 평등한 대우를 향유한다.”
- ▶ CRC의 제 22조는 당사국은 난민들이 동 협약에 규정되어 있는 교육권 등의 권리를 향유할 수 있는 조치들을 채택할 의무가 있다.
- ▶ 정기검토과정을 통해서, CEDAW 위원회는 이주여성과 여성난민이 자신의 법적 권리와 인권 등에 대한 정보를 구하고, 받을 수 있는 권리에 강조를 두었다.

ICESCR의 최종논평은 비 국적자의 교육권 향유에 허용할 수 있는 제한이 있을 수 있다는 것을 암시하고 있다 하지만, 일반적으로 수용되고 있는 인권원칙들을 바탕으로 한 모든 상황에서, 교육을 포함한 모든 분야에서 굴욕적이고 비 인간적인 대우로부터 보호 받아야 한다.

#### 최저 법적연령과 고유간의 상호작용: 고용, 결혼, 형사책임

많은 국가에서는 의무적인 초, 중등 교육 이행이 아동 결혼을 막고, 아동이 노동력에서 제외되고, (공식분야에서 학대 없이) 젊은 성인들에게 미래의 고용기회를 제공하는 데 중요하다. 최근 몇십년간, 무료로 의무교육수준을 보장하는 조항으로 고용, 결혼, 형사책임의 “최저 법적연령”(minimum legal age)의 변화를 가져왔다.

많은 국가에서, 아동을 위한 의무교육수준 연장은 “최저법적연령”을 넘어서도 아동의 권리를 확장시켰다. 이 이슈는 고용, 결혼, 형사책임에 대한 최저연령이 교육권의 적응성의 특징과 서로 관련되어 있다는 데 중요하다.

우선, CRC에 따르면, 아동은 “아동에게 적용될 수 있는 법에 의거하여 다수가 조기에 달성되지 않는한(unless under the law applicable to the child, majority is attained earlier” 18세 미만의 사람을 의미한다.

#### 최저 고용연령

CRC의 제 32(1)항은 아동은 “경제적 착취와 위대한 작업 또는 아동의 교육을 방해하는 노동, 또는 아동의... 성장에 해로운 일을 하지 않도록” 보호받아야 한다고 규정하고 있다. 덧붙여서, 제 32(2)(a)항은 국가가 다양한 유형의 고용에 따라 다양할 수 있는 최저 법적 고용연령을 정할 의무를 부여하고 있다.

또다른 차원에서, ILO 협약 고용허가에 대한 최저연령 제 138의 제 1항은 국가는 아동노동을 폐지하고, “... 고용허가 최저연령을 점진적으로 올리기 위해” 조치를 취해야 한다. 또한, 제 5(3)항은 최저고용연령은 (i) 15세 미만이어서는 안 되고, (ii) 의무교육 완료연령보다 낮아서는 안 된다고 규정하고 있다. 따라서, 의무교육수준이 15세 이상까지 제공되어야 한다는 것을 암시한다.

나아가, CRC의 무장갈등에 참여한 아동에 관한 선택의정서(Optional Protocol on the Involvement of Children in Armed Conflict)는 국가가 “... CRC의 제 38(3)항에 규정된 것에 근거하여 국가의 무장군에 자발적으로 참여할 수 있는 최저연령을 높여야” 할 의무가 있다고 설명하고 있다.

#### 최저 결혼연령

UNIFEM, UNICEF, 그리고 여타 국제인권기구들과 단체들은 아동결혼 관행을 차별할 목적의 캠페인을 주도하였다. 전 세계적으로는 남아와 여아에게 규정된 “최저 결혼연령”이 다른 것이 일반적인 관행이다. 이는, 젊은 여성과 여아들이 현실적으로 결혼을 선택하거나 강제로 선택하여, 학업을 중단하기 때문에 중요하다. 나아가, UNSRE는 “여성의 자율을 제한하고, 젊은 십대의 여아들을 교육으로부터 떨어지게 하는 가부장적인 관행은 대개 조혼이나 원하지 않는 결혼, 임신, 그리고 모성까지 포함시키고 있다.”

더군다나, 여아의 조혼의 해로운 효과 때문에, CEDAW 위원회는 “예를 들어 젊은 여성... 여성 누구와 언제 결혼할 것인가를 선택할 권리를 바탕으로 한 합리적인 제한은 보호받아야 하고, 법적으로도 집행되어야 한다”고 규정해왔다. 이런 점에서, 아프리카 여성의 권리에 관한 의정서(African Protocol on Women’s Rights)의 제 6(b)조는 더 구체적이어서, 여성의 최저 결혼연령을 18세로 규정하고 있다.

#### 최저 형사책임연령

UNSRE는 “자신의 자유와 교육을 박탈당한 아동은 자유와 교육을 제공받아야 하고, 이는 아동이 교육권을 가지지 않는 한 발생할 가능성이 낮다”는 점을 명확히 해오고 있다. 이와 마찬가지로, CRC의 제 40조는 공정한 재판을 받을 권리와 소년사법을 개괄하고 있다. 제 40(3)(a)조는 국가가 “아동이 형사법을 위반할 능력을 가지지 않는다고 추정되는 이하의” 최저연령을 정해야 한다고 요구하고 있다.” 또한, 제 40(4)항과 관련하여, 교육훈련과 직업훈련은 형사법을 위반한 아동에게 이용가능해야 한다.

### **2.2.2 교육권의 최소핵심 내용**

“... 해당 국가의 가용자원, 다른 요소, 그리고 애로사항과 관계없이” 적용되고/이행되어야



하는 교육권의 핵심요소들이 있다. 교육권의 핵심내용을 정의하는 각 요소는 특별한 핵심의무를 규정한다는 것을 암시하고 있다. 그에 따라, CESCR은 “... 최소한 [동 협약에 규정된] 각 권리의 최소핵심수준의 충족은 당사국에 달려있다는 점을 확인할 최저 핵심의무”가 있다고 규정했다.

이 페이지의 1항에 설명된 것처럼, 국제법에서 폭넓게 받아들여지는 많은 교육권의 요소가 있다. 이런 점에서, 교육권에 대한 다음의 핵심요소를 나타내는 국제법의 충분한 소스가 있다.

- 기본교육수준은 모두를 위하여 의무여야 하고, 무료여야 한다.
- 교육권에 관한 국가계획/전략이 반드시 채택되고 이행되어야 한다.
- 모든 개인은 국제인권법에서 인정되는 금지된 차별사유를 근거로 교육에서 비차별에서 보호받아야 한다.
- 국가는 교육권과 관련된 자유를 존중하고 증진시켜야 한다.

ICESCR의 제 13조의 맥락에서, 교육권의 최소 핵심의무에는 다음이 포함된다.

“공공교육기관에 비 차별적으로 접근할 권리를 보장하고, 교육이 제 13(1)항에 규정된 목적을 준수하고, 제 13(2)(a)항을 준수하면서 모든 이를 위한 초등교육을 제공하며, 중등, 고등, 그리고 기본 교육 제공을 포함한 국가교육전략을 채택하고 이행하고, “최소 교육기준(제 13(3)조와 (4)조”를 준수해야 하는 국가나 제 3자의 방해없이 자유로운 교육의 선택을 보장할 의무”

또한, 위원회는 “당사국이 (교육권과 관련된) 최소핵심의무를 이행하지 못한 것을 자용자원 부족 탓으로 돌리기 위해서는, 우선권 문제로서 최소 의무를 충족시키려는 노력으로 가용자원을 모두 다 소진했다는 것을 증명해야 한다.”라는 점을 명확히 했다.

### 2.3 점진적 실현의무: 모든 이를 위한 교육의 실현 보장

이용성, 접근성, 수용성, 그리고 적응성의 특징에 따라 교육권의 모든 요소를 완전하게 실현시키는 것은 다음을 포함한 점진적 수행이다.

#### 2.3.1 “최대 가용자원”을 이용하고, 조치를 취할 의무

ICESCR의 제 2(1)항은 “현재 협약에 가입한 각 당사국은 ...최대 가용자원을 이용하기 위한 조치를 취한다”고 규정하고 있다. 따라서, 국가는 모두를 위한 교육권의 완전한 실현을 위하여 추가적 조치를 취하기 위하여 무기한으로 기다릴 수는 없다.

위원회가 주목한 바대로: 조정, 경제후퇴 과정이나 다른 요소들에 의해 발생하는 지 여부와 상관없이 심각한 자원제약이 있을 때에도 취약계층은 상대적으로 저비용의 프로그램의 채택으로 보호받을 수 있고, 실제로 보호받아야 한다. 그러므로, “가용자원”이라는 용어는 교육을 위한 기존의 공공자원의 배정을 요구하지 않고, “(i)자원이 (ii) 다른 권리의 점진적 실현에 부정적으로 영향을 미치거나, 손상시키지 않으면서 효율적으로, 효과적으로 배분될 것을 요구하고 있다.

어떤 차원에서는, ICESCR의 제 13조 조항과 다른 인권조약들에 있는 유사한 조항들의 실현은 당사국에게 상당한 재량의 여지를 제공한다. 하지만, ICESCR의 제 14조에 있는 무로이며 의무인 기본/초등교육을 받을 권리를 이행시킬 목적의 의무는 “상대적으로 융통성 있고,” 합리적인 기간 내에 이행되어야 한다.

UNSRE는 교육분야에서 “최적의 공공지출수준”을 달성하는 데 필요한 구체적인 비율을 정의하는 것이 가능하지 않다”는 점을 확인했다. 하지만, UNSRE는 (i) 교육에 대한 공공투자는 교육권을 위한 선결요건이며, (ii) 공공자원 배정은 초등교육을 우선으로 해야 한다는 점에서 합의가 있다는 점을 발견했다.

### 2.3.2 지속적으로 상황을 개선시키고 역행하는 조치를 의도적으로 취하지 않을 의무

ICESCR의 제 2.1항의 또다른 요소는 “현 협약에 인정된 권리들 점진적으로 완전한 실현을 달성할 목적으로” 조치를 취할 의무를 규정하고 있다. 계속해서, CDESCR은 국가가 “... 교육권의 완전한 실현을 위하여 최대한 신속하게, 효과적으로 움직일 구체적이고, 지소적인 의무”가 있다고 간주하고 있다.

교육권의 실현은 시간을 두고 점진적으로 이뤄져야 하기 때문에, 국가가 교육권의 향유에 관련하여 “퇴보시키는” 법과 정책을 마련하려는 의도적인/계획적인 결정은 교육권의 침해 구성할 것이다. ICESCR에 따르면, “계획적으로 역행하는 조치들은... 가장 주의깊은 주의가 필요하고, 협약에서 제공되고 최대가용자원을 이용한다는 맥락에서 권리들의 전체성 (totality)으로 완전하게 정당화될 필요가 있다.”

이런 점에서, CDESCR의 관행과 견해를 세부적으로 분석한 후, Sepulveda는 “국가는 상황을 해결하거나 개선시키려는 행동을 취하지 않고 특정 권리에 부여되는 보호의 정도의 감소를 용납할 수 없다. 이 의무는 특히 취약집단의 경우 엄격하게 부여된다.

### 2.2.3 교육권의 완전한 이행을 위해 “모든 적절한” 조치를 취할 의무

교육권을 달성할 “적절한 조치들”에는 법률채택, 행정조치 이행, 사법절차와 과정을 통한 보호보장 확대, 특정 프로그램/서비스와 커리큘럼 개발, 학교 세우기 등이 포함된다.

또한, 채택된 조치들에는 교육권 침해의 명시적 인정 (최소 비 차별과 자유 보장)과 구제를 위한 적절한 메커니즘이 반드시 포함되어야 한다.

덧붙여서, 동 협약의 기본 틀은 “(i) 조치들은 ‘합리적’이고, ‘효과적’이고, 동 협약에 의거한 의무와 양립될 수 있는 ‘결과를 도출해야’ 하고, (ii) 국가는 다른 인권을 보호하는 데 가장 효과적이라고 판명된 수단들을 고려해야 한다. 교육권에 대한 국가행동계획을 평가하는 데 적용되어야 하는 한 가지 “테스트”는 이들 행동계획들이 국제인권법에 규정된 교육권의 모든 요소와 관련하여 “이행을 증진”시켜야 한다는 것이다.

### **국가와 국가행위자를 넘어서 확대되는 성격, 범위, 그리고 의무**

교육권의 실현을 위해서는 (i) 개인, 그의 가족, 그리고 지역사회, (ii) 민간분야, 매스미디어, 종교단체를 포함한 시민사회, (iii) 행정부, 사법부, 입법부를 포함한 중앙정부와 지방정부의 모든 기구들, (iv) 지역단체 및 국제기구를 포함한 국제단체, (v) 초국적 기업, NGO 및 기타 단체 사이에 조화로운 노력이 필요하다. 교육권의 대한 공동노력에는 조정과 다양한 수용/감시가 필요하기 때문에, 국가를 넘어서 인권의무들이 있다.

### **2.4 국제금융기관, 초국적 기업을 포함한 비 국가행위자들의 교육권 증진 및 보호 의무**

모든 국제인권조약들은 모든 개인과 기관들에게 확장되는 명시적 금지가 포함되어 있다. 앞서 언급된 바와 같이, 보호의무는 국가들에게 국가의 관할권에 속하는 곳에서는 “그 누구도 (no one)” 교육권을 침해하지 않도록 확인하는 법과 메커니즘을 마련할 것을 요구하고 있다. 마스트리히트 가이드라인에 마련되어 있고, 비 차별원칙을 준수하면서, 개별주체들과 개인들은 다른 개인들의 교육권을 박탈하게 되는 결과를 낳는 행동을 하지 말아야 한다.

국가가 “통제”하거나 규제해야 되는 비 국가행위자의 행위와 관련하여, 마스트리히트 가이드라인도 금지되고, 방지되어야 하는 침해사례를 제공하고 있다. 예를 들어, (i) 교육프로그램과 교육기관은 교육권과 일관성이 없는 조치들과 규정들을 채택하도록 허가되어서는 안 된다. (ii) 사업자는 근로자가 산업안전보건에 해가 되는 것에 대한 정보를 필요할 경우에 구하고 받을 수 있게 해야 한다. (iv) 미디어가 한 활동의 결과는 교육권의 목적을 저해하지 않아야 한다.

비록, 개별 국가의 관할권 내에서 운영하는 비국가행위자들의 의무가 뚜렷하기는 하지만, 이러한 점에서 국제단체의 의무들은 논의대상이 된다. 더 구체적으로는, 국제금융기관들이 교육권을 존중하고, 증진시키고, 이행시킬 의무가 있는 지 여부에 대해서 다양한 견해가 있다.

흥미로운 것은, 많은 독립전문가, 학계, 유엔 인권조약기구들은, 국제단체 문제에 있어서는, 국가는 교육권 실현의 증진에 있어서 “공동” 및 “개별” 의무가 있다고 주장하고 있다. 이런 점에서, ICESCR의 당사국과 기타 인권조약들은 국제 및 지역단체들의 행동이 교육권의 목적에 기여하도록 해야 한다.

“국제협회의 협상과 비준에 관련해서, 당사국은 이들 규약들이 교육권에 역으로 영향을 미치지 않도록 할 수 있는 조치를 취해야 한다. 이와 마찬가지로, 당사국은 국제금융기관과 같은 국제단체들의 회원으로써 자신의 행동이 교육권을 정당히 고려해야 할 의무가 있다.”

“교육권을 보호할 국가의 의무는 단체로 행동해야 하는 국제단체들의 참여로 확대된다... 국제금융기관을 포함한 국제단체들이 단체의 정책과 관행을 수정해서, 교육권을 침해하지 않도록 교육권 침해 제거에 중요하다.”

이런 맥락에서, ICESCR 일반논평 13의 제 60항은 “모든 당사자들 사이에 지속성과 상호작용을 개선시킬” 목적이어야 하는 “교육권의 실현을 위한 조정된 노력”을 요구하기 때문에 특히 적절하다.

또한, 제 60항은 많은 유엔 기구들과 세계은행, 지역별 개발은행들, IMF 등의 국제금융기관을 열거하고 있다. 더 중요한 것으로, 제 60항은 “특히, 국제금융기관, 특히 세계은행과 IMF는 차관정책, 신용합의(credit agreement), 구조조정 프로그램과 채무위기를 벗어나기 위한 조치들 등에 큰 관심을 기울여야 한다.”고 규정하고 있다.

또한, 최근 몇 년간, 인권원칙을 WTO에서 나온 심의에 포함시키는 것도 논의되기 시작했다는 점을 언급하는 것이 중요하다. 이런 점에서, UNSRE를 역임한 2명의 전문가들은 교육의 자유화를 협상 가능한 서비스로 하는 데 대해서 우려를 제기하였다.

## 2.5 국제지원과 협력을 제공할 국가의 의무

ICESCR에 따르면, 각 당사국은 “개별적으로 그리고 국제지원과 협력을 통하여 특히, 경제 및 기술지원과 협력을 할 수 있는 조치를 취할” 의무가 있다. CESCR은 “최대가용자원”에 대한 언급이 국내차원에서 존재하는 제한에 한정되지 않을 뿐만 아니라 국제사회로부터 이용할 수 있는 자원을 포함한다는 것을 명확히 하였다. 나아가, 이러한 수준의 의무는 국제사회가 기금과 전문성을 약속하여 국제인권법이 규정한 교육의 목적에 대해서 공동의 비전 실현에 기여할 의무를 부과한다. 또한, 이는 경제적 자원과 기술자원이 때로는 최소핵심교육요소들이 모두에게로 확장된다는 것을 보장해야 한다는 결론에 이른다.

UNSRE를 역임한, K. Tomasevsky는 지원을 받는 국가가 교육권에 대한 의무를 이행할 수

있는 역량을 높일 수 있는 수단으로써 교육에 대한 지원의 발달과 동향을 분석하였다. 한 가지 흥미로운 결과는 1990년대에는 “교육지원은.. 감소하는 지원물량 내에서 증가했고, 일반적인 통념과는 반대로 “대부분의 교육지원은 초등교육보다 고등교육에 배정된다”는 사실이다.

### 선진국

CESCR 위원회는 선진국들이 전문성을 제공하고, 금전적 지원을 약속하여 교육권이 약속 이상으로 실천되도록 해야 한다.

예를 들어, 일반논평 11에서, 위원회는 “당사국이 재정자원과/또는 전문성이 부족한 경우에는 세부계획을 “마련하고 채택”하면, 국제사회가 이들 국가를 지원할 명확한 의무가 있다”라고 주장하였다. 비록 “지원”할 의무와 “협력”할 의무간의 차이점이 해결되어야 하겠지만, 선진국은 자국의 해외원조정책이 의도하지 않은 부정적 효과를 유발하지 않을 의무가 있다. 최소한, 선진국은 개도국의 교육권을 저해하거나 침해할 정책을 채택하고, 이행하지 않도록 할 의무가 있다.

럼버그 원칙은 “국가의 정치, 경제, 사회제도가 다른 것과 관계없이, 국가는 다른 국가들과 국제, 사회, 경제, 및 문화발전을 증진시키도록 협력해야 한다...” 이 페이지에서 개괄된 것처럼, 교육권이 인간개발과 발전의 핵심 구성요소라는 것은 의심의 여지가 없다.

### 개도국

최저수준의 교육을 제공하기 위한 자원이 부족한 국가들은 국제지원을 구해야 한다. 이런 점에서, 개도국은 (i) UNESCO, UNICEF와 같은 UN 특별기구나 (ii) 정부간 기구와 국제 및 지역적 금융기관으로부터 “적극적으로 지원을 요청할” 수 있다.

동일한 방법으로, CESCR 위원회는 수령한 기금과 지원은 교육권(최소 무료, 의무교육수준)과 같은 기본적인 인권의 점진적 실현과 관련된 기본적인 요구를 만족시키는 데 이용되어야 한다. 더구나, 위원회는 선정(good governance)과 투명성을 강조하고 있다. 그래서, 기금이 얼마나 배정되는 지를 알아보기보다는, 위원회는 모든 이를 위한 (지방 포함) 교육에 목적을 둔 균등한 기금배정에 초점을 두기도 하고, 또한, 또 다른 권리의 실현이 교육권을 실현시키는 노력을 위협하게 하지 않았는 지 여부를 테스트하기도 한다.

Sepulveda의 CESCR의 업무분석에 따르면, 개도국은 또한 다음의 행동을 해야 한다.

- 보장된 교육수준을 달성하기 위해 해당 국가 내에 사람들을 지원하기 위한 상당한 노력에 있어서 국제단체들이 주도한 노력을 용이하게 하거나 최소한, 방해할 하지 말아야 한다.

- ▶ 사회 내에서 가장 취약하고 불리한 계층”의 교육요구사항에 최우선을 두어야 한다.

### 3. 효율적인 교육권 이행을 위해 고려해야 할 기타 요소들

#### 3.1 3D 장애물 제거: 장애, 애로사항, 불리한 점(Disability, Difficulty, Disadvantage)

2002년 보고서에서, UNSRE는 현실상 많은 국가들의 교육 및 공정자금배정계획이 특별하고 뚜렷한 요구사항이 있을 수 있는 학습자들의 구체적인 범주를 이해하지 못하고, 의도하지 않게 “구분이 안 되게(blurring)” 된다는 점을 발견하였다. 따라서, 교육권을 “장애”, “애로사항” 그리고 “불리한 점”이 있는 학습자들에게 확장할 필요가 있는 조치들 사이의 차이는 종종 거의 동일하다고 간주된다. 보고서에서, UNSRE는 다음과 같이 주목하고 있다.

“장애는 의료모델에 의존하여 일반적으로 정의된다. 그리고, 시각, 청각 장애가 있는 학습자와 신체 및 정신적 장애가 있는 학습자들은 특수학교로 분리되거나 주류교육에서 교습과 학습지원을 제공받는다. 학습 애로사항은 정의하여 범주로 나누기 더 힘든 반면에, 불리한 점과 장애의 구분을 흐리는 것은 이주자나 난민, 또는 소수 아동에게 지시 언어에 익숙하지 않을 수도 있기 때문에 “장애” 범위에 들어가게 한다.”

이 페이퍼의 목적이 이들 범주의 세부적 분석을 요구하지는 않으나, 임시 또는 영구특별조치들이 교육권의 목적이 실현되는 것을 보장하는 데 기여할 수 있는 방법을 모색하는 것이 중요하다. 이런 점에서, 임시 특별조치들은 특별한 도움이 필요한 학습자와 특별한 상황에 놓여있는 학습자들이 교육으로 평등하고 혜택을 받아서, 모든 이들에 대한 평등한 결과를 보장받을 수 있다.

비록, CESC, CRC, UNSRE가 교육에서 “임시특별조치들”을 도입해야 할 필요성에 초점을 두고 있지만, CEDAW 위원회는 현실적인 수준에서 적용될 수 있는 기본 틀을 개발해 놓았다. 더구나, Marc Bossuyt는 이 주제에 초점을 두는 업무발전에 기여했다. 현재, 교육분야의 임시특별조치들은 완전하게 모색되지 않았다. 따라서, 개별 국가 내에서 고려되지 않은 가능성있는 조치들이 있다. 그 결과, 교육에 있어서 임시특별조치들을 증진시키고 옹호하는 것과 관련된 NI의 역할은 주의깊게 고려될 필요가 있다.

#### 3.2 교육권의 점진적 실현을 보장하기 위해 취한 조치들의 영향을 평가할 지표/접근법 개발

CESCR은 동 협약 제 13(1)조에 따라, 국가는 “사실상, 교육이 13조에 명시된 교육목적과 일맥상통하는 지 여부를 모니터하는 투명하고 효율적인 시스템을 마련하여, 유지시켜야 할 의무가 있다”고 확인하였다. 많은 전문가들, 국제기구/기관, 그리고 주요 국

내 및 지역적 인권기구들은 국제인권기준의 국내이행의 영향을 모니터하고 평가해야 하는 점을 강조하였다. 다시 말해서, 교육권이 “권한부여(empowerment)”와 “교차적인(cross-sectional)” 권리로 간주된 이후로, 교육권의 실현은 인간계발과 불리한 위치에 있는 계층의 발전에서 필수적인 구성요소가 되고 있다. 이러한 이유로, 사실상의 평등을 보장하고, 차별을 철폐하는 과정은 교육관련 법과 정책을 필요한 경우에 개혁할 수 있는 접근법이 요구된다.

ESCR의 침해에 관한 마스트리히트 가이드라인의 제 32항은 “경제, 사회, 문화적 권리의 침해에 대해 문서화하고, 권리침해를 모니터하는 것은 NGO, 국내정부 및 국제단체들을 포함한 관련된 모든 행위자들에 의해 수행되어야 한다”고 규정하고 있다. NI는 교육권 침해를 문서화하고, 교육권의 실현을 위해 취한 점진적 조치들을 모니터하는 역할을 한다. 이런 점에서, 첨부자료 III에는 UNSRE가 제안했던 교육권에 대한 권리를 기반으로 한 지표들이 포함되어 있다.

권리를 기반으로 한 영향평가에 대한 7개 원칙	
1	명시적인 인권 기본 틀 이용
2	인권의 점진적 실현에 목표를 둠
3	과정과 정책에서 비 차별과 평등 증진
4	모든 이해당사자들의 의미있는 참여 보장
5	정보를 제공하고 자유롭게 의사를 표현할 권리 보호
6	국가가 책임을 지는 메커니즘 수립
7	인권의 상호의존성 인정

교육권 영향 분석을 개발하고 수행하는 혜택은 다음과 같이 요약될 수 있다:

- (i) NI와 정부기구에 인권을 공고정책과 입법과정에 편입시킨다.
- (ii) 권리를 기반으로 한 정책접근법은 정부의 행동의 효율성과 지속성을 증진시킨다는 것을 이해하는 데 기여한다.
- (iii) 점진적인 실현이라는 원칙들의 측면에서 교육권이행단계들을 쉽게 이해하게 해준다.

이 접근법과 케를 같이하여, NI들이 교육에서 차별적인 관행, 법, 정책들의 영향을 모니터하고 조사하는 과정에서 다음의 질문들을 고려할 수 있다.

<ul style="list-style-type: none"> <li>● 정책이 국제 및 국내법에 의거하여 정부의 교육권 의무와 일관성이 있는가?</li> <li>● 정책이 정부의 교육전략과 행동계획과 일관성이 있는가?</li> <li>● 권리를 바탕으로 한 정책분석이 교육권 침해의 가능성을 드러내는가?</li> <li>● 완화하는 조치들이 필요한가?</li> </ul>
--

- 역으로 영향을 받은 이들에게 보상이 필요한가?
- 이 정책이 교육권을 더 잘 증진시킬 수 있는가?
- 교육권에 대한 영향을 개선시키는 데 고려되어야 할 수정사항은 무엇인가?
- 건강권의 향유를 더 증진시킬 제안된 정책에 대한 대안적 정책선택에는 무엇이 있는가?

### 3.3 교육권의 사법심사가능성 (justiciability)

교육권은 국내, 지역, 국제적 차원에서 계속 소송대상이 되고 있다. 덧붙여서, 교육권에 적용되는 국제기준의 해석과 적용 원칙을 설명하는 기존의, 그리고 확장된 법체계(jurisprudence)가 있다. 그 결과, 교육권에서 발생하는 국가의무의 범위는 사법적 과정과 준 사법적 과정에 의해서 점진적으로 해석되고, 명백해지고, 확인되고 있다.

이런 점에서, 만일 권리가 사법적 기구에 의해 원용되고, 판결을 받을 수 있다면, 해당 권리는 사법심사 대상이 된다. 따라서, 확장된 일체의 법 체계는 교육권이 사법심사대상이 될 수 있다는 점을 명확히 했다. 또한, 다양한 국제법 전문가들은 구체적으로 교육권이 사법심사가능성이 있다는 사실을 언급하였다. 이런 점에서, 최소한 교육에서 비 차별과 평등이라는 요소는 국내차원에서 사법심사를 받아야 한다. 이는 비 차별 보장사항이 모든 개인이 받아야 하는 안전조치이기 때문에 필수적이다.

#### 국제사법재판소(International Court of Justice)의 견해

팔레스타인 점령지역에서 장벽설치의 법적 결과에 대한 국제사법재판소의 자문의견에서, ICESCR과 CRC가 규정하고 있는 교육권, 기타 ESCR은 이 문제에 적용할 수 있었다. 더 중요한 것은, ICJ가 나아가 이스라엘이 위반했다는 것을 선언하고/표명했다.

K. Tomasevsky에 따르면, 교육권의 국내법이행은 국제적인 강행으로 이어지고, 그래서, 사법심사가능성에 대한 분석이 국내법과 메커니즘에 의해 판결받았던 교육권의 요소들에 초점을 맞추어야 하는 이유이다. 또한, UNSRE를 역임하면서, Tomasevsky는 다음의 사실이 지속되는 동향을 파악하였다.

- ▶ 주요사건은 교육이 (특히 초등교육) 이용가능하고 접근할 수 있는 국가와 관련되어 있다.
- ▶ 주요 기존의 법 체계는 인권단체나 기관에 의해서 주도되거나 발생하지 않았기 때문에, 때로는 인권옹호가나 지지자에게는 알려져 있지 않다.

또한, 현재 UNSRE가 주목한 최근의 동향은 아동이 자신의 교육권을 주장하기 위하여 국내 법원에 제기한 소송건수의 증가이다.



Martin Scheinin에 따르면, 사법심사가능성이라는 용어는 다음의 사항을 고려할 수 있게 되는 차원(dimension)이 있다.

- (i) 가능하면 다양한 법의 출처를 통합
- (ii) 각 권리의 본질을 암시하는 방법론
- (iii) 각 권리의 “핵심”적인 사법심사가능 요소들 파악
- (iv) 권리침해에 적용되는 구제조치 보장
- (v) 국가의무 명확히 함
- (vi) 불가분성 실현에 대한 통합된 접근 강조

이들은 교육권의 사법심사가능성 분석에 적용될 수 있다.

교육권의 사법심사가능성에 대한 결과는 NI가 교육권에 대한 사법 및 준 사법기구들의 인식을 국내적으로 증진시키는 역할을 한다는 것을 암시한다. 이 점에서, 2002년에, UNSRE는 “국내 차원에서 교육권에 대한 법 체계 확장은 NI의 업무로 보완되어 왔다.

# **ADVISORY COUNCIL OF JURISTS**



## **THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

...a partnership for human rights in our region

## **RIGHT TO EDUCATION**

## **BACKGROUND PAPER**

**31 July – 3 August 2006  
Suva, Fiji Islands**

## **The Asia Pacific Forum of National Human Rights Institutions**

The Asia Pacific Forum of National Human Rights Institutions ('APF') is an independent non-profit organisation that supports, through regional cooperation, the establishment and development of national institutions in order to protect and promote the human rights of the peoples of the region.

Established in 1996, the APF is comprised of independent national human rights institutions that have been established in compliance with the minimum standards of the United Nations General Assembly endorsed 'Principles relating to the status of national Institutions' ('the Paris Principles').

The APF plays a unique role in developing human rights dialogue, networks and practical programmes of support. With its member institutions the APF is well positioned to directly influence the development of human rights law and practice in the Asia Pacific.

## **The Advisory Council of Jurists**

The Advisory Council of Jurists ('ACJ') advises the APF Forum Council on the interpretation and application of international human rights standards. The ACJ is comprised of eminent jurists who have held high judicial office or senior academic or human rights appointments.

The establishment of the ACJ reflects the Forum Council's recognition of the need for access to independent, authoritative advice on international human rights questions and to develop regional jurisprudence relating to the interpretation and application of international human rights standards. The ACJ has considered five references: torture (2005); anti-terrorism legislation and the rule of law (2004); trafficking of women and children (2002); death penalty (2000); and the regulation of child pornography on the internet (2000).

Further information about the ACJ is available at: [www.asiapacificforum.net/jurists/](http://www.asiapacificforum.net/jurists/)

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# **ADVISORY COUNCIL OF JURISTS**

## **RIGHT TO EDUCATION**

### **BACKGROUND PAPER**

The development of the *Background Paper on the Right to Education* and the meeting of the Advisory Council of Jurists in Suva, Fiji Islands, 31 July – 3 August 2006 have been made possible with the support of the MacArthur Foundation.

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## List of Abbreviations

ACJ	Advisory Council of Jurists
African Children's Charter	African Charter on the Rights and Welfare of the Child
APF	Asia Pacific Forum of National Human Rights Institutions
ASEAN	Association of South East Asian Nations
CEDAW	(UN) Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW Committee	(UN) Committee on the Elimination of All Forms of Discrimination Against Women
CERD	(UN) International Convention on the Elimination of All Forms of Racial Discrimination
CERD Committee	(UN) Committee on the Elimination of All Forms of Racial Discrimination
CESCR	(UN) Committee on Economic, Social and Cultural Rights
Children's Committee	(UN) Committee on the Rights of the Child
CRC	(UN) Convention on the Rights of the Child
ESCR	Economic, Social and Cultural Rights
HRC	(UN) Human Rights Committee
ICCPR	(UN) International Covenant on Civil and Political Rights
ICESCR	(UN) International Covenant on Economic, Social and Cultural Rights
ICRMW	(UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organisation
IMF	International Monetary Fund
NGOs	Non-governmental organisations
NHRIs	National Human Rights Institutions
MDGs	(UN) Millennium Development Goals

OHCHR	(UN) Office of the High Commissioner for Human Rights
OIC	Organisation of the Islamic Conference
Pact of San Salvador	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights
RBA	Rights Based Approach
SAARC	South Asian Association for Regional Cooperation
TVE	Technical and Vocational Education
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	(UN) Educational, Scientific and Cultural Organisation
UNICEF	(UN) Children's Fund
UNSRE	(UN) Special Rapporteur on the Right to Education
WTO	World Trade Organisation

## Preface: Advisory Council of Jurists Reference on the Right to Education<sup>1</sup>

At a meeting held in Darwin, Australia in July 1996 representatives of the national human rights institutions ('NHRIs') of Australia, India, Indonesia and New Zealand agreed to the establishment of the Asia Pacific Forum of National Human Rights Institutions ('APF'). The NHRIs of the Philippines<sup>2</sup>, Sri Lanka<sup>3</sup>, Fiji<sup>4</sup>, Mongolia<sup>5</sup>, Nepal<sup>6</sup>, Malaysia<sup>7</sup>, the Republic of Korea<sup>8</sup>, Thailand<sup>9</sup> and Afghanistan<sup>10</sup> have since also become full members of the APF. The NHRI of Timor-Leste has been admitted as a Candidate Member of the APF.<sup>11</sup> The NHRIs of Jordan<sup>12</sup>, the Palestinian Territories<sup>13</sup> and Qatar<sup>14</sup> have each been admitted as Associate Members of the APF.

At the Third Annual Meeting of the APF held in Indonesia in September 1998, APF members established an Advisory Council of Jurists ('ACJ') to provide NHRIs with jurisprudential guidance on contemporary human rights issues.<sup>15</sup> The ACJ is made up of one eminent jurist from each State of the full member institutions. The current members of the ACJ are Dr Qasim Hashimzai (Afghanistan), Associate Professor Andrea Durbach (Australia), Justice

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<sup>1</sup> The Asia Pacific Forum of National Human Rights Institutions would like to express its appreciation to its member institutions for their assistance and valuable input into this background paper.

<sup>2</sup> Admitted inter-sessionally between the first and second annual meetings of the Asia Pacific Forum of National Human Rights Institutions.

<sup>3</sup> Admitted at the Second Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, New Delhi, India, 1997.

<sup>4</sup> Admitted at the Fourth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Manila, the Philippines, 1999.

<sup>5</sup> Admitted at the Sixth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Colombo, Sri Lanka, 2001.

<sup>6</sup> Admitted at the Fifth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Rotarua, New Zealand, 2000.

<sup>7</sup> Admitted at the Seventh Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, New Delhi, India, 2002.

<sup>8</sup> Admitted at the Seventh Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, New Delhi, India, 2002.

<sup>9</sup> Admitted at the Seventh Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, New Delhi, India, 2002.

<sup>10</sup> Afghanistan was admitted as an associate member at the Eighth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Kathmandu, Nepal, February 2004. It was admitted as a full member at the Tenth Annual Meeting in Ulaanbaatar, Mongolia, August 2005.

<sup>11</sup> Admitted at the Tenth Annual Meeting in Ulaanbaatar, Mongolia, August 2005.

<sup>12</sup> Admitted at the Ninth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Seoul, Republic of Korea, September 2004.

<sup>13</sup> Admitted at the Eighth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Kathmandu, Nepal, February 2004.

<sup>14</sup> Admitted at the Tenth Annual Meeting in Ulaanbaatar, Mongolia, August 2005.

<sup>15</sup> 'Report of the Third Meeting of the Asia Pacific Forum of National Human Rights Institutions', 7th to 9th September 1998, Jakarta,

[http://www.asiapacificforum.net/activities/annual\\_meetings/third/final.htm](http://www.asiapacificforum.net/activities/annual_meetings/third/final.htm)



Anthony Gates (Fiji), Mr Fali S Nariman (India), Professor Jacob Sahetapy (Indonesia), Dato' Mahadev Shankar (Malaysia), Mr Jugnee Amarsanaa (Mongolia), Justice Susan Glazebrook (New Zealand), the Hon Mr Daman Nath Dhungana (Nepal), Mr Sedfrey Ordoñez (Philippines), Professor Kyong-Whan Ahn (Republic of Korea), Mr Rajendra Goonesekere (Sri Lanka) and Professor Vitit Muntarbhorn (Thailand).

To date the ACJ has held a number of sessions to consider references relating to child prostitution, the death penalty, trafficking, terrorism and torture.<sup>16</sup>

At the Tenth Annual Meeting of the APF held in Mongolia in August 2005, Forum Councillors decided to formulate a new reference to the ACJ on the legal obligations of States for the implementation of economic, social and cultural rights ('**ESCR**') and requested the secretariat prepare draft terms of reference for the consideration and approval of the APF.<sup>17</sup> In the interests of narrowing the scope of the reference and in light of the substantive work already conducted on this issue, the secretariat recommended that the terms of reference focus specifically on the right to education.

In February 2006 draft terms of reference were distributed to APF members for comment. The terms of reference adopted by APF members were as follows:

The Asia Pacific Forum of National Human Rights Institutions refers to the Advisory Council of Jurists to advise and make recommendations as to international law, instruments and standards relevant to the legal obligations of States for the implementation of economic, social and cultural rights, with respect to the right to education.

In particular the Advisory Council of Jurists is asked to consider:

- (i) how international law, standards and mechanisms define the 'right to education', including with reference to the obligation to *respect, protect, promote* and *fulfil* the right to education.
- (ii) the nature and scope of the obligation to undertake steps by all appropriate means, including legislative measures, and the requirement to avoid retrogressive measures. Consideration should be given to the following interrelated and essential features of the right to education: *availability, accessibility, acceptability* and *adaptability*. The Advisory Council of Jurists is asked to be mindful of fundamental issues including the minimum age of employment, marriage and criminal responsibility.
- (iii) the question of the justiciability of the right to education;
- (iv) the nature and scope of the obligation to prioritise the introduction of compulsory and free primary education for all and to achieve progressively the full realisation of secondary, higher and fundamental education;

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<sup>16</sup> Details of these references can be found at [http://www.asiapacificforum.net/jurists/jurists\\_reference.html](http://www.asiapacificforum.net/jurists/jurists_reference.html)

<sup>17</sup> 'Concluding Statement', Tenth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, 26-28 August 2005, Ulaanbaatar, Mongolia, [http://www.asiapacificforum.net/annual\\_meetings/tenth/concluding.htm](http://www.asiapacificforum.net/annual_meetings/tenth/concluding.htm)

- (v) the nature and scope of the obligation of the State to use the maximum of its available resources;
- (vi) the nature and scope of the obligation to ensure non-discrimination and equality of opportunity in access to education, including access to education for non-nationals, refugees, internally displaced persons, people living with disabilities and other minorities;
- (vii) the nature and scope of the obligation to ensure gender parity and gender equality in education;
- (viii) the nature and scope of the obligation to respect religious and cultural practices within schools and other educational institutions;
- (ix) the nature and scope of the obligation to provide quality education and to establish minimum education standards and an effective and transparent system to monitor such standards;
- (x) the nature and scope of the obligation of the State, within the context of the right to education, to ensure the realisation of the right to human rights education for all;
- (xi) the nature and scope of the obligation to ensure academic freedom and the autonomy of educational institutions;
- (xii) the nature and scope of the obligation to respect parents and legal guardians' freedom of choice of educational institution and educational program;
- (xiii) the nature and scope of the obligation of States to receive and to provide international assistance and cooperation;
- (xiv) the nature and scope of the obligation of non-state actors, including international financial institutions and trans-national corporations, to protect and promote the right to education.

Relevant international instruments include but are not limited to:

- (i) Universal Declaration of Human Rights;
- (ii) International Covenant on Economic, Social and Cultural Rights;
- (iii) International Convention on the Elimination of All Forms of Racial Discrimination;
- (iv) Convention on the Elimination of All Forms of Discrimination Against Women;
- (v) Convention on the Rights of the Child;
- (vi) Convention Against Discrimination in Education;
- (vii) Minimum Age Convention 1973
- (viii) Worst Forms of Child Labour Convention 1999

The Advisory Council of Jurists may wish to consider:

- (i) General Comment No.3 of the Committee on Economic, Social and Cultural Rights: The nature of States parties obligations
- (ii) General Comment No. 13 of the Committee on Economic, Social and Cultural Rights: The right to education
- (iii) General Comment No. 10 of the Committee on Economic, Social and Cultural Rights: The role of national human rights institutions in the protection of economic, social and cultural rights
- (iv) General Comment No. 1 (2001) of the Committee on the Rights of the Child on the aims of education
- (v) General recommendation N°3 (1987) of the Committee on the Elimination of All Forms of Discrimination Against Women
- (vi) Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights;
- (vii) Maastricht Guidelines on Violations of Economic, Social and Cultural Rights
- (viii) The UN Millennium Development Goals
- (ix) The Dakar Framework for Action;
- (x) The Asia and Pacific Regional Framework for Action: Education for All;
- (xi) Revised Recommendations concerning Technical and Vocational Education;
- (xii) Vienna Declaration and Programme of Action;

- (xiii) Plan of Action for the first phase (2005-2007) of the World Programme for Human Rights Education (A/59/525/Rev.1), dedicated to the integration of human rights education within the primary and secondary school systems.

The Advisory Council of Jurists may wish to consider the following regional human rights instruments:

- (i) African Charter on Human and Peoples' Rights (1981)
- (ii) Additional Protocol in the Area of Economic, Social and Cultural Rights to the American Convention on Human Rights (Protocol of San Salvador) (1988)
- (iii) European Social Charter (revised 1996) and the Additional Protocol thereto.

On the basis of the terms of reference a questionnaire was distributed to the APF's member NHRIs in April 2006, asking them to outline in as much detail as possible the laws and practices relating to the right to education in their State and/or relevant to their mandate.<sup>18</sup>

On the basis of the information provided and independent research, this background paper has been prepared to assist the ACJ in its consideration of this issue.

The ACJ will consider this report at their fifth session which will be held in conjunction with the Eleventh Annual Meeting of the APF in Fiji, from 31 July to 3 August 2006.

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<sup>18</sup> Responses of APF members to the questionnaire are available on the website at: <http://www.asiapacificforum.net/jurists/references/education/questionnaire.htm>. The following APF members provided responses: Afghanistan, Australia, Fiji, India, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Philippines, Qatar, Republic of Korea and Thailand.

## Introduction

In 1948 the Universal Declaration of Human Rights ('UDHR') set the basis for the body of international human rights law that states that "[e]veryone has a right to education."<sup>19</sup> During the last decade the progressive development of a framework for the realisation of the right to education has advanced. At the same time, however, in 2006 at least 23 countries in the world risk failing to achieve a minimum of universal primary education by 2015.<sup>20</sup> It is timely, therefore, for NHRIs to analyse the ways the right to education has been elaborated on and to consider how they potential role in the realisation of this right.

This background paper aims to assess various human rights based approaches that may contribute to the realisation of the right to education within the Asia Pacific region. A detailed analysis of the international texts that denote the right to education is provided. In addition, information on the existing work and practices on the right to education in countries represented in the APF is included. It is hoped that this background paper will assist NHRIs in the development of analytical tools to inform comprehensive strategies and practices on the right to education.

### 1. International human rights instruments on the right to education

There are many international instruments and tools that can be used to canvass the various dimensions of the right to education. To illustrate this point, as of 1995, a compendium of international treaties and documents specifically referring to the right to education had already listed forty one sources.<sup>21</sup> Since that time, the list has continued to expand.

This section lists the main instruments, interpretative tools and documents that set the basis of the right to education in its present-day form.<sup>22</sup> Nonetheless, it is important to stress that, in order to contribute to conceptual clarity around the right to education, not all the listed

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<sup>19</sup> See UDHR Art. 26. The UDHR was adopted and proclaimed by the UN General Assembly in resolution 217 A (III) of 10 December 1948.

<sup>20</sup> See for example, UNESCO, "2006 UNESCO Education for All Global Monitoring Report: Literacy for Life" [http://portal.unesco.org/education/en/ev.phpURL\\_ID=43283&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.phpURL_ID=43283&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>21</sup> See reference provided in paragraph 8 of report by Mustapha Mehedi on the realisation of the right to education, including human rights education (UN Doc E/CN.4/Sub2/1998/10), 3 June 1998. [A. Fernandez S, Jenkner. *Declarations et conventions internationales sur le droit a l'education et a la liberte d'enseignement*, Info-3 Verlag, Frankfurt 1995].

<sup>22</sup> International Instruments and Regional Instruments are listed in chronological order, taking into account the date of entry into force. Although this list of 'other sources' is comprehensive, it is not exhaustive. Also, in spite of the references to international/regional case law on the right to education that will be made in Chapter 1, it is necessary to stress that domestic jurisprudence is also plentiful.

sources will be analysed. Priority has been given to the examination of authoritative and legally-binding sources of the right to education in international human rights law.

### ***1.1 International Instruments***

Most international human rights treaties refer to the right to education, including:<sup>23</sup>

- Universal Declaration on Human Rights;<sup>24</sup>
- International Convention on the Elimination of All Forms of Racial Discrimination;<sup>25</sup>
- International Covenant on Civil and Political Rights;<sup>26</sup>
- International Covenant on Economic, Social and Cultural Rights;<sup>27</sup>
- Convention on the Elimination of All Forms of Discrimination Against Women;<sup>28</sup>
- Convention on the Rights of the Child;<sup>29</sup>
- International Convention on the Protection of the Rights of Migrant Workers and members of their families;<sup>30</sup> and
- Draft Comprehensive and Integral Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.<sup>31</sup>

Examples of other International Conventions that refer to the right to education are:

- Convention relating to the Status of Refugees;<sup>32</sup>

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<sup>23</sup> For easy reference, the main articles of main human rights treaties are listed in Appendix 1.

<sup>24</sup> UDHR Art. 26.

<sup>25</sup> See Art. 5(e)(v) to be read in conjunction with Arts. 1-4 (c ) and 5(e)(v). Adopted by UN General Assembly Resolution 2106 A (xx) of 21 December 1965, entry into force on 4 January 1969.

<sup>26</sup> Arts 18(4) and 19 refer to elements of the right to education. Adopted by the UN General Assembly Resolution 2200 A(XXI) of 16 December 1966, entry into force 23 March 1976.

<sup>27</sup> See Arts. 13 and 14 to be read in conjunction with Arts. 2-3. Adopted by UN General Assembly resolution 2200 (XXI) of 16 December 1966, entry into force on 3 January 1976.

<sup>28</sup> See Arts. 10, 13, 14(d) and 16(e) to be read in conjunction with Arts. 1-5. Adopted by UN General Assembly resolution 34/180 of December 1979, entry into force on 3 September 1981.

<sup>29</sup> See Arts. 28 and 29, also relevant are Arts. 13, 17 and 28 to be read in conjunction with Arts. 1-4. Adopted by UN General Assembly in resolution 44/25 of 20 November 1989, entry into force 2 September 1990. There are two optional protocols to the CRC and both make references to the right to education.

<sup>30</sup> See Arts 30 conjunction with Arts. 1 and 7. In addition, Art. 33 deals with the right to information. Adopted by UN General Assembly resolution 25/158 of 18 December 1990, entry into force 1 July 2003.

<sup>31</sup> Although the Disability Convention has not been adopted, it is important to bear in mind that the right to education is likely to be included. In the future, this instrument may be a valuable tool for NHRIs interested in exploring comprehensive approaches to the implementation of this right.

<sup>32</sup> See Art. 22. Adopted by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) on 28 July 1951, entered into force 22 April 1954.

- UNESCO Convention Against Discrimination in Education<sup>33</sup> and UNESCO Convention on Technical and Vocational Training;<sup>34</sup>
- ILO Convention (No 138) Concerning Minimum Age for Admission to Employment;<sup>35</sup> and
- ILO Convention (No 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.<sup>36</sup>

The status of ratifications of some of these conventions by the seventeen States whose NHRIs are members of the APF is set out in Table 1 (principal human rights instruments relevant to the right to education).

## ***1.2 Regional Instruments***

The right to education is included in the following regional human rights instruments:

- American Convention on Human Rights<sup>37</sup> and its Additional Protocol on Human Rights in the Area of Economic, Social and Cultural Rights (**‘Pact of San Salvador’**);<sup>38</sup>
- African Charter on Human and Peoples’ Rights<sup>39</sup>, its Protocol on the Rights of Women in Africa<sup>40</sup> and the African Charter on the Rights and Welfare of the Child (**‘African Children’s Charter’**),<sup>41</sup> and
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms;<sup>42</sup> European Social Charter (revised)<sup>43</sup> and the European Charter for Regional or Minority Languages.<sup>44</sup>

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<sup>33</sup> Adopted by the General Conference of UNESCO on 14 December 1960, entered into force on 22 May 1962.

<sup>34</sup> Adopted by the General Conference of UNESCO on 10 November 1989, entered into force on 29 August 1996.

<sup>35</sup> Adopted at the 58<sup>th</sup> session of the ILO General Conference on 26 June 1973, entered into force on 9 June 1976.

<sup>36</sup> Adopted at the 87<sup>th</sup> session of the ILO General Conference on 17 June 1999, entered into force on 19 November 2000.

<sup>37</sup> See Art. 26. Adopted by the Inter-American Specialised Conference on Human Rights on 22 November 1969, entered into force 18 July 1978.

<sup>38</sup> See Art. 13. Adopted at the 18<sup>th</sup> regular session of the General Assembly of the Organisation of American States held in San Salvador on 17 November 1988, entered into force on 16 November 1999.

<sup>39</sup> See Arts. 17, 22 and 25. Adopted by the 18<sup>th</sup> Assembly of Heads of State of the Organization of African Unity on 27 June 1981, entered into force 21 October 1986.

<sup>40</sup> See Art 12. Adopted by 2<sup>nd</sup> Ordinary Session of Assembly of the Union 11 July 2003, entered into force 25 November, 2005.

<sup>41</sup> See Art. 11. Adopted by the 26<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU on 11 July 1990, entered into force on 29 November 1999.

Case law from the European and Inter-American human rights mechanisms has also contributed to clarifying the nature and scope of the right to education.<sup>45</sup>

### ***1.3 General Comments/Recommendations by UN Treaty Bodies***

General and specific provisions on the right to education have been further elaborated on by general comments and recommendations by UN Human Rights Committees. These are authoritative statements on the meaning of provisions contained in international human rights treaties aimed at assisting states parties in reporting and implementation processes.<sup>46</sup>

When analysing the meaning, extent and scope of the right to education, the following general comments and recommendations should be considered:

- General Comments No. 3,<sup>47</sup> 10,<sup>48</sup> 11,<sup>49</sup> 13,<sup>50</sup> 16<sup>51</sup> and 18<sup>52</sup> of the Committee on Economic, Social and Cultural Rights (**‘CESCR’**);
- General Comment No. 1 of the Committee on the Rights of the Child<sup>53</sup> (**‘Children’s Committee’**); and
- General Recommendation No. 3<sup>54</sup> of the Committee on the Elimination of All Forms of Discrimination Against Women (**‘CEDAW Committee’**).

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<sup>42</sup> See Art 2. Adopted by the Members of the Council of Europe in Paris on March 20 1952, entered into force on 18 May 1954.

<sup>43</sup> See Part I, and Arts. 7, 9, 10, 17 and 21. Adopted by the Members of the Council of Europe on 3 May 1996 at Strasbourg, entered into force on 1 July 1999.

<sup>44</sup> See Art.8. Adopted by the Members of the Council of Europe in Strasbourg on November 1992, entered into force on 1 March 1998.

<sup>45</sup> For example: *Dalicia Yean and Violeta Bosica v Dominican Republic* (case No 12.189) before the Inter American Commission of Human Rights in which the Commission established that since effective domestic remedies did not exist, the case was admissible. The *Autism Europe v France* case (complaint No 13/2002- European Committee of Human Rights) recalled that the failure to take necessary steps to ensure the right to education of children and adults with mental disability amounts to indirect discrimination.

<sup>46</sup> A consolidated list of general recommendations/comments can be found through UN treaty body data base created by the Office of the UN High Commissioner of Human Rights: <http://www.unhchr.ch> as well as the resource page on UN Human Rights Treaty bodies created by Professor Anne Bayefsky: <http://www.bayefsky.com/tree.php/id/13/misc/general>.

<sup>47</sup> On the nature of State Parties obligations (ICESCR Art. 2 para 1), UN Doc E/1991/23.

<sup>48</sup> On the role of national human rights institutions in the protection of ESCR, UN Doc E/C.12/1998/25.

<sup>49</sup> On plans of action for primary education (ICESCR Art 14), UN Doc E/C.12/1999/4.

<sup>50</sup> On the right to education (ICESCR Art 13), UN Doc E/C.12/1999/10.

<sup>51</sup> On the equal right of men and women to the enjoyment of all ESCR (ICESCR Art 3), UN Doc E/C.12/2005/3.

<sup>52</sup> On the Right to Work (ICESCR Art 6), UN Doc E/C.12/GC/18.

<sup>53</sup> On the aims of education (CRC Art 29 para 1), UN Doc CRC/GC/2001.

<sup>54</sup> On education and public information campaigns, UN Doc A/42/38.

#### ***1.4 Other Interpretative tools***

International law experts have developed principles and guidelines that set out views on the interpretation of key provisions of the ICESCR that have been widely accepted and extensively referred to. The following tools provide a framework for understanding the legal nature of obligations in relation to ESCR:

- Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights<sup>55</sup> (hereinafter ‘**Limburg Principles**’);
- Maastricht Guidelines on Violations of Economic, Social and Cultural Rights<sup>56</sup> (hereinafter ‘**Maastricht Guidelines**’); and
- Montreal Principles on Women’s Economic Social and Cultural Rights<sup>57</sup> (hereinafter ‘**Montreal Principles**’).

#### ***1.5 Supplementary Sources***

A wide range of inter-governmental bodies, agencies and human rights experts with mandates that touch on economic, social and cultural rights have explored various aspects of the right to education. The most important references are included in the following documents:

- Outcome documents of relevant UN Conferences such as: (i) the Vienna Declaration and Programme of Action,<sup>58</sup> (ii) the Beijing Declaration and Platform for Action,<sup>59</sup> and (iii) the Durban Declaration and Programme of Action;<sup>60</sup>
- Reports of UN Special Rapporteur on the Right to Education<sup>61</sup> and other UN experts that have contributed to developing a better understanding of the right to education. Specifically: (i) the working paper by Mustapha Mehedi on “The realization of the

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<sup>55</sup> *Human Rights Quarterly*, Vol. 9, No. 2 (May, 1987), pp. 122-135.

<sup>56</sup> *Human Rights Quarterly*, Vol 20, No 3 (August, 1998), pp 691-704.

<sup>57</sup> *Human Rights Quarterly*, Vol 26, No 3 (August, 2004), pp 760-780.

<sup>58</sup> For example, see section D of the Vienna Programme of Action, paras 78-82. Adopted by the UN World Conference on Human Rights on 25 June 1993 (UN Doc A/Conf.157/2).

<sup>59</sup> For example, see strategic objectives B and I.3 of the Beijing Platform for Action. Adopted by the UN Fourth World Conference on Women on 17 October 1995 (UN Doc A/Conf.177/20).

<sup>60</sup> See <http://www.unhchr.ch/html/racism/educationWCAR.doc> for references on the right to education contained in the Durban Declaration and Programme of Action. Adopted by the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance on 8 September 2001.

<sup>61</sup> This mandate was established in 1998 and all reports are available on-line through the Office of the High Commissioner of Human Rights: <http://www.ohchr.org/english/issues/education/rapporteur/>.



- right to education, including education on human rights<sup>62</sup> and (ii) reports by the independent expert on the question of a draft optional protocol to the ICESCR,<sup>63</sup>
- The UN Millennium Declaration<sup>64</sup> and the Millennium Development Goals ('MDGs'),<sup>65</sup>
  - The World Declaration on Education for All<sup>66</sup> and the Dakar Framework for Action: "Education for All: Meeting Our Collective Commitments"<sup>67</sup> ('**Dakar Framework for Action**');
  - Revised Recommendations concerning Technical and Vocational Education;<sup>68</sup>
  - Plan of Action for the United Nations Decade for Human Rights Education, including the first phase (2005-2007) of the World Programme for Human Rights Education dedicated to the integration of human rights education within the primary and secondary school systems;<sup>69</sup> and
  - Cairo Declaration on Human Rights in Islam<sup>70</sup> and the Arab Charter on Human Rights.<sup>71</sup>

## 2. The right to education and the current international context

In recent decades, the correlation between access to quality education and human development has been confirmed. As a result, demands for the right to education as a means to restore "human rights for all people" have gained greater momentum.

Even though the right to education extends beyond the notion of "basic learning needs," Article 1(1) of the 1990 World Declaration on Education for All, provides an overview of the issues and areas that are linked to educational processes:

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<sup>62</sup> This paper was commissioned and considered by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1998 (UN Doc: E/CN.4/Sub.2/1998/10).

<sup>63</sup> Independent Expert's second study on an Optional Protocol (2003) E/CN.4/2003/53

<sup>64</sup> Resolution adopted by the UN General Assembly on 18 September 2000 (UN Doc A/55/L.2).

<sup>65</sup> According to the UN's website, the MDGs "form a blueprint agreed to by all the world's countries and all the world's leading development institutions." Goal 2 is to achieve *universal primary education* by ensuring that all boys and girls complete a full course of primary education. In addition, goal 2 establishes the need "to eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015." This information and more can be found at: <http://www.un.org/millenniumgoals/index.html>

<sup>66</sup> Adopted by the World Conference on Education for All, Jomtiem 1990.

<sup>67</sup> Adopted by the World Education Forum, Dakar 2000. The Dakar Framework affirmed the vision set forth in Jomtiem, Thailand 1990. It also entrusted UNESCO to coordinate follow up and implementation. All relevant documents, including the Asia-Pacific framework for action are available on-line: <http://unesdoc.unesco.org/images/0012/001211/121147e.pdf>

<sup>68</sup> Adopted by the general conference of UNESCO at its 31<sup>st</sup> session, 2 November 2001.

<sup>69</sup> A/59/525/Rev.1.

<sup>70</sup> See Article 9. Adopted at the Nineteenth Islamic Conference of Foreign Ministers on 31 July 1990.

<sup>71</sup> See Article 34. Adopted by the Council of the League of Arab States on 15 September 1994 as per resolution 5437.

Every person – child, youth, adult – shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy and problem solving) and basic learning content (such as knowledge, skills, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning. The scope of basic learning needs and how they should be met varies with individual countries and cultures and inevitably, changes with the passage of time.

Since the need for knowledge, skills and information is universal, every individual has an inherent right to access and benefit from education. In this connection, contemporary debates around the right to education go beyond meeting basic educational needs. Instead, the pressing question is: to what extent should States be obliged to provide the right to education? In this context the challenge of domestic implementation is linked to the fact that the guarantees to the right to education are comprehensive. Accordingly, the progressive realisation of this right is linked to the recognition, enjoyment and exercise of all human rights.

In an increasingly inter-dependent world, an important consideration is the relationship between the right to education and the right to work. In this regard, the provision of various levels of formal education as well as vocational training allows States to compete in the global market and pursue economic growth. However, many human rights bodies and experts continue to emphasise that the benefits of education should not be measured in mere economic terms and that a human rights based approach to education is essential.

### **3. The right to education and national human rights institutions**

A minimum requirement for a NHRI to join the APF is that it meet the Paris Principles.<sup>72</sup> The Paris Principles set out the basic structure and powers to be afforded a NHRI. Most importantly, NHRIs must be independent of government and governmental influence and have the power to:

- report and make recommendations to the State about human rights violations;
- promote and ensure the harmonisation of national laws with the international obligations; and

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<sup>72</sup> The basis for membership is outlined in the ‘Larrakia Declaration: Conclusions, recommendations and decision’, First Asia Pacific Regional Workshop of National Human Rights Institutions, Darwin, Australia, 8-10 July 1996 and includes compliance with the ‘Paris Principles’ (1991) as adopted by the UN General Assembly, ‘Principles Relating to the status and functioning of national institutions for protection and promotion of human rights’, A/RES/48/134, 20 December 1993.

- encourage the ratification of international human rights instruments.

NHRIs that are established in full compliance with the Paris Principles and enjoy independence and autonomy are in a unique position to work with and monitor the protection and promotion of economic, social and cultural rights (including the right to education) by the relevant State authorities.

The role of NHRIs in monitoring the implementation of economic, social and cultural rights by States is an issue that is receiving increasing attention by international NGOs and a wide range of UN bodies, mechanisms and agencies. In this regard, the CESCR has noted that “national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights.”<sup>73</sup> Also, the fact that NHRIs should actively advocate in favour of a rights-based approach to the implementation of economic, social and cultural rights is widely accepted. At an international roundtable in New Delhi in 2005 on the role of national human rights institutions in the implementation of economic, social and cultural rights, it was noted the importance for national institutions to:

- (a) Monitor and promote State compliance with the International Covenant on Economic, Social and Cultural Rights and where the State is not a party to the Covenant call for its ratification;
- (b) Engage with the working group in drafting an optional protocol to the Covenant and encourage States to adopt it;
- (c) Ensure independent access to the international treaty body system;
- (d) Assist in ensuring that domestic legislation that may impact on the enjoyment of ESCR is in compliance with international human rights norms and provides for sufficient protection of ESCR;
- (e) Use the existing tools and interpretations, including those developed by the United Nations, the Committee on Economic, Social and Cultural Rights and its general comments, as well as the Limburg Principles and the Maastricht Guidelines;
- (f) Ensure that the Millennium Development Goals process is consistent with State obligations under international human rights instruments and that their implementation is undertaken from a rights-based perspective.<sup>74</sup>

With regard to human rights education, it is important to mention that, in many countries, NHRIs have led national campaigns that have increased awareness and availability of information on human rights standards. At the same time, efforts to mainstream human rights through formal schooling systems have posed challenges for NHRIs world wide.

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<sup>73</sup> ICESCR General Comment No 10, para. 3.

<sup>74</sup> International Roundtable on National Institutions Implementing Economic, Social and Cultural Rights, New Delhi, India, 29 November – 1 December 2005: The New Delhi Concluding Statement; <[http://www.nhri.net/pdf/RT\\_New\\_Delhi\\_Conclusions\\_011205.pdf](http://www.nhri.net/pdf/RT_New_Delhi_Conclusions_011205.pdf)>

#### **4. Scope of this background paper**

This background paper is divided into three parts. **Chapter One** addresses each of the questions raised in the terms of reference, with specific analysis of international and regional instruments and case law. In order to ensure an appropriate analysis of the right to education, the questions raised in the terms of reference have been addressed on the basis of thematic categories. **Chapter Two** sets out the status of law and practice in each of the countries of member institutions. The **Conclusion** contains possible findings of fact that are open to the ACJ to make on the basis of the analysis in Parts One and Two. These findings are intended only as a guide and are in no way meant to limit the findings that the ACJ may make.

The focus of this report is on the laws of the States whose NHRIs are members of the APF, namely: Afghanistan, Australia, Fiji, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestinian Occupied Territories, Philippines, Qatar, Republic of Korea, Sri Lanka, Thailand and Timor Leste.

It is envisaged that the information contained in this Background Paper and the Final Report prepared by the ACJ following its consideration of this reference, will assist the member NHRIs fulfil their mandates, particularly their role as advisers to government and promoters of human rights.

**Table 1: Quick guide for the Terms of Reference in Chapter 1**

The questions contained in the Terms of Reference on the Right to Education have been addressed in Chapter 1 on the basis of thematic categories in order to minimise unnecessary duplication and repetition. The table below provides a quick guide to the page numbers for the questions in the terms of reference.

Questions	Page Numbers
(i) how international law, standards and mechanisms define the ‘right to education’, including with reference to the obligation to <i>respect, protect, promote</i> and <i>fulfil</i> the right to education.	
<ul style="list-style-type: none"> <li>• definition</li> <li>• obligation to respect, protect, promote and fulfil</li> </ul>	pp22-46 pp50-54
(ii) the nature and scope of the obligation to undertake steps by all appropriate means, including legislative measures, and the requirement to avoid retrogressive measures. Consideration should be given to the following interrelated and essential features of the right to education: <i>availability, accessibility, acceptability</i> and <i>adaptability</i> . The Advisory Council of Jurists is asked to be mindful of fundamental issues including the minimum age of employment, marriage and criminal responsibility.	
<ul style="list-style-type: none"> <li>• Obligation to undertake steps by all appropriate means</li> <li>• Retrogressive measures</li> <li>• Essential features: availability; accessibility; acceptability; and adaptability</li> <li>• Minimum age</li> </ul>	pp63-66 p65 pp46-49  pp60-62
(iii) the question of the justiciability of the right to education;	p75
(iv) the nature and scope of the obligation to prioritise the introduction of compulsory and free primary education for all and to achieve progressively the full realisation of secondary, higher and fundamental education;	
<ul style="list-style-type: none"> <li>• obligation to prioritise the introduction of compulsory and free education</li> <li>• obligation to achieve progressively the realisation of secondary, higher and fundamental education</li> </ul>	pp26-31 & Ch1 (part 2) pp31-33 & Ch1 (part 2)
(v) the nature and scope of the obligation of the State to use the maximum of its available resources;	p64

(vi)	the nature and scope of the obligation to ensure non-discrimination and equality of opportunity in access to education, including access to education for non-nationals, refugees, internally displaced persons, people living with disabilities and other minorities;	
	<ul style="list-style-type: none"> <li>• non-discrimination and equality of opportunity</li> <li>• access to education for non-nationals, refugees, internally displaced persons, people living with disabilities and other minorities;</li> </ul>	pp55-56 pp34-36; 72-73
(vii)	the nature and scope of the obligation to ensure gender parity and gender equality in education;	pp56-58
(viii)	the nature and scope of the obligation to respect religious and cultural practices within schools and other educational institutions;	pp39-40
(ix)	the nature and scope of the obligation to provide quality education and to establish minimum education standards and an effective and transparent system to monitor such standards;	
	<ul style="list-style-type: none"> <li>• quality education</li> <li>• minimum education standards</li> <li>• effective and transparent system to monitor standards</li> </ul>	p44, p48 pp62-63 pp73-75
(x)	the nature and scope of the obligation of the State, within the context of the right to education, to ensure the realisation of the right to human rights education for all;	pp36-37 & Ch1 (part 2)
(xi)	the nature and scope of the obligation to ensure academic freedom and the autonomy of educational institutions;	pp38, 42-43 & Ch1 (part 2)
(xii)	the nature and scope of the obligation to respect parents and legal guardians' freedom of choice of educational institution and educational program;	pp38-39, 41-42
(xiii)	the nature and scope of the obligation of States to receive and to provide international assistance and cooperation;	pp69-71
(xiv)	the nature and scope of the obligation of non-state actors, including international financial institutions and trans-national corporations, to protect and promote the right to education.	pp66-68

*Table 2. Status of Ratifications of Principal International Instruments Relevant to the Right to Education as of 20 April 2006*

Country	ICESCR	CERD	CEDAW	CRC	UNESCO Discrimination in Education	ILO No. 138	ILO No. 182
<b>Afghanistan</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>			
Armenia	X	X	X	X	X	X	X
<b>Australia</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		
Azerbaijan	X	X	X	X		X	X
Bahrain		X	X	X			X
Bangladesh	X	X	X	X			X
Bhutan		s	X	X			
Brunei Darussalam				X	X		
Cambodia	X	X	X	X		X	
China	X	X	X	X	X	X	X
Cook Islands				X			
Democratic People's Republic of Korea	X		X	X			
Federated States of Micronesia			X	X			
<b>Fiji</b>		<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>
<b>India</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>			
<b>Indonesia</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
Iraq	X	X	X	X	X	X	X
Islamic Republic of Iran	X	X		X	X		X
Israel	X	X	X	X	X	X	X

Japan	X	X	X	X		X	X
<b>Jordan</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
Kazakhstan	X	X	X	X		X	X
<b>Country</b>	<b>ICESCR</b>	<b>CERD</b>	<b>CEDAW</b>	<b>CRC</b>	<b>UNESCO Discrimination in Education</b>	<b>ILO No. 138</b>	<b>ILO No. 182</b>
Kiribati				X			
Kuwait	X	X	X	X	X	X	X
Kyrgyzstan	X	X	X	X		X	X
Lao People's Democratic Republic	X	X	X	X		X	X
Lebanon	X	X	X	X	X	X	X
<b>Malaysia</b>			<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>
Maldives		X	X	X			
Marshall Islands				X			
<b>Mongolia</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
Myanmar			X	X			
Nauru		s		X			
<b>Nepal</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>
<b>New Zealand</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>
Oman		X		X		X	X
Pakistan		X	X	X			X
Palau				X			
<b>Palestinian Territories</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>
Papua New Guinea		X	X	X		X	X
<b>Philippines</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Qatar</b>		<b>X</b>		<b>X</b>			<b>X</b>



<b>Republic of Korea</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>
Samoa			X	X			
Saudi Arabia		X	X	X	X		X
Singapore			X	X		X	X
Solomon Islands	X	X	X	X	X		
<b>Country</b>	<b>ICESCR</b>	<b>CERD</b>	<b>CEDAW</b>	<b>CRC</b>	<b>UNESCO Discrimination in Education</b>	<b>ILO No. 138</b>	<b>ILO No. 182</b>
<b>Sri Lanka</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
Syrian Arab Republic	X	X	X	X		X	X
Tajikistan	X	X	X	X	X	X	X
<b>Thailand</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>
<b>Timor-Leste</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>			
Tonga		X		X			
Turkmenistan	X	X	X	X			
Tuvalu			X	X			
United Arab Emirates		X	X	X		X	X
Uzbekistan	X	X	X	X	X		
Vanuatu			X	X			
Viet Nam	X	X	X	X	X	X	X
Yemen	X	X	X	X		X	
<b>Total: 59</b>							
<b>Signatories</b>							

Notes:

ICESCR: *International Covenant on Economic, Social and Cultural Rights.*

CERD: *Convention on the Elimination of all Forms of Racial Discrimination*  
CEDAW: *Convention on the Elimination of all Forms of Discrimination Against Women*  
CRC: *Convention on the Rights of the Child*.  
UNESCO Discrimination in Education: *Convention Against Discrimination in Education*  
ILO No. 138: *Minimum Age Convention 1978 (No. 138)*  
ILO No. 182: *Worst Forms of Child Labour Convention, 1999 (No. 182)*

'x' indicates that the State has ratified, acceded or succeeded to the specified treaty.

's' indicates that the State is a signatory to the specified treat

References:

OHCHR: <http://www.ohchr.org/english/bodies/docs/status.pdf>

UNESCO: [http://portal.unesco.org/education/en/ev.php-URL\\_ID=9107&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php-URL_ID=9107&URL_DO=DO_TOPIC&URL_SECTION=201.html)

ILO: <http://www.ilo.org/public/english/standards/norm/whatare/fundam/>

## Chapter One

As noted by the UN Special Rapporteur on the Right to Education (‘UNSRRE’) “[t]he right to education is recognized, promoted and protected at all levels – from global to local – and it fully reflects the interplay between the dual processes of globalization and localization which are now taking place.”<sup>75</sup> In order to provide a theoretical framework to contextualize the national efforts outlined in chapter 2 of the paper, this chapter outlines the normative standards and obligations around the right to education. Each of the questions raised in the terms of reference is addressed, with specific analysis of international and regional instruments and case law. In order to ensure an appropriate analysis of the right to education, the questions raised in the terms of reference have been addressed on the basis of thematic categories.

In most instances, the analysis is directly derived from specific conventions and international texts that denote the right to education. Due to their importance, the examination of international human rights instruments that create legally binding obligations on States parties is more exhaustive. Where available, sources specifically relating to the right to education are used to respond to general questions set forth in the terms of reference. In addition, some references to international jurisprudence on the right to education are included.

### 1. The Right to Education in International Law

The efforts of government and inter-governmental bodies in the field of education have mainly focused on the need to make primary education available to all. In this connection, although the guarantee of primary education is a component of the right to education, at times this approach has been inconsistent with the process of mainstreaming human rights.

While, at one level, the provision of compulsory and free primary education for children from the most disadvantaged sectors of society is important, it does not translate to the realisation of the right to education. Therefore, steps for the realisation of the right to education require conceptual clarity around: (i) what does the right to education encompass? and (ii) what does it take to realise the right to education?

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<sup>75</sup> Report of the UN Special Rapporteur on Education, E/CN.4/2001/52, 11 January 2001, para 5.

## ***Characteristics, Elements and Standards: What does the right to education encompass?***

### **1.1 The right to education: a human need, a human right**

Like all other human rights, the right to education “[c]an have a bearing on both relations between the individual and the state, and between individuals themselves.”<sup>76</sup> Hence, it is important to establish that the right to education shares characteristics with other human rights. It is:

- **Inherent & inalienable:** as established by the UDHR and other texts, everyone is entitled to the right to education by virtue of being human, irrespective of their race, ethnicity, sex/gender, age, nationality, socio-economic condition, health status, etc.
- The right to education is **inter-connected** to all other human rights and is therefore, **indivisible** from them.
- The right to education is **equally applicable to all**. In this regard, although there may be some limitations provided by law, in principle, the right to education is a **universal** entitlement.

### **1.2 The aims of the right to education**

The only definition of “education” included in an international convention is set forth in the Convention Against Discrimination in Education:

For the purposes of this Convention, the term ‘education’ refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.<sup>77</sup>

Although the right to education is affirmed in a significant number of international human rights instruments, most of these focus on the aims of education.<sup>78</sup> The table below contains examples that demonstrate a general acceptance of the aims of education:<sup>79</sup>

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<sup>76</sup> Magdalena Sepulveda et al, ‘Human Rights Reference Handbook’, University of Peace, 2004, p. 6.

<sup>77</sup> UNESCO Convention against Discrimination in Education, Article 1(2)

<sup>78</sup> See articles listed in Appendix 1. In addition, Article 5 of the UNESCO Convention Against Discrimination in Education should also be considered.

## The aims of education

### UDHR Article 26(2):

Education shall be directed to the **full development of the human personality** and to the strengthening of respect **for human rights and fundamental freedoms**. It shall **promote understanding, tolerance and friendship among all nations, racial or religious groups**, and shall further ... **peace**.

### ICESCR Article 13 (1):

Article 13(1) of ICESCR reaffirms Article 26(2) of the UDHR and adds two more elements:

The States Parties to the present Covenant... 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 or religious groups, and further the activities of the United Nations for the maintenance of peace.

### CRC Article 29(1):

Article 29(1)(a) refers to education as a process aimed at:

**[t]he development of the [individual's] personality, talents and mental and physical abilities to their fullest potential.**

Articles 29(1)(c)–(e) touch on respect for diversity (cultural, linguistic, religious, ethnic/racial), gender parity as well as the respect for the environment.

### Pact of San Salvador Article 13(2):

The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, **ideological pluralism**, fundamental freedoms, **justice** and peace. They further agree that education ought to enable everyone **to participate effectively in a democratic and pluralistic society and achieve a decent existence** and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

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<sup>79</sup> Emphasis added to show differences in the ways the aims of education have been affirmed and articulated.

As already indicated, most human rights instruments state that education “shall be directed to the full development of the human personality.” Thus, the implication is that the right to education is a precondition of human development. Also, in its General Comment, CESCR noted that the right to education is a means through which “marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.”<sup>80</sup> Nevertheless, as already articulated by the UNSRE, even when considering the important link between education and poverty reduction, a rights based approach (**‘RBA’**) to education requires education to be considered “[a]s an end in itself rather than a means for achieving other ends.”<sup>81</sup> From the outset, a RBA to realising education implies a commitment to countering social exclusion and discrimination as defined in various international human rights treaties and, the Convention Against Discrimination in Education.

The aims of education have been further re-affirmed by government and civil society at the international and regional level. In April 2000 the World Education Forum adopted the *Dakar Framework for Action*.<sup>82</sup> Article 7 of the *Framework* states:

We hereby collectively commit ourselves to the attainment of the following goals:

- (i) expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children;
- (ii) ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality;
- (iii) ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programmes;
- (iv) achieving a 50 per cent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults;
- (v) eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality;
- (vi) improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.

### **1.3 Normative Standards on the Right to Education**

This section outlines the components of the right to education that can be drawn from international as well as regional human rights instruments.

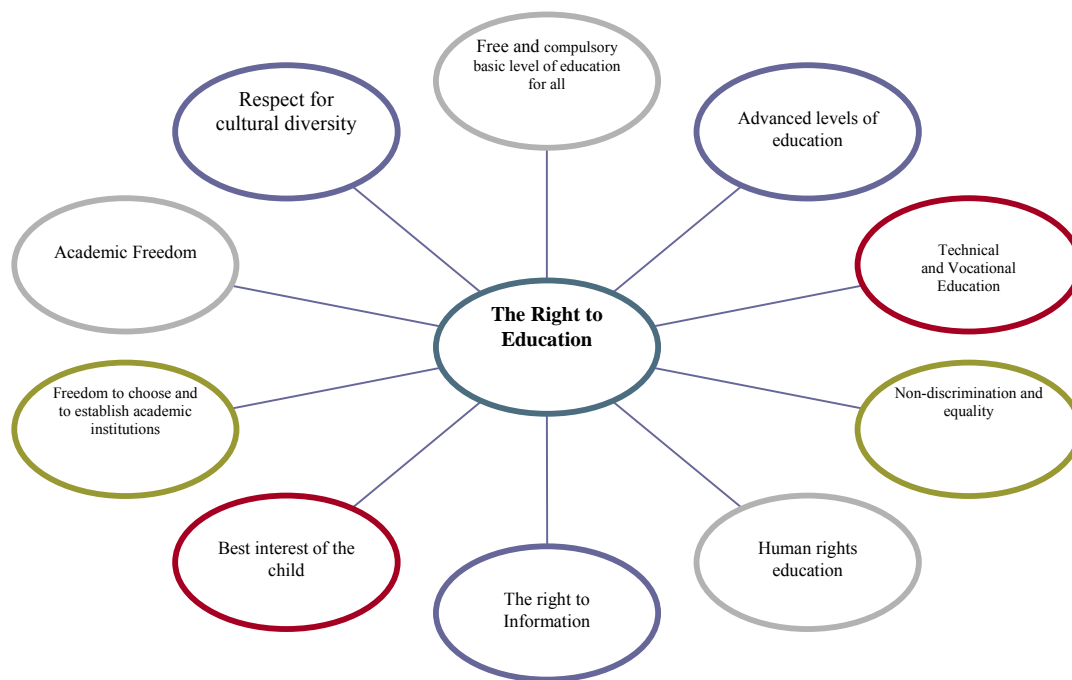
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<sup>80</sup> CESCR General Comment No. 13, para 1

<sup>81</sup> Report of the UN Special Rapporteur on Education, E/CN.4/1999/49, 13 January 1999, para. 13.

<sup>82</sup> The Dakar Framework for Action, Education for All: Meeting Our Collective Commitments; Text adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000

In this regard, a combination of all the normative standards on the right to education contained in international human rights law point to a clearly defined set of elements and components that will be discussed in this section:



### ***1.3.1 A basic level of education should be compulsory and free for all***

In the same way the language around the aims of education is consistent in most international human rights instruments, it is also clear that there is a minimum level of education that should be compulsory, free and available to all. In this regard, it is possible to assert that this is one of the core elements of the right to education.<sup>83</sup> Thus, a more detailed analysis of each component is provided below.

#### **Minimum Level(s) of Education: Primary and Elementary/Basic/ Fundamental**

The right to enjoy a minimum level of education is not necessarily confined to formal education (i.e. to a classroom or to accredited academic institution).

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<sup>83</sup> The vast majority of treaties that refer to the right to education contain provisions on free and compulsory education: UDHR Art 26(1); ICESCR Art 13(a); CRC Art 28(1)(a); Pact of San Salvador Art 13(3)(a); African Children’s Charter Article 11(3)(a).

Nonetheless, it is “[s]o fundamental for the development of a person’s abilities that it can be rightfully defined as a minimum claim.”<sup>84</sup> Furthermore, although provisions of international human rights treaties have not clearly defined “primary education”,<sup>85</sup> “elementary education”,<sup>86</sup> “basic education”<sup>87</sup> and “fundamental education”<sup>88</sup> there is a close connection between these terms. Hence, the progressive realisation of the right to education places an onus on States and society as a whole to take steps to ensure all individuals benefit from elementary/primary education and/or basic/fundamental education.

Although primary/elementary education and basic/fundamental education are supplementary, these levels of education are not the same:

- *Primary/Elementary education*: the term “elementary education” contained in the UDHR can be interpreted to be in correlation with “primary education” as included in the ICESCR/CRC. Usually, elementary education is aimed at children within the framework of formal primary schooling. Consequently, in its General Comment, the CESCR has referred to the definition provided in Article 5 of the *World Declaration on Education for All*.<sup>89</sup>

***The main delivery system for the basic education of children outside the family is primary schooling.*** Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs, and opportunities of the community. Supplementary alternative programmes can help meet the basic learning needs of children with limited or no access to formal schooling, provided that they share the same standards of learning applied to schools, and are adequately supported.

- *Basic/Fundamental Education*: the CESCR has established that “[i]n general terms, fundamental education corresponds to basic education as set out in the World Declaration on Education for all.”<sup>90</sup>

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<sup>84</sup> Fons Coomans, *In Search of the Core Content of the Right to Education*, in A. Chapman and S. Russel Eds., ‘Core Obligations: Building a Framework for Economic, Social and Cultural Rights’, Intersentia, 2002, p. 217-246, at p. 226.

<sup>85</sup> For example, ICESCR Art. 13 (2)(a) and CRC Art, 29(1)(a) refer to: “primary education shall be compulsory and available free to all.”

<sup>86</sup> See UDHR Art. 26 (1) which states: “Elementary education shall be compulsory and available free to all”

<sup>87</sup> See Pact of San Salvador Art 13(3)(d) and also the African Children’s Charter Art 11(3)(a). In this connection, it is important to mention that the definition of “basic education” contained in the World Declaration on Education for All has been provided in page 7 of this paper.

<sup>88</sup> See, for example, ICESCR Art 13 (2)(d): “Fundamental education shall be encouraged or intensified as far as possible for those who have not received or completed the whole period of their primary education.”

<sup>89</sup> CESCR General Comment No. 13, para 9

<sup>90</sup> CESCR General Comment No. 13, para 22



As provided in ICESCR Article 13(2)(d), fundamental education extends to “[t]hose persons who have not received or completed ... primary education.” In this connection, this component extends the right to education to all, irrespective of age, gender, race/ethnicity or nationality. More specifically, the guarantee of basic/fundamental education extends to those who have been marginalised, discriminated against or socially excluded due to their lack of education. For example: illiterate persons, women/girl children, persons with disabilities, elderly persons and refugees.<sup>91</sup> At another level, Article 13(2)(d) of the ICESCR and 13(3)(d) of the Pact of San Salvador state that basic/fundamental education “should be encouraged or intensified as far as possible.” Thus, there is an aim of ensuring that groups with special needs and in special circumstances are considered in the context of plans for the implementation of the right to education.

In this connection, basic/fundamental education should provide individuals with a minimum level of knowledge/skills/information required to enable them to participate and contribute to society in accordance to the broad aims of the right to education.

### Compulsory and Free

The majority of international and regional human rights instruments contain provisions regarding a minimum level of “compulsory and free” education.<sup>92</sup> Traditionally, it was understood that these provisions generally applied to elementary/primary education. Interestingly, as a result of the extension of the minimum age of employment and marriage, a global trend points to the extension of the number of years of compulsory education beyond primary school.<sup>93</sup> Nonetheless, it is important to stress that the schooling system varies significantly from country to country. Also, in reality, millions of children around the world, particularly, girl children, children with special needs (e.g. children with disabilities) or children in special circumstances (e.g. internally displaced children) continue to be excluded from education.

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<sup>91</sup> For example, CEDAW Article 10(3) requires States to provide women with “the same opportunities for access to programmes of continuing education...including adult and functional literacy programmes... aimed at reducing... any gap in education existing between men and women”.

<sup>92</sup> UDHR Art 26(1); ICESCR Art 13(a); CRC Art 28(1)(a); Pact of San Salvador Art 13(3)(a); African Children’s Charter Article 11(3)(a)

<sup>93</sup> Coomans, *op. cit.*, p227; see also, in general, the body of work of the UNSRE.

In this regard, Article 14 of the ICESCR is of particular relevance:

Each State Party to the present Covenant which... **has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge**, undertakes ... to work out and adopt **a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.**<sup>94</sup>

Due to extensive debates on the nature and scope of human rights obligations relating to “compulsory and free” levels of education in accordance to a “detailed plan of action”, it is necessary to consider these elements in further detail:

- *Compulsory*: In principle, no one should prevent a child from benefiting from a minimum level of education. CESCR has already established that: “[n]either parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether or not a child should have access to primary education.”<sup>95</sup> In addition, the Convention Against Discrimination in Education establishes that practices and policies/laws that result in depriving children from accessing elementary levels of education amount to discrimination.<sup>96</sup>
- *Free of charge*: This aspect has created disagreements at the international level and has been a controversial area of debate, particularly because of the varying approaches to determining whether the State should bear the cost of education. In this connection, while some governments and international financial institutions consider privatisation is the most efficient means to finance the school system, others strongly disagree. In the view of the UNSRE “[t]he requirement that primary schooling should be free for the child has generated a great deal of consensus, but the requirement that primary school should also be free of cost for the parents does not generate consensus.”<sup>97</sup>

In general, proponents of the right to education as outlined in international human rights law consider that the CESR has clarified this aspect. In this connection, paragraph 7 of General Comment No 11 is relevant:

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<sup>94</sup> Emphasis added.

<sup>95</sup> CESCR General Comment No. 11, para 6

<sup>96</sup> UNESCO Convention against Discrimination in Education, Article 1(a)

<sup>97</sup> Report of the UN Special Rapporteur on Education, E/CN.4/2004/45, 15 January 2004, para 24.

**[T]he nature of this requirement is unequivocal.** The right is expressly formulated so as to ensure the **availability of primary education without charge to the child, parents or guardians.** Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. Their elimination is a matter which must be addressed by the required plan of action.<sup>98</sup>

In addition, although private schools supplement the public education system in regard to the provision of “compulsory education”, they do not replace it.<sup>99</sup> In this connection, landmark decisions on the right to education reviewed by human rights mechanisms at the international and regional levels have maintained States are allowed to provide more subsidies to public schools than to private schools.<sup>100</sup> Furthermore, as established by international law, the right to education requires the State to allocate financial resources to public educational institutions and services. Hence, the private schooling system supplements but does not replace the public schooling system.

- *A plan of action:* the CRC and the CESCR have emphasised the importance of developing comprehensive national plans of action aimed at “free and compulsory” levels of education.<sup>101</sup> More specifically, this is considered to be a continuing obligation that cannot be ignored by States’ Parties to the CRC and the ICESCR.<sup>102</sup> Besides, the CESCR adds “[p]articipation of all sections of civil society in the drawing up of the plan is vital and some means of periodically reviewing progress and ensuring accountability are essential.”<sup>103</sup> Moreover, since the development of a plan of action shows the intention and approach of the State in relation to the fulfilment of the right to education, it is considered a minimum requirement for the implementation of the right to education.

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<sup>98</sup> Emphasis. This para also adds: “Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category. Other indirect costs may be permissible, subject to the Committee’s examination on a case-by-case basis....”

<sup>99</sup> Report of the UN Special Rapporteur on Education, E/CN.4/1999/49, 13 January 1999, para 47

<sup>100</sup> See, for example, *Waldam v. Canada*, Communication No 694/1996: 05/11/99, CCPR/C/67/D/694/1996.

<sup>101</sup> CRC General Comment No. 1, para 23; CESCR General Comment No. 11, para 8

<sup>102</sup> CESCR General Comment No. 11, para 8 and 9

<sup>103</sup> CESCR General Comment No 11, para 8

The monitoring of policies and national plans of action is essential to ensuring transparency, consultation and participation in decision-making. For this reason, the implementation of plans of action in education should be accompanied by mechanisms for receiving continuous feedback and impact assessments.

### ***1.3.2 Advanced levels of higher education and technical/vocational training should be generally available and accessible to all by appropriate means***

As a result of the difficulties in realising basic/primary levels of education, many human rights experts and bodies continue to treat secondary/higher education and technical/vocational training as “peripheral elements of the right to education.”<sup>104</sup> At the same time, the fact that references to more advanced and specialised levels of education are consistent in international human rights law should not be overlooked.<sup>105</sup>

Although the right to education is holistic and encompasses all levels and kinds of education, a general analysis of provisions shows that: (i) basic/primary education should be prioritised in order to be “**available to all**”; (ii) secondary and vocational/technical training should be “**generally available and accessible to all**”; while (iii) higher education should be “**equally accessible to all**.” In this regard, it is clear that States have, at minimum, an obligation to regulate secondary and higher/technical levels of education in order to ensure that programmes, services and institutions exist and function in accordance with the aims of the right to education.

#### Secondary Education and Technical/Vocational Training: Compulsory and Free?

Article 13(2)(b) of ICESCR stipulates:

Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education.

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<sup>104</sup> Coomans, *op cit*, p231

<sup>105</sup> See, for example: UDHR Art 26(1), ICESCR 13(2)(b)(c), CRC (28)(b, c, d); CEDAW 10 (a)(d) and 14(2)(d); CERD e(v); the UNESCO Convention Against Discrimination in Education Art 4(a)(d); the Pact of San Salvador Art 13(3)(b)(c), the African Children’s Children and the European Social Charter (Arts 9-10).

As discussed above, many States have included secondary education and technical/vocational training as part of the minimum level of compulsory and free education that should be made “available and accessible to all” children. In this regard, the language included in the ICESCR implies that, over time, as the minimum level of education is realised, opportunities to complete secondary education and vocational/technical training should be extended to all children. Consequently, plans of action on education should aim to provide these levels of education as part of a basic package that should be “compulsory and free.”

### Higher Education

Higher education, also known as tertiary education, should be “equally accessible to all.” In its General Comment 13, CESCR considered that:

[i]f higher education is to respond to the needs of students in different cultural and social settings, it must have flexible curricula and varied delivery systems, such as distance learning; in practice, therefore, both, secondary and higher education have to be available in ‘different forms.’<sup>106</sup>

In the same way, the Committee has clarified that technical and vocational education should also be considered to be part of this level of education.<sup>107</sup> In this regard, the idea that higher education should be accessible on the basis of “capacity” and “merit”<sup>108</sup> has been progressively interpreted and re-considered in light of the principle of substantive equality.<sup>109</sup> Hence, the promotion of the rights of discriminated groups may require the creation of enabling conditions to access higher education.<sup>110</sup>

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<sup>106</sup> CESCR General Comment No 13, para 18.

<sup>107</sup> Ibid.

<sup>108</sup> For example, while ICESCR Art 13(2)(c); CRC Art 28(1)(c) and the Pact of San Salvador Art 13(3)(c) refer to equal opportunity to access higher education “on the basis of individual capacity.” The UDHR Art 26(1) refers to access to higher education “on the basis of merit.”

<sup>109</sup> For clarification on the differences between substantive and formal equality, it is useful to refer to CESCR General Comment No. 16, para. 7. It reads: “...formal equality assumes that equality is achieved if a law or policy treats men and women [and other disadvantaged groups] in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.”

<sup>110</sup> Examples of enabling conditions mentioned in CEDAW Article 10 include the creation of opportunities for girls to benefit from scholarships and other study programs. Other enabling conditions could include introducing temporary special measures to reduce female student drop-out rates from elementary and higher education.

Over the years, the body of work of human rights mechanisms that focus on marginalised groups have contributed to this understanding.<sup>111</sup> Although some opportunities of free education must be provided in higher levels of education, it does not necessarily need to be free of cost for all. At a more practical level, as the former Special Rapporteur on the Right to Education, Katarina Tomasevsky has repeatedly noted, public university students and institutions tend to exercise their civil and political rights more effectively. As a result, in general, universities tend to benefit more from public allocation of resources than in the primary/secondary/vocational schooling system. Tomasevsky commented:

The proverbial preference for university students in budgetary allocations within education (in the extreme exceeding 1,000 times the allocation for primary education) vividly illustrates the necessity for introducing the human rights rationale for allocations.<sup>112</sup>

### Technical and Vocational Education

According to UNESCO, technical and vocational education (“**TVE**”) consists of “[a]ll forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and acquisitions of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life.”

In regard to TVE as contained in the provisions of the ICESCR, the Committee has clarified that it “[f]orms part of both the right to education and the right to work... [and] has a wider role, helping ‘to achieve steady economic, social and cultural development and full and productive employment.’”<sup>113</sup> What’s more, according to the CESCR “[t]he right to work requires States parties ... to take positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment.”<sup>114</sup>

Finally, it is also important to note that the European Social Charter contains the most detailed references to TVE. In this regard, the standards contained therein may be useful in the development of national plans of action.

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<sup>111</sup> In this regard, “merit” or “capacity” should be used as an excuse to restrict access to higher education for individuals with special learning needs and under special circumstances.

<sup>112</sup> E/CN.4/1999/49, 13 January 1999, para 37

<sup>113</sup> CESCR General Comment No. 13, para 15

<sup>114</sup> CESCR General Comment No 18, para 27

### ***1.3.3 Equality and Non-Discrimination in Education and Through Education***

The Committee on the Rights of the Child has commented on discrimination and education:

Discrimination...whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.<sup>115</sup>

The right to equality and non-discrimination constitutes a central component of the right to education. The impact of discrimination on an individual is so far-reaching that it is addressed in the majority of international and regional sources on the right to education. Accordingly, there are three layers to the right to equality and non-discrimination in education that need to be considered:

- All individuals and groups have a right to equality and non-discrimination in regard to the recognition, access, enjoyment, exercise and realisation of the right to education.
- All individuals that establish, coordinate or work in educational/learning institutions, programmes and services have a duty to promote equality and prohibit discrimination.
- The State has the obligation to respect, protect, promote and fulfil equality in education and thus, a corresponding duty to prohibit all recognised grounds of discrimination as established in international human rights law.

States have an obligation to ensure individuals and groups are not discriminated in the process of seeking, accessing, benefiting and claiming the right to education. In this regard, the definitions of discrimination contained in CEDAW,<sup>116</sup> CERD<sup>117</sup> and the Convention Against Discrimination in Education have similar components. According to these treaties, discrimination is “any distinction, exclusion or restriction” in education on the basis of any of the grounds listed “which has the effect or purpose of impairing or nullifying the enjoyment” of the equal enjoyment of the right to education.

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<sup>115</sup> CRC General Comment No. 1, para 10

<sup>116</sup> CEDAW Art. 1. It is also important to mention that the CEDAW Definition of discrimination has been referred to in CESCR General Comment No. 16, para. 11.

<sup>117</sup> CERD Art. 1

According to this definition of discrimination, nobody – including the representatives of the State, private actors or institutions – should be “allowed” to discriminate. As will be further explored in the course of this paper, the prohibition of discrimination in education is absolute and creates immediate obligations for the State.

It is generally accepted that international human rights treaties have been interpreted to include the following prohibited grounds of discrimination which also extend to the right education:

- Race, colour, ethnicity;
- Sex and gender;
- Health status;
- Physical and mental disability;
- Language/cultural identity;
- Religion;
- Political or other opinion;
- National origin/citizenship;
- Social origin; and
- Economic condition.

In addition, there is a general, yet, not always uniform, consensus around the acceptance of the following prohibited grounds of discrimination:

- Age;
- Occupation;
- Poverty status;
- Sexual orientation; and
- Citizenship/nationality.



In addition, there has been an increasing awareness of the negative impact of intersectional discrimination (also referred to as multiple forms of discrimination.)<sup>118</sup> In recent years, the CERD General Comment 25, the Plan of Action for Durban and ICESCR General Comment 16 have stressed the importance of acknowledging that intersectional discrimination needs to be recognised and addressed at the national level. In this regard, the work of the Special Rapporteur has paid special attention to the rights of the girl child and exposed the reality of intersectional discrimination in education.<sup>119</sup> Consequently, it is clear that the only way to effectively address intersectional discrimination in education is through inter-sectoral strategies.

It is also important to mention, that despite the fact that the Convention Against Discrimination in Education refers to “equality in treatment in education,” the standard that has been promoted by the CEDAW Committee is “substantive equality”.<sup>120</sup>

In this regard, the substantive model of equality requires going beyond “equal access” and “equal treatment”, but instead, it focuses on equal results that “may be qualitative or quantitative in nature.”<sup>121</sup> In connection with the right to education, it is necessary to acknowledge that at times, “laws, policies and practice can fail to address or even perpetuate inequality ... because they do not take account of existing economic, social and cultural inequalities.”<sup>122</sup>

#### ***1.3.4 Human Rights Education as a central component of the right to education***

Since “respect for human rights and fundamental freedoms” is one of main aims of the right to education, human rights education should be considered as a means for affirming the values/vision set forth in the UDHR and other international documents.

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<sup>118</sup> See CESCR General Comment No 16, para 5. For more details, see Ontario Human Rights Commission, ‘Discussion Paper on an Intersectional Approach to Discrimination’ (2002).

<sup>119</sup> See generally Report of the UN Special Rapporteur on Education devoted to “Girls’ right to Education”, E/CN.4/2006/45, 8 February 2006.

<sup>120</sup> For example, see CEDAW Committee General Recommendation 25 (CEDAW Art. 4.1 on temporary special measures), UN Doc CEDAW/C/2004/WP.1/Rev.1, paras. 8-11. Also, References to substantive equality have been included in CESCR General Comment No 16. Most importantly, the principle of substantive equality has been used to inform debates throughout the drafting process of the Disability Convention.

<sup>121</sup> For example see CEDAW General Recommendation No 25, para 8.

<sup>122</sup> CESCR General Comment No 16, para 8.

Although the right to human rights in and through education is not expressly provided in the main text of international human rights treaties, it is implied.<sup>123</sup> As expressed by the CRC Committee “[h]uman rights education should be a comprehensive, life-long process and start with the reflection of the human values in the daily life of children”<sup>124</sup> as well as their communities and their families.

One of the most comprehensive sources outlining human rights education is the *Vienna Declaration and Programme of Action* from the 1993 World Conference on Human Rights. It is worth noting two paragraphs that specifically address this topic:

79. States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.
80. Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.

Despite ongoing efforts, including a UN decade on human rights education, this dimension of the right to education continues to pose challenges. Katarina Tomasevsky has observed that “without a clear vision of the interrelationship between the right *to* education and rights *in* education, promoting human rights education or human rights through education remains impossible.”<sup>125</sup>

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<sup>123</sup> In this regard, the aims of the right to education and the goals of human rights education are sometimes articulated similarly. For example, Para 78 of the Vienna Programme of Action reads: “The World Conference on Human Rights considers human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.”

<sup>124</sup> CRC General Comment No 1, para 15.

<sup>125</sup> K. Tomasevsky, Right to Education Primer No 3: *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable*, Raoul Wallenberg Institute of Human Rights and Humanitarian Law 2001, p.45.

### ***1.3.5 The right to information***

The right to information outlines aspects of the right to education that are often implicit. Accordingly, the link between freedom of expression, educational freedoms, the obligation of the State to inform citizens about human rights and the corresponding right to be informed is somewhat obvious. In this regard, the ICCPR and the CRC expand on what the components of the right to information are. For instance, Articles 19(2) of ICCPR and Art 13 (1) of the CRC refer to the “*freedom to seek, receive and impart information and ideas of all kinds*” through various means such as visually, in written form, orally, artistic works, and the media.

The right to information is important because it is also a component of freedom of expression and freedom of thought. Also, in many cases, individuals and groups that are unable to access the formal education system receive fundamental education through “seeking and receiving” information in relation to various aspects of other human rights (e.g. sexual and reproductive health; nutrition; voting rights; worker’s rights).

It is also important to note that, in general, most UN human rights treaty bodies have stressed the importance of the right to information as a transformative tool for combating prejudice and discrimination. As an example, in General Recommendation No 3, the CEDAW Committee urges States to “[e]ffectively adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.”<sup>126</sup>

### ***1.3.6 The best interest of the child***

In accordance with the CRC, all children below eighteen years of age are entitled to the rights covered in the Convention.<sup>127</sup> In addition, Article 3 of the CRC sets forth the principle that the “best interest of the child” should be taken into consideration when analysing and applying the right to education. In this regard, Article 3(1) reads: “**In all actions concerning children...the best interest of the child shall be a primary consideration.**” Thus, the article does not make a distinction between State and non-state actors, individuals or institutions, therefore making it clear that it is an overarching principle of the CRC.

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<sup>126</sup> CEDAW General Recommendation No 3, para 3.

<sup>127</sup> CRC Article 1.

The following ideas can be drawn from progressive interpretations of international standards that have been made by the CRC, CESCR and the Special Rapporteur:

- At one level, the State is not to interfere with parental freedom of choice in schools or institutions aimed at contributing to the education of their children (formal and informal). Moreover, although parents have freedoms over their choice of education for their children, these guarantees are not absolute. The State must ensure that the choices of parents do not exclude children from enjoying their right to education.
- At another level, the State has an obligation to protect the child and interfere when parents obstruct their right to education. In light of Article 1(1)(a) of the Convention Against Discrimination in Education, it is possible to assert that according to the principle of “best interest of the child” nobody can deprive a child from access to education. As stated before, this prohibition gains even more relevance in the context of basic/elementary levels of education that should be compulsory and free.

Overall, the recognition, enjoyment and exercise of the right to education should be considered to be in the best interest of the child. According to the CRC, education should be “child-centred” and, consequently, the content of education imparted should contribute to the overall aims of human rights.<sup>128</sup> Therefore is important to promote the child’s right to express views and provide input into decisions related to his/her education.<sup>129</sup>

### ***1.3.7 Cultural and social dimensions of the right to education***

Article 29(1)(c) of the CRC establishes that “the education of the child shall be directed to”:

“The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.”

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<sup>128</sup> This point is developed furthered in CRC General Comment No. 1.

<sup>129</sup> CRC General Comment No 1, para 22

In this regard, the African Children's Charter<sup>130</sup> and the Pact of San Salvador<sup>131</sup> contain similar provisions making it clear that the right to education encompasses: (i) respect for cultural diversity and pluralism as well as (ii) the promotion of national unity and values.<sup>132</sup>

While the aspect of education as a means to contribute to citizenship and a society free from discrimination/violence is clear, there are on-going debates about the steps that the obligation to promote cultural diversity in education requires. There is lack of consensus regarding whether or not the right to be educated in one's mother tongue is to be considered as part of the "core" package of free and compulsory education that should be provided by the State.<sup>133</sup> Particularly when due to lack of resources, this may prejudice attempts to teach the "official" language of a State.

The UNESCO Declaration on Cultural Diversity establishes that cultural rights are those *that "[a]ll persons have ... the right to express themselves and to create ..., work in the language of their choice, and particularly their mother tongue; all persons are entitled to equality in education and training that fully respect their cultural identity..."*<sup>134</sup> Hence, at a minimum, States have an obligation (i) to ensure national plans for action on the right to education respect cultural identity in education and (ii) "to respect the freedom of individuals to teach a minority language in schools established by members of that minority."<sup>135</sup> These obligations are also part of those that need to be considered with regard to the "adaptability" of the right to education (to be discussed in the next section).

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<sup>130</sup> See Art. 11(2) in particular (c)-(g)

<sup>131</sup> See Art. 13(2)

<sup>132</sup> It is argued this includes respect for the environment and preservation of natural resources as well as peace.

<sup>133</sup> Although there are no direct references to this in the text of international human rights treaties, the Article 8 of the European Charter for Regional or Minority Languages (at n. 46) is very comprehensive.

<sup>134</sup> See Article 5 of the UNESCO Universal Declaration on Cultural Diversity. Adopted by the 31<sup>st</sup> session of the UNESCO General Conference, Paris 2 November 2001, It is also important to note that this affirmation is made on the basis of UDHR Art. 27 and ICESCR Arts. 13, 15.

<sup>135</sup> See Convention Against Discrimination in Education Art 5(1)(c) and n. 85 at p. 130. See also Permanent Court of International Justice Advisory Opinion No 26, *Minority Schools in Albania*, January 18, 1985.

### ***1.3.8 Freedoms that relate to the right of education***

The *de facto* enjoyment of the right to education requires States to guarantee a series of individual freedoms. While these freedoms are an essential component of the right to education, they are not absolute. That is why the prohibition of discrimination through and in education is an essential requirement for the full enjoyment of these freedoms.

#### Free choice of education

The vast majority of international and regional human rights treaties make reference to the right to freely choose types and means of education without interference (by the State or by non-state actors.) Although there are “compulsory” dimensions of the right to education, individuals have a right to choose educational programmes, institutions or services in accordance to their own beliefs and convictions. In this regard, again, a pre-condition is that these beliefs do not, for instance result in the exclusion of the girl child from education. The Special Rapporteur has noted, “[a]lthough the child is today treated as the principal subject of the right to education, the child is not party to decision making on the realisation of the right to education. International human rights law divides decision making between the parents and the State.”<sup>136</sup>

In regard to children’s right to education, for example, the UDHR establishes that “[p]arents have a prior right to choose the kind of education that shall be given to their children”. The ICCPR adds that parents – and, legal guardians – have a right to “[e]nsure the religious and moral education of their children [is] in conformity with their own convictions.”<sup>137</sup>

Furthermore, Article 5.2 of the UNESCO Convention Against Discrimination in Education is similar to Article 13.3 of the ICESCR:

[i]t is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children [is] in conformity with their own convictions...

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<sup>136</sup> E/CN.4/1999/49, 13 January 1999, para 79

<sup>137</sup> See ICCPR Art 18(4).

The on-going work of the Special Rapporteur, UNESCO and scholars has demonstrated that, in reality, “[i]n many countries there is limited or no opportunity for 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.”<sup>138</sup> Also, in general, rural areas and poorer areas tend to have fewer educational institutions, programmes and services available and thereby further limiting choices in this regard.

In the context of disability rights, the provision of “choice” with regard to the voluntary segregation of children with physical and mental disabilities in separate schools has been controversial. Thus, through the process of negotiating the text of the UN Disability Convention, there has been growing consensus around the obligation of governments to take steps to accommodate children with special learning needs within the mainstream public schooling/education system. Parents should not be forced into “choosing” segregated schooling for children with special learning needs.

#### Freedom to establish educational institutions

The ICESCR, the African Children’s Charter<sup>139</sup> and the Pact of San Salvador<sup>140</sup> have similar provisions in regard to the right to freely establish educational institutions. The CESCR’s interpretation of the meaning of Article 13(4) would apply to all these provisions. In this regard, paragraph 30 of General Comment No 13 reads: “Under article 13(4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to “bodies”, i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principle of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13(4) does not lead to extreme disparities of educational opportunity for some groups in society.”

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<sup>138</sup> Coomans, op cit, pp229-230

<sup>139</sup> See African Children’s Charter Art. 11(7)

<sup>140</sup> See Pact of San Salvador Art 13(5)

## Freedom of expression and academic freedom

The main elements of the right to information discussed above are part of the freedom of expression, one of the fundamentals of academic freedom. In this connection, Article 19 of ICCPR and Article 13 of the CRC focus on this. More specifically, Article 19 of the ICCPR reads:

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.”

The view expressed by the CESCR is that “[t]he right to education can only be enjoyed if accompanied by the academic freedom of staff and students” involved in all kinds and levels of education.<sup>141</sup> More specifically the Committee has clearly established that: (i) “[m]embers of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing;”<sup>142</sup> and (ii) “the enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair distribution of contrary views, and to treat all without discrimination on any of the prohibited grounds.”<sup>143</sup>

Also, since universities and other institutions of higher education are often subjected to pressures and repercussions as a result of their political views, a certain degree of autonomy is required. According to the CESCR, “autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related freedoms.”<sup>144</sup>

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<sup>141</sup> CESCR General Comment No 13, para 38. For comprehensive views please refer to paras. 38-40.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> CESCR General Comment No. 13, para 40



### ***Features: What does it take to realise the right to education?***

As stated earlier, although international human rights principles on the right to education are comprehensive, through the process of monitoring the realisation of this right globally, gaps in implementation have been identified. Although States have a margin of discretion to set education/learning priorities in accordance to national contexts, in recent years, the “non-negotiable” features of the right to education have been clarified. Thus, a rights based approach to the realization of the right to education must take into account the need to: (i) ensure that the implementation of the right to education does not jeopardise the realisation of other human rights; and (ii) develop comprehensive strategies that give due importance to the availability, accessibility, acceptability, adaptability and quality of the right to education. Hence, when duly considered, these features can bring about coherence to national policies, laws and strategies on the right to education.

#### **1.4 Indivisibility and Interdependence of the right to education and other human rights**

Many international human rights documents, mechanisms and experts have asserted the importance of a holistic approach to the realisation of civil, cultural, economic, political and social rights. For example, in a paper presented to the UN sub-commission on the prevention of discrimination of minorities, the special rapporteur on the realisation of ESCR asserted that:

“Human rights do not exist in a vacuum. The fulfilment of all rights, including those of socio-economic nature, is contingent upon a wide range of economic, social, political, historical, philosophical and legal choices and forces. Each of them, in addition to others, will play a role in the realization of these rights. None should be over-emphasized and none should be forgotten.”<sup>145</sup>

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<sup>145</sup> See report of the Special Rapporteur on the realisation of ESCE of the Sub-Commission on prevention of discrimination and prevention of discrimination of minorities, E/CN.4/Sub.2/1991/17, 18 July 1991, para 52.

Also, over the years, the principles set forth in the Vienna Declaration have been built upon through the work of national courts, independent experts, scholars and international/regional human rights mechanisms. Most importantly, Section I, paragraph 5, of the Declaration reads: “[a]ll human rights are universal, indivisible and interdependent and interrelated ... it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

The definite elements of the right to education point to an inevitable conclusion: this right embodies the principle of inter-connectedness and inter-dependence of all human rights.<sup>146</sup> Accordingly, it has been referred to as a “cross-sectoral” right that embodies all human rights dimensions and extends to all people. What’s more, the CESCR has reiterated that the right to education “has been variously classified as an economic right, a social right, and a cultural right. It is all of these. It is also, in many ways, a civil and a political rights since it is central to the full and effective realisation of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights.”<sup>147</sup>

As already noted by CESCR and other human rights bodies, when individuals enjoy the right to education, they are more likely to claim other rights through the exercise of their civil and political rights (e.g. freedom of expression/opinion, freedom to organise collectively, to vote, to participate in decision-making, etc).<sup>148</sup> It is also important to emphasise that, similarly, in many countries of the world, the failure to create incentives and means to enable disadvantaged sectors of society to register children at birth has had a negative impact on their right to education. As a direct result of this “administrative failure” millions of children around the world are being denied access to the schooling system.<sup>149</sup>

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<sup>146</sup> E/CN.4/2001/52, para 6-8.

<sup>147</sup> CESCR General Comment No 11, para 3.

<sup>148</sup> Some authors, such as for example Fons Coomans, categorise the right to education as an “empowerment right.” because the exercise of the right to education “enables a person to experience the benefit of other rights.” See Coomans, op cit, p216.

<sup>149</sup> See generally Paulo David, ‘A Holistic Vision of the Right to Education’, Educational Challenges and Human Rights July 2003, pages 39-55. More specifically, pages 42 and 43 refer to this point.

Finally, since “human rights do not exist in a vacuum” national plans of action for the implementation of each right should be inter-related. When it is found that steps towards the realisation of the right to education may have an unintended negative impact on the enjoyment of other rights, mitigating measures will be required. For example, if a child is working to contribute to his/her family’s income in order to buy food, forcing the same child to go to school might lead to hunger in his/her family. Thus, in circumstances like this, States have adopted programmes to provide food for children in schools and also provide financial assistance to their families.

### **1.5 The 4-A scheme: availability, accessibility, acceptability and adaptability**

In Paragraph 6 of General Comment No 13, the CESCR Committee proposes “interrelated and essential features” that relate to all sorts and levels of education. In this connection, the UNSRE has also refined and added to this understanding. As the 4-A scheme of the availability, accessibility, acceptability and adaptability of the right to education is applicable to other ESCRs, it is generally accepted in international human rights law.<sup>150</sup>

#### ***1.5.1 Availability***

According to the CESCR, availability of education relates to “[f]unctioning educational institutions and programmes must be [made] available widely and in sufficient quantity within the State”<sup>151</sup> The requirements that enable proper “functioning of educational institutions” will depend on each context and has to take into consideration the needs of teachers, learners and their families. In some cases, “functioning” may require specific facilities (e.g. classrooms, libraries, gyms) and in other instances, it may require responding to basic needs (e.g. protection from extreme situations resulting from bullying; food/nutrition for children; and safe drinking water). The work of the UNSRE has highlighted additional aspects that should be considered with respect to “availability”. For instance:

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<sup>150</sup> See Appendix II and for more details on the framework for realisation of the right to education.

<sup>151</sup> CESCR General Comment No 13, para 6(a)

- Schools must be available to children, this means that the guarantee to compulsory education requires that the intake capacity of schools (at least in relation to basic levels of education provided in each e.g. primary only or primary and secondary) should match the number of children/persons in need of these.
- Availability should not only take into account *enrolment* but also the capacity to *retain* girl children, children with special needs and children in special circumstances.
- States should not abuse their power to close secondary schools and universities due to political reasons or on the basis of protecting “the public interest.”

### ***1.5.2 Accessibility***

Within the scope of accessibility, paragraph 6(b) of ICESCR General Comment No. 13 establishes that “[e]ducational institutions and programmes must be accessible to everyone, without discrimination, within the jurisdiction of the State.” Moreover, accessibility also encompasses: (i) physical accessibility;<sup>152</sup> (ii) economic accessibility,<sup>153</sup> and (iii) non-discrimination.<sup>154</sup>

Although certain aspects of the principle of non-discrimination have already been highlighted, it is important to emphasise that they are “the overriding principles of international human rights”<sup>155</sup> The link between accessibility, non-discrimination and state obligation in relation to the right to education is clear and will be further discussed in the next section. It is also important to mention that, in many instances, the increase in school fees and education fees. has made education unaffordable for many vulnerable/marginalised groups.<sup>156</sup> Therefore, as the levels of education that should be “compulsory and free of charge” progressively expand, the need to develop approaches to guarantee access through affordability becomes more important.

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<sup>152</sup> “Education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location or via technology” (examples omitted).

<sup>153</sup> In addition to the levels of education that are not compulsory and/or free; “education has to be affordable for all.”

<sup>154</sup> “Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination of any of the prohibited grounds.”

<sup>155</sup> Report of the UN Special Rapporteur on Education, E/CN.4/1999/49, 13 January 1999, para 57.

<sup>156</sup> In this connection, there is plenty of information and critiques on the World Bank’s approach to school fees in the context of structural adjustment programmes. See Report of the UN Special Rapporteur on Education, E/CN.4/2001/52, 11 January 2001, para 23-29.

### ***1.5.3 Acceptability***

This feature of the right to education refers to the premise that “[t]he form and substance of education, including curricula and teaching methods, have to [be] acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents.”<sup>157</sup> This aspect is related to cultural dimensions and freedoms in education described under the elements of the right to education. It is also related to a model of inclusive education that does not justify exclusion of social groups under any circumstances.<sup>158</sup>

Furthermore, it is important to stress that since discrimination is not acceptable under any circumstances and thus, “[t]he right to education by its very nature calls for regulation by the state, regulation which may vary in time and place according to the needs and resources of the community and of individuals.”<sup>159</sup> At a minimum, therefore, the State should ensure that all schools and educational institutions are operating in accordance to a consistent criteria and quality.

It is also important to note that in the course of periodic State party reviews undertaken by UN human rights treaty bodies, it has been declared that physical discipline and sexual harassment within the education system violates the individual’s dignity.<sup>160</sup> Increasingly, national courts are developing jurisprudence prohibiting physical punishment in schools on the basis that it is humiliating and degrading treatment.<sup>161</sup> In this regard, it is necessary to acknowledge that while corporal punishment has been found not to be consistent with the provisions of the CRC, when it comes to parents and legal guardians, the reality is that corporal punishment is still practiced to discipline children in many countries.

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<sup>157</sup> CECSER General Comment No 13, para 6(c).

<sup>158</sup> The education article in the current working text of the UN disability convention, Article 24, places an obligation on governments to provide inclusive education for all learners.

<sup>159</sup> See European Court of Human Rights, *Belgian Linguistic Case*, Judgement of July 1968, Series A. No.6, para 5.

<sup>160</sup> Paulo David, ‘A Holistic Vision of the Right to Education’, *Educational Challenges and Human Rights* July 2003, pp43-45

<sup>161</sup> References to these and other cases can be found throughout the work of the UNSRE. See for example Report of the UN Special Rapporteur on Education, E/CN.4/1999/49, 13 January 1999, para 68

### ***1.5.4 Adaptability***

The CESCR considers that “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 contexts.”<sup>162</sup> That is why, as new layers of discrimination are exposed and society advances, the content of education will have to be reassessed and reviewed. For example, in accordance with CEDAW, CERD and the current draft of the Disability Convention, States are required to modify educational plans, strategies and content in order to eliminate negative stereotypes.<sup>163</sup>

Besides the on-going need to realign education to the goals of human rights and human development, it is also necessary to take into consideration advances in fast evolving areas such information technology and science. Furthermore, as educationalists develop better tools and methodologies to enhance learning of groups with specific learning needs, the content and approaches of education needs to be revised (e.g. children with mental disabilities, adult literacy, etc). As well, the learning needs of children in situations of internal displacement, refugees and other special circumstances need to be taken into account in the process of developing national plans for action on the right to education.

In conclusion, the adaptability of the right is important because, overall, “the knowledge, skills and values that [future generations of children and adults] will need in their lifetime is not only unknown but unknowable.”<sup>164</sup>

## **2. State Obligation**

The Dakar Framework for Action and other outcome documents emerging from international forums have focused on outlining plans and steps for realising the right to education. Although global policy commitments are of importance, translating them into action requires due regard to the principles of state obligation as set forth in international human rights law. Likewise, since each element of the right to education delineates a corresponding duty on the part of the State, the notion of accountability gains significance all through stages of implementation.

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<sup>162</sup> CESCR General Comment No. 13, para 6(d).

<sup>163</sup> These treaties contain similar provisions to CEDAW. In this regard, CEDAW Art 5(a) sets forth that States must “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or the superiority... or on stereotyped roles...”

<sup>164</sup> Report of the UN Special Rapporteur on Education, E/CN.4/1999/49, 13 January 1999, para 72

As the Special Rapporteur has articulated:

The unique advantage of the human rights approach is its comprehensive legal framework, defining human rights and the corresponding government obligations which span horizontal and vertical division competences. The symmetry between human rights and corollary government responsibilities ensures sustainability, linking empowerment with accountability.<sup>165</sup>

While this section will make reference to other international human rights treaties, it will mainly focus on the framework on the right to education as outlined by the ICESCR and the CESCR. In this regard, through the progressive interpretation of state obligations under the Covenant, the CESCR has clarified the meaning and scope of overarching principles on the right to education. These principles can, in turn, be applied to provisions on the right to education contained in other conventions.

Likewise, the principles outlined in this section can be incorporated into targeted action points outlined in international policy documents on education for all. Also, it must be clear that when States do not comply with obligations/duties stemming from what the right to education is in international law, they are violating it.

### ***Nature and Scope of general obligations that relate to the right to education***

The obligations described in this sub-section have been listed under “general obligations” because they are not specific to the right to education and are common to most categories of human rights. More to the point, in the last decade, the conceptual understanding of these levels of State obligation, and their respective application to the right to education has become increasingly sophisticated. Thus, at this stage, what is required is a renewed commitment on the part of national governments to implement the right to education in accordance to these principles.<sup>166</sup>

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<sup>165</sup> Report of the UN Special Rapporteur on Education, E/CN.4/2004/45, 15 January 2004, para 43

<sup>166</sup> CESCR General Comment No 13 para 50 reads: “...in relation to article 13(2) States have obligations to respect, protect and fulfil each of the ‘essential features’ of the right to education (availability, accessibility, acceptability, adaptability) of the right to education.”

## 2.1 The obligation to respect, protect, and fulfil the right to education

In the late 1990s, the CESCR and various UN independent experts began to consistently incorporate and perfect the “tripartite” – respect, protect and fulfil – framework of State obligation.<sup>167</sup> The right to education also encompasses these levels of state obligation. An indication of the wide acceptance of this typology of State obligation can be gathered from analysis and applications provided by UN treaty bodies, human rights mechanisms, experts and national courts world-wide.

The obligation to respect, protect and fulfil the right to education incorporates *obligations of conduct* as well as *obligations of result*.<sup>168</sup> Therefore, States have an obligation to *act* and *achieve practical outcomes* on the basis of the elements of the right to education outlined in Chapter One of this paper.

### 2.1.1 Respect

In accordance with the obligation to respect, States must recognise freedoms linked to the full enjoyment of the right to education and refrain from interfering and hindering in their exercise.<sup>169</sup> As a starting point, the State must “respect the availability of education by not closing private schools.”<sup>170</sup>

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<sup>167</sup> The obligations to respect, protect and fulfil have been referred to consistently by the CESCR since 1999. The first reference is made in CESCR General Comment No 12. Also, the UN special rapporteurs with mandates on ESCR use this typology. Moreover, Maastricht guideline No. 6 establishes “Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights.”

<sup>168</sup> In accordance to generally accepted principles, the obligation of conduct requires action reasonably calculated to realize the enjoyment of the right to education. The obligation of result on the other hand, requires the achievement of specific targets in relation to the realisation of the right to education. See Maastricht guideline No. 7.

<sup>169</sup> Maastricht Guidelines, para 6

<sup>170</sup> CESCR General Comment No 13 para 50.



At another level the State must also:<sup>171</sup> (i) abstain from enforcing discriminatory laws, policies in education and through education; (ii) the State has a duty to refrain from implementing policies that may affect the enjoyment of the right to education by the most vulnerable groups in society. In addition, examples of obligations of conduct that relate to the obligation to “respect” are listed in Articles 1 and 3 of the Convention Against Discrimination in Education. In accordance with Article 3, States agree:

- “(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;
- (b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;
- (c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;
- (d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;
- (e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.”

### **2.1.2 Protect**

The obligation to protect requires States to take steps to prevent, prohibit and address violations of the right to education by third parties.<sup>172</sup> Coomans adds that it “[r]equires states to guarantee the exercise of the right to education in horizontal relations (among private groups or individuals).”<sup>173</sup>

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<sup>171</sup>Magdalena Sepulveda, ‘The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights’, Intersentia 2003. The list is taken from headings in pp212-222.

<sup>172</sup> Maastricht Guidelines, para 6

<sup>173</sup> Coomans, op cit, p 243

For example: (i) the state has a duty to ensure that harmful social and traditional practices do not impede the enjoyment of the right to education by marginalised groups in society (e.g. women/girls, persons with disabilities);<sup>174</sup> (ii) the state has an obligation to ensure that private educational institutions design and implement entrance exams on the basis of non-discrimination.

Overall, this level of obligation requires positive steps to regulate and oversee third parties: (i) adequate legislation, (ii) effective mechanisms for complaint, (ii) appropriate remedies, (iii) comprehensive policies, (iv) coherent action and (v) on-going monitoring.

### **2.1.3 Fulfil**

As already set forth by the CESCR, “[i]t is clear that Article 13 regards States as having principal responsibility for the direct provision of education in most circumstances.”<sup>175</sup> The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of the right to education.<sup>176</sup>

Furthermore, according to Coomans, this level of obligation “[c]an be characterised as a programme obligation and implies a longer-term view. In general, this will require a financial input which cannot be accomplished by individuals alone. This obligation also includes setting up a general supportive legal and policy framework, which is generally thought to be a basic state responsibility.”<sup>177</sup> In this way, the CESCR has indicated that there are three additional sub-categories of the obligation to fulfil.<sup>178</sup>

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<sup>174</sup> CESCR General Comment No 13, para 50, illustrates this point: “... A State must protect the accessibility of education by ensuring that third parties, including parents and employers do not stop girls from going to school.”

<sup>175</sup> CESCR General Comment No 13, para 48

<sup>176</sup> Maastricht Guidelines, para 6

<sup>177</sup> Coomans, op cit, p242

<sup>178</sup> Ibid, pp239-246

### Fulfil (facilitate)

Coomans notes: “According to the Committee’s approach in its general comments, the obligation to facilitate implies that the state must take positive measures aimed at enabling and assisting individuals to enjoy [the right to education].”<sup>179</sup> In order to be effective, measures aimed at facilitating the enjoyment of the right to education must be appropriate to each context. As a result, measures adopted will vary from State to State. The ICESCR has referred to this level of obligation as being linked to the acceptability of education.<sup>180</sup>

### Fulfil (provide)

The State has a duty to ensure all types and levels of education are provided within its jurisdiction.<sup>181</sup> This level of obligation relates to further steps related to the adaptability of education. More specifically, when individuals are unable to exercise the right to education for reasons beyond their control, the State is required to satisfy their basic/minimum educational needs.

Examples include: (i) the content of education should “reflect the contemporary needs of students in a changing world;”<sup>182</sup> (ii) children in youth detention centres should be provided with levels of free and compulsory levels of education.

### Fulfil (Promote)

The State has a duty to promote international human rights standards that relate to the right to education. Most importantly, the components of human rights education and the right to information would fall under this category.

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<sup>179</sup> Ibid, p239

<sup>180</sup> The example of fulfil (facilitate) in CESCR General Comment No. 13, para 50, is “taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality to all.”

<sup>181</sup> Coomans, op cit, pp241-243

<sup>182</sup> Example included in CESCR General Comment No 13, para 50.

## 2.2 Obligations of Immediacy

Article 2.1 of the ICESCR refers to obligations related to the right to education that must be undertaken “by all appropriate means, including particularly the adoption of legislative measures.”<sup>183</sup> It is also clear that the obligations set forth in Articles 2 and 3 of the Covenant often relate to essential features of the right to education. These steps and measures must be implemented immediately. In accordance to this, the CESCR has established that “[w]hile the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect.”<sup>184</sup>

The obligations described below leave little discretion to the State and must be implemented without delay.

### 2.2.1 *Non-discrimination and equality in education*

In accordance with Article 2.2 of the ICESCR States: “[u]ndertake to guarantee that [the right to education] will be exercised without discrimination of any kind.”

Article 1.1 of the Convention Against Discrimination in Education establishes that discrimination “[i]ncludes any distinction, exclusion, limitation or preference, which ... has the purpose of nullifying or impairing equality in treatment in education.”<sup>185</sup>

It is also important to emphasise that the elements of this definition are similar to those provided in CEDAW and CERD.<sup>186</sup>

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<sup>183</sup> It is important to note that most human rights treaties contain similar to provisions. For example ICCPR Arts 2-3 and CEDAW Arts 2-4.

<sup>183</sup> The example of fulfil (facilitate) in CESCR General Comment in No 13, para is “taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality to all.”

<sup>183</sup> See n. 174 at p. 241-243.

<sup>183</sup> Example included in CESCR General Comment No 13, para 50.

<sup>183</sup> It is important to note that most human rights treaties contain similar language/obligations.

<sup>184</sup> CESCR General Comment No.3, para 1.

<sup>185</sup> Four concrete examples of discrimination in education are included in the Article 1. Also, Article 2 clarifies permitted exceptions.

<sup>186</sup> See Arts 1 of both Conventions. Also, as stated earlier, CESCR General Comment No. 16 incorporates the elements of the definition of discrimination in CEDAW to the ICESCR.

Articles 2 of these Conventions require States to take steps to prohibit and eliminate discrimination “without delay.” In addition, the Limburg principles establish that ICESCR Article 2.2 “calls for immediate application and involves an explicit guarantee on behalf of States Parties.”<sup>187</sup>

At another level, in General Comment No.3 the CESCR establishes that anti-discrimination legislation is: “[h]ighly desirable and in some cases may even be indispensable [because] it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for necessary measures.”<sup>188</sup> Furthermore, supplementary positive measures and steps are required to ensure that educational laws, policies and programmes serve as means to address the situation of vulnerable/discriminated groups.

### Gender parity and gender equality in education

Article 3 of the ICESCR encompasses the equal right of men and women to the enjoyment of the right to education. In this regard, CESCR General Comment 16, the Montreal Principles on Women’s ESCRs, the Limburg principles and the Maastricht guidelines make it clear that gender equality in education must be defined on the basis of the provisions of the CEDAW Convention.<sup>189</sup> Furthermore, this understanding of gender equality has also been applied in the practice of other treaty bodies such as the CRC, the Human Rights Committee and CERD.

Paragraph 30 of CESCR General Comment No. 16 provides examples of steps required to guarantee gender parity in education:

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<sup>187</sup> Limburg Principle No 35. Also consider Principles No. 36-40. See also Montreal Principle No. 14 and n.81 at para 57.

<sup>188</sup> CESCR General Comment No.3, para 3.

<sup>189</sup> See for example Limburg Principle No. 45 and Maastricht Guideline No.12.

“[I]mplementing article 3 in relation to article 13 requires, *inter alia*, the adoption of legislation and policies to ensure the same admission criteria for boys and girls in all levels of education. States parties should ensure the same admissions criteria for boys and girls in all levels of education. States should ensure, in particular through information and awareness raising campaigns, that families desist from giving preferential treatment to boys in sending their children to school, and that curricula promote equality and non-discrimination. States parties must create factorable conditions to ensure the safety of children, in particular girls, on their way to and from school.”

More specifically, Article 10 of the CEDAW Convention lists a series of measures that should be adopted by States. Some examples of “measures to eliminate discrimination against women in order to ensure equal rights with men in the field of education” are:

“... (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; (d) The same opportunities to benefit from scholarships and other study grants; ... (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely; ... (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. “

In general, Article 5 of the CEDAW Convention should be considered as part of the overarching framework for the elimination of gender discrimination in education. It addresses the need to modify social and cultural values that reinforce ideas of superiority of men/boys over women/girls. More specifically, Article 5(a) should inform the policies aimed at addressing barriers that girls and women face when attempting to access and equally benefit from opportunities in education.

Unfortunately, globally, the challenges to the attainment of gender parity in education continue.<sup>190</sup> The two experts that have served as UNSRE have consistently raised concerns in regard to girls' exclusion from the formal schooling system. In particular, the 2006 annual report by the UNSRE focuses on the girl child and proposes a comprehensive approach for confronting gender discrimination in education. One additional area, which has been explored by the UNSRE, focused on the issue of pregnancy as a "disciplinary offence" that may lead to the expulsion of girls from school.<sup>191</sup> While on one hand, there are societal pressures and expectations for girls to marry young, the views of parents, teachers and community leaders tend to support the expulsion of pregnant girls from schools. Most of the time, expulsion has been seen as a way to punish these "young mothers" and affirm a moral norm which prohibits teenage sex. Interestingly, in recent years, the Supreme Court of Colombia has held that "the conversion of pregnancy – through school regulations – into a ground for punishment violates fundamental rights to equality, privacy, free development of personality and to education."<sup>192</sup>

### Other discriminated groups

Around the world, many individuals still suffer "disproportionate harm" and experience violations of their right to education.<sup>193</sup> Besides women and girl-children, there are other groups that are: (i) excluded from the benefits of the right to education; and/or (ii) not reached by educational services, institutions, programmes aimed to benefit disadvantaged groups in society. For example: "lower-income groups, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless."<sup>194</sup> Hence, the realisation of the right to education requires addressing and ending *de facto discrimination* as soon as possible.

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<sup>190</sup> See for example: MDGs, BPA, Dakar and on-going work by UNESCO and UNICEF.

<sup>191</sup> See 2000 report

<sup>192</sup> See n 55 and para 59 of in SR2000 report.

<sup>193</sup> Maastricht Guideline No. 20.

<sup>194</sup> Ibid.

More specifically, as already established, inclusive education is aimed at ensuring the right to education is realised bearing in mind the specific learning needs<sup>195</sup> and learning circumstances<sup>196</sup> of each individual. Thus, States have an obligation to extend the basic guarantees of education to all.

### The extension of the right to education to non-nationals

Although international law prohibits discrimination on many grounds, many States continue to assert that the right to education should not be extended to non-nationals. In particular, to “stateless” persons, migrant workers and their families, trafficked persons, refugees and those that may not have exercised their right to obtain a legal identity/nationality/citizenship within their own countries.

Regardless, a general interpretation of the provisions on the right to education contained in many human rights treaties points to an obligation to guarantee non-discrimination in education to all persons “within the jurisdiction” of a State Party. This obligation would extend to non-nationals.<sup>197</sup> It should be noted that the exception contained in the ICESCR Article 2(3) is limited to “economic rights” and thus, does not apply in the context of the right to education.

Various treaties that contain provisions on the right to education clearly establish that at the very least, minimum levels of guarantees and protections relating to the right to education apply equally to nationals and non-nationals.<sup>198</sup> For example:

- Read in conjunction, Articles 36 and 45 of the International Convention on Migrant Workers and Members of their Families establishes that: “Migrant workers and members of their families who are documented or in a regular situation in the state of employment shall enjoy [...] equal treatment to nationals in regard to access to educational institutions.”

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<sup>195</sup> For example: the learning needs of those with mental or physical disabilities; adult learning, cultural minorities.

<sup>196</sup> For example: children in refugee camps, children that work and youth detention centres.

<sup>197</sup> In general comment 13 the CESCR refers to “non-nationals” irrespective of their legal status. Thus, implying that “everyone within the jurisdiction of a States Party” includes non-nationals.

<sup>198</sup> See Limburg Principles 42-44.



- Article 22 of the CRC establishes that States' parties have an obligation to adopt measures to ensure refugees enjoy the rights set forth in the convention, including the right to education.
- Throughout the periodic review process, the CEDAW Committee emphasised the right of migrant and refugee women to seek and receive information on their legal and human rights.

ICESCR has indicated that there may be permissible limitations to the enjoyment of the right to education of non-nationals.<sup>199</sup> However, in all cases based on generally accepted human rights principles, protections from degrading and inhuman treatment in every field, including education, must be provided.

#### Interplay between minimum legal age and the right to education: employment, marriage and criminal responsibility

In many countries, the implementation of compulsory primary and secondary education has been instrumental in preventing child marriage, removing children from the labour force and providing future employment opportunities to young adults (in the formal sector and without abuse). Over recent decades, the provision of guarantees to free and compulsory levels of education has resulted in changes in the “minimum legal age” for employment, marriage and criminal responsibility.

In many countries, the lengthening of compulsory levels of education for children has resulted in an extension of children's right beyond a “minimum legal age”. The importance of this issue is that the minimum age for employment, marriage and criminal responsibility is inter-related to the feature of adaptability of the right to education.

As a starting point, in accordance with the CRC, a child is anyone under the age of eighteen “[u]nless under the law applicable to the child, majority is attained earlier.”<sup>200</sup>

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<sup>199</sup> For example if foreign nationals are in the country concerned “legally” all the provisions of the Covenant apply whereas, in comparison, “illegal” foreigners should only be guaranteed minimum protections of non-discrimination. In the same way, “refugees” may have more guarantees than “asylum seekers”. Interestingly, the Committee considers that “stateless persons” must enjoy CESCR on the same footing as citizens. For more details, see Sepulveda, op cit, pp261-270, for a more detailed analysis of the trends identified by the study of concluding comments by the CESCR.

<sup>200</sup> CRC, Article 1

### Minimum age of employment

Article Art 32 (1) of the CRC establishes that children need to be protected from “[e]conomic exploitation and from performing any work that is likely to be hazardous or *to interfere with the child’s education*, or to be harmful to the child’s ... development.”<sup>201</sup> Additionally, Article 32(2)(a) places an obligation on States to set a minimum legal age for employment which may vary according to different types of employment.<sup>202</sup>

At another level, Article 1 of the ILO Convention No 138 Concerning Minimum Age for Admission to Employment establishes that States must ensure to take steps to abolish child labour and “... raise progressively the minimum age for admission to employment.” Also Article 5(3) specifies that the minimum age of employment should: (i) not be less than 15 years old; and (ii) not be less than the age of completion of compulsory schooling. Thus, it is implied that compulsory levels of education should be provided until the child is 15 years of age or older.

Furthermore, Article 3(1) of the CRC’s Optional Protocol on the Involvement of Children in Armed Conflict sets out that States have an obligation to “... raise minimum age in years for voluntary recruitment of persons into their national armed forces from that set out in article 38(3) of the CRC.”

### Minimum age of marriage

UNIFEM, UNICEF and other international human rights bodies and agencies have led campaigns aimed at abolishing the practice of child marriage. The general practice around the world is that there is a different “minimum age of marriage” provided for boys and girls. This is important because, in practice, young women and girls’ that choose or are forced to marry discontinue their education. Furthermore, the Special Rapporteur has observed that “[p]atriarchal practices that limit female autonomy and keep young and teenage girls away from education usually involve *early or unwanted marriages, pregnancies and motherhood*.”<sup>203</sup>

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<sup>201</sup> Emphasis added.

<sup>202</sup> These provisions are similar to those included in Article 10(3) of the ICESCR.

<sup>203</sup> Report of the UN Special Rapporteur on Education devoted to “Girls’ right to Education”, E/CN.4/2006/45, 8 February 2006, para 71 (emphasis added)

Moreover, due to the detrimental effects of early marriage on girls, the CEDAW Committee has noted that: “[s]ubject to reasonable restrictions based for example on a woman's youth... a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.”<sup>204</sup> In this regard, Article 6(b) of the African Protocol on Women’s Rights is more specific, thus establishing women’s minimum age of marriage is 18.

### Minimum age of criminal responsibility

The Special Rapporteur has observed that “[c]hildren who are deprived of their liberty, education ought to be provided where they are and this is unlikely to happen unless children have a right to education.”<sup>205</sup> Similarly, Article 40 of the CRC outlines the right to a fair trial and juvenile justice. Article 40(3)(a) requires States to set a minimum age “below which children shall be presumed not to have capacity to infringe the penal law.” Also, in relation to Article 40(4) education and vocational training must be available to children that have infringed penal law.

### **2.2.2 *The minimum core content of the right to education***

There are essential components of the right to education that must be applied and implemented “...irrespective of the availability of resources of the country concerned or any other factors and difficulties.”<sup>206</sup> It is implied that each element that defines the core content of the right sets out specific core obligations. Consequently, the CESCR has established that there is “... a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [set forth in the Covenant] is incumbent upon every State party.”<sup>207</sup>

As established in Section One of this paper, there are many elements of the right to education that are widely accepted in international law. In this regard, there are enough sources of international law that suggest the following core elements of the right to education:

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<sup>204</sup> CEDAW General Recommendation No. 21 para 16: “... in this regard, a women’s youth or in this case the restrictions placed on allowing girl children to marry or to be forced to marry is reasonable and in accordance with women’s rights.”

<sup>205</sup> Tomasevsky, op cit, p22

<sup>206</sup> Maastricht Guidelines, para 9

<sup>207</sup> CESCR General Comment No. 3, para 10

- A basic level of education should be compulsory and free for all;
- A national plan/strategy on the right to education must be adopted and implemented;
- All individuals should be protected from non-discrimination in education on the basis of prohibited grounds of discrimination recognised in international human rights law; and
- States must respect and promote freedoms related to the right to education.

In the context of Article 13 of the ICESCR, the minimum core obligations of the right to education include:

to ensure the right of access to public educational institutions 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 (art 13(3) and (4)).<sup>208</sup>

The Committee has also clarified that “[i]n order for a State party to be able to attribute its failure to meet at least its minimum core obligations [that relate to the right to education] to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”<sup>209</sup>

### **2.3 Obligations of progressive realisation: ensuring the realisation of the right to education for all**

The full realisation of all the elements of the right to education according to the features of availability, accessibility, acceptability and adaptability is a progressive undertaking which encompasses the following:

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<sup>208</sup> CESCR General Comment No 13, para 57

<sup>209</sup> CESCR General Comment No 3, para 10

### ***2.3.1 Obligation to take steps and devote “maximum of available resources”***

ICESCR Art 2(1) sets forth that: “[e]ach State party to the present Covenant undertakes to take steps ... to the maximum of available resources.” Therefore, States cannot wait indefinitely to take additional steps towards the full realisation of the right to education for all.<sup>210</sup>

As the Committee notes: “[E]ven in times of severe resource constraints whether caused by a process of adjustment, economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes”<sup>211</sup> Thus, the term “to the maximum available resources” does not require the allocation of all existing public resources towards education, instead, it requires: (i) resources to be allocated efficiently and effectively;<sup>212</sup> (ii) without negatively affecting or impairing the progressive realisation of other human rights.<sup>213</sup>

At one level, the realisation of the provisions of Article 13 of the ICESCR and similar provisions in other human rights treaties provide a significant margin of discretion for States Parties. However, the obligation aimed at implementing the right to free and compulsory primary/basic education in Article 14 of the ICESCR is “relatively inflexible” and must be met within a reasonable time frame.<sup>214</sup>

The UNSRE has verified that is not possible to define a specific percentage needed to achieve an “optimal level of public expenditure” in the area of education.<sup>215</sup> However, the UNSRE has found that there is consensus with regard to the following: (i) public investment in education is a pre-requisite for the right to education; (ii) public resource allocation ought to prioritise primary education.<sup>216</sup>

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<sup>210</sup> Limburg principle No. 21.

<sup>211</sup> CESCR General Comment No 3, para 12

<sup>212</sup> In this connection, Limburg principle No 27 reads: “In determining whether adequate measures have been taken for the realisation of the rights recognized in the Covenant attention shall be paid to equitable and effective use of and access to available resources”.

<sup>213</sup> Everyone must be provided with “minimum subsistence rights” that include but are not limited to the human right to education. See Limburg principle No 25.

<sup>214</sup> See CESCR General Comment No. 11, para 10.

<sup>215</sup> See n. 81 at para 34.

<sup>216</sup> See n. 81 para 38: “Human rights education would face a considerable challenge if it ventured to reconcile, for example, an acquired right to free education for university students which may be depriving young children of access to any education whatsoever.”

### ***2.3.2 Obligation to continuously improve conditions and the prohibition of taking deliberately retrogressive measures***

Another element of Article 2.1 of the ICESCR establishes a duty to take steps “[w]ith a view to achieving progressively the full realisation of the rights recognised in the present Covenant.” Following on, the CESCR considers that States have “[...] specific and continuing obligations to move expeditiously and effectively as possible towards the full realisation [of the right to education].”<sup>217</sup>

Since the realisation of the right to education needs to progressively evolve over time, any intended or deliberate decisions by the State to put in place laws and policies that “set back” achievements in relation to the enjoyment of the right to education would constitute violations of the right to education. According to the ICESCR, “[a]ny deliberately retrogressive measures ... would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”<sup>218</sup>

In this regard, after a detailed analysis of the practice and views of the CESCR, Sepulveda notes:

States cannot tolerate a decline in the degree of protection afforded to a particular right without taking any action to try to redress or improve the situation. This obligation is particularly stringent in the case of vulnerable groups.<sup>219</sup>

### ***2.3.3 Obligation to take “all appropriate” measures towards the full implementation of the right to education***

“Appropriate measures” to achieve the right to education include: adoption of legislation; implementation of administrative steps, expansion of guarantees of protection through judicial procedures and processes; development of specific programmes, services and curricula; and building schools.<sup>220</sup>

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<sup>217</sup> Quote taken from CESCR General Comment No. 14 para. 3. Although the general comment deals with the right to the highest attainable standard of health but has also been applied to other rights in the Covenant.

<sup>218</sup> ICESCR General Comment No. 3, para 9

<sup>219</sup> Sepulveda, op cit, p231

<sup>220</sup> See Limburg Principle No 17

Also, measures adopted must include express recognition of violations of the right to education (at minimum non-discrimination and freedom guarantees) as well as adequate mechanisms for redress/remedies.<sup>221</sup>

Additionally, the framework of the ICESCR indicates that:<sup>222</sup> (i) measures must be ‘reasonable’, ‘effective’ and ‘produce results’ compatible with the obligations under the Covenant; (ii) states must take into account the means which have proved to be the most effective in ensuring the protection of other human rights. One “test” that should be applied in the evaluation of national plans for actions on the right to education is that these should “enhance compliance” with regard to all elements of the right to education provided in international human rights law.

### ***Nature and scope and obligations that extend beyond the State and state-actors***

It is understood that the realisation of the right to education requires concerted efforts among: (i) individuals, their families and their communities; (ii) civil society, including the private sector, mass media and religious institutions; (iii) all levels of federal and local government bodies, including the executive, judiciary and legislature; (iv) international organisations, including regional bodies and international agencies; and (v) trans-national corporations, NGOs and other organisations. Since joint efforts on the right to education require coordination and varying levels of acceptance/supervision, there are human rights obligations that extend beyond the state.

#### **2.4 The obligation of non-state actors, including international financial institutions and trans-national corporations, to protect and promote the right to education**

All international human rights treaties contain explicit prohibitions that extend to all individuals and institutions.

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<sup>221</sup> Limburg Principles No. 16-20

<sup>222</sup> Sepulveda, op cit, pp335-360

As described earlier, the obligation to protect requires States to put in place laws and mechanisms to ensure that “no one” within the reach of that State’s jurisdiction violates the right to education. As set forth in the Maastricht Guidelines and in accordance to the principle of non-discrimination, private entities and individuals must refrain from acts that result in depriving other individuals of their right to education.<sup>223</sup>

With regard to the behaviour of non-state actors that needs to be “controlled” or regulated by the State, the Maastricht Guidelines also provide examples of violations that must be prohibited and prevented.<sup>224</sup> For example: (i) educational programmes and institutions should not be allowed to adopt measures and regulations which are inconsistent with the right to education;<sup>225</sup> (ii) communities should not promote ideas that actively deny the right of children with special learning rights to their right to education; (iii) employers must allow workers to seek and receive information on health occupational hazards as and when required and (iv) activities undertaken by the media should not result in undermining the aims of the right to education.

Although, the obligations of non-State actors that operate within the jurisdiction of individual States are clear, the obligations of international organisations in this regard are the subject of debate. More specifically, there are various perspectives on whether or not international financial institutions have an obligation to respect, promote and fulfil the right to education.

Interestingly, a vast number of independent experts, academics and UN human rights treaty bodies have established that, when it comes to international organisations, States have “joint” as well as “individual” obligations in regard to the promotion of the realisation of the right to education.<sup>226</sup> In this regard, States’ Parties to the ICESCR and other human rights treaties should ensure the actions of international and regional organisations in which they are represented contribute to the aims of the right to education:

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<sup>223</sup> Maastricht Guidelines, para 18. This is also compatible with provisions contained in treaties that specifically refer to non-discrimination such as CERD, CEDAW and ICMW.

<sup>224</sup> Maastricht Guidelines, para 14 and 15

<sup>225</sup> Maastricht Guidelines, para 14(c)

<sup>226</sup> A detailed analysis is included in the following books: Mathew Craven, ‘The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development, Oxford 1990, p. 144-150; Douglas Hodgson, ‘The Human Right to Education’ Ashgate-Darmouth 1998, pp 211-218; See Sepulveda, op cit, pp370-372.



“[I]n relation to the negotiation and ratification of international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to education. Similarly, States parties have an obligation to ensure that their actions as members of international organizations, including international financial institutions, take due account of the right of education.”<sup>227</sup>

“The obligations of States to protect [the right to education] extend also to their participation in international organisations, where they act collectively .... It is crucial for the elimination of violations of [the right to education] for international organisations, including international financial institutions, to correct their policies and practices to that they do not result in deprivation of [this right]”<sup>228</sup>

In this context, paragraph 60 of ICESCR General Comment 13 is of particular relevance as it calls for “[c]oordinated efforts for the realisation of the right to education” which should aim to “[i]mprove coherence and interaction among all actors concerned.”<sup>229</sup>

The paragraph also lists many UN agencies as well as international financial institutions including, the World Bank, the regional development banks, and the International Monetary Fund (IMF). Most importantly, it also states: “[I]n particular, the international financial institutions, notably the World Bank and the IMF, should pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt crisis.”

It is also important to mention that in recent years, the incorporation of human rights principles in the deliberations resulting from the World Trade Organisation have also begun to be discussed. In this regard, the Special Rapporteur and other experts have raised concerns about the liberalisation of education as a negotiable service.

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<sup>227</sup> See CESCR General Comment No. 13, para 56.

<sup>228</sup> Maastricht Guideline No 19. Note that general references to CESCR have been changed to specific references to the right to education.

<sup>229</sup> CRC General Comment No. 1, para. 23 similarly calls for coordination among bodies interested in promoting educational policy and human rights education. Also, see n. 75 para 35: “the Special Rapporteur has encountered this dilemma within the World Bank itself, with one part advocating for the abolition of school fees in primary education in order to combat poverty and another tolerating, if not, encouraging them, so as to decrease government budgetary allocations, and thus, fiscal deficits, through cost sharing.”

## 2.5 The obligation of States to provide and to receive international assistance and cooperation

Under the ICESCR, each State Party has an obligation to “[t]ake steps, *individually and through international assistance and co-operation, especially economic and technical...*”<sup>230</sup> The CESCR has made it clear that the reference to “maximum available resources” is not limited to those existing at the national level, but also, those available from the international community.<sup>231</sup> Furthermore, this level of obligation places an onus on the international community to commit funds and expertise in order to contribute to the realisation of a shared vision with regard to the aims of education as provided by international human rights law. This also leads to the conclusion that economic and technical resources are sometimes needed to guarantee that the minimum core elements of education extend to all.

In the course of her work as the former Special Rapporteur, Katarina Tomasevsky analysed the evolution and trends of development assistance for education as a means to enhance the capacity of receiving States to meet their obligations regarding the right to education.<sup>232</sup> One interesting finding is that in the 1990s “[a]id for education has ... increased within ... a diminishing volume of aid”<sup>233</sup> and, contrary to common belief, “most aid for education goes to higher rather than primary education.”<sup>234</sup>

### Developed States

The CESCR Committee has repeatedly remarked that developed States are required to provide expertise and commit financial resources aimed at ensuring the right to education transforms into more than a promise.<sup>235</sup>

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<sup>230</sup> ICESCR Art. 2(1). Also, ICESCR Art 11(1). It is important to note that although other treaties contain general provisions on international cooperation, the ICESCR is the only UN human rights treaty with clear indication of this obligation. Over the years, the CESCR has also made reference s to Articles 55 and 56 of the United Nations Charter.

<sup>231</sup> CESCR General Comment No. 3, para 13. This implies that the principle of equitable distribution of resources domestically also has meaning at the global level.

<sup>232</sup> See reports of the UNSRE from 1999-2004.

<sup>233</sup> Report of the UN Special Rapporteur on Education, E/CN.4/2000/6, 1 February 2000, para.14

<sup>234</sup> Ibid, para 15

<sup>235</sup> For specific examples, see Sepulveda, op cit, p370

For example in General Comment No 11 the Committee has asserted: “[w]here a State party is clearly lacking in the financial resources and/or expertise required to “work out and adopt” a detailed plan, the international community has a clear obligation to assist.”<sup>236</sup> Although the differences between the obligation to “assist” and the obligation to “cooperate” need to be clarified, developed States are obliged to ensure their foreign aid policies don’t cause unintended negative effects. At the very least, developed states are obliged to abstain from adopting and implementing policies that may obstruct or violate the right to education in developing countries.<sup>237</sup>

The Limburg Principles establish that “[i]rrespective of differences in their political, economic and social systems, States shall cooperate with one another to promote international, social, economic and cultural progress...”<sup>238</sup> The right to education is a central component of human development and progress.

### Developing States

States that lack resources to provide for minimum levels of education should seek international assistance.<sup>239</sup> In this respect, developing States may “actively seek assistance” from: (i) UN Specialised agencies such as UNESCO and UNICEF; or (ii) other inter-governmental organisations and international/regional financial institutions.<sup>240</sup>

In the same way, the CESCR Committee stresses that the funds and assistance received should be directed to satisfying basic needs associated with the progressive realisation of fundamental human rights such as the right to education (at least free and compulsory levels). Moreover, the Committee places emphasis on good governance and transparency. So, rather than looking at how much funds are allocated, the committee often focuses on equitable distribution of funds aimed at education among all (rural, etc) and will also test whether or not the realisation of another right has jeopardised efforts to realise the right to education.

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<sup>236</sup> CESCR General Comment No. 11, para 9

<sup>237</sup> According to Sepulveda, op cit, this can be gathered from CESCR General Comment No. 8

<sup>238</sup> Limburg Principle No. 31

<sup>239</sup> Sepulveda, op cit, p376; see also E/1998/22, para 271.

<sup>240</sup> Sepulveda, op cit, p376

In accordance to Sepulveda's analysis of the work of the CESCR, developing States are also required to:<sup>241</sup>

- facilitate or at least, refrain from obstructing, efforts led by international organisations in their legitimate efforts to assist people within that state to achieve guaranteed levels of education;
- prioritise the education needs of the "*most vulnerable and disadvantaged groups within society.*"<sup>242</sup>

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<sup>241</sup> Ibid, pp376-377

<sup>242</sup> This language and approach has been widely used in the development field, in particular, by the World Bank.

### 3. Other Considerations for the Effective Implementation of the Right to Education

#### 3.1 Addressing the 3-D obstacles: disability, difficulty and disadvantage<sup>243</sup>

In her 2002 report, the UNSRE found that, in practice, many national plans in education and public financial allocations point to a lack of understanding and unintended “blurring” of specific categories of learners that may have specific and distinct needs. Thus, the differences between the steps needed to extend the right to education to learners with “disability”, “difficulty” and “disadvantage” are often considered to be the same. In her report, she notes:

“[D]isability is commonly defined by reliance on the medical model, and learners with visual, hearing, physical and mental impairments are segregated into special schools or provided with teaching and learning aids in mainstream education. Learning difficulties are more difficult to define and categorise, while the blurring of disadvantage and disability brings immigrant or refugee or minority children into the purview of “disability” because they may be unfamiliar with the language of instruction.”<sup>244</sup>

While the purpose of this paper does not require a detailed analysis of these categories, it is important to explore the ways temporary or permanent special measures may contribute to ensuring the aims of the right to education are realised.<sup>245</sup> In this regard, temporary special measures can be a means to ensure that learners with special need and learners under special circumstances benefit equally from education, thus, ensuring equal results for all.

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<sup>243</sup> Report of the UN Special Rapporteur on Education, E/CN.4/2002/60, 7 January 2002.

<sup>244</sup> Ibid, para 45

<sup>245</sup> Temporary special measures are steps taken (policies, laws, regulations, programmes, services) by the State in order to accelerate the advancement of disadvantaged or socially excluded groups. These measures are means for ensuring *de facto equality* is achieved within a reasonable time frame and on the basis of a model that doesn't perpetuate disadvantage and exclusion. In this connection, measures should be crafted and designed in order to correct the on-going effects of discrimination. Temporary special measures are also known as “affirmative action.”

Although the CESCR, CRC and the UNSRE have not made particular emphasis on the need to introduce “temporary special measures” in education, the CEDAW Committee has outlined a framework that can be applied at a practical level.<sup>246</sup> Moreover, the work of Marc Bossuyt has contributed to the development of a body of work that focuses on this topic.<sup>247</sup> At present, the potential of temporary special measures in education has not been fully explored. Hence, there are possibilities that have not been considered within individual States. As a result, the role of NHRIs in relation to promoting and advocating for temporary special measures in education needs to be carefully considered.

### **3.2 Overview of Indicators/Approaches to assess the impact of steps taken to ensure the progressive realisation of the right to education**

The CESCR has affirmed that in accordance with Article 13(1) of the Covenant, States are “[o]bligated to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in Article 13.”<sup>248</sup> Many experts, international agencies/organisations as well as the majority of national and regional human rights bodies have stressed the importance of monitoring and assessing the impact of the domestic implementation of international human rights standards. Once again, since the right to education has been considered as an “empowerment” and “cross-sectoral” right, its realisation is a central component of human development and the advancement of disadvantaged groups. For this reason, the process of ensuring *de facto* equality and eliminating discrimination requires approaches to ensure that reforms in law and policy aimed at education take place when and as required.

Paragraph 32 of the Maastricht Guidelines on Violations of ESCRs states that “[d]ocumenting and monitoring violations of economic, social and cultural rights should be carried out by all the relevant actors, including NGOs, national governments, and international organizations.” It is clear that NHRIs have a role to play in documenting violations of the right to education and monitoring progressive steps taken towards its realisation. In this regard, Appendix III includes the rights-based indicators on the right to education that have been proposed by the UNSRE.

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<sup>246</sup> See CEDAW General Recommendation No. 25, para 22-24

<sup>247</sup> See reports of Special Rapporteur of the sub-commission on Human Rights on “Comprehensive Examination of Thematic Issues Relating to Racial Discrimination: The concept and practice of affirmative action”, E/CN.4/Sub.2/1999/5 (1999); E/CN.4/Sub.2/2000/11 (2000); E/CN.4/Sub.2/2001/15(2001).

<sup>248</sup> CESCR General Comment No. 13, para. 49

	<b>Seven Principles of Human Rights-Based Impact Assessment<sup>249</sup></b>
1	Use an explicit human rights framework
2	Aim for the progressive realisation of human rights
3	Promote non-discrimination and equality in process and in policy
4	Ensure meaningful participation by all stakeholders
5	Provide information and protect the right to freely express ideas
6	Establish mechanisms to hold the State accountable
7	Recognise the inter-dependence of human rights

The benefits of developing and undertaking an analysis of the impact of the right to education can be summarised as follows: (i) it provides NHRIs and government bodies with a framework for incorporating human rights in all areas of public policy and law making; (ii) it contributes to the understanding that a RBA to policy enhances effectiveness of government action and coherence; and (iii) it makes it easier to understand the stages of implementation of the right to education in light of the principles of progressive realisation.<sup>250</sup>

In line with this approach, the following questions could be considered by NHRIs in the process of monitoring and investigating the impact of discriminatory practices, laws and policies in education:<sup>251</sup>

- Is the policy consistent with the government's right to education obligations under international and national law?
- Is the policy consistent with the government's national education strategy and plan of action?
- Does the rights analysis of the policy reveal any potential right to education violations?
- Are any mitigating measures necessary?

<sup>249</sup> Paul Hunt and Gillian MacNaughton, 'Impact Assessments, Poverty and Human Rights: A Case Study Using the Right to the Highest Attainable Standards of Health', Submitted to UNESCO on 31 May 2006, p56.

<sup>250</sup> Ibid, p41

<sup>251</sup> These questions are based on the work of Hunt and MacNaughton, op cit. Questions have been adapted in order to make them relevant to the right to education.

- Is compensation to people adversely affected necessary?
- Could this policy better promote the right to education?
- What modifications should be considered to improve the right to education impacts?
- What are the alternative policy choices to the proposed policy that would better enhance enjoyment of the right to health?

### 3.3 The Justiciability of the right to education

The right to education has been and continues to be litigated at the domestic, regional and international level.<sup>252</sup> In addition, there is an existing and extensive body of jurisprudence which lays down principles for the interpretation and application of international standards that apply to the right to education. As a result, the scope of State obligations stemming from the right to education are being progressively interpreted, clarified and affirmed by judicial and quasi judicial processes.

In this regard, it is generally agreed that if a right can be *invoked before* and *adjudicated upon* by a judicial body, then, it is justiciable. Thus, an extensive body of jurisprudence has clarified that the right to education is justiciable.<sup>253</sup> Also, various international law experts have specifically referred to the fact that the right to education is justiciable.<sup>254</sup> In this sense, at a minimum the component of non-discrimination and equality in education must be justiciable at the national level. This is essential as the guarantee of non-discrimination is a safeguard that all individuals should have.

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<sup>252</sup> In fact, the volume and importance of cases is such that the OHRCR announced that a database on case law on the right to education will be launched in the future. Also, the report of the UN Special Rapporteur on the Right to Education, E/CN.4/2005/50, 17 December 2004, para 51-59 point to increasing case law.

<sup>253</sup> See Appendix IV for some examples.

<sup>254</sup> See n. 238. Also refer to reports by independent expert on the question of a draft optional protocol to the ICESCR. In particular, E/CN.4/2003/53, 13 January 2003.



### **The International Court of Justice's Opinion:**

In an Advisory opinion by the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian Territory the right to education and other ESCR provided by the ICESCR and CRC were found applicable to the case. Most importantly, the ICJ went further to declare/pronounce that Israel was in breach.<sup>255</sup>

According to Katarina Tomasevsky, domestic legal enforcement of the right to education leads to international enforcement and that is why any analysis on justiciability should focus on the elements of the right that have been adjudicated by national courts and mechanisms.<sup>256</sup> It is also worth noting that in the course of her work as Special Rapporteur, Tomasevsky identified trends that continue to hold:<sup>257</sup>

- The majority of cases relate to countries in which education (more specifically primary) is available and accessible.
- The majority of the existing jurisprudence has not been led or generated by human rights organisations or institutions thus, it is sometimes unknown by human rights advocates and proponents.

Also, a more recent trend that has been noted by the current Special Rapporteur, is that there are now more cases in which children have sought standing in domestic courts in order to claim their right to education.<sup>258</sup>

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<sup>255</sup> International Court of Justice Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, ICJ General List No. 131, 9 July 2004.

<sup>256</sup> Tomasevsky, op cit, p11

<sup>257</sup> Report of the UN Special Rapporteur on Education, E/CN.4/2000/6, 1 February 2000, para 65

<sup>258</sup> See Supreme Court of Colombia, *Pablo Enrique Torres Gutierrez and Jose Prieto Restrepo v. Instituto Ginebra La Salle*, T-147493, judgement of 24 March of 1998. Also, see Supreme Court of the Socialist Republic of Sri Lanka, petitions Nos. 6/98 and 7/98 concerning an Act to Eliminate Ragging and other Forms of Violence and Cruel, Inhuman and Degrading Treatment from Educational Institutions, 7 April 1998.

According to Martin Scheinin, the term justiciability has dimensions that make it possible to consider: (i) bringing together, and if possible, combining various sources of law; (ii) methodologies for inferring the substance of each right, (iii) identifying ‘core’ justiciable elements of each right, (iv) ensuring there are remedies that apply to violations of rights, (v) clarifying State obligation and (vi) stressing an integrated approach to realising indivisibility.<sup>259</sup> These ideas are applicable to the analysis of the justiciability of the right to education.

The findings on the justiciability of the right to education indicate that NHRIs have a role to play in raising awareness of judicial and quasi judicial bodies nationally on the right to education.<sup>260</sup> In this respect, in 2002, the UNSRE found that the “[e]xpansion of jurisprudence on the right to education at the domestic and international levels has been supplemented by the work of national human rights institutions.”<sup>261</sup>

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<sup>259</sup> Martin Scheinin, *Justiciability and the Indivisibility of Human Rights*, in J. Squires et al Eds, ‘The Road to a Remedy: Current Issues in the Litigation of Economic, Social and Cultural Rights’, UNSW Press 2005, p. 17-27, pp18-19.

<sup>260</sup> OHCHR, ‘Professional Training Series No. 12: Economic, Social and Cultural Rights Handbook for National Human Rights Institutions’, UN 2000, p87.

<sup>261</sup> Report of the UN Special Rapporteur on Education, E/CN.4/2002/60, 7 January 2002, para 1

## Chapter Two

This section of the background paper sets out the status of law and practice in each of the countries of APF member institutions.<sup>262</sup>

### 1. Afghanistan<sup>263</sup>

#### 1.1 International Law

Afghanistan is a party to the ICESCR,<sup>264</sup> CERD,<sup>265</sup> CEDAW<sup>266</sup> and the CRC.<sup>267</sup> Afghanistan is not a party to the UNESCO Convention Against Discrimination in Education.

Afghanistan is not a party to the ILO Minimum Age Convention or the Worst Forms of Child Labour Convention.

#### 1.2 National Law

##### 1.2.1 Constitution

##### Right to education

Chapter II (Fundamental Rights and Duties of Citizens) of the *Constitution of Afghanistan 2004* contains the following provisions relevant to the right to education, including primary, secondary and higher education and the financing of education:

**(Article 43)**

Education, being the right of all citizens of Afghanistan, shall be offered up to the B.A. level in the state educational institutes free of charge by the state.

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<sup>262</sup> The information contained in Chapter 2 is based on responses to a questionnaire by the APF's member institutions. The responses to the questionnaire are available on the APF website:

<<http://www.asiapacificforum.net/jurists/references/education/questionnaire.htm>>

<sup>263</sup> The reader is also referred to a recent report of Human Rights Watch, *Lessons in Terror: Attacks on Education in Afghanistan*, Volume 18, Number 6(C), July 2006;

<<http://www.hrw.org/reports/2006/afghanistan0706/>>

<sup>264</sup> Afghanistan acceded to the ICESCR on 24 January 1983.

<sup>265</sup> Afghanistan acceded to the CERD on 6 July 1983.

<sup>266</sup> Afghanistan acceded to the CEDAW on 5 March 2003.

<sup>267</sup> Afghanistan ratified the CRC on 28 March 1994.

To expand a balanced education as well as to provide mandatory intermediate education throughout Afghanistan, the state shall design and implement effective programs and prepare the ground for teaching mother tongues in areas where they are spoken.

**(Article 44)**

To create and foster balanced education for women, improve education of nomads as well as eliminate illiteracy in the country, the state shall devise and implement an effective plan.

**(Article 45)**

The state shall devise and implement a unified educational curricula based on the tenets of the sacred religion of Islam, national culture as well as academic principles, and develop religious subjects curricula for schools on the basis of existing Islamic sects in Afghanistan.

**(Article 46)**

Establishing and administering higher, general and specialized educational institutions shall be the duty of the state.

With the permission of the state, the citizens of Afghanistan shall establish higher, general and specialized educational as well as literacy institutions.

The state shall permit foreign individuals to establish higher, general and specialized institutions in accordance with the provisions of the law.

Admission terms to higher educational institutes of the state and other related matters shall be regulated by law.

## Non-discrimination and access for all

The following provisions of the *Constitution* are relevant to non-discrimination and access for all:

(Article 22)

Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man or woman, have equal rights and duties before the law.

(Article 23)

Life is the gift of God as well as the natural right of human beings. No one shall be deprived of this except by legal provision.

(Article 24)

Liberty is the natural right of human beings. This right has no limits unless affecting others freedoms as well as the public interest, which shall be regulated by law. Liberty and human dignity are inviolable. The state shall respect and protect liberty as well as human dignity.

(Article 29)

Persecution of human beings shall be forbidden. No one shall be allowed to—or order—torture, even if to discover the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished. Punishment contrary to human integrity shall be prohibited.

## Relevance of international law in the national jurisdiction

Articles 7 and 8 of the *Constitution* are relevant to the application of international law in the national jurisdiction:

(Article 7)

The United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights shall be respected.

The state shall prevent terrorist activities, cultivation and smuggling of narcotics, and production of intoxicants.

(Article 8)

The state shall regulate the foreign policy of the country on the basis of preserving the independence, national interests and territorial integrity as well as non-interference, good neighborliness, mutual respect and equality of rights.

### ***1.2.2 Legislation***

#### Minimum Age of Employment

The Afghan Independent Human Rights Commission ('**AIHRC**') notes that although Afghanistan is yet to ratify the relevant ILO Conventions, the government, as a general practice does not recruit persons under the age of 18, while the private sector recruits persons under 18 as apprentices or workers.

#### Minimum Age of Marriage

In accordance with civil law, the minimum age of marriage is 16 for women and 18 for men.

#### Minimum Age of Criminal Responsibility

According to Article 5 of the *Law of Investigation of Children's Violation*, children under 12 years of age are not responsible for their criminal acts.

## **1.3 Overview of Education Policies and Programmes**

### ***1.3.1 Educational Framework***

The AIHRC reports that free education for all was first available in Afghanistan from 1935. Under the current Constitution, the state provides education facilities for up to the BA and B.Sc levels free of charge throughout the capital and provinces. This support covers the tuition fee and textbooks provision especially for primary education (grade 1-9), and high schools, and accommodation, (within government affordability). The state also provides technical education free of charge within its institutions.

The targets of the Millennium Development Goal (MDG) for Education in Afghanistan are:

- Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary education
- Eliminate gender disparity in primary and secondary education preferably by 2005 and to all level of education no later than 2015.

The AIHRC advises that it is government policy to provide education facilities for both men and women, but that within the present situation and as a result of cultural constraints there is a need for separate schools for young girls. The number of schools for young girls and married women is much lower than schools for boys. In rural areas, young girls are not able to maintain their education after the primary level, because of a lack of high schools and universities at district level. Other barriers to education include: the existence of cultural barriers which prevent continuation of education by girls and women and prevailing security issues, particularly in the country's southern provinces.

The AIHRC notes that while major urban centres such as Kabul and Herat have enrolment rates of 87 per cent and 86 per cent respectively, only a few kilometres outside of these cities, the number of children enrolled in school drops to less than 50 per cent.

All of the school and higher education costs, including the remuneration of teachers, service staff

and other administrative factors are foreseen in the annual budget allocated for the ministries of Education and Higher Education, coming into effect after parliament approval. Budget allocations differ for each provinces and at each district.

After high school (twelfth grade), all the students may take the national university admission test. Every student may then select a field of study based on their score number for a specific faculty. Gender discrimination is not involved in the admission test or the field of study selection.

The Ministry of Education's mandate is to provide instruction through the formal education system, literacy education for adults, and formal religious schools all over the country. The number of religious schools is low due to low demand. Religious institutions like mosques and religious Madrasa provide religious education on the basis of donation, and have a special curriculum.

The Ministry of Higher Education is responsible for operation of governmental universities, and technical training institutions such as teacher training institutes.

There are many private courses for English and IT, mostly in the centre of provinces. As of now, only one university, in Kabul, has been established by the private sector.

The Ministry of Education also provides literacy courses for illiterate government employees as an on-job course. The State also provides, in some provinces but not at the district level, schooling facilities and higher education for government employees in night shift education.

The Ministry also provides special schools for women who fail to maintain their education in their residential areas.

The state facilitates study abroad for students who receive scholarships or fellowships awarded by foreign institutions. No prohibitions are placed on students going abroad for post-graduate studies by their own expense.

## **1.4 Availability**

### ***1.4.1 Expenditure***

#### Overview of Governmental Expenditure

The AIHRC reports that in order to achieve its educational targets the Ministry of Education has requested \$USD2.7 billion over the next seven years. There is a significant funding gap however. Of the \$USD250 million requested by the Government of Afghanistan in its *National Development Budget* in 2003, only \$USD77.47 million (13%) has been committed to by donors leaving a gap of \$USD172.53 million.

The 2006 education sector budget allocation is \$USD125.4 million which represents 18.5 per cent of the total annual development budget. A breakdown of the budget by educational categories is unavailable.

The government provides support for accommodation and living expenses for those university students who cannot afford to pay themselves. Accommodation services are indiscriminately awarded to poor students in accordance with the universities accommodation regulations. Education fees for the state-provided formal education operated by the government (up to the BA or B.Sc level) are not charged.

Fees are charged for informal education courses which are provided by the private sector. These courses include English, computing, information technology, art, social science, and business administration. Religious education, which is run by the clergy, is funded through the collection of dues.

#### International Assistance and Cooperation

Having suffered 25 years of devastating conflict, Afghanistan's economy is largely dependant upon donor assistance. International assistance and technical cooperation provides significant support in meeting the cost of educational development programmes (up to the tertiary level), administrative capacity building, curriculum development, infrastructure development, training and post graduate studies abroad and professional development courses for teachers. Local civil society organizations conducting training and education also receive foreign assistance. Non-



governmental organisations have an important role in school construction and capacity building in primary and secondary education, particularly in rural areas. Principal sources of international assistance and cooperation have included UNICEF, UNESCO, UNDP, international non-governmental organisations and a range of donor countries.

The AIHRC observes that without foreign assistance in the education sector, the government would not be able to achieve the targets identified in the MDG's. Foreign assistance helps achieve the equal right to education for boys and girls and improves access to education throughout the country. Foreign assistance also enables the development of a sound curriculum, the implementation of an appropriate teaching methodology and the operation of an effective education management system.

#### ***1.4.2 Infrastructure***

During the period of 25 years of conflict, approximately 80 per cent of Afghanistan's 6,870 schools were destroyed. Forty per cent of the Ministry of Education's 2005 budget was allocated to school constructions, with only six per cent dedicated to teacher training and development. Between 2002 and 2004 the number of schools increased from 3,800 to 6,870. Attendance by children at school has steadily increased in recent years. In 2003 the number of school-age children attending primary and secondary schools reached 3.7 million and in 2006 this increased to 4.3 million. The AIHRC reports that currently, about 50 per cent of these students study in tents due to the unavailability of proper classrooms or school buildings. Higher education institutions are also experiencing a shortage of adequate premises.

Very few schools are equipped with laboratories or libraries and most schools have no sport facilities. Healthy drinking water is unavailable in most schools and sanitation conditions are very poor. About 95 per cent of schools have open-air latrines. Classroom space is generally inadequate: 30-50 students are accommodated in a small 8m x 4m classroom. As a result of insufficient and inadequate infrastructure, all schools operate at least two education shifts (a morning and afternoon programme) while some schools operate a three shift education programme.

### ***1.4.3 Teachers and support staff***

The AIHRC reports that statistics show that in 2003 there were 74,205 school teachers nationwide, and that it was estimated that an additional 28,000 teachers would be required for 2004. The number of students per teacher varies by province. In the Kabul, the ratio is 84 students per teacher, while in the provinces the average ratio is 45-50 students per teacher.

#### **Qualifications**

The qualification of teachers is a significant concern. During the more than two decades of conflict many teachers were prevented from working. Most teachers have not been educated beyond grade 12. The Ministry of Education has recruited female teachers in rural areas to work in primary schools, many of whom have not studied beyond ninth grade and some not beyond sixth grade. Teachers are poorly paid with an average salary of \$USD43 per month. The Ministry of Education has established refresher courses for unqualified teachers.

The quality of university teaching tends to be quite poor. Many university lecturers and professors have not been able to keep up to date with the latest developments in their respective professions around the world. Access to materials and publications is difficult. The AIHRC reports that between five and eight years is required to adequately train young teachers to fill the gap. In addition to running teacher training institutes in a number of provinces, the Ministry of Higher Education has established a Faculty of Education at the Kabul University and education faculties in five other provinces.

### ***1.4.4 Teaching Facilities and Materials***

As noted above, there is an inadequate supply of classrooms for students, with many schools in rural areas and in urban areas, using tents as extra classrooms. Computing is taught in only a few high schools in the main cities. Very few high schools are equipped with laboratories, libraries or sport facilities. Existing sport fields are in a very poor shape are often without the necessary equipment.

## **1.5 Accessibility**

### ***1.5.1 Non-discrimination***

Article 22 of the *Constitution* prohibits “any kind of discrimination and distinction between citizens of Afghanistan.” The AIHRC reports that the curriculum of schools is generally conducted in the major language of province in which it is situated. The government has attempted to prepare textbooks for the primary schools in different local languages. Enrollment in schools is open to students from minority groups, IDP and refugee communities, and non-nationals. Students with disabilities are entitled to study in general schools and also in universities, although this is subject to their capacity. There are a limited number of special schools for blind and deaf people, providing special learning facilities and techniques.

The Ministry of Justice provides education facilities in prisons however these are generally limited to literacy training and teaching handicraft skills. The children of female prisoners who live with their mothers are provided with kindergarten facilities in a separate space either inside the Prison compound or elsewhere. Recently, the Ministry of Education and the Ministry of Justice agreed to provide schooling facilities inside prisons for adults with the same curriculum as other schools so to allow prisoners to continue their education upon release from prison.

### ***1.5.2 Gender Parity and Gender Equality***

Figures provided by the AIHRC show that there is a need to address gender disparity and gender inequality in education at all levels. In 2003, at the primary and secondary school level, little more than 30 per cent of enrolled students were female.<sup>268</sup> Striking disparities are also evident between urban and rural areas. Enrolment rates are as high as 92 per cent for boys and 81 per cent for girls in Kabul. The AIHRC notes however that in other locations including the city of Herat and the provinces of Badakhshan the net enrolment of girls is higher than that of boys. At the other extreme in the Badghis and Zabul provinces, enrolment for girls is as low as one per cent. In rural areas, traditional attitudes and the unavailability of all-female schools close to residential areas often means that girls will not attend school beyond 12 years of age. While the enrolment of girls and boys is relatively high for grade 1 and 2, it drops off substantially among

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<sup>268</sup> The AIHRC quotes figures from Central Statistic Organization which show that of the 3,705,233 school students enrolled in 2003, 1,171,963 were female.

higher grades. Information on drop-out rates suggests that 74 per cent of girls and 58 per cent of boys drop out of schools by the time they reach grade five. A wide range of factors are responsible for students dropping out, including cultural traditions, economic constraints, security concerns, travel constraints, poor teaching and inadequate teaching materials and facilities.

The AIHRC notes that although there are no laws or regulations which limit the access of girls or boys to school there is a practice of having female high school students attend separate schools or alternatively, attend school at particular times (morning or afternoon) to prevent simultaneous attendance at school with boys.

At the higher education level the AIHRC refers to a report, *Securing Afghanistan's Future*, in which it was reported that of the 22,000 students enrolled in the higher education system, only 4,363 are women. Of the 89 female lecturers teaching in the higher education system there is only one professor with a PhD qualification. Access to accommodation for female students is also restricted, with only 121 women having access to dormitories out of a total of 11,749 dormitory students.

### ***1.5.3 Physical Accessibility***

In rural Afghanistan there is a shortage of basic education infrastructure with insufficient school buildings, classrooms and libraries and a shortage of teaching materials (including textbooks and visual aids). Poor sanitation and contaminated drinking water is a common concern for many schools. Similarly, in urban areas there is a shortage of school buildings, teaching and sports facilities, with poor sanitation also being a problem.

### ***1.5.4 Economic Accessibility***

#### **Primary and Secondary Education**

Primary education (grade 1-9) is free and compulsory and secondary education (grade 10-12) is free although not compulsory. Due to a shortage in government funding, students often have to resort to purchasing their own textbooks and teaching materials in local markets. In rural areas, the maintenance of school buildings is generally paid for through voluntary donations by local

communities. These communities often donate land for the establishment of schools. Under the Ministry of Rural Development's development plan the government pays 70 per cent of construction costs for school buildings with the local community contributing the remaining 30 per cent.

### Higher Education

The government fully funds the cost of Bachelor of Arts and Bachelor of Science courses at universities for eligible students. Admission to such courses is based on students achieving satisfactory results in national exams. The government provides funding for the cost of teachers' salaries, transportation, teaching materials and research expenses. Students with financial needs are also eligible to receive support for general living and accommodation expenses. The AIHRC notes however that in recent years, due to budget shortfalls, the government has not been able to provide funding for all higher education institutions.

### Technical Education

The government also provides technical education at high school and post-baccalaureate level programmes up to grade 14. Technical education courses include teacher training; mechanics training; electrician training and a selection of other skills training.

#### ***1.5.5 Non-formal Education***

The Ministry of Education has a literacy education department which provides literacy training for people working in government departments. The government also provides access to school education for adults who have not had previous access to formal schooling. The government also provides literacy courses for men and women in residential areas.

The private sector has established a number of fee-based courses including English language courses, information technology, business administration, art, and other skills training. A number of non government organisations provided facilities for informal education in urban and rural areas free of charge, or at a minimal cost. Mosques and religious Madrassas provide religious education free, through the support of religious donations.

## **1.6 Acceptability**

### ***1.6.1 Quality Education and Minimum Standards***

The Ministries of Education and Higher Education are responsible for the implementation of the right to education as enshrined in the *Constitution*. Cabinet Ministers and the Parliament monitor the implementation of the right to education and also the implementation of government's annual plan and programmes. The Ministry of Education's Monitoring Department oversees the implementation of the school curriculum and monitors the quality of education services.

### ***1.6.2 Discipline***

Although there is no law or regulation relating to the use of corporal punishment, it is widely used in all schools in Afghanistan particularly in religious madrasas. The AIHRC reports however that the Ministry of Education is expected to shortly announce the prohibition of corporal punishment in schools. According to the AIHRC, there is recognition of the need for more research on the use of discipline in schools, with the objective of creating an efficient learning environment where children can develop self-confidence, character and improve their behaviour. There is recognition of the need to learn from the experience of other countries about alternative options for maintaining discipline in schools.

### ***1.6.3 Curriculum***

#### **Overview of Curriculum Determination**

The Curriculum Committee and the Publishing Textbook Department within the Ministry of Education are responsible for developing school curriculum and updating and producing school textbooks. In accordance with Article 45 of the Constitution the curriculum is to be based on the tenets of Islam, national culture as well as academic principles. The Committee also consults with UNESCO in its curriculum development process.

According to Ministry of Education policy, all schools are required to implement the same

curriculum. The teaching of languages in primary schools differs according to the language spoken by the majority of people in the local community. The Committee and the Department are responsible for the development of textbooks which will prepare students for higher education as well as providing good general knowledge for everyday life. A main aim of curriculum development is to strengthen students' belief in democracy, peace, the use of new technology and respect of human rights.

### Human Rights Education

The AIHRC observes that traditionally, the teaching of languages and social subjects in primary and secondary schools have included messages relating to humanism and the strengthening of social behaviour, however without specifically addressing human rights. The AIHRC reports that it is working with the Ministry of Education to incorporate human rights topics in school textbooks.

#### ***1.6.4 Parents / Legal Guardians***

With the exception of religious schools parents have little opportunity for differentiation in the choice of school for their children to attend, particularly given that most primary and secondary schools operate the same general programmes. With regards to higher education some parents may indirectly encourage their children to select certain courses and subjects, however students are generally free to choose their own field of study.

#### ***1.6.5 Religious and Cultural Practices, Languages of Minority Groups***

### Religion

The AIHRC observes that in accordance with Article 45 of the *Constitution*, the government is required to develop religious curricula for schools on the basis of existing Islamic sects in Afghanistan. The government however is yet to develop such curricula with the content and materials of religious education taught in schools belonging to the dominant sect in Afghanistan. The AIHRC notes that although major principles of beliefs are the same across the various sects of Islam there are some minor differences that exist, such as in methods of prayer.

## Language

In accordance with Article 43 of the *Constitution*, the state is required to design and implement effective programmes and prepare the ground for teaching local languages in the communities where they are spoken. Two official languages are still used in schools according to the language of the majority of inhabitants spoken in a certain area. The AIHRC reports that the Ministry of Education plans to provide textbooks in other five local languages for students of different areas. At higher education institutions teachers generally use the two popular official languages, Pashto and Persian.

## **1.7 Adaptability**

### ***1.7.1 Education and Work***

The AIHRC notes that the required age of enrolment in the primary schools is seven, but that in practice, a six year old child can be enrolled depending on his or her physical growth and ability. Under the relevant employment law the minimum age for employment is 18 however this is generally ignored by the private sector. There is no age limit on education in Afghanistan. Adults are able to attend night-shift schools subject to availability of such schools in their local community. The AIHRC reports that a number of children attend school in either the morning or afternoon and spend the remaining part of the day at work. There are a few non government organisations which conduct outreach work to provide literacy and other skills training to working children.

### ***1.7.2 Education for Women***

Under the Civil Law of Afghanistan, the minimum age for marriage for girls is 16 years. In practice however many girls are encouraged or pressured by their parents to enter into marriages at the age of 14 or 15. For girls and women in rural areas, marriage usually means that access to education is no longer possible, whilst for women in urban areas there are fewer restrictions and limitations. The AIHRC notes that although there are no official restrictions on allowing married and pregnant women to attend university, for many however, traditional domestic responsibilities



limit such attendance. The AIHRC reports that under Afghanistan's five-year socio-economic development plan, priority will be given to constructing high schools for girls. It also reports that the government recently constructed university dormitories for female students in several main cities. This plan will be implemented in other main cities where there is university or post-baccalaureate institute.

## **1.8 Activities of the AIHRC**

### ***1.8.1 Mandate and Methods***

The mandate of the AIHRC is outlined under Article 58 of the *Constitution*:

1. The State, for the purpose of monitoring the observation of human rights in Afghanistan, to promote their advancement (behbud) and protection, shall establish the Independent Human Rights Commission of Afghanistan.
2. Any person, whose fundamental rights have been violated can file complaint to the Commission.
3. The Commission can refer cases of violation of human rights to the legal authorities, and assist in defending the rights of the complainant.
4. The structure, and functions of this Commission shall be regulated by law.

Under the *Law of the Commission*, the AIHRC has a broad authority for the protection and promotion of human rights. To protect and promote the economic, social and cultural rights, the AIHRC analyses the government's national development strategies of Afghanistan to assess their compliance with the rights contained in the Constitution and their compliance with Afghanistan's obligations under ICESCR. The AIHRC uses three principles for a rights-based approach to national development strategies: a) non-discrimination, b) justice, gender equality, and c) poverty reduction. In its monitoring of economic, social and cultural rights, the AIHRC works closely with government agencies, NGOs and private enterprises.

### ***1.8.2 Investigation of Complaints***

The AIHRC is yet to receive complaints relating specifically to the denial of the right to education on the grounds of gender, disability or any other forms of discrimination. The AIHRC does however regularly monitor the provision of education, particularly primary and secondary, throughout the country. Members of the community, school teachers and students regularly

complain about a shortage of classrooms, shortage of furniture, lack of teaching materials, very poor remuneration for teachers, poor qualification of teachers, lack of textbooks and security concerns especially for girls. The AIHRC discusses the outcomes of its monitoring with the Ministry of Education, policy makers and donor agencies. A serious concern is the destruction of schools by terrorist groups. Schools have been set on fire, creating fear among students and sabotaging the efforts of the international community to bring democracy, peace and stability to Afghanistan.

### ***1.8.3 Identification of Laws, Policies and/or Practices Impacting on the Right to Education***

The AIHRC notes that while the right to education is enshrined in the *Constitution*, the prevailing economic situation and conservative traditions operate to undermine the enjoyment of this right. Many families cannot afford secondary education for their children. The children of poor families, particularly boys, often have to work to strengthen the financial situation of the family, whether it is working on the family farm or as an apprentice in mechanical shops, bakeries, as a carpet weaver or as a street vendor in the street.

### ***1.8.4 Education and Awareness Campaigns***

The right to education has been addressed at many awareness workshops, meetings with communities, authorities and civil society organizations. The AIHRC, with the cooperation of the Ministry of Education, plans to organize a two-day national seminar in Kabul to produce recommendations addressing the key actors within the government, donor agencies, civil society organizations and parliament to make necessary efforts related to the realization of the right to education on the basis of the Constitution and international treaties to which Afghanistan is a party.

### ***1.8.5 Human Rights Education***

<ul style="list-style-type: none"> <li>• After lengthy negotiations the AIHRC convinced the Ministry of Education to include the issues of human rights into various school textbooks. The Ministry and the AIRHC are working together to include human rights issues in the curriculum.</li> </ul>
<ul style="list-style-type: none"> <li>• AIHRC staff convened several training courses on human rights for 450 students of the Faculty of Journalism in Kabul University. As a result of this initiative, human rights and democracy is now taught in the Education University of Kabul and at teacher training institutes in northern Afghanistan.</li> </ul>
<ul style="list-style-type: none"> <li>• Human rights training for the Kabul Police Academy.</li> </ul>
<ul style="list-style-type: none"> <li>• Human rights workshops for prison officers.</li> </ul>
<ul style="list-style-type: none"> <li>• Workshops on human rights and humanitarian law for the National Security Department and the National Army.</li> </ul>
<ul style="list-style-type: none"> <li>• Human rights workshops and meetings for the Clergy, women, community workers, and school teachers. In 2005 21,537 people participated in the AIHRC's human rights workshops.</li> </ul>
<ul style="list-style-type: none"> <li>• Production of a total of 2,285 minutes of television and 6,240-minutes of radio programming. These programmes focused on different categories of human rights and democracy.</li> </ul>
<ul style="list-style-type: none"> <li>• Every year, the AIHRC celebrates the anniversary of the UDHR, International Children Day, and the campaign against the violation against women on 25 November.</li> </ul>

### ***1.8.6 Collaboration with Civil Society***

The AIHRC's collaboration with civil society in recent years has included:

- AIHRC financial and management support for the Foundation for Free and Fair Election in Afghanistan (FEFA) for monitoring the presidential and parliament elections in 2004 and 2005.
- AIHRC membership of the Human Rights Advocacy Consortium (HRAC), consisting of several international and local Afghan NGOs working in Kabul. The main output of this consortium includes research reports on democracy, women and election, education, and security issues.
- Joint-cooperation with the UN Assistance Mission for Afghanistan (UNAMA), monitoring the realization of the political rights during the presidential and parliamentary elections in 2004 and 2005. Six reports were produced which effectively improved the elections process.
- Joint monitoring with the UNHCR of economic and social rights in the field, with activities carried out in rural and semi urban areas. This collaboration has been extended to the end of 2006.

- Entering into arrangements for the funding and implementation of programmes with the governments of Afghanistan and also the governments of Denmark, Norway, Finland, Switzerland, Finland, the United Kingdom, the United States and New Zealand.

## 2. Australia

### 2.1 International Law

Australia is a party to the ICESCR,<sup>269</sup> CERD,<sup>270</sup> CEDAW<sup>271</sup> and the CRC.<sup>272</sup> Australia is a party to the UNESCO Convention Against Discrimination in Education.<sup>273</sup>

Australia is not a party to the ILO Minimum Age Convention or the Worst Forms of Child Labour Convention.

### 2.2 National Law

#### 2.2.1 Constitution

The *Constitution of the Commonwealth of Australia 1901* does not contain comprehensive human rights provisions. It does not enshrine the right to education or non-discrimination. It expressly guarantees only a limited number of individual rights, including:

- protection against acquisition of property on unjust terms (section 51(xxxi));
- the right to a trial by jury (section 80); and
- freedom of religion (section 116).

Section 51 of the Constitution does, however, give the Federal Government the general power to implement Australia's international treaty obligations under section 51(xxix).

While the Constitution does not provide a specific power to enable the Commonwealth parliament to legislate for the provision of primary and secondary education, it does provide a limited power for the enactment of legislation providing "benefits to students" pursuant to section 51(xxiiiA).

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<sup>269</sup> Australia ratified the ICESCR on 10 December 1975

<sup>270</sup> Australia ratified the CERD on 30 September 1975.

<sup>271</sup> Australia ratified the CEDAW on 28 July 1983.

<sup>272</sup> Australia ratified the CRC on 17 December 1990.

<sup>273</sup> Australia ratified the Convention Against Discrimination in Education on 29 November 1966.

### **2.2.2 Legislation**

The relevant legislation referring to the right to compulsory and free primary (or basic) education on a non-discriminatory basis, the right to secondary and higher education, the financing of education and the minimum age of employment is discussed in the text that follows below.

#### Minimum age of marriage

Section 11 of the *Marriage Act* 1961 (Cth) states:

Subject to section 12, a person is of marriageable age if the person has attained the age of 18 years.

Section 12 of the *Marriage Act 1961* (Cth) allows marriage of a person under the aged of 18 years in exceptional circumstances.

## **2.3 Overview of Education Policies and Programmes**

The framework of government education policies and programmes in Australia is determined by the fact that Australia, as a federation, has a Commonwealth government as well as six State and two Territory governments. The Commonwealth and State/Territory governments each have specific funding, policy and administrative responsibilities for the education system (which includes primary, secondary and tertiary (university) education as well as vocational and educational training.

### **2.3.1 Primary and Secondary Education**

Each State and Territory has its own legislation governing the delivery of primary and secondary education.<sup>274</sup> Primary and secondary schooling is compulsory from age 6 to 15 except in Tasmania, South Australia and Western Australia where it extends to 16.<sup>275</sup> Government schools

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<sup>274</sup> Education Act 2004 (ACT); Education Act (NT); Education Act 1990 (NSW); Education (General Provisions) Act 1989 (Qld); Education Act (South Australia) 1972; Education Act (Victoria) 1958; Education Act 1994 (Tasmania); School Education Act (Western Australia) 1999. See also: Education (General Provisions) Regulation 1989 (Qld); Education (Accreditation of Non-State Schools) Act 2001 (Qld); Education (Capital Assistance) Act 1993 (Qld); Community Services Act 1970 (Vic); Education (Special Developmental Schools) Act 1976 (Vic); and Educational Grants Act 1973 (Vic).

<sup>275</sup> See for example, Education Act 1990 (NSW), s22. Children generally start primary school at the age of 6 with primary education continuing for either six or seven years, depending on the State. Students usually

operate under the direct responsibility of the State or Territory Education Minister. The eight State and Territory government education departments<sup>276</sup> are responsible for developing and implementing primary and secondary education policy and regulating and managing the government school system in their state or territory.<sup>277</sup> These education departments are responsible for providing appropriately trained and qualified teachers; providing a properly resourced and maintained physical environment; curriculum delivery; reporting on the performance of government schools and the standard of student learning; provision of specialist services designed to meet the needs of students with a disability or impairment or who have a specific learning or social need and provision of financial support to and regulation of non-government schooling.

The Commonwealth Government, through the Department of Education, Science and Training (DEST) develops national education policies and initiatives to support the coordination and implementation of national education priorities and strategies as well as providing significant supplementary funding for primary and secondary schools and financial support for families of primary and secondary students.<sup>278</sup>

### **2.3.2 Vocational Education and Training**

State and territory governments also have responsibility for the administration and delivery of vocational education and training (VET) within their jurisdictions (including regulation, primary funding and legislative responsibility for issuing qualifications).<sup>279</sup> VET is available in all three

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commence their secondary schooling at the age of 12 or 13 and this continues for either five or six years, depending on the State.

<sup>276</sup> Department of Education and Children's Services (South Australia); Department of Education and Training (New South Wales); Department of Education and the Arts (Queensland); Department of Education (Tasmania); Department of Education and Training State of (Victoria); Department of Education and Training (Western Australia); Department of Education, Youth and Family Services (Australian Capital Territory); and the Department of Employment, Education and Training (DEET) Northern Territory.

<sup>277</sup> In August 2005, there were 9,623 schools in Australia, of which 6,929 (72.0%) were government schools and 2,694 (28.0%) were non-governmental schools. In 2005 there were 3,348,139 full-time school students. The proportion of these students attending government schools was 67.1%

Australian Bureau of Statistics, *Schools, Australia 2005*

<<http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument>> [Last accessed: 14 June 2006]

<sup>278</sup> *States Grants (Primary and Secondary Education Assistance) Act 2000* (Cth)

<sup>279</sup> Tertiary Accreditation and Registration Act 2003 (ACT); Technical and Further Education Commission Act 1990 (NSW); Vocational Education and Training Act 2005 (NSW); Technical and Further Education Act 1975 (SA); TAFE Tasmania Act 1997 (Tas)

sectors of the education system—school, postsecondary and higher education. As it is competency-based it can be undertaken through multiple pathways, allowing people to move between different levels of education – including school, post-secondary and higher education and the workplace.<sup>280</sup>

The post-secondary vocational education and training sector is diverse and includes government-funded Technical and Further Education (TAFE) colleges and other government providers (public registered training organisations), private registered training organisations, and community-based registered training organisations. The States and Territories allocate public funding to the public TAFE colleges and registered community-based and private providers of VET. They are also responsible for the administration of TAFE colleges.

As a national system, VET is also supported by the Federal Government and major industry bodies. The Ministerial Council (MINCO) of Federal, State and Territory Ministers responsible for VET makes decisions on national objectives and priorities, and strategic policy and planning (including funding) and the Federal Government, through the Department of Education, Science and Training (DEST), promotes national consistency and coherence in the provision of VET and provides advice on national VET issues.

### ***2.3.3 Higher Education***

The Commonwealth Government has administrative, regulatory, funding and legislative responsibility for the university higher education sector<sup>281</sup> which comprises 37 public universities; three private universities, which are autonomous and self-accrediting; four other self-accrediting higher education institutions; and over 100 other institutions, such as theological colleges and providers specialising in professional and artistic courses of study.<sup>282</sup>

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<sup>280</sup> In 2004 over 1.7 million students were engaged in the vocational education and training system. Training is delivered by both public providers (90 providers at over 1500 sites servicing over 78 per cent of students) and private providers (servicing the remainder)  
[www.dfat.gov.au/aib/education.html](http://www.dfat.gov.au/aib/education.html) viewed 5 May 2006

<sup>281</sup> Higher Education Funding Act 1988 (Cth); Higher Education Legislation Amendment (2005 Measures No. 2) Act 2005 (Cth); Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 (Cth); Higher Education Support Act 2003 (Cth)

<sup>282</sup> In 2004, 900,000 students were studying at Australian universities  
[www.dfat.gov.au/aib/education.html](http://www.dfat.gov.au/aib/education.html) viewed 5 May 2006



## 2.4 Justiciability

Article 13 of the ICESCR is not justiciable in the national courts of Australia because ICESCR has not been incorporated into Australian domestic law.<sup>283</sup>

### 2.4.1 Detail of National Court Cases

Cases in Australia regarding the right to education have generally arisen in the anti-discrimination jurisdiction. Each State and Territory has its own anti-discrimination legislation which makes it unlawful for an educational authority (all public and private educational institutions, primary and secondary schools, and tertiary institutions such as TAFE, private colleges and universities) to discriminate against someone because that person has a disability in relation to admission or access or the provision of educational services.<sup>284</sup> These laws, unlike the Commonwealth laws, do not cover all of Australia. They are limited to the particular State or Territory. Additional coverage is provided by Commonwealth anti-discrimination legislation.<sup>285</sup>

The seminal cases have related to the right of students with disabilities to an accessible, acceptable and adaptable education although those concepts do not appear overtly in the decisions. For example, cases have included consideration of: the extent of the obligation of an educational institution to provide an Auslan interpreter;<sup>286</sup> whether education institutions are required to provide information in an accessible and convenient format;<sup>287</sup> the extent of reasonable adjustment a school is obliged to make to continue the enrolment of a child with a disability; whether standard disciplinary treatment for a student with poor and impulsive behaviour manifesting itself because of a brain injury is disability discrimination<sup>288</sup> and the

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<sup>283</sup>In Australia's third periodic report, 23 July 1998, paragraph 7: UN Doc. E/1994/104/Add.22. the government asserts that the Covenant rights are already protected by law in various forms: the common law, legislation and subordinate legislation from the federal Parliament and any of the six state or the three territory parliaments

<sup>284</sup>*Discrimination Act 1991 (ACT), Anti-Discrimination Act 1977 (NSW), Anti-Discrimination Act 1992 (NT), Anti-Discrimination Act 1991 (Qld), Equal Opportunity Act 1984 (SA), Anti-Discrimination Act 1998 (Tasmania), Equal Opportunity Act 1995 (Vic) and the Equal Opportunity Act 1984 (WA).*

<sup>285</sup>The *Racial Discrimination Act 1975 (Cth)*, the *Sex Discrimination Act 1984 (Cth)*, *Disability Discrimination Act 1992 (Cth)* and the *Age Discrimination Act 2004 (Cth)*.

<sup>286</sup>*Hurst and Devlin v Education Queensland* (Federal Court 15 April 2005); *Clarke v Catholic Education Office* (Federal Court, 8 October 2003)

<sup>287</sup>*Hinchcliffe v University of Sydney* [2004] FMCA 85 (17 August 2004)

<sup>288</sup>*Purvis v New South Wales (Department of Education and Training)* [2003] HCA 62 (11 November 2003); *Purvis v NSW* (Full Federal Court 24 April 2002); *State of NSW v HREOC and Purvis* (Federal Court, 29 August 2001)

obligation of a private primary school to accept the request for enrolment of a child with a physical disability.<sup>289</sup>

Apart from the anti-discrimination jurisdiction, other common law actions include actions in tort. A body of case-law has recognised actions in tort against educational authorities<sup>290</sup> but these generally relate to the extent of a schools' duty of care to prevent injury to students rather than their duty to provide available, accessible, acceptable and adaptable education.

#### **2.4.2 Available Remedies and Enforceability**

Complaints of unlawful discrimination pursuant to Commonwealth anti-discrimination legislation are made to the Human Rights and Equal Opportunity Commission ('HREOC'). HREOC investigates complaints and attempts to resolve complaints through a conciliation process. If the complaint cannot be resolved though, conciliation parties may pursue the matter in the Federal Court or Federal Magistrates Court to obtain such remedies as a direction to perform a certain act, payment of compensation or an apology. The State and Territory anti-discrimination laws are administered by specialist commissions that investigate complaints and try to resolve them by conciliation. Where the complaints cannot be resolved by conciliation, they are referred to specialist tribunals that hold hearings into the complaints. These tribunals provide remedies similar to those available in the Commonwealth jurisdiction.

### **2.5 Availability**

#### **2.5.1 Expenditure**

##### Primary and secondary education

Primary responsibility for funding government school education in the States rests with the respective governments who provide about 88 per cent of their public funding. It is very difficult however to calculate disaggregated government expenditure on primary and secondary education

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<sup>289</sup> *Hills Grammar School v HREOC* (18 May 2000)

<sup>290</sup> See for example, negligence cases against educational authorities concerning school children who have suffered personal injury during school hours, *Johns v Minister for Education* (1981) 28 SASR 206 or on school excursions *Munro v Anglican Church of Australia* Unreported, NSW Supreme Court, Court of Appeal, 14 May, 1987.

in Australia because each State and Territory education department is responsible for its own expenditure in that State or Territory, some educational programmes are inter-departmental, some are jointly funded and run cooperatively with the Commonwealth and because of the overlap of funding generally between the Commonwealth and the States and Territories. The most recent Australian Bureau of Statistics Government Finance Statistics for education state that for all Australian governments in 2000-01, primary and secondary education operating expenses were \$19,490m which accounted for 56.2 per cent of total education expenses.<sup>291</sup>

### Tertiary education

It is easier to calculate total operating expenses on tertiary education because this is funded primarily by the Commonwealth. For 2000-2001, the total operating expenses on tertiary education for all Australian governments were \$12,769m accounting for 36.8 per cent of total education expenses (with university education accounting for 71.2 per cent of the total amount spent on tertiary education).<sup>292</sup> Of this, the total operating expenses on education by the Commonwealth Government were \$10,881m with \$9,889m (90.9 per cent) comprising grants to other levels of government (including universities).

As a percentage of Gross Domestic Product (GDP), total expenses on education increased from 5.1 per cent in 1999-2000 to 5.2 per cent in 2000-01.

Disaggregation of expenditure on VET is difficult for reasons similar to disaggregating spending on primary and secondary education. Commonwealth funds make up approximately one third of public expenditure on the VET system (in school, as a pathway alternative to school and post-school) in Australia. A significant part of the Commonwealth's expenditure has been by way of grants to the States and Territories to support them in their role as providers and administrators of VET. Other Commonwealth funds for VET include funding for specific Commonwealth programmes such as New Apprenticeships and school based vocational education and training.<sup>293</sup>

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<sup>291</sup>

<http://abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyReleaseDate/3A1EA5484BB3D47BCA256B9F00046B19?OpenDocument>

<sup>292</sup> Ibid.

<sup>293</sup> Note, the *Skilling Australia's Workforce Bill* 20005 proposes to establish a new framework under which grants to the states and territories will be allocated. It will take the place of the ANTA Agreement funding framework.

The government provides around \$21.3 million per year in direct funding to VET in Schools and \$4 million for School Skill Centres.<sup>294</sup>

### **2.5.2 Infrastructure**

HREOC reports that Australian schools generally have adequate educational infrastructure. It notes however, exceptions in certain parts of Australia where facilities are of a lesser and unacceptable standard. In particular, students living in remote and rural areas (and particularly, Indigenous students) may lack access to library and information technology resources and other relevant educational facilities which students not living in remote or rural areas enjoy.<sup>295</sup> In particular, the *HREOC Inquiry into Rural and Remote* education found that students attending rural and remote schools had more limited sporting and library facilities and insufficient access to appropriate technology infrastructure and maintenance support.<sup>296</sup>

### **2.5.3 Teachers and support staff**

Responsibility for the qualifications and employment of teachers rests with both government and non-governmental education authorities in each State and Territory.<sup>297</sup>

In Australia, the key issues that impact on the availability of qualified teachers and support teachers are the aging workforce,<sup>298</sup> domination of female teachers in the profession,<sup>299</sup> inadequate supply of teachers for certain secondary specialisations – including physics,

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<sup>294</sup> [www.dest.gov.au/NR/rdonlyres/DA7C8375-A076-4561-9E...](http://www.dest.gov.au/NR/rdonlyres/DA7C8375-A076-4561-9E...)

<sup>295</sup> See HREOC, *National Inquiry into Rural and Remote Education and Education Access 2000* which recommend ways of improving access to education for school children in rural and remote areas.

<sup>296</sup> *Ibid.* p.40

<sup>297</sup> There was 235,794 full-time equivalent teaching staff in 2005, 156,564 at government schools and 79,231 at non-governmental schools.

Australian Bureau of Statistics, *Schools, Australia 2005*;

<http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument>

<sup>298</sup> In fifteen years, to 2001, the median age of the teaching population rose from 34 to 43 years, 44 per cent being older than 45 years. See

[http://www.dest.gov.au/sectors/school\\_education/policy\\_initiatives\\_reviews/reviews/teaching\\_teacher\\_education/](http://www.dest.gov.au/sectors/school_education/policy_initiatives_reviews/reviews/teaching_teacher_education/)

<sup>299</sup> The proportion of FT teaching staff who are female continues to rise — in 2005, 68.0% of all FT teachers were female. The figure was 79.7% in primary schools and 56.0% in secondary schools. The comparable figures in 1995 were 64.2%, 76.1% and 52.3% respectively. See Australian Bureau of Statistics, *Schools, Australia 2005*;

<http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument>

chemistry, mathematics, technology studies and languages other than English (LOTE), inadequate recruitment and retention of teachers in many rural and remote (and some metropolitan locations)<sup>300</sup> and the poor representation of prospective teachers from Indigenous and other cultural, social and ethnic groups who need to be recruited to achieve a more diverse population of teachers more representative of the diversity of the Australian community.<sup>301</sup>

#### **2.5.4 Teaching facilities and materials**

State and Territory education departments provide funding for the purchase of teaching materials and equipment to each school. The schools then allocate their resources according to their school's strategic plan. However, because all primary and secondary schools rely on both government-funded facilities, materials and services as well as parent-supported materials and services, inequities will inevitably arise according to the socio-economic status of the school area. Accordingly, there is great variance between schools regarding the availability and adequacy of teaching facilities and materials. In particular, students living in remote and rural areas (and particularly, Indigenous students) lack access to resources which the majority of students not living in remote or rural areas enjoy.<sup>302</sup>

## **2.6 Accessibility**

### **2.6.1 Non-discrimination**

Legislation relevant to issues of non-discrimination, equal treatment and equality of opportunity in education

All schools and universities are subject to the Federal and State/Territory anti-discrimination legislation which, cumulatively, make discrimination, inequality of treatment and inequality of

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<sup>300</sup>Due to the isolation and the cost of travel, the cost of living including higher telephone, food and power costs, poor quality and often expensive housing and limited opportunities to participate in professional development with resulting impacts on promotional opportunities. See *HREOC, National Inquiry into Rural and Remote Education, 2000 p.33*

<sup>301</sup>

[http://www.dest.gov.au/sectors/school\\_education/policy\\_initiatives\\_reviews/reviews/teaching\\_teacher\\_education/](http://www.dest.gov.au/sectors/school_education/policy_initiatives_reviews/reviews/teaching_teacher_education/)

<sup>302</sup> See HREOC, *National Inquiry into Rural and Remote Education and Education Access 2000* which recommend ways of improving access to education for school children in rural and remote areas.

opportunity in education, on the basis of sex, race and disability, unlawful.<sup>303</sup> In addition the State and Territory Education Acts require equal treatment of students. For example, Section 6 of the NSW Education Act provides as follows:

Objects for administration of this Act or of education

- (1) It is the intention of Parliament that every person concerned in the administration of this Act or of education for children of school-age in New South Wales is to have regard (as far as is practicable or appropriate) to the following objects:
  - (h) provision of an education for children from non-English speaking backgrounds that has regard to their special needs;
  - (i) recognition of the special problems of rural communities, particularly small and isolated communities;
  - (j) provision of opportunities to children with special abilities;
  - (k) provision of special educational assistance to children with disabilities;

### Access for people living with disabilities

In 2005 the Australian government enacted *Disability Standards for Education* (the Standards).<sup>304</sup> These Standards clarify, and make more explicit, the obligations of education and training service providers under the *Disability Discrimination Act 1992* (Cth) and the rights of people with disabilities in relation to education and training. The Standards apply to Commonwealth, State and Territory education and training and service providers who are required to give students and prospective students with disabilities the right to education and training opportunities on the same basis as students without disabilities (including the right to comparable access, services and facilities, and the right to participate in education and training unimpeded by discrimination). Education providers have a positive obligation to make changes to reasonably accommodate the needs of a student with a disability.

All State and Territory Education Departments have programmes and policies to facilitate educational access for people living with disabilities. In NSW, for example, the Department of Education and Training has funding and programmes to support the integration of students with physical disabilities into NSW public primary and secondary schools; TAFE; VET; TVET (TAFE delivered HSC). The Department also funds the NSW Apprenticeship Programme for People

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<sup>303</sup> See footnotes 12 and 13

<sup>304</sup>

<http://www.ag.gov.au/agd/WWW/agdHome.nsf/AllDocs/1821B1CD1293253DCA2570610014D867?OpenDocument>

with Disabilities which provides on-the-job trade training opportunities in state government departments and statutory authorities to people with assessed disabilities.

### Access for prisoners

Young people who have been charged with, or convicted of, committing a criminal offence may be remanded into custody, or sentenced to a period of custody, in a detention centre. State and Territory legislation govern the operation and administration of juvenile detention centres<sup>305</sup> and State and Territory Education Departments operate education and training units in the juvenile justice centres. In NSW, for example, the Department of Juvenile Justice and the Department of Education and Training together deliver educational programmes.

### Access for refugees

Australian schools can be attended by children who arrive in Australia with a visa who seek asylum and live in the community on bridging visas, children who arrive under Australia's Refugee and Humanitarian Programme, and children released from immigration detention and living in the community on temporary protection visas. These students usually attend Intensive English Centres (IECs) partially funded through the Commonwealth's New Arrivals Programme. Children attending these schools are provided with an intensive English programme, which in each State is taught within the context of the key learning areas of the relevant mainstream curriculum. For example, in South Australia, the New Arrivals Programme provides intensive English support for children newly arrived in Australia. Students attend New Arrivals Programme centres for approximately one year before they enrol in local schools; classes are small, organised by age, and students are taught the full range of primary school subjects in English. In the Secondary New Arrivals Programme, students follow an intensive ESL course in all subject areas.

### Access for indigenous students

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<sup>305</sup> See for example, the Children (Detention Centres) Act 1987 (NSW) and the Children (Detention Centres) Regulation 2000.

The significantly poorer educational outcomes of Indigenous students, compared to non-Indigenous students (particularly in rural and remote areas in Australia) are well documented by the Australian Government and non-governmental organisations. In order to improve educational accessibility for Indigenous students a National Aboriginal and Torres Strait Islander Education Policy was endorsed by all Australian governments and is reflected in the Indigenous Education (Targeted Assistance) Act 2000. The policy guides programme initiatives across Australia with the aim of achieving greater equity between Indigenous and non-Indigenous Australians. The Australian Government provides Indigenous-specific funding as a supplement to other mainstream funds for strategic interventions which aim to accelerate learning outcomes for Indigenous students.<sup>306</sup>

Individual State and Territory Education Departments also have specific programmes and policies for providing Indigenous education. An example is the Indigenous Education Strategic Initiatives Programme (IESIP) which is managed in the Northern Territory Education Department's Indigenous Education Division. The IESIP is funded by the Australian Government and the IED allocates funding for school projects targeting improved enrolment, higher attendance and retention, improved literacy and numeracy outcomes for Indigenous students and greater awareness of Indigenous language and culture.

### Access for students who have disengaged from mainstream schooling

State and Territory Education Departments have programmes and policies to provide pathways back into formal or informal education for students who have disengaged from mainstream schooling. An example is the Alternative Education Provision (AEP) initiative which has been established in the Northern Territory in Darwin's northern suburbs and Palmerston. The AEP focus is on young people aged 10-15 who have disengaged from mainstream schooling or are at strong imminent risk of disengagement. Individuals are case managed with a view to re-engaging them in education, training or employment.<sup>307</sup>

### ***2.6.2 Gender parity and gender equality***

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<sup>306</sup> [http://www.dest.gov.au/sectors/school\\_education/School\\_education\\_summary2.htm](http://www.dest.gov.au/sectors/school_education/School_education_summary2.htm)

<sup>307</sup> [http://www.deet.nt.gov.au/...on/alternative\\_education/index.shtml](http://www.deet.nt.gov.au/...on/alternative_education/index.shtml)



Commonwealth and State/Territory Anti-Discrimination legislation and government policy and programmes result broadly in gender parity in terms of access to education, educational curriculum and educational opportunities of boys and girls. There is no difference between net primary school enrolment for boys and girls in Australia.<sup>308</sup>

Rather, the poorer educational outcomes and retention rates for boys (than for girls) in Australian secondary schools is a key issue for the Australian education system. For example, in 2005 the retention rate of full-time school students from Year 7 to Year 12 was 75.3%. As in previous years, the retention rate for females (81.0%) was significantly higher than the rate for males (69.9%). The Year 10 to Year 12 rate for females in 2005 was again considerably higher than that for males (81.6% and 71.5% respectively).<sup>309</sup>

In response, government policies and programmes have been introduced that specifically target the learning styles and characteristics of boys. The NSW Department of Education and Training, for example, has been implementing a “Boys at School: Gender Equity Strategy” since 1996 to ensure that NSW schools continue to address gender as an educational issue.<sup>310</sup>

### **2.6.3 Physical accessibility**

#### Geographic Location and Physical Access – Urban, Rural and Remote Communities

Australia is a geographically vast country with many rural and remote communities. Some students may be hundreds or thousands of kilometres from the nearest educational institution.

As at 2000, between one-quarter and one-third of Australian students attend school in rural and remote areas.<sup>311</sup> HREOC conducted a *National Inquiry into Rural and Remote Education*<sup>312</sup> in 1999-2000 because of concerns about the quality of school education in rural and especially

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<sup>308</sup> UNICEF, *The State of the World's Children 1999*, New York, 1998 pp. 106-109.

<sup>309</sup> Australian Bureau of Statistics, *Schools, Australia 2005*;  
<http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument>

<sup>310</sup> See [https://www.det.nsw.edu.au/policies/student\\_serv/equity/gender\\_equity/PD20040018.shtml](https://www.det.nsw.edu.au/policies/student_serv/equity/gender_equity/PD20040018.shtml)

<sup>311</sup> In Victoria, for example, 66% of students attend school in metropolitan Melbourne, 11% in provincial cities, 15% in rural areas and 8% in remote parts of the State. In comparison, in NSW 34.6% of students attend rural and remote schools. See

[http://www.humanrights.gov.au/human\\_rights/rural\\_education/index.html#5](http://www.humanrights.gov.au/human_rights/rural_education/index.html#5)

<sup>312</sup> [http://www.humanrights.gov.au/human\\_rights/rural\\_education/index.html#5](http://www.humanrights.gov.au/human_rights/rural_education/index.html#5)

remote areas and the fact that fewer rural students finish their formal schooling and go on to tertiary education.<sup>313</sup>

The main issues for these students were: a lack of equivalent teaching and school facility resources; a lack of opportunities to participate in sporting competitions, cultural and other performances, excursions, university visits and visiting speakers;<sup>314</sup> poorer educational outcomes and school performance; reduced school retention rates; a paucity of funding assistance (only about 5% of students attend schools which qualify for the Commonwealth's Country Areas Programme (CAP) funding and fewer than 1 % of Australian students receive the Commonwealth's Assistance for Isolated Children);<sup>315</sup> and poor tertiary attendance of rural and remote students. Although they represent approximately one-third of school students, rural and remote students constitute only about 17% of tertiary students in Australia.<sup>316</sup>

Policies and initiatives have been introduced to address these issues including the establishment of the School of the Air<sup>317</sup> and Distance Education Units. Funding initiatives include the Assistance for Isolated Children scheme's (AIC's), Basic Boarding Allowance, ABSTUDY's Basic School Fees Allowance, the AIC's Distance Education Allowance and the Non-governmental School Term Hostels Programme.

### Geographic Location and Physical Access – People with Physical Disabilities

Access to the variety of schooling available for students with physical disabilities is limited by various factors, including the type of disability and geography.

Key issues for children with physical disabilities accessing education are: lack of available options (physical access limits choice, as does provision of support services); lack of information to families or prospective students about educational options and funding availability and application procedures; lack of equivalence and inadequacy of transitional programmes and

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<sup>313</sup> The inquiry concluded with 73 recommendations for implementation by public and private education systems across the country.

<sup>314</sup> *ibid*, p.43

<sup>315</sup> *ibid*, pp.10-11

<sup>316</sup> *ibid*. p.12

<sup>317</sup> The School of the Air, based in Alice Springs (Northern Territory) has approximately 140 students (located across an area of about 1.3 million square kilometres) who are taught via two-way radio, the internet, satellite and the telephone.

procedures between various education providers and sectors (when moving from one educational sector to the next); inadequate co-ordination between services, departments and ancillary staff; inadequate training and availability of Trained Aides and ancillary and support staff; insufficient provision of equipment, technological aids and other devices; difficulties adapting the curriculum to address the needs and capacities of individual students; and the functional and financial transport: barriers (to transport to and from school/college/university).<sup>318</sup>

Additional issues for children with physical disabilities accessing education in rural and remote areas are: very restrictive choice in schools; travel distance involved if a special school or special unit was required by the student but not available in close proximity to home; difficulty in attracting and keeping skilled teaching staff and aides (particularly) in country areas; severe shortage or lack of appropriately trained therapists; failure to expedite building adjustments to accommodate students with physical disabilities – for example, to permit wheelchair access; inaccessibility of much school transport provision and impact of long journeys on students with disabilities; inequity in funding distribution formulae; and lack of specialist support services in rural and, especially, remote areas is common, including special education support staff and a range of essential health and disability services.<sup>319</sup>

#### ***2.6.4 Economic accessibility***

##### Primary and secondary education

In Australia legislation stipulates that primary and secondary education at government schools is free. For example, in NSW the Education Act stipulates that “The instruction provided in government schools is to be free of charge.”<sup>320</sup> Attendance at private or independent schools is not free. These schools have their own fee structure, although they may receive subsidies from both Federal and State governments.

##### School fees, charges and other costs imposed on parents or guardians for primary and secondary education

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<sup>318</sup> See [http://www.hreoc.gov.au/disability\\_rights/education/barriers\\_96.htm](http://www.hreoc.gov.au/disability_rights/education/barriers_96.htm)

<sup>319</sup> [http://www.humanrights.gov.au/human\\_rights/rural\\_education](http://www.humanrights.gov.au/human_rights/rural_education) p.52

<sup>320</sup> Section 31 of the *Education Act* 1990 (NSW)

Although education at Australian primary and secondary schools is required to be provided free of charge, this only relates to the Standard Educational Programme and parents are expected to provide, or pay the school to provide, their children with text books, individual student requisites and school uniforms. In addition, they may be required to pay a 'voluntary contribution' if they wish their child to be provided with optional school materials and services such as school magazines, photographs, access to excursions and camps, school concerts and productions and access to graduation dinners, camps and excursions. Schools may also seek voluntary contributions for special projects such as building and grounds beautification, library purchases or extra equipment purchases. In its 1997 report, *Not a Level Playground: The Private and Commercial Funding of Government Schools*, the Senate Employment, Education and Training References Committee estimated that the average amount paid by parents in fees and levies to government schools was of the order of \$AUD200 per annum.

State and Territory education departments may provide guidelines for the collection of voluntary contributions. In Victoria, for example, the Department of Education and Training issued an Executive Memorandum in 2005 relating to "School materials charges and parent voluntary contributions."<sup>321</sup> These guidelines state that schools may seek contributions from parents for: (i) materials and services that augment the student programme; (ii) materials and services that are optional; and (iii) materials and services that are supported by voluntary contributions. The Victorian guidelines state clearly that "a student cannot be refused access to programmes, materials or services which are part of the school programme" and that "a student must not be denied access to a particular subject which is part of the school programme due to their inability to contribute to the relevant programme/elective charge or where parents choose not to pay for that programme/elective charge". However, non-governmental organisations have raised concerns that voluntary fees and levies in Australian primary and secondary schools undermine the right to free education by effectively reducing accessibility to education for children from families with low incomes, due to the humiliation many of them feel when they cannot pay and the discrimination or humiliation they are subjected to by school authorities because of difficulties in paying 'voluntary' fees.<sup>322</sup>

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<sup>321</sup> Department of Education and Training (Victoria), Executive Memorandum No. 2005/29 - School materials charges and parent voluntary contributions (15 November 2005)  
<<http://www.sofweb.vic.edu.au/scln/voluntary.htm>>

<sup>322</sup> ASERP, *Australia's Compliance with the UN Covenant on Economic, Social And Cultural Rights* 2000 pp. 50-51

## Extent of financial assistance available for the completion of primary and secondary education

A variety of mostly means-tested financial assistance is available for the completion of primary and secondary education including Abstudy, Austudy, Assistance for Isolated Student and subsidised school travel schemes. In addition, the States and Territories offer varying forms of financial assistance for students completing primary and secondary school. NSW, for example, provides a Back to School Allowance of \$50 for each child each year, access to a Special Needs Transport Service and, specifically for secondary students, a Living Away from Home Allowance (LAFHA) and access Scholarships for Isolated Students (ASIS) and Agricultural High School Boarder Scholarships (AHSBS). In Victoria, eligible parents can apply for financial assistance through the Education Maintenance Allowance<sup>323</sup> (EMA) which is provided to low income families to assist them with educational costs for students. One half of the EMA is paid directly to the parents through the school, and the other half of the EMA is paid to the school to expend on behalf of the student. The school portion of the EMA can only be put towards the cost of parent-supported materials and services for which all parents are expected to contribute.

## Higher education

### Information about fees, charges and other costs for higher education

Australian students studying higher education award courses that are funded by the Commonwealth Government, which lead to degrees, diplomas, associate diplomas, graduate diplomas and graduate certificates contribute to the cost of their higher education through the Higher Education Contribution Scheme (HECS), which was introduced in the *Higher Education Funding Act* (Cth) 1988. Students studying postgraduate courses are generally required to pay full up-front fees. Students taking courses at private institutions or taking courses not funded by the Commonwealth (i.e. undergraduate or graduate courses for which fees are being charged) are not required to pay HECS. Neither are students taking adult and continuing education courses that do not lead to an award, courses fully-funded by employers or courses which are approved work experience in industry.

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<sup>323</sup> *Education Regulations 2000*; Section 45(1) (Vic)

HECS is administered by the Commonwealth Department of Education, Science and Training, the Australian Tax Office and higher education institutions. HECS is differentiated into 3 cost bands based on a combination of the relative cost of course delivery and profitability of programmes. Generally, students pay between 25 and 35 percent of their tuition costs and they can either pay HECS upfront directly to their university (and receive a 25% discount) or they can choose to defer payment and take out a loan with the Commonwealth Government at a real interest rate of zero. The Commonwealth then pays an amount equivalent to the discount for up-front payments and the loans directly to the institution. Students can also choose a combination of both payment options, paying part of the fees upfront (at least A\$500) with a 25 percent discount and deferring the rest. Students must start payment via the taxation system once their annual salary reaches the average Australian earning income (A\$22,346 for the 2000-01 income year). Each income range has a repayment rate which increases with the former student's income, i.e. the more he/she earns, the higher the repayments until the debt is paid.<sup>324</sup>

Students studying with Open Learning Australia (OLA) are also eligible to defer the payment of part of the fee charged by OLA by taking out a loan from the Commonwealth.

The other costs of higher education are compulsory union fees, books, IT and other educational expenses, lodging transport and living expenses.

#### Extent of financial assistance (if any) available for the completion of higher education

In Australia, there are a variety of public and university financial grants, scholarships, bursaries and loan support schemes available to tertiary students in both the higher education and vocational education and training sectors to cover living expenses. Support for Higher Education is provided largely through the Commonwealth Grant Scheme which provides for a specified number of Commonwealth supported places each year and the Higher Education Loan Programme which provides means tested financial assistance to students.

A means-tested Youth Allowance is available to eligible full-time students aged 16 to 25; full-time students over the age of 25 if they were getting Youth Allowance before they turned 25 and

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<sup>324</sup> For more information see the Dept of Education Science and Training website <http://www.goingtouni.gov.au/Main/CoursesAndProviders/GettingStarted/CostsAndEntranceRequirements/ScheduleOfStudentContributionAmountsAndFees.htm>

they are still pursuing the same course of study; and young people up to the age of 21, who are combining part-time job and part-time study. In addition, an allowance called Austudy is available to eligible full-time students aged 25 and older who are enrolled in an approved course of study. Both payments are subject to income and assets tests and to a parental means test if the student does not qualify as independent. Abstudy is also available which provides financial assistance for Aboriginal and Torres Strait Islander Australians who undertake full and part-time study.

Additional benefits are also available to students receiving these kinds of allowances including fare allowances for transportation between home and the educational institutions, a Health Care Card to help with medical costs, a pharmaceutical allowance to help cover the cost of certain prescriptions, a remote area allowance for students living in remote parts of Australia, an interest free Advance Payment of up to \$500 and access to the Student Financial Supplement Scheme.<sup>325</sup> Students aged 16 to 24 may also be eligible for Rent Assistance if they live away from home to study.

### ***2.6.5 Non-formal education***

All Australian State and Territory education departments provide non-formal adult and community education programmes.<sup>326</sup> Access to a wide range of vocational training for trade, technical, professional and para-professional occupations as well as a range of adult education, leisure and general enrichment programmes are widely available through TAFE colleges and other government providers (public registered training organisations) but also through private registered training organisations and community-based registered training organisations.

For example, the NSW Department of Education and Training provides non-formal education through Adult and Community Education (ACE) and through the Community Grants Programmes. ACE offers courses to all adults at hundreds of locations in New South Wales, regardless of age or previous education. The Community Grants Programme allocates funding for community organisations to provide educational opportunities for people with specific needs,

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<sup>325</sup> The Student Financial Supplement Scheme is available to tertiary students who are eligible to receive Youth Allowance, Austudy, Pension Education Supplement or Abstudy to help pay for expenses such as accommodation, transport, food or books. Under the scheme, a student can elect to trade in part of their payment for double the amount that then becomes a repayable loan.

<sup>326</sup> See <http://www.education.gov.au/goved/browse/0,15500,15974,15941>

for example, Aboriginal Community Programmes, Community Language Schools Programme, Mature Workers Programme, Links to Learning Programme (for young people) and Intervention Support Programme (for children and students with disabilities).

## 2.7 Acceptability

*Legislative measures in relation to “Acceptability” are notable omissions from Australian education statutory schemes. There are no provisions, beyond the objects clauses, which encompass the acceptability of education to students (or parents<sup>327</sup>).*

### 2.7.1 Quality education and minimum standards

#### Relevant national institutions responsible for the implementation of the right to education

The Department of Education, Science and Training (DEST) is the key national department that, in collaboration with the States and Territories, industry, other agencies and the community, develops policies to implement the right to education in Australia.<sup>328</sup> The Australian National Training Authority's Ministerial Council leads the national VET system. Each year, the Ministerial Council (which is made up of the Australian and state and territory ministers responsible for vocational education and training) sets national priorities for the system.

#### Relevant State and Territory institutions responsible for the implementation of the right to education

Each State and Territory has a number of specialised agencies, apart from the education departments, that directly or indirectly implement the right to education across the various education sectors. These include the ACT Department of Education and Training - Office of Training and Adult Education, Western Australia - Training Accreditation Council, the South Australia Further Education, Employment, Science and Technology organisation, the Office of

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<sup>327</sup> Durbach and Moran, op cit. p.11

<sup>328</sup> There are numerous other national institutions responsible for providing particular aspects of education. For example, Adult Learning Australia (ALA) is Australia's peak organisation for adult and community education providers; the Australian Council for Private Education and Training (ACPET) is the peak body which represents the Australian private education and training sector in dealings with federal and state governments and other agencies and the Australian Council of Independent Vocational Colleges is a non-profit organisation which caters for the specific needs of private Education and Training Colleges and organisations associated with international and domestic Education and Training.



Training & Tertiary Education, the Tasmanian Office of Post-Compulsory Education & Training, Tasmanian Qualifications Authority and the NSW Board of Vocational Education and Training (a statutory body established by the *Vocational Education and Training Accreditation Act 1990* (NSW) whose mission is to foster vocational education and training of the highest possible quality and with the widest possible community access).

### Specialised agencies, authorities or officials that have a mandate on the right to education

The Federal, State and Territory Education Ministers each have a mandate to provide education in accordance with relevant legislative and common-law obligations. HREOC (although it cannot receive complaints about breaches of the right to education under the ICESCR), can consider complaints about breaches of the right to education that are contained in the CRC and the ICCPR which are both declared as relevant international instrument under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). HREOC can also conduct National Public Inquiries, and develop and deliver human rights education, which focus on the right to education in Australia.

In addition, State and Commonwealth Ombudsman have power to investigate the administrative actions and decisions of State or Commonwealth education departments alleged to be wrong, unjust, unlawful or discriminatory.

### Measures adopted by Education Authorities

The *Declaration on the National Goals for Schooling in the Twenty-First Century*,<sup>329</sup> which was adopted by the State, Territory and Australian Government Ministers of Education in 1999 sought, amongst other things, to establish Australian minimum education standards. Accordingly, all Australian Education Ministers have adopted a National Literacy and Numeracy Plan which sets national benchmarks (nationally agreed minimum acceptable standards at a particular year level) in literacy and numeracy.<sup>330</sup> All States and Territories have agreed to report student

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[http://www.dest.gov.au/sectors/school\\_education/policy\\_initiatives\\_reviews/national\\_goals\\_for\\_schooling\\_in\\_the\\_twenty\\_first\\_century.htm](http://www.dest.gov.au/sectors/school_education/policy_initiatives_reviews/national_goals_for_schooling_in_the_twenty_first_century.htm)

<sup>330</sup> Students who fall below the national reading benchmark are eligible to receive a tutorial voucher valued at up to \$700 exclusive of GST. The tutorial voucher will provide for a pre and post tuition assessment, and a number of hours of reading tuition delivered on a one-to-one basis outside school hours.

achievement data against the benchmarks to the Australian community through the MCEETYA annual National Report on Schooling in Australia.<sup>331</sup>

A *National Goals for Teaching* strategy is also in the process of being implemented. It focuses on identifying and promoting national standards and priorities for students, providing learning outcomes of students, providing a framework for reporting nationally comparable data on student achievement and for public accountability by school education authorities. Particular measures being discussed and implemented currently include establishing greater national consistency in schooling across Australia through implementing a common school starting age by 2010; developing statements of learning in key subjects to build more consistency in curriculum outcomes; introducing national tests in key subject areas; the development of a national system for the transmission of student information for students moving from one jurisdiction to another; and implementing an Australian Certificate of Education for year 12.

In addition, the Australian Government has also introduced the *National Indigenous English Literacy and Numeracy Strategy* (which targets English literacy and numeracy for Indigenous students at levels comparable to those achieved by other young Australians) and the *Australian Government Quality Teacher Programme* (AGQTP) (which funds the realisation of national initiatives such as targeting improvements in the education of boys and Indigenous students).

In relation to VET, the quality of the education delivered is standardised and monitored by the Australian Qualifications Framework (“AQF”) which provides a single framework for all qualifications from Senior Secondary Certification to PhD. Consistent teaching delivery is established through the Australian Quality Training Framework (“AQTF”) which requires training providers and registering authorities to adhere to two sets of nationally agreed standards: standards for registered training organisations and standards for state and territory registering and course accrediting authorities. Training organisations must meet AQTF standards to become registered and only registered training organisations can issue AQF qualifications and deliver accredited training and assessment. Registering authorities in each state and territory are responsible for registering and monitoring training organisations and ensuring they comply with AQTF standards and with accrediting VET courses and approving training organisations’ delivery of VET to overseas students.

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<sup>331</sup> [http://www.dest.gov.au/...lish\\_literacy\\_and\\_numeracy\\_strategy.htm](http://www.dest.gov.au/...lish_literacy_and_numeracy_strategy.htm)

Although Australian universities and self-crediting training institutions are established by or under relevant State, Territory and Commonwealth legislation and have authority to accredit their own courses, the qualifications which each of them confer comply with the requirements of the Australian Qualifications Framework.<sup>332</sup>

### Academic freedom and autonomy of educational institutions

HREOC observes that Australian laws provide for freedom of speech and of the press in Australia. It states that there are no significant legislative provisions or government policies, practices and programmes in Australia which impact upon academic freedom and the autonomy of educational institutions.

#### **2.7.2 Discipline**

Corporal punishment is not allowed in Australian schools. The decision to exclude a student from a school, either temporarily or permanently, is the most serious form of discipline that a school can exercise.

### Government schools

Over the past eight years, several states and territories have reviewed and updated the procedures and principles regulating suspensions and expulsions in government schools. However, concern remains about the high rate of suspensions, disproportionate rate of suspensions of students of Aboriginal or Torres Strait Islander descent, the need for suspension and expulsion procedures to be further developed to give greater consideration to a student's right to representation, arrangements for the continuing education of expelled students, impartiality in review processes and proper documentation and records management.<sup>333</sup>

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<sup>332</sup> For more information see <http://www.aqf.edu.au/aboutaqf.htm>

<sup>333</sup> *The Non-government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia*, DCI, 2005 [http://www.ncylc.org.au/croc/images/CROC\\_Report\\_for\\_Web.pdf](http://www.ncylc.org.au/croc/images/CROC_Report_for_Web.pdf)

## Non-governmental schools

Since discipline in non-governmental schools is regulated on a contractual basis between the parents and each school the key issues are the lack of natural justice, clear accountability, uniformity and regulation of non-governmental school authorities and denying a student the opportunity to answer claims that decision-makers rely upon to justify suspensions and expulsions.

### **2.7.3 Curriculum**

#### Overview of Curriculum Determination

Education departments in each State and Territory are responsible for developing and implementing primary and secondary school education policy and regulating and managing the government school system in their state and territory. This includes the development of quality curriculum for government and non-governmental schools. Curriculum development is achieved by way of statutory organisations such as the Board of Studies in NSW and the Victorian Curriculum and Assessment Authority. Their role is to set the core curriculum by developing syllabus for Kindergarten to Year 12, and to provide support materials for teachers and parents; to assess student learning and monitor student achievement as well as conduct research leading to innovative education programmes. These statutory organisations manage external examinations such as in the NSW, the School Certificate (Year 10) and the Higher School Certificate (Year 12) Examinations each year. The curriculum is developed in conjunction with a range of teachers and teacher and parent organisations, school principals and principals' organisations as well as academic authorities and is reviewed regularly.

#### Human rights education

'Human rights' does not exist as a discrete subject in any state or territory curricula. However, an understanding of rights and responsibilities – and their relevance to young people as active citizens – is an identified learning outcome in a range of secondary school subjects. In 1999, the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) released a set of *National Goals for Schooling in the Twenty-First Century*, known as 'The

Adelaide Declaration.’ According to the National Goals, students should:

- be active and informed citizens with an understanding and appreciation of Australia's system of government and civic life (Goal 1.4)
- have the capacity to exercise judgement and responsibility in matters of morality, ethics and social justice, and the capacity to make sense of their world, to think about how things got to be the way they are, to make rational and informed decisions about their lives and to accept responsibility for their own actions (Goal 1.3), and
- be free from the effects of negative forms of discrimination based on sex, language, culture and ethnicity, religion or disability; and of differences arising from students' socio-economic background or geographic location (Goal 3.1).

The Adelaide Declaration also sets out the eight ‘Key Learning Areas’ (KLAs) that must be addressed in a ‘comprehensive and balanced curriculum’: (i) the Arts; (ii) English; (iii) health and physical education; (iv) languages other than English; (v) mathematics; (vi) science; (vii) studies of society and the environment; and (viii) technology. Within the current framework, ‘human rights’ as a discrete area of study falls most naturally in subjects that comprise the ‘Studies of Society and the Environment’ KLA, such as Australian Studies or Legal Studies. However, in reality, discussion and teaching about issues of human rights and responsibilities is common across most KLAs.

In June 2004 the Commonwealth Parliament’s Joint Standing Committee on Foreign Affairs, Defence and Trade released its inquiry report on *Human Rights and Good Governance Education in the Asia Pacific Region*. The Committee recommended that human rights education be incorporated into all civics and citizenship education initiatives. It also recommended that the Commonwealth Minister for Education, in collaboration with State and Territory Ministers, develop a coherent and consistent approach to human rights education with a formal role in the education system.<sup>334</sup>

#### **2.7.4 Parents / Legal Guardians**

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<sup>334</sup> A copy of the report is available at:  
<<http://www.aph.gov.au/house/committee/jfadt/HRGoodGov/GoodGovIndx.htm>>

Australian parents and legal guardians are able to exercise freedom of choice with regards to educational institutions and educational programmes subject to their ability to physically access the programme and to finance participation in it.

### ***2.7.5 Religious and cultural practices, languages of minority groups***

The *Racial Discrimination Act 1975* (Cth) and State and Territory anti-discrimination acts proscribe discrimination in education on the basis of race, colour, descent, national or ethnic origin. In addition, certain State and Territory Education acts require schools to have regards to the:

(h) provision of an education for children from non-English speaking backgrounds that has regard to their special needs.<sup>335</sup>

State and Territory Education departments all have a variety of policies and programmes targeting respect for religious and cultural practices and addressing the needs of minority language groups within schools (as opposed to the use of languages of minority groups (for example in two-way language schools for Indigenous students). The Victorian Department of Education and Training, for example, has established a Languages and Multicultural Education Resource Centre and has developed resources on LOTE, ESL and Multicultural Education.<sup>336</sup> In South Australia, the Department of Education and Children's Services has developed the DECS Aboriginal Education Strategy 2005-2010 with one of the four targets being the development of Culturally Appropriate Curriculum and Teaching.<sup>337</sup>

Other Commonwealth and State departments develop resources and programmes targeting respect for diversity and education about different religious and cultural practices. For example, HREOC has developed a number of educational resources on multiculturalism, racism and diversity, including: Face the Facts and Voices of Australia.<sup>338</sup> Significantly, in terms of addressing the needs of minority language groups within schools, a review by the Northern Territory Department of Employment, Education and Training (DEET) into Indigenous language and culture programmes in Northern Territory schools culminated in the release of the Indigenous Languages

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<sup>335</sup> For example, see section 6 of the NSW *Education Act 1990*

<sup>336</sup> [www.sofweb.vic.edu.au/lem/lmerc/index.htm](http://www.sofweb.vic.edu.au/lem/lmerc/index.htm)

<sup>337</sup> <http://www.aboriginaleducation.sa.edu.au/>

<sup>338</sup> [www.hreoc.gov.au](http://www.hreoc.gov.au)

and Culture Report which recommended an increased focus on Indigenous languages and culture programmes in DEET schools and the placement of bilingual education back on the agenda (Ministerial Statement, 24 August 2005).<sup>339</sup>

## 2.8 Adaptability

### 2.8.1 Education and work

The State and Territory Education Acts provide that children must remain at school in Australia until they are 15 or 16 years old depending upon the State or Territory in which they reside.<sup>340</sup> The Western Australian Parliament recently amended its Act to raise the school leaving age to 16 in 2006 and 17 in 2008. Moves to increase the school leaving age in various states have attracted criticism that such measures do not achieve adaptability in education because “increasing the school age will compound the already deficient right of students to an education which is relevant, of good quality and reflects individual needs.”<sup>341</sup> Some of these criticisms might be met by the approach adopted in Western Australia which requires students, until they reach the minimum leaving age, to be *either* in school, training, an apprenticeship or a traineeship, or approved full-time employment – or combinations of part-time education/training and employment.<sup>342</sup>

Australia has not ratified the ILO Convention 138 or ILO Convention 182. Australia does not have Commonwealth legislation that specifically regulates the minimum age of employment of children or the conditions of children’s employment. However, all states and territories have laws prohibiting the employment of children under school-leaving age during school hours but the laws differ in relation to the employment of young children outside school hours.<sup>343</sup>

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<sup>339</sup> [http://www.deet.nt.gov.au/education/indigenous\\_education/indigenous\\_languages\\_culture\\_report/](http://www.deet.nt.gov.au/education/indigenous_education/indigenous_languages_culture_report/)

<sup>340</sup> *Education Act* (ACT) 2004, *Education Act* (NT), *Education Act* (NSW) 1990, *Education (General Provisions) Act* (Qld) 1989 and *Education (General Provisions) Regulation* (Qld) 1989, *Education Act (South Australia)* 1972, *Education Act (Victoria)* 1958 (and *Community Services Act (Vic)* 1970), *Education Act (Tasmania)* and *School Education Act (Western Australia)* 1999

<sup>341</sup> Durbach and Moran, *op cit*, p.14

<sup>342</sup> <http://www.det.wa.edu.au/schoolleavingage/>

<sup>343</sup> The information in this section was obtained from <http://www.right-to-education.org/content/age/australia.html> viewed 8 May 2006

In the Australian Capital Territory, for example, the *Children's Services Act* 1986 (ACT) regulates the employment of children under the age of 15. The Act prohibits the employment of a child in hazardous employment without the consent of the Director of Welfare. Conditions are outlined for children employed for light work (e.g. errands, distributing newspapers, baby-sitting etc). A person may only employ a child in certain occupations, which are listed, or in a family business. The employment must be for less than 10 hours per week, and must not have a detrimental effect on the child's schooling. The Act imposes a penalty where activities may be dangerous to the health and safety of the child.

In New South Wales, the employment of children under the age of 15 years is regulated by the Department of Community Services under Part 4 of the *Children (Care and Protection) Act* 1987 (NSW) which protects children from abuse and exploitation. The employment of children aged 16 to 18 years is regulated by the Department of Industrial Relations, Employment, Training and Further Education.

In the Northern Territory the *Education Act* 1979 (NT) provides that no child between the age of six and 15 years is to be employed during school hours or at any other time which would make the child unfit or unable to attend school or receive instruction provided. The *Community Welfare Act* 1983 (NT) provides that children under 15 years of age will not be employed between 10.00 pm and 6.00 am and prohibits employment of children in dangerous activities without the consent of the Minister.

In Queensland, the *Education (General Provisions) Act* 1989 (Qld) provides that a parent shall not employ or cause to be employed his or her child during school hours unless special dispensation has been granted. The *Workplace Health and Safety Act* 1989 (Qld) provides that an employer shall not permit any male under the age of 18 years or any female to operate at a workplace where lead processing is used. The *Health Act* 1937 prohibits persons under 18 years from obtaining a pest control operators licence and prohibits a person under the age of 17 years from mixing or loading agricultural chemicals. Curiously, the *Children's Services Act* 1965 prohibits any female child under the age of 17 years from engaging in street trading but not boys over the age of 12 years who may engage in street trading between the hours of 6.00 am and 10.00 pm, under certain conditions. Finally, section 78 of the *Education Act* provides that a child of compulsory school age may not be employed during the hours at which he or she is required to



attend school or during any part of a day or night in any labour or occupation that is such as to render the child unfit to attend school or to obtain the proper benefit from the instruction provided for him or her.

In Tasmania, the *Child Welfare Act* 1960 governs the public performance of children under 14 years, trading in a public place under the age of 11 years and trading in a public place under the age of 14 years after 9.00 pm. In Victoria the *Community Services Act* 1970 prohibits the employment of a child under 15 years of age without a child employment permit issued by the Department of Labour. In Western Australia a child may engage in part-time employment at any age subject to any restrictions relating to the particular occupation such as those imposed by the *Child Welfare Act* 1947 which limits the part-time employment of children in street trading to those aged 12 and above and to daylight and out of school hours and licences the employment of children under 15 in entertainment and advertising.

### ***2.8.2 Education for women***

#### Legislation

State and Territory Education Acts, anti-discrimination legislation and the *Sex Discrimination Act* (Cth) 1984 provide for equal access to education for women in Australia.

The minimum age for marriage in Australia is 18 although a couple where one person is between the age of 16 years and 18 years may marry with parental or guardian consent and an order from a judge or magistrate (*The Marriage Act* 1961 (Cth)).

#### Other initiatives

All Australian States and Territories education and related government departments have in place strategies, policies and programmes which are targeted at, and adapted to, the education needs of women. For example, In NSW, the Department of Education and Training has developed the NSW state programme of Action for Women in TAFE which aims to better meet the diverse needs of women within the TAFE system. Some programmes and initiatives run by the NSW government through this programme include English for living courses, Women-only certificate

in carer education and employment for women, Job's for girls courses, Careers for women in IT and video and a Science is for girls programme.

### ***2.8.3 Special Needs Education***

#### Policies and Programmes

In Australia most children with special needs are educated in their local schools. Where this is not possible there are also small special classes attached to local schools, and special schools, which accept children who have moderate, severe, or profound disabilities. Distance Education Units also provides special education to students who live in isolated regions.

State and Territory education departments all have policies and programmes that have been developed to provide targeted services for students with special needs including educational, psychological, and vocational counselling, literacy and numeracy assistance for Aboriginal children and adults, programmes offering English as a second language, courses for gifted and disabled children, and programmes to assist children in remote areas. The Commonwealth Department of Education also develops policies and programmes targeting a national approach to special needs education.

In relation to offering English as a Second language, each State and Territory has either an English as a Second Language (ESL) curriculum or an established practice of using ESL documents as a guide for targeted language teaching for ESL learners within the general curriculum and students are often taught by specialist subject teachers who also have ESL qualifications.<sup>344</sup> However, the manner in which ESL is taught differs between States.<sup>345</sup> National ESL documents are used as a guide to help teachers record and assess the progress of students learning English as a second language in reading, writing, speaking and listening. Generally, these documents provide a set of benchmarks for ESL learner achievement, a common language for reporting student achievement, guidance to teachers in making judgments about

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<sup>344</sup> This information was obtained from the [http://www.hreoc.gov.au/human\\_rights/children\\_detention\\_report/report/chap12.htm](http://www.hreoc.gov.au/human_rights/children_detention_report/report/chap12.htm)

<sup>345</sup> Some states have a full ESL curriculum; some have documentation supporting ESL learning in mainstream curriculum areas; and some use national documents to assist in adapting curriculum for ESL learners.

students' level of achievement and help in identifying ESL learners' needs to assist programme and curriculum development.

### Adaptability of schools

Australian primary and secondary schools are expected to be able to adapt to the special education needs of individual students. For example, the long title of the Northern Territory Education Act is “An Act to make provision for the availability of education to all people of the Northern Territory and in particular to provide for the access of all children to education programmes appropriate to their individual needs and abilities.”

To gain Special Education support, children need to have a diagnosis provided by a paediatrician or a psychologist. Families have the right to choose their own placement – special school, special class, or local school – dependent on places available. Students who are identified with a special need are placed on an Individual Education Plan (“IEP”) in both primary and secondary school and may be entitled to funding assistance and the provision of an aide in the classroom. IEP’s are required to be written with the family at least once a year so that goals for individual children are agreed upon by all those working with the child. Provisions differ enormously state by state – for example, NSW is the only state which does not provide therapists (speech, physio) for students. Western Australia has Education Support teachers working to support students in school, while Victoria relies a great deal on untrained integration aides.

In general terms, a school’s capacity to adapt to the special education needs of individual students is dependent on funding, resources, the teacher’s level of experience, the extent of the aide’s experience and the relationship between the school and the student and their family.

## **2.9 Activities of HREOC**

### ***2.9.1 Mandate and Methods***

Human rights are defined under the *Human Rights and Equal Opportunity Commission Act* (HREOC Act) as being those rights recognised under the ICCPR, the CRC, the *Declaration on the Rights of Mentally Retarded Persons*, the *Declaration on the Rights of Disabled Persons*, the

*Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (the Declarations), and the ILO Convention on the Elimination of All Forms of Discrimination in Employment and Occupation (s 3 of the HREOC Act). These international instruments are also scheduled to or declared under the HREOC Act.

The rights recognised in the ICESCR are not included in the definition of the human rights under the HREOC Act and ICESCR is not scheduled to or declared under the HREOC Act. The HREOC Act does provide, however, that the Aboriginal and Torres Strait Islander Social Justice Commissioner must have regard to ICESCR in the performance of his functions (s 46C(4) of the HREOC Act). Furthermore, HREOC notes that the ICCPR, CRC, CERD and the Declarations recognise rights that can be defined as economic, social and cultural rights. It follows that the HREOC's mandate does involve consideration of these rights.

HREOC uses a number of methods and approaches for protecting and promoting human rights (as defined in the HREOC Act) including: intervening in court proceedings that involve human rights issues (as permitted by s 11(o) of the HREOC Act; undertaking research projects and developing and disseminating educational materials on human rights; conducting public inquiries into and report to Parliament on human rights issues; investigating and conciliating complaints of unlawful discrimination; investigating human rights breaches or discrimination relating to equal opportunity in employment and, where complaints are not conciliable, report to Parliament; and HREOC Commissioners appearing as *amicus curiae* in proceedings relating to unlawful discrimination before the Federal Court and Federal Magistrates Court.

### ***2.9.2 Investigation of Complaints***

HREOC can receive complaints regarding the right to education under each of the laws it administers.<sup>346</sup> Statistics for the number of complaints that raised issues in the area of education for 2003/04 and 2004/05 are outlined in the table below. Complaints can be lodged by individuals or groups who are aggrieved.

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<sup>346</sup> *Racial Discrimination Act 1975; Sex Discrimination Act 1984; Disability Discrimination Act 1992; Age Discrimination Act 2004; Human Rights and Equal Opportunity Commission Act 1986.*

	SDA		RDA		DDA		ADA		HREOCA	
	#	%	#	%	#	%	#	%	#	%
2003/2004	8	1%	3	1%	90	10%	N/A		0	
2004/2005	12	2%	6	2%	102	10%	2	1%	0	

Complaints raise a diverse range of issues regarding access to education. HREOC investigates and where appropriate attempts to resolve complaints lodged under the laws it administers. Examples of some of the complaints in the area of education that have been resolved through conciliation are provided below and indicate the range of issues raised and the types of outcomes achieved through the conciliation process. Some of these conciliated matters are reported in HREOC's annual report and on its website. The examples below are drawn from complaints made under the *Disability Discrimination Act 1992* under which the majority of complaints relating to education are lodged.

**Case Study: Disability and access to primary school education**

The complaint was made by parents on behalf of their son who has Autism Spectrum Disorder and other severe learning difficulties. The parents claimed that the government primary school their son attended was unwilling to act upon the requests of other professionals involved in their son's welfare and that his teacher failed to understand autism. The parents alleged that the school blocked their son's progress, made derogatory comments about him and did not fully carry out the requirements of his Individual Education Plan.

The respondent school claimed that the Principal had met with the complainants on numerous occasions and that they were often reacting to a version of what their son thought had happened at school. The respondent claimed it provided reasonable accommodation for the complainant's son, including participation in a social skills group, development of a special speech programme and provision of extra support from an aid who worked in his classroom.

The complaint was resolved through a conciliation process. The parents agreed to withdraw the complaint on the basis that the school would provide them with a statement of regret and \$500 in acknowledgement of the difficulties they experienced during the previous school year. It was also agreed that if the complainant's son was assessed as requiring ongoing integration support he would receive this and the school will be provided with \$2 000 for speech therapy for him for the next two and a half years.

### **Case Study: Hepatitis C discrimination in tertiary education**

A woman who is hepatitis C positive complained that she had been discriminated against in her pathology course. One element of the course involved students taking blood samples from each other. She was willing and able to take blood but asked that other students not take blood from her to avoid health risks. She claimed that as a result she was excluded from core components of the course. The complaint was settled with an apology, payment of \$7000 compensation, and an agreement to have staff trained in issues regarding blood borne diseases.

### **2.9.3 Research / Public Inquiries**

HREOC has conducted public inquiries on the right to education in Australia in two specific contexts: the right to education of children in immigration detention centres; and the right to education of children living in rural and remote areas.

#### Inquiry into Children in Immigration Detention (2004)

The National Inquiry into Children in Immigration Detention was conducted between 2001 and 2003, with a final report released in 2004.<sup>347</sup> One aspect of the inquiry was to examine the provision of education to children in detention, compare it to the provision of education to similar children living in the Australian community, and determine whether the education that was being provided to children in detention met with Australia's international human rights obligations.<sup>348</sup> The inquiry addressed the following general questions:

1. What are children's rights regarding the provision of education in immigration detention?
2. What policies were in place regarding education for children in detention?
3. What education is provided to similar children in Australian schools?
4. What education was provided in internal detention centre schools?

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<sup>347</sup> Human Rights and Equal Opportunity Commission, *National Inquiry into Children in Immigration Detention Report- A Last Resort?* (May 2004)  
< [http://www.humanrights.gov.au/human\\_rights/children\\_detention/index.html](http://www.humanrights.gov.au/human_rights/children_detention/index.html)>

<sup>348</sup> The provision of education to children in detention changed considerably over the period of the inquiry. In November 2001 most of the approximately 700 children in detention were being educated in internal detention centre schools. By the end of 2002, approximately half of the children in detention were accessing external education, with approximately 80 per cent in external schools by mid-2003.

5. What external education was provided to children in detention?

A full response to these questions and other associated education issues can be found in Chapter 12 *Education for Children in Immigration Detention* of the final report.<sup>349</sup> In summary, the Commission reported that the evidence before the inquiry demonstrated that the Australian Government failed to take all appropriate measures to provide children in immigration detention with an adequate education over the period of the Inquiry and had therefore breached the Convention of the Rights of the Child (CRC).

The Commission reports that although there were significant variations in the amount and quality of education provided in different detention centres at different times, the education available to children at on-site schools always fell significantly short of the level of education provided to children with similar needs in the Australian community. Despite the significant efforts of teachers, the Inquiry found that there were fundamental weaknesses in the on-site schools over the period of the Inquiry, including:

- No curriculum to suit the needs and capacities of children in immigration detention. This was especially the case for children above the compulsory age of education. Until late 2002 there was no systematic attempt to adopt the State curricula available and apply them within the English as a Second Language (ESL) framework.
- Insufficient infrastructure, curriculum resources, and teachers to support an appropriate education programme for the numbers of children in detention.
- Inadequate hours of schooling. Contact hours were often well below the standard school day.
- Inadequate educational assessments and insufficient reporting of children's educational progress.
- No teachers with ESL qualifications in certain centres at certain points in time. Detainees without teaching qualifications were sometimes used to make up the shortfall in qualified teachers. A high turnover of teachers also impacted on the quality of teaching.
- The inadequacy of on-site education combined with increasing depression in long-term detainees resulted in low attendance levels at on-site schools at certain points in time.

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<sup>349</sup> [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/chap12.htm](http://www.humanrights.gov.au/human_rights/children_detention_report/report/chap12.htm)

The Commission reports that many of these problems were substantially addressed when, in mid 2002, the Department of Immigration and Multicultural and Indigenous Affairs arranged for increasing numbers of children in immigration detention to go to local schools. It points out however, that not all children were eligible to attend external schools and the fact that children had to return to detention centres every day prevented them from taking full advantage of the external educational experience. The Commission notes:

It is unacceptable that it took ten years of mandatory detention before the Department began negotiating MOUs with State education authorities regarding routine access by children in immigration detention to external schools.

One of the findings of the Inquiry was that at various times between 1999 and 2002, children in immigration detention were not in a position to fully enjoy the right to an appropriate education on the basis of equal opportunity (CRC, article 28(1)).<sup>350</sup>

#### Inquiry into Rural and Remote Education (2000)

The National Inquiry into Rural and Remote Education was initiated by HREOC in February 1999. This followed HREOC's 1998 *Bush Talks* consultations on the human rights concerns of regional, rural and remote Australians, which had revealed that access to education of an appropriate standard and quality was a significant concern in rural and remote areas. The inquiry investigated the provision of education for children in rural and remote Australia with reference to:

- the availability and accessibility of both primary and secondary schooling
- the quality of educational services, including technological support services
- whether the education available to children with disabilities, Indigenous children and children from diverse cultural, religious and linguistic backgrounds complies with their human rights.

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<sup>350</sup> Major finding 3(d), Chapter 17: *Major Findings and Recommendations of the Inquiry*, Human Rights and Equal Opportunity Commission, *A Last Resort; The National Inquiry into Children in Immigration Detention* (2004)  
[http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/report/chap17.htm](http://www.humanrights.gov.au/human_rights/children_detention_report/report/chap17.htm)



The inquiry published four main reports, the two most relevant of which were: *Emerging Themes* and *Recommendations*.<sup>351</sup> The first report, *Emerging Themes* summarised the major themes, issues and concerns arising in the Inquiry. It concludes with an overview of the human rights provisions relevant to rural and remote school education. The second report, *Recommendations*, sets out the findings of the inquiry and its recommendations. There are 73 recommendations in total. The findings and recommendations are organised by reference to the five necessary features of school education: it must be available, accessible, affordable, acceptable and adaptable (Chapters 5-9 inclusive). The report makes the adoption of these five features by all education policy and provision in Australia its first recommendation (Chapter 3 sets out what each requires). Chapter 4 sets out the necessary policy parameters for the implementation of all the inquiry recommendations. These include the need for cross-sectoral and inter-agency collaborations, a new funding framework for rural and remote education and other strategies.

#### ***2.9.4 Education and Awareness Campaigns***

HREOC has promoted reports and conducted awareness campaigns about the right to education for people with disability, indigenous Australians and children in immigration detention through its website, the media, mailing lists and promotion by Commissioners through speeches and media engagements. HREOC does not conduct training programmes.

#### ***2.9.5 Human Rights Education***

In response to the high demand from teachers and students, HREOC has developed a range of human rights education modules specifically for use in upper primary and secondary schools. These modules are linked to the curriculum of each Australian state and territory education system. They have been developed in consultation with education experts to ensure that they are relevant to young people and to the contemporary pedagogy of the Australian classroom. Human rights education is promoted through three dimensions of educational components:

- Knowledge: provision of information about human rights and mechanisms for their protection;

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<sup>351</sup> All four reports are available on the HREOC website at:  
[http://www.humanrights.gov.au/human\\_rights/rural\\_education/index.html](http://www.humanrights.gov.au/human_rights/rural_education/index.html)

- Values, beliefs and attitudes: development of values, beliefs and attitudes, which uphold human rights; and
- Action: encouragement to take action to defend human rights and prevent human rights abuses.

The education modules also include detailed teaching notes and resources to help teachers deliver an effective teaching and learning programme on human rights. They also provide significant flexibility in how they are delivered. Teachers can incorporate individual activities into an existing programme or teach the module as a whole.

<b>HREOC's Human Rights Education resources</b>
<p><b>Information for Teachers</b>  <a href="http://www.humanrights.gov.au/info_for_teachers/index.html">www.humanrights.gov.au/info_for_teachers/index.html</a></p>
<p><b>Information for Students</b>  <a href="http://www.humanrights.gov.au/info_for_students/index.html">www.humanrights.gov.au/info_for_students/index.html</a>  <i>Information for Students</i> provides students with 'plain English' information about international and domestic human rights issues. It has a Q&amp;A Section and links to a wide range of resources to assist students to research and find answers to questions they may have in relation to their rights and responsibilities.</p>
<p><b>Youth Challenge: Teaching Human Rights and Responsibilities</b>  <a href="http://www.humanrights.gov.au/youthchallenge/index.html">www.humanrights.gov.au/youthchallenge/index.html</a></p>
<p><b>Face the Facts: Questions and Answers about Refugees, Migrants and Indigenous People</b>  <a href="http://www.humanrights.gov.au/info_for_teachers/face_facts/index.html">www.humanrights.gov.au/info_for_teachers/face_facts/index.html</a></p>
<p><b>Bringing Them Home: Learning About the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families</b>  <a href="http://www.humanrights.gov.au/bth/index.htm">www.humanrights.gov.au/bth/index.htm</a></p>
<p><b>Paid Maternity Leave: Activities on Gender Equality in the Workplace</b>  <a href="http://www.humanrights.gov.au/info_for_teachers/pregnancy/index.html">www.humanrights.gov.au/info_for_teachers/pregnancy/index.html</a></p>

**Human Rights Explained**

[www.humanrights.gov.au/hr\\_explained/index.html](http://www.humanrights.gov.au/hr_explained/index.html)

This is an online resource for tertiary students. It was first published in 1998 and remains one of the Commission's most accessed sections.

**2.9.6 Annual Reports**

HREOC's 2004-2005 Annual Report contained a number of references to its work on the right to education in relation to people with a disability. The first was in relation to access to education materials and HREOC's progress in removing barriers to information access caused by copyright regimes and practices, and for developments in technology to enable the production of information in accessible formats.<sup>352</sup> The second was in relation to amendments to the *Disability Discrimination Act* associated with the draft Disability Standards for Education.<sup>353</sup>

HREOC's Annual Report also refers to its own role in providing education programmes that relate to human rights issues specifically, but also refers to Australia's consistent support of human rights education.<sup>354</sup>

**2.9.7 Contribution to Australian Government reports to treaty body committees**

HREOC does not provide shadow reports to the relevant treaty body committees. It is on occasions consulted by the Australian Government in relation to periodic reports to treaty body committees. This is however on the basis that it is up to the Government whether it incorporates HREOC's comments into the report or not. HREOC is not at liberty to provide the comments that it has provided the Government in relation to periodic reports.

**2.9.8 Collaboration with Civil Society**

HREOC has provided support to the UN World Programme for Human Rights Education, especially in relation to the Plan of Action (2005-2007) and has offered to provide assistance to the Australian Government in its implementation of the Plan of Action.

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<sup>352</sup> Human Rights and Equal Opportunity Commission *Annual Report 2004-2005*, pp103-104.

<[http://www.humanrights.gov.au/annrep04\\_05/index.html](http://www.humanrights.gov.au/annrep04_05/index.html)>

<sup>353</sup> *Ibid*, p107

<sup>354</sup> *Ibid*, p19

## 3. Fiji

### 3.1 International Law

Fiji is a party to the CERD,<sup>355</sup> CEDAW<sup>356</sup> and the CRC.<sup>357</sup> Fiji is not a party to the ICESCR or the UNESCO Convention Against Discrimination in Education.

Fiji is a party to the ILO Minimum Age Convention<sup>358</sup> and the Worst Forms of Child Labour Convention.<sup>359</sup>

### 3.2 National Law

#### 3.2.1 Constitution

The *Constitution of the Republic of the Fiji Islands 1997* contains comprehensive human rights provisions. Under Chapter 4 (Bill of Rights) there are a number of provisions relevant to the right to education. Section 39 of the *Constitution* (Education) sets out specifically:

- (1) Every person has the right to basic education and to equal access to educational institutions,
- (2) Every religious community or denomination and every cultural or social community has the right to establish and maintain places of education and to manage them, whether or not it receives financial assistance from the State.
- (3) The admission policy of a place of education referred to in subsection (2) may be administered on the basis of the need to maintain its special character but, subject to that, those concerned in its management must ensure that it is open to all qualified students without discrimination on any ground prohibited by this Constitution.
- (4) Nothing contained in, or done under the authority of, a law prescribing standards or qualifications for educational institutions is inconsistent with this section to the extent that the requirements of the law are reasonable and justifiable in a free and democratic society.

Section 38 of the *Constitution* (Equality) contains comprehensive anti-discrimination and equality of access provisions. The relevance of international law within the domestic jurisdiction is set out in Section 43(2) of the *Constitution*:

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<sup>355</sup> Fiji succeeded to the CERD on 11 January 1973.

<sup>356</sup> Fiji acceded to the CEDAW on 28 August 1995.

<sup>357</sup> Fiji ratified the CRC on 13 August 1993.

<sup>358</sup> Fiji ratified the Minimum Age Convention on 3 January 2003.

<sup>359</sup> Fiji ratified the Worst Forms of Child Labour Convention on 17 April 2002.

(2) In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter.

### 3.2.2 *Legislation*

#### Right to compulsory and free primary education

Under Part XI, Section 28 of the *Education Act*, the Minister of Education may make orders regarding compulsory education:

- (1) The Minister may, with the consent of Parliament, by order, specify any area or areas of Fiji in which all children of such age or ages as may be specified in such order shall be required to attend a school.
- (2) When any order has been made under the provisions of subsection (1), the Minister may make regulations to secure that every child of the age specified in such order shall receive education in a school.

The *Compulsory Education Regulations 1997* require parents and/or guardians of children to ensure that every child of compulsory school age receives suitable and relevant education by regular attendance at school.

#### Minimum age of employment

Section 59 of the *Employment Ordinance* stipulates:

- (1) No child under the age of twelve years shall be employed in any capacity whatsoever:  
  
Provided that the provisions of this section shall not apply to any such child employed in light work suitable to his capacity in an agricultural undertaking which is owned and operated by the family of which he is a member.
- (2) Any person who employs any child under the age of twelve years in contravention of the provisions of subsection (1) shall commit an offence against this Act.

The *Employment Ordinance* contains other protections relevant to the employment of children, including:

- guarantee of proper and regular payment - s60(1)(a)
- security of residence with parents or guardian – s60(1)(b)

- protection from unhealthy, dangerous or unsuitable employment – s61(1)
- hours of work – s64

It should be noted that as a party to the ILO Minimum Age Convention, Fiji has specified 15 years of age as the minimum age of admission to employment of work.

### Minimum age of marriage

Section 12 of the *Marriage Act 1969* stipulates:

Any person may contract a marriage under the provisions of this Act if such person is, in the case of a male, of the age of eighteen years or upwards, or, in the case of a female, of the age of sixteen years or upwards.

### Minimum age of criminal responsibility

Section 14 of the *Penal Code of Fiji* stipulates:

- (1) A person under the age of ten years is not criminally responsible for any act or omission.
- (2) Any person under the age of 12 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission.
- (3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

### **3.2.3 Overview of Education Policies and Programmes**

#### Suva Declaration on Education: Educating the Child Holistically for a Peaceful and Prosperous Fiji

The *Suva Declaration on Education* sets out Fiji's national goals for education for the period 2006-2015. The Suva Declaration sets out a comprehensive list of goals which are based on seven core principles and objectives, including:

1. Children in Fiji need to be provided with educational experiences that will cater for their interests and aspiration as well as preparing them to be competent in a rapidly changing world. Thus the need to adopt a broader social vision with the child at its centre.
2. Education should holistically develop and inculcate in every child the

- fundamental ethical, moral, spiritual, social and democratic values.
3. In developing the curriculum, it should be ensured that it is aligned to the holistic development of the child.
  4. The school is central to the learning and teaching process.
  5. Technical and Vocational Education and Training [TVET] will be given greater prominence in the education system as it will play an important role in the development of the future for children in Fiji.
  6. The development of human resources will be given priority to the training of both teachers and the administrative staff.
  7. The Communities play a vital role in the development of education in Fiji.

The Fiji Human Rights Commission ('**FHRC**') reports that education and training is an important priority for the Government of Fiji. According to the FHRC, education has always accounted for the largest expenditure item in Fiji's national budget.

In Fiji the financing of education is shared jointly by the government and the local community. The government provides grants to subsidise education costs and to provide salaries for teachers. Local communities and parents shoulder the burden of raising the majority of funds necessary to assist the running of schools.

The FHRC reports that national education policies, including the new policy, *Educating the Child Holistically for a Peaceful and Prosperous Fiji*, are designed to ensure that Fiji's international obligations are met, in particular with respect to the Convention on the Rights of the Child, Education for All [EFA] and the MDGs.

The Minister of Education, Ms Temumu Kepa has stated:

The Government is committed to providing a quality education system that is accessible to all, including those in disadvantaged and rural areas. Fiji can be proud of the high net enrolment rate of students in primary schools compared to many countries in the world. There will be a number of strategies to ensure students are retained in secondary schools such as alternative courses, a new curriculum framework, extension of compulsory schooling to Form four and additional professional development of teachers.<sup>360</sup>

### **3.3 Justiciability**

A summary of a complaint received by the FHRC which then proceeded to court is outlined below:

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<sup>360</sup> Ministry of Education, *Educating the Child Holistically for a Peaceful and Prosperous Fiji: Strategic Plan 2006-2008*, p3

### **Abdul Lateef v Suva Muslim Primary School**

The Fiji Human Rights Commission received a complaint from a parent regarding the non-admission of his two children to Suva Muslim Primary School on the basis of the refusal to pay development fees of \$F20 for 2000 and 2001. The complaint claimed that because the Ministry of Education had not approved the fee increase, he should not be required to pay. The efforts of the FHRC to conciliate the matter between the school management, the complainant and the Ministry of Education were unsuccessful.

The FHRC filed a motion and took the matter to the High Court for a declaration, based on a breach of Section 39 of the 1997 Constitution and the Convention on the Rights of the Child. The High Court dismissed the proceedings however, stating that the matter was one better suited to settlement between the parties and that it “need not be spelled out through declarations.”

### Available Remedies and Enforceability

Individuals and groups have a range of options available in seeking redress for matters with respect to the right to education. These include: commencing actions in the civil courts; applying to the High Court for constitutional redress pursuant to Section 43(2) of the *Constitution*; and lodging a complaint with the Fiji Human Rights Commission.

## **3.4 Availability**

### **3.4.1 Expenditure**

#### Government expenditure

The Ministry of Education’s *Strategic Plan 2006-2008* states that the government’s allocation for education funding in the 2006 budget increased to \$301 million. According to the FHRC this figure represents 21 per cent of the national budget. The Ministry reports that seventy-five percent of the budget allocation is for the wages for Fiji’s 10,300 teachers and Ministry of Education employees.<sup>361</sup> Local government authorities are not responsible for education funding.

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<sup>361</sup> Ibid, p9



### Dependence upon school fees

The FHRC reports that government funding for schools is complemented by a range of fees and charges, including general school fees, fees for building services, library facilities, sports facilities, books, recreational and other miscellaneous items. Schools are bound by guidelines which state that any increase of fees must be no more than ten percent or otherwise approved by the Chief Executive Officer of the Ministry of Education.

### Privatisation of the education system

The FHRC reports that the only private primary and secondary schools in Fiji are the International Secondary School and the Christian School. The Ministry of Education's *Strategic Plan 2006-2008* notes, regarding the running of private and non-government schools:

Pre-schools and Special schools are owned and run by grant aided school communities. This is also the case for 99% of Primary schools and 91% of secondary schools. The stakeholders who run these committees included religious organisations, village communities and civil societies. There are also private vocational and tertiary institutes that play a major role in developing higher education.<sup>362</sup>

### International assistance

International assistance for education in Fiji is coordinated by the Ministry of Finance and the Ministry of Education through the Fiji Education Section Programme (FESP) before it is made available to schools. In some instances the Ministry of Foreign Affairs will also be involved in the development of government-to-government agreements for the procuring of international assistance. The Ministry of Education states:

Collaborative partnerships with international donors [are] very important to the successful delivery of educational development and services that will assist in the achievement of education outcomes, broad national goals and most importantly, improved student outcome[s]. Current donor programs involve funding from foreign government agencies such as AusAID, the European Union, New Zealand Aid and JICA.<sup>363</sup>

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<sup>362</sup> Ibid, p11

<sup>363</sup> Ibid

### Role of non-state actors

The FRHC says that non-state actors have a role to play in improving the realisation of the right to education and contributing to equity in educational needs. The FHRC notes that the non-state actors in Fiji are not only international financial institutions or transnationals corporations but also non-governmental organisations and other private and non-profit making organizations in Fiji. Support from other governments is often tied to commitments to structural adjustment programmes such as labour market reform. One of the challenges will be the need to reconsider the nature and role of educational providers and their relationship to students. The FHRC acknowledges that in the context of globalisation, with greater recognition, transparency and mobility of the professions, certain sectors of traditional education are being transformed.<sup>364</sup>

#### **3.4.2 Infrastructure**

The FHRC has provided figures for recent government expenditure on school infrastructure:

<b>Infrastructure for girls boarding schools</b>	
2005	
<ul style="list-style-type: none"> <li>• Jasper Williams High School</li> <li>• Ballantine Memorial School</li> </ul>	\$40,000 \$20,000
<b>Classrooms, library, ablution block, safe drinking water</b>	
2005	
<ul style="list-style-type: none"> <li>• Ba Methodist High School</li> <li>• Ballantine Memorial School</li>   <li>• Lelean Memorial School</li> </ul>	\$14,000 \$10,000 (kitchen) & \$45,000 (library) \$20,000 (upgrading)
2006	
<ul style="list-style-type: none"> <li>• Lelean Memorial School</li> </ul>	\$20,000 (upgrading)
<b>Hostel grants for co-ed schools</b>	
2005	
<ul style="list-style-type: none"> <li>• Primary</li> <li>• Secondary</li> </ul>	\$420, 000 \$470,000
2006	
<ul style="list-style-type: none"> <li>• Primary</li> <li>• Secondary</li> </ul>	\$420,000 \$470,000

<sup>364</sup> An extended discussion on this topic is available in the Fiji Human Rights Commission's response to the questionnaire which is available on the APF website.

Building Grants	
• Primary	\$60,000
• Junior secondary schools	\$500,000
• Secondary schools	\$700,000

### ***3.4.3 Teachers and support staff***

The Ministry of Education notes that there are wide variations in pupil-teacher ratios in schools across Fiji. More teachers are being trained, including initiatives to convert grant-in-aid teachers to be civil servants. According to the Ministry of Education, in the last three years there has been a twenty-five percent increase in the number of trained and qualified primary school teachers and a fifteen percent increase in the number of trained and qualified secondary education teachers. These are teachers who have attained a Bachelor's degree with specialist teacher training qualifications. The Ministry of Education reports that ninety-six percent of secondary school teachers and ninety-eight percent of primary school teachers are qualified. A higher proportion of female teachers have at least a bachelor's degree.

### ***3.4.4 Teaching facilities and materials***

The Ministry of Education coordinates the provisions of school classrooms, laboratories and workshops. Requests from schools are prioritised by the Ministry in accordance with the government's budget. The provision of books, writing materials, information and technology equipment and sporting equipment is usually the task of School Committees. The government provides minimal financial support for these expenses. Under the Affirmative Action Programme, selected schools may qualify for additional grants for a range of facilities, resources and materials.

## **3.5 Accessibility**

### ***3.5.1 Non-discrimination***

Section 38 of the *Constitution* stipulates:

- (1) Every person has the right to equality before the law.
- (2) A person must not be unfairly discriminated against, directly or indirectly, on the ground of his or her:

- (a) actual or supposed personal characteristics or circumstances, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability; or
- (b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others; or on any other ground prohibited by this Constitution.

Section 17(3)(j) of the *Human Rights Commission Act 1999* prohibits discrimination in “access to, and participation in, education.”

*The Prisons and Corrections Act 2006* contains a number of provisions relevant to issues of non-discrimination, equal treatment and equality of opportunity in education for prisoners. Section 32(b) of the *Act* provides:

Arrangements shall be made for the provision of other medical and related services, in accordance with any relevant policy of programme of the Ministry of Health, including:

- (b) public awareness and education programmes

With respect to approved prison labour, Section 43(1) of the *Act* provides:

Every convicted prisoner may be required to undertake labour, within or outside a prison, in any labour that may be prescribed by Regulations or in Commissioners Orders, which shall:

- (a) have due regard to the need to provide meaningful rehabilitation of prisoners, with an emphasis on vocational training being provided;
- (b) in the case of female prisoners, be of a type that is appropriate for women to undertake;
- (c) be aimed at providing relevant skills to prisoners so as to enhance their opportunities after discharge;

Under Section 44 (social justice and affirmative action) of the *Constitution*

- (1) The Parliament must make provision for programs designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to:

- (a) education and training

Pursuant to Section 44 of the Constitution is the *Social Justice Act 2001* under which the Government of Fiji has established an Affirmative Action Programme. The Programme contains a range of programmes administered by various government departments, including the Ministry of Education. The individual programmes identify the target persons and/or groups; eligibility

criteria; programme goals; means of assistance; and performance indicators.<sup>365</sup>

### **3.5.2 Gender parity and gender equality**

National Goal 1.3 of the *Suva Declaration on Education* states:

Gender equality: where men and women, boys and girls are given equal opportunities in all areas of education.

The FHRC has provided an overview of the achievements, current initiatives and future priorities of the Government of Fiji with respect to improving gender parity and gender equality. To date, Fiji has developed gender-specific curriculum; it has reviewed TVET and non-formal education programmes; the curriculum review committee is focussing on gender bias in education curriculum; and it has conducted gender-awareness seminars. Current initiatives include developing gender awareness programmes for curriculum and resource writers; providing training in gender equity to teachers, school principals and senior school management personnel; and the training and recruitment of student counsellors.

Future priorities as identified by the government include: improved access to qualitative data and improved evaluation of gender disparities in education in Fiji; improved career counselling for female students to address traditional attitudes and provide broader career choices; review of school curriculum and materials for gender bias.

### **3.5.3 Physical accessibility**

The Ministry of Education has noted the disparity of access to education between urban and rural areas as a challenge for the government.

The low [enrolment] rates in Secondary indicate high proportions of students being sent to urban schools for secondary education. There are also low enrolment[s] for pre-school, special schools and TVET in rural and remote locations due to lack of centres. In urban centres, there are high numbers of students who dwell in low socio-economic areas such as squatter settlements and over-populated housing areas.<sup>366</sup>

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<sup>365</sup> Schedule (Section 4) Affirmative Action Programs, *Social Justice Act 2001*

<sup>366</sup> Ministry of Education, *Strategic Plan 2006-2008*, p10

In rural and remote communities, poor quality infrastructure including roads, electricity and water impact upon access to education facilities. Under the *Social Justice Act 2001*, the Ministry of Education has established an affirmative action programme to improve education in rural areas and disadvantaged schools.<sup>367</sup> Under the programme, financial assistance is provided by the government to school management to improve school facilities and a special allowance and incentive payment is offered to attract qualified and experienced teachers.

### Students with disabilities

Students with disabilities are generally educated in schools in urban areas where facilities tend to be more appropriate. The Ministry of Education has a special education affirmative action programme which is targeted at students with physical, mental and intellectual disabilities. The programme includes the provision of dedicated equipment and resources; development of education policies prioritising special education needs; improved training for special education teachers; and the building of schools which provide improved access for students with disabilities.<sup>368</sup>

### **3.5.4 Economic accessibility**

#### Primary education

The FHRC says that although primary education is free and compulsory, it is not monitored adequately by the Ministry of Education. The FHRC notes that the government has adopted a range of initiatives to reduce the financial burden on the community for primary education. The government has made changes to the formula which is applied for cost-sharing arrangements with respect to primary education. Under the formula it is expected that government contributions to school fees will increase until free primary education is achieved. Other initiatives include: introduction of financial management training for school administrators and the introduction of standard procedures for the auditing of school accounts; payment of fee free grants to 723 schools by the Ministry of Education; provision of boarding facilities at schools and per capita grants; assistance with furniture grants and transport subsidies; and conduct of awareness programmes to assist parents in motivating their children to attend school. The FHRC notes that there is a need

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<sup>367</sup> Program No. 3, Schedule (Section 4) Affirmative Action Programs, *Social Justice Act 2001*

<sup>368</sup> Program No. 5, Schedule (Section 4) Affirmative Action Programs, *Social Justice Act 2001*

to ensure that the formula for tuition fee-free grant is reviewed to avoid the widening gap between small/medium schools and large schools.

School fees, charges and other costs imposed on parents or guardians for primary education. Extent of financial assistance available for the completion of primary education

The Ministry of Education awards grants to schools based on four enrolment categories:

Category	Number of Students	Grant Amount
A	10-49 students	\$2,500 per year
B	50-99 students	\$4,000 per year
C	100-149 students	4,500 per year
D	150+ students	\$30 per student per year

According to the FHRC, schools can also levy parents for schools fees however this has to be approved at an annual general meeting, the minutes of which should accompany a formal request to be submitted to the Chief Executive Officer of the Ministry of Education.

Secondary education

Secondary education is neither free nor compulsory in Fiji. The Ministry of Education pays the following grants to secondary schools:

<b>Tuition Grants</b>	Forms 1-2 : \$90/student/year	Forms 3-4 : \$90/student/year	Forms 5-6 : \$165/student/year
<b>Per-Capita Grants</b>	\$8/student/year if school teaches both Ind/Arts & Home Economics	\$7.50/student/year if schools teach either of the two subjects	\$7/student/year if schools teach none of the two subjects
<b>Boarding per-capita</b>	\$45/student/year.		

School fees, charges and other costs imposed on parents or guardians for secondary education. Extent of financial assistance available for the completion of secondary education

Apart from the grants from the Ministry of Education, schools can levy parents with a wide range of fees to cover administration, books, library services, buildings, sports and recreation activities and other miscellaneous costs. Similarly with primary schools, secondary school fees have to be approved at an annual general meeting, the minutes of which should accompany a formal request to be submitted to the Chief Executive Officer of the Ministry of Education.

### Higher education

The University of the South Pacific's *2006 Calendar* provides a guide to the cost of higher education in Fiji.<sup>369</sup> In addition to the cost of tuition, students are required to pay a general service fee as well as fees for books, residential and dining facilities, the health service, the library and student academic services. Tuition expenses vary between programs and courses. For example: the Bachelor of Arts and the Bachelor of Science programmes require the completion of twenty courses. With course costs ranging from \$FJ395-655 per course, these programmes could be expected to cost more than \$FJ10,000.<sup>370</sup>

#### **3.5.5 Non-formal education**

Access to non-formal education in Fiji is available through a range of institutions including: the Fiji Institute of Technology's Open and Distance learning Centre; the Pre-Degrees Studies Unit and the Non-Formal Section of the Distance and Flexible Learning Support Centre at the University of the South Pacific; and Early Childhood Centres which are located throughout Fiji.

The FHRC reports that following the endorsement of the *Programme of Action of the International Conference on Population and Development (ICPD)* in Cairo in September 1994, the Government of Fiji pledged itself to promoting non-formal education for young people and guaranteeing equal access for women and men to literacy centres.

## **3.6 Acceptability**

### **3.6.1 Quality education and minimum standards**

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<sup>369</sup> University of the South Pacific, *2006 Calendar*, Suva (2006)

<sup>370</sup> *Ibid*, p93 and p421



## Relevant Legislation, Government Policies and Programmes

In Fiji the national institutions responsible for the implementation of the right to education are the Ministry of Education and the FHRC.

## Measures Adopted by Education Authorities

*Standards Monitoring in Schools: Policy Framework and Guides* is a document developed by the Ministry of Education. The rationale for the *Policy Framework* is outlined as follows:

Standards monitoring in schools assures all stakeholders that schools are making a significant contribution to the intellectual, physical, social, emotional, spiritual, moral and cultural growth of their students. It assures stakeholders that schools are overtly focussing on student learning in a well-established culture of problem-solving, responsiveness and continuous improvement. It assures stakeholders that schools are engaged in quality self-assessment and improvement processes that lead to improved student achievement in all aspects of their lives.<sup>371</sup>

The Policy Framework identifies a wide range of key review areas including: school leadership; student achievement; staff management; curriculum; teaching and learning; school management; learning environment; community involvement; and school responsiveness.

## Indicators

The Ministry of Education has prepared a detailed list of qualitative and quantitative performance indicators and measures which are linked to the strategic development initiatives (Outcomes 1-10) of its 2006-2008 Strategic Plan. The Ministry of Education draws upon information which is compiled by the Bureau of Statistics, including the number of students enrolled in primary and secondary schools; the gender breakdown of children in school; the number of teachers in primary and secondary schools; and the student/teacher ratio.

### **3.6.2 Discipline**

Corporal punishment was declared invalid and unconstitutional by the High Court of Fiji in 2001 in *Naushad Ali v State*.<sup>372</sup> In a submission to the High Court, the Fiji Human Rights submitted

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<sup>371</sup> Ministry of Education, *Standards Monitoring in Schools: Policy Framework and Guides*, p2

<sup>372</sup> C.C.P.No. 0001 of 2001L

that all corporal punishment was a breach of Section 25(1) of the *Constitution*. In its judgment the High Court said:

As with corporal punishment under the Penal Code there is no consistent and coherent principle as to the basis of corporal punishment in schools.

....

It is quite clear that the common law rights of parents to discipline their children cannot be compared to disciplining of children by teachers. Teachers have no such rights. It is questionable whether parents can delegate such rights. In any case the authority in Fiji is derived from an administrative circular issued by the Ministry of Education. Even if the motive for corporal punishment in schools is to achieve some laudable objectives the punishment cannot be authorised by law.<sup>373</sup>

### **3.6.3 Curriculum**

#### Overview of Curriculum Determination

The Fiji National Curriculum Framework (Kindergarten-Form 7) has been developed by the Ministry of Education in consultation with a wide range of stakeholders including school leaders, kindergarten, primary, secondary and special education teachers as well as representatives from tertiary institutions and community organisations.

#### Incorporation of Human Rights Education

The FHRC reports that it has been principally responsible for the development of human rights education content for school curricula. It notes that the Ministry of Education is responsible for the implementation of school curriculum but that the incorporation of human rights education as part of the curriculum has been delayed due to the restructure of the National Curriculum Framework.

At the tertiary level, the FHRC reports that it is working in partnership with the University of the South Pacific to establish a Human Rights Research Centre which will provide a focal point for human rights research and learning for both academics and students.

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<sup>373</sup> A copy of the judgment and the submission from the Fiji Human Rights Commission is available at: <[http://www.humanrights.org.fj/information\\_services/submissions\\_judgements.html](http://www.humanrights.org.fj/information_services/submissions_judgements.html)>

### **3.6.4 Parents / Legal Guardians**

Section 3 of the *Education Act 1978 (Cap 262)* provides:

The Permanent Secretary, in the exercise and performance of the powers and duties conferred or imposed on him under the construction of this Act, shall have regard to the general principle that, so far as is compatible with the provisions of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils should be educated in accordance with the wishes of their parents.

### **3.6.5 Religious and cultural practices, languages of minority groups**

Section 35 (religion and belief) of the *Constitution* stipulates:

- (1) Every person has the right to freedom of conscience, religion and belief.
- (2) Every person has the right, either individually or in community with others, and both in public and in private, to manifest his or her religion or belief in worship, observance, practice or teaching.
- (3) The right set out in subsection (2) extends to the right of religious communities or denominations to provide religious instruction as part of any education provided by them, whether or not they are in receipt of any financial assistance from the State.
- (4) The right set out in subsection (2) may be made subject to such limitations prescribed by law as are necessary:
  - (a) to protect:
    - (i) the rights or freedoms of other persons; or
    - (ii) public safety, public order, public morality or public health; or
  - (b) to prevent a public nuisance.
- (5) Except with his or her consent or, in the case of a person under the age of 18, the consent of a parent or guardian, a person attending a place of education is not required to receive religious instruction or to take part in or attend a religious ceremony or observance if the instruction, ceremony or observance relates to a religion that is not his or her own or if he or she does not hold any religious belief.

Section 39 (education) of the *Constitution* relevantly provides:

- (2) Every religious community or denomination and every cultural or social community has the right to establish and maintain places of education and to manage them, whether or not it receives financial assistance from the State.
- (3) The admission policy of a place of education referred to in subsection (2) may be administered on the basis of the need to maintain its special character but, subject to that, those concerned in its management must ensure that it is open to all qualified students without discrimination on any ground prohibited by this Constitution.

Section 4 of the *Constitution* provides that the English, Fijian and Hindustani languages have equal status in the State. English is the medium of instruction in schools. Fijian and Hindustani languages are optional subjects taught in schools.

The situation regarding language and cultural education varies according to the student population, and according to the policy formulated by each school. Where schools are exclusively attended by Fijian or Indian students, all core subjects in classes one and two are conducted in the vernacular language of the student with English being taught as a separate subject. From Year 3, all instruction is in English. In schools with a combination of races, all subjects are taught in English from Year 1.

### **3.7 Adaptability**

#### **3.7.1 Education for women**

##### Legislation

Aside from provisions in the Constitution which provide for the right to education and equality of access to education for women and girls, there is no legislation in Fiji which is specifically directed to women with respect to education. The FHRC notes that Fiji is a party to the CRC and CEDAW, under which it has committed itself to protecting and promoting the right to education and equality of access to education for women. As noted above, Section 12 of the *Marriage Act* 1969 stipulates sixteen as the minimum age of marriage for women.

#### **3.7.2 Special Needs Education**

The FHRC reports that special needs schools have been established in urban and rural areas to cater for the needs of children with special education requirements. The FHRC reports that it is currently investigating a draft affirmative action policy for special education.

### **3.8 Activities of the FHRC**

#### **3.8.1 Mandate and Methods**

The mandate of the Fiji Human Rights Commission for the protection and promotion of economic, social and cultural rights is grounded in Section 39 and Section 42 of the *Constitution*

and the *Human Rights Commission Act 1999*.

The approach of the FHRC to the protection and promotion of human rights is guided by its Strategic and Corporate Plan and its Education Activities Plan. The Media and Promotion Team's activities include: presentations to a private and public sector institutions, community organizations and educational institutions; press releases and a regular newsletter (Rights Quarterly); participation in radio talk-back programs; and the production of videos and photographs. The Legal and Policy Team's activities include: development of submissions on legislation to Parliament; acting as independent observers in discussions with Government Ministries and non-governmental organisations on the process of ratification of international instruments; and acting as advisors to the Government on the consistency of government laws, policies and programs with international human rights standards.

### **3.8.2 Investigation of Complaints**

FHRC:

- A). Complaints on Right to Education - refer Annual Reports of 1999-2005
- B). Breakdown of complaints - refer to Annual Reports of 1999-2005
- C). Case Studies - Cs39 Right to Education -Abdul Lateef v. Fiji Muslim League & Anor.

### **3.8.3 Research / Public Inquiries**

The FHRC has not conducted any research or public inquiries specifically on the issue of the right to education. In December 2001 however it did hold a joint national workshop with the Fiji Teachers' Federation Confederation on the development of a national action plan for human rights education.

The FHRC has recently engaged a consultant to conduct investigations into whether the Ministry of Education's policy on the scaling of marks violates the right to education as provided under the *Constitution* and the *Human Rights Commission Act*.

#### **3.8.4 Education and Awareness Campaigns**

The FHRC reports that it has conducted a number of awareness and education programs with the Ministry of Education and its schools and a range of other organisations including UNICEF and the UNDP. The programs provide general human rights training with a specific focus on the Bill of Rights contained in the Constitution. The FHRC organised a poster competition with the right to education featuring as a theme of the competition. Further information about the FHRC's education and awareness activities is available from its website at: [www.humanrights.org.fj](http://www.humanrights.org.fj).

#### **3.8.5 Human Rights Education activities**

The FHRC has conducted a wide range of human rights education activities including through its publications and media activities. Its publications include draft sexual harassment policy guidelines, draft genuine occupational and genuine justifications guidelines, disciplinary services handbook, annual report, *Rights Quarterly*, calendars, and 'frequently asked questions.' These publications are distributed to stakeholders and handed out during all awareness programs. A number of publications are available in three languages for easier understanding and proper dissemination of information. The FHRC has also disseminated information through the media with press releases, feature articles and participation in radio broadcasts. The FHRC's training activities can also be conducted in any of the other two languages (Fijian or Hindi) depending on the audience and the level of understanding thereby allowing human rights training to be accessible to remote communities.

#### **3.8.6 Annual Reports**

The FHRC's Annual Reports regularly include cases studies referring to complaints relating to the right to education under Section 39(1) of the *Constitution*. Annual Reports are available on the FHRC's website at: [www.humanrights.org.fj](http://www.humanrights.org.fj)

#### **3.8.7 Intervention in court proceedings**

The FHRC intervened as an amicus curiae in the case of *Nausad Ali v State* in 2001 (see above) in which the High Court of Fiji declared the use of corporal punishment unconstitutional. The

FHRC reports that it may be taking a case on its own motion on the right to education and non-discrimination in the near future.

### ***3.8.8 Contribution to Government reports to treaty body committees***

The FHRC reports that it has been invited to participate in the writing of government reports to treaty body committees but has refrained from doing so in order to maintain its independence. The FHRC does not prepare shadow reports for treaty body committees as it believes this role is more appropriate for non-governmental organisations. The FHRC does however make itself available to provide information about its activities, policies and program for inclusion in government and shadow reports. The FHRC reports that it has received a draft copy of the CRC report from the Ministry of Women, Social Welfare and Poverty Alleviation for its comments which it is the process of finalising.

### ***3.8.9 Collaboration with Civil Society***

The FHRC reports that it has worked in close collaboration with a range of local and international organisations based in Fiji on the issue of the right to education.

In the development of the NGO Status Report on the Status of Women (12 January 2002) and the NGO Report on the International Convention on the Elimination of All Forms of Racial Discrimination (January 2002) the FHRC has provided advice to and worked with the Fiji Women's Rights Movement, the Fiji Women's Crisis Centre and the Ecumenical Centre for Research Education and Advocacy. The FHRC has also worked with the teacher's union.

In terms of international organisations, the FHRC has worked with UNDP on Citizenship Education and the Save the Children Fund through its outreach program. The FHRC has a child-rights desk officer who conducts legal training for the Save the Children Fund as and when required.

## 4. India

### 4.1 International Law

India is a party to the ICESCR,<sup>374</sup> CERD,<sup>375</sup> CEDAW<sup>376</sup> and the CRC.<sup>377</sup> India is not a party to the UNESCO Convention Against Discrimination in Education.

India is not a party to the ILO Minimum Age Convention or the Worst Forms of Child Labour Convention.

### 4.2 National Law

#### 4.2.1 Constitution

The following provisions of the *Constitution of India 1950* are relevant to the right to education:

#### **Part IV. Directive Principles of State Policy**

##### Article 21A<sup>378</sup> - Right to education

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

##### Article 28 - Freedom as to attendance at religious instruction or religious worship in certain educational institutions

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

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<sup>374</sup> India acceded to the ICESCR on 10 April 1979.

<sup>375</sup> India ratified the CERD on 3 December 1968.

<sup>376</sup> India ratified the CEDAW on 9 July 1983.

<sup>377</sup> India acceded to the CRC on 11 December 1992.

<sup>378</sup> Ins by the Constitution (Eighty-sixth Amendment) Act, 2002, s. 2 (w.e.f. the date to be notified).



Article 29 - Protection of interests of minorities

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30 - Right of minorities to establish and administer educational institutions

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.<sup>379</sup>

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

**Part IV. Directive Principles of State Policy**

Article 41 - Right to work, to education and to public assistance in certain cases.

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45 - Provision for free and compulsory education for children

The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 46 - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

**Part XVII. Official Language (Chapter IV. Special Directives)**

Article 350A - Facilities for instruction in mother-tongue at primary stage

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of

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<sup>379</sup> Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 4 (w.e.f. 20-6-1979).

education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Article 15 of the *Constitution* is relevant to non-discrimination and access for all:

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -  
(a) access to shops, public restaurants, hotels and places of public entertainment; or  
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) or article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 51 of the *Constitution* provides a mandate for the courts to endeavour to interpret the *Constitution* and laws in accordance with the provisions of the international instruments ratified by India:

#### **Part IV. Directive Principles of State Policy**

Article 51 - Promotion of international peace and security

The State shall endeavour to -

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and
- (d) encourage settlement of international disputes by arbitration.

Additionally, Article 253 of the *Constitution* empowers Parliament to make laws to implementing international agreements:

#### **Part XI. Relations Between the Union and the States (Chapter I Legislative Relations)**

Article 253 - Legislation for giving effect to international agreements

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

#### **4.2.2 Legislation**

The subject of education is listed in Entry 25 of List III (Concurrent List) and Entries 63 to 66 of List I of the *Constitution* providing legislative competence to the State and Union Governments in matters of education. The Union Government is responsible for higher education and technical education, while the State Governments are responsible for primary, secondary and higher-secondary education. Further to this the States have a wide variety of statutes relevant to primary, secondary and higher-secondary education.

##### Primary Education

Beyond the aforementioned State responsibility and education acts, the Apex Court in *Mohini Jain v. State of Karnataka* (AIR 1992 SC 1858) extended the scope of Article 21 of the *Constitution* to include the 'right to education' under the right to life. In *J.P. Unnikrishnan & ors. v. State of Andhra Pradesh & ors., etc.* [Judgments Today, 1993 (1) SC 474] the Court later declared education of children up to the age of fourteen years as a fundamental right.

##### Secondary and Higher Education

Secondary education in India is controlled by the Central Board of Secondary Education and the State Ministries of Education. The *University Grants Commission Act* 1956, the *Institutes of Technology Act* 1951 and the *All India Council for Technical Education Act* 1987 are amongst the most important statutes relating to higher education in India. There are also various statutes governing centralised universities responsible, for example, the Indira Gandhi National Open University was established under the *Act of Parliament, Act 50 of 1985*.

##### Minimum Age of Employment

Articles 23 and 24 of the *Constitution* provide protection against exploitation such as human

trafficking, beggar<sup>380</sup> and other forced labour and child employment in factories. These articles are premised upon preventing the State or others from compelling a person to work against his or her will or to accept employment of a hazardous nature below the age of 14 years.<sup>381</sup> In *M.C. Mehta v. State of Tamil Nadu & ors.* (AIR 1997 SC 699) the Apex Court issued extensive directions beyond prohibiting children from working in hazardous employment and created new penalties for actually employing such children. One such direction was the requirement of the withdrawal of children working in hazardous industries while ensuring their admission into formal or non-formal schools.

### Minimum Age of Marriage

Under the *Child Marriage Restraint Act 1929* the minimum age of marriage for women is 18 years and 21 years for men. The NHRC reports that it has proposed major amendments to the Act as a means of preventing the practice of child marriage.

### Minimum Age of Criminal Responsibility

Under Section 82 of the *Indian Penal Code* children aged below seven are considered incapable of committing a criminal offence. Section 83 of the *Penal Code* stipulates that no act by a child aged between seven and twelve will constitute an offence if it can be shown that the child in question lacks sufficient maturity of understanding to judge the nature and consequences of his or her conduct.

## **4.2.3 Overview of Education Policies and Programmes**

### Educational Framework

*The National Policy on Education* (1986), as modified in 1992, was developed in accordance with the constitutional guarantee to provide basic education to all. The Central and State governments share responsibility for education and operate in partnership and separately in developing education policy and implementing programmes and services. There is a current trend towards

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<sup>380</sup> Under the old zamindari system, the tenants were sometimes forced to render free service to their landlords. This was called begar.

<sup>381</sup> This is the age for compulsory education stated in the terms of Article 21A.

decentralisation in the delivery of education services with significantly enhanced role for local bodies, community organisations and voluntary agencies.

Following its ratification of the CRC in 1992 the Government of India developed a *National Plan of Action for Children* which emphasised the importance of education for children. Similarly, the *State Plans of Action for Children* emphasise the importance of education. The Central and the State Governments are therefore focussing on all aspects of education including: early child care education, elementary education, secondary education, gender equality in education, education of children with special needs, vocational education and the education of Scheduled Castes, Scheduled Tribes, Minorities and other disadvantaged groups.

The government established a Department of Elementary Education and Literacy, which together with the Department of Secondary and Higher Education, has introduced initiatives to meet human resource development needs. The provision of *Universal Elementary Education (UEE)* is a salient feature of India's *National Policy on Education*. Other initiatives include: the *District Primary Education Programme (DPEP)*; the provision of food grains and cooked meals to children under the *National Programme for Nutritional Support for Primary Education* (the Mid-Day Meals Programme); teacher recruitment and provision of teaching-learning material under *Operation Blackboard*. *Lok Jumbish* and *Shiksha Karmi* in Rajasthan, *Gyankalash* in Himachal Pradesh and the *Nali Kali* programme in Karnataka are also State specific initiatives. Likewise, the *Janshala* programme is a collaborative effort of the government and five United Nations agencies (UNDP, UNICEF, UNESCO, ILO and UNFPA). The programme supports efforts towards achieving UEE, covering 139 blocks in nine States of India. The programme has been instrumental in establishing a large number of alternative schools in small and remote communities, in addition to evolving strategies and establishing schools with community participation.

In 2000 the government launched *Sarva Shiksha Abhiyan* (Education for All) to achieve the goal of UEE through a time bound integrated approach in partnership with States. The programme also aims to provide elementary education to all children in the 6-14 age group by 2010. *Sarva Shiksha Abhiyan* has particular focus on the educational needs of girls, Scheduled Castes and Scheduled Tribes and children in other difficult circumstances. An important component of *Sarva Shiksha Abhiyan* is the Education Guarantee Scheme and Alternative and Innovative

Education, which is specifically designed to provide access to elementary education access for children living in communities without schools and other out-of-school children.

The government has established a *National Charter for Children* which has the objective of ensuring that no child remains illiterate. The government has committed itself to achieving universal primary education and gender parity in education in accordance with the Millennium Development Goals.

### **4.3 Justiciability**

#### Detail of National Court Cases

In Kerala Education Bill 1957 (1959 SCR 995) the Supreme Court emphasized that a citizen cannot be denied admission to an educational institution that is either maintained by the State or in receipt of State funding solely on the grounds of religion, race, caste or language.

In the two cases of Ahmedabad St. Xavier's Society v. State of Gujarat [1974 (1) SCC 717] and St. Stephen's College v. University of Delhi [1992 (1) SCC 558] the Court held that minorities enjoyed special status in matters relating to the establishment of educational institutions and securing the rights of the children of minorities.

In the two cases of Islamic Academy of Education v. State of Karnataka [2003 (6) SCC 697] and T.M.A. Pai Foundation v. State of Karnataka (AIR 2003 SC 355) the Court provided guidelines regarding admission and reservation for children as well as the selection of teachers for educational institutions.

In P.A. Inamdar v. State of Maharashtra [2005 (6) SCC 537] the Supreme Court accorded wide freedom to the operations of private non-State funded educational institutions and placed them beyond State control and regulation.

In Prof. Yashpal v. State of Chhattisgarh [2005 (5) SCC 420] the Court emphasised the importance of maintaining the overall quality and standard in institutions of higher education and accorded primacy to the Union Government's policies on education.

## Remedies

Under Articles 32, 226, 227 of the Constitution, remedies are available to citizens for denial of the constitutionally guaranteed rights to education.

### **4.4 Availability**

#### ***4.4.1 Expenditure***

The Central and State governments are responsible for the majority of education funding in India. Education at the primary, secondary and higher levels is also funded by non-State private enterprises including minority institutions. Since private education initiatives are undertaken by a diverse number of organisations it is difficult to calculate their financial contributions to the education sector. The Central Government provides funding for Central Universities through the University Grants Commission. The State Government Education Departments provides all other types of grants required for the operation of State Universities as well as primary, secondary and higher secondary education institutions. The Central Government also allocates funding to non-formal education.

The 2004-05 Budget Estimate records that the combined total expenditure on education by Central and State Governments was 3.49% of GDP. Central Plan Allocation for education was increased from Rs.8,225 crore (approx. \$USD1.6 billion) in the 2004-05 Budget Estimate to Rs.15,244 crore (approx. \$USD3 billion) in the 2005-06 Budget Estimate with Rs.12,242 crore (approx \$USD2.4 billion) for elementary education, Rs.2,90 crore for adult education and Rs.2,712 crore for secondary and higher education.

## Education Funding Models

Fees are not charged at the primary level of schooling in the State funded schools. Students at these schools are also provided with textbooks, uniforms and mid day meals in a number of States. The provision of land and school facilities by the government is contingent on the expectation that the school will provide concessional education and fixed seats for female

children and children from poor socio-economic strata. In private schools children pay fees at the pre-primary and primary level, as privately run institutes do not receive land, water and other necessary facilities at Government subsidised rates. The same distinction between State and private educational institutions occurs at the secondary, higher secondary and university education levels.

The trend towards establishing a 'deemed university' under the University Grants Commission's rules and regulations by private parties is an increasingly common approach to meeting increasing educational needs. These privately-run schools, colleges and universities have considerable freedom in matters relating to fee structures, facilities, service conditions and staff salaries. There are also a large number of minority educational institutions managed by Christian, Muslims, Sikhs and other regional groups which enjoy constitutional status by virtue of Article 29 and 30 of the *Constitution*.

### International Assistance and Cooperation

Foreign contribution is governed by the *Foreign Contribution (Regulation) Act* 1976. Under the Act an applicant organisation is required to be a legal entity (i.e. registered as a society, trust or charitable organization) and to have been operating for a period of at least three years. An organisation can accept foreign contributions only after obtaining prior permission from the relevant government department. Every organisation in receipt of foreign contributions must disclose the nature of the contribution within a stipulated time from the closing of the financial year.

### Role of Non-State Actors

The National Human Rights Commission of India ('**NHRCI**') observes that non-state actors such as international financial institutions and trans-national corporations have a marginal role in the realisation of the right to education as all foreign funding is governed by the *Foreign Contribution (Regulation) Act* 1976. In this regard, accredited non-governmental organisations and minority institutions can be distinguished from international financial institutions and trans-national corporations because the government allows them to receive foreign contributions which can be used to support legitimate educational institutions.



#### ***4.4.2 Infrastructure***

The NHRCI reports that the Central and State governments are working to improve the quality of classrooms, libraries, and sanitation and safe drinking water facilities at all education institutions. In India there are both single-sex schools and co-educational schools. There is currently a trend towards increased co-educational instruction at the primary level. In this regard the Government has committed to ensuring that there are a fixed percentage of female children in co-educational schools (as well as increasing the number of women attending higher education). The government provides separate school hostels for both girls and boys. Separate hostels have also been provided for tribal students. Student hostels at universities and colleges include recreation facilities and common rooms.

#### ***4.4.3 Teachers and support staff***

The minimum qualification required of school teachers is a Bachelor of Education degree and a basic degree in a specific field. University and college teachers require a research degree with a consistently high academic record. The NHRCI reports that the government places a high priority on ensuring that only qualified teachers are recruited. A network of institutions including the National Council of Teacher Education, State Council of Educational Research and Training, and the National Council for Educational Research and Training are collectively responsible for the development and professional development of teachers. The NHRIC notes that there is generally a large source of qualified and competent teachers at all levels of education in India.

#### ***4.4.4 Teaching Facilities and Materials***

India has developed a significant education infrastructure in the last five decades of its independence. According to the NHRCI teaching facilities such as classrooms, books and writing materials are being continuously upgraded to meet current needs and future requirements. Adequate research laboratory facilities and libraries are being progressively updated at the institutional and national level. The government and educational institutions, including the University Grants Commission, provide information and technology resources, including intranet and internet networks for colleges and universities. The NHRCI reports that sport and recreation

facilities and equipment are being upgraded at the primary, secondary and higher education levels.

## **4.5 Accessibility**

### ***4.5.1 Gender Parity and Gender Equality***

The *National Policy on Education* and the *National Policy for the Empowerment of Women* (2001) have the objective of achieving gender parity and gender equality in education. Through the specially targeted programme *Sarva Shiksha Abhiyan* (SSA) launched in 2000, efforts are being made to reach out to women and girls. The SSA programme is part of the 10th Five Year Plan (2002-07). Other government programmes<sup>382</sup> designed to achieve gender parity and gender equality in education include:

- The Mahila Samakhya Programme (Education for Women's Empowerment)
- Sarva Shiksha Abhiyan (Education for All)
- District Primary Education Programme
- Universalisation of Elementary Education
- Early Childhood Care and Education Programmes, which include the Integrated Child Development Scheme (ICDS), Crèches, Balwadis, Child to Child Programmes
- Kasturba Gandhi Balika Vidyalaya Scheme
- Balika Smridhhi Yojana

### ***4.5.2 Physical Accessibility***

Article 19 (1)d of the *Constitution* guarantees citizens the right to move freely throughout the territory of India thereby allowing students to seek education in any part of the country. The NHRCI notes that the government's education planning has taken into consideration the need to ensure that education facilities are located within reasonable physical access to people from urban, rural and remote communities as well as being accessible to people living with disabilities. In remote areas such as the North Eastern State of India (also an area of insurgency), the government provides routine support for educational accessibility. The government allocates an

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<sup>382</sup>For details on these programmes please refer to <http://www.wcd.nic.in> and <http://www.education.nic.in>

additional 10 per cent in grants to educational institutions and conducts surveys of institutions located in remote and hill areas. The NHRCI reports that the government is working to improve access to education facilities for students with disabilities through the construction of specially equipped schools and the placement of ramps and specially designed facilities such as toilets in all schools.

### **4.5.3 Economic Accessibility**

#### Primary Education

Primary education is free and compulsory.<sup>383</sup> Please refer to the discussion above on government expenditure.<sup>384</sup>

#### Secondary Education

In India secondary education is neither compulsory nor free for all. Secondary education serves as a bridge between elementary education and higher education and prepares young people aged 14-18 for entry into higher education or work situations. The *National Policy on Education* states that access to secondary education will be widened with emphasis on the enrolment of girls, Scheduled Castes and Scheduled Tribes, particularly in science, commerce and vocational streams. Boards of Secondary Education are being reorganised along with efforts to improve computer literacy. A Committee of the *Central Advisory Board of Education (CABE)* has been established to prepare a strategy for ensuring universal access to of secondary education.<sup>385</sup>

#### Higher Education

Until recently higher education fees were highly subsidised by the government at the graduate and post graduate level (including research degree programmes). In recent years however, there has been a steep rise in the fee structure at the graduate level cutting across all areas of studies ranging from traditional courses (i.e. – science, arts, commerce) to vocational and professional courses with fees of R3000 to R7000 per annum. The trend is towards a continuing upward

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<sup>383</sup> *Constitution*, Article 21A

<sup>384</sup> Additional information is also available at <http://www.education.nic.in>

<sup>385</sup> Additional information is also available at <http://www.education.nic.in>

progression in fees. Moreover, the cost of higher education varies from subject to subject, region to region, and university to university. Furthermore, the cost of technical education including medical and professional educations has increased considerably in the last decade. Financial assistance for the completion of higher education is available through low-interest private bank loans to people and for all fields of study.

#### **4.5.4 Non-formal Education**

The *Scheme of Non-Formal Education* (NFE) was introduced in 1977-78 on a pilot basis and subsequently expanded to focus on out-of-school children in the 6-14 year age group who have remained outside the formal system due to socio-economic and cultural factors. Due to some inherent deficiencies in the Scheme, in 2000 the programme was renamed the *Education Guarantee Scheme* and *Alternative and Innovative Education*. The *National Literacy Mission* was established in 1988 to impart functional literacy to non-literates in the 15-35 year age group. The *National Literacy Mission* fully recognises the important partnership role of non-governmental organisations in delivering literacy training.

## **4.6 Acceptability**

### **4.6.1 Quality Education and Minimum Standards**

#### Relevant Institutions

The NHRCI reports that measures adopted by education authorities to provide quality education and to establish minimum education standards and an effective system for monitoring standards include.<sup>386</sup>

- The Central Advisory Board of Education (the highest advisory body to advise the Central and State Governments on education)
- The National Policy on Education and Programme of Action (1992)
- State Programmes of Action
- The Constitution of the Bharat Shiksha Kosh

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<sup>386</sup>For details please see the website of the Department of Secondary and Higher Education, Ministry of Human Resource Development, Government of India <http://www.education.nic.in>

- National Commission on Higher Education
- Accreditation and affiliation of the Central Board of Secondary Education, the All India Council for Technical Education and the University Grants Commission.

### Indicators

Indicators used include the rate of enrolment, drop-out rate, gender disparity in enrolment, availability of neighbourhood institutions, mid-day meals and other incentives, school building and infra-structural facilities and the teacher-student ratio.

### Academic Freedom

Academic freedom and the autonomy of universities is regulated by a range of State legislation and University Acts and Ordinances providing for measures relating to institutional practices and disciplinary norms. Such measures and norms are operated through designated authorities, committees and bodies that retain the power of enquiry and disciplinary actions. All such actions however are subject to judicial review.

#### **4.6.2 Discipline**

Corporal punishment is banned in India although occasional incidents do occur for which remedial measures are immediately taken.

#### **4.6.3 Curriculum**

##### Overview of Curriculum Determination

The National Council of Educational Research and Training (NCERT) is a peak resource organisation established by the central government's Ministry of Human Resource Development, headquartered at New Delhi, to assist and advise the Central and State Governments on academic matters related to school education. One of its tasks is to work on the curriculum development at the school level. The Central Board of Secondary Education (CBSE), another autonomous body working under the aegis of the Ministry of Human Resource Development, is responsible for

updating and designing school curriculum. The University Grants Commission serves as a coordinating body between the Union and State Governments and institutions of higher learning. In addition to its role of providing grants to universities and colleges, it also advises Central and State Governments on necessary measures are necessary for the development of higher education including curriculum development.

### Human Rights Education

Human rights education is part of social science education at the primary school level and is part of civics education at the secondary school level. At higher education level, human rights education is provided by 37 universities and institutions of which 11 offer degree courses, 10 offer certificate courses and 15 offer diplomas in human rights.

#### ***4.6.4 Parents / Legal Guardians***

Parents and legal guardians are only able to exercise freedom of choice with regards to educational institutions and programmes subject their particular ward or their child's successful completion of the entrance admission test procedure prescribed by the concerned educational institution.

#### ***4.6.5 Religious and Cultural Practices, Languages of Minority Groups***

Article 29 of the Constitution recognises the right of certain members of society to preserve their language, script and culture, while retaining the right to secure admission in educational institutions maintained or aided by the State. Similarly, Article 30 confers a right on all minorities to establish and administer educational institutions of their choice. Correspondingly, Article 46 of the Constitution looks after the education and economic interests of marginalised communities, in particular, the Scheduled Caste and Scheduled Tribes.

## **4.7 Adaptability**

### ***4.7.1 Education and Work***

The *National Literacy Mission* was established in 1988 with the aim of improving functional literacy for people aged 15-35 years. This age cohort represents a potentially productive segment of the workforce. People outside this age group are not excluded from participating, particularly children aged 9-14 who have dropped out of school. Additionally, there is a Continuing Education Scheme that provides further learning opportunities to people in rural and remote areas.

#### **4.7.2 Education for Women**

Girls and young women in India are expected to manage both educational and domestic responsibilities which often results in poor academic performance and an early drop-out from the educational system resulting in lasting consequences on all aspects of a woman's life. In order to enable women to enjoy not only de-jure but also de-facto rights and fundamental freedom at par with men in all spheres, the NHRCI notes that the government has endeavoured to completely eradicate female foeticide and female infanticide through effective enforcement of both the *Indian Penal Code, 1860* and the *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act* (1994). Additionally, the Government is initiating action to amend existing legislations impacting on women so as to ensure gender justice as well as facilitate their entry into the mainstream of the society.

#### **4.7.3 Special Needs Education**

To cater to the needs of children with disabilities, the *Integrated Education for Disabled Children* (IEDC) scheme was launched in 1974 and last revised in 1992. The scheme provides educational opportunities for disabled children in common schools to facilitate their integration and ultimate attention in the general schools system and is implemented through the education departments of State Governments, Union Territory administrations and with the assistance of non government organisations. In the higher education system, the University Grants Commission operates two schemes, the *Teachers Preparation in Special Education* scheme and the *Higher Education for Persons with Special Needs* scheme. The main objective is to develop courses for special teachers and counsellors and also provide facilities in various forms for different needs.

The NHRCI reports that in accordance with government policy of meeting the multi-dimensional needs people with physical and mental disabilities and providing welfare support, the following peak bodies have been established:

- National Institute for the Visually Handicapped, Dehradun;
- National Institute for the Orthopaedically Handicapped, Kolkata
- Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai;
- National Institute for the Mentally Handicapped, Secunderabad;
- National Institute for Rehabilitation Training and Research, Cuttack;
- Institute for the Physically Handicapped, New Delhi;

These organisations conduct specialised courses to train professionals in the different areas of disability including: Degree courses in Physiotherapy, Occupational Therapy, Prosthetic and Orthotic Engineering, Bachelors Degree Courses in Mental Retardation, Diploma in Special Education (Mental Retardation), Diploma in Vocational Training (Hearing Impaired), Bachelors and Masters Degree in Hearing, Language and Speech Bachelors and Masters Degree in Audiology and Speech Rehabilitation, Primary and Secondary level Teachers Training Programme for Visually Handicapped and Training Course for Orientation and Mobility Instructors for Visually Handicapped.

According to the NHRCI, schools are generally able to adapt to the special education needs of individual students.<sup>387</sup>

## **4.8 Activities of the NHRCI**

### ***4.8.1 Mandate and Methods***

Under the *Protection of Human Rights Act* (1993) the National Human Rights Commission of India has the statutory responsibility provide for ‘better protection of human rights’ in the country and ‘for matters connected therewith or incidental thereto’. Under the Act human rights include civil and political rights as well as economic, social and cultural rights.

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<sup>387</sup>For more information please log on to the website of Ministry of Social Justice and Empowerment, Government of India [www.socialjustice.nic.in](http://www.socialjustice.nic.in), and see earlier discussions on accessibility.



The methods and approaches used by the NHRCI for the protection and promotion of human rights include:

- Inquiring, suo-motu or on a petition presented to it by a victim or any person on his/her behalf.
- Intervening in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.
- Undertaking visits to jails/institutions under the control of the State Government, where persons have been detained or lodged for purposes of treatment, reformation or protection so as to study the living conditions of the inmates and make recommendations thereon.
- Reviewing the safeguards of the Constitution or any law concerning protection of human rights and recommending measures for their effective implementation.
- Reviewing the factors including acts of terrorism that inhibit the enjoyment of human rights and recommending appropriate remedial measures.
- Studying treaties and international instruments on human rights and making recommendations for their effective implementation.
- Undertaking and promoting research in the field of human rights
- Spreading human rights literacy through publications, media, training programmes, seminars, etc.
- Encouraging the efforts of non-governmental organisations and institutions working in the field of human rights.

#### ***4.8.2 Investigation of Complaints***

The NHRCI reports that it has received complaints relating to education and has also intervened in numerous instances to assist individuals experiencing harassment, intolerance or discrimination on the grounds of disability. It notes that in a notable case concluded in 2002 after a number of hearings, a medical student, who had lost his eyesight while still studying for an MBBS degree at the All India Institute of Medical Sciences was allowed to complete his studies and take his final examination.

### **4.8.3 Research and/or Public Inquiries**

The NHRCI has addressed the right to education in the context of child labour. Further information is available in its report, *Impact, Community Response and Acceptance of Non Formal Education under the National Child Labour Project – A Case study of Carpet-Weaving belt of Mirzapur – Bhadhoi and Glass – Bangle region of Ferozabad.*<sup>388</sup>

In 2005, the NHRCI prepared a Status Paper on Human Rights Education. The main objective of the Status Paper was to find out whether human rights education constituted an integral part of the existing school curriculum at various levels. The methodology adopted comprised of a subject analysis of the NCERT textbooks of class I to XII and the SECRT textbooks of class I to VIII. This apart, the concerned researcher held discussions with key officials of NCERT, the SECRT and the CBSE all of which are based in Delhi. The Status Paper is yet to be placed before the NHRCI.

Similarly, the NHRCI is conducting an exercise at the State level which involves the distribution of a questionnaire to all the States to determine the status of human rights education. Information from almost all the States has been received and with the results suggesting that human rights education is not being taught as a separate subject but as part of other subjects such as Civics Education and Social Science.

### **4.8.4 Identification of Laws, Policies and/or Practices Impacting on the Right to Education**

Since its establishment, the NHRCI has concentrated on the constitutional right to free and compulsory primary education up to the age of 14 years.

With an express mandate to promote human rights literacy and awareness under Section 12(h) of *the Protection of Human Rights Act* (1993), the NHRCI has worked with the Government to develop a *National Action Plan for Human Rights Education*. This Plan was finalised and circulated by the Government in the year 2001.

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<sup>388</sup>For details please see [www.nhrc.nic.in](http://www.nhrc.nic.in)

The NHRCI reports that it has also urged the government to give human rights education the importance it deserves. Action has been taken by the government to introduce human rights courses in universities as well as prepare a resource material kit for human rights education. Thirty-five universities and colleges have introduced certificate, diploma and post-graduate courses on human rights with financial assistance from the University Grants Commission.

In September 1999 the *National Institute of Human Rights* (NIHR) was established at the National Law School of India University, Bangalore through a memorandum of understanding. The NHRCI has established a Chair on Human Rights at the NIHR and created an endowment in order to meet the expenses relating to the Chair.

#### ***4.8.5 Education and Awareness Campaigns***

The NHRCI's education and awareness campaigns in relation to the right to education have included:

- Internship programmes for university students;
- Establishment of a Training Division in 2003 to provide training to different sectors of society on a range of issues that have primarily emerged from complaints, including: child rights, women's rights, bonded labour, child labour, custodial management, custodial violence, custodial deaths, alleged atrocities by police, prison conditions, shortcomings within the criminal justice system, the rights of disabled and mentally ill persons, refugees, terrorism, rape and torture.
- Training programmes, workshops and seminars are regularly organised for civil servants, police officers, prison officials, judicial officers, paramilitary and armed forces officials, educators, NGOs and human rights activists.
- A training programme on 'human rights investigation, interviewing skills and custody management' in collaboration with the British Council for police officers.
- A collaborative project with the Canadian Human Rights Commission and the Indira Gandhi National Open University for the protection of human rights of persons with disabilities.

#### ***4.8.6 Human Rights Education***

The NHRCI publishes a monthly newsletter, an annual journal in English and Hindi, an annual report in English and Hindi, manuals, handbooks, information kits, and posters on various subjects relating to human rights. The aim of these publications is to generate new thinking on the protection of human rights and the promotion of human dignity in the country

In 2004, eight booklets in the 'Know Your Rights' series were released and related to topics like international human rights conventions, sexual harassment of women at the work place and manual scavenging. This series has been translated into regional languages for wider dissemination.

Additionally, the NHRCI recently released a manual on human rights disability and law, encourages original writings on human rights issues, in Hindi and provided financial assistance to NGOs for human rights education.

#### ***4.8.7 Contribution to Indian Government reports to Treaty Body Committees***

The NHRCI has never provided a shadow report to the United Nations Committees in connection with the international human rights conventions ratified by the Government of India. The Ministry of Women and Child Development, Government of India had approached the NHRCI to be a part of preparing the periodic report on CEDAW for submission to the CEDAW Committee but in keeping with its status as an autonomous institution, the NHRCI has expressed its inability to do so, but willingness to offer observations and comments for the final report.

#### ***4.8.8 Collaboration with Civil Society***

The NHRCI works in collaboration with the government, international organisations, NGOs and the civil society on the issue of right to education. Details of this collaboration have been discussed throughout the report.

## 5. Indonesia<sup>389</sup>

### 5.1 International Law

Indonesia is a party to the ICESCR,<sup>390</sup> CERD,<sup>391</sup> CEDAW<sup>392</sup> and the CRC.<sup>393</sup> Indonesia is a party to the UNESCO Convention Against Discrimination in Education.<sup>394</sup>

Indonesia is a party to the ILO Minimum Age Convention<sup>395</sup> and the Worst Forms of Child Labour Convention.<sup>396</sup>

### 5.2 National Law

#### 5.2.1 Constitution

The *Constitution of the Republic of Indonesia* (1945) contains the following provisions relating to the right to education:

#### **Chapter XIII. Education**

(Article 31)

- (1) Every citizen has the right to education.
- (2) Every citizen has the obligation to undertake basic education, and the government has the obligation to fund this.
- (3) The government shall manage and organise one system of national education, which shall increase the level of spiritual belief, devoutness and moral character in the context of developing the life of the nation and shall be regulated by law.
- (4) The state shall prioritise the budget for education to a minimum of 20% of the State Budget and of the Regional Budgets to fulfil the needs of implementation of national

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<sup>389</sup> The APF Secretariat did not receive a completed questionnaire on the Indonesian education system. Accordingly, this country profile consists chiefly of relevant legislation from Indonesia's Constitution and Education Act.

<sup>390</sup> Indonesia acceded to the ICESCR on 23 February 2006.

<sup>391</sup> Indonesia acceded to the CERD on 25 June 1999.

<sup>392</sup> Indonesia ratified the CEDAW on 13 September 1984.

<sup>393</sup> Indonesia ratified the CRC on 5 September 1990.

<sup>394</sup> Indonesia ratified the Convention Against Discrimination in Education on 10 January 1967.

<sup>395</sup> Indonesia ratified the Minimum Age Convention on 7 June 1999.

<sup>396</sup> Indonesia ratified the Worst Forms of Child Labour Convention on 28 March 2000.

education.

- (5) The government shall advance science and technology with the highest respect for religious values and national unity for the advancement of civilisation and prosperity of humankind.

#### **Chapter XA Human Rights<sup>397</sup>**

(Article 28C)

- (1) Every person shall have the right to better him/herself through the fulfillment of his/her basic needs, the right to education and to benefit from science and technology, art and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.
- (2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

(Article 28E)

- (1) Every person shall be free to embrace and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.
- (2) Every person shall have the right to the freedom to hold beliefs (*kepercayaan*), and to express his/her views and thoughts, in accordance with his/her conscience.
- (3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.

The *Constitution* also contains provisions relating to non-discrimination and access for all:

#### **Chapter X Citizens and Residents<sup>398</sup>**

(Article 27)

- (1) All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.

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#### **Chapter XA Human Rights<sup>399</sup>**

(Article 28A)

Every person shall have the right to live and to defend his/her life and existence.

(Article 28B)

- (1) Every person shall have the right to establish a family and to procreate based upon lawful marriage.
- (2) Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.

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<sup>397</sup> As adjusted by the Second Amendment to to the 1945 Constitution.

<sup>398</sup> As adjusted by the Second Amendment to to the 1945 Constitution.

<sup>399</sup> As adjusted by the Second Amendment to to the 1945 Constitution.

(Article 28D)

- (1) Every person shall have the right to recognition, guarantees, protection and certainty before a just law, and to equal treatment before the law.
- (2) Every person shall have the right to work and to receive fair and proper recompense and treatment in employment.
- (3) Every citizen shall have the right to obtain equal opportunities in government.
- (4) Every person shall have the right to citizenship status.

(Article 28G)

- (1) Every person shall have the right to protection of self, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.
- (2) Every person shall have the right to be free from torture or inhuman and degrading treatment, and shall have the right to obtain political asylum from another country.

(Article 28I)

- (1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.
- (2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.
- (3) The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.
- (4) The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government

### **5.2.2 Legislation<sup>400</sup>**

The *National Education System, Act No. 20* (2003) stipulates:

#### **Chapter IV. Rights and Obligations of Citizens, Parents, Community, and Government**

##### **Part One Rights and Obligations of Citizens**

(Article 5)

- (1) Every citizen has equal rights to receive quality education.
- (2) Citizens with physical, emotional, mental, intellectual, and/or social deficiencies shall have the right to receive special education.

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<sup>400</sup> The remainder of this country report will consist of relevant excerpts of the *National Education System, Act No. 20* (2003) unless otherwise specified.

(3) Citizens in the remote or less-developed areas, and isolated areas have the rights to receive service of special education.

(4) Citizens who are potentially intelligent and especially gifted have the rights to receive special education.

(5) Every citizen shall have the right to enhance his/her educational ability in the process of life-long education.

### **Part Three. Rights and Obligations of Community**

(Article 8)

The community has the right to participate in the planning, implementation and monitoring, and evaluation of the education programs.

(Article 9)

The community has to support by supplying resources needed in the implementation of education.

## Primary Education

### **Chapter IV. Rights and Obligations of Citizens, Parents, Community, and Government**

#### **Part One Rights and Obligations of Citizens**

(Article 6)

(1) Every seven to fifteen years old citizen shall have the right to basic education.

(2) Every citizen shall have the obligation to keep the education process sustained.

### **Chapter VI Streams, Levels, and Types of Education**

#### **Part Two Basic Education**

(Article 17)

(1) Basic education is a foundation for secondary education.

(2) Primary Education takes the form of Sekolah Dasar or SD (primary schools) and Madrasah Ibtidaiyah or MI or other schools of the same level, and Sekolah Menengah Pertama or SMP (junior secondary schools) and Madrasah Tsanawiyah or MTs, or other schools of the same.

(3) The implementation of basic education set forth in verse (1) and verse (2) shall be further stipulated by government regulation.

#### **Part Seven Early Childhood Education**

(Article 28)

(1) Early childhood education shall be organized prior to basic education.

(2) Early childhood education is provided through formal education, non-formal education, and/or informal education.

(3) Early childhood education provided through formal education can take the form of taman



kanak-kanak or TK (kindergarten) or , raudatul athfal (RA), or other education units of similar type.

(4) Early childhood education provided through non-formal education can take the form of kelompok bermain or KB (play groups), taman penitipan anak or TPA (child care centers), or other education units of similar type.

(5) Early childhood education provided through informal education can take the form of family education or community education.

(6) The implementation of early childhood education set forth in verse (1), verse (2), verse (3), and verse (4) shall be further stipulated by government regulation.

## Secondary and Higher Education

### **Chapter VI Streams, Levels, and Types of Education Part Three Secondary Education**

(Article 18)

(1) Secondary Education is the continuation of basic education.

(2) Secondary education comprises general secondary schools and vocational secondary schools.

(3) Secondary education takes the form of Sekolah Menengah Atas or SMA (senior secondary schools), Madrasah Aliyah or MA, Sekolah Menengah Kejuruan or SMK (vocational secondary education)), and Madrasah Aliyah Kejuruan or MAK , or other schools of the same level.

(4) The implementation of secondary education set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

### **Part Four Higher Education**

(Article 19)

(1) Higher Education is level of education after secondary education including diploma, undergraduate education, postgraduate education (Master and Doctoral), and specialized education organized by a tertiary education institution.

(2) Higher education shall be provided in an open system.

(Article 20)

(1) Higher education institutions can take the form of academy, polytechnic, higher education, institute, or university.

(2) Higher education institutions have to provide education, research, and community services.

(3) Higher education institutions can run academic, professional, and/or applied science programs.

(4) The implementation of higher education institutions set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

(Article 21)

(1) Higher education institutions that have met the requirements of establishment and are declared to have the rights to provide a particular academic program can confer academic, professional, or degrees in accordance with the education programs that are provided.

...

(Article 22)

Universities, institutes, and higher education which have doctorate programs are entitled to confer a suitable degree of honorary doctor (Doctor Honoris Causa) on an individual who deserves a high appreciation with regard to his/her extraordinary contribution to science, technology, community, religion, culture, or arts.

(Article 24)

(1) In the implementation of education and development of science, a higher institution is entitled to academic freedom and academic forum freedom, and scientific autonomy.

(2) Higher education institutions are entitled to autonomy to manage their institutions as a center of higher education, scientific research, and services to the community.

(3) Higher education institutions are entitled to raise funds from the community and the management is based on the principles of public accountability.

(4) The implementation of the provisions set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

### **Part Eight In-Service Education**

(Article 29)

(1) In-Service education is professional education provided by a department or a non-department government agency.

(2) Service education functions to enhance the ability and skills in carrying out government service for officials and official candidates in a department or a non-department government agency.

(3) In-Service education is provided through formal education and non-formal education streaming.

(4) The implementation of service education set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

## Financing of Education

### **Chapter XIII Financing of Education Part One Responsibility for Financing**

(Article 46)

(1) Financing of education shall be the shared-responsibility of the Government, Local Governments, and community.

(2) The Government and Local Governments should mobilize the funding as stipulated in the 1945 Constitution of the Republic of Indonesia, Article 31, verse (4).

(3) The implementation of the provisions set forth in verse (1) and verse (2) shall be further stipulated by government regulation.

#### **Part Two Sources of Education Funds**

(Article 47)

(1) The source of education funds shall be determined based on the principles of equality, adequacy, and sustainability.

(2) The Government, Local Governments, and community mobilize the educational resources available in accordance with regulations which are in effect.

(3) The implementation of the provisions set forth in verse (1) and verse (2) shall be further stipulated by Government Regulation.

#### **Part Three Educational Finance Management**

(Article 48)

(1) The management of education finance is based on the principles of equity, efficiency, transparency, and accountability.

(2) The implementation of the provision set forth in verse (1) shall be further stipulated by Government Regulation.

#### **Part Four Allocation of Funds**

(Article 49)

(1) Education funds excluding salary of educators and service education expenditure are allocated at a minimum 20% of the National Budget (APBN) and a minimum of 20% of the Regional Budget (APBD).

(2) Salary of teachers and lecturers appointed by the Government are allocated at the National Budget (APBN).

(3) Education funds from the Government and Local Governments to units of education are in the form of a grant in accordance with the regulations, which are in effect.

(4) Education funds from the Government to Local Governments are in the form of a grant in accordance with the regulations, which are in effect.

(5) Guidelines of the allocation of education funds set forth in verse (1), verse (2), verse (3), and verse (4) shall be further stipulated by government regulation.

### Minimum Age of Employment

Since 1998 the *Employment Act (1995)* has established 15 as the minimum age for employment and 18 years for employment in hazardous occupations.

### Minimum Age of Marriage

The *Marriage Act (1974)* establishes 16 as minimum age of marriage for women, and 19 years for men. Both require the legal consent of parents, until reaching the age of 21.

### Minimum Age of Criminal Responsibility

The *Juvenile Court Act (1997)* establishes 8 years as the minimum age of criminal responsibility.

## **5.3 Overview of Education Policies and Programs**

### **5.3.1 Educational Framework**

The Ministry of National Education provided an overview of the education system in Indonesia in its 2004 report as part of the UNESCO/OECD Early Childhood Policy Review Project.<sup>401</sup> The first 9 years of primary and lower secondary education is compulsory basic education. As reflected in the Chapter VI of the *National Education System, Act No. 20 (2003)*, Indonesia's formal education system is based on 6 years primary education (SD), 3 years of lower secondary (SMP), 3 years of upper secondary education (SLTA) and 4 years of higher education. The starting age for formal education is 7 years.<sup>402</sup>

Lower and upper secondary education each have two tracks, one that is general (SMU) and another which is vocational (SMK). In terms of higher education, diploma courses are available in colleges offering 1-4 year courses (D1, D2, D3, D4) and bachelor's degrees are available at 4-

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<sup>401</sup> Ministry of National Education, *The Background Report of Indonesia*, UNESCO/OECD Early Childhood Policy Review Project, August 2004, ED/BAS/EIE/05/A

<sup>402</sup> Ibid, para1.3.1

year universities. There are also post-graduate programmes (S2), doctoral programmes (S3) and Open Universities distance higher education programmes (UT).<sup>403</sup>

Early childhood services are available at Kindergartens (TK) for children aged 4-6 age, however this is not part of the official education system.<sup>404</sup>

The administrative and organisational structure of the education system in Indonesia is established under Chapter XIV of the *National Education System, Act No. 20 (2003)*:

**Chapter XIV Education Management**  
**Part One General**

(Article 50)

- (1) The management of national education system is the responsibility of the minister.
- (2) The Government determines national policies and national standards for assuring the quality of national education.
- (3) The Government and Local Governments organize at least a unit of education at all level of education to be developed further as a unit of international education.
- (4) The Local Governments organize the implementation of education, the development of education personnel, and facility for education implementation across regions/cities for primary education and secondary education.
- (5) The Regional/City Governments organize primary education and secondary education, and a unit of local-content based education.
- (6) Higher education institutions can determine policy and have the autonomy in managing education units in their institutions.
- (7) The implementation of the education provision set forth in verse (1), verse (2), verse (3), verse (4), verse (5), and verse (6) shall be further stipulated by government regulation.

(Article 51)

- (1) The management of pre-school, primary, and secondary education units shall be based on a minimum-service standard by applying principles of school/madrasah-based management.
- (2) The management of higher education unit is based on the principles of autonomy, public accountability, quality assurance, and transparent evaluation.
- (3) The implementation of the provisions set forth in verse (1) and verse (2) shall be further stipulated by government regulation.

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<sup>403</sup> Ibid, para 1.3.2

<sup>404</sup> Ibid, para 1.3.3

(Article 52)

(1) The management of non-formal education unit shall be carried out by the Government, Local Governments, and/or community.

(2) The implementation of the non-formal education provision set forth in verse (1) shall be further stipulated by government regulation.

### **Part Three Board of Education and School/Madrasah Committee**

(Article 56)

(1) Community shall be taking part in the quality improvement of educational services, which include planning, monitoring, and evaluation of educational programs through board of education and school/madrasah committee.

(2) Board of Education, as an independent body, shall be established and shall participate in the quality improvement of education by providing inputs; directions; supports on personnel, facilities, and infrastructure; and monitoring at national, provincial, and district/city levels that do not have hierarchical relationship.

(3) School Committee, as an independent body, shall be established to provide inputs; direction; and support on personnel, facilities, and infrastructure; and monitoring at a unit of education.

(4) The establishment of the board of education and the school/madrasah committee set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

## **5.4 Justiciability**

### **5.4.1 Available Remedies and Enforceability**

The *Constitution of the Republic of Indonesia* (1945)<sup>405</sup>:

(Article 24)

(1) The judicial power shall be independent and shall possess the power to organise the judicature in order to enforce law and justice.

(2) The judicial power shall be implemented by a Supreme Court and judicial bodies underneath it in the form of public courts, religious courts, military tribunals, and administrative courts, and by a Constitutional Court.

(Article 24A)

(1) The Supreme Court has the authority to hear a trial at the highest (cassation) level, to review ordinances and regulations made under any law against such law, and shall possess other authorities as provided by law.

...

(Article 24C)

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<sup>405</sup> As adjusted by the 2001 3<sup>rd</sup> Amendment to the Constitution.

(1)The Constitutional Court shall possess the authority to try a case at the first and final level and shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by this Constitution, deciding over the dissolution of a political party, and deciding over disputes on the result of a general election.

(2)The Constitutional Court shall possess the authority to issue a decision over an opinion of the DPR concerning alleged violations by the President and /or Vice-President of this Constitution.

## 5.5 Availability

### 5.5.1 Expenditure

#### Overview of Governmental Expenditure

The Ministry of National Education's *Background Report on Indonesia* notes that although the Constitution mandates that 20 per cent of government expenditure will be allocated to education, actual expenditure is approximately 1 per cent.<sup>406</sup> The report notes:

The central government, local government and parents are the three main sources of educational finance. Public sources account for only 1.4% of the total educational expenditure. Education budgets are decentralised from the central government to the Provinces and down to the lower levels of the administration. In most cases, the decentralised government education budgets are sufficient only to cover teachers' salaries. Although special laws allow local governments to raise tax revenues, teachers' salaries have not increased in any significant way since 2001, when the decentralisation of education management was put into effect. As the local governments have the autonomy of determining their priorities, their spending patterns tend to vary greatly.<sup>407</sup>

#### Education Funding Models

The *Background Report on Indonesia* provides an overview of the allocation of resources for education:

**Public Funding:** Public Reference Services such as public Kindergartens, Integrated Service Posts (Posyandu) and Mother's Programmes (BKB) are funded by their respective ministries. Funds are decentralised from the central government to the Sub-districts and Villages. The decentralised budgets from different ministries are, in the case of Childcare Centres (TPA), merged at the District level. Government funds, which are drawn directly from the central government's "fiscal balance" in the form of block grants, are spent mainly to cover teacher's salaries in all ministries.

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<sup>406</sup> *Background Report of Indonesia*, para 5.1.3

<sup>407</sup> Source: *The Background Report of Indonesia* pg. 15. August 2004

In case of a crisis, early childhood services are provided and funded through emergency funds. During the economic crisis in 1997 and 1998, a series of Social Safety Net Programmes were prepared. Integrated Service Posts (Posyandu) were used to deliver necessary foods and health services to poor families and their young children.

**Private provision:** Indonesia has a long tradition of delivering early childhood services in partnership with the private sector. Individuals, NGOs and foundations have set up Kindergartens, Playgroups (KB) and Childcare Centres (TPA), which cater mainly for families of middle or upper-middle class. These partners are now members of the Early Childhood Education Forum. Private early childhood services recover all their costs (e.g., buildings, equipment, materials, teacher's salaries and other operational costs) from the fees that they collect from the parents. Private Childcare Centres (TPA) and Playgroups (KB) can apply for government subsidies or supports available from international development agencies.

**Parental contribution:** In Indonesia, whether it is a public or private service, some kind of parental contribution is always expected in early childhood services. In the educationally reinforced Integrated Service Posts (Taman Posyandu), which is largely public, for example, the parents are to pay Rp. 500 per session. In the Childcare Centres (TPA) established and run by the Christian Children's Fund, contributions from parents come in the form of food, time and labour (e.g., assistance with feeding, construction of buildings, etc.), in addition to the fees ranging from Rp.2,500 to Rp. 7,500.

Monthly Kindergarten fees range from Rp. 3,000 to Rp. 36,000, implying wide quality gaps among services of different fee rates. Some private Kindergartens charge as high as Rp.150,000 - Rp.200,000 (UNICEF, 2000). According to the IEA Pre-primary Education Project, the monthly fees for Kindergartens and Playgroups (KB) in Jakarta range from \$22 or Rp. 200,000 to \$33 or Rp. 300,000.

According to the same source, 97% of urban Kindergartens and 71% of rural Kindergartens charge fees.<sup>44</sup> In addition to the regular fees, 73% of urban Kindergartens and 64% of rural Kindergartens charge additional fees for books and other learning materials. Considering the parents' travel time to drop off their children at the services and other foregone costs, the actual monthly cost to enrol a child in even one the least expensive Kindergartens (costing Rp. 3000) could in fact augment at least four times to Rp. 14,000.

According to the IEA Survey on Child Care and Education (2001) for 3.5 – 4.5 year olds, about 65% of Indonesian working parents who purchase a childcare service outside the home must pay an average of \$4 or Rp. 36,000 each month. In addition, 28% of urban parents and 32% of rural parents provide in-kind support (e.g., providing lunches for their children).

**Community Participation:** Community empowerment is being adopted as a strategy to promote ECCE. Community participation can take many forms. Participation in services is one and contribution to the provision and delivery of services is another. Community members can promote ECCE as users, managers, service providers and supporters.<sup>408</sup>

### 5.5.2 Infrastructure

#### Availability and Adequacy

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<sup>408</sup> Source: *The Background Report of Indonesia* para 5.1, August 2004



Chapter XII of the *National Education System, Act No. 20 (2003)* stipulates:

### **Chapter XII Educational Facilities and Infrastructures**

(Article 45)

(1) Every formal and non-formal education units have to provide educational facilities and infrastructure required for by pedagogical criteria in accordance to learners' growth and development of physical potentiality and intellectual, social, emotional and spiritual abilities.

(2) The criteria for providing facilities and infrastructures at all education unit set forth in verse (1) shall be further stipulated by government regulation.

In its concluding observations in January 2004 the Committee on the Rights of the Child made the following observations:

- a. The Committee welcomes the inclusion in the Constitution of the rights to education as well as a minimum budget allocation for education. It is further encouraged by education reforms initiated by the State party in 1994, which raised the number of years of elementary education from 6 to 9 years, and which tries to raise the teaching standards of teachers. The Committee further welcomes the allocation of scholarships to children from poor families.
- b. However, the Committee is very concerned:
  - (a) that education is not free, even at primary level, and that education is not affordable for many families;
  - (b) by the high drop out and repeater rates;
  - (c) that married children and pregnant teenagers do not generally continue their education;
  - (d) by the high teacher-pupil ratio and by the low level of ability of teachers;
  - (e) by the high occurrence of violence against children in the school, including student bullying and student fighting, and that no specific law exists to regulate school discipline and protect children against violence and abuse in the school.
- c. The Committee notes with appreciation the efforts done by the State party to monitor the quality of education in madrassas and boarding schools. However it is concerned about the narrow education provided within these schools and about the lack of supervision of their curricula.
- d. The Committee recommends that the State party:
  - (a) strengthen measures to achieve universal and free primary education;
  - (b) progressively ensure that girls and boys, from urban, rural and least developed areas have equal access to educational opportunities, without any financial obstacles;
  - (c) implement additional measures to provide access to early childhood education for every child;
  - (d) adopt effective measures to decrease the drop-out rate and to reduce repeaters and illiteracy rates;
  - (e) provide education opportunities for married children and pregnant teenagers;
  - (f) pursue its efforts to ensure that teachers are adequately trained;
  - (g) take appropriate measures to introduce human rights, including children's rights, into school curricula;
  - (h) take measures to reduce violence in schools
  - (i) continue its cooperation with UNESCO, UNICEF the Asian Development Bank and the civil

society to improve the education sector.<sup>409</sup>

### ***5.5.3 Teachers and support staff***

#### Availability and Adequacy

Chapter XI of the *National Education System, Act No. 20 (2003)* provides a legal framework for the organisation of teachers and support staff:

#### **Chapter XI Educators and Educational Personnel**

(Article 39)

(1) Educational personnel have the duty to carry out administration, organization, development, monitoring, and technical service to support education process in a unit of education.

(2) Educators mean professional whose duty are to plan and implement learning process, to assess education outcomes, to carry out counseling and training, and to conduct research and community service, especially for higher education institution personnel.

(3) Educators who teach in the units of primary education and secondary education are called teachers and educators who teach in the unit of higher education institutions are called lecturers.

(4) The implementation of the provision set forth in verse (3) shall be further stipulated by particular law.

(Article 41)

(1) Educators and educational personnel can work across autonomous regions.

(2) The recruitment, placement, and deployment of educational personnel shall be regulated based on the demand criteria of a formal education unit.

(3) The Government and Local Governments have to facilitate unit of education with the required educators and education personnel to ensure the implementation of quality education program.

(4) The implementation of the provisions set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

(Article 42)

(1) An educator has to have minimum qualifications in accordance with his/her level of teaching responsibility; possess healthy body and mind; and acquire abilities to accomplish the goals of national education.

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<sup>409</sup> CRC/C/15/Add. 223, 30 January 2004, para 60-63

(2) Early childhood education, basic education, secondary education, and higher education educators are graduated from accredited higher education institutions.

(3) Criteria for educator qualifications set forth in verse (1) and verse (2) shall be further stipulated by government regulation.

(Article 43)

(1) Promotion and recognition for educators and educational personnel are organized based on educational background, experience, abilities, and performance in education.

(2) Certification of other educational personnel is organized by higher education institutions that provide accredited program.

(3) Criteria for promotion, recognition, and certification set forth in verse (1) and verse (2) shall be further stipulated by government regulation.

(Article 44)

(1) The Government and Local Governments have to supervise and develop educational personnel in an educational unit organized by the Government and Local Governments.

(2) The community providing education has to supervise and develop educational personnel in an educational unit organized by the community.

(3) The Government and Local Governments have to render assistance in the supervision and development of educational personnel in a formal education unit organized by community

### ***5.5.4 Teaching Facilities and Materials***

#### Availability and Adequacy

Not details provided.

## **5.6 Accessibility**

### ***5.6.1 Non-discrimination***

#### Relevant Legislation, Government Policies and Programs

##### **Part One. Rights and Obligations of Citizens Chapter V Learners**

(Article 12)

(1) Every learner in an educational unit is entitled to:

a. have religious education in accordance with his/her religion and is taught by an educator who has the same religion;

- b. have an education opportunity in accordance with his/her talent interest, and ability;
- c. receive a scholarship in recognition of talent for those who comes from a poor economic background;
- d. receive education fees for those whose parents come from a poor economic background.
- e. shift program from one to another stream and unit of education at the same level;
- f. complete an education program based on individuals' rate of learning and do not exceed the time determined.

In its concluding observations the CRC expressed its concerns:

The Committee notes with concern that societal discrimination persists against girls and against other vulnerable groups of children, in particular children living in poverty, children born outside of wedlock, children displaced by conflicts as well as minority children.<sup>410</sup>

### ***5.6.2 Gender Parity and Gender Equality***

#### **Relevant Legislation, Government Policies and Programs**

The 1998 concluding observations of the CEDAW Committee noted barriers to gender parity:

- a. The Committee is convinced that the existence of cultural attitudes that confine women to the roles of mothers and housewives presents a great obstacle to the advancement of women. Policies and programmes developed on the basis of those stereotypes limit women's participation and entitlements, thereby impeding implementation of the Convention. The Committee expresses the view that cultural and religious values cannot be allowed to undermine the universality of women's rights. It also stated its belief that culture is not a static concept and that the core values in Indonesian society are not inconsistent with the advancement of women.
  
- 291. The Committee is concerned about women's low rates of participation in education, as well as the high level of illiteracy among women, especially in the rural areas. It notes that education is a basic human right and that while the State has made some efforts to facilitate the education of poor but gifted children, the Committee remains concerned about the access to education of all children, including those from minority groups.<sup>411</sup>

### ***5.6.3 Physical Accessibility***

#### **Geographic Location and Physical Access**

##### **Part Ten Distance Education**

(Article 31)

<sup>410</sup> CRC/C/15/Add.223, 30 January 2004, para 30

<sup>411</sup> A/53/38/Rev.1, 1998, para 282 & 291.

- (1) Distance education is organized in all streams, levels, and types of education.
- (2) Distance education is aimed at extending educational services to any group of people in the community who cannot attend 'face-to-face' classes at regular basis.
- (3) Distance education is organized in various forms, modes, and coverage supported by learning facilities and services, and assessment system which ensure that the quality of graduates are in accordance to national education standards.
- (4) The implementation of distance education set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

### ***5.6.4 Economic Accessibility***

#### Primary Education

##### **Chapter VIII Compulsory Education**

(Article 34)

- (1) Every 6 years old citizen can follow compulsory education.
- (2) The Government and Local Governments guarantee the implementation of compulsory education at least for basic education without imposing learners on paying fees.
- (3) Compulsory education is the State's responsibility, which is provided by the Government, the Local Governments, and the community.
- (4) The implementation of compulsory education set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

#### Secondary Education

No details provided.

#### Higher Education

No details provided.

### ***5.6.5 Non-formal Education***

#### Access

**Chapter VI. Streams, Levels, and Types of Education**  
**Part Five Non-formal Education**

(Article 26)

(1) Non-formal Education is provided for community members in need of education services which functions as a replacement, complement, and/or supplement to formal education in the frame of supporting life-long education.

(2) Non-formal Education is aimed at developing learners' potentials with emphasis on the acquisition of knowledge and functional skills and developing personality and professional attitudes.

(3) Non-formal comprises life-skills education, early childhood education, youth education, women empowerment education, literacy education, vocational training and workshop, equality education, and other kinds of education aimed at developing learners' ability.

(4) Non-formal Education unit consists of training centers and colleges, study groups, community learning centers, majelis taklim, and other education units of the similar type.

(5) Training centers and colleges are provided for community members in need of the acquisition of knowledge, competencies, life-skills, and attitudes to develop their personality, professionalism, working ethic, entrepreneurship, and/or for further education.

(6) The outcomes of the non-formal education shall be recognized to be equal as the outcomes of formal education program after undergoing a process of equality assessment by an agency appointed by the Government or Local Governments based on national education standards.

(7) The implementation of non-formal education set forth in verse (1), verse (2), verse (3), verse (4), verse (5), verse (6) shall be further stipulated by government regulation.

**Part Six Informal Education**

(Article 27)

(1) Informal education could be in the form of self-directed learning provided by families and/or environment.

(2) The outcomes of informal education shall be recognized to be equal as the outcomes of formal education and non-formal education after being evaluated by using national education standards.

(3) The implementation of informal education set forth in verse (1) and verse (2) shall be further stipulated by government regulation.

## **5.7 Acceptability**

### ***5.7.1 Quality Education and Minimum Standards***

#### **Relevant Institutions**

**Chapter IV. Rights Obligations of Citizens, Parents, Community, and Government**  
**Part Four Rights and Obligations of the Government and Local Governments**

(Article 10)

The Government and Local Governments have the right to guide, supervise, assist, and monitor the implementation of education in accordance with the regulations, which are in force.

(Article 11)

(1) The Government and Local Governments have to provide services and facilities, and ensure the implementation of quality education for every citizen without discrimination.

(2) The Government and Local Governments have to ensure that the availability of funds for the implementation of education for every Indonesian citizen from aged seven to fifteen.

**Chapter XIX Supervision**

(Article 66)

(1) Government, local governments, board of education, and school/madrasah committee shall supervise the education implementation at all levels and types of education falling within their respective jurisdiction.

(2) The supervision set forth in verse (1) shall be carried out with the principles of transparency and public accountability.

(3) The implementation of the provisions set forth in verse (1) shall be further stipulated by government regulation.

Measures Adopted by Education Authorities

No details provided.

Indicators

No details provided,

Legislation, Government Policies, Practices and Programs

**Chapter XVI Evaluation, Accreditation, and Certification**  
**Part One Evaluation**

(Article 57)

(1) Evaluation shall be made in order to monitor and control education quality nationally as a statement of the education provider's accountability to society.

(2) Evaluation shall be made on learners, institutions, and education programs at formal education and non-formal education in all levels, units, and types of education.

(Article 58)

(1) Evaluation of learners conducted by educators shall be made to monitor the process, progress, and to improve learners' learning outcomes continually.

(2) Evaluation of learners, institutions, and educational programs shall be conducted by independent bodies regularly, comprehensively, transparently, and systematically in order to assess the achievements of national education standards.

(Article 59)

(1) The Government and local governments carry out an evaluation on all providers, units, streams, levels, and types of education.

(2) Community and/or professional organizations shall have the rights to set up an independent evaluation body to conduct an evaluation set forth in Article 58.

(3) The implementation of the provisions set forth in verse (1) and verse (2) shall further be stipulated by government regulation.

#### **Chapter XVII Criteria for Establishment of an Educational Unit**

(Article 62)

(1) Any formal and non-formal education unit established must get the Government or local governments' license.

(2) The requirements for obtaining a license include educational contents, the number and qualification of the educators and educational personnel, educational facilities and infrastructures, educational funding, evaluation and certification systems, management and educational process.

(3) The Government and local governments can give and revoke licenses enabling the establishment of an educational unit in accordance with the regulations which are in effect.

(4) The implementation of the provision set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

### ***5.7.2 Discipline***

#### **Legal Status of Corporal Punishment**

The CRC has made the following observations regarding the use of corporal punishment:

- a. The Committee is deeply concerned that corporal punishment in the family and in the schools is widely spread, culturally accepted and still lawful.
- b. The Committee recommends that the State party:



- (a) amend the current legislation to prohibit corporal punishment in all places, including in the family, in schools and other childcare settings
- (b) carry out public education campaigns about the negative consequences of ill- treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment.<sup>412</sup>

### **5.7.3 Curriculum**

#### Overview of Curriculum Determination

##### **Chapter X Curriculum**

(Article 36)

- (1) The development of curriculum is based on national education standards in the pursuit of national education goals.
- (2) The curriculum at all educational levels and types of education is developed with principle of diversifications in accordance with unit of education, local and learners potency.
- (3) The curriculum development is organized in accordance to level of education within the framework of the national unity of the Republic of Indonesia and takes the following into account:
  - a. the enhancement of faith and piety;
  - b. the enhancement of noble character;
  - c. the enhancement of learner's potential, intellectual, and interests;
  - d. the diversity of the region's potential and environment;
  - e. demand for regional and national development;
  - f. demand of workplace;
  - g. development in science, technology, and arts;
  - h. religion;
  - i. the dynamic of global development; and
  - j. the national unity and nation values.
- (4) The implementation of curriculum development set forth in verse (1), verse (2), and verse (3) shall be further stipulated by government regulation.

(Article 37)

- (1) The curriculum for primary and secondary education must include:
  - a. religious education;
  - b. civic education;
  - c. language;
  - d. mathematics;
  - e. science;
  - f. social sciences;
  - g. art and culture;
  - h. physical education and sports;
  - i. skills/vocational; and

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<sup>412</sup> CRC/C/15/Add.223,30 January 2004, para 43-44

j. local content.

(2) The curriculum of higher education must include:

- a. religious education;
- b. civic education;
- c. language.

(3) The implementation of the provisions set forth from verse (1) and verse (2) shall be further stipulated by government regulation.

(Article 38)

(1) The Government determines the curriculum framework for basic and secondary education;

(2) The curriculum for primary and secondary education shall be developed in accordance with its relevance by each educational cluster and/or unit and school/madrasah committee under the coordination and supervision of ministry of national education or ministry of religious affairs at the district/city levels for primary education, and at the provincial level for secondary education.

(3) The curriculum of higher education shall be developed by each related higher education institution with reference to national standards of education for each program of study.

(4) Higher education institutions determine the frameworks and structures of curriculum with reference to national standards of education for each program of study.

#### ***5.7.4 Parents / Legal Guardians***

##### Freedom of Choice

#### **Chapter IV Rights and Obligations of Citizens**

#### **Part Two Rights and Obligations of Parents**

(Article 7)

(1) Parents shall have the right to choose in the selection of unit education for their child and to obtain information concerning their child's circumstances of education.

(3) Parents of compulsory education aged children shall have the obligation to provide basic education for their child.

#### ***5.7.5 Religious and Cultural Practices, Languages of Minority Groups***

##### Relevant Legislation, Government Policies and Programs

#### **Chapter VI Streams, Levels, and Types of Education**

#### **Part Nine Religious Education**

(Article 30)

- (1) Religious education is provided by Government and/or any group of people in accordance to the law which are in force.
- (2) Religious education functions to prepare learners to become a member of community who understand and apply religious values and/or experts of religious studies.
- (3) Religious education can be conducted through formal education, non-formal education, and informal education.
- (4) Religious education can take the form of diniyah education, pesantren, pasraman, pabhaja samanera, and other education units of similar type.
- (5) The implementation of religious education set forth in verse (1), verse (2), verse (3), and verse (4) shall be further stipulated by government regulation.

#### **Chapter VII Medium of Instruction**

(Article 33)

- (1) Indonesian language as the language of the nation shall be the medium of instruction in the national education.
- (2) Local language can be used as a medium of instruction in the early stage of education, if needed in the delivery of particular knowledge and/or skills.
- (3) A foreign language can be used as a medium of instruction to support the foreign language competence of the learners.

#### **Chapter XIV Education Management** **Part Two Community-Based Education**

(Article 55)

- (1) Community shall have the rights to provide community-based education at formal and non-formal education in accordance with the typical religion, social norms, and culture for the benefit of the community.
- (2) Community-based education providers shall design and implement curriculum, evaluate and manage education programs and funds with reference to national education standards.
- (3) The funds in the provision of community-based education can be from the provider, community, Government, local governments, and/or other sources, which are not against the regulations that are in effect.
- (4) Community-based educational institutions shall be entitled to technical assistance, subsidies, and other resources proportionally, justly, and evenly from the Government and/or Local Governments.
- (5) The implementation of the provisions set forth from verse (1), verse (2), verse (3), and verse (4) shall be further stipulated by government regulation.

The CRC has observed:

90. The Committee welcomes the adoption of the 1999 Human Rights Act, which recognizes the right to freedom of religion and worship of everyone. However, the Committee is still concerned that the rights of children belonging to a minority or ethnic group are not recognized by the 1999 Human Rights Act, and that these children do not have adequate access to education, health and social services.<sup>413</sup>

## **5.8 Adaptability**

### ***5.8.1 Education and Work***

#### Legislation Prescribing Age for Completion of Compulsory Education

Please refer to section on national and constitutional law relevant to education rights and access.

#### Overview of Strategies, Policies and Programs Enabling Adaptability

Recent reports note child labour as a widespread phenomenon in Indonesia. In a media report about the announcement of the Indonesian government's aim to eliminate widespread child labour by 2022, it was noted that:

An estimated 2.85 million children under 18, about 1.3 percent of the nation's entire population of 220 million, work as hard labourers in the oil, shoe, fishing, restaurant and hotel service sectors.<sup>414</sup>

The report noted the government's intention to close down companies violating labour laws, but also pointed to statistics which show that 1.6 million children work in industrial manufacturing in East Java, Central Java and Medan and 4 million children under the age of 15 do not attend school due to work commitments.

### ***5.8.2 Education for Women***

In 2004 the CRC expressed concerns about the provisions of the *Marriage Act* (1974):

The Committee is concerned:

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<sup>413</sup> CRC/C/15/Add.223, 30 January 2004, para 90

<sup>414</sup> "Indonesia Vows to Eliminate Child Labor." Associated Press News. 12, July 2006.

<http://news.moneycentral.msn.com/provider/providerarticle.asp?feed=AP&Date=20060712&ID=5861972>

- (a) despite previous recommendations of the Committee, the legal age to marry is still discriminatory between female and male children (sixteen and nineteen years respectively);
- (b) a very large proportion of children, especially girls, are married by the age of 15 years, and that they are legally considered to be adults, meaning that the Convention on the Rights of the Child does not apply to them anymore.<sup>415</sup>

### 5.8.3 *Special Needs Education*

#### **Chapter VI Streams, Levels, and Types of Education Part Eleven Special Education and Service of Special Education**

(Article 32)

- (1) Special education is provided for learners who have degree of difficulties in following the learning process because of physical, emotional, mental, and social deficiencies, and/or potentially intelligent and especially gifted.
- (2) Service of special education is provided for learners in the remote and less-developed areas, isolated tribes, and/or for learners who suffer from natural disasters, social deficiencies, and those who are economically disadvantaged.
- (3) Implementation of the special education and service of special education set forth in verse (1) and verse (2) shall be further stipulated by government regulation.

The CRC has made the following observations in relation to the education needs of children with disabilities, children deprived of a family environment, refugee and internally displaced children, and children affected by armed conflict, sexual exploitation, abuse and drug use:

- 41. The Committee is concerned at the high number of children victims of violence, abuse and neglect, including sexual abuse, and ensure that there is a national system for receiving, monitoring, and investigating complaints, and when necessary, prosecuting cases, in a manner which is child-sensitive and ensures the victims privacy;
- 49. The Committee expresses its concern at the high number of children who are placed in institutions and at the living conditions in these institutions; and at the increasing increasing number of children who are abandoned by their parents.
- 53. While acknowledging the development of special services and rehabilitation centres for children with disabilities, the Committee is concerned that only very few children with disabilities have access to these services.
- 65. The Committee is very concerned at the situation of refugee and internally displaced children living in refugee camps.
- 67. The Committee is alarmed at the high level of fatalities in Aceh, West Kalimantan, Central Sulawesi, Maluku and Ambon, as well as those which resulted from the conflict in East Timor in 1999. The Committee is further concerned that children affected by armed conflict remain a particularly

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<sup>415</sup> CRC/C/15/Add. 223, 30 January 2004, para 26

vulnerable group and that the perpetrators of violations of their human rights, especially during conflicts, are rarely prosecuted.

69. The Committee is deeply concerned at the report of use of child soldiers, notably in Aceh and Maluku, as well as in East Timor up to 1999.
73. The Committee is concerned at the large number of children who use drugs or narcotics and that those children are treated as criminals rather than victims.
79. The Committee welcomes the introduction of the Social Safety Net Programme for Street Children and of the Free Street Children Programme of Bandung Raya. Nonetheless, it is concerned by the high number of children living on the streets and by the violence to which they are subject, especially during sweeping operations.
81. The Committee welcomes the launching of the National Plan of Action for the Elimination of Commercial Sexual Exploitation of Children in 2002. However, the Committee is concerned that existing legislation does not provide effective protection (e.g. the age limit for sexual consent of 12 years is too low) and that children victims of sexual exploitation often do not receive adequate protection and/or recovery assistance. The Committee is also concerned about the lack of information about how the National Plan of Action will be carried out at the provincial and district levels.<sup>416</sup>

## **5.9 Activities of Komnas HAM**

The Indonesian National Commission on Human Rights (Komnas HAM) was initially established by Presidential Decree (*Decree of the President of the Republic of Indonesia No 50/1993*) on 7 June 1993. In 1999 the legal foundation of the Commission was re-established with the passage of *Legislation Number 39 of 1999 Concerning Human Rights* by the House of Representatives.

With Indonesia a party to ICESCR, Legislation Number 39 provides Komnas HAM with a mandate for the protection and promotion of economic, social and cultural rights.

Komnas HAM is authorized and obligated to conduct four types of activities:

- spread the national and the international concept of human rights both to the national as well to the international communities. This activity is conducted by the Sub Commission for Education and Public Awareness on Human Rights;
- monitor international treaties on human rights that the Commission may propose to the government for their ratification or accession. This activity is conducted by the Sub Commission for Monitoring the International Conventions on Human Rights;
- monitor and investigate the implementation of human rights, and in consequence of which to extend its opinion, consideration and proposal to the related government agencies in order to

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<sup>416</sup> CRC/C/15/Add.223, 30 January 2004, para 41, 49, 53, 65, 67, 69, 73, 79, 81

continuously improve the observance of human rights. This activity is conducted by the Sub Commission for Monitoring the Implementation of Human Rights;

- cooperate with regional and international agencies for the continuous protection of human rights.

## 6. Jordan

### 6.1 International Law

Jordan is a party to the ICESCR,<sup>417</sup> CERD,<sup>418</sup> CEDAW<sup>419</sup> and the CRC.<sup>420</sup> Jordan is a party to the UNESCO Convention Against Discrimination in Education.<sup>421</sup>

Jordan is a party to the ILO Minimum Age Convention<sup>422</sup> and the Worst Forms of Child Labour Convention.<sup>423</sup>

### 6.2 National Law

#### 6.2.1 Constitution

Article 6(ii), Article 19 and Article 20 of the *Constitution of the Hashemite Kingdom of Jordan* are relevant to the right to education:

(Article 6)

(ii) The Government shall ensure work and education within the limits of its possibilities, and it shall ensure a state of tranquility and equal opportunities to all Jordanians.

(Article 19)

Congregations shall have the right to establish and maintain their own schools for the education of their own members provided that they comply with the general provisions of the law and be subject to the control of Government in matters relating to their curricula and orientation.

(Article 20)

Elementary education shall be compulsory for Jordanians and free of charge in Government schools.

Article 6(i) of the Constitution is relevant to the issue of non-discrimination and access for all:

(Article 6)

(i) Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion.

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<sup>417</sup> Jordan ratified the ICESCR on 28 May 1975.

<sup>418</sup> Jordan acceded to the CERD on 30 May 1974.

<sup>419</sup> Jordan ratified the CEDAW on 1 July 1992.

<sup>420</sup> Jordan ratified the CRC on 24 May 1991.

<sup>421</sup> Jordan ratified the Convention Against Discrimination in Education on 6 April 1986.

<sup>422</sup> Jordan ratified the Minimum Age Convention on 23 March 1998.

<sup>423</sup> Jordan ratified the Worst Forms of Child Labour Convention on 20 April 2000.



Article 33(i) and (ii) of the Constitution is relevant to the application of international law in the national jurisdiction:

(Article 33)

(i) <sup>424</sup>The King declares war, concludes peace and ratifies treaties and agreements.

(ii) Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly. In no circumstances shall any secret terms contained in any treaty or agreement be contrary to their overt terms.

### **6.2.2 Legislation**

#### Primary and Secondary Education

Article 10 of *Education Act No. 3* (1994) provides in relation to primary and secondary (basic) education:

(Article 10)

- (a) Basic education shall be compulsory and shall be provided free of charge at government schools;
- (b) Pupils shall be admitted to the first year of basic education if they will have reached the age six by the end of December of the academic year in which they are admitted.
- (c) Pupils shall not leave school before reaching the age of 17 (the stage of basic education having been extended to the end of tenth grade).

#### Higher Education

The *Jordanian Universities Law No. 29* (1987) regulates the establishment and operations of public universities. Private universities are regulated by the *Companies Law* which applies to shareholding companies. Under the *Jordanian Universities Law No. 29* (1987), public universities are required to establish a council of deans headed by a president who runs the university, a faculty council for each faculty or college, and department councils composed of a department's academic staff. Public universities also have a institution-specific government teaching staff regulations relating to issues such as academic freedom.

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<sup>424</sup> As amended in the Official Gazette No. 1396 dated 1/9/1958.

### Minimum Age of Employment:

Article 73 and Article 74 of the Labour Code, *Law No. 8 (1996)* prohibit the employment of children under 16 years of age:

(Article 73)

It is not permissible, under any circumstance, to employ a young person under 16 years of age in any manner whatsoever.

(Article 74)

It is not permissible to employ a young person under 17 years of age in occupations that are hazardous, strenuous or detrimental to health.

### Minimum Age of Marriage:

Under the *Personal Status Act No. 61 (1976)* males must be at least 16 years of age and females 15 years of age to be eligible for marriage. Eligibility is also conditional upon soundness of mind.

### Minimum Age of Criminal Responsibility

Article 18 of the *Juveniles Act No. 24 (1968)* (read with the amending Act No. 7 (1983)) stipulates:

(Article 18)

Criminal proceedings shall not be instituted in respect of an offence committed by a person under seven years of age.

Under the Act, special courts hear juvenile cases with set conditions and restrictions, including the requirement that cases be heard expeditiously.

## **6.3 Overview of Education Policies and Programmes**

The Jordan National Centre for Human Rights ('**JNCHR**') reports that Jordan has made significant strides in education in recent decades, despite the Winflux of hundreds of thousands of

refugees and a very large share of the national budget assigned to the armed forces. There are three types of schools in Jordan: government schools, private schools, and the UNRWA schools for refugee children. Schooling consists of six years of elementary, three years of preparatory, and three years of secondary education.

The Ministry of Education supervises all schools and establishes the curriculum, teacher's qualifications, and state examinations; it also distributes free books to students in government schools and enforces compulsory education up to the age of 14.

The majority of the students attend government schools. About 82 percent of the Jordanian population age 15 or older were literate in 1992. In the early 1990s an estimated 926,445 pupils were attending elementary schools in Jordan, more than 100,000 were attending secondary schools, and 80,442 were enrolled in higher education institutions.

Jordan's education system consists of a 12-year comprehensive programme comprised of two cycles: basic and secondary. The basic cycle includes grades 1-10 and is free and compulsory for all Jordanians as reflected in the Constitution. At the end of grade 10, student performance from 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> grade is used to determine which secondary stream a student may pursue. The secondary cycle has two main streams. The first is the comprehensive secondary education stream that ends with a general secondary education examination, the Tawjihi, and consists of a common core curriculum and optional specialized academic or vocational courses. The second is the applied secondary educational stream, which consists of specialized vocational courses; these prepare skilled labour through apprenticeship programmes run by the Vocational Training Corporation or the Ministry of Education.

To enter a public university, a student must attain a score of at least 65 percent on the Tawjihi examination; private universities require a minimum score of 60 percent. All Jordanian universities have adopted the credit-hour system. In most cases, the minimum credit hours permitted per semester is nine, and the maximum is 18. The academic year usually consists of two 18-week semesters and an optional summer semester. The University of Jordan, Yarmouk University, and community colleges offer non-formal studies consisting of courses in fields such as industry, computer science, agricultural industries, typing and foreign languages. Students are required to hold Tawjihi certificates and courses last from one week to four months.

## 6.4 Justiciability

### 6.4.1 Available Remedies and Enforceability

Chapter 6 of the *Constitution* outlines provisions relating to the Judiciary and access to the Courts:

#### Chapter 6. The Judiciary

(Article 97)

Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law.

(Article 98)

Judges of the Civil and Sharia Courts shall be appointed and dismissed by a Royal Decree in accordance with the provisions of the law.

(Article 99)

The courts shall be divided into three categories:

- (i) Civil Courts
- (ii) Religious Courts
- (iii) Special Courts

(Article 101)

- (i) The courts shall be open to all and shall be free from any interference in their affairs.

...

(Article 102)

<sup>425</sup>The Civil Courts in the Hashemite Kingdom of Jordan shall have jurisdiction over all persons in all matters, civil and criminal, including cases brought by or against the Government, except those matters in respect of which jurisdiction is vested in Religious or Special Courts in accordance with the provisions of the present Constitution<sup>426</sup> or any other legislation in force.

## 6.5 Availability

### 6.5.1 Expenditure

#### Overview of Government Expenditure<sup>427</sup>

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<sup>425</sup> As amended in the *Official Gazette No. 1380* of 4/5/1958

<sup>426</sup> As amended in the *Official Gazette No. 1396* of 1/9/1958

<sup>427</sup> Source: *The Development of Education In The Hashemite Kingdom of Jordan 1995-1996 National Report*.

<b>Distribution of General Expenditure on Education in J.D. for the Years 1994/1995 and 1995/1996</b>			
Cycle	Basic & Secondary	Vocational, Agricultural & Hotel	Total
Year	(Academic)	Vocational	
1994/1995	128,444,935	2,472,140	130,918,075
1995/1996	154,649,377	4,950,326	159,599,703

<b>Current and Capital Expenditure in J.D. for the Years 1994/1995 and 1995/1996</b>			
Type of Expenditure	Current	Capital	Total
Year	(Academic)	Vocational	
1994/1995	168,6	11,5	180,1
1995/1996	185,7	13	198,7

<b>Ratio of JOE Budget to GGB in J.D. for the Years 1994 and 1995</b>			
Fiscal Year	GGB	MOE	Ratio to GGB
1994	1,481,000,000	155,390,000	10.5%
1995	1,225,153,180	168,649,500	13.76%

<b>Sources of Financing of Public University Education for the Year 1995</b>	
Income Sources	Amount in JD
University Fees	26,358,000
Revenue of movable and fixed assets	4,052,000
Other sources of income	2,801,000
Customs taxes	28,715,000
Additional fees	10,500,000
Annual government grants	8,000,000
Periodic & annual donations	2,800,000
Expected income	4,250,000
Fees due to government institutions	1,200,000
Income and loans	2,500,000

<b>Ratio of Public University Education Budget to the Government Budget</b>			
Year	(Academic)	Vocational	
1995	167,400,000	9,37,000	5.6%

### Education Funding Models

According to The Development of Education in the Hashemite Kingdom of Jordan 1995-1996 National Report<sup>428</sup> education is chiefly funded by the government's general budget according to an educational development plan, educational objectives and priorities. In 1995, governmental expenditure on education was 12 per cent of the total general budget.

<sup>428</sup> Presented to the 45<sup>th</sup> session of the International Conference on Education, Geneva, 30 September – 5 October 1996

The Council of Higher Education is charged with securing financial support for public universities and establishes criteria for investment, resource distribution and accepts grants for institutions of higher education. Financial sources include: government support; student fees; external assistance (through the Ministry of Education or via university partnerships with external entities); taxes collected by Customs Department and Municipalities (in the form of University Tax) distributed among all public universities; private university investments (i.e. Hospital of the University of Jordan and shopping centres at Yarmouk University and University of Jordan; and community donations. Private universities are financed by student fees, shareholders and institutional and individual donations.

### International Assistance and Cooperation and Role of Non-State Actors

Some schools are financed and administered by international and non-governmental agencies, including: UNRWA, Queen Alia Fund for Voluntary Social Work, and Noor Al-Hussein Foundation.<sup>429</sup>

#### **6.5.2 Infrastructure**

##### Availability and Adequacy<sup>430</sup>

The JNCHR reports that the Ministry of Education made the following infrastructure improvements enhancements in the 1994/1995 academic year: equipping schools with computer labs; preparing curricula, textbooks, manuals and educational computer programmes for the 10<sup>th</sup> class and for comprehensive secondary education; equipping schools with computers for information technology courses for the 10<sup>th</sup> class; produced 163 educational television programmes for various subjects and classes; produced 168 school radio programmes; produced educational boards, transparencies, models and kits; equipped schools with furniture and educational material for 150 libraries, 144 labs and 168 display and observation rooms. The Ministry of Education supervises textbook preparation and production for basic and secondary course. Textbooks are distributed free of charge to students in the basic education cycle. Students

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<sup>429</sup> Source: *The Development of Education In The Hashemite Kingdom of Jordan 1995-1996 National Report*.

<sup>430</sup> Source: *id.*

in government schools use public transportation, private cars or walk to school, while private schools provide buses for fees that depend on the distance travelled.

### ***6.5.3 Teachers and support staff***

Primary-school teachers must hold an associate degree (community college diploma) and an educational qualification certificate. Community colleges offer two-year teacher preparation programmes in most subjects. Secondary-school teachers must hold a bachelor's degree for which a diploma of education is preferred. Higher-education teachers must hold a doctorate, although in some cases a master's degree is sufficient. The Higher College for the Certification of Teachers (established in 1988) provides educational opportunities for in-service school teachers and opportunities to raise qualifications to equivalent of a university degree. Teacher promotion occurs after five years in a new grade, class or category, however promotions can be accelerated in the event of a teacher obtaining a further qualification or demonstrating a distinctive performance. Quotas for teachers (which do not exceed 5 per cent) exist for candidates who are suitably qualified and are a son or daughter of a martyr of the Jordanian Armed Forces; or are from a financially disadvantaged background; or have a disability.

### ***6.5.4 Teaching Facilities and Materials***

The Ministry of Education conducts teaching training programmes as part of its educational development plan. In-service certification programmes are provided at universities of Jordan which allow for a teacher to upgrade his or her qualifications. In-service programmes include training on effective teaching methods, and academic training on new textbook content and educational specialisation.

## **6.6 Accessibility**

### ***6.6.1 Non-discrimination***

#### Relevant Legislation, Government Policies and Programmes

No information provided.

### **6.6.2 Gender Parity and Gender Equality**

#### Relevant Legislation, Government Policies and Programmes

No information provided.

### **6.6.3 Physical Accessibility**

#### Geographic Location and Physical Access

No information provided.

### **6.6.4 Economic Accessibility**

#### Primary Education

The JNCHR observes that despite the existence of constitutional and legislative guarantees to free and compulsory primary education in public schools, a nominal fee is generally collected from families to provide additional support to the education system. Students from financially disadvantaged backgrounds are exempted from the requirement to pay the school contribution.

#### Secondary Education

The JNCHR advises that beyond the tenth grade, secondary education is not compulsory.

### **6.6.5 Non-formal Education**

With regards to non-formal education, the 1995-1996 national report, *The Development of Education in the Hashemite Kingdom of Jordan* stated:

The educational authorities in Jordan paid special attention to literacy and adult education programs in particular and to non-formal education programs in general. A plan for this



purpose was set down aiming at:

- Reducing the rate of illiteracy in 1995 to 8% by the year 2000
- Reinforcing the literacy programs by introducing agricultural, health and cultural education skills to meet the needs of the labour market
- Improving compulsory education conditions to restrict failure and drop-out in the basic cycle and attract school re-entry
- Developing quality of non-formal education programs

The JNCHR reports that in 1995/1996 the following non-formal education initiatives were implemented:

- 576 literacy centres ( 55 for males and 521 for females) serving 10,518
- 57 evening class centres for adults to continue formal education
- experimental literacy centres

The JNCHR notes that cultural centres also play an important role in the provision of non-formal education and training.

## **6.7 Acceptability**

### **6.7.1 *Quality Education and Minimum Standards***

#### Relevant Institutions

The Education Supervision unit within the Ministry of Education is responsible for the monitoring and supervision of schools. The Ministry of Education works with governorate of each area to ensure that students are properly enrolled and participating in primary education. The Ministry of Education has an action plan to evaluate the strengths and weaknesses of the education system, through a planning and curriculum management team.

#### Indicators

The tables below, extracted from the 1995-1996 report, The Development of Education in the Hashemite Kingdom of Jordan, provide an overview of the indicators used by the Ministry of Education to monitor the realisation of the right to education in Jordan. The Ministry also draws

on information obtained from the results of student's tests and examinations and administrative reports for evaluation purposes.

<b>Promotion, Failure and Drop-out Rates for Basic and Secondary Cycles According to Sex</b>						
	<b>Male</b>			<b>Female</b>		
<b>Cycle and Year</b>	<b>Promotion %</b>	<b>Drop-out %</b>	<b>Failure %</b>	<b>Promotion %</b>	<b>Drop-out %</b>	<b>Failure %</b>
<b>Basic Cycle</b>						
1992/1993	97.35	1.02	1.63	97.73	0.61	1.66
1993/1994	97.49	1.16	1.35	97.83	0.71	1.46
1994/1995	92.66	1.18	6.16	92.95	1.34	5.71
<b>Secondary Cycle</b>						
1992/1993	95.44	1.06	3.50	97.03	1.28	1.69
1993/1994	94.09	2.71	3.20	96.43	1.60	1.97
1994/1995	.....	.....	.....	.....	.....	.....
<b>Secondary Cycle including Vocational Education</b>						
1995/1996	73.49	18.72	7.79	84.69	12.11	3.20

<b>Distribution of Students According to education Cycle</b>				
<b>Study Year</b>	<b>1994/1995</b>		<b>1995/1996</b>	
<b>Educational Cycle</b>	<b>No. of Students</b>	<b>Percentage</b>	<b>No. of Students</b>	<b>Percentage</b>
Pre-School	57,050	4.5%	91291	4.5%
Basic Education	1074,855	85.5%	1082642	84%
Secondary Education	123,883	10%	146022	11.5%
Total	1,255,788	100%	128995	100%

<b>The average pupil-teacher ration for 1995/1996 was 23:1</b>				
<b>Supervising Authority</b>	<b>Pre-School</b>	<b>Basic</b>	<b>Academic Secondary</b>	<b>Vocational Secondary</b>
Ministry of Education	10	20	38	19
Other Governmental	40	17	31	17
UNRWA	—	31	—	8

Private Education	15	27	32	9
Average	22	24	34	13

### 6.7.2 Discipline

The JNCHR reports that the Ministry of Education has prohibited corporal punishment and has established a direct hotline to the Ministry for reporting incidents of corporal punishment.

### 6.7.3 Curriculum

#### Overview of Curriculum Determination<sup>431</sup>

The Ministry of Education is responsible for curriculum development. The curriculum development process includes the review and updating of textbooks and teacher's manuals for the basic education, secondary education and vocational secondary education cycle.

The JNCHR reports that Jordan has engaged in a diagnostic evaluation project with the Scottish General Examination Board to improve evaluation methods at both the basic and secondary levels.

#### Incorporation of Human Rights Education<sup>432</sup>

In a 2005 report on the status of teaching human rights in Jordan, the JNCHR noted:

The Ministry of Education (MOE) responded to a NCHR initiative and put in place a joint three-year (2005-2008) plan of action that revolves around four main themes:

1. Integrating HR concepts into school curricula
2. Building the capacities of Ministry workers in HR education
3. Enhancing extra-curricular activities in the schools by establishing HR clubs, conducting annual HR competitions
4. Enhancing the role of communication, by supplying the media with information on the Centre's and Ministry's activities in the area of HR education.

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<sup>431</sup> Source: *The Development of Education in the Hashemite Kingdom of Jordan 1995-1996 National Report*.

<sup>432</sup> An in depth analysis is available in *The Status of Teaching Human Rights in Jordan*. December 2005. Available upon request.

#### **6.7.4 Religious and Cultural Practices, Languages of Minority Groups**

##### Relevant Legislation, Government Policies and Programmes

No information provided.

### **6.8 Acceptability**

#### **6.8.1 Education and Work**

The JNCHR's 2005 Status Report<sup>433</sup> notes increases in the ratio of working children, with numbers approaching 50,000, more than half of whom work in the capital city earning less than minimum wage in often hazardous conditions. There was also an increase in children working in the unorganized business and vocational sector. Forty per cent of working children are employed in vocational workshops (i.e. mechanical repair, carpentry) where they face long hours and low wages. According to the Ministry of Labour, there are an estimated 45,000 working children in Jordan, although this may be underestimated as families and employers evade registration.

#### **6.8.2 Education for Women**

In its 2005 *Status Report of Human Rights The Hashemite Kingdom of Jordan*, the JNCHR observed:

The Jordanian society is still a male society where the woman practices a secondary role in comparison to man, whether at the family or society level in general. A NCHR study of three Jordanian universities, conducted in 2005 on the awareness of students regarding women's rights and violence against women, had monitored some positive changes in the attitudes and views of male and female youth towards women's issues.<sup>434</sup>

It is also observed:

Although Jordan has one of the highest female literacy rates in the region (82 percent), females are often directed into generalist streams. This situation deprives girls from taking part in learning that

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<sup>433</sup> *Status Report of Human Rights The Hashemite Kingdom of Jordan 2005*. National Centre for Human Rights

<sup>434</sup> *Status Report of Human Rights The Hashemite Kingdom of Jordan 2005*. National Centre for Human Rights

will serve them in the workforce. It also creates significant gaps in future employment and income as compared with their male peers. Further, although parents value education, economic hardship sometimes forces them to remove their daughters from the educational system at an early age – in many cases to care for younger siblings. This practice negatively impacts female participation rates and ensures a life of economic and social challenges for affected women.<sup>435</sup>

### **6.8.3 Special Needs Education**

The *Law on the Care of the Disabled Number 12* (1993) granted disabled persons rights equal to healthy persons, including general rights such as to participate, right to medical care, and the right to education.

In providing access to students with special needs, the Directorate of Special Education and Division of Remedial Education has introduced services for children with special needs with the development of dedicated resources rooms in schools; the Ministry of Education has started to encourage the integration of students with disabilities into regular school programmes; the University of Jordan has developed programmes to provide special needs services; the UNRWA Care Programme has offered services to students with learning difficulties through dedicated learning resource rooms; and private organisations contribute to the establishment of special centres and schools.

Special programmes have also been introduced for gifted students, including: the promotion of gifted students, where appropriate, to higher classes; the establishment by the Noor Al-Hussein Foundation of the Jubilee School, a coeducational secondary school offering special programmes; the provision of enrichment materials in UNRWA schools; and the development of a special Science and Technology Club.

## **6.9 Activities of the JNCHR**

### **6.9.1 Mandate and Methods**

The JNCHR was established under *Provisional Law No. 75 of 2002 - Law of the National Center for Human Rights*. With respect to the protection and promotion of economic, social and cultural rights, Article 4 of the Provisional Law establishes the objectives of the JNCHR:

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<sup>435</sup> <http://www.usaidjordan.org/sectors.cfm?inSector=17>

- (a) To promote human rights principles in the Kingdom, by drawing from the tolerant message of Islam, the values of the Arab Islamic culture, the rights enshrined in the Constitution and the principles asserted in international charters and covenants.
- (b) To contribute to entrenching principles of human rights in the Kingdom at both intellectual and practical levels, and of non-discrimination among citizens on the basis of race, language, religion or sex.
- (c) To bolster the democratic process in the Kingdom in order to create a comprehensive and balanced model, based on disseminating freedoms, safeguarding political pluralism, respecting the rule of law and guaranteeing the right to economic, social and cultural development,
- (d) To strive to ensure the Kingdom's accession to Arab and international human rights charters and conventions.

Article 5 of the *Provisional Law* details the powers and functions of the JNCHR. In summary, the JNCHR has a wide human rights mandate and deals with cases of human rights violations, complaints, education and promotion, monitoring and integrating human rights into Jordanian legislation and practices. The JNCHR's mission is:

To protect human rights and disseminate a human rights culture, observe human rights situation and provide consultation and legal assistance, take necessary administrative and legal procedures to deal with human rights complaints and violations in order to put an end to it and eliminate its effects, to conduct studies and researches and provide information, in addition conduct training workshops and seminars, manage and organize campaigns, and take stands and issue necessary reports and publications.

### **6.9.2 Investigation of Complaints**

The JNCHR reports that it is currently dealing with complaints, including from non-nationals in Jordan, relating to the refusal of the Ministry of Intelligence to grant the complainants permission to attend government schools. The JNCHR has submitted letters to the Ministries of Education and Intelligence requesting that they provide a response and to address the outstanding issues, however at this stage no response has been received.

### **6.9.3 Research and/or Public Inquiries**

In 2005 the JNCHR, in partnership with the Ministry of Education and UNESCO and with Dr. Sleiman Swies, published a report on *The Status of Teaching Human Rights in Jordan*.

#### ***6.9.4 Identification of Laws, Policies and/or Practices Impacting on the Right to Education***

The JNCHR reported that it has collaborated with the Ministry of Education to develop an action plan on human rights education. The action plan includes a matrix for human rights training on the integration of human rights into the education curriculum. The JNCHR also encouraged the Ministry of Education to establish a National Committee for Human Rights Education.

#### ***6.9.5 Education and Awareness Campaigns***

The JNCHR has conducted a workshop on “the status of teaching human rights in Jordan” and published a special issue of its magazine on human rights education; it has conducted two workshops on techniques for the integration of human rights concepts into schools curriculum; and it has conducted seven four-day workshops on the issue of youth violence against women.

#### ***6.9.6 Contribution to Jordanian Government reports to Treaty Body Committees***

The JNCHR reports that it has provided a shadow report to the Committee on the Rights of the Child. The JNCHR also reports that one of the outcomes of a workshop it conducted recently was the publication in 2006 of *The NGOs Supplementary Report on the 3<sup>rd</sup> Jordanian Official Report on the Convention on the Rights of the Child*. The report was a national joint effort by various non-governmental organizations following a JNCHR workshop.

## 7. Malaysia

### 7.1 International Law

Malaysia is a party to the CEDAW<sup>436</sup> and the CRC.<sup>437</sup> Malaysia is not a party to the ICESCR, CERD or the UNESCO Convention Against Discrimination in Education.

Malaysia is a party to the ILO Minimum Age Convention<sup>438</sup> and the Worst Forms of Child Labour Convention.<sup>439</sup>

### 7.2 National Law

The *Constitution of Malaysia 1957* relevantly contains the following rights and freedoms:

#### 8. Equality

- (1) All persons are equal before the law and entitled to the equal protection of the law.
- (2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
- (3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.
- (4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.
- (5) This Article does not invalidate or prohibit -
  - (a) any provision regulating personal law;
  - (b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion;
  - (c) any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;
  - (d) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election;

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<sup>436</sup> Malaysia acceded to the CEDAW on 5 July 1995.

<sup>437</sup> Malaysia acceded to the CRC on 17 February 1995.

<sup>438</sup> Malaysia ratified the Minimum Age Convention on 9 September 1997

<sup>439</sup> Malaysia ratified the Worst Forms of Child Labour Convention on 10 November 2000



- (e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day;
- (f) any provision restricting enlistment in the Malay Regiment to Malays.

## 12. Rights in respect of education

(1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth –

- (a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or
- (b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).

(2) Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose.

(3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.

(4) For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

Part IV of the *Constitution (Relations between the Federation and the States)* addresses the distribution of legislative powers (Chapter 1). Article 74(1) refers to the power of Parliament to make laws relating to external affairs as contained in *List I – Federal List*, of the *Ninth Schedule*, including relevantly:

- (a) Treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with any other country;
- (b) Implementation of treaties, agreements and conventions with other countries;
- ...
- (d) International organizations; participation in international bodies and implementation of decisions taken thereat;

### 7.2.1 Legislation

*The Education Act* (1996) relevantly contains the following provisions:

## Primary education

### **29A. Compulsory primary education**

(1) The Minister may, by order published in the *Gazette*, prescribe primary education to be compulsory education.

(2) Every parent who is a Malaysian citizen residing in Malaysia shall ensure that if his child has attained the age of six years on the first day of January of the current school year that child is enrolled as a pupil in a primary school in that year and remains a pupil in a primary school for the duration of the compulsory education.

(3) The Minister may, if he considers it desirable and in the interest of the pupils or the public to do so, by order published in the *Gazette*, exempt any pupil or any class of pupils from the requirement to attend compulsory education, either absolutely or subject to such conditions as he may think fit to impose, and may at any time in his discretion revoke the exemption or revoke or alter or add to such conditions.

(4) A parent who contravenes subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) The Minister may make regulations for the carrying into effect of the provisions of this section.

## Secondary Education

### **30. Minister to provide secondary education**

(1) It shall be the duty of the Minister to provide secondary education in the following national secondary schools:

- (a) academic secondary schools;
- (b) technical secondary schools; and
- (c) secondary schools of such other descriptions as the Minister may from time to time determine.

(2) Subject to the provisions of this Act, the Minister may provide upper secondary education in any national secondary school.

### **31. Establishment and maintenance of secondary schools.**

Subject to the provisions of this Act, the Minister may establish and maintain any of the schools described in section 30.

## Post-secondary Education

### **33. Post-secondary education**

The Minister may provide post-secondary education in-

- (a) the national secondary schools described in paragraphs 30(1)(a) and (1)(b);
- (b) colleges; and
- © any other national secondary school or educational institution established and maintained by the Minister under this Act.

### Financing of education

Section 6 (*Management and Control of Consolidate Funds*) of the *Financial Procedure Act 1957* is relevant to the financing of education:

- (1) The management of the Federal Consolidated Fund and the supervision, control and direction of all matters relating to the financial affairs of the Federation not specifically assigned to any other person by any other law shall, subject to the Federal Constitution and this Act, vest in the Minister.
- (2) The management of the Consolidated Fund of a State and the supervision, control and direction of all matters relating to the financial affairs of a State not specifically assigned to any other person by any other law shall, subject to the Federal Constitution, the Constitution of the State and this Act, vest in the State financial authority.

### Minimum age of employment

The *Children and Young Persons (Employment) Act 1966* (Revised 1988) contains provisions relevant to the employment of children aged less than fourteen and young people aged less than sixteen. The Act contains provisions regulating the nature of the employment in which children and young persons can be engaged, the number of days of work and the hours of work.

### Minimum age of marriage

Section 8 of the *Islamic Family Law (Federal Territories) Act 1984* stipulates the minimum age for marriage:

No marriage may be solemnized under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Syariah Judge has granted his permission in writing in certain circumstances.

### Minimum age of criminal responsibility

The *Penal Code* (Revised 1997) contains a number of provisions relevant to the actions of children, including:

82. Act of a child under 10 years of age  
Nothing is an offence which is done by a child under ten years of age.

and:

83. Act of a child above 10 and under 12 years of age, who has not, sufficient maturity of understanding  
Nothing is an offence which is done by a child above ten years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

## **7.3 Overview of Education Policies and Programmes**

The National Education Philosophy, as articulated by the Ministry of Education states:

Education in Malaysia is an on-going effort towards further developing the potential of individuals in a holistic and integrated manner, so as to produce individuals who are intellectually, spiritually, emotionally and physically balanced and harmonic, based on a firm belief in and devotion to God. Such an effort is designed to produce Malaysian citizens who are knowledgeable and competent, who possess high moral standards and who are responsible and capable of achieving high level of personal well-being as well as being able to contribute to the harmony and betterment of the family, the society and the nation at large.<sup>440</sup>

## **7.4 Justiciability**

### **7.4.1 Detail of National Court Cases**

The right to education was raised to the attention of the High Court of Malaysia in the case of *Merdeka University Sdn Bhd v Government of Malaysia*. In deciding against the application of Article 26 of the Universal Declaration of Human Rights 1948 to Malaysia, the Court found:

The Universal Declaration of Human Rights was proclaimed and adopted on 10 December 1948, by the General Assembly of the United Nations. It is not a legally binding instrument as such and some of its provisions depart from existing and generally accepted rules. It is merely a statement of principles devoid of any obligatory character and is not part of our municipal law.

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<sup>440</sup> Ministry of Education, National Education Philosophy, located at <http://www.moe.gov.my/tayang.php?laman=falsafah&bhs=en> (28 May 2006)

Mr. Beloff submits that the reasons for the rejection of the plaintiff's petition are incompatible with Article 26 of the declaration which provides inter alia that technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit and that parents have a prior right to choose the kind of education that shall be given to their children. The declaration sets out fundamental rights in absolute and unqualified terms and does not contain any precise specification of the extent or ambit of these rights, but a general limitation is laid down in Clause 2 of Article 29 that in the exercise of his rights and freedoms, everyone shall be subject to such limitations as are determined by law as specified therein, combining in effect the traditional concept of the sphere of individual liberty with the modern rule of social purpose and social utility.

The national education policy reflected in the Education Act does however take into consideration the general principle that pupils are to be educated in accordance with the wishes of their parents in the second recital in the preamble thereto which declares that regard shall be had to this postulate so far as it is compatible inter alia with the policy set out in the first recital thereof to establish a national system of education but subject to the further requirement stipulated in the third recital and in particular that of making the national language the main medium of instruction. The point taken on behalf of the plaintiff in this respect does not therefore arise and in any event the pertinent provisions for consideration are those contained in our municipal legislation.

I would in disposing of this aspect of the matter briefly refer to what Sir Robert Megarry VC, said in *Malone v. Metropolitan Police Commissioner* [1979] 1 Ch 344, 352-354, 366 (at pp. 352-354, 366) with regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and repeat what I said in *Lim Cho Hock v. Government of the State of Perak & Ors.* [1980] 2 MLJ 148, 153 (at p. 153) that the Court's power to make declarations is confined to matters justiciable in the Courts and limited to legal and equitable rights and does not extend to moral, social or political matters.<sup>441</sup>

Although the decision of the High Court was appealed to the Federal Court, the Federal Court did not dispute the High Court's finding regarding the application of the Universal Declaration of Human Rights.

## **7.5 Availability**

### **7.5.1 Expenditure**

According to the report of the Human Rights Commission of Malaysia ('SUHAKAM'), *The Human Rights Approach to the Millennium Development Goals (MDGs): Goal 2 – Achieve Universal Primary Education*:

From 1996 to 2000, development of preschool, primary and secondary education received the largest share of the Ministry of Education's development allocation received from the Federal Government. During the Eighth Malaysia Plan (8MP) period, education and training received the

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<sup>441</sup> Page 19 of the judgment

highest sum of Federal Government Development Allocation and Expenditure. According to the Mid-Term Review of the Eighth Malaysia Plan 2001-2005, the revised 8MP allocation for education was RM40,033.4 million. From this total, RM 376.1million was allocated for pre-school education, RM6,606.0 million for primary education and RM10,901.132 for secondary education.

### ***7.5.2 Infrastructure***

SUHAKAM reports that infrastructure such as dormitories, learning and teaching materials, school buses, sanitation and clean water supply in urban schools are generally adequate. It suggests however, that there is a disparity between resources available in urban and rural areas, particularly rural schools and schools in the interior areas of the states of Sabah and Sarawak in Borneo. Basic facilities, including access to clean water supplies are described as “inadequate.”

### ***7.5.3 Teachers and support staff***

The Teacher Education Division of the Malaysian Government’s Ministry of Education is responsible for the training of teachers. The Division has oversight of teacher education colleges which conduct initial teacher training, ‘in-service’ teacher training, short courses and workshops.

The Teacher Education Division implements and evaluates the curriculum and examination system and is responsible for the admission of candidates into the teacher-training programmes.

Primary school teachers in national and national-type Chinese and Tamil schools are trained in teacher education colleges. Secondary school teachers are either college trained or graduate teachers, trained mainly in the Faculties of Centres of Education in local public universities and in teacher education colleges. The long-term policy of the Malaysian Government is to employ only graduate teachers in secondary schools.

### ***7.5.4 Teaching facilities and materials***

#### Educational Resource Centres

A network of State Education Resource Centres (SERC) and Teacher Activity Centres (TAC) has been established to provide teachers with facilities and opportunities to share resources, ideas and

experiences in producing their own instructional materials. Teachers and pupils have access to media services, equipment, instructional and reference materials. Each Centre acts as a coordinating agency in planning, organising and conducting in-service education programmes for teachers in its state or district.

### Educational Radio and Television

Educational services are provided through radio and television networks. The services provided include educational television programmes for formal education in four core subjects, namely: Bahasa Melayu, English, Mathematics and Science which are broadcast nationwide. Radio programmes are aired in Sarawak only. Television programmes for informal education purposes are also regularly broadcast nationwide.

## **7.6 Availability**

### ***7.6.1 Non-discrimination***

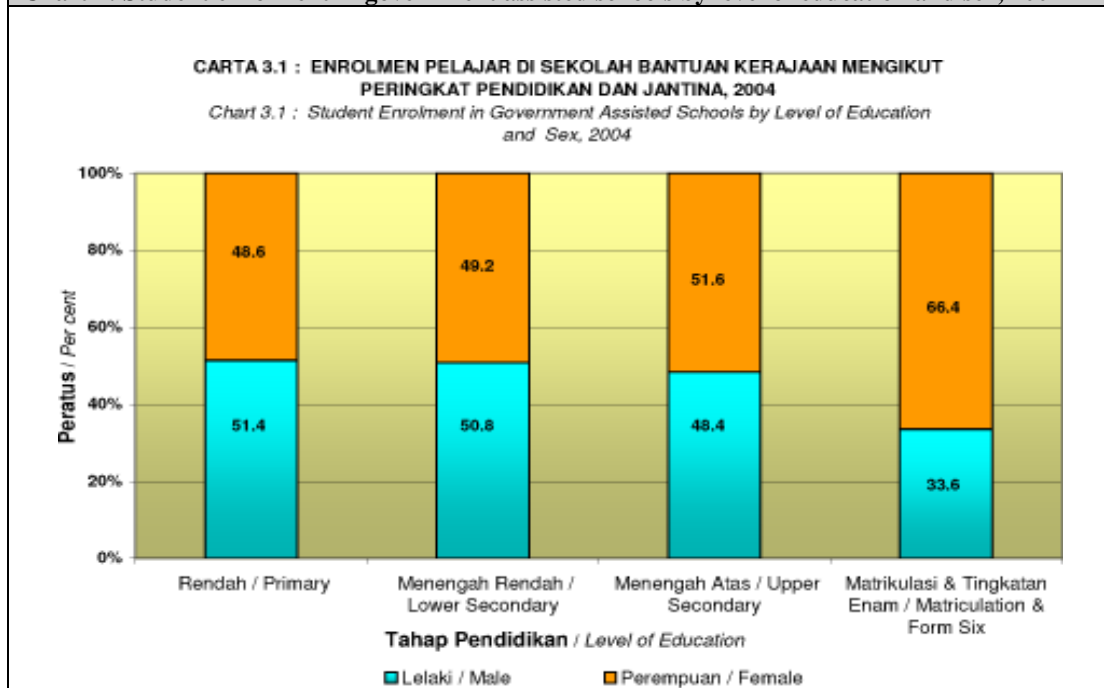
Please refer above to the relevant provisions of the Constitution of Malaysia and the Education Act.

### ***7.6.2 Gender parity and gender equality***

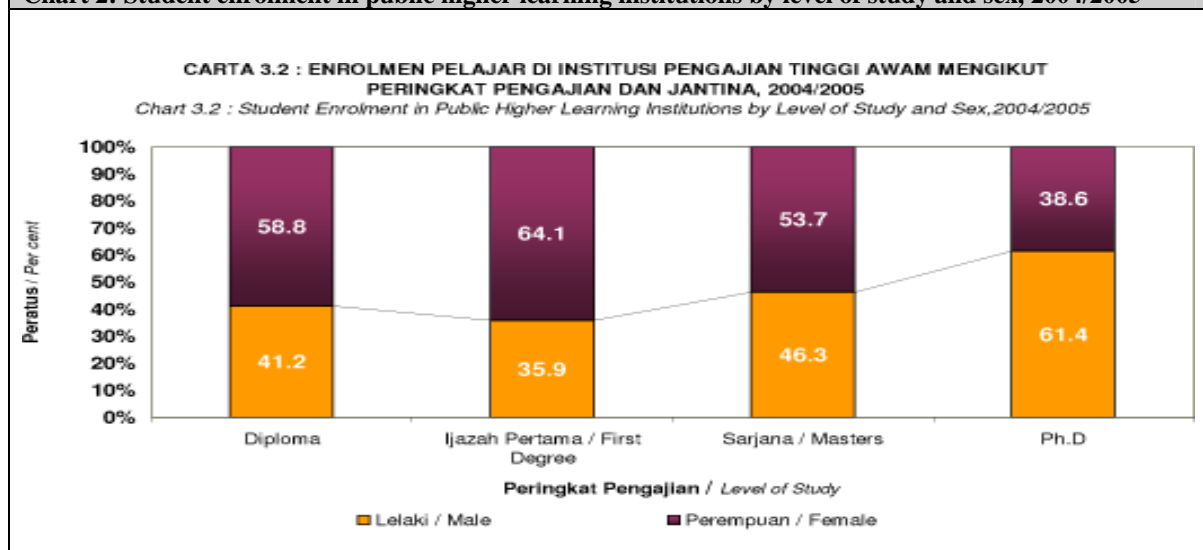
SUHAKAM reports that the Malaysian Government has established a Cabinet Ministry on the Promotion of Gender Equality, whose primary aim is to facilitate the creation of gender equality in Malaysia through policy and legislative measures. Amongst its recent initiatives has been the appointment of gender focal point officers in a number of other Cabinet Ministries, including the individual Ministries of Housing; Information; Information; Human Resources; Women, Family and Community Development; Education; Higher Education; Rural Development; Youth and Sports; and the Prime Minister's Department (Islamic Affairs) and (Legal Affairs).

Statistical information on the enrolment of students in government schools and institutions of higher education is copied below in Chart 1 and Chart2.

**Chart 1: Student enrolment in government assisted schools by level of education and sex, 2004**



**Chart 2: Student enrolment in public higher learning institutions by level of study and sex, 2004/2005**





### ***7.6.3 Physical accessibility***

#### **Remote and Indigenous Communities**

Many indigenous children have problems attending school due to the lack of effective and accessible means of transportation. In some areas of Malaysia the routes that are taken by children to reach their schools are often unsafe. Education facilities in indigenous settlements are usually inadequate.

#### **Persons with disabilities**

A barrier to accessible education is the lack of disabled-friendly public infrastructure and transport. Existing infrastructure creates a barrier to mobility and accessibility as it does not accommodate the needs of persons with disabilities. In addition to the lack of special schools, there are usually limited facilities in schools to accommodate the needs of persons with disabilities. Most schools do not have basic infrastructure such as wheelchair ramps and specially modified toilets.

#### **Undocumented migrants**

Malaysian law does not recognise the rights of undocumented migrants, even bona fide refugees that have been registered with the UNHCR. Upon arrest, all undocumented migrants are vulnerable to a host of penal sanctions, including detention and corporal punishment, ultimately culminating in deportation. The children of undocumented migrants born in Malaysia do not have any rights to education, although there have been a few instances where education authorities have exercised their discretion to allow such children to obtain some basic education in Malaysian schools. However, due to their lack of legal status, such children are usually prevented from sitting for national level examinations to allow them to pursue higher levels of education.

#### **7.6.4 Economic accessibility**

##### Primary education

The Malaysian Government's *Compulsory Education Policy* is aimed at educating parents and society and ensuring a primary school education for every child. Compulsory education was implemented at the beginning of the school year of 2003 with Year 1 pupils. In 2004, it was extended to Year 2 pupils in all schools throughout Malaysia.

Compulsory education at the primary level is required under the *Education Act*. Parents are required to register their children at primary schools upon reaching the age of six years, on the first day of the current school year. Failure to do so is an offence, upon which parents may face a fine of not more than RM5000, jail not exceeding 6 months, or both.

##### Secondary education

Upon completion of primary education at public schools, pupils are generally automatically promoted to the secondary level education at public secondary schools for another five years of free education (i.e. three years of lower secondary and another two years of upper secondary education).

According to the Malaysian Government, the secondary school curriculum offers a wide range of subjects from the arts and sciences as well as vocational and technical subjects that provide a hands-on approach to learning. Several religious schools and special education schools also offer secondary education.

##### School fees, charges and other costs imposed on parents or guardians for primary and secondary education / Extent of financial assistance available for the completion of primary and secondary education

Public primary education in Malaysia is not entirely free. Although school fees are not charged, school administrative often imposes other miscellaneous fees such as fees for sports, extra-curricular activities, examinations and insurance, among others. Students (or their families) are

also required to buy items such as personal files, a report card, clothes for sport activities, school badges and name tags. Relief is available to a limited few through scholarships. The *Federal Minor Sponsorship* and *Pre-University Scholarships* are awarded to selected students at the primary and secondary school level.

Malaysia has had a textbook-on-loan scheme since 1975. The programme covers all levels of education, from primary to upper secondary education. The objective is to lessen the financial burden of parents from the lower income group and ultimately ensure access to education for every child. Other assistance such as health and dental care, and supplementary food schemes to children from the rural areas, and urban poor are also implemented by the government.

### Higher education

#### Information about fees, charges and other costs for higher education. Extent of financial assistance (if any) available for the completion of higher education

Higher education expenses include tuition fees, accommodation fees, student welfare, health, library and sports fees.

The Ministry of Higher Education provides loans through the National Higher Education Loan Fund Corporation. This assistance takes the form of long-term, low-interest loans to students who have secured places in tertiary institutions but lack the economic resources a necessary for further education.

The National Higher Education Loan Fund Corporation (NHEFC) is a statutory body established under the *National Higher Education Fund Board Act 1997* (Act 566). While students at public higher education institutions are allocated a loan of RM6,500 per annum upon successful application, those at selected private higher education institutions are eligible for a loan of RM12,000 per annum. A four-percent administration cost is charged and loans are repaid upon employment after graduation. The mode of repayment is via tax deductions over a 15-year period. However, the NHEFC has the right to change the mode of repayment.

To promote science and science-related education a further incentive of an additional loan of

RM500 a year without the admission charge is given. NHEFC evaluates the financial status of the student's family based on the declared total income before approving the loan.

#### **7.6.5 *Non-formal education***

SUHAKAM reports that amongst a number of initiatives to improve adult literacy has been the implementation of the adult functional-literacy and reading habit promotion programmes. These programmes are made available by the government through the Ministry of Rural Development and other relevant ministries. The programmes are especially designed to meet the needs of persons with lower levels of income. There is no age limit for entrance into these programmes, nor are there gender-based restrictions.

The Community Education Division within the Department of Community Development Department (or KEMAS), provides programmes relating to non-formal education such as Computer Literacy Education, Family Prosperity Education and Skills Education. One of the objectives of these programmes is to provide basic reading, writing and counting education with skills guidance for people who have not completed formal schooling.

ERA Consumer Malaysia (the Education and Research Association for Consumers, Malaysia) is a voluntary, non-profit and non-political civil society organization which is currently establishing community centres for the empowerment of Indian women in Malaysia. The objective of the project is to address discrimination and violence against Indian women. The aim of the project is to improve the ability of these women to exercise power in the social institutions that govern their daily lives (such as in the home and extended family, local community councils and associations, local elite, local markets and the local government. The main objectives of the community centres are:

- to build confidence among Indian women and to build awareness of gender issues in the urban and suburban Indian communities;
- to raise the socio-economic status of Indian women by enhancing capacities of Indian women to sustain their own living and to participate in self-help groups of the community; and
- to improve legislation provisions on women's rights in Malaysia through organizing

campaigns, seminars and other activities.

## **7.7 Availability**

### ***7.7.1 Measures adopted to provide quality education and establish minimum education standards and a monitoring system***

At primary and secondary levels, the national curriculum prepares students for the common public examinations, the first being at the end of the sixth year of their primary education, called the Primary School Achievement Test or more commonly known as the UPSR. The next is the Lower Secondary Assessment known as the PMR at the end of the third year in the lower secondary level (Form 3) and then the SPM examination or the Malaysian Certificate of Education at the end of the upper secondary level (Form 5). The pre-schooling curriculum is provided by the government but there is no common public examination at this level.<sup>442</sup>

### ***7.7.2 Curriculum***

#### Overview of Curriculum Determination

The Curriculum Development Centre (CDC) of the Ministry of Education is responsible for developing school curriculum and improving the quality of education, in line with the National Education Policy. The CDC has been focusing on strengthening curriculum through research and evaluation. At the macro level, research is focused on curriculum policy at three levels (pre-school, primary and secondary). At the micro level, the CDC conducts research projects to accumulate information in certain aspects of curriculum implementation and development. Several aspects of research are on Critical and Creative Thinking and Generic Skills.

#### Human rights education

In 2005 the Ministry of Education began implementing a new subject in schools, *Civics and Citizenship*. Civics refers to the individual's relationship with the community while citizenship refers to the individual's relationship with the country. Civics and Citizenship education is

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<sup>442</sup> Ministry of Education, National Education Philosophy, located at <http://www.moe.gov.my/tayang.php?laman=home&bhs=en&id=0&info=0> (28 May 2006)

designed to provide awareness to students of their role, rights and responsibilities to the community and country. In line with this, SUHAKAM highlighted several areas where human rights elements can be integrated into the curriculum of the subject. The CRC and UDHR were the basic documents used. SUHAKAM also supplied several human rights resource materials including the Human Rights Lesson Plan for Southeast Asian Schools to every school in the country. There is also a section on SUHAKAM in moral education textbooks for form 2 and form 4 secondary school students. There are elective papers on human rights in some higher education institutions under the social studies and law faculties.

### ***7.7.3 Religious and cultural practices, languages of minority groups***

#### **Religion**

Article 12 of the *Constitution of Malaysia* contains provisions relevant to religious practices with respect to the right to education:

(2) Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose.

(3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.

(4) For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

National religious secondary schools offer Islamic religious education and Arabic Studies as well as science and technology subjects.

#### **Language**

Bahasa Melayu (Malay language), the country's national language, is the main medium of instruction. Since 2003 English has been a compulsory subject taught in school. English is used as the medium of instruction for Science and Mathematics at specific entry levels. In order to

meet the needs of the multi-ethnic nature of the population, the vernacular primary schools (known as national-type schools) are allowed to be set up and to use Mandarin or Tamil as the medium of instruction.<sup>443</sup>

## **7.8 Adaptability**

### ***7.8.1 Education for Women***

Amongst efforts to reduce adult illiteracy is the implementation of the adult functional-literacy and the reading habit promotion programmes. These are readily made available by the government through the Ministry of Rural Development (MORD) and other relevant ministries. The programmes are designed to meet the needs of persons in the lower income bracket. There is no age limit for entrance into these programmes, nor are there restrictions based on gender.

### ***7.8.2 Special Needs Education***

#### Policies and programmes

Malaysia has ‘special education schools’ which are designed to cater to the needs of students with disabilities. The Ministry of Education special needs education programmes include: Early Intervention Programme, Special Education Programme at three levels (Primary, Secondary and Post Secondary), and the Special Rehabilitation and Education Programme for Children with Disabilities.

Malaysia also has what it calls ‘Smart Schools’ which are one of the seven flagship applications of the Multimedia Super Corridor (MSC) which uses information and communications technology in the learning process.

Malaysia also has Sports Schools which focus on nurturing and developing potential athletes amongst school children.

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<sup>443</sup> Ministry of Education, National Education Philosophy, located at <http://www.moe.gov.my/tayang.php?laman=home&bhs=en&id=0&info=0> (28 May 2006)

### Capacity of schools to provide special needs education

According to SUHAKAM there is a severe shortage of human resources in special education in Malaysia, particularly in terms of quality, quantity, mobility and allocation. More professionals or experts, specially trained teachers, teachers' assistants, trained disabled trainers and volunteers are required. There are some instances where special classes cannot be conducted because of the shortage of specially trained teachers and the refusal of other teachers to teach classes. Some schools also refuse to accept children with disabilities because of social prejudice and the reluctance of teachers to conduct classes for children with disabilities.

## **7.9 Activities of SUHAKAM**

### ***7.9.1 Mandate and Methods***

Human rights are defined under section 2 of the *Human Rights Commission of Malaysia Act 1999* (Act 597) as referring to “fundamental liberties as enshrined in Part II of the Federal Constitution.” SUHAKAM uses a number of methods and approaches for the protection and promotion of economic, social and cultural rights.

### Economic, Social and Cultural Rights Working Group (ECOSOC)

Research and policy development relating to economic, social and cultural rights is conducted by the Economic, Social and Cultural Rights Working Group (ECOSOC). Pursuant to s4(2)(a) of the *Human Rights Commission of Malaysia Act 1999* (Act 597), ECOSOC's activities include programmes, seminars and workshops and the dissemination and distribution of its research. ECOSOC focuses on a range of issues including the right to adequate housing, healthcare and education. Its work highlights the plight of vulnerable groups including the urban and rural poor, single mothers, the elderly and people suffering from mental illness.

### Human Rights Education and Promotion Working Group (EWG)

Pursuant to section 4(1)(a) of the *Human Rights Commission Act 1999* (Act 597), human rights education and promotion is a fundamental responsibility of SUHAKAM. Primary responsibility



for this function rests with SUHAKAM's Human Rights Education and Promotion Working Group (EWG). The EWG's objectives include:

- (a) promote respect for and protection of human rights through educational activities for all members of society;
- (b) assess needs and formulate strategies for the furtherance of human rights education;
- (c) strengthen the role and capacity of the media in promoting human rights education;
- (d) co-ordinate the development of effective human rights education materials with the collaboration of Governmental and Non-government agencies;
- (e) foster learning environments that encourage participation and development of a caring personality that upholds the dignity of human beings and values friendship, understanding, tolerance and equality.

SUHAKAM's education programmes on economic, social and cultural rights focus on the right to education, employment and recreation, the right to adequate standard of living, health and shelter and the right to a safe environment. The EWG's activities include both immediate and informal activities to promote awareness of human rights and formal human rights education with long-term objectives.

The underlying philosophy of SUHAKAM's approach to human rights education is that it must be conducted from the perspective of knowledge, development of values, beliefs and attitudes, and action. Therefore, SUHAKAM's programmes aim to:

- provide all strata of society with information on human rights and existing mechanisms to protect these rights.
- develop beliefs in and positive attitudes toward human rights that will be translated into action so that individuals are likely to act to uphold their rights and those of others.

### ***7.9.2 Investigation of Complaints***

SUHAKAM reports that it received three complaints in 2003 and three complaints in 2004 relating to alleged violations of the right to education. In 2005 it received eight complaints on this issue. SUHAKAM reports that as of April 2006 it has received five complaints relating to the right to education. In a number of these cases, the subject-matter of the complaints have been outside of the scope of SUHAKAM's jurisdiction, thereby preventing it from taking any direct action. In these instances SUHAKAM has referred the complaints to the Ministry of Education

and/or other relevant authority for their action. With regards to complaints relating to the right to education within indigenous communities, SUHAKAM has referred these cases to the Department for the Advancement of Indigenous Affairs.

### ***7.9.3 Identification of laws / policies / practices impacting on the right to education in Malaysia***

SUHAKAM reports that it is conducting a review of the *University and University Colleges Act*, which contains a number of restrictive provisions that impact upon the freedoms of students and academics in higher education institutions.

### ***7.9.4 Education and Awareness Campaigns***

SUHAKAM organises conferences and workshops for Education Officers within the Ministry of Education at both the national and state level. The objective of the training is to increase awareness of human rights education, particularly the importance of understanding the Convention on the Rights of the Child, and the relevance of the rights of the child in the school environment. SUHAKAM generally invites officers from the Ministry of Education, State Education Department, District Education Officers, lecturers from teacher-training colleges and senior teachers from schools, including principals and counselors. SUHAKAM has provided training for approximately 300 people since 2004.

### ***7.9.5 Human Rights Education***

SUHAKAM's human rights education activities have included:

#### **Human Rights Awareness Programmes**

SUHAKAM has conducted human rights awareness programmes in primary schools for children aged 10-12. The programmes have been conducted for students in co-ed urban and rural schools, schools for indigenous children, Chinese and Tamil medium schools and single sex schools. SUHAKAM says that the objective of the programme is to raise awareness of human rights with emphasis on responsibility.

### Poster Competition

SUHAKAM conducts an annual poster competition to promote human rights awareness among primary and secondary school children. The competition adopts a different theme each year.

### CRC Training Awareness Workshops

SUHAKAM conducts awareness-raising and Training of Trainers workshops on the Convention on the Rights of the Child. To facilitate public understanding of the CRC, Training of Trainers and awareness workshops are conducted. SUHAKAM says that the main objective of the training is to improve public awareness and understanding of the CRC and its implementation. Workshops have been conducted for people with disabilities and those who work with them, teacher trainers, and indigenous people. A CRC Training Manual was developed, containing useful guidelines for trainers and facilitators. SUHAKAM reports that since 2003 it has trained 373 participants throughout Malaysia. Workshop participants included representatives from government agencies and non-governmental organisations working in the field of child development.

### Training of Young Trainers

*Training of Young Trainers* workshop participants come from various youth associations. The course content is drawn from the Convention on the Rights of the Child and is delivered through a participatory and child-centred methodology. SUHAKAM's objective is to generate interest among participants and to develop a better understanding of the CRC and related human rights principles.

### Human Rights Camps for School Children

SUHAKAM, with the support of Ministry of Education, has organised a series of Human Rights Camps for school children aged 13 to 14 years. The main objective of the Human Rights Camps is to educate children about their rights and responsibilities as stated in the Convention on the Rights of the Child, as well as related human rights principles.

### Roundtable Discussion: The Indigenous Community's Right to Education

SUHAKAM's Roundtable Discussion provided an effective platform for representatives of the indigenous communities to raise concerns, particularly in relation to their right to education. Participants at the Roundtable Discussion included representatives of the Ministry of Education, the Department of Orang Asli Affairs, non-governmental organisations as well as community leaders.

### Seminar on Rights of Indigenous People

SUHAKAM's seminars and workshops on the right of indigenous people have provided a platform for indigenous people to directly express their views and concerns and to enable SUHAKAM to assess and prioritise human rights concerns, in particular, rights to customary native land, fair and appropriate compensation for lands acquired from communities, the right to education, development and adequate healthcare.

### Roundtable Discussion for Persons with Disabilities

SUHAKAM organised a series of dialogues and roundtable discussion to promote the rights of persons with disabilities. The discussions included representatives from government departments, NGOs as well as people with disabilities. Discussions focused on issues regarding education, employment and creating a less restrictive learning environment.

### Human Rights Workshop for Police Officers

SUHAKAM has organised a series of workshops for the police since 2002. The rationale for such workshops is to encourage discussions on alleged human rights violations and abuse of powers by the police, based on public complaints, and to assist in improving departmental procedures through the development of human rights guidelines. The objectives of the workshops are to improve the awareness amongst participants about their role in protecting and promoting human rights and to develop their ability to prepare standing orders in line with human rights principles.

## Human Rights Workshop for Prison Departments

SUHAKAM has conducted workshops for prison officers to raise their awareness and understanding of human rights. Workshop participants have urged SUHAKAM to conduct more human rights programmes, particularly for lower-ranking staff whose duties involve handling prisoners and other categories of detainees.

### ***7.9.6 Annual Reports***

SUHAKAM's Annual Reports document the activities of the Education Working Group which is responsible for matters concerning the realisation of the right to education.

### ***7.9.7 Intervention in court proceedings***

SUHAKAM does not have any quasi-judicial powers under its legislation to enable intervention in court proceedings, either as *amicus curiae* or in any other capacity.

### ***7.9.8 Contribution to Malaysian Government reports to treaty body committees***

Although Malaysia is a party to CEDAW and CRC, SUHAKAM is yet to assist the government with its reporting obligations by contributing to Malaysia's reports to the treaty bodies.

### ***7.9.9 Collaboration with Civil Society***

SUHAKAM's Education and Promotion Working Group works closely with the Ministry of Education to promote awareness of human rights in schools and to integrate human rights into the education system by addressing what it refers to as "misconception[s] of human rights among educators and decision makers, and building their understanding on [the] CRC."

SUHAKAM also collaborates with other government departments and non-governmental organisations to provide information to people with disabilities and indigenous people about aspects of the right to education.

SUHAKAM reports that UNICEF supported its publication of a booklet and training manual on the Convention on the Rights of the Child. SUHAKAM also receives some international funding for its trafficking educational programmes.

## 8. Mongolia

### 8.1 International Law

Mongolia is a party to the ICESCR,<sup>444</sup> CERD,<sup>445</sup> CEDAW<sup>446</sup> and the CRC.<sup>447</sup> Mongolia is a party to the UNESCO Convention Against Discrimination in Education.<sup>448</sup>

Mongolia is a party to the ILO Minimum Age Convention<sup>449</sup> and the Worst Forms of Child Labour Convention.<sup>450</sup>

### 8.2 National Law

#### 8.2.1 *Constitution*

Article 16(7) of the *Constitution of Mongolia 1992* is relevant to the right to education:

The right to education. The state provides basic general education free of charge. Citizens may establish and operate private schools if these meet the requirements of the State.

Article 14 of the *Constitution* is relevant to the issue of non-discrimination and access for all:

- (1) All persons lawfully residing within Mongolia are equal before the law and the courts.
- (2) No person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or status, property, occupation or post, religion, opinion, or education. Everyone is a person before the law.

The relevance of international law in the national jurisdiction is stipulated in Article 10 and Article 16(14) of the *Constitution*:

Article 10 - Foreign Policy, Treaties

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<sup>444</sup> Mongolia ratified the ICESCR on 18 November 1974.

<sup>445</sup> Mongolia ratified the CERD on 6 August 1969.

<sup>446</sup> Mongolia ratified the CEDAW on 20 July 1981.

<sup>447</sup> Mongolia ratified the CRC on 5 July 1980.

<sup>448</sup> Mongolia ratified the Convention Against Discrimination in Education on 4 November 1964.

<sup>449</sup> Mongolia ratified the Minimum Age Convention on 16 December 2002.

<sup>450</sup> Mongolia ratified the Worst Forms of Child Labour Convention on 26 February 2001.

- (1) Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.
- (2) Mongolia fulfills in good faith its obligations under international treaties to which it is a Party.
- (3) The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.
- (4) Mongolia may not abide by any international treaty or other instruments incompatible with its Constitution.

#### Article 16 - Citizen's Rights

The citizens of Mongolia are enjoying the following rights and freedoms:

- (14) The right to appeal to the court for protection if one considers the rights or freedoms spelt out by the Mongolian law or an international treaty to have been violated; to be compensated for the damage illegally caused by others; not to testify against oneself, one's family, parents, or children; to defense; to receive legal assistance; to have evidence examined; to fair trial; to be tried in one's presence; to appeal against a court decision; to seek pardon.

Compelling to testify against oneself is prohibited. Every person is presumed innocent until proven guilty by a court by due process of law. The penalties imposed on the convicted may not be applicable to his or her family members and relatives.

Additionally the Constitution empowers Parliament to make laws with a view to implementing international agreements:

The *National Human Rights Action Programme* (2003) states:

#### **Chapter 3. Implementation and monitoring of the international human rights treaties**

##### (3.1) Ratification and implementation of the international human rights treaties

(3.1.1) Increase use of international mechanisms and improve cooperation to protect and promote human rights

(3.1.1.1.) Mongolia shall fully implement the recommendations of the UN Commission on Human Rights and other human rights bodies. To that end, the comments of the treaty monitoring bodies shall be reviewed by the Government Cabinet or, if related with legislation, by the State Great Hural (Parliament), and the decisions taken thereon shall be enforced

(3.1.1.2) Close collaboration shall continue to be pursued with organizations such as UNDP, UNESCO, UNICEF, UNFPA, UNIFEM, ILO, OHCHR, WHO and their representative field offices in Mongolia to obtain the necessary support for the implementation of programs and projects for promotion and protection of human rights

(3.1.1.3) NGOs shall be encouraged to collaborate with each other, international NGOs and charitable organizations in the field of human rights

(3.1.1.4.) UN activities in the Asia-Pacific region shall be supported. Mongolia will also support the establishment of a regional human rights legal and institutional framework



(3.1.1.5) A list of the outstanding international human right treaties, which Mongolia has not yet ratified, shall be drawn up and the desirability of their ratification shall be the subject of in-depth examination

## 8.2.2 *Legislation*

### Primary and Secondary Education

Together with the *Constitution*, the *Law on Education 2002* and the *Law on Primary and Secondary Education* and other relevant statutes establish a foundation for the right to primary (basic) and secondary education and create a framework for the organisation and management of education in Mongolia.

Article 5 of the *Law on Education 2002* articulates the Basic Principles on Education:

#### Article 5 - Basic Principles on Education

(5.1.1.) Education shall be developed as a priority sector and shall be under the state patronage and co-ordination, and state and public supervision.

(5.1.2.) Education in Mongolia shall be humanistic, democratic, continuous, and accessible to all citizens and shall be based on mankind's cultural and historical heritage, and progressive traditions and science.

(5.1.3.) Education in its methods and forms shall be diverse, free and open.

(5.1.4.) Education shall be accessible to the citizen regardless of nationality, language, colour of skin, age, sex, social and property status, work and official position, religion, and opinions; the citizen shall be provided with conditions to learn in his/her native language.

(5.1.5.) It shall be prohibited to organise training which adversely affects the rights, health and security of the citizen and society.

(5.1.6.) Educational organisations shall be treated equally regardless of the type and form of ownership.

(5.1.7.) Education shall be developed as a priority sector and shall be under the state patronage and co-ordination, and state and public supervision.

(5.1.8.) Education in Mongolia shall be humanistic, democratic, continuous, and accessible to all citizens and shall be based on mankind's cultural and historical heritage, and progressive traditions and science.

(5.1.9.) Education in its methods and forms shall be diverse, free and open.

(5.1.10.) Education shall be accessible to the citizen regardless of nationality, language, colour of skin, age, sex, social and property status, work and official position, religion, and opinions; the citizen shall be provided with conditions to learn in his/her native language.

(5.1.11.) It shall be prohibited to organise training which adversely affects the rights, health and security of the citizen and society.

(5.1.12.) Educational organisations shall be treated equally regardless of the type and form of ownership.

Article 6 of the *Law on Education 2002* articulates the Basic Rights and Duties of Citizen with Regard to Education

Article 6 - Basic Rights and Duties of Citizen With Regard to Education

(6.1) The citizen of Mongolia shall have right to obtain all levels of education in accordance with provisions and regulations of the law, on a free of charge or chargeable basis, and full or part-time basis.

(6.2) Public general education shall be provided by the State free of charge, as stipulated in the Constitution of Mongolia.

(6.3) The citizen of Mongolia shall have the duty to obtain basic education.

The *National Human Rights Action Programme (2003)* states:

**Chapter 2. Protecting and Promoting Fundamental Rights**

(Article 2.4.3.) Right to education.-

(2.4.3.2.) Policies will be developed to eliminate the disparities in the quality of education in rural and urban areas. Informal and distance courses tailored to various age and gender groups, shall be developed to eradicate illiteracy.

(2.4.3.5.) The education and cultural rights of minorities shall be guaranteed through practical measures to preserve the heritage of native languages and scripts, customs, history and cultural traditions.

(Article 2.4.6.) Rights of specific groups.-

(2.4.6.2.) Public advocacy programs shall be regularly conducted, aimed at changing attitudes of discrimination and prejudice. A mechanism to ensure own participation shall be created.

Financing of Education

Article 39 of the *Law on Education 2002* contains general provisions relating to the financing of education:

(39.1) The budget shall be approved by the Parliament (State Great Hural), Citizen Representative's Board of provinces, the capital city, local units, and districts. Education funding shall constitute not less than 20 percent of the annual revenue of the state budget.

(39.2) The financial resources of an educational institution shall consist of allocations from the state centralised and local budgets, investments, tuition fees, contributions, soft loans from local and foreign organisations and citizens, and operational revenue of the educational institute.

(39.3) An educational institution may in conformity with the legislation conduct business activities in order to increase its financial resources and ensure social protection guarantees of teachers and staff. A director of an educational institution shall exercise the power to spend such operational revenue for the purposes as stipulated in the law.

(39.4) It shall be prohibited to reduce the centralised and local budget funding of an educational

institution on the basis of its revenue.

(39.5) Educational research and methodological institutions, province and the capital city educational centres shall be funded from the centralised and local budgets and research projects.

(39.6) Costs of the part-time, short-term and informal training courses shall be covered from respective local budgets.

(39.7) A state education fund shall be established in order to provide students with soft loans and grants. The Government shall set the regulations for the use of the state education fund.

(39.8) A public-initiated education fund may be established at the level of provinces, the capital city, local units, and districts.

(39.9) It shall be prohibited to use education funds and budgets for purposes other than educational purposes.

(39.10) Assets provided by the founder and the institution in conformity with its basic activity purposes, regulations, and a contract made between the founder and the institution shall efficiently use assets of an educational institution generated in the course of its activities.

Article 40 of the *Law on Education 2002* is relevant to the funding of government-owned educational institutions:

(40.1) A Government owned educational institution shall be financed by fixed and normative expenditures.

(40.2) Fixed expenditures of the universities, institutes and colleges shall be financed from the state-centralised budget. Fixed expenditures of general education schools and total expenditures of dormitories, and normative expenditures per capita/student irrespective of the form of ownership of kindergartens and general education schools shall also be financed from the state budget.

Article 41 of the *Law on Education 2002* is relevant to the funding of non-governmental educational institutions:

(41.1) Financial resources of a non-government owned educational institution shall be composed of the assets of the founder, part of normative expenditures per capita/student financed from the state budget, tuition fees, contributions, soft loans, and its operational revenue.

(41.2) The Government shall support a non-government owned educational institution to improve teaching environment and to provide training for their staff.

In addition *The Constitution of Mongolia* (in Article 16 listed in the previous section) and the *Law on Education* (in Article 6 also listed in the previous section) note the right to a basic education, free of charge.

### Minimum Age of Employment

Article 109.3 of the Labour Law 1999 stipulates:

A person who reaches 14 years of age may enter into a contract of employment for the purpose of acquiring vocational training and work experience, but only with the consent of his parents or guardians and the State central administration organization in charge of labour issues.

Under Article 109.2 a person aged 15 to enter into an employment contract with the permission of his or her parents or guardians. Under Article 109.1 a person aged 16 has the right to enter into an employment contract.

### Minimum Age of Marriage

Article 6 of Chapter 2 of the *Family Law* 1999 stipulates the minimum age of marriage:

Mongolian male and female citizens, aged 18 and over, or a Mongolian citizen with a foreign citizen or stateless person can marry on ground of mutual consents in Mongolia unless it is contradict 9.1 of this law.

### Minimum Age of Criminal Responsibility

Article 21 of the *Criminal Code of Mongolia* establishes the age limit for criminal liability:

21.1. Persons who have attained 16 years of age at the time of committing a crime shall be subject to criminal liability.

21.2. Persons of 14 to 16 years of age shall be subject to criminal liability for homicide (Article 91), deliberate infliction of a severe bodily injury (Article 96), rape (Article 126), theft in aggravating circumstances (Article 145), misappropriation (Article 146), robbery (Article 147), deliberate destruction or damage of property (Article 153) and hooliganism in aggravating circumstances (Articles 181.2 and 181.3).

21.3. If the court finds that the culprit who has committed for the first time a minor or a less serious crime before attaining the age of 18 may be reformed without imposing punishment, it may apply a measure of coercion of educational character specified in this Code.

### 8.3 Overview of Education Policies and Programmes

#### Educational Framework

Mongolia has taken steps in recent years to reform its education system. Reforms have focussed on improving consistency between the education system and the needs of the employment market, improving training content to meet student's needs, improving training methodology, and reforming management of the education system. The main goals of the government are to create an environment for ensuring human development, improving living standards, promote access to social services, and reduce unemployment and poverty. A short-term objective is to form a national partnership between government, civil society and international organisations to provide public access to high-quality basic education for all.

Following the Dakar Global Conference on Universal Education, Mongolia adopted a national plan of action up to the year 2015 and established the National Forum of Universal Education. The government and UNESCO have signed a memorandum of understanding and are working to implement its proposals for action up to the year 2015 within the framework of a public education action plan and the Dakar Action Plan. Within the context of the Dakar Framework of Education, the government has developed a Mid-Term National Action Plan for Improving Education for All in Mongolia (2002-2005)<sup>451</sup> which has three main goals:

- (1) Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children and children from herder families;
- (2) Providing quality basic education for all children; and
- (3) Reducing illiteracy and ensuring the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programmes

The National Human Rights Commission of Mongolia ('**NHRCM**') reports that the government has introduced new standards for pre-school, primary, basic and full-secondary education. These standards have four goals: bringing primary and secondary education curriculum into line with international standards; improving the structure and content of school curriculum; improving the applicability of the education system; and improving the knowledge-based capacity of students.

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<sup>451</sup> The full text of the MNA is available upon request.

## National Human Rights Action Programme<sup>452</sup>

In October 2003 the Parliament of Mongolia adopted the *National Human Rights Action Programme* (NHRAP). The programme addresses the need to reform the education system and the need to teach the skills necessary to enjoy and protect one's own rights, and to raise the level of general education and legal awareness of its citizens. The NHRAP outlines the following commitments:

- The form, content, and delivery of education shall be continually reformed to meet modern requirements. A legal environment and the necessary implementing actions shall be established to meet the national objective of providing free and compulsory primary education for all children
- Policies will be developed to eliminate the disparities in the equality of education in rural and urban areas. Informal and distance learning courses tailored to various age and gender groups shall be developed to eradicate illiteracy
- Steps will be taken to improve the consumer value of secondary education and to enable graduates to explore their professional interests. Schools shall begin to offer vocational training
- The formal and informal structures of pre-school education shall be increased, with the eventual aim of full coverage in the future. A pre-school education programme shall be developed to include at least 50% of pre-school children from urban and settled areas, including herders and farmers' children within 5 years
- The education and cultural rights of minorities shall be guaranteed through practical measures to preserve the heritage of native languages and scripts, customs, history and cultural traditions
- Special attention shall be paid to stabilizing the supply of rural teachers and facilitating their work. Steps shall be taken to ensure that all mandatory classes designated as such by the central public administration are taught, including if necessary during non-scheduled hours. School officials shall be held accountable if mandatory classes fail to be taught
- Public and non-governmental organizations and community groups shall be encouraged to provide educational opportunities, collaborate through common information networks, continually monitor and analyze the situation and offer solutions
- Step-by-step actions shall be taken to broaden the economic and financial basis of education services and to strengthen its capacity

## National Programme of Action for the Development and Protection of Children

### 2002-2010

The government has also developed and adopted the *National Programme of Action for the Development and Protection of Children 2002-2010*. The programme addresses a wide range of

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<sup>452</sup> *National Human Rights Action Programme of Mongolia* (2003)

issues including child health, nutrition, development, education, social participation and protection of children's rights and their living environment. The objective of the programme is to create a legal environment which protects children's rights in Mongolia, promote youth development through quality education and improved livelihood.

## **8.4 Availability**

### **8.4.1 Expenditure**

The government's budget allocation for education is based on the principle of free and equal delivery of resources to all children as guaranteed in Article 16(7) of the *Constitution*. Under Article 39.1 of the *Law on Education 2002* "education funding shall constitute not less than 20 percent of the annual revenue of the state budget."

The *Law on Education 2002* stipulates that the teaching and operational budgets of kindergartens and schools are to be divided into fixed and variable costs. The variable costs per child are set differently for primary, secondary and high school students and according to regional location. The government sets food and other related expenditures per child enrolled in kindergarten and per student living in school dormitories on an annual basis. The NHRCM observes that this method of financing school and kindergarten budgets has created a legal environment for improving the quality of service and decreasing school drop-outs.

The NHRCM reports that a significant proportion of the government's education budget for primary and secondary schools is taken up by indirect education costs, the result of which is that fewer resources are available to directly improve the quality of education. The main expenditure components include heating, electricity, water supply and transportation (28.9 per cent); general expenses, salaries, wages and additional payments for teachers and workers (55.2 per cent); food expenses (4.3 per cent); school building and dormitory maintenance expense (1.6 per cent); class and practical training expenses (0.2 per cent); and other repair work expenses (7.4 per cent). In the case of remote schools and suburban areas, the regular allocation of funds is often insufficient. The physical isolation of many rural communities and small urban centres poses a significant challenge to the provision of social services and other public goods. Lack of investment in education has created two major problems for these schools: a lack of appropriate furniture (desks

and chairs) and a lack of textbooks.

The NHRCM reports that the government has in recent years allocated an average of 20 per cent of the budget to the education sector. From 1996 to 2000 total social expenditure increased from 44.4 per cent to 52.3 per cent of total budget expenditures (an increase of 11.3 per cent to 21.5 per cent of GDP). This was for expenditure on basic social services, in particular, education, social security, cultural and recreational programmes. Total expenditure on education increased from 4.6 percent of GDP in 1995 to 8.8 percent in 2001. In 2002 education accounted for 18.9 percent of total budget expenditures. These figures are outlined below in Table 1 and Table 2.

*Table 1: Budget allocations to education<sup>453</sup>*

<b>Indicators/years</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
State budget for education sector (MNT million, current prices) <sup>454</sup>	111,006.8	135,830.7	147,341.4
Education sector as percentage of total State budget	20.7	23.4	20.9
Education sector as percentage of GDP	8.2	9.0	7.6

Source: Ministry of Education, Culture and Science, Economic and finance Department, April 2005

*Table 2: Social budget expenditures for educational activities*

<b>Year</b>	<b>Total social expenditures (share in total budget expenditures)</b>	<b>Share in total budget expenditures</b>	<b>Total social expenditures (share in the GDP)</b>	<b>Share in the GDP</b>
1995	<b>49.1</b>	17.0	<b>13.3</b>	4.6
1996	<b>44.4</b>	15.9	<b>11.3</b>	4.0
1997	<b>45.5</b>	16.2	<b>16.0</b>	5.7
1998	<b>46.2</b>	17.1	<b>19.4</b>	7.1
1999	<b>48.2</b>	17.8	<b>19.1</b>	7.0
2000	<b>52.3</b>	19.1	<b>21.5</b>	7.9
2001	-	20.4	-	8.8
2002	-	18.9	-	-
2003	-	19.7	-	-
2004	-	18.4	-	-

Source: Ministry of Finance, 2004

<sup>453</sup> Data on budget allocations to different types of education is not available

<sup>454</sup> Exchange rate \$1USD=1186 MNT



### **8.4.2 Infrastructure**

The NHRCM reports that in 2000, primary and secondary schools only had 60 per cent of the classroom seats required for the estimated 494,000 school children. With a sharp increase in rural migration to urban areas, schools in Ulaanbaatar and other major urban areas started to operate three daily shifts. Classroom sizes reached 45 to 50 students, negatively impacting on the quality of education for both teachers and students.

Currently in Mongolia, many students do not have textbooks; school uniforms and desks and chairs. In the *Alternative Report of the National Coalition of NGO's on the Rights of the Child in Mongolia*<sup>455</sup> published in 2004, a survey of teachers identified the lack of policies in schools on the provision of medical services. The report also highlighted the shortage of doctors in rural areas and the lack of access to regular medical examinations for children. Teachers complained about inadequate water and heating systems and students complained that sanitation facilities were unhygienic.

The NHRCM reports that the government is taking measures to repair school buildings and to provide public funding for school dormitories. Under the Asian Development Bank funded *Education Sector Development Programme*, the government has been able to commit resources to the upgrading and rationalising of schools and the provision of textbooks, and the retraining and professional development of teachers.

### **8.4.3 Teachers and support staff**

The Ministry of Education, Culture and Science is responsible for the development and implementation of education management standards. Since 1996 teachers in Mongolia have received additional benefits for successfully obtaining professional degrees and developing professional skills. In 1997 the government eliminated differences in the base salaries of teachers in primary, secondary schools and kindergartens. In the academic year of 1998/1999, non-professional teachers occupied 9.1 per cent of teaching positions in general education schools. Training courses and seminars have been conducted to improve the professional qualifications and skills of teachers. Teachers at general education schools and kindergartens receive advanced

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<sup>455</sup> Alternative report of the National Coalition of NGO's on the Rights of the Child in Mongolia, 2004

training courses and expenses for professional training courses. A Unit for Social Work in Schools has been established within the Ministry of Education, Culture and Science with the cooperation of the Mongolian Center for Child Rights and the assistance of the Norwegian Child Care Foundation. The Unit's objectives are to prepare and retrain social workers to work in secondary schools. The Soros Foundation has an ongoing programme for modernizing teacher training, educational publishing, and information and communications technology development.

#### **8.4.4 *Teaching Facilities and Materials***

The NHRCM reports that many students lack textbooks, school uniforms, desks, chairs, and some schools have inadequate sanitation facilities. The government has introduced measures to improve textbook development and distribution however quality remains poor. The Ministry of Education, Culture and Science require textbooks to have a minimum five-year usage lifespan. Since 2000 the government has provided free school supplies and textbooks to children from vulnerable families or families with three or more children enrolled in school. The NHRCM notes that with the exception of textbooks, there is complete absence of literature for children outside of school. There is no policy to encourage children to read and the cost of translating 'literature classics' into Mongolian is not included in the government's budget. The NHRCM suggests that the government invest in school libraries, develop reading facilities and books for children and provide other learning resources besides basic textbooks.

### **8.5 Accessibility**

#### **8.5.1 *Non-discrimination***

##### Access to education by children with disabilities

In 1998 the government introduced the *National Programme for Improving Disabled People's Livelihood* to improve access to basic services for children with disabilities. The government proclaimed 2001 as the *Support Year for Disabled People* and in 2003 the Ministry of Education, Culture and Science and the Ministry of Health and the Ministry of Social Welfare and Labour jointly approved the *Programme on Inclusive Education for Children with Developmental Problems and Special Needs*. In addition, a unit responsible for developing a national policy on inclusive education for disabled children was established under the Department of Primary and

Secondary Education of the Ministry of Education, Culture and Science.

The Ministry of Education, Culture and Science and Ministry of Health has developed and implemented a *National Programme on Equal Education for Disabled Children* with the aim to improve to regular schools for children with developmental difficulties. Programme activities include: training courses for parents and teachers; the publication of manuals and materials; and the development of an advocacy campaign directed to encourage inclusive education for disabled children. An evaluation system for teachers and students has been developed and in accordance with the Ministry of Infrastructure's 2004 Strategy Paper, provisions have been made for barrier-free access to buildings. Save the Children (UK) has commenced the *Inclusive Education* project to assist the policy reform relating to children with disabilities.

### **8.5.2 Gender Parity and Gender Equality**

According to the NHRCM, girls and women enjoy equal access to education in Mongolia with 50.1 per cent female inclusion in primary, secondary and tertiary schools.

\*Ministry of Education, Culture and Science

The NHRCM observes that although children are not discriminated on the basis of gender, inequality of participation in school education grows between girls and boys with the increase of age. School enrolment indicates an unusual 'reverse gender gap', with more girls enrolled than boys in every province across the country. This is particularly noticeable at the higher levels of education where typically girls outnumber boys. In secondary education, gross enrolment rates of girls are 20.0 percent higher than boys, while in tertiary education women now account for 70.0 percent of all students.<sup>456</sup>

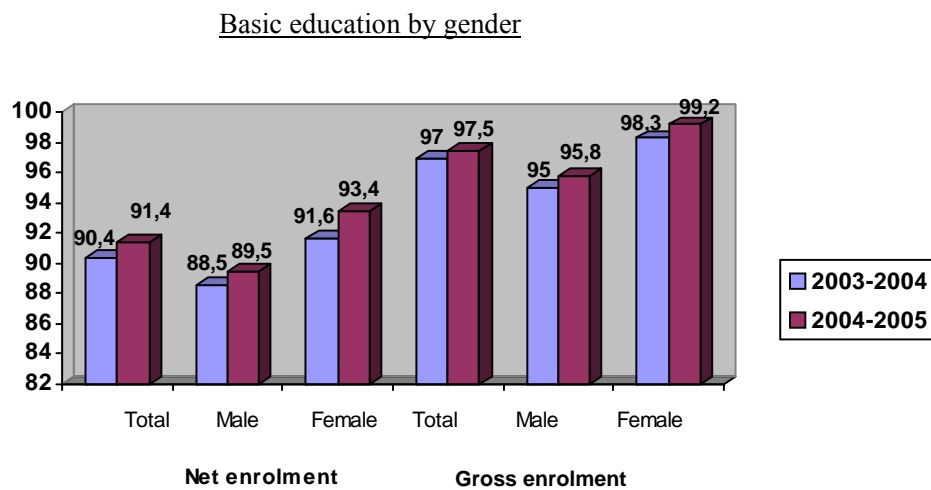
At kindergarten age (3-7 years) male participation is lower than female at 31.5 per cent and 35.9 per cent respectively. At the first grade of primary education the number of boys and girls is almost equal but at the senior level 62 per cent of school children are girls and 38 per cent are boys. Sixty-nine per cent of children who drop out of school live in the rural areas. School children completing the fourth grade level decreased from 97.6 per cent before the political and economic transition of 1990 to about 85 per cent in 2000. In the academic year of 2000-2001, schoolgirls counted for 52.3 per cent of all school children. They make up 50.1 per cent of

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<sup>456</sup> Human Development Report Mongolia, 2003

primary grade students, 53.4 per cent of junior grade students, and 59.4 per cent of senior grade students.

According to the findings of the *2000 Population and Housing Census*, 47.8 per cent (44.5 per cent male and 51.1 per cent female) of the total population aged 7-29 attended schools up to a certain educational level.<sup>457</sup> The *Mongolian Law on Primary and Basic Education* requires the admission of children aged eight years to primary schools. Under recent amendments, children aged 6-7 can enrol in primary schools by forming classes or groups if certain special circumstances and conditions are met.<sup>458</sup> The chart below provides an overview of the gender breakdown of net enrolments and gross enrolments for basic education for 2003-2004 and 2004-2005.



Source: Ministry of Education, Culture and Science, Education Statistics

<sup>457</sup> Population and Housing census 2000, "Education and literacy", 2002

<sup>458</sup> The package of educational laws were revised and updated in 2002

### **8.5.3 *Physical Accessibility***

#### Rural students

The availability of boarding facilities is crucial to providing access to primary education in rural areas and reducing the drop-out rate. The NHRCM reports that in the early 1990s the financial management of school boarding facilities collapsed. An attempt to charge fees failed due to the poor financial position of herder families. Since 1997 there have been some improvements although services at boarding schools are still inadequate. For example, most boarding houses remain unheated during winter. There is an increasing tendency among herders to remove their children from school so that they can work on the family farm. A survey conducted in four provinces by the Social Development Center recorded that among 291 children working at home as herders, 53.8 per cent reported running away from school and 8.3 per cent reported having never attended school at all. The NHRCM notes that the local government administration has done little remedy this issue.

#### Students with a disability

The NHRCM reports that there are 34,000 students with disabilities in Mongolia. There are currently five special schools with more than 2000 students with disabilities enrolled. Access to education for disabled students living in rural areas is very limited or non-existent, resulting in high drop-out rates. The NHRCM says that there is an urgent need to increase the number of special schools and to provide access for disabled children to schools in rural areas.

### **8.5.4 *Economic Accessibility***

#### Primary Education and Secondary Education

Article 16(7) of the *Constitution* stipulates that the state will provide “basic general education free of charge.” This constitutional guarantee is strengthened by Article 39 (paragraph 2.3) of the Law on Education 2002 which provides that a child shall be provided with a free, compulsory basic education up to 17 years of age, and his or her interest and desire to learn should not be hindered.

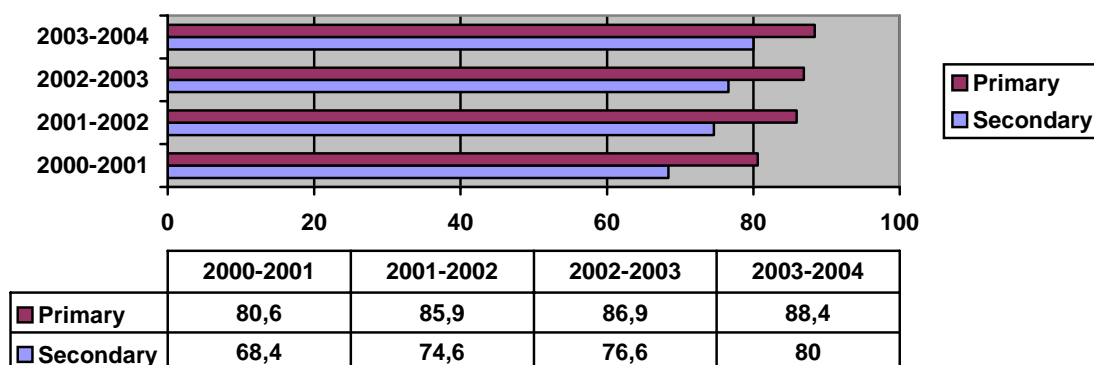
The article 6 of the *Education Law* stipulates:

The citizen of Mongolia shall have right to obtain all levels of education in accordance with provisions and regulations of the law, on a free of charge or chargeable basis, and full or part-time basis.

On the basis of this provision, the Paragraph 1, Article 6(1) of the *Law on Protection of Child Rights 1996* states that the state shall support a free general education, study of native language and literacy and development of their ability. The *Education Law* and the state policy provide for basic principles of education such as a free general education for all, creation of all conditions for children’s education, equality and non-discrimination in education.

There are no specific policies or programs regarding the additional fees and charges.

*Completion rate of primary and secondary education from 2000-2004*



Source: National Human Rights Commission of Mongolia

### 8.5.5 *Non-formal Education*

A national policy on non-formal education was established by the government in 1997 with the objective of developing a non-formal education system that enables each Mongolian citizen to participate in continuing education. The *New Education Law* defines “non-formal education” as a set of organized activities that deliver educational services to the population outside of formal education system. The NHRCM reports that in the past few years alternative education has been provided to 19,970 children and young people, of whom 7,877 received education certificates. In

2000, 3,856 children were able to enter their corresponding grades at secondary schools through alternative education. With the help of alternative education, 10,979 children completed primary education; 3,880 people completed their basic education and 2,237 people completed secondary education. The NHRCM reports that international organizations such as UNICEF, UNESCO and the ILO play an important role in supporting non-formal education in Mongolia.

## **8.6 Acceptability**

### ***8.6.1 Quality Education and Minimum Standards***

#### Relevant Institutions

In Mongolia there are a number of different organisations and bodies which are responsible for the implementation of the right to education.

#### State Central Administrative Authority

Under the *Law on Special Permit to Conduct Business Activities* the State Central Administrative Authority within the Ministry of Education, Science and Culture is responsible for issuing permits for the establishment of an educational training institution such as a university, institute, college or vocational training centre. The State Central Administrative Authority other responsibilities include: implementation of education legislation at a national level; development and monitoring of standards and norms of all levels of education; provision of professional and administrative support on formal and informal education training; working with administrative authorities regarding the training and development of administrative staff and teachers; coordinating the provision of equipment, training facilities, textbooks, and literature to kindergartens and schools of all level; evaluation of kindergartens and schools; provision of support for non-governmental educational organisations; cooperation with foreign and international organisations; establishing contacts between foreign education institutions; appointment of directors of government-owned universities, institutes, colleges, and vocational training centres; and provision of professional and managerial support to provincial and urban educational centres.

### Specialized agencies and authorities

The National Authority for Children (NAC) is responsible for regulating, implementing and monitoring policies on children's rights and operates within the office of the Deputy Prime Minister.

The National Council for Children (NCC) is responsible for the implementation, monitoring and coordination of the *National Programme of Action for the Development and Protection of Children* with the support from NAC. The NCC has 25 members, representing government ministries and agencies, NGOs and children themselves. The NHRCM is also a member of the Council.

The NHRCM, the Ministry of Education, Culture and Science, Ministry of Social Welfare and Labour and Local self-governance institutions are other state institutions mandated with the protection of the right to education.

### Citizen Representatives' Boards of Provinces, Capital City, Local units and Districts Councils

Citizen Representatives' Boards consider reports on education submitted by Governors and approve budgets for the financing of educational training institutions on the basis of taxation revenue.

### Provincial Governors and City Mayors

The responsibilities of Provincial Governors and City Mayors include: implementation of laws and decrees on education; development and implementation of education and training plans and programmes for citizens and staff; establishing, restructuring, and dissolving local government-owned educational training institutions; supporting education institutions with funding and the provision of training premises, dormitories, equipment and textbooks; issuing permits for the establishment of education institutions; providing social security benefits and other support to teachers and students, conduct evaluation of their work, provide them with incentives and



rewards, and other support; supervising education institutions and reporting on education issues; and appointment of directors of local government-owned general education institutions.

### Measures Adopted by Education Authorities

The NHRCM reports that the *Primary and Secondary Education Standards* were revised in 2005 with new standards centred upon four goals: to bring the content of primary and secondary education into line with international education standards; to improve the structure and content of education curriculum; to improve the application and relevance of education; and to increase the knowledge-based capacities of students. The government has completed the *Second Education Sector Development Programme* which focused on the provision of textbooks and teacher training and capacity building. The government is now implementing the *Third Education Sector Development Programme* (2006-2011) which is made up of three main components:

- Development of a national curriculum framework and aligned education standards;
- Improving teaching and learning environments in primary and secondary schools;
- Promoting demand-driven vocational education for youth.

### Indicators

The NHRCM reports that considerations of access; effectiveness; the nature of the school and the learning environment; course content and teaching methodology; and the skills of teachers and parents are essential indicators in monitoring the realisation of the right to education for students in Mongolia. The school environment and the right to education is evaluated on the basis of attendance and academic results. The NHRCM notes that the Ministry of Education, Culture and Science's *Guidelines for examining and evaluating activities of the primary and secondary schools* does not include human rights indicators. Accordingly, it suggests that measures should be taken to develop standards for evaluating and monitoring the human rights-based environment in all schools.

#### **8.6.2 Discipline**

Legal Status of Corporal Punishment

The NHRCM reports that although there is no specific law relating to the use of corporal punishment, each school has its own internal rules relating to its use. The NHRCM notes that a person could be charged if his or her use of corporal punishment amounted to a criminal offence.

### **8.6.3 Curriculum**

The NHRCM reports that education curriculum in Mongolia is classified into pre-school, primary school, secondary school and higher education levels. The design and the development of curriculum is guided by the State Education Standards and in accordance with the requirements of the Law on Primary and Secondary Education, Law on High Education and the Law on Professional Education and Training. In the process of curriculum development, primary considerations are the age, abilities and interests of students; the education requirements of the public and private sector; and other factors including science and technology and the evolution of national traditions.

#### Human Rights Education

The NHRCM reports that with the move from a 10-year school system to an 11-year system in 2005-2006, human rights education has been introduced at all levels.<sup>459</sup> Under the Street Law programme developed jointly by the Ministry of Education, Culture and Science and the Mongolian Foundation for Open Society, legal education courses in secondary schools have introduced elements of human rights education.

The NHRCM reports that research has been conducted which supports the introduction of human rights education into universities and other higher education institutions. Human rights has been taught as an optional subject in university law schools since 1997. The NHRCM reports that some university administrators have suggested that human rights not be taught separately but instead that it be incorporated into other legal education courses. Legal education curriculum at universities and colleges is currently being reviewed with the support of the World Bank with efforts being made to make the study of human rights compulsory. A pilot curriculum has been

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<sup>459</sup> The NHRCM reports that the government will move to a 12-year education system in 2009-2010.

developed which includes an optional specialist 40 hour course on Human Rights Law and an optional 48 hour course on the Rights of the Child.

#### **8.6.4 *Parents / Legal Guardians***

The NHRCM reports that under the Law on Education parents and legal guardians have the right to choose the type and form of education for their child in accordance with rules and regulations; present proposals regarding educational institutions and teachers; and to obtain evaluations made by educational institutions or teachers with regard to knowledge, skills, capacity, and talent, physical and mental condition of their child.

#### **8.6.5 *Religious and Cultural Practices, Languages of Minority Groups***

The National Human Rights Programme (2003) stipulates:

The education and cultural rights of minorities shall be guaranteed through practical measures to preserve the heritage of native languages and scripts, customs, history and cultural traditions

In December 2005 the government adopted *Tuva Language Programme* which is designed to support the national minority Tsaatan's desire to preserve their native language, culture and unique way of life. The programme will be incorporated in their secondary school curricula of Tsaatan students.

### **8.7 *Adaptability***

#### **8.7.1 *Education and Work***

The NRHCM reports that since 1999 an ILO/IPEC project has provided support to the government addressing the issue of child labour. The main activities of this project have included: assisting local government officials to implement and coordinate child labour policies; raising awareness amongst the local media on child labour issues, particularly in relation the health and development of children from herding families; improving non-formal education; and improving opportunities for rural children who have dropped out of school to access non-formal education.

Juvenile detention centres have classrooms and vocational training rooms, with detainees provided with access to secondary education. The Mongolian Child Rights Centre has provided basic education and legal education programmes for detainees with the support of Christina Noble Foundation and the Hans Zeidel Foundation.

### **8.7.2 *Special Needs Education***

The Ministry of Education, Culture and Science and Ministry of Health have developed and implemented the *National Programme on Equal Education for Children with Developmental Difficulties* with the objective of improving access to regular schools for children with developmental difficulties.

The Mongolian government has implemented national programmes to meet the education needs of children who have dropped out of school in rural areas. These programmes include *Improving Education for All in Mongolia* (2002-2005), *Distance Education Programme* (2002-2006) and the *National Programme on Non-formal Education* (1997-2004). Within the framework of these programmes, the Ministry of Education, Culture and Science has introduced catch-up literacy training courses for children and youth with the support of international organisations.

Since 2003 the government has supported the *SOS – Kinderdorf International Children's Village* where some 100 orphan children have been provided with homes. Social work, education and training services have been provided and currently twelve higher education institutions provide social work baccalaureate programmes. The Association of School Social Workers conducts a variety of activities among school social workers assigned to every school of the country.

## **8.8 Activities of the NHRCM**

### **8.8.1 *Mandate and Methods***

The NHRCM was established with the adoption of *The National Human Right Commission of Mongolia Act* by the State Great Hural (The Parliament of Mongolia) on 7 December 2000. Under the Act the NHRCM has a mandate to promote and protect human rights and to monitor the implementation of human rights and freedoms in Mongolia in accordance with the country's

*Constitution*, national laws and international obligations.

The main functions of the NHRCM are: analysis of the compliance of legislation with international human rights standards and principles; submission of recommendations and proposals to the government; human rights education and promotion; conduct of human rights research, study and inquiries; publication of annual human rights status reports for tabling in Parliament; handling human rights complaints; and encouraging ratification and accession to international human rights treaties.

### ***8.8.2 Investigation of Complaints***

The NHRCM received a complaint from a student who had successfully passed an examination to enter the Police Academy. The General Police Department however refused to permit the candidate to participate in the Police Academy's Preparatory Fundamental Course on the basis that he did not meet the necessary ethical criteria because his brother had a criminal conviction. In considering the complaint, the NHRCM issued a demand to the General Police Department. The NHRCM held that the General Police Department's decision was invalid and represented a breach of the Constitution which says "The penalties imposed on the convicted shall not be applicable to his/her family members and relatives." The NHRCM reports that the complainant has returned to the Academy.

### ***8.8.3 Research and Public Inquiries***

In 2002 the NHRCM conducted a study on the status of vulnerable communities in Mongolia. The study included an analysis of the right to education for children. Although the restructuring of the public education system had brought some improvements, the NHRCM found that equitable access to education still remained a significant challenge. Overcrowded facilities at primary and secondary schools were a particular problem. In a NHRCM questionnaire completed by 290 students in Ulaanbaatar, 23 per cent of respondents confirmed that the school administration and teachers systematically "tap money"<sup>460</sup> and 58.4 per cent said that this practice occurred "from time to time." The NHRCM notes that parents often complain about additional

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<sup>460</sup>The practice of "tapping money" is where students are asked to provide money for particular school events or campaigns or where demands are imposed upon students to improve their clothing. Children from vulnerable backgrounds are often offended by this practice with the result that many do not attend school.

charges and fees imposed by schools, whether it be for the purchase of non-essential school handbooks, show tickets or 'fines' for students missing classes.

### Human Rights Education in Secondary Schools (2005)

In 2005 the NHRCM conducted a study *Human Rights Education in Secondary Schools* with the support of UNESCO. The study was a comprehensive review of the state of secondary schools. The study evaluated and assessed the quality, effectiveness, content, methodology, adequacy of teaching materials, current state of teaching staff and the 'human rights environment' of secondary schools. The study issued recommendations on improving and strengthening teaching methods, reforming school curriculum and developing guidelines on teacher requirements. A comprehensive set of recommendations were made to the State Great Hural (Parliament); the Government Cabinet; the Ministry of Education, Culture and Science; the State Professional Inspection Agency; the Institute of Education; the Provincial and Capital City Institutes of Education and Culture; Teacher Training Universities; and Primary and Secondary Schools.<sup>461</sup>

#### ***8.8.4 Identification of Laws, Policies and/or Practices Impacting on the Right to Education***

Government policies and programmes and policies which impact on the right to education include the Government Improvement of Child Development and Protection; Child Friendly School; Integrated Early Childhood Development and Multi-grade Teaching policies. The NHRCM reports that there are inconsistencies between various policies and that there is need for better implementation of policies and programmes.

#### ***8.8.5 Education and Awareness Campaigns***

The NHRCM's education and awareness campaigns in relation to the right to education have included radio and television programmes and trainings workshops for teachers and students.

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<sup>461</sup> A copy of the results and recommendations of the study are available in the response of the National Human Rights Commission of Mongolia to the APF questionnaire.  
<http://www.asiapacificforum.net/jurists/references/education/questionnaire.htm>

### **8.8.6 Human Rights Education**

The NHRCM is implementing a Human Rights Education Plan in accordance with its Strategic Plan. The main human rights education activities include: training for specific target groups; incorporation of human rights education into the formal education system; public lectures; awareness-raising with the media; publications; competitions; and the hosting of Human Rights Open Day.

#### Human rights education in schools

Since 2005 the NHRCM, with the support of UNESCO, has been conducting a project on *Human Right Education in Secondary Schools* with the objective of evaluating how human right education is taught in secondary schools, developing proposals and recommendation to relevant authorities, and establishing minimum qualification standards for teachers. The Chief Commissioner and staff have contributed to the creation and editing of a human rights textbook for students in the 6th grade of secondary schools. The NHRCM has also contributed to the development of a human rights handbook for secondary school teachers. With a particular lack of specialized teachers, the handbook is expected to significantly improving human rights education, particularly for teachers in rural areas.

#### Model Human Rights Curriculum for law schools

With the support of the Canada Fund, the NHRCM has developed a *Model Human Rights Curriculum* for law schools. The purpose of the *Model Human Rights Curriculum* is to improve the knowledge and understanding of students about human rights and national and international and national human rights mechanisms. The *Model Curriculum* was piloted in three universities for a summer course involving 20 students. The NHRCM trained 60 professors from 20 universities.

### **8.8.7 Contribution to Mongolian Government reports to Treaty Body Committees**

In accordance with its Strategic Plan, the NHRCM assists the government with the preparation of reports to international treaty bodies. The NHRCM reports that its activities have included: the

compilation of government reports under the international human rights treaties and production of a booklet on these reports; conducted training seminars and workshops to improve the capacity of government officials to prepare reports for international human rights treaty bodies; and produced training packages on six United Nations conventions under which Mongolia is required to submit reports.

#### **8.8.8 Collaboration with Civil Society**

Under Article 24.3 of *The National Human Right Commission of Mongolia Act*:

The Commission may establish ex-officio boards, which consists of the representatives of advocates' association, confederation of trade unions and/or human rights NGOs, to be assisted in conducting its activities

The NHRCM's *Strategic Plan of the Commission* establishes an ex-officio board which includes representation of 28 non government organisations. The NHRCM cooperates with these organisations in the conduct of training, conferences, workshops, human rights open days, investigations and studies. The NHRCM also cooperates with a wide range of international organizations, human rights organisations, education and training institutions as well as other national human rights institutions.



## 9. Nepal

### 9.1 International Law

Nepal is a party to the ICESCR,<sup>462</sup> CERD,<sup>463</sup> CEDAW<sup>464</sup> and the CRC.<sup>465</sup> Nepal is not a party to the UNESCO Convention Against Discrimination in Education.

Nepal is a party to the ILO Minimum Age Convention<sup>466</sup> and the Worst Forms of Child Labour Convention.<sup>467</sup>

### 9.2 National Law

#### 9.2.1 Constitution

Article 18 and Article 26 of the *Constitution of the Kingdom of Nepal 1990* are relevant to the right to education:

(Article 18) Cultural and Educational Rights

- (1) Each community residing within the Kingdom of Nepal shall have the right to preserve and promote its language, script and culture.
- (2) Each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children.

(Article 26) State Policies

- (1) The State shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions by equitably distributing o investment of economic resources for balanced development in the various geographical regions of the country.
- (2) The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.

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<sup>462</sup> Nepal acceded to the ICESCR on 14 May 1991.

<sup>463</sup> Nepal acceded to the CERD on 30 January 1971.

<sup>464</sup> Nepal ratified the CEDAW on 22 April 1991.

<sup>465</sup> Nepal ratified the CRC on 14 September 1990.

<sup>466</sup> Nepal ratified the Minimum Age Convention on 30 May 1997.

<sup>467</sup> Nepal ratified the Worst Forms of Child Labour Convention on 3 January 2002.

...

- (7) The State shall pursue a policy of making the female population participate, to a greater extent, in the task of national development by making special provisions for their education, health and employment.
- (8) The State shall make necessary arrangements to safeguard the rights and interests of children and shall ensure that they are not exploited, and shall make gradual arrangements for free education.
- (9) The State shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons, as well as ensure their protection and welfare.
- (10) The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health, and employment.
- (11) The State shall, with a view to bringing about prosperity in the country, pursue a policy of giving priority to the development of science and technology and shall also give due consideration to the development of local technology.

In addition to the provisions outlined above, Article 11 of the *Constitution* is relevant to non-discrimination and access for all:

(Article 11) Right to Equality

- (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.
- (2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion (dharma), race (varya), sex (li\_ga), caste (jât), tribe (jâti) or ideological conviction (vaicârik) or any of these.
- (3) The State shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe, or ideological conviction or any of these.

Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward.

- (4) No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.
- (5) No discrimination in regard to remuneration shall be made between men and women for the same work.

Article 26 and Article 126 of the *Constitution* are relevance to the application of international law in the national jurisdiction:

(Article 26) State Policies)

...

- (15) The foreign policy of Nepal shall be guided by the principles of the United Nations Charter, nonalignment, Panchsheel, international law and the value of world peace.
- (16) The State shall pursue a policy of making continuous efforts to institutionalise peace for Nepal through international recognition, by promoting cooperative and good relations in the economic, social and other spheres on the basis of equality with neighbouring and all other countries of the world.

(Article 126) Ratification of, Accession to, Acceptance of or Approval of Treaty or Agreements-

- (1) The ratification of, accession to, acceptance of or approval of treaties or agreements to which the Kingdom of Nepal or His Majesty's Government is to become a party shall be as determined by law.
- (2) The laws to be made pursuant to clause (1) shall, inter alia, require that the ratification of, accession to, acceptance of or approval of treaties or agreements on the following subjects be done by a majority of two-thirds of the members present at a joint sitting of both Houses of Parliament:
  - (a) peace and friendship;
  - (b) defence and strategic alliance;
  - (c) boundaries of the Kingdom of Nepal; and
  - (d) natural resources, and the distribution of their uses.

Provided that out of the treaties and agreements referred to in sub-clauses (a) and (d), if any treaty or agreement is of an ordinary nature, which does not affect the nation extensively, seriously, or in the long term, the ratification of, accession to, acceptance of or approval of such treaty or agreement may be done at a meeting of the House of Representatives by a simple majority of the members present.

- (3) After the commencement of this Constitution, unless a treaty or agreement is ratified, acceded to, accepted or approved in accordance with this Article, it shall not be binding on His Majesty's Government or the Kingdom of Nepal.
- (4) Notwithstanding anything contained in clauses (1) and (2), no treaty or agreement shall be concluded that is detrimental to the territorial integrity of the Kingdom of Nepal.

Additionally, Part 9 *Nepal Treaty Act* (1990) provides:

- (1) In case of the provisions of a treaty to which the Kingdom of Nepal or HMG has become a party following its ratification accession, acceptance or approval by the Parliament conflict with the provisions of current laws, the latter shall be held invalid to the extent of such conflict for the purpose of that treaty, and the provisions of the treaty shall be applicable in that connection as Nepal laws.

- (2) In case any treaty which has not been ratified, accede to, accepted or approved by the Parliament, but to which the Kingdom of Nepal or HMG has become a party, imposes any additional obligation or burden upon the Kingdom of Nepal, or upon HMG, and in case legal arrangements need to be made for its execution, HMG shall initiate action as soon as possible to enact laws for its execution.

### **9.2.2 Legislation**

#### Primary Education and Secondary Education

Article 4 of the *Children's Act* (1992) stipulates rights relating to education:

(Article 4) Right to maintenance and upbringing, education and health care:

- (1) Parents shall be under an obligation to make arrangements so as to bring up the Child and to provide education, health care, sports and recreation facilities to the Child according to the economic status of their family.

Although education is not compulsory in Nepal, the *Ninth Five Year Plan* (1997-2002) reflects the policy intention of the government to provide free compulsory education for children between 6 and 12 years of age.<sup>468</sup>

#### Secondary and Higher Education

The *Higher Secondary Education Act* (1989) created the Higher Secondary Education Board (HSEB) to run the nation's "10+2" system.

Under the *University Grant Commission Act* (1993) the government has created a University Grants Commission to provide advice on the creation of new universities, higher education policy, allocation of university grants and the general promotion and maintenance of higher education in Nepal.<sup>469</sup> The University Grants Commission is comprised on 11 members and commenced operations in 1994.

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<sup>468</sup> Ministry of Education and Sports: [http://www.moe.gov.np/planning\\_document.php](http://www.moe.gov.np/planning_document.php)

<sup>469</sup> Based on the Government of Nepal's Ministry of Education and Sport's website: [http://www.moe.gov.np/Autonomous%20Agencies/University\\_Grants.php](http://www.moe.gov.np/Autonomous%20Agencies/University_Grants.php)

### Minimum Age of Employment<sup>470</sup>

Under the *Children's Act* (1991) a child is defined as being any person under the age of 16. A child under the age of 14 is not permitted to work as a labourer,<sup>471</sup> and a child aged between 14 and 16 is not permitted to work as a labourer between 6:00pm and 6:00am.<sup>472</sup> The *Labour Act* (1992) and *Labour Rules* (1993) include prohibitions on the employment of children under the age of 14, and the employment of minors (aged 14-18) in hazardous work.

The International Labour Organisation reports that the *Child Labour (Prohibition and Regulation) Act* (1999) was prompted by Nepal's ratification of the *ILO Minimum Age Convention* (No. 138). The Act amends the *Labour Act* (1992) with the listing of specific occupations as hazardous work and prohibiting the use of children under the age of 16 those activities. As of March 2005 however, the Act had yet to go into effect.<sup>473</sup> The ILO also notes that the *Self-Governance Act* (1997) contains important provisions relevant to child labour. For example, much of the power for protecting girl children has devolved on the Village Development Committees, which are obliged to give priority to development projects that directly benefit children.

### Minimum Age of Marriage

The *Marriage Registration Act* (1970) outlines rules for the recognition of and registration of marriage with the Office of the Chief District Officer.<sup>474</sup> In Nepal, the legal age of marriage without parental consent is 21 years for males and 18 for females and 18 years for males and 16 years for females with parental consent.

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<sup>470</sup> Source: International Programme on the Elimination of Child Labour

<http://www.ilo.org/public/english/region/asro/newdelhi/ipec/responses/nepal/national.htm>

<sup>471</sup> Children's Act 1991, article 17(1)

<sup>472</sup> Children's Act 1991, article 17(2)

<sup>473</sup> ILO: National Legislation and Policies Against Child Labour in Nepal;

<http://www.ilo.org/public/english/region/asro/newdelhi/ipec/responses/nepal/national.htm>; Other relevant legislation restricting child labour and trafficking in Nepal includes: Te *Citizen Rights Act* (1955); *Begging Prohibition Act* (1962); *Prison Act* (1962); *Common Law Code* (1963); *Public Offence and Punishment Act* (1970); *Foreign Employment Act* (1985); *Trafficking Control Act* (1986), and the *Drug Trafficking (Control) Act*.

<sup>474</sup> Source: United Nations Economic and Social Council, 25 September 2000

## Minimum Age of Criminal Responsibility

The *Children's Act* (1991) contains the following provisions relevant to the minimum age of criminal responsibility:

### (Article 11) Child and Criminal Liability

- (1) If the Child below the age of 10 years commits an act which is an offence under law, he shall not be liable to any type of punishment.
- (2) If the age of the Child is 10 years or above 10 years and below 14 years and he commits an offence which is punishable with fine under law, he shall be warned and explained and if the offence is punishable with imprisonment, he shall be punished with imprisonment for a term which may extend to six months depending on the offence.
- (3) If the child who is above 14 years and below 16 years commits an offence he shall be punished with half of the penalty of the penalty to be imposed under law on a person who has attained maturity.

## **9.3 Overview of Education Policies and Programs**

### Educational Framework<sup>475</sup>

The Ministry of Education and Sports (MOES) was created in 1951 and has primary responsibility for the development and implementation of education policies and programs in Nepal. The Ministry, which is headed by the Secretary of Education, is comprised of four Central Offices, each of which is led by a Joint Secretary. These offices include: the Administration and Sports Division; the Higher Education and Educational Management Division; the Planning Division; and the Monitoring, Evaluation and Inspection Division

The Ministry has oversight of a wide range of functional offices which address specific education requirements in Nepal. These offices include: the Department of Education; the Curriculum Development Centre; the National Centre for Educational Development; the Non-formal Education Centre; the Office of the Controller of Examinations; the Teacher Records Office; the Food for Education office; the Nepal National Library; the Kaiser Library; and the Dilli Raman Library

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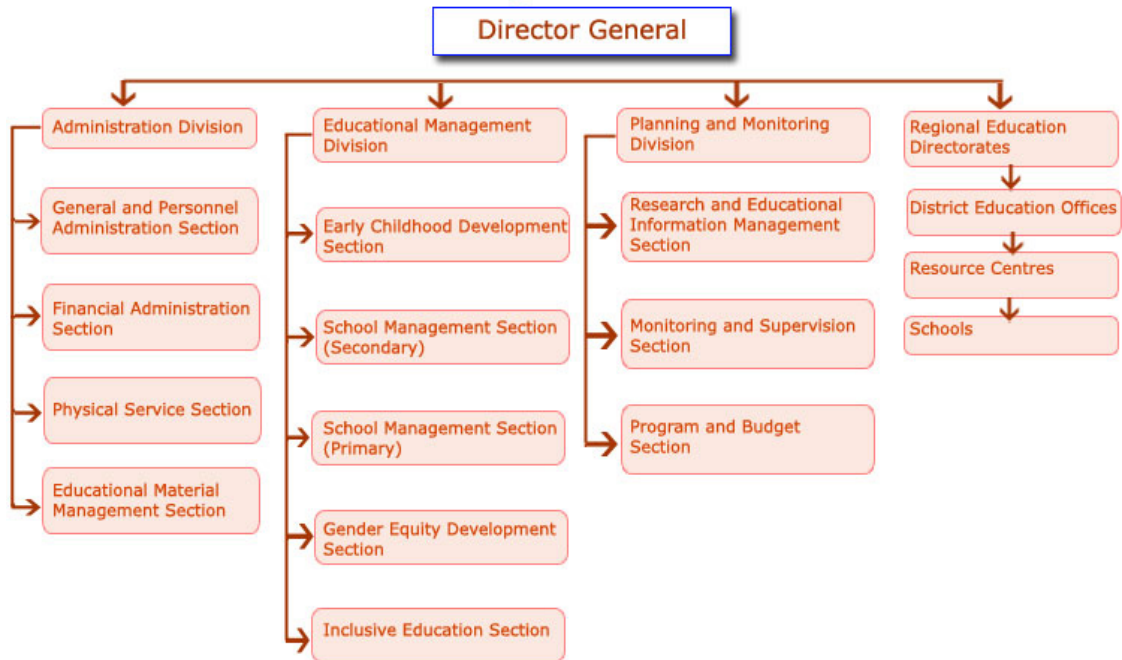
<sup>475</sup> Sources: Ministry of Education <http://www.moe.gov.np/index.php> and Department of Education <http://www.doe.gov.np>

## Department of Education

The Department of Education was established under Nepal's Ministry of Education and Sports in 1999 to coordinate basic and primary (formal and non-formal) education. The Director General serves as head of the Department, which in turn has financial and administrative control over regional and district offices and their educational programs. The Department consist of four divisions: Administrative Division; Educational Management Division; Planning and Monitoring Division; Organizational Structure of the Department of Education; and Regional Education Directorate. The responsibilities of the Department of Education include: preparation of plans, budgets and programs for basic and primary, lower secondary, secondary and higher secondary education; implementation of primary and secondary education programs in accordance with the Ministry's policies and regulations; supervision and monitoring of activities relating to primary and secondary education; preparation of staff development plans and coordination of program implementation with other agencies; provision of experienced and skilled staff for the implementation of programs organised by the Ministry and its related organisations at the regional and district levels; provision of financial management and conduct of audits of the expenditure made under donor-supported programmes; and establishment and management of resource centres at district levels.

Government of Nepal  
Ministry of Education and Sports  
Department of Education

Organization Chart



The Ministry of Education and Sports is affiliated with a number of autonomous institutions. Regular meetings are held to facilitate the coordination of education programmes and services. These institutions include: Council for Technical Education and Vocational Training; Higher Secondary Education Board; Teacher Service Commission; University Grants Commission; Tribhuvan University; Mahendra; Sanskrit University; Kathmandu University; Purbanchai University; Nepal Scouts; and the Janak Educational Materials Centre.

The National Human Rights Commission of Nepal ('**NHRCN**') reports that the conflict between government security forces and the Maoist forces has had a direct impact on the right to education in Nepal. In particular, violence has occurred on school grounds and has been directed at teachers who are sometimes forced to "interject certain cultural programs into the curriculum."<sup>476</sup> The US Department of State's 2004 Country Report on Nepal's Human Rights Practices provides an overview of the impact on the education system:

During the year, Maoists significantly expanded a campaign of abducting civilians, primarily students and teachers, for indoctrination programs and forced paramilitary training. In January and

<sup>476</sup> The NHRCN



February, approximately 700 children were abducted. Additionally, Maoist-enforced education closures in the western part of the country affected more than 700,000 students and 51,000 employees from 5,000 private and public schools, according to the Western Regional Coordination Committee of the Private and Boarding Schools Organization Nepal.

## Levels of Education

Education in Nepal consists of school and higher education. School education includes primary level (grades 1-5; ages 5-9), lower secondary (6-8; ages 10-12) and secondary level (9-10; ages 13-14) with pre-primary education available in some areas. A national level School Leaving Certificate Examination is administered upon completion of grade 10. In addition grades 11 and 12 (ages 15-16) are considered higher secondary level. These grades were previously part of the university system but are currently being integrated into the school system. Higher education (ages 17-21 and beyond) includes bachelor courses (3-5 years of study), masters courses (2 years of study) and Ph D degrees.

## **9.4 Justiciability**

### **9.4.1 Remedies**

Part 11 of the *Constitution* outlines provisions relating to the Judiciary and access to the Courts:

#### **Part 11 Judiciary**

(Article 84) Courts to Exercise Powers Related to Justice—

Powers relating to Justice in the Kingdom of Nepal shall be exercised by courts and other judicial institutions in accordance with the provisions of this Constitution, the laws and the recognized principles of justice.

(Article 85) Courts of Kingdom of Nepal—

(1) Courts in the Kingdom of Nepal shall consist of the following three tiers:

- (a) Supreme Court,
- (b) Appellate Court; and
- (c) District Court.

(2) In addition to the Courts referred to in clause (1) above, the law may also establish special types of courts or tribunals for the purpose of hearing special types of cases: Provided that no special court or tribunal shall be constituted for the purpose of hearing a particular case.

(Article 88) Jurisdiction of the Supreme Court—

(1) Any Nepali citizen may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by this Constitution

or on any other ground, and extraordinary power shall rest with the Supreme Court to declare that law as void either ab initio or from the date of its decision if it appears that the law in question is inconsistent with the Constitution.

(2) The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or to settle the dispute. For these purposes the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including habeas corpus, mandamus, certiorari, Prohibition and quo warranto: - Provided that:

(a) the Supreme Court shall not be deemed to have power under this clause to interfere with the proceedings and decisions of the Military Court except on the ground of absence of jurisdiction or on the ground that a proceeding has been initiated against, or punishment given to, a non-military person for an act other than an offence relating to the Army.

(b) except on the ground of absence of jurisdiction, the Supreme Court shall not interfere under this clause with the proceedings and decisions of Parliament concerning penalties imposed by virtue of its Privileges.

(3) The Supreme Court shall have original and appellate jurisdiction as defined by law.

(4) The Supreme Court may review its own judgment or final orders subject to the conditions and in the circumstances prescribed by law.

(5) If His Majesty wishes to have an opinion of the Supreme Court on any complicated legal question of interpretation of this Constitution or of any other law, the Court shall, upon consideration on the question, report to His Majesty its opinion thereon.

(6) Other powers and procedures of the Supreme Court shall be as prescribed by law.

Relevantly, Article 20 of the *Children's Act* (1991) provides:

#### 20. Enforcement of Rights:

(1) For the enforcement of the rights set out in this Chapter, every person shall have the right to file a petition on behalf of the Child to a District Court of the district where the Child is residing. On receipt of such petition, the concerned Court may, upon inquiry into the matter, enforce the right by issuing the appropriate order, direction or writ.

Provided that, in matters relating to the prohibition on maintaining direct contact or living by the Child in pursuance of the proviso clause of sub-section (1) of Section 8. such action may be initiated order ma" be issued only on the basis of a petition of the parent (s) of the concerned Child

(2) In cases where a person is aggrieved as a result of inflicting harm on any right conferred by this chapter, the Court may, in issuing order, direction or writ under sub-section (1), decide to grant a reasonable amount of compensation.

## 9.5 Availability

### 9.5.1 Expenditure

#### Overview of Governmental Expenditure

The Ministry of Education and Sports reports that in 2003, 60 per cent of the total education budget was allocated to basic and primary education; 21 per cent supported secondary education; 10 per cent supported higher education and remaining 9 per cent was allocated to administration, technical education and youth and sports development.<sup>477</sup> The table below produced by the Ministry of Finance provides an overview of the financing of education in Nepal for 1990, 1995 and 2000-2003.

#### Education Finance

Share of total government budget, share of Foreign Aid in total education budget, share of GDP and GNP in Education Sector

Headings	1990	1995	2000	2001	2002	2003
% of Government budget	9.1	13.1	14.1	13.8	16.3	15.8
% of Foreign Aid in education budget	10.3	26.0	21.0	18.9	15.4	16.7
% of GDP	1.8	2.4	2.5	2.8	3.2	3.0
% of GNP	1.7	2.3	2.4	2.6	3.0	2.8

Source: MOF, Economic Survey, 2003 and 2004

#### University Funding

The chart below, produced by the University Grants Commission, provides an overview of the allocation of university grants allocated as of May 2005.

Note:	Number of grants receiving campuses	147
	Number of students under grants receiving campuses	44500
	Number of affiliated campuses to TU and not receiving grants	246
	Number of students in TU affiliated campuses and not receiving grants	34845

Source: University Grant Commission

<sup>477</sup> *Education in Nepal 2003*, Ministry of Education and Sports

## Education Funding Models

There are three types of schools in Nepal: public community schools (those receiving regular government grants); private and institutional schools (those that are self-funded or receiving support from non-government sources); and unaided community schools (do not receive regular government grants and operate with the support of the local community). Universities and academies are publicly financed and managed.

The table below produced by the Ministry of Education and Sports provides an overview of education statistics for 2004 and provides the distribution of students across the three types of schools (aided, unaided and institutional) and by gender and education level.

### **School Level Educational Statistics (Flash I)**

**At A Glance, 2004(2061)<sup>478</sup>**

			Pre primary/ECD	Primary (1-5)	L. Secondary (6-8)	Secondary (9-10)	Total (1- 10)
<b>Aided Community</b>	<b>Schools</b>	Total	-	19467	3759	2291	20464
	<b>Students</b>	Total	-	3416630	1042617	429978	4889225
		Girls	-	1595092	477030	193529	2265651
		Girls (%)	-	46.7	45.8	45.0	46.33
		Boys	-	1821538	565587	236449	2623574
<b>Unaided Community</b>	<b>Schools</b>	Total	-	2421	1905	967	5132
	<b>Students</b>	Total	-	188315	253678	79301	521294
		Girls	-	88556	114879	34674	238109
		Girls	-	47.0	45.3	43.7	45.67

<sup>478</sup> *Education in Nepal 2003*, Ministry of Education and Sports

		(%)					
		Boys	-	99759	138799	44627	283185
<b>Institutional</b>	<b>Schools</b>	Unit	-	2858	1772	1289	3137
	<b>Students</b>	Total	-	425100	148702	34485	608287
		Girls	-	181364	61250	14362	256976
		Girls (%)	-	42.7	41.2	41.6	42.24
		Boys	-	243736	87452	20123	351311

### International Assistance and Cooperation

The Ministry of Education and Sport's brochure, *Education in Nepal 2003*<sup>479</sup> notes in relation to international assistance and cooperation:

About 80 percent of total education budget comes from the national sources whereas the remaining 20 per cent comes from the foreign source (15 per cent as grant and 5 per cent as loan). However, in total development education budget as high as 86 per cent comes from the foreign source (63 per cent as grant and 23 per cent as loan) and only the remaining 14 per cent comes from the national source.

#### **9.5.2 Infrastructure**

Schools and other education institutions in Nepal suffer from poor infrastructure. The *ICESCR Nepal NGO Report* observes:

Poor infrastructure and inaccessibility are some major factors that deprive Nepali children from quality education...Often schools are not available and they are inadequate. When schools do exist, long distances, poor roads, and lack of transportation render them inaccessible.

The *ICESCR Nepal NGO Report* also highlighted concerns over the quality of public school buildings, particularly in relation to leaking roofs and poor sanitation:

Public schools are so ill equipped that often [at] times the pupils have no furniture to sit. In the remote areas of Nepal, students generally pass the day sitting outside because their school buildings are often crumbling. Some schools do not even have a school building at all.

<sup>479</sup> Produced by the Ministry of Education

The table below, produced by the Ministry of Education and Sports, provides an overview of the number of schools and annual growth rate in the number of schools for the period 1990-2003.<sup>480</sup>

	Number of Schools				Average Annual Growth Rate		
	1990	1995	2000	2003	1990-1995	1995-2003	1990-2003
Primary	17,842	21,473	25,927	27,268	3.8	3.0	3.3
Lower Secondary	3,964	5,040	7,289	8,249	4.9	6.4	5.8
Secondary	1,953	2,649	4,350	4,741	6.3	7.5	7.1

The following chart, produced by the Ministry of Education and Sports, details the distribution of students and teachers across the various educational levels (i.e. primary, lower secondary etc.) This chart also accounts for the gender ratio among students and the percentage of trained teachers. Note that this chart provides statistics for all schools and solely for government-aided schools as well.

**SCHOOL LEVEL EDUCATIONAL STATISTICS (FLASH I)**  
**AT A GLANCE, 2004(2061)<sup>481</sup>**

			Pre primary/ECD	Primary (1-5)	L. Secondary (6-8)	Secondary (9-10)	Total (1-10)
<b>Total</b>	<b>Schools</b>		-	24746	7436	4547	26277
	<b>Students</b>	Total	-	4030045	1444997	543764	6018806
		Girls	-	1865012	653159	242565	2760736
		Girls (%)	-	46.3	45.2	44.6	45.87
		Boys	-	2165033	791838	301199	3258070
	<b>Teachers</b>	Total	-	101483	25962	20232	147677
		Total Full Trained	-	30967	7818	9727	48512

<sup>480</sup> Source: Nepal Economic Survey Statistics listed in Ministry of Education and Sports' *Nepal: Education in Educational Figures 2005*:  
<http://www.moe.gov.np/Educational%20Statistics/download%20pdf/Nepal%20in%20Educational%20Figures,%202005.pdf>

<sup>481</sup> Source: Ministry of Education and Sports  
[http://www.moe.gov.np/Educational%20Statistics/Educational\\_Statistics\\_2061.php](http://www.moe.gov.np/Educational%20Statistics/Educational_Statistics_2061.php)

		Total Full Trained (%)	-	30.51	30.11	48.07	32.85
		Female	-	30542	4238	1732	36512
		Female (%)	-	30.1	16.3	8.6	24.7
		Female Full Trained	-	8260	1177	731	10168
		Female Full Trained (%)	-	27.04	27.77	42.20	27.85
<b>Aided Community</b>	<b>Schools</b>		-	19467	3759	2291	20464
	<b>Students</b>	Total	-	3416630	1042617	429978	4889225
		Girls	-	1595092	477030	193529	2265651
		Girls (%)	-	46.7	45.8	45.0	46.33
		Boys	-	1821538	565587	236449	2623574
	<b>Teachers</b>	Total	-	70555	14806	12379	97740
		Total Full Trained	-	26528	5501	7168	39197
		Total Full Trained (%)	-	37.60	37.15	57.90	40.10
		Female	-	16560	1494	738	18792
		Female (%)	-	23.5	10.1	6.0	19.2
		Female Full Trained	-	6273	631	435	7339
		Female Full Trained (%)	-	37.88	42.24	58.94	39.05

The government's *Ninth Five Year Plan* (1997-2002) notes the following problems and challenges regarding the education system in Nepal.

#### Pre-primary Level

At the pre-primary level there is a lack of resources, including properly trained teachers and

education materials, to provide comprehensive pre-primary education throughout Nepal.

### Primary Level

At the primary level, approximately 31 per cent of primary school age children have not enrolled in schools; children from disadvantaged communities have poor access to primary education; repetition and drop-out from primary education persists; the attendance of teachers, particular in rural areas is unsatisfactory; there is a lack of institutionalised reform for the effective implementation of education projects; further reform is required to improve the quality of primary education; efforts to decentralise the management of education and to increase the participation of the public have not been effective; supervision of primary school education, monitoring of school programmes, and student evaluation is ineffective; and there has been a lack of measures to promote the accessibility and availability of primary education.

### Secondary Level

At the secondary level, the school syllabus has not been revised in accordance contemporary with social, economic, technical and political developments; teacher training programmes are inadequate; supervision and monitoring of the quality of the learning achievements of students is poor; the participation of local communities in school management has been poor; and the decentralisation of management of secondary education has been ineffective.

### Higher Secondary Level

At the higher secondary level, the majority of teachers are under-qualified and un-trained; difficulties exist between management and teachers regarding the professional security, career development, permanency, and salaries of teachers; school facilities are generally inadequate to conduct the necessary education courses; the higher secondary level syllabus does not meet the needs of the employment market; the preparation and distribution of textbooks is inadequate; the examination system requires further reforms; and there is little planning in relation to infrastructure.



## Higher Education

At the higher education level, the Ministry of Education has limited control over universities despite bearing the financial burden of many institutions; campus and research centres are not financially autonomous and cost-recovery measures have not been implemented; there is inadequate strategic development and coordination with the private sector in the development and implementation of university curriculum; university teachers are not effectively involved in teaching activities, thereby limiting efforts to improve the quality of higher education; and the late publication of examination results by some universities has hindered post-study opportunities for graduates.

## Technical and Vocational Education

Technical and vocational education has not met the needs of economic development within Nepal; the availability of technical and vocational education at the local level has not met local development needs; there has been poor coordination between the Technical Education and Vocational Training Council and the private sector; courses and programmes have not been cost effective; and the Labour Management Information System was unable to be systematically developed.

### ***9.5.3 Teachers and support staff***

The *ICESCR Nepal NGO Report* indicates that teachers tend to lack necessary training, are underpaid, and often do not report for teaching duties. Furthermore, in 2001 the World Bank's Human Development Unit for the South Asia Region also noted concerns regarding teacher adequacy.<sup>482</sup> In its report it noted that the teaching profession is highly politicised, citing this as a major cause of the decline in the quality of public education and the low level of accountability across the system. It also observed that poor teacher management is a major cause of poor quality education. In its report, the World Bank noted:

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<sup>482</sup> World Bank (Human Development Unit: South Asia Region), *Nepal: Priorities and Strategies for Education Reform*, Report No. 22065-NEP (18 July 2001), p.iii. The report is accessible at: <[http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2001/08/29/000094946\\_01080304092060/Rendred/PDF/multi0page.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2001/08/29/000094946_01080304092060/Rendred/PDF/multi0page.pdf)>

At the core of school quality are teachers who need to be continually supported in their professional development and made accountable for student's learning. There is an urgent need for a coherent teacher training and management policy and strategy covering the entire schooling cycle. There is also a need for a national curriculum framework covering the entire school curriculum and for a more coherent examination and assessment system. The minimum education level for teachers is low, most have had no preservice training and upgrading programs have been limited in number and effectiveness. As a result, classroom teaching has not improved. There is a lack of transparency for appointments and transfers which is deleterious for school quality and morale. A similar situation faces teachers in secondary schools.<sup>483</sup>

The tables below are source from Nepal Economic Survey Statistics and were published by the Ministry of Education and Sports. The tables provide a breakdown of female teachers and fully trained teachers for the period 1990-2003.<sup>484</sup>

	1990	1995	2000	2003	Average Annual Growth Rate		
					1990-1995	1995-2003	1990-2003
Primary	71,213	82,645	97,879	112,360	3.0	3.9	3.6
Lower Secondary	12,399	16,821	25,375	29,895	6.3	7.5	7.0
Secondary	10,421	14,585	19,498	23,297	7.0	6.0	6.4

	1990	1995	2000	2003	Average Annual Growth Rate		
					1990-1995	1995-2003	1990-2003
Primary	9,181	15,885	24,770	32,739	11.6	9.5	10.3
Lower Secondary	1,398	2,285	3,051	4,905	10.3	10.0	10.1
Secondary	897	1,248	1,490	2,194	6.8	7.3	7.1

	1990	1995	2000	2003
Primary	12.9	19.2	25.3	29.1
Lower Secondary	11.3	13.6	12.0	16.4
Secondary	8.6	8.6	7.6	9.4

					Average Annual Growth Rate		
	2000	2001	2002	2003	2000-2001	2000-2002	200-2003
Primary	11,683	14,191	17,878	19,535	67.2	23.7	18.7
Lower Secondary	5,753	7,437	7,264	7,979	38.7	12.4	11.5
Secondary	8,419	8,689	8,545	9,286	10.3	0.7	3.3

<sup>483</sup> Ibid p. vi

<sup>484</sup> Nepal Economic Survey Statistics listed in Ministry of Education and Sports' *Nepal: Education in Educational Figures 2005*:  
<http://www.moe.gov.np/Educational%20Statistics/download%20pdf/Nepal%20in%20Educational%20Figures%202005.pdf>

	Number of Full Trained Teachers 1990-2003 (Female)				Average Annual Growth Rate		
	2000	2001	2002	2003	1990-1995	1995-2003	1990-2003
Primary	3,362	2,989	4,257	4,841	44.0	12.5	12.9
Lower Secondary	837	844	976	1,114	33.1	8.0	10.0
Secondary	681	653	712	749	10.0	2.3	3.2

	Percentage of Female Full Trained Teachers 1990-2003			
	2000	2001	2002	2003
Primary	28.8	21.1	23.8	24.8
Lower Secondary	14.5	11.3	13.4	14.0
Secondary	8.1	7.5	8.3	8.1

## 9.6 Accessibility

### 9.6.1 Non-discrimination

The *Ninth Five Year Plan* provides for a scholarship program for children from “lower caste groups and ethnic tribes. The program provides Rs. 25 a month for up to 10 months to encourage enrolment in school. The *Plan* sets out a goal of expanding the scholarship program to sponsor 440,000 recipients. The *ICESCR Nepal NGO Report* observes that students belonging to marginalised groups such as the children of Dalits and ethnic minorities are likely to face inadequate education services.

### 9.6.2 Gender Parity and Gender Equality

The Department of Education has a Women’s Education Section which is responsible for: developing policies and programmes on women's education and other target groups; coordinating and monitoring different programmes in order to increase women's participation in education; developing and implementing norms and criteria to increase women teachers; developing programmes to increase community participation in education and to implement such education programmes implement through district resource centres, Village Development Committees, and non-government organisations; act as the contact office for the Ministry of Women and Social Welfare, Ministry of Health and the Ministry of Local Development in matters related to women's education; and allocate, distribute and monitor scholarships for girls.

The *Ninth Five Year Plan* observed that various programs were implemented with the objective

of increasing primary education access, and enrolment for female students. Additionally, other programs encouraged women to enter the teaching profession and complete their secondary level education. The *Ninth Five Year Plan* indicated commitment to supporting and expanding such programs, and increasing teacher training and scholarship programs. The *Plan* includes a goal of at least one female teacher in every primary school.

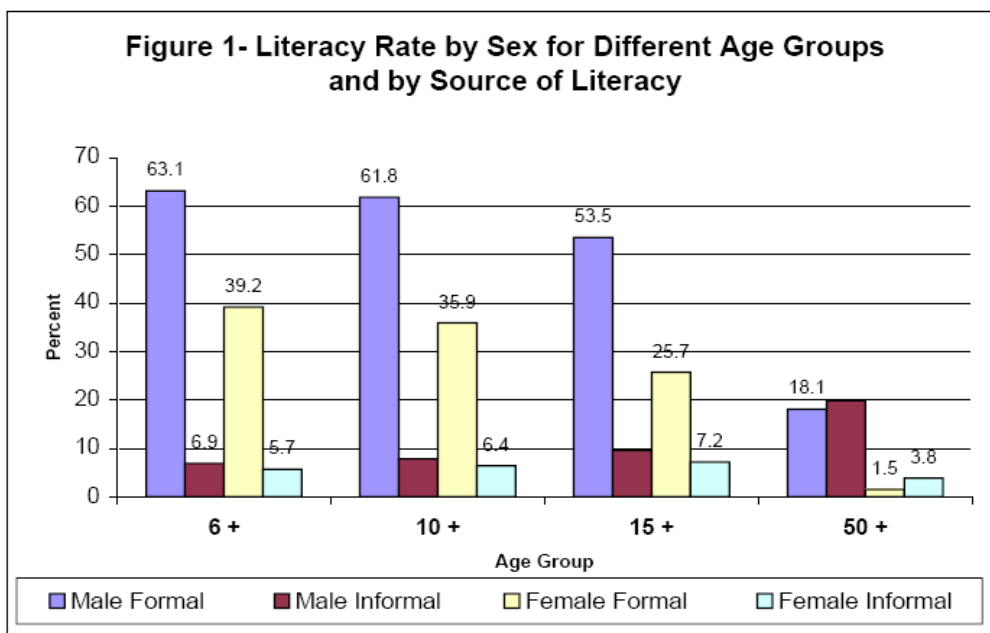
The charts below, published by the Central Bureau of Statistics, provide an insight into disparities in literacy rates between males and females in Nepal.

### Literacy Rate

**Table: 01: Literacy Rate in different Year (6 Years and above)**

Year (B. S.)	Year (A. D.)	Male	Female	Total	GPI	Gender Gap (male – female)
2009	1952/54	9.5	0.7	5.3	0.07	8.8
2018	1961	16.3	1.8	8.9	0.11	14.5
2028	1971	23.6	3.9	14.0	0.17	19.7
2038	1981	34.0	12.0	23.3	0.35	22.0
2048	1991	54.5	25.0	39.6	0.46	29.5
2058	2001	65.1	42.5	53.7	0.65	22.6

Source: Various Publications of Central Bureau of Statistics (CBS)



Source: CBS, 2000

### 9.6.3 *Physical Accessibility*

Nepal has three distinct ecological areas (terai, hill and mountain). The terai is a narrow strip of plain that runs east to west in the south of the country. This area tends to have fertile soil, easy access and better infrastructure and thus accounts for 48 per cent of the total population. The hill region lies with the terai to its south and the high mountains to its north. This area consists of hills, valleys and river basins and accounts for 44 per cent of the total population. The mountain region accounts for 8 percent of the total population and consists of high-rise mountains, deep valleys and a harsh climate.

The country has 75 districts which are grouped into 5 development regions: 16 districts in Eastern Development Region, 19 in the Central Development Region, 16 in the Western Development Region, 15 in the Mid-Western and 9 in the Far-Western.

The Library of Congress 1991 Country Study of Nepal noted that better quality education was urban-based:

Further, education remained largely urban-biased. The majority of educational institutions, particularly better quality institutions, were found in urban areas. In rural areas where schools were set up, the quality of instruction was inferior, facilities were very poor, and educational materials were either difficult to find or virtually unavailable. Consequently, if rural families were serious about the education of their children, they were forced to send them to urban areas, a very expensive proposition that the vast majority of rural households could not afford.

The World Bank's *Nepal: Priorities and Strategies for Education Reform* indicates such challenges still persist:

There are large differences in gross enrolment rates across geographic / ecological areas and income levels. The rates in primary schooling range between 64 percent in the Eastern Terai to 104 percent in the Eastern hills / mountains, and from 68 percent for the poorest quarter of all households to 118 percent for the wealthiest quarter.

The *ICESCR Nepal NGO Report* further notes:

In rural areas, universal education is often undermined by impediments to access and the low quality of available schooling. Rural areas tend to lack the educational infrastructure (including schools and teachers) generally available to urban areas...Parents from rural areas, particularly farming communities where children work in subsistence agriculture, are more apt to view formal education as irrelevant to their children's future.

#### **9.6.4 Economic Accessibility**

The *ICESCR Nepal NGO Report* notes that efforts to provide a free compulsory education are often undermined by poor quality and negative stigma. The report details that government schools tend to offer low quality education services especially when compared to private schools whose fees are too expensive for most Nepalese families:

Furthermore, low-income families suffer from the stigma that society places on those who send children to government school. People consider government schools a place only suitable for children of lower class. Children of upper class families only attend high-priced private schools.

Additionally, many families face greater incentive to not send their children to school. Many families instead have their children work and contribute to family income, especially in rural subsistence agriculture areas:

School fees are high, leading poor and marginalized families not to send their children to school. Even if free education is provided, in many cases the costs of school supplies, books, uniforms, meals, transportation are prohibitive to poor families. The opportunity cost of education—in the form of a child's foregone earnings and on-the-job work experience—is a further factor in a family's decision not to send children to school.

The Library of Congress 1991 Country Study provides historical context:

Despite general accessibility, education still nonetheless primarily served children of landlords, businessmen, government leaders, or other elite members of the society, for they were the only ones who could easily afford to continue beyond primary school.

#### **9.6.5 Non-formal Education**

The United Nations 1999 *Implementation of the International Covenant on Economic, Social and Cultural Rights* notes inclusion of non-formal education as part of national strategies, including village-based *Chelibeti* and *Sikchya Sadan* for out-of-school children age 6 to 14. The *Ninth Five Year Plan* (1997-2002) also notes the importance of non-formal education as part of efforts to address adult illiteracy. The National Centre for Educational Development operates a Non-formal Education Centre whose programs include: Adult Education Program (AEP) I and AEP post literacy; Women education I and II; Out of School I and II; School outreach; Flexible schooling

(Non-form primary education); Population and family life education; Income generating skills; and Community Learning Centre (CLCs).

## **9.7 Acceptability**

### **9.7.1 *Quality Education and Minimum Standards***

#### Indicators

As detailed in the tables and charts included above, the Ministry of Education and Sports works closely with other government departments and agencies to collate statistics on literacy, enrolment and gender participation in the education system.

### **9.7.2 *Discipline***

#### Legal Status of Corporal Punishment

The NHCRN observes that although corporal punishment was recently declared ultra vires, its practice remains widespread, particularly in private schools where traditional teaching methods persist. A number of local and international organisations (including UNICEF and CIVICT) are working to eliminate the use of corporal punishment in schools.

### **9.7.3 *Curriculum***

Established in 1971, the Curriculum Development Centre (CDC) operates under the supervision of the Ministry of Education and Sports. Its key responsibilities include: developing, revising and improving the school curriculum, textbooks and other school materials; organising seminars and workshops for curriculum improvement and textbook dissemination; conducting research on school curriculum matters; preparing subject handbooks for teachers; monitoring the implementation of curriculum and the use of textbooks; consulting with teachers and students on curriculum development; distributing free textbooks to primary school students; selecting and listing reference materials; and supporting professional development for teachers.

The CDC also carries the following activities: development of mother tongue curriculum and textbooks; development and distribution of resource materials for teachers; of Teachers' resource material development and distribution; establishment of libraries for children; introduction of a Continuous Assessment System and the adoption of a Liberal Promotion Policy for grade 1 to 3 (currently being piloted in five districts – Ilam, Chitwan, Syanja, Surkhet and Kanchanpur).

In the context of the Secondary Education Support Programme the CDC's responsibilities include: development of a national curriculum framework for comprehensive school education; renewal and revision of secondary curriculum and textbooks; development and distribution of resource materials for teachers; and the development of an examination and assessment system.

#### ***9.7.4 Parents / Legal Guardians***

The NHRCN reports that parents and guardians are free to choose a child's discipline, school, campus or university of enrolment.<sup>485</sup>

#### ***9.7.5 Religious and Cultural Practices, Languages of Minority Groups***

The NHRCN reports that the 2001 Population Census registered 101 different caste groups, 92 language groups, and ten religious groups as existing in Nepal.

### **9.8 Adaptability**

#### ***9.8.1 Education and Work***

Constitutional and legislative provisions relating to free and compulsory education and the minimum age of employment are detailed above.

The ICESCR Nepal NGO Report (May 2006) makes the following observation regarding work and compulsory schooling in Nepal:

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<sup>485</sup> United Nation's *Implementation of the International Covenant On Economic, Social and Cultural Rights*, 1999.



Work is one factor that can constitute a major impediment to children's attendance and successful completion of primary school. Working children have low enrolment and high absenteeism and dropout rates. This may be attributable to fatigue from long hours of labour, injuries and illnesses, and work schedules that conflict with school hours.

....

Although the government has made education up to grade 10 free of tuition fees, these free public schools are very poorly managed and mostly provide low quality education. Private schools with better education programs are too expensive for the majority of Nepalese families. As such, many parents cannot afford to send their children to schools to gain a proper compulsory education.

### **9.8.2 Education for Women**

As outlined above, the *Marriage Registration Act* (1970) stipulates that the legal age of marriage without parental consent is 21 years for males and 18 for females and 18 years for males and 16 years for females with parental consent.

The US Department of State's *2004 Country Report on Nepal's Human Rights Practices* observes:

Societal attitudes view a female child as a commodity to be bartered off in marriage, or as a burden. Some persons considering marrying a girl before menarche an honourable, sacred act that increases one's chances of a better afterlife. As a result, although the law prohibits marriage for girls before the age of 18, child brides were common. According to the Ministry of Health, girls' average age of marriage was 16 years of age. The age difference in marriage often was cited as one cause of domestic violence.

The country report also noted the prevalence of violence against women: domestic violence, (including rape and incest particularly in rural areas) killing of brides for defaulted/inadequate dowry payments and trafficking into forced prostitution abroad.

The report highlighted governmental protections including Constitutional guarantee of equal pay for equal work, and penalties for abuse, but indicated inadequacy and lack of enforcement.

### **9.8.3 Special Needs Education**

The *Ninth Five Year Plan* (1997-2002) notes that people with disabilities are a target group for special education programmes which could be developed as an integral part of an "Education for All" approach. The *Ninth Plan* proposed the gradual implementation of special education in areas where compulsory primary education program is in operation; the revision of curriculum at all

education levels; the creation of opportunities for high achieving students with disabilities to access higher education; the creation of scholarships for talented students with disabilities; and the creation of special work-oriented non-formal education. It was noted that only one per cent percent of disabled children were currently receiving training or educational opportunities, and that there was no institution providing education and training for children with multiple disabilities.

## **9.9 Activities of the NHRCN**

### **9.9.1 Mandate and Methods**

The NHRCN is an independent and autonomous institution that is established under the *Human Rights Commission Act, 2053 (1997)*. The mandate of the NHRCN for the protection and promotion of economic, social and cultural rights is stipulated under Section 2(f) of the *Act*:

"Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and the rights embodied in the international treaties relating to human rights to which Nepal is a party.

As noted above Nepal is party to ICESCR and a number of other international human rights conventions which protect and promote economic, social and cultural rights.

The NHRCN uses a range of methods and approaches including: conducting inquiries and investigations into human rights violations; conducting public hearings or inquiries into any event; visiting, inspecting and observing any authority, jail or organization and submitting recommendations on the reforms to be made on the functions, procedures and physical facilities necessary for such an organization to protect human rights; reviewing the provisions and protection provided by the *Constitution* and other laws for the enforcement of human rights and making necessary recommendations for the effective implementation of such provisions; studying international human rights treaties and instruments and making recommendations to the government for effective implementation of such provisions; conducting research on human rights issues; conducting human rights education programs; and working with human rights non government organisations and other civil society organisations.

### ***9.9.2 Investigation of Complaints***

The NHRCN reports that it receives complaints about the failure of education institutions to provide certificates to students following the completion of courses. The NHRCN has investigated these complaints to ensure that students who have successfully completed all course requirements are awarded the appropriate certificate.

The majority of the complaints received by the NHRCN regarding the right to education have related to the closure of schools and the ‘forceful invitation’ of students to attend CPN (Maoist) cultural programmes and weapon displays. The NHRCN reports that it has received complaints about the creation of bunkers within school premises and the use of schools as shelters by both the security forces and the Maoist forces.

### **Monitoring**

The NHRCN reports that it has adopted a monitoring approach to protect the right to education in relation to the circumstances outlined above. NHRCN monitoring teams meet with Maoist rebels as well as local government officials and security forces. At the conclusion of the monitoring visits, the NHRCN issues press releases to bring the matter to the public’s attention and issues recommendations that schools not be used for any military purposes and be treated as ‘zones of peace.’

### ***9.9.3 Research and/or Public Inquiries***

The NHRCN conducted a research program on the issues of Dalit rights focusing on the right to education. The NHRCN is yet to provide recommendations to the government however it is follow-up interaction programs with Teacher Associations, School Associations and civil society organisations.

### ***9.9.4 Human Rights Education***

The NHRCN has developed a human rights education training program (including a train-the-trainer component) for delivery to government officials and non-government organisations. The

program provides training about the role of the NHRCN and general human rights issues. The program has been conducted in 22 districts and has produced a booklet on children's rights.

The NHRCN is working with the Department of Education, the Ministry of Education, the National Centre for Educational Development and the Curriculum Development Centre as part of an initiative to have human rights education included within the secondary school curriculum.

The NHRCN reports that it is also working with the various security agencies in Nepal to introduce human rights education into the training curriculum for security personnel.

#### ***9.9.5 Collaboration with Civil Society***

The NHRCN reports that it has taken an active role in working with civil society organisations and international organisations (including the United Nations) in addressing the issue of the right to education. The NHRCN has repeatedly urged parties to the civil conflict in Nepal to respect and protect the situation of children with respect to their right to education.

## 10. New Zealand

### 10.1 International Law

New Zealand is a party to the ICESCR,<sup>486</sup> CERD,<sup>487</sup> CEDAW<sup>488</sup> and the CRC.<sup>489</sup> New Zealand is a party to the UNESCO Convention Against Discrimination in Education.<sup>490</sup>

New Zealand is a party to the ILO Worst Forms of Child Labour Convention,<sup>491</sup> however it is not a party to the Minimum Age Convention.

### 10.2 National Law

#### 10.2.1 Constitution

The legal regulation of New Zealand's constitutional arrangements is unusual as most modern states operate under an entrenched supreme law constitution which gathers in a single document or a small number of documents, the principal elements governing how public power is to be exercised within that state. New Zealand's "constitution" consists of constitutional convention, statute and common law. Further, New Zealand lacks some constitutional features of other western democracies (i.e. the courts lack power to strike down statutes of Parliament on the ground of unconstitutionality).

#### Treaty of Waitangi

The *Treaty of Waitangi* (1840), signed by the Crown and certain Maori chiefs, is regarded by many as the founding document of the modern New Zealand polity.<sup>492</sup> In the context of the

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<sup>486</sup> New Zealand ratified the ICESCR on 28 December 1978.

<sup>487</sup> New Zealand ratified the CERD on 22 November 1972.

<sup>488</sup> New Zealand ratified the CEDAW on 10 January 1985.

<sup>489</sup> New Zealand ratified the CRC on 6 April 1993.

<sup>490</sup> New Zealand ratified the Convention Against Discrimination in Education on 12 February 1963.

<sup>491</sup> New Zealand ratified the Worst Forms of Child Labour Convention on 14 June 2001.

<sup>492</sup> Although the Crown traditionally traced its legitimacy from the Treaty, it lacks formal status in law – it is an unincorporated treaty, and as such, imposes no legal obligations and creates no legal rights of itself. There is still considerable controversy over the Treaty's legal status, with proposals to delete statutory

Treaty of Waitangi it is important to reflect on how the right to self-determination relates to the right to education. The right to education is considered a fundamental element of the realisation of the right to self-determination and varying views exist among Māori about how to achieve the right to education for Māori.

### ***10.2.2 Legislation***

#### **Right to Education**

The right to education is reflected in the *Education Act* (1964), the *Education Act* (1989), the *Education Standards Act* (2001),<sup>493</sup> and the *Private Schools Conditional Integration Act* (1975). Section 3 of the *Education Act* (1989) provides for the right to free primary and secondary education:

Except as provided in this Act or the *Private Schools Conditional Integration Act* 1975, every person who is not a foreign student is entitled to free enrolment and free education at any state school during the period beginning on the person's 5th birthday and ending on the 1st day of January after the person's 19th birthday.

#### **Non-discrimination and access for all**

The *Human Rights Act* (1993) (HRA) and the *Bill of Rights Act* (1990) (BoRA) both protect the right to freedom from discrimination. Although the two overlap, the BoRA generally applies to the public sector, the legislature, the executive and the judiciary, while the HRA generally applies to the private sector.

On the whole, New Zealand's statutory regime for dealing with discrimination complies substantially with international requirements. Before 2001, a complaint of discrimination against the government under the BoRA had to be filed as a case in the High Court. As a result of an amendment to the HRA, complaints can now go to the publicly-funded disputes resolution service at the Human Rights Commission.

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references to it being advanced regularly, and others seeking to establish it as the fundamental constitutional document that should override all other law that is inconsistent with it.

<sup>493</sup> An amendment to the Education Act 1989.

The HRA outlaws discrimination on 13 different grounds: sex (including pregnancy and childbirth), marital status, religious belief, ethical belief, colour, race, ethnic or national origins (including nationality or citizenship) disability, age, employment status, family status, and sexual orientation.

### Relevance of international law in the national jurisdiction

In New Zealand treaty-based international law becomes domestic law solely through an Act of Parliament, however customary international law is automatically a source of law and directly applicable by the courts in the absence of contrary statutory provisions. A strong common law tradition, separation of powers and independent judiciary provide necessary safeguards for most civil and political rights and make engagement in massive legislative change unnecessary to give effect to new international human rights obligations. Specific legislation to give effect to the ICESCR has not been implemented however a tradition of supporting social welfare rights through a wide range of laws, policies and programs reflects a general committing to the promotion and protection of economic, social and cultural rights.

## **10.3 Overview of Education Policies and Programs**

New Zealand's national Parliament funds education, while Boards of Trustees (elected by local school communities) govern New Zealand schools. According to Section 75 of the *Education Act* (1989), Boards of Trustees have the discretion to run schools as they see fit subject to any enactment (including the *New Zealand Bill of Rights Act*, 1990) and the general law of New Zealand. Schools remain open for a prescribed number of days and hours and may only employ teachers registered by the *Teachers' Council*. The Minister of Education sets national education guidelines based on national education goals, foundation curriculum policy statements, national curriculum statements and national administration guidelines. Additionally, under the administration guidelines, school boards must prepare revocable school charters for approval by the Minister.<sup>494</sup> Each board provides an analysis of variance between the school's performance

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<sup>494</sup> A charter is an undertaking by the board to the Minister to take all reasonable steps to ensure that the school is managed and administered for the charter purposes and that the school, its students and community achieve the charter's aims and objectives.

and the aims, objectives, directions, priorities and targets set out in the charter in their annual reports.<sup>495</sup>

The New Zealand Human Rights Commission identifies four standards as the basis of the *New Zealand Right to Education Framework Te Whare Tāpapa Mātauranga* as part of their scoping of the status of human rights in the nation.<sup>496</sup> The table below indicates key areas for concern.

<b>4-A FRAMEWORK</b>	<b>The right to education Aspects of significance to New Zealand</b>
<b>Availability</b>	New Zealand is performing well.
<b>Accessibility</b>	Formal and informal costs of education create barriers at all levels.
	Participation rates for males, Māori, Pacific peoples, disabled people, and those from poor communities are disproportionately low.
	Māori and Pacific students have higher stand-down, suspension, exclusion and expulsion rates than those of other ethnicities, and males have higher rates than females.
<b>Acceptability</b>	There are disparate standards of education, particularly for disabled children and those from isolated schools or poor communities.
	There is discrimination, bullying, and harassment, particularly over race, disability, sexual orientation and gender.
<b>Adaptability</b>	The gap in achievement between the lowest achieving students and those who are average achievers is increasing. Compared with other OECD countries, we have one of the widest gaps in educational performance.
	Achievement rates for males, Maori, Pacific peoples, disabled people, and those from poor communities are disproportionately low.

Source: New Zealand Human Rights Commission

<sup>495</sup> Source: Ministry of Education

<sup>496</sup> The Right to Education chapter in Human Rights in New Zealand Today Ngā Tika Tangata o Te Motu is available at <http://www.hrc.co.nz/report/chapters/chapter15/education01.html>. The report found that while New Zealand provides a wide range of educational opportunities, education in New Zealand is still not fully accessible, acceptable and adaptable. The NZHRC included early childhood education in its right to education work even though outside of the parameter of the international conventions due to growing evidence of ECE's significance to successful participation of children and young people throughout their compulsory years.



## 10.4 Justiciability

### 10.4.1 Detail of National Court Cases

In *Daniels v Attorney-General v Daniels* [2003] 2 NZLR 742 the Court of Appeal noted that:

Parliament has conferred rights to education. It has done that since 1877 [through various Education Acts]. It has continued to recognise the essential role of public education for both private and public good in the money that it votes for education each year (at p762).

According to the Ministry of Education, in essence, the *Education Act* (1989) establishes a right to education that is not a free-standing one enforceable through the Courts but rather is provided for by (1) the systems to promote education created under the *Act*; and (2) external scrutiny by the Ombudsmen, Controller and Auditor-General, parliamentary processes and international review.

The New Zealand Human Rights Commission (NZHRC) notes that judges in New Zealand have traditionally shown ambivalence when adjudicating education rights because it can involve allocation of resources, which is considered to be a function more properly belonging to the executive arm of government. For example, in *Lawson v Housing New Zealand* [1997] 2 NZLR 474 the complainant, in the absence of any right to housing in New Zealand, sought judicial review of a government policy to increase the rent of state housing to market levels which amounted to deprivation of affordable shelter and a breach of the right to an adequate standard of living.<sup>497</sup> Williams J in the High Court held that the matter involved, “Strong policy considerations and was [therefore] not amenable to judicial review ... the issue of compliance with international treaties was determined by international forums, not by the Court.”

The Court of Appeal in the *Attorney-General v Linda Shirleen Daniels & Anor* [2003] NZCA 29 the Court of Appeal rejected the approach of the High Court in *Daniels v Attorney-General*, preferring recognition of some procedural rights to education. The Court of Appeal stated:

We do not find helpful the “all or nothing” or “justiciability or not” discussions in the judgment below and submissions. The schools have duties correlative to the students’ statutory rights and those general rights are capable of legal enforcement [para 79].

Parliament has conferred some rights in respect of education which can be judicially protected. The real question is of course about the content of those rights [para 81].

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<sup>497</sup> ICESCR, Article 1

As we have already indicated, “justiciability or not” puts the argument in the present case into too absolute a form. The 1989 Act plainly creates some rights, powers and duties which can be enforced and be the subject of review proceedings in the courts [para 89].

#### ***10.4.2 Available Remedies and Enforceability***

Judicial review is available in relation to provisions in the *Education Act* 1989. The *Education Standards Act* 2001 responds directly to the *Human Rights Act* 1993 by ensuring compliance with human rights standards particularly in areas of gender, marital status and disability. Breaches of the *Human Rights Act* are subject to general remedies: such as declarations,<sup>498</sup> restraining orders, damages and orders for specific performance.

Under the *Education Act* (1989), the New Zealand Qualifications Authority may issue compliance notices to education providers regarding registrations, course approvals or accreditations. The Authority can also direct education providers to act or refrain from actions related to such matters. Upon failure of compliance the Minister of Education is informed and a report is tabled in Parliament.

The Office of the Ombudsmen may review any decision or recommendation, act or omission by a central or local government department or organisation affecting persons in their personal capacity. After review, the Ombudsman may propose a range of recommendations relating to the complaint, however it does not have the power to enforce its recommendations.

#### ***10.4.3 Government position on the proposed Optional Protocol***

The Government of New Zealand has adopted a cautious approach to the proposed Optional Protocol on the International Covenant on Economic, Social and Cultural Rights. In January 2005 the then Minister of Foreign Affairs and Trade was quoted as saying:

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<sup>498</sup> The HRA provides the remedy of a “Declaration of inconsistency” for enactments that breach the right to freedom from discrimination. This declaration does not automatically strike down statutes, as declarations must be tabled in Parliament.

Given the complex nature of the issues concerned, and the clear lack of international consensus on the way forward we consider that further discussion is warranted before any decision is taken to begin negotiations on a new instrument (consequently) New Zealand opposes immediate drafting of an Optional Protocol.<sup>499</sup>

## 10.5 Availability

### 10.5.1 Expenditure

#### Primary, Secondary and Higher Education

The spreadsheet and chart below includes an analysis of overall government spending on education compared against GDP and estimate of spending by sector (additional data is available upon request).<sup>500</sup>

#### Expenditure Summary

<i>Thousands of Dollars Only</i> <i>(all figures GST exclusive where applicable)</i>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>
	<i>estimated</i>	<i>estimated</i>	<i>estimated</i>	<i>estimated</i>	<i>estimated</i>
Ministry Outputs	1,509,318	1,497,802	1,501,401	1,486,713	1,482,224
Crown Outputs	656,032	705,276	721,341	723,486	727,113
Benefits	81,671	89,083	86,954	86,767	85,932
Other Expenses	6,258,751	6,587,441	6,827,540	6,887,296	6,944,726
Capital Expenditure	136,241	89,477	28,031	18,148	11,736
Crown Funding	7,132,695	7,471,277	7,663,866	7,715,697	7,769,507
<b>Total Appropriations</b>	<b>8,642,013</b>	<b>8,969,079</b>	<b>9,165,267</b>	<b>9,202,410</b>	<b>9,251,731</b>
Ministry Outputs	17.46%	16.70%	16.38%	16.16%	16.02%
Crown Funding	82.54%	83.30%	83.62%	83.84%	83.98%
Education as Percentage of Nominal GDP	5.53%	5.61%	5.42%	5.16%	4.93%
School Property Outputs					
Provision of School Sector Property					

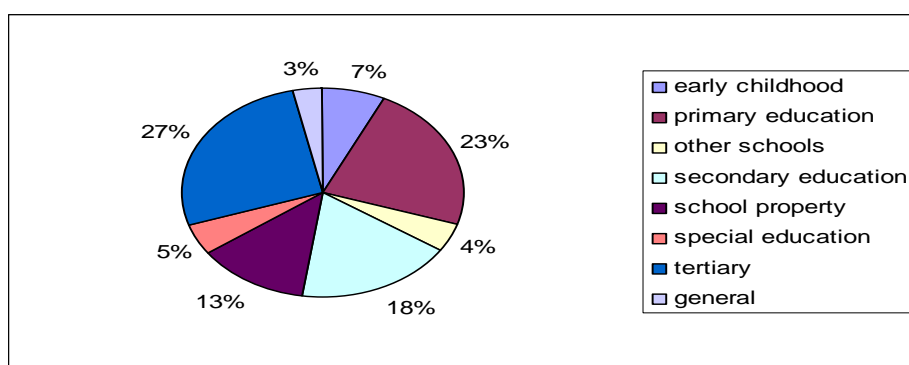
<sup>499</sup> Anthony Ravlich, *Division in the UN over a complaints procedure for socio-economic rights: New Zealand's reluctance to take sides*, Socio Economic Rights Project, University of Western Cape, <[http://www.communitylawcentre.org.za/ser/esr2005/2005may\\_nz.php](http://www.communitylawcentre.org.za/ser/esr2005/2005may_nz.php)>

<sup>500</sup> Source: Ministry of Education

	1,102,244	1,068,120	1,075,833	1,075,839	1,075,845
Provision of Teacher and Caretaker Housing	17,102	15,540	15,141	15,141	15,142
	1,119,346	1,083,660	1,090,974	1,090,980	1,090,987
Percentage of Ministry Outputs above	74.16%	72.35%	72.66%	73.38%	73.60%
<b>FUNCTIONAL CLASSIFICATION</b>					
<b>Core Crown Expense Tables - B.2 &amp; B.3 page 179</b>					
	2006	2007	2008	2009	2010
(\$ million)	Forecast	Forecast	Forecast	Forecast	Forecast
<b>Total Core Crown Expenses</b>	50,445	52,254	55,158	57,973	60,527
<b>Education Expenses</b>					
Early childhood education	561	625	768	818	840
Primary and secondary schools	4,166	4,322	4,352	4,320	4,350
Tertiary funding	4,156	2,932	3,035	3,110	3,153
Departmental expenses	818	847	840	827	821
Other education expenses	338	342	342	356	344
	10,039	9,068	9,337	9,431	9,508
Education as Percentage of Total Expenses	19.90%	17.35%	16.93%	16.27%	15.71%
Education as Percentage of Nominal GDP	6.42%	5.67%	5.52%	5.29%	5.07%
<b>Primary and Secondary Education breakdown</b>					
Primary	2,067	2,141	2,155	2,123	2,158
Secondary	1,616	1,682	1,693	1,698	1,688
School transport	118	119	121	123	124
Special needs support	247	257	260	259	261
Professional Development	105	108	109	103	105
Schooling Improvement	13	15	14	14	14
Schools Funding Expenses	4,166	4,322	4,352	4,320	4,350
Places (year)	2006	2007	2008	2009	2010
Primary	454,000	450,000	448,000	451,000	452,000

Secondary	288,000	288,000	288,000	287,000	285,000
<b>Tertiary Education breakdown</b>					
Tuition	1,878	2,003	2,071	2,116	2,119
Other tertiary funding	130	168	163	162	159
Tertiary student allowances	351	365	376	385	390
Initial fair value change in student loans	1,479	-	-	-	-
Student loans	318	396	425	447	485
Tertiary Funding Expenses	4,156	2,932	3,035	3,110	3,153
Places (year)	2006	2007	2008	2009	2010
EFT Students	231,528	232,980	233,623	235,622	236,744
Nominal GDP \$m	156257	160013	169104	178305	187584

#### By Sector



#### Adult and Community Education (ACE)

Information provided by the Ministry of Education suggests that the government will provide \$NZD40m to support the provision of Adult and Community Education in 2007. ACE is the main government-funded program that supports non-formal education (defined as organised learning opportunities that do not lead toward a recognised qualification). In 2004, 174,000 people enrolled in ACE activities in schools, and 288,500 people participated in ACE provided by tertiary education institutions. Women represented 63 percent of these enrolments. Participation

figures for ACE provided by other community groups are not available.

### ***10.5.2 Education Funding Models***

#### Early childhood education

Most of the government's investment in early childhood education is by way of funding subsidies by the Ministry of Education. Almost all early childhood education providers are community or privately owned independent of government. Early childhood education is currently not fully funded, therefore requiring many services to seek other income from fees or donations.

The early childhood funding system supports the *Early Childhood Education Strategic Plan* goals of increased participation and improved quality. Almost all funding is paid through the Early Childhood Education Funding Subsidy, which allocates for up to six hours per day, and 30 hours per week, per occupied child place. Equity funding is paid to community-owned services that face additional costs from teaching children from low socio-economic groups, with special needs or in isolated communities. The Childcare Subsidy<sup>501</sup> administered by the Ministry of Social Development also supplements funding. From July 2007, up to 20 hours free early childhood education will be funded for enrolled three and four year olds.

#### Schools

Since the *Tomorrow's Schools* reforms, and following passage of the *Education Act* 1989, all state and state-integrated schools generally receive both in-kind and cash resources from the government. A key feature of the reforms was introduction of formula-based resourcing to improve transparency, flexibility and efficiency of resource use and allocation. School boards of trustees are expected to manage their resources to meet the requirements of the *National Education Guidelines*, including the New Zealand Curriculum. Most resources are provided to schools from the Ministry of Education to cover the three main components of teacher staffing, operational funding and property. Schools and students are also provided with further resources to meet particular needs.

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<sup>501</sup> The Childcare Subsidy is a fee subsidy primarily targeted at working families with low and modest incomes.

## Staffing

Teacher staffing is provided to schools as an in-kind entitlement which schools can use only to employ a registered (or provisionally registered) teacher. Schools can also use operational funding to hire extra teaching staff. School Boards of Trustees decide whom they employ as principals, teachers and other staff, and the staffs are paid directly by the Ministry of Education in line with a Collective Agreement. Formularised staffing entitlements are set each year through *Orders in Council*. Staffing is largely allocated to schools according to the number of students at each year level. Additional staffing is allocated on a formularised basis to meet the special needs of particular schools or students, including teaching staff for: students with very high and high special education needs; students learning in Māori language for more than half time; literacy, learning and behaviour, Māori, and the visually impaired. Salaries for support and auxiliary staff are paid out of operational funding, generally according to the appropriate Collective Agreement.

## Operational funding

Operational funding is the cash resource provided to schools according to a school's size, type and student characteristics. All schools are allocated base and per-pupil money according to the school type and number of students at each year-level. There are a number of other components specific to students, schools or programmes including: a decile component to overcome learning barriers facing students from lower socio-economic communities; programmatic support, for Māori language learning, special education needs, and senior secondary student transition to work; and property maintenance; costs associated operating isolated schools.

## Property

The Crown owns the state school land and the vast majority of state school buildings in New Zealand, (but not state-integrated schools' property). However, schools determine their own priorities for property expenditure based on individualised needs assessments. The Ministry of Education provides advice to schools on maintenance planning, project management, and statutory requirements and represents the Crown as owner of these properties. The proprietors of state-integrated schools own and are responsible for their own new capital development but are funded to maintain their land and buildings.

### Other resources

The government provides additional resources in cash or in kind to meet the needs of students, teachers and schools including:

- special education - an integrated resourcing package, *Special Education 2000*, was introduced in 1996 with the aims of improving educational opportunities and outcomes for children with special education needs;
- learning materials - supplied to ensure student access to high quality core materials that reflect the range of New Zealand ethnic, cultural and social perspectives and learning contexts;
- English for speakers of other languages – to support English-language learning;
- professional development - provided to teachers, principals and members of boards of trustees, mainly in-kind
- information and communication technology – a number of tools to help improve teaching and learning and administrative processes within the schools;
- school transport, boarding allowances & bursaries - provide assistance to families and schools to facilitate access to education for students disadvantaged by distance from an educational institution or by special circumstances;
- school improvement and school support – provides resources for a number of community-based schooling improvement projects, or to schools with serious financial, governance or other difficulties.

### Locally-raised funds

State schools are fully-funded to meet the requirements of the *National Education Guidelines* but they can also raise their own funds through voluntary school donations, sponsorship, events, etc, and by accepting foreign fee paying students. State-integrated schools are able to charge fees to cover the costs of their school property.



## Private schools

The government provides per-student subsidies to private schools. Private schools also receive similar funding to state schools for students with special education needs, for Māori language learning, and national senior secondary school qualifications (NCEA).

### ***10.5.3 Teachers and support staff***

All teachers are required to register with the New Zealand Teachers Council and may do so only if fully qualified and trained. Secondary and primary schools are fully staffed with registered teachers with exceptions only for short-term relieving positions employed on a “limited authority to teach” basis.<sup>502</sup>

There is currently an oversupply of trained and qualified primary teachers. An oversupply in secondary school teachers is limited to a few subjects. Secondary subjects such as mathematics and physical sciences are taught in some schools by qualified teachers teaching ‘out of field’: that is, qualified to teach other subjects. The government employs incentive schemes to attract adequately qualified and trained teachers in these shortage subjects.

The head teacher in licensed early childhood education centres must be trained and qualified. The government has set a target date of 2012 for all early childhood education teachers to be appropriately qualified and trained. Currently only about half of early childhood education teachers are fully trained. Schools and early childhood centres employ their own support staff and no shortages are reported at any level.

## **10.6 Accessibility**

### ***10.6.1 Non-discrimination***

#### Relevant Legislation, Government Policies and Programs

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<sup>502</sup> At any one time only about 2% of teaching positions are held by persons with “limited authority to teach” status.

All education institutions in New Zealand, from early childhood education services to tertiary institutions, are required to have policies that encourage and implement equal treatment and equal opportunity. Section 8 of the *Education Act* (1989) provides that children with special needs have the same rights to enrol and attend state schools as all other children. Extra support is available for children and students with special education needs and those who are an ‘English Speaker of Other Languages.’

Education in the Māori Language is available through total immersion schools and early childhood services and bi-lingual units in schools. There are some early childhood services that specialise in teaching in the Pasifika languages.

### Māori

Educational achievement indicators highlight a disproportionate percentage of Māori failing within current education structures. Successful participation rates in education for Māori, as a group, are disproportionately low. Māori have higher stand-down, suspension, exclusion and expulsion rates than those of other ethnicities. Māori students also have lower achievement rates.

The Ministry of Education provides specific services to Māori and a number of programs and some funding have traditionally been made available to support specific needs and rights. Support has also been given to the establishment of institutions at all levels of education that provide Māori language immersion and validate Māori knowledge structures, processes, learning styles, and administration practices. The NZHRC notes however that over the past twelve months, the government has committed to systematically removing funding which is separately tagged for specific racial groups not achieving education outcomes, specifically Māori and Pasifika.

The *Treaty of Waitangi* provides a framework for Māori education rights as they relate to *rangatiratanga* (the right to self-determination).<sup>503</sup> There are varying views among Māori about how to achieve the right to education. Māori *whānau* (family), *hapu* (wider familial group) and *iwi* (tribe) are calling for greater autonomy in shaping and determining educational success.

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<sup>503</sup> Many Māori perceive *rangatiratanga* as the right to freely determine social, cultural, political and economic development within the State. For some, *rangatiratanga* may be about living outside the authority of the State. Others perceive *rangatiratanga* as the ability to develop mechanisms to deliver *iwi* (tribal)-based education services.

Debates continue about whether educational success for Māori is achievable through State partnerships, independence or a combination of both.

### Pacific Peoples

New Zealand has 66,000 Pacific students enrolled in the compulsory education sector. For reasons similar to those related to Māori, educational achievement indicators for Pacific students highlight a disproportionate percentage failing within current education structures. Along with Māori, the Ministry of Education has identified prioritised Pacific education as a priority area of work. Presently one in ten children is a Pasifika child, and by 2051 it is predicted that this will rise to one in five. Following the implementation of a successful *Pasifika Education Plan* in 2001, in June 2006 the government launched a new action plan aimed at improving educational achievement among Pacific students. The plan commits an additional \$NZD4.8 million over the next four years, including funding to support literacy teaching, strengthen engagement with Pacific families and communities, develop resources to support teaching of Pacific languages, and to provide professional development for teachers.

### Disabled People

The Ministry of Education (through Group Special Education), together with schools and early childhood education services, provides services to children and young people in New Zealand with special education needs. Special education in New Zealand is available for children with physical and/or intellectual impairments; hearing or vision difficulties; children who struggle with learning, communicating, or getting along with others; or who have an emotional or behavioural difficulty.<sup>504</sup>

In April 2001 the government launched the *New Zealand Disability Strategy*. The strategy specifically addresses education with the objective of ensuring access to school; improving communication; developing educators who understand the learning needs of disabled people; ensuring equitable access to resources; enabling contact with disabled peers; improving the

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<sup>504</sup> For further information: <http://www.minedu.govt.nz>

responsiveness and accountability of schools; developing effective educational settings; and creating post-compulsory opportunities.<sup>505</sup>

Many of the disability-related complaints received by the NZHRC relate to education, particularly refusals to enrol a student, as well as suspension, exclusion and expulsion. The NZHRC received a significant number of submissions relating to disability in the preparation of its *Right to Education Discussion Document* in 2003. The capacity and capability of mainstream schools to meet the needs of disabled students are recurring themes, as is the issue of the availability of and equitable distribution of resources between different disability groups.

In June 2005 the New Zealand Education Review Office released two evaluations of the use of by schools of Special Education Grants and the Ongoing and Reviewable Resourcing Schemes to improve student outcomes. The evaluation of 180 schools identified a wide range in the level of effectiveness and performance in the use of these resources.

### Migrants and Refugees

New Zealand is a signatory to the Convention relating to the Status of Refugees and accompanying Protocol. In 2003 the Government developed a national *Immigration Settlement Strategy* for migrants, refugees and their families. The strategy outlines the importance of access to information and services, including education. People recognised as refugees in New Zealand are able to exercise the same rights as ‘permanent residents’, which includes the right to education.<sup>506</sup>

### Children in detention and prisoners

A range of education programs are offered to children held in youth detention centres. Rehabilitation and education programs are also available for people held in regular adult prisons. Prisoners who were consulted as part of the development of the *New Zealand Action Plan for Human Rights* expressed some positive attitudes about the available educational courses, but also

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<sup>505</sup> For further information: <http://www.odi.govt.nz/nzds>

<sup>506</sup> For further information:

<http://www.immigration.govt.nz/community/stream/support/nzimmigrationsettlementstrategy>

identified a lack of opportunity for mainstream education and raised concerns about the cost of non-compulsory education.

### ***10.6.2 Gender parity and gender equality***

The Ministry of Education say that it employs an evidence-based approach to diversity, to highlight groups of students requiring particular assistance, rather than a blanket gender approach, which separates male students from female students. According to the Ministry, over the 1990s, achievement of girls has matched or even overtaken boys in subjects where they had been under-represented and/or under-achieving. As a result, the focus on gender issues has shifted more recently to the long-standing achievement disparity for boys. In 2004 the Ministry established a Boys' Educational Achievement Reference Group. The Reference Group made findings on two main issues. Firstly, it identified problems with literacy standards for boys, with boys on average significantly under-performing compared to girls upon completion of primary school. Secondly, boys were identified as failing to establish key relationships with teachers, disengaging with academic learning and engaging in behaviour which negatively impacted on their general well-being and employability.

### ***10.6.3 Economic accessibility***

In the mid-1990s, the government introduced 'decile funding' to rank schools according to the level of wealth of their local community and to provide additional funding for lower decile schools. Decile ratings are used in allocating a variety of funding and support programs for schools. Measures used include average household income, crowding, education and skills of parents, reliance on benefits, and the proportion of Maori and Pacific Island students on the school roll. Current efforts to remove 'race-based' funding have removed those components which are based on the percentage of Māori, Pacific, and ESOL-eligible refugee students.

### **Primary and Secondary Education**

Completion of primary education is compulsory and the right to free enrolment and education for local students prevents a Board of Trustees from charging fees. The only exception to this rule is the provision for proprietors of integrated schools to charge attendance dues. A Board of

Trustees is not permitted to charge fees for the cost of tuition or teaching materials. Charges can be imposed on students for subjects involving a practical component where materials used result in an end product belonging to the student.

Costs are often incurred by students and their families for activities such as fieldwork in geography and biology and outdoor education programs. In cases where parents are unwilling or unable to pay for a school excursion, teachers generally try to provide an alternative learning experience. The NZHRC is currently preparing a discussion paper highlighting the role of additional education expenses which can act as barrier to proper access to schooling. According to the NZHRC, a 2003 survey of Auckland schools showed that the amount suggested by schools to families for an annual donation ranged from \$40 to \$300 per student, with the most common figure around \$150.

The *New Zealand Action Plan for Human Rights* identified as particularly disadvantaged, those students whose families could not afford to pay for their participation in school trips and activities. In an attempt to address this issue, the Ministry of Social Development's *Work and Income* service provides a special needs grant that offers one-off recoverable financial assistance for school exam fees, school stationery and school uniforms. Government assistance is available to families with students who are still at school as part of the wider support for families. Boarding bursaries are available for secondary school students who live in rural areas where smaller schools may not be able to offer a full curriculum choice. Education through *The Correspondence School*, a distance learning school, can assist rural students or those alienated from regular schools, to complete their secondary education

An additional cost facing families and schools relates to the introduction of information and communications technologies into all aspects of the school curriculum, as mandated by the Ministry of Education's *Digital Horizons* strategy. In 2001 the national census recorded that 63 percent of New Zealand households and 50 percent of households with two or more children under the age of fifteen did not have internet access. Projects such as *Recycled computers - Learning Power* (CAN Trust) and *Computers in Homes* (2020 Communications Trust) in partnership with the Ministry of Education aim to bridge the access gap for students, families and communities of low-decile schools.

## Higher Education

In New Zealand the costs of tertiary education are shared by the government and students. Tertiary education providers are expected to raise part of their revenue by way of tuition fees. On average, fees currently represent around 26 percent of full tertiary education costs. Under the government's fee and course costs maxima (FCCM) policy, upper limits on fees in each field of study are set to prevent tertiary education providers from raising fees sharply

The Student Loan Scheme and Student Allowances are the two main forms of government assistance for meeting the costs of tertiary study. Loans are open to nearly all New Zealand students<sup>507</sup> and under the scheme, students may borrow tuition fees and part of their course-related costs. Full-time students may also borrow to help meet their living costs. Loan repayment is managed through the tax system and is income contingent. Under legislation enacted in 2005, no interest is charged on loans while the borrower remains in New Zealand. Student Allowances are grants made to full-time students who meet targeting criteria that help meet the costs of living while studying.

Around 150,000 students access loans from the Student Loan Scheme annually. This represents approximately 53 percent of all students and approximately 74 percent of all full-time students. Approximately 72,000 students receive Student Allowances. The government provides a range of scholarships targeted to particular groups, including students undertaking training for teaching in certain fields and students who are undertaking studies in animal or human health.

In 2003 the New Zealand University Students' Association lodged a complaint with the Human Rights Commission claiming that because women take nearly twice as long as men on average to repay their loans, earn less than men, and take time out of the workforce to have and care for children, they effectively pay more for their education through increased interest payments. Data collected for the *Student Loan Scheme Annual Report (2003)* revealed that male and 'New Zealand European' borrowers indeed had shorter repayment times due to higher income projections.

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<sup>507</sup> There are some restrictions on loan access for students undertaking very small quantities of study and for students whose courses/qualifications that don't meet threshold conditions for access to loans

#### ***10.6.4 Non-formal education***

The Tertiary Education Commission funds eligible organisations through Adult and Community Education (ACE) to conduct non-formal education programs. ACE promotes and facilitates the engagement of adults in lifelong learning, through a wide range of flexible, community-based educational activities (both formal and non-formal). There are five national priorities for ACE: targeting learners whose initial learning was unsuccessful; raising foundation skills; encouraging life-long learning; strengthening communities by meeting identified community needs; and strengthening social cohesion. Adult and Community Education is provided by a range of community organisations, as well as by schools and tertiary education institutions.

Non-formal learning opportunities are also funded by government through the Foundation Learning Pool which supports opportunities that build skills in literacy, numeracy and language through engagement in a variety of social and cultural contexts, including: family literacy projects, workplace literacy programs and English for Speakers of Other Languages (ESOL).

Various non-governmental organisations, including the Workers' Education Association, Literacy Aotearoa and the Rural Activities Education Programme provide life-long learning and adult and community education. In the consultations for the development of the *New Zealand Action Plan for Human Rights* participants commented positively on the range of opportunities for lifelong learning and second-chance education for adults. Specific mention was made of evening classes, on-the-job training and tertiary institutions that provided adults with wider choices. Others noted the lack of opportunities for adults to acquire new skills or improve existing ones, and difficulty for those without past school qualifications to catch up.

### **10.7 Acceptability**

#### ***10.7.1 Quality education and minimum standards***

##### Relevant National Institutions / Specialised Agencies

The right to education is protected by five accountability measures. Firstly, parents must send their children to school, and are subject to prosecution by the Ministry of Education if they fail to do so. Secondly, Boards of Trustees are required to report annually to the Ministry of Education



on the variance between their school's performance and the aims set out in the charter.<sup>508</sup> Thirdly, the Education Review Office reviews and reports on the performance of state schools and other bodies in the provision of education services. Fourthly, the Ministry of Education has powers to intervene in the operations of schools. These powers include: requesting information; requiring specialist help; requiring an action plan; appointing a limited statutory manager; the dissolution of the board and the appointment of a commissioner.<sup>509</sup> Fifthly, a wide range of agencies and institution can exercise external scrutiny. These agencies include the Office of the Ombudsman, the Controller and Auditor-General. The responsible government Ministers of course exercise scrutiny and control and the Parliament exercises a form of scrutiny through its various processes.

### Measures Adopted to Provide Quality Education

Early childhood sector:

Minimum standards in the early childhood sector are established through a licensing system that sets standards in relation to curriculum, teaching, care, administration, health and safety. Compliance with these standards is reviewed on a regular basis by the Education Review Office.

Primary and secondary schools

Minimum standards in the primary and secondary school sector are established through the *National Education and Administration Guidelines* as developed by the Secretary for Education. Under these guidelines schools are required to follow the National Curriculum. Schools are required to submit and report on both annual plans and three-five year strategic plans that set out how they will achieve going to meet the requirements contained in the Guidelines. The Education Review Office regularly reviews schools for compliance.

Indicators

The Ministry of Education has developed an online resource, *Education Counts*, which is designed as a 'one-stop-shop' to increase the availability and accessibility of information about

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<sup>508</sup> *Education Act 1989*, s87

<sup>509</sup> *Education Act 1989*, s78I

education statistics and research.<sup>510</sup> The main focus of education sector indicators is on educational and learning outcomes, covering the skills, knowledge, attitudes, and values gained through the education system. This domain shows the extent New Zealand is improving and compares to other countries in education. Outcomes are considered throughout an individual's progression through the education system and labour market outcomes are also included. A second key focus is participation. Indicators consider who has access to learning opportunities and who is enabled to take up the opportunity. Education sector indicators focus on retention and different methods of student engagement.

### Academic freedom and autonomy of educational institutions<sup>511</sup>

Section 160 of the Education Act 1989 stipulates the academic freedom and autonomy of tertiary institutions:

The object of the provisions of this Act relating to institutions is to give them as much independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest, and the demands of accountability.

Section 161(2) of the *Act* defines academic freedom as:

- (a) The freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions;
- (b) The freedom of academic staff and students to engage in research;
- (c) The freedom of the institution and its staff to regulate the subject-matter of courses taught at the institution;
- (d) The freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning;
- (e) The freedom of the institution through its chief executive to appoint its own staff.

Universities and other tertiary institutions also have powers to develop their own subordinate legislation. University Councils have broad powers to make statutes with respect to good government and discipline of the institution, penalties upon staff or students for contravention of university statutes, enrolment, courses of study and training, and numerous other matters.<sup>512</sup>

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<sup>510</sup> <http://educationcounts.edcentre.govt.nz/indicators/edachievmnt/index.html>

<sup>511</sup> Source: New Zealand Human Rights Commission

<sup>512</sup> *Education Act* 1989, ss193-194

### ***10.7.2 Discipline***

Corporal punishment was banned from New Zealand schools in 1990.<sup>513</sup> The use of physical force against students is permitted only for the purpose of self-defence or to prevent the assault of other persons. A common form of discipline used by schools is detention which can either be used during the regular lunch break or, with the consent of parents or guardians, after school. Other forms of behaviour management of students by schools include stand-down, suspension, exclusion or expulsion. Both the Office of the Children's Commissioner and the New Zealand Human Rights Commission receive complaints relating to removal of students from schools. In 2001 the Ministry of Education introduced intervention and monitoring programs to reduce suspensions and stand-downs in secondary schools. The *Suspension Reduction Initiative* was established to address the high proportion of Māori suspensions in secondary schools. Although recent reports suggest that the proportion of students being stood down and suspended are falling, boys and Māori students in particular, continue to be over-represented.

### ***10.7.3 Curriculum***

#### Overview of Curriculum Determination

In June 2006 the government approved and released the revised draft *New Zealand Curriculum* for consultation. The draft curriculum is the culmination of a review which was conducted between 2000 and 2002 and which identified the need for reform. The Ministry of Education describes its national curriculum policy as being student-centred, recognising that what occurs in classrooms is something that students and teachers do together, rather than as something that is done 'to' students.

#### Human rights education

Human rights education is located in the social sciences and health and physical education curricula for primary and secondary students. In the Social Studies curriculum, students develop understandings of the rights, roles and responsibilities of people as they interact within groups. The curriculum also specifically mentions the "the roles and responsibilities that New Zealanders have within such international organisations as the United Nations" and includes the study of

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<sup>513</sup> *Education Act* 1989, s139A

“New Zealand’s participation in significant international events and institutions.”<sup>514</sup> For example, students learn about the work of aid and development organisations; the granting of the right to vote to women; the history of workers’ rights in New Zealand; the situation of refugees; the Universal Declaration of Human Rights; and individual cases of human rights abuses. The Healthy Communities and Environments strand of the Health and Physical Education curriculum teaches students about policies, rules and laws and their contribution to social justice at school and the wider community.

#### ***10.7.4 Parents / Legal Guardians***

Parents are free to enrol their child at the state school of their choice unless: the school does not provide education at a level that is appropriate for the child; the school is a single-sex school and the child is of the opposite sex; the school has an enrolment scheme in order to prevent overcrowding and the child does not meet the criteria under the scheme; the school is one with a special character (e.g. religious or philosophical) and the parents do not meet the special character requirements; and the school is a special school, in which case the child can only be enrolled with the consent of the Secretary for Education. Enrolment in a particular early childhood services is a matter between the parent and the services. The *Human Rights Act* (1993) prevents services from discriminating against parents in relation to the enrolment of their child.

#### ***10.7.5 Religious and cultural practices, languages of minority groups***

##### Religious and cultural practices

Parents of students under 16 years of age and the students themselves, if they are over the age of 16, may ask the school principal to release them from tuition in a particular class or subject on religious or cultural grounds. Parents may request that their child be excluded from tuition in specified parts of the health curriculum that relate to sexuality education.

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<sup>514</sup> Examples of learning for a range of ages that incorporates human rights education are at: (<http://www.tki.org.nz/r/socialscience/curriculum/SSOL/>).

## Languages

Te Reo Māori (Māori language) is an official language, together with English and New Zealand Sign. The Ministry of Education has a Māori Language Strategy (2004-2008) for the teaching and learning of Māori in English medium schools focussing on the development of a curriculum and materials and on professional learning for teachers. The government's willingness to promote second language learning is recognised as a fiscal challenge as there are capability and resourcing issues such as insufficient numbers of quality teachers.

A number of languages are taught as separate subjects. Curriculum is developed for English, Māori, Chinese, French, German, Japanese, Korean, Spanish, Samoan and Cook Islands Māori, Tongan, Tokelau, Niue, Latin and Indonesian and New Zealand Sign language. Second language learning is available for students from Years 8 – 13 (aged 11 – 18). From 2008, New Zealand schools with year 7-10 students (aged 10 – 14) will be required to offer those children the opportunity to learn a second language. However, it will not be compulsory for those students to take up the option.<sup>515</sup>

## **10.8 Adaptability**

### ***10.8.1 Education and Work***

There is no minimum age of employment in New Zealand. New Zealand has not ratified ILO Convention 138, which provides for a minimum working age of 15. The Department of Labour is currently assessing New Zealand's compatibility with ILO Convention 138. New Zealand sets its minimum age of criminal responsibility at ten years of age. However, the *Children, Young Persons, and their Families Act* (1989) established graduated minimum ages for criminal prosecution limiting the number of children, as defined by the CRC, who are called to account in an adult setting for any offending. Section 272(1) of the Children, Young Persons and Their Families Act 1989 prohibits the initiation of formal criminal proceedings against children except for murder or manslaughter. Section 21 of the *Crimes Act* provides:

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<sup>515</sup> Useful reports include: The Human Rights Commission Race Relations Report 2005 at <http://www.hrc.co.nz/home/hrc/newsandissues/racerelationsreporturgesaction.php> and the "Managing Cultural Diversity in New Zealand secondary Schools (2005) at <http://www.educationnz.org.nz/eeidf/ManagingCulturalDiversityfinal.pdf>

- (1) No person shall be convicted of an offence by reason of any act done or omitted by him when under the age of 10 years.

Section 22 of the *Crimes Act* provides:

- (1) No person shall be convicted of an offence by reason of any act done or omitted by him when of the age of 10 but under the age of 14 years, unless he knew either that the act or omission was wrong or that it was contrary to law.

The New Zealand Parliament's Select Committee is currently considering the *Young Offenders (Serious Crimes) Bill*. The effect of the Bill is to allow children and young persons to be charged with the majority of criminal offences. It removes the protection of *doli incapax*, and allows children as young as 10 to be tried in the adult courts, sentenced as adults, and be exposed to the risk of imprisonment for almost every offence for which they can be charged. The effect of the Bill on a young person is to restrict the use of Family Group Conferences to a bare minimum of 12 offences.

### ***10.8.2 Education for Women***

#### **Relevant Legislation**

Under *the Marriage Act 1955*, the minimum marriage age is 16 years, although no marriage will be deemed invalid merely by infringement of the minimum age provision.<sup>516</sup> People under 18 years of age, who are not widowed, require the consent of parents or guardian.<sup>517</sup> In the absence of a parent or guardian, consent may be sought from a relative acting in the place of a parent or from a Family Court Judge.<sup>518</sup> Under the *Civil Union Act 2004*, a person who has not reached 16 years of age is prohibited from entering a civil union.<sup>519</sup>

#### **Strategies, policies and programs**

The education system in New Zealand has consciously worked to meet the educational needs of women. In some urban areas opportunities exist for families to send their daughters to single-sex schools. Female students are recognised as out-performing boys in many areas in senior

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<sup>516</sup> *Marriage Act 1955*, s17

<sup>517</sup> *Marriage Act 1955*, s18 and *Marriage Amendment Act 2005*, s3

<sup>518</sup> *Marriage Act 1955*, s18(6)

<sup>519</sup> *Civil Union Act 2004*, s7

secondary schools. According to figures provided by the Ministry of Education, in 2004 women represented 58.3 per cent of tertiary education enrolments.

### ***10.8.3 Special Needs Education***

#### Policies and Programs

Section 8(1) of the *Education Act* 1989 provides:

Except as provided in this Part of this Act, people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not.

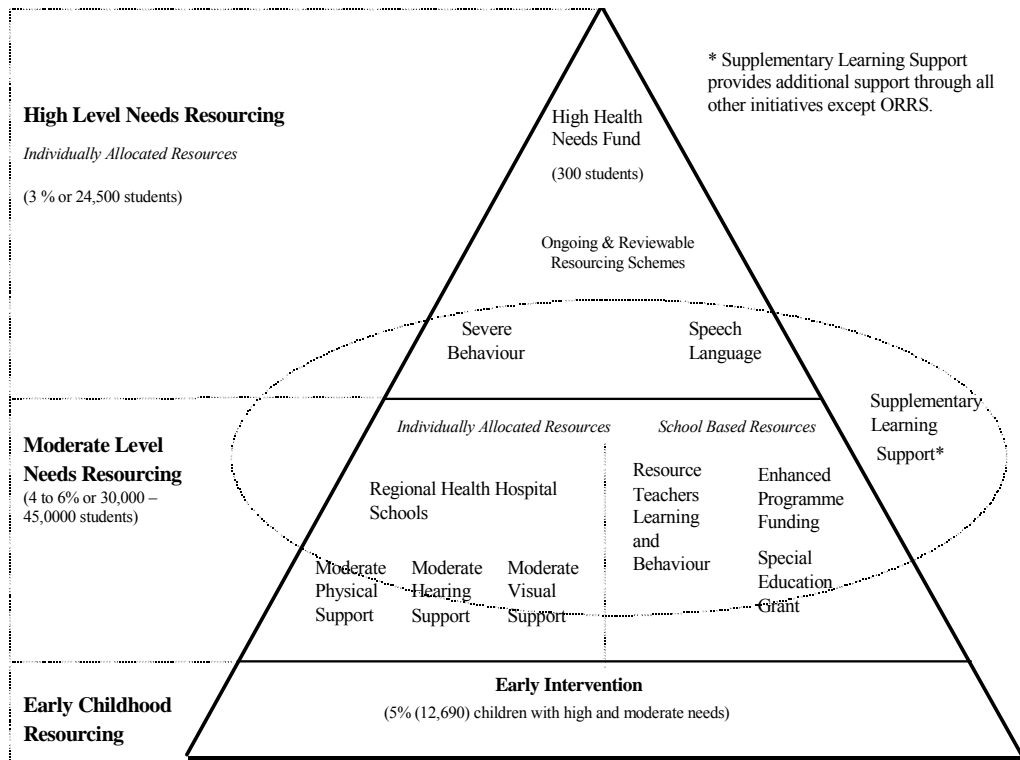
New Zealand schools are independent statutory entities and are obliged to accept their local students with special needs and support them appropriately, individualising teaching practice to ensure that all learners can access the national curriculum and experience meaningful learning. The Ministry of Education provides a range of support targeted to individuals, schools and clusters of schools. The Ministry estimates that for the 2006/2007 budget period, approximately \$NZD430 million will be spent on special education support. Every school receives a Special Education Grant as part of its operational funding. At the other end of the spectrum children with high needs receive ongoing individually targeted support through the Ongoing and Reviewable Resourcing Scheme. There are some services such as *Resource Teachers: Learning and Behaviour* that are administered by clusters of schools. These specialist teachers provide advice and support to the classroom teachers with moderate learning and behaviour needs. The Ministry of Education also provides direct support specialist services through Group Special Education.

As of July 2004 New Zealand had 46 special schools for children with total enrolments of 2,646 students. As noted above, in New Zealand all students with special educational needs have the same right to enrol in their local school as people who do not. However, some parents can choose to send their child to a special school that is specifically equipped to support children with special educational needs. This choice is governed by the process set out in Section 9 of the *Education Act* (1989) and to a degree by geographic accessibility.<sup>520</sup> The 'Section 9 process' seeks to

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<sup>520</sup> Section 9 of the *Education Act* 1989 establishes that a child's parents may, with the agreement of the Secretary of Education, enrol their child in a special school.

balance parental choice (where available) with the obligation of publicly funded schools to ensure that they support the needs of all local students.



The government is currently conducting a review of Long-Term Disability Supports. According to the Ministry of Education it is envisaged that the review will make recommendations about steps to ensure overall coherency in government-provided disability supports. These recommendations will inform future special education policy work and ensure that special education support structures form a coherent part of an overall support structure that meets the needs of people with disabilities at all stages of their life.

There are a small number of non-governmental organisations providing direct special education support. However, the majority of non-governmental organisations focus their attention on providing whole of life support for children and their families.



## Ability to adapt to Special Education Needs

In spite of the provisions of the *Education Act*, that recognise the right of disabled people to participate in education, the experience of the New Zealand Human Rights Commission, the Office of the Children's Commission and a number of disability-focused non-government agencies indicate that this is not a reality.

The NZHRC reports that people who participated in the consultation for the *New Zealand Action Plan for Human Rights* reported experiencing difficulties with the attitudes and behaviour of staff and students who lacked understanding of their needs, and were patronising or openly discriminatory. They also reported insufficient specialist services and equipment (and lack of funding) and expressed a need for more specialist teachers to work with people with a range of disabilities.

According to the NZHRC, good progress has been made in tertiary institutions which, with the support of government funding, have increased the rate of participation of people with disabilities. The NZHRC suggests that with the development of best practice guidelines, further progress should be made. It is noted that until the recent removal of interest payments, student loans discriminated against disabled people since their ability to repay was limited by the fact that their rates of pay was quite often lower than those of non-disabled people.

## **10.9 Activities of the NZHRC**

### ***10.9.1 Mandate and Methods***

The primary functions of the New Zealand Human Rights Commission, under the *Human Rights Act 1993* are to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and to encourage the maintenance and development of harmonious relationships between individuals and among the diverse groups in New Zealand society. The NZHRC has the power to resolve disputes relating to unlawful discrimination. Section 57 of the *Act* specifically addresses discrimination in education:

- (1) It shall be unlawful for an educational establishment, or the authority responsible for the control of

an educational establishment, or any person concerned in the management of an educational establishment or in teaching at an educational establishment -

- (a) To refuse or fail to admit a person as a pupil or student; or
- (b) To admit a person as a pupil or a student on less favourable terms and conditions than would otherwise be made available; or
- (c) To deny or restrict access to any benefits or services provided by the establishment; or
- (d) To exclude a person as a pupil or a student or subject him or her to any other detriment,—

by reason of any of the prohibited grounds of discrimination.

- (2) In this section "educational establishment" includes an establishment offering any form of training or instruction and an educational establishment under the control of an organisation or association referred to in section 40 of this Act.

### ***10.9.2 Investigation of Complaints***

Since 1 January 2002 the NZHRC has received 35 complaints (not enquiries) of incidents where students have been denied access or full participation in education, based on of thirteen prohibited grounds of discrimination. Of these 35 complaints, 23 related to disability, 7 to race, 2 to family status, 2 to religious belief and 1 to both race and family status.

<b>Education complaints to the NZHRC on prohibited grounds of discrimination</b>			
Main issues for disabled	Main race issues	Family status issues	Religious Belief issues
Stand-down, suspension, exclusion, expulsion	Stand-down, suspension, exclusion, expulsion	Refusal to enrol because of an incident involving a father	Wearing (or not) of specific items of clothing
Lack of physical access	Bullying & discrimination and school not supportive	Number of suspensions in one family group	
Lack of access to targeted funding			
Bullying and school not supportive			

### ***10.9.3 Research and/or Public Inquiries***

In 2003 the NZHRC commenced its Right to Education project. The first stage of the project was

the development of a *Right to Education Discussion Document* and its dissemination for public discussion and submission.<sup>521</sup>

New Zealand's status report, *Human Rights in New Zealand Today* was published in August 2004. Chapter 15 of the report, which is on the *Right to Education*, drew upon the submissions to the *Right To Education Discussion Document* and the *New Zealand Action Plan for Human Rights* consultation process.<sup>522</sup>

In February 2005 the *New Zealand Action Plan for Human Rights* (including priority actions for New Zealand for 2005 – 2010) was published. The actions relating to the right to education were informed by the status report and involved education for all children and young people, the rights of indigenous people, and recognition of the specific issues for disabled people, migrants, asylum seekers and refugees.<sup>523</sup> Arising from the Action Plan, the NZHRC has identified two specific projects for its own work program:

1. Investigating the specific issue of cost as a barrier to the free and compulsory schooling sector (2005/2006)
2. Encouraging Early Childhood Centres and Schools as Human Rights Communities (2005 – 2010). This project involves a partnership with four other national organisations (the Office of the Children's Commissioner, Amnesty International (NZ), the New Zealand Peace Foundation and the Development Resource Centre). The project objectives are to:
  - develop guidelines and activities that will assist participating schools and early childhood centres to become human rights communities;
  - contribute to the government's implementation of the United Nations Plan of Action for the World Programme for Human Rights.

#### ***10.9.4 Education and Awareness Campaigns***

The NZHRC's Right to Education program has involved extensive consultation, discussion, education, and advocacy amongst government and civil society individuals and organisations.

#### ***10.9.5 Human Rights Education***

The NZHRC is currently finalising its two-year review of its human rights education provision. Human rights education programs, projects and activities during this time include,

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<sup>521</sup> A copy is available upon request.

<sup>522</sup> Full status report can be sourced from <http://www.hrc.co.nz/report>

<sup>523</sup> Full report can be sourced from <http://www.hrc.co.nz/report/actionplan>

<ul style="list-style-type: none"> <li>• <b>Campaigns, promotions and media work</b></li> </ul>
<ul style="list-style-type: none"> <li>• <b>Informal HRE</b> through Commissioners, mediators, kaiwhakarite, the communications team, library and policy analysts.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Korowai Whaimana</b>, a ‘train-the-trainer’ programme aimed at education for those with experience of mental illness</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Making Human Rights Work</b>. HRE specifically aimed at the public sector (with a recent emphasis on police and prisons)</li> </ul>
<ul style="list-style-type: none"> <li>• <b>New Zealand Action Plan for Human Rights</b>. Although not an education-focused project, the development of the action plan has had a profound awareness raising outcome.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>NZ Diversity Action Programme</b>. Creating meaningful and intentional networks of those organisations and projects aimed at enhancing (ethnic) cultural diversity</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Speakers Forums</b>. Public opportunities to inform, raise awareness and encourage ongoing discussion on current and ongoing human rights issues.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Regional and Sectoral development and Outreach</b>. Various levels of engagement with prioritised regions and sectors. Development of specific partnerships is one feature of this work.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Resource development and Information provision</b></li> </ul>
<ul style="list-style-type: none"> <li>• <b>Responsive education</b> to internal and external requests</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Taku Manawa</b>. A comprehensive HRE programme aimed at those groups most at risk of unlawful discrimination, piloted in a remote and impoverished area on the East Coast of NZ, and used as a basis for intense regional development</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Te Mana I Waitangi</b>. A programme with a series of projects aimed at promoting a better understanding of the human rights dimensions of the Treaty of Waitangi through information-giving and facilitating of public dialogue</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Tu Tikanga</b>. A ‘train-the-trainer’ programme aimed at education for those with an intellectual disability</li> </ul>

The NZHRC has developed a model of ‘education’ (as defined in its broadest sense) which highlights key approaches such as: information dissemination, content-focused education and training, education for change, advocacy and relationship building.

### ***10.9.6 Annual Reports***

Since 2001 the NZHRC’s annual reports have recorded the complaints relating to education as outlined below:

<ul style="list-style-type: none"> <li>• 1 July 2002 – 30 June 2003: 9 percent of total complaints</li> </ul>
<ul style="list-style-type: none"> <li>• 1 July 2003 – 30 June 2004: 8 percent of total complaints</li> </ul>
<ul style="list-style-type: none"> <li>• 1 July 2004 – 30 June 2005: 10.3 percent of total complaints</li> </ul>

Reporting against the New Zealand Right to Education Framework will be introduced in the 2007 Annual Report.

### ***10.9.7 Intervention in court proceedings***

The NZHRC intervened in the *Daniels* case at the Court of Appeal, seeking to argue that the High Court's approach to the concept of discrimination was unduly restrictive and wrong in law. The High Court had stated that "discrimination" in the *New Zealand Bill of Rights Act* and the *Human Rights Act* cannot sometimes mean 'failure to treat the same' and other times mean 'failure to treat differently'; [in these statutes] it means the former, not the latter." The Court of Appeal however, did not consider the issue High Court's ruling on discrimination.<sup>524</sup>

### ***10.9.8 Contribution to New Zealand Government reports to Treaty Body Committees***

The New Zealand Government invites the NZHRC to review and comment on all of the periodic reports. The NZHRC is also invited by non-governmental organisations to comment on their shadow reports.

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<sup>524</sup>The Court of Appeal decision in *Daniels* is at <http://www.nzlii.org/nz/cases/NZCA/2003/29.htm>. The NZHRC's submissions are available upon request.

# 11. Palestine

## 11.1 International Law

The Palestinian National Authority has committed to ratifying all international human rights instruments upon receiving statehood. Article 10(2) of the *Basic Law* stipulates:

The Palestinian National Authority shall work without delay to join regional and international declarations and covenants which protect human rights.

The Palestinian Independent Commission for Citizen's Rights ('**PICCR**') makes a number of observations regarding Israel's responsibilities under international law as an occupying power.

Israel has argued that under international law it is not required to apply these treaties to areas that are not part of its sovereign territory. It takes the position that humanitarian law should be applied in the Occupied Territories to the exclusion of international human rights law. However, it is a basic principle of human rights law that the ICCPR and other human rights treaties are applicable in all areas in which states parties exercise effective control, regardless of whether they exercise sovereignty in that area or not.

In addition, Israel argues that it cannot be internationally responsible for ensuring the implementation of the ICCPR in these areas because the majority of civil powers and responsibilities have been transferred to the PA [Palestinian Authority] under the Oslo Agreements. Israel claims that the PA '*is directly responsible and accountable vis-à-vis the entire Palestinian population of the West Bank and the Gaza Strip with regard to such issues.*'

The Oslo Agreements envisage that the PA should exercise extensive powers and responsibilities in the Occupied Territories. However, the PA is clearly dependent on Israel's cooperation to exercise these powers and responsibilities. Israel can and does control the movement of Palestinians within the Occupied Territories, as well as access to many vital resources such as land and water. Increasingly in the past year, it has redeployed its forces in towns and villages which according to the Oslo Agreements are under the PA jurisdiction and where most Palestinians live. There can be no doubt that Israel continues to exercise effective control over the Occupied Territories and is therefore responsible for implementing its obligations under international human rights law.

Even though Israel has argued before the UN human rights treaty bodies that the appropriate legal regime to be applied in the Occupied Territories is humanitarian law only, it has refused to accept that many of these norms are applicable. While recognizing the de jure applicability of the Hague Regulations, it has consistently rejected the applicability of the Fourth Geneva.

Israel maintains that it applies de facto unspecified 'humanitarian provisions' contained in the Fourth Geneva Convention, while arguing that it is not required to do so by international law. However it alone on this as the UN, the ICRC and the international community at large have consistently maintained that the Fourth Geneva Convention fully applies to the Occupied Territories and that the Palestinians are a protected population under the terms of the Convention.<sup>525</sup>

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<sup>525</sup> Palestinian Independent Commission for Citizen's Rights, "Excerpt from Parallel Report to the Human Rights Committee", *PICCR response to APF Questionnaire on Advisory Council of Jurists Reference on Torture* (2005), pp17-18

## 11.2 National Law

### 11.2.1 Constitution

The 'constitution' governing the Palestinian Territories is the *Palestinian Basic Law 2003*.

Article 24 of the *Basic Law* stipulates:

1. Every citizen has the right to education. It shall be compulsory until at least the end of basic grades, and it shall be free in public schools and institutes.
2. The Palestinian National Authority shall supervise all levels of education and its institutions, and shall strive to upgrade the educational system.
3. The Law shall guarantee the independence of universities, higher institutes, and scientific research centers, in a manner that guarantees the freedom of scientific research, as well as literary, artistic, and cultural creativity. The Palestinian National Authority shall encourage and support such creativity.
4. Private schools and educational institutions shall comply with the curriculum approved by the Palestinian National Authority, and shall be subject to its supervision.

### 11.2.3 Legislation

Article 9 of the *Basic Law* is also relevant:

All Palestinians are equal under the law and judiciary, without discrimination because of race, sex, colour, religion, political views, or disability.

The PICCR notes that laws that regulate the right to education vary within the Palestinian territories. In addition to Law No. 11 of 1998 pertaining to higher education, Jordanian Law No. 16 of 1964 is applicable in the West Bank, and the Education Law of 1933 and its amendments are still in force in the Gaza Strip.

Laws that regulate school education are the same as existed before the Israeli occupation in 1967, which means that there is also no legal unity between the West Bank and the Gaza Strip. No changes have been introduced to the applicable education laws in 2005, although the Legislative Council accepted the General Law of Education in general discussion on October 18, 2005. There has also been no progress in the implementation of the draft law regulating the teaching profession that was endorsed on 10 March 2001.

### 11.3 Overview of Education Policies and Programs

Responsibility for education in the Palestinian Territories has rested with the Palestinian Authority's Ministry of Education and Higher Education since 1994. The Ministry develops Five-Year-Plans focusing on five key areas: access to education for all children; quality of education; formal and non-formal education; management capacity in planning, administration and finance; and human resources of the educational system. In the adoption of this strategy, five developmental principles are considered:

1. Education as a human right: All children between the ages of 6 and 16 years old have the right to receive free basic education, regardless of social or economic status, gender, or religious belief.
2. Education as the basic component of citizenship: Together with the family and the community, the school shall be a main catalyst for developing the Palestinian citizen's character, moral values and social responsibilities.
3. Education as a tool for social and economic development: Education must meet the political, social and economic challenges of Palestinian society.
4. Education as the basis for social and moral values, and democracy: Education shall be the cornerstone for building a Palestinian society with strong commitment to ethics, principles, and openness to the global culture.
5. Education as a continuous, renewable, participatory process: Education is a life-long activity, in and out of school, fuelled by classroom learning, social relations and communications, community activities, and the mass media.

Two of the Ministry's main challenges have been the unification of education systems in Gaza and the West Bank and the development of an education curriculum to meet the needs of the Palestinian people. Other challenges have included infrastructure development (construction of school buildings and installation of laboratories and other equipment); training and recruitment and selection of teachers; and the development of targeted programs to meet the different education needs of the Palestinian people.

In the West Bank and Gaza, the Palestinian Authority and the United Nations Refugees and Works Agency (UNRWA) are principally responsible for the provision of basic and secondary education, while pre-school and tertiary education is generally provided by private and non-governmental organisations.

According to figures provided by the PICCR and the Ministry of Education, the current education system accommodates 1,078,488 school children,<sup>526</sup> 48,674 teachers and 2276 schools. In addition, there are 138,139 students enrolled at 43 higher education institutions.<sup>527</sup>

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<sup>526</sup> This figure excludes the 73,119 children in pre-school education.

<sup>527</sup> The population of the West Bank and Gaza is 3.7 million with an average growth rate of 3.8%. The median age is 16.5 years. According to the Palestinian Central Bureau of Statistics in 2004: 46% of the population was aged 0-14; 10.6% was aged 15-19; 38.7% was aged 20-59; and 4.4% were aged 60



With more than fifty percent of the population enrolled in the education system, education constitutes a significant financial burden on the Palestinian Authority.

In 2005 illiteracy rates declined, with the number of illiterate people in the Palestinian territories estimated at about 145,000. According to the PICCR, this represents about 7.2% of the adult population, compared with a rate of 15.7% in 1995. Although the rate declined for both men and women, it is still higher among females (11.4%) than males (3.1%). The illiteracy rate in Palestine is lower than the Arab world average which is approximately 35% and the world average which is approximately 18%.

## **11.4 Justiciability**

### ***11.4.1 Available Remedies and Enforceability***

The PICCR reports that despite the provisions contained in the *Basic Law* with respect to the right to education, avenues for the judicial oversight and enforcement measures are seldom used or are non-existent. According to the PICCR, prior to the establishment of the Palestinian Authority in 1994, Israel's occupation military courts were generally boycotted, the legacy of which is that Palestinian people seldom resort to legal procedures to enforce rights such as the right to education. Furthermore, the infrastructure of the judiciary and the security agencies has been affected by the Israeli occupation, with stringent measures on the freedom of movement imposed, the result of which is that the judiciary has not functioned efficiently or independently and the security agencies have not been able to protect judges or implement court decisions.

## **11.5 Availability**

### ***11.5.1 Expenditure***

#### Overview of Governmental Expenditure

The Palestinian Authority's education budget for 2005 was more than \$USD293m, as reported by the Ministry of Finance, representing more than fourteen percent of the overall budget and second only to the budget of the Ministry of Interior (which includes the security

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years or older. This means that Palestine is a very young country where not less than 56% of its people are enrolled in the education system. Such a situation constitutes a big financial burden on the PA.

agencies). UNRWA's education budget for 2005, covering the West Bank and Gaza was more than \$USD97.8m.

According to the PICCR, donors have spent \$353m on education-specific projects in the Palestinian Territories since 1994. The PICCR referred to a World Bank study which showed significant satisfaction amongst donors with the record of the Palestinian Authority on the development of education infrastructure. There was also general satisfaction with the quality of the education services, with the education sector comparing favourably in its performance compared with other government sectors.

According to the PICCR, families are required to contribute approximately \$USD20 per year, per pupil for education expenses.

#### **Ministry of Education: Implementation of the Five Year Plan**

1. This program aims to provide the opportunity for all children and adults of all ages to receive proper education, from kindergarten to secondary school, by recruiting new teachers, adding new classrooms, textbooks, increasing the level of enrolment in the secondary stage, and decreasing the dropout rate. The expected cost of the program is approximately \$1319.7 million for the five-year period of the plan.
2. The program's main objective is to develop and achieve quality education through the production of school textbooks, enrichment materials and instructional manuals to accompany the Palestinian Curriculum; pre-service and in-service teacher education; and capacity building of other education staff. This program will cost \$35.7 million.
3. The development of a vocational and technical training program that focuses on meeting the basic needs of the local market, and providing a skilled and proficient workforce that can contribute positively to the national economy. The plan also offers extended learning within the framework of formal education through the introduction of vocational training, as well as providing schools with the necessary equipment and resources. The overall cost of the program is estimated to be around \$72.1 million.
4. Developing new programs for general education, pre-school care, informal education, adult education, and special education, that is available for the general population. By providing schooling for kindergarten-age children, the program offers support for parents and improves the quality of education in the long-run. \$9.1 million will be allocated for the program.
5. Restructuring the financial and administrative systems to ensure efficient use of available resources. The program will include the school-mapping project, as well as reinforcing strategic planning and organizational administration. It focuses on developing and reviewing policies, and rules and regulations; updating administrative structures and job descriptions; and developing relations between schools and the local community. The estimated cost of this project is about \$109.2 million.

The PICCR reports that the Ministry of Education's 2005 budget did not include any specific allocations for students with special needs. The Ministry's Department of Special Education is dependant on external funding for the implementation of its programs. Such projects are subject to continuous change depending on the donor's priorities rather than the Ministry's plans.

## Education Funding Models

The Ministry of Education and Higher Education funds its schools through taxation and with the support of funds from international donors. It also collects a payment of approximately \$USD20 per student from the families of all students attending its schools.<sup>528</sup> Exemptions are provided for cases of financial hardship. The schools also receive financial and in-kind support from the local community.

UNRWA schools are funded by international donors. The schools collect contributions from the families of its pupils and they are encouraged to operate school canteens to pay for school supplies or to promote extra-curricular activities. The local community is supportive of UNRWA schools and it contributes land for the construction of schools, equipment, school supplies, school clothing and bags.

Private schools are primarily funded through the collection of relatively high fees.

## Higher Education<sup>529</sup>

The Palestinian Authority's capacity to support the higher education sector has declined significantly as it has faced increased financial constraints. The Ministry of Higher Education and Scientific Research has developed a financing strategy based on the following principles:

- Targeting public funds to national and regional human resource development by identifying and focusing on high priority programs;
- Increasing dependence on student fees to maintain the continuity of higher education institutions;
- Promoting quality through competitive funding of selected projects;
- Promoting capacity building and quality improvement, especially in priority fields, through partial funding of selected projects on a competitive basis and identification of potential donors;
- Promoting research through competitive funding;

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<sup>528</sup> Article 14 of the Education Law No. 16 of 1964, permits collection of donations (school contributions from pupils) according to special regulations issued by the Ministry in order to promote and strengthen various school activities.

<sup>529</sup> The following information has been taken from an extract of a document of the Palestinian Ministry of Education & Higher Education, as provided in the response of the PICCR to the APF's questionnaire.

- Respecting the autonomy of public non-profit Palestinian universities but requiring improved accountability, based on incentives rather than regulations; and
- Improving the management of the higher education sector.

A “Budget Trade-off Model” has been designed whereby universities will be required to collaborate to reduce costs in a wide range of areas including: admissions; staff; infrastructure and equipment; priority areas; fees and vouchers; student loans; government funding; and financial management.

### International Assistance and Cooperation

The Ministry of Finance and the Ministry of Planning are responsible for the oversight of international donor funds received by the Palestinian Authority. The Ministry of Finance manages the development and implementation of the education budget and develops contingency plans in the event of a prolonged fiscal crisis, to ensure that any funding gaps are covered.

The Ministry of Planning manages aid and resource mobilisation. Its primary function is to ensure that the medium-term needs of the Palestinian people can be met through donor assistance. It is also responsible for keeping its sights on short-term relief to help alleviate the impact of six years of heightened restrictions and border closures imposed by Israel. The Ministry of Planning’s Medium Term Plan provides a framework for better donor coordination that adheres to a clear national agenda comprising:

- well articulated priorities;
- geographical and demographic differentiation leading to equitable financing;
- a clear focus on vulnerable population groups and more broadly on poverty and the means to eradicate it;
- affirmative action for women's empowerment and gender mainstreaming;
- proper accountability and transparency on the part of the PA and donors;
- regular monitoring of donor commitments and disbursements by sector, agency and project/programs.

### Impact of non-state actors

The PICCR reports that although there has been a substantial decline in donor support recently, since 1994, donors have spent \$USD353m education-specific projects in the Palestinian Territories, providing invaluable support for achievements which would otherwise have been unattainable.

According to the PICCR, the role of UNRWA in the education of Palestine refugees has been of paramount importance. Not only has it extended its educational services to Palestinians in the West Bank and Gaza but also to Palestinian refugees in Jordan, Syria and Lebanon. Its education program covers basic education (and secondary education in Lebanon), vocational, technical, pre-service and in-service teacher education and a scholarship program for study at universities in the Middle East. Half a million Palestine refugees study in UNRWA schools in the four countries, approximately a third of Palestinian school aged children in Palestine. In 2005 UNRWA's regular education budget was more than \$USD383m and its project budget was \$USD42.5m. The PICCR says UNRWA deserves much credit for the high literacy rate amongst Palestinians.

### ***11.5.2 Infrastructure***

Three quarters of the 2276 school buildings in the West Bank and Gaza are government schools, with the remaining belonging to UNRWA and private institutions. Co-education schools represent 32% of these schools, with 34% as boys-only schools and 34% as girls-only schools.

Since 1994 the Ministry of Education has built an additional 484 schools (a 53.8% increase) and has increased the public school population from 418,807 in 1994/1995 to 729,340 in 2004/2005 (a 68.9% increase). The average annual school population growth is 6.9% (for the secondary school cycle it is 13.5%). Approximately 98% of school-aged children are currently enrolled in the compulsory education cycle.

Although the practice of running three daily class shifts in schools has been eliminated, approximately 25% of schools continue to run on double shift basis.

In the period 1994/1995, the percentage of schools with science laboratories has risen from 39.6% to 51.6%; and the percentage of schools with libraries has increased from 24.4% to 57.5%. In the same period there has been a significant increase in the percentage of schools with computer facilities, increasing from 3.5% to 47.4%. Of the 1661 government schools, 1210 schools have canteens, 452 schools have sports playgrounds, 168 schools have lecture halls and 314 schools have domestic science laboratories.

## Higher Education Institutions

The Palestinian Territories have eleven universities, thirteen university colleges granting Bachelor of Arts degrees, and 19 community colleges. The number of university students and other post-secondary educational institutions rose from 29,380 students in the academic year 1994/1995 to 129,137 students in 2004/2005. The Open University has contributed to this increase in the number of students. There has been an increase in the number of enrolled female students, up from 45% in 1994/1995 to 52% in 2004/2005. There is a wide discrepancy in the distribution of female teachers, with 57% of female school teachers, however only 13% of female university lecturers.

### ***11.5.3 Teachers and support staff***

#### Number of teachers

The number of teachers in Palestinian schools increased from 19,844 in 1994 to 38,907 in 2005, an overall increase of 87.5%. This includes a 104.2% increase in teachers in government schools, 73.3% in UNRWA schools and 91.5% in private schools.

#### Qualifications

In the period 1994-2005, the appointment of teachers with two-year diplomas *decreased* from 64.1% to 35.3% and the appointment of teachers with bachelor degrees *increased* from 54.8% to 64.5%.

In terms of gender break-down, 45.9% of school teachers are male and 54.1% are females. The average ratio of pupil to teacher is 26.8. There has been an increase in the recruitment of administrative staff from 3236 in 2001 to 4780 in 2005 and an increase in support staff from 531 to 1061 for the same period. Approximately half of all government schools have school counsellors. A national action plan (2005-2010) for the implementation of the "Education for All" goals has been devised with the technical and financial support of UNESCO. The Ministry of Education has invested significant resources towards an in-service training program for teachers.

#### Higher Education

According to figures provided by the PICCR, the higher education sector has 9289 employees:

Category	Males	Females	Total
Academic/Teaching	3895	697	4592
Academic/Administration	382	36	418
Administrative	321	88	409
Office Staff	815	807	1622
Teaching Assistant	489	222	714
Professional	191	57	248
Technical	426	86	512
Unskilled Staff	1127	187	1314
Total	7646	2183	9829
Academic Qualifications: 1971 PhD's (1841 M, 130 F); 2715 Master Degrees (2213 M, 502 F); 78 H. Diploma holders (54 M, 24 F); 2444 Bachelor Degree holders ( 1660 M, 784 F); 964 two-year Diploma (520 M, 444 F) and the rest are high school graduates or below.			

#### ***11.5.4 Teaching facilities and materials***

The percentage of schools with science laboratories has risen from 39.6% in 1994/1995 to 51.6% in 2004/2005, whereas school libraries have increased from 24.4% to 57.5% during the same period. There has been as well a significant increase in the percentage of schools having a computer laboratory, from 3.5% in 1994 to 47.4% in 2005. Of the 1661 government schools, 1210 have school canteens, 452 sports playgrounds, 168 lecture halls, and 314 domestic science laboratories.

The Ministry of Education and Higher Education continued the policy of expanding the network of educational institutions in 2005, providing infrastructure, increasing the number of classrooms to alleviate overcrowding, improving school cleanliness and environmental conditions, and protecting schools from drug abuse. During 2005, 77 new schools were inaugurated, 42 of them with new buildings, 1,364 new classrooms were also opened to absorb the 30,000 new students enrolled the year before. Regarding school furniture, 86,000 seats and 40,000 tables were provided, and 45 new schools were linked to the internet. Commercial specialization was also introduced in 73 schools, and 15 specializations were provided in industrial schools. Sixteen government schools teach foreign languages other than English, and 110 literacy classes were opened. Developments in gender equality included starting two specializations at the industrial schools for female students.

## 11.6 Accessibility

### 11.6.1 Non-discrimination

#### Relevant Legislation, Government Policies and Programs

Articles 9 and 24 of the *Basic Law* (see above) articulate the framework with respect to non-discrimination, equal treatment and equality of opportunity in the right to education. These provisions of the Basic Law define the responsibilities and measures that the Palestinian Authority is required to take to respect, protect and administer these rights.

#### Disparities between the West Bank and the Gaza Strip

Referring to data published by the Ministry of Education, the PICCR notes that there are substantive disparities between the quality of the education environment in the West Bank and the Gaza Strip. In the West Bank there is an average of 32 students per class, whereas in the Gaza Strip the average is 41 students per class. The pupil/teacher ratio is 26 in the West Bank compared to 29 in Gaza. In the West Bank there are only four schools operating double-shifts whereas in the Gaza Strip there are eighteen such schools.

#### Lack of educational opportunities for early school-leavers

In 2004-2005, 9395 students (0.9% of the student population) dropped out of school prematurely, a decline from a rate of 1.8% three years ago in 2001-2002. The *Childs Law No. 7 of 2004* states that education is compulsory until the end of the higher basic level at least, and that the state is required to take all suitable measures to prevent the early exit of children from schools. Although the phenomenon of early school-leavers is not currently a significant problem for Palestinian society, the decline in drop out rates may be attributed to unexpected external factors such as the lack of employment opportunities due to border closures and operations of the Israeli military. The Ministry of Education published a report in 2005 which highlighted the decline in drop out rates during the Intifada. There was nothing, however, indicating that the decline was the result of actions or policies taken by the Ministry of Education to eradicate the phenomenon. According to the PICCR, the concern therefore remains that the drop-out rate may increase once again if there are no specific policies are adopted by the Ministry of Education. The PICCR recommends that main priority is to introduce legislation to criminalize dropping out from the basic education stage, with



penalties to be imposed on the students' parents if they force their sons or daughters to drop out from compulsory schooling.

### People living with disabilities

The PICCR reports that it is the policy of the Ministry of Education and Higher Education to support the rights people living with disabilities. The Ministry's operations include adapting school buildings and training of staff on working with people with disabilities. The Ministry has prepared the educational curriculum in Braille for students with visual impairment and introduced Braille machines into a number of schools. The PICCR also reports that the Ministry has established resource centres to assist students with speech difficulties. The Ministry is also supporting non-governmental educational institutions in their provision of services to the disabled, and is covering the salaries of 160 teachers.

Education opportunities for people living with disabilities in the Palestinian Territories remain unsatisfactory however. According to the Ministry of Education, of the more than 729,000 students enrolled in government schools in 2005, there were only 4283 enrolled students with mobility, audio or visual impairments. The PICCR attributes the low enrolment of students with disabilities to a number of factors including: poorly equipped school buildings and facilities; lack of special education teachers; lack of availability of Braille printers for people with visual impairment; lack of sign language facilities; lack of appropriate transport options such as appropriately equipped school buses; and lack of opportunities in the school curriculum and extra-curricular activities such as sports activities.

The PICCR notes that the Ministry of Education has provided exemptions for students with disabilities for some forms of assessment but not for others. For example, visually impaired students have been exempted from sitting mathematics and map-drawing assessments, whereas audio-impaired students were not exempted from sitting an exam for oral expression. The PICCR has also observed that government schools also lack a special manual to inform disabled students on the requirements of the academic process. The PICCR recommends that such a manual can be prepared in either an audible way or written in Braille for students with visual impairment, or photographed in sign language for audio-impaired students. The PICCR notes that the Ministry of Education does not provide tuition for visually-impaired students in reading, writing, and mobility, instead relying on the services of private schools.

## Prisoners

In 2005 the *Program for Rehabilitating Prisoners and Released Prisoners* ceased all activities for a short time, including educational services, due to a shortage in funding. Consequently, the program stopped paying 50% of the university fees to released prisoners which therefore forced a number of students to withdraw from their courses. The program has since resumed however, following the restoration of funding by the Council of Ministers at its session in September 2005.

### ***11.6.2 Gender Parity and Gender Equality***

The PICCR reports that the distribution of the school population is 536,752 males and 541,636 females. According to the PICCR, the commitment of the Ministry of Education to gender parity and gender equality is based upon the first principle of its five-year strategic plan (“education as a human right”). The PICCR notes that legislation guaranteeing free and compulsory education at the elementary stage; equal opportunities in education to all citizens; prohibiting all forms of discrimination; promoting the diversity of education; and the admission of women to agricultural schools, is a measure of qualitative improvements in gender equality in education being achieved.

### ***11.6.3 Physical Accessibility***

#### Geographic Location and Physical Access

The PICCR reports that 38% of schools are located in major urban areas, 51.3% are located in villages and 10.7% are located in refugee camps. Some villages do not have secondary schools, leaving students with the choice of either commuting to another village to complete their high school studies or not continuing with their education at all. The PICCR notes that some village schools do not have science laboratories, limiting students to enrollment in what is called the “Literary Stream” and thereby limiting their choices for higher education.

The physical location of some schools is detrimental to effective learning, particularly schools adjacent to taxi-parking areas, bazaars or factories. Others schools are located close to Israeli settlements and are often subject to a number of disturbances. Some schools operate in rented premises which barely meet the minimum standard requirements. The PICCR notes that above all, the wide-ranging internal and external closure of the Palestinian Territories by

Israel, and the ensuing violence, has significantly limited the physical provision of and access to education.

### Overcrowding in schools

Many schools are over crowded with some twenty-five per cent of schools operating on more than one shift. Out of a total of 1,078,488 school children, 757,615 students study in Palestinian Authority schools (70%); 254,552 in UNRWA schools (24%); and 66,321 (6%) in private schools. UNRWA offers basic education (grades 1-10) as well as vocational, technical and teacher education and education for refugee communities.

### ***11.6.4 Economic accessibility***

#### Primary Education

The Child's Law No. 7 of 2004 states that education is free and compulsory until the end of the higher basic level at least, and that the state is committed to take all suitable measures to prevent the early exit of children from schools. The PICCR notes however that while education is compulsory at least until the end of the basic stage, and free at least in public schools, the Ministry of Education collects school 'contributions' from students in a manner which makes it mandatory. In doing so, the Ministry relies on Article 14 of the Education Law No. 16 of 1964, which permits the collection of donations according to special regulations in order to strengthen various school activities. The PICCR says that a decision needs to be made in which the Ministry acknowledges that donations are voluntary and that no student can be deprived of his or her right to education for not paying school contributions.

#### Secondary Education

Secondary education in the Palestinian Territories is of two years duration (grades 11 & 12). It is not compulsory however it is free. The PICCR reports that the Ministry of Education and the wider community are investing significant energy into increasing enrolments in secondary education and to prevent the rate of early high school leavers. Secondary school students are required to pay a \$USD20 charge each year as part of a contribution to their school, similar to the charge imposed on students in the basic or primary education cycle.

## Higher Education

Fees for higher education courses depend on the number of credit hours for which students are registered. Higher education charges vary from one faculty to the other, with science colleges being the most expensive. In 2001 the Ministry introduced the Students Revolving Lending Fund whereby students are entitled to apply for an education loan. Loans are awarded on the basis of academic achievement and financial need. A limited rate of interest is charged to cover administrative costs. Repayment of the loan commences only after graduation and after having secured employment. These loans cover between 30% and 75% of the university fees. In addition, students can apply for assistance under the Saudi Scholarship Program, which provides support for 75% of the course expenses. Another source of financial support is the Arabic Fund Box which has provided significant financial support for scholarships in the last four years.

### ***11.6.5 Non-formal education***

The Ministry of Education and Higher Education is responsible for the planning, implementation and follow up of non-formal education programs in the Palestinian Territories. It provides classrooms, stationary, educational materials and teachers. It also conducts exams and awards certificates. The Ministry pays teachers involved in projects sponsored by international bodies such as UNESCO. According to Ministry of Education statistics, there are currently 127 government-affiliated literacy centres, with 2278 females and 1367 males enrolled. There are also twenty-two literacy centres being operated by non-government organisations.

As part of its efforts to promote literacy among women, the Ministry extended the compulsory cycle of education from nine to ten years of schooling. It also joined with women's non-government organisations to conduct literacy awareness campaigns for women. Schools have been established in villages and rural areas to improve access to education for women. The Ministry has introduced a new program, *Parallel Education*, to provide students aged 13-20 who have left school early, with access to alternative education. Students are required to attend afternoon classes, two days a week for the duration of two years.

## **11.7 Acceptability**

### ***11.7.1 Quality education and minimum standards***

#### Relevant National Institutions / Specialised Agencies

The Ministry of Education and UNRWA are responsible for the implementation of the right to education.

#### Measures Adopted by Education Authorities

The PICCR reports that the main objective of the Ministry of Education is to develop and achieve quality education through the production of school textbooks, enrichment materials and instructional manuals to accompany the Palestinian curriculum; pre-service and in-service teacher education; and capacity building of other education staff. The PICCR also notes that the Ministry employs only qualified university graduates in the education sector and that it is working to reduce the student/teacher ratio in school classrooms. Palestinian schools participate in the international exam, the Trends in International Mathematics and Science Study, which is conducted every four years. The exam measures the competencies of students in Maths and Science and provides an important comparative indicator and a guide to areas requiring additional attention.

#### Indicators

The PICCR reports that it is working with the Central Bureau of Statistics, the Ministry of Education and Higher Education and university educators and civil society representatives, on the development of indicators on the right to education. This is part of an international initiative, the Metagora Project, to develop indicators for measuring human rights, democracy and good governance.<sup>530</sup>

#### Academic freedom

The PICCR reports that the Law for Higher Education guarantees academic freedom, preventing any political indoctrination by educational institutions, and assuring union freedoms inside educational institutions. The law also guarantees freedom of publication, and

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<sup>530</sup> Metagora Project, < <http://www.metagora.org/html/index.html>>

the existence of a transparent and effective system which is designed to ensure that education objectives are achieved.

### ***11.7.2 Discipline***

The PICCR observes that there is no law or administrative regulations prohibiting the use of corporal punishment in public schools. It notes that UNRWA is very strict about the exercise of any form of violence in its schools and administrative measures can lead to the termination of service to any teacher who is guilty of resorting to corporal punishment as a form of disciplinary measure.

### ***11.7.3 Curriculum***

#### Overview of Curriculum Determination

The PICCR reports that the Ministry of Education adopted a participatory approach to the development of the Palestinian curriculum. Political representatives, educators, civil society organisations and others were brought into consultations coordinated by the Ministry. The development of the Palestinian curriculum and the unification of the education system in Gaza and the West Bank were major challenges and significant achievements.

#### Human rights education

UNRWA introduced human rights education into its school curriculum six years ago. The Ministry of Education is working now on incorporating human rights education into the curriculum in response to initiatives by UNESCO's and is being assisted with this work by the Office of the High Commissioner for Human Rights in Ramallah. Human rights courses are mandatory in some colleges and universities.

### ***11.7.4 Parents / Legal Guardians***

The PICCR says that the choices available to parents and legal guardians with respect to the educational institutions and educational programs are limited. The placement of children in public schools is dependant upon the proximity of the family residence to the school. UNRWA admits refugees only into its school system. Wealthier families can choose schools within their own cities however options for boarding schools are very limited or non-existent

and with the difficulties imposed on freedom of movement, many parents would rather have their children educated in local areas.

### ***11.7.5 Religious and cultural practices, languages of minority groups***

Article 9 of the *Basic Law* prohibits all forms of discrimination including religious discrimination. As part of the new curriculum, the Ministry of Education has included the teaching of Islamic Education to Muslim students and the teaching of Christianity to Christian students.

## **11.8 Adaptability**

### ***11.8.1 Education and Work***

Basic compulsory education in Palestine covers ten years of schooling. With a starting age of 5 years, the minimum age for employment is therefore 15 years of age.

### ***11.8.2 Education for Women***

The minimum age for marriage is 16 years of age.

Pregnant girls are not generally admitted into regular schools, although there is no problem with regard to university students. Paid maternity leave is provided for three months, and beyond that, working mothers may request unpaid nursing leave for up to a year.

### ***11.8.3 Special Needs Education***

The PICCR observes that under the present economic, political and security challenges within the Palestinian Territories, it is quite difficult for schools to adapt to the special education needs of individual students.

## **11.9 Activities of the Palestinian Independent Commission for Citizen's Rights**

### ***11.9.1 Mandate and Methods***

The PICCR has a broad mandate to address all cases of human rights violations. The PICCR pursues its objectives in the following manner:

- It receives and follows-up on complaints submitted by citizens, individual or collective, related to maladministration, abuse of power and squandering of public funds by public authorities that result in the violations of human rights.
- It reviews laws and draft laws to ensure that they conform to international standards of human rights.
- It follows up on plans, policies and programs of public institutions to ensure compliance and respect for human rights.
- It educates Palestinian citizens about their rights and freedoms and the mechanisms for their protection against violations.
- It publishes annual reports and special reports on the status of Palestinian citizens' rights.

### ***11.9.2 Investigation of Complaints***

In 2005 PICCR received 46 complaints against the Ministry of Education and Higher Education. The complaints were about a range of issues including: the inadequacy of school infra-structure in certain areas of the Palestinian Territories; the imposition of high ‘school contributions’; promotions and appointments; unsuitability of a large number of schools to accommodate students with disabilities, despite the adoption of a ‘mainstreaming’ strategy by the Ministry; accreditation of university certificates and courses; prohibition of students from state examinations; arbitrary dismissals; and arbitrary school transfers. Of these 46 complaints, twenty-two are currently being addressed by the Ministry; ten complaints have been resolved with satisfactory outcomes; eleven complaints were resolved, although with a less than satisfactory conclusion; and three complaints were closed without any cooperation between the parties.

#### **Complaints against the Ministry of Education addressed by the PICCR**

##### **Payment for teaching**

A complaint by a citizen (I. H.) demanded the Ministry of Higher Education to pay his financial entitlements for teaching in one of the colleges. PICCR conducted several meetings with the Ministry and the money was paid to the citizen.

##### **Payment of leave salary**

A complaint from a female citizen (N.Q.) demanded the Ministry to pay her salary for a short period of leave and to grant her early retirement. The PICCR followed up the complaint through field visits and phone calls, and the Ministry agreed to accept the requests.

##### **Dismissal unresolved**

An example of a complaint against the Ministry for which PICCR did not achieve satisfactory results was that made by a citizen (A.H.) regarding his request to know the reasons why he was dismissed from his job. Despite several follow-ups by PICCR, no replies were received.



### ***11.9.3 Research and Public Inquiries***

The PICCR has not conducted research or public inquiries examining the impact of laws, policies and government practices impacting on the right to education. The PICCR reports that it does however monitor the right to education at a general level and includes reference to this monitoring in its annual reports.

### ***11.9.4 Identification of laws / policies / practices impacting on the right to education in the Palestinian Territories***

According to the PICCR, in 2005, the Palestinian Authority continued to improve on its commitment to the right to education, through a series of measures including expanding and improving the school network, improving the living conditions of teachers and respecting their right to protest, and improving conditions for the education of the disabled. It notes however that much remains to be done and recommend a wide range of changes and reforms. These recommendations include: the need for additional laws to regulate and protect the right to education; the provision of equal opportunities for all students; the enjoyment of full free education; the adaptation of schools to accommodate students with special needs; a greater respect for academic freedoms within higher education institutions; the elimination of the use of violence (corporal punishment) against students; additional attention to be given to the needs of early school leavers; and the need for complete adherence to fair standards in distributing grants to university students.

### ***11.9.5 Education and Awareness Campaigns***

The PICCR conducts training courses and human rights education awareness activities for teachers and students. Teachers, administrators, school supervisors and counsellors have received human rights education training with a special focus on children's rights. School children are educated about their rights through the use of art, songs, educational games, posters, brochures, diaries, short stories, summer camps, and non-violent communication training. The PICCR and the Ministry of Education and Higher Education conduct a children's rights short story competition for seventh, eighth and ninth-grade students. The competition is designed to encourage students to cultivate their creative-writing abilities whilst incorporating human rights concepts, particularly in relation to the Convention on the Rights of the Child and the Palestinian Law of the Child of 2004.

### ***11.9.6 Human Rights Education***

The PICCR conducts a number of awareness-raising activities on the subjects of human rights, international humanitarian law, and democracy and civil society. These activities include: short term training courses, extended instructional courses, public lectures, open meetings, television and radio programs, and other available media and promotional activities. These activities are conducted with the following objectives:

- To foster a culture of human rights and democratic principles throughout Palestinian society.
- To raise the issue of citizens' rights as a public concern on a national level, and to ensure that it is a high priority for the Palestinian National Authority and broader community.
- To inform Palestinian society about the status of citizen' rights, particularly as relates to the safeguards available for these rights and the necessity of having all individuals, groups, institutions, and public authorities respect them.
- To define the role played by the PICCR in following up and handling citizens' complaints with the Palestinian public authorities, civilian and security alike.

### ***11.9.7 Contribution of reports to treaty body committees***

With the Palestinian Territories having not yet achieved statehood, the Palestinian Authority is not able to ratify any international treaties, including international human rights conventions. In 2003 however, the PICCR coordinated and edited the Shadow Report to the UN Committee on CESCR regarding the Report of Israel concerning the International Covenant on Economic, Social and Cultural Rights.

## **Impact of Israeli occupation on the right to education of Palestinians**

This is an edited version of the PICCR's report.

The right to education has suffered seriously at the hands of the Israeli occupation authorities. The continued Israeli incursions into towns, villages and refugee camps, assaults, and siege have had a serious impact on the educational process. Students, teachers and education staff are often barred from crossing check-points or leaving their towns. Most of the times, they face humiliation and harassment by the Israeli soldiers or settlers. The construction of the separation wall has further aggravated the situation and in certain areas, children are cut off from their schools and access is at a specified hour in the morning and in the afternoon. For example, in Nazlet Issa School, the "apartheid wall" cuts through the village, and separates it from its school. Students are forced to pass through one of the Wall's gates in order to reach their school which exposes them to confront the aggressive behaviour of the Israeli soldiers everyday.

Between September 2000 and May 2006, 32 school-teachers, 601 pupils, 200 university students and 14 employees have been killed by Israeli soldiers. 76 teachers, 405 pupils, 720 university students, and 29 education employees have been detained. 54 teachers, 3471 school children, 1245 university students and 13 education employees have been injured. Studies are being constantly disrupted either due to closures or to curfews imposed by the occupation authorities. School buildings have been damaged as a result of being exposed to shelling. Damages incurred to schools totaled \$USD2,298,389 and to institutions of higher learning \$USD7,888,133.

Moreover, the Israeli violations and aggressions have affected the implementation of many educational projects and programs. The Ministry of Education and Higher Education has to constantly adopt new emergency plans and alternative strategies to cope with the circumstances of closures, curfews and siege and to decentralize the management of the education program as much as possible.

Palestinian children in East Jerusalem are also victims of discriminatory practices. Only one school was built for Palestinian residents of East Jerusalem, despite an annual population growth of 6%. The Israeli government spends less per Palestinian Arab child than it does per Jewish child and Arab schools are inferior to Jewish schools virtually in every respect – school building, equipment and educational facilities and materials. Palestinian Arab children attend schools with larger classes and fewer teachers than those in the Jewish school system, with some children having to travel long distances to reach the nearest school. Palestinian children with disabilities are particularly marginalized. Many Palestinian communities lack Kindergartens, despite legislation making such schools and attendance obligatory. While Palestinians contribute about 25% of tax revenue to the municipality, they receive only 5% of municipal services.

While the official policy of the Jerusalem Municipality is to grant access to education to any child resident of the city, actual policies demonstrate that it is a legal fiction that obscures the realities on the ground. Only children who are recognized residents of Jerusalem by the Israelis, and hold an Israeli identity card number, may attend the municipal schools. As a result, many parents do not practice their right to education in Jerusalem and they are forced to send their children to schools in the West Bank. This has significant consequences for the future because children are required to present record of attendance in a Jerusalem school in order to obtain an ID when they reach the age of 16.

This situation, coupled with the generally poor economic situation of Palestinian Jerusalemites (28.6% below the poverty line), contributes to a very high dropout rate for Palestinian school children. A 1999 report by the Israeli Ministry of Education determined the rate of dropout for Palestinian children in East Jerusalem to be a staggering 40%.

Although primary education is compulsory and free to all children, in East Jerusalem, only 41% of school-aged children are enrolled in public schools, while 31% attend schools in the West Bank and 28% attend private and religious schools. 40% of classrooms in East Jerusalem are in rented houses or apartments with the result that 30 or more pupils are cramped into a class-room, roughly 4 by 5 metres in size, with four students sharing one small desk. Ventilation is a grave problem in many of these classrooms, with small windows, and lack of heating and cooling systems. Toilets and drinking fountains are extremely unsanitary and in disrepair.

## 12. Philippines

### 12.1 International Law

The Philippines is a party to the ICESCR,<sup>531</sup> CERD,<sup>532</sup> CEDAW<sup>533</sup> and the CRC.<sup>534</sup> The Philippines is a party to the UNESCO Convention Against Discrimination in Education.<sup>535</sup>

The Philippines is a party to the ILO Minimum Age Convention<sup>536</sup> and the Worst Forms of Child Labour Convention.<sup>537</sup>

### 12.2 National Law

#### 12.2.1 Constitution

The *Constitution of the Philippines 1987* contains a wide range of provisions relevant to the right to education. Article II, Section 17 stipulates:

The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

Article XIV (Education, Science and Technology, Arts, Culture, and Sports) contains a number of important provisions including:

Section 1: The State shall protect and promote the rights of citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

Section 2: The State shall:

- (1) Establish, maintain, and support a complete, adequate, integrated system of education relevant to the needs of the people and society;
- (2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;

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<sup>531</sup> The Philippines ratified the ICESCR on 7 June 1974.

<sup>532</sup> The Philippines ratified the CERD on 15 September 1967.

<sup>533</sup> The Philippines ratified the CEDAW on 5 August 1981.

<sup>534</sup> The Philippines ratified the CRC on 21 August 1990.

<sup>535</sup> The Philippines ratified the Convention Against Discrimination in Education on 19 November 1964.

<sup>536</sup> The Philippines ratified the Minimum Age Convention on 4 June 1998.

<sup>537</sup> The Philippines ratified the Worst Forms of Child Labour Convention on 28 November 2000.

- (3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;
- (4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and
- (5) Provide adult citizens, the disabled and out-of-school youth with training in civics, vocational efficiency, and other skills.

### Section 3

- (1) All educational institutions shall include the study of the Constitution as part of the curricula.
- (2) They shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency;
- (3) At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religion to which the children or wards belong, without additional cost to the Government.

### Section 4:

- (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.
- (2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions. The control and administration of educational institutions shall be vested in citizens of the Philippines. No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.
- (3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.
- (4) Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions, subject to the limitations provided by law, including restrictions on dividends and provisions for reinvestment.
- (5) Subject to conditions prescribed by law, all grants, endowments, donations, or contributions used actually, directly, and exclusively for educational purposes shall be exempt from tax.

## Section 5

- (1) The State shall take into account regional and sectoral needs and conditions and shall encourage local planning in the development of educational policies and programs.
- (2) Academic freedom shall be enjoyed in all institutions of higher learning.
- (3) Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements.
- (4) The State shall enhance the right of teachers to professional advancement. Non-teaching academic and non-academic personnel shall enjoy the protection of the State.
- (5) The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction.”

## Section 18:

- (1) The State shall ensure equal access to cultural opportunities through the educational system, public or private cultural entities, scholarships, grants and other incentives, and community cultural centers, and other public venues.
- (2) The State shall encourage and support researches and studies on the arts and culture.

Article VI (Section 28(3)) is also relevant:

Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

Other rights and freedoms contained within the *Philippines Constitution* relevant to the right to education include:

- Life, liberty and property (Article II, Section 2);
- Dignity of every human person (Article II, Section 11);
- Equal protection of the law (Article III, Section 1); and
- Freedom of speech, expression, the press, peaceful assembly and petition (Article III, Section 4).

### ***12.2.2 Legislation***

Section 2 of the *Free Public Secondary Education Act of 1988* (Republic Act No. 6655) stipulates:

It is the policy of the State to provide for a free public secondary education to all qualified citizens and to promote quality education at all levels.

Other Acts relevant to the right to education are cited within this report.

## **12.3 Overview of Education Policies and Programs**

The framework of the education policies and programs of the Philippines Government is shaped by the provisions of the *Philippines Constitution* relating to the right to education, including Article II (Section 17), Article VI (Section 28(3)) and Article XIV (Sections 1-5, 18).

## **12.4 Justiciability**

### ***12.4.1 Detail of National Court Cases***

Philippines jurisprudence has emphasised the importance of the right to education as articulated in the Philippines Constitution. The Commission on Human Rights of the Philippines (CHRP) states that “the Judiciary as a co-equal branch of the government has never been remiss in resolving issues pertaining to this constitutionally guaranteed right, it has always given its judicial interpretation to legal controversies arising therefrom that would ultimately safeguard and protect this freedom.”

#### Prioritisation of budget expenditure

The Supreme Court of the Philippines ruled in *Guingona v Carague, 196 SCRA 221; Philippine Constitution Association v. Enriquez, supra* that Article XIV, Section 5(5) of the Constitution (“the State shall assign the highest budgetary priority to education...”) was to be construed as merely directory. The Supreme Court said that it did not follow that the hands of Congress were to be so hamstrung as to deprive it of the power to respond to the imperatives of national interest and the attainment of other state policies and objectives.

#### Quality education – government authorisation required

In *Philippine Merchant Marine School v Court of Appeals, supra* the Supreme Court said that the requirement that a school must first obtain government authorisation before operating is based on the State policy that educational programs and/or operations shall be of good quality and, therefore, shall at least satisfy minimum standards with respect to curricula, teaching staff, physical plant and facilities and administrative and management viability.

### Quality education – admissions tests

The constitutionality of the National Medical Admission Test (NMAT) as a requirement for admission to medical school was upheld by the Supreme Court in *Tablarin v Gutierrez* **154 SCRA 730**. The NMAT did not violate the right of the citizens to quality education at all levels. The Supreme Court held that the NMAT ensured quality education for future doctors and protected public health by testing the competence of future medical practitioners. In *DECS v San Diego* **180 SCRA 534**, a regulation stipulating that a candidate who failed the NMAT on three occasions was not entitled to re-site the test was likewise upheld.

### Academic freedom

Section 5(2) of Article XIV of the *Philippines Constitution* in relation to academic freedom has given rise to numerous legal issues relating to the right to education.

In *Board of Medical Education v Judge Alfonso*, **176 SCRA 304**, the Supreme Court sustained the decision of the Board of Medical Education in closing the Philippine Muslim-Christian College of Medicine for being ‘inadequate.’

In *Capitol Medical Center v Court of Appeals*, **178 SCRA 493**, the closure of the nursing school was upheld, after due notice to the Department of Education, Culture and Sport, when its teachers and students declared a strike, refusing to hold classes and take examinations. The Supreme Court held that a school cannot be forced to reopen at the instance and insistence of striking teachers and students.

In *Non v Dames* **185 SCRA 523** the Supreme Court reversed its ruling in *Alcuaz v PSBA*, **161 SCRA 7**, declaring that the “termination of contract” theory in *Alcuaz* can no longer be used as a valid ground to deny readmission or re-enrollment to students who had led or participated in student mass actions against the school. The Court held that the students do not shed their constitutionally-protected rights of free expression at the school gates.<sup>538</sup> Accordingly, the only valid grounds to deny readmission of students are academic deficiency and breach of the school’s reasonable rules of conduct.

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<sup>538</sup> Cited with approval were the rulings in *Malabanan v. Ramento*, **129 SCRA 359**, along with *Villar v. technological Institute of the Philippines*, **135 SCRA 706**; *Arreza V. George Araneta University Foundation*, **137 SCRA 94**; and *Guzman V. National University*, **142 SCRA 699**.



## Discipline of students

In imposing disciplinary sanctions on students, it was held in *Guzman v National University, 142 SCRA 69* (reiterated in *Ateneo de Manila University v Capulong, supra*) that the following minimum standards of procedural due process must be satisfied:

- (i) The students must be informed in writing of the nature and cause of the accusation against them;
- (ii) They shall have the right to answer the charges against them, with the assistance of counsel, if desired;
- (iii) They shall be informed of the evidence against them;
- (iv) They shall have the right to adduce evidence in their own behalf; and
- (v) The evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.<sup>539</sup>

## Discrimination between local and international employees

The issue of discrimination in rates of pay between local and foreign employees was addressed by the Supreme Court in *International School Alliance of Educators v Quisumbing, et. al. GR No. 128845, June 1, 2000*. The Supreme Court referred to Article 7(a)(i) of the International Covenant on Economic, Social and Cultural Rights which provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

In its decision the Supreme Court stated:

The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of “equal pay for equal work.” Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions should be paid similar salaries. This rule applies to the School, its “international character” notwithstanding.

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<sup>539</sup> Held inapplicable to this case are the rulings in *Garcia v. The Faculty Admission Committee, Loyola School of Theology, 68 SCRA 277* where the issue was whether a female lay student had the right to compel a seminary for the priesthood to admit her for theological studies leading to a degree, and *Tangonan v. Pano, 135 SCRA 245* where the issue was whether a nursing student, who was admitted on probation and who failed in her nursing subjects, may compel her school to readmit her for enrolment.

## 12.5 Availability

### 12.5.1 Expenditure

#### Overview of Government Expenditure

The Philippines Commission on Human Rights (CHRP) reports that the Philippines Government has allocated PhP100 billion, or 12.5 percent, of the most recent national budget to the education sector. This represents the largest expenditure item in the national budget. Despite this, according to the CHRP, the education sector's share of total expenditures has declined from 13.24 percent to 12.35 percent during the period 2003-2005. The CHRP also notes that the average expenditure on education per child per year in the Philippines (approximately US\$150) is one of the smallest within the region (compared, for example, Thailand where the average expenditure is US\$ 950 per child).

With the Philippines Government's policy of free and compulsory elementary education, the majority of the education budget is dedicated to the 'basic education' sector. The CHRP reports that government spending for basic education grew at an annual average of 4.5 percent during the period 2000-2004. The 2004 budget for basic education increased by PhP10.8 billion, representing an increase of approximately 11 percent from the 2001 level of PhP98.2 billion.

#### **IBON commentary on the 2006 Budget**

Today, debt is still the largest expenditure in the National Budget. Statistics show that the single largest chunk of the 2006 budget, more than 30%, will still go to paying interest on public debt, followed by spending on education, 13.9 %, and on communications, roads and other transportation, 6.8 %.

Examining trends from 2001 to 2006, the share of education to the total budget has fallen from 17.4% to 13.9%.

In the 2006 budget, total debt service will be: five times that of education spending (P146.5 billion); 53 times that of health spending (P13.7 billion); and 262 times that of housing spending (P 2.8 billion).

Furthermore, in real terms education and health spending have actually declined. Compared to 2001 levels, real spending in 2006 on education will be 4.5% lower and on health 19.2% lower. Increasing population growth has also cut into per capita spending. The Department of Education (DepEd) per capita budget per public school student, for example, has fallen from P6,007 per enrollee in 2001 to P4,782 per enrollee in 2006, or a 20% decrease.

The DepEd also estimates that there will be a need for an additional 10,549 classrooms, 1.2 million seats, 67 million textbooks and 12,131 teachers in 2006, which they already foresee will not be met by the 2006 budget. <http://70.85.145.34/~ibon/read.php?newsid=179>

### **An historical perspective**

The proportion of the national government budget going to education has varied from a high of 31.53 percent in 1957 to a low of 7.61 percent in 1981. It stood at 15.5 percent in 1987. The peso amount, however, has steadily increased, and the lower percentage reflects the effect of a larger total government budget. Although some materials were still in short supply, by 1988 the school system was able to provide one textbook per subject per student. In 1991 the Philippine government and universities had numerous scholarship programs to provide students from low-income families with access to education. The University of the Philippines [classified as a State University] followed a "socialized tuition" plan whereby students from higher income families paid higher fees and students from the lowest income families were eligible for free tuition plus a living allowance.

Source: Country Studies/Area Handbook Series, Federal Research Division of the US Library of Congress

<http://countrystudies.us/philippines/53.htm>

### Education Funding Models

The approach to education funding is guided by section 4(2) of Article XIV of the *Philippines Constitution* which requires that educational institutions to be solely owned by Filipino citizens or corporations or associations comprised of at least 60% Philippines-owned capital. Exceptions apply to educational institutions operated by religious institutions and institutions for the education of temporary foreign residents.

### International Assistance and Cooperation

With the exception of the electoral law provisions in the *Philippines Constitution* prohibiting the acceptance of financial assistance from foreign governments and organisations,<sup>540</sup> there are no national laws which prohibit or regulate the acceptance of international assistance and cooperation specifically in relation to the right to education. Article XIV of the Philippines Constitution does however contain important tax exemption provisions for educational institutions.<sup>541</sup>

### Third Elementary Education Project

The *Third Elementary Education Project* (TEEP) is a joint initiative of the Philippines Government, the World Bank and the Japan Bank for International Cooperation. The project,

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<sup>540</sup> *Philippines Constitution*, Art IX, Sec 2(5)

<sup>541</sup> *Philippines Constitution*, Art XIV, Sec 4(3) and (4)

which has been developed to improve the quality of and access to elementary education, consists of three main activities: (i) civil works, including the construction and rehabilitation of classrooms and division offices; (ii) finance and administration, including procurement, financial management, management information systems and project management; and (iii) educational development, including student assessment, textbooks and instructional materials.<sup>542</sup>

### Impact of non-state actors

The CHRP observes that debt-servicing represents the highest proportion of expenditure in the national budget, which has significant consequences for the prioritisation of education funding. The Bangko Sentral ng Pilipinas (BSP) reported that foreign debt fell by 1.2 per cent from \$US54.8 billion at the end of 2004 to \$US54.2 billion at the end of 2005.<sup>543</sup> Despite this however, roughly 70 per cent of the 2006 national budget was reportedly allocated to servicing this debt, at the expense of expenditure on government programs and services.<sup>544</sup>

### **12.5.2 Infrastructure**

Responsibility for the development of education infrastructure is shared by a number of different government departments and other organisations. The Department of Public Works and Highways sources government funds for the construction of school buildings under the *General Appropriations Act*.

Local Government Units (LGUs) are also responsible for the construction and repair of classrooms and school-buildings located within their jurisdiction. Under section 272 of the *Local Government Code*, LGUs are required to apply the proceeds of a Special Education Fund to the operation and maintenance of public schools, construction and repair of school buildings, facilities and equipment, educational research, purchase of books and periodicals, and sports development as determined and approved by the Local School Board.

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<sup>542</sup> The World Bank has reported that of its US\$ 1.158 billion allocation in 2005, 30% of the 23 projects are for education, health and social development, including a US\$910,000 grant for the preparation of the National Program Support for Basic Education. Further information: <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/0,,contentMDK:20565636~menuPK:282423~pagePK:64020865~piPK:149114~theSitePK:282386,00.html>>

<sup>543</sup> Des Ferriols, Foreign Debt Declines 1.25 to \$54.2 billion in 2005, *Philippines Star*, 1 April 2006 <http://www.newsflash.org/2004/02/be/be003389.htm>

<sup>544</sup> Ted Torres, 70% of 2006 Budget to go to Debt Servicing, *Philippines Star*, 20 September 2005, <http://www.newsflash.org/2004/02/be/be003228.htm>

Another source of infrastructure support for the building of new classrooms is the Countrywide Development Fund and the Priority Development Assistance Fund which enables members of the Philippines Senate and the House of Representatives to fund projects within their electorates.

### Third Elementary Education Project

The Third Elementary Education Project has provided technical and financial assistance to Local Government Units (LGU's) for the construction and rehabilitation of school buildings in twenty-two of the country's most economically depressed regions. Seventeen of these regions were identified by the Social Reform Agenda, while the remaining five were chosen by the Presidential Commission to Fight Poverty.

### Classroom Galing sa Mamamayang Pilipino Abroad Project

In 2003 the Department of Labor and Employment launched the *Classroom Galing sa Mamamayang Pilipino Abroad* (CGMA) project. The project is funded by contributions received from overseas Filipino workers associations and communities across the Middle East, Asia, Europe, and the United States. As of 31 March 2005, more than PhP62 million has been donated by overseas Filipino workers, corporations and philanthropists for the construction of 310 classrooms in public elementary and high schools.

### Adopt-A-School Program

The Department of Education operates the Adopt-A-School Program, the objective of which is generate private sector support for the public basic education system. In the period September 2002 to January 2004 the program raised more than PhP270 million in donations. Donor assistance came in the form of classroom construction; teaching skills development, provision of basic school resources, including textbooks; computer and science laboratory equipment and school-feeding programs for children.

### Brigada Eskwela (School Brigade)

In May 2003 the Department of Education launched the Brigada Eskwela (School Brigade), a school maintenance project operated by community volunteers. In May 2004, a total of 278,170 parent-volunteers joined the program and worked on rehabilitation and maintenance

activities. In May 2005, a total of 20,563 public schools (17,861 elementary and 2,702 high schools) participated in the project.

### Armed Forces of the Philippines

The Armed Forces of the Philippines (AFP), through the AFP Engineers, also assists in the building of schools. To date, the AFP's involvement in the building of schools has resulted in the construction of 220 school buildings for 2002 and 155 school buildings for 2003. The AFP targeted the construction of an additional 48 school buildings for 2005.

### ***12.5.3 Teachers and support staff***

The *Excellence in Teachers Education Act* (Republic Act No. 7784) was introduced with the purpose of ensuring quality education for all children. Under the Act, Centers of Excellence in Teacher Education have been established to improve the quality and the competence of the teaching profession.

### Minimum education requirements for teachers

Teachers in public and private elementary schools are required to have a bachelor's degree in elementary education. Secondary school teachers are required to have a bachelor's degree in secondary education with specialisation in secondary school subjects. All teaching programs are four years in length. Non-education graduates may complete an 18-unit Certificate of Professional Education program to qualify as primary or secondary teachers. Upon completion of these programs, graduates are required, pursuant to the *Teachers Professionalisation Act* (Republic Act No. 7836), to take the Licensure Examination for Teachers.

### Professional Development

The Department of Education conducts regular in-service training for teachers at the division and regional levels. Regular district and school learning 'action cell sessions' are conducted to assist teachers to develop their classroom instruction and management skills. The National Educators Academy of the Philippines (NEAP) focuses on professional development as well as encouraging management and leadership excellence. NEAP's three main activities include: training and development; program and development; and, research and development. In the assessment of the effectiveness of public elementary and secondary schools, NEAP uses the

following criteria: (i) highly motivated learners; (ii) competent and highly committed teachers; (iii) capable and dynamic managers and administrators; (iv) an adequate and wholesome learning environment; and (v) a harmonious school-parent-community relationship.

### **Teachers and the Armed Forces: A comparison of salaries**

An entry level teacher (Teacher 1) receives a monthly salary of PhP9,939 (approx \$US183) which is equivalent to the salary of a Private in the Armed Forces.

A Chief Master Sergeant earns the same salary as the District Supervisor II of the Department of Education. District Supervisors and Principals are required to hold post-graduate (masters) qualifications while the Master Sergeant need only have completed high school.

An Assistant Professor 1 at the college level belongs to the same salary grade of a Chief Master Sergeant and District Supervisor II (salary grade 18) and receives a gross monthly pay of PhP15,841 (approx \$US292). A cadet of the Philippine Military Academy (PMA) belongs to Salary Grade 19 and receives an even higher 'subsistence allowance' than the District Supervisor who, aside from being an MA degree holder, has served the government for at least 15 years.

Source: Philippines Commission on Human Rights

## **12.6 Accessibility**

### **12.6.1 Non-discrimination**

#### Relevant Legislation, Government Policies and Programs

The CHRP reports that in response to the needs of special groups, the government provides, through the Department of Education, the Commission on Higher Education (CHED), and the Technical Education and Skills Development Authority (TESDA), special educational services which include:

- **Non-formal education** which is any organized school based educational activity aimed at attaining specific learning objectives for a particular clientele, especially the illiterate, adults, and out of school youths;
- **Technical-vocational education** which is any non degree program at the post-secondary education level leading to proficiency in skills;
- **Work education** or practical arts which provides basic education to develop proper attitudes toward work; and
- **Special education** which develops the capabilities of individuals who are physically, mentally, emotionally, socially or culturally disabled as well as gifted children. In terms

of school practices and services, the clientele is served with a modified education program.

### Measures to guarantee equal access to education

The Bureau of Alternative Learning Systems (BALS) implements programs for people who have not received or completed their primary education. Such programs and projects include Non-formal Education Accreditation and Equivalency System, Basic Literacy Mobile Teacher Project, Basic Literacy Thru Service Contracting Scheme Project and the *Balik-Paaralan Para sa Out-of-School Youth Adult Project*.

Functional literacy programs, which are geared toward increasing the numerical ability and communication skills of the population, are also being implemented for out-of-school youths and adults in remote communities.

The government administers the Philippine Education Placement Test (PEPT) for the benefit of people who wish to continue with their schooling after stopping for a number of years. PEPT is a paper-pencil test which measures and accredits the non-formal learning experiences of the out-of-school youth so that they can qualify for re-entry and placement in the formal school system.

### Indigenous communities

Section 30 of the *Indigenous Peoples Rights Act of 1997* (Republic Act No. 8371) provides that indigenous cultural communities shall have equal access to the education system and a range of education programs and initiatives. The *Select Ethnic Group Educational Assistance Program* provides adult education programs for indigenous communities. The programs include subjects such as basic literacy and mathematics classes. An alternative education program for indigenous children has been developed by the Department of Education to meet the needs of children in indigenous communities.

### Children in Mindanao

Confronted with the severe lack of teachers and classrooms compounded by the distance of the schools from their homes, many children in remote *sitios* and mountainous communities in Mindanao are not able to proceed and finish either primary or elementary education. In response to this, the *Basic Education Assistance for Mindanao* (BEAM) was established.



BEAM is a Department of Education project funded by the Government of the Philippines and the Government of Australia.

BEAM aims to improve access to formal education in Mindanao. The project introduces distance learning as an approach to the delivery of classes, more particularly for remote and isolated communities. To ensure that these pupils will be able to proceed without having to walk and attend the daily classes in the nearest elementary public school (on the average a daily hike of 2-4 hours), classes are delivered right in their homes through a distance learning strategy.

### Children living in situations of armed conflict

The *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*, (Republic Act No. 7610) seeks to ensure the survival and protection of children in situations with on-going armed hostilities. Under the law, the Government ensures the delivery of basic services, provides physical and psychological recovery services, and protects and promotes the rights of children in situations of armed conflict.

Section 13 of the *Juvenile Justice and Welfare Act 2006* (Republic Act No. 9344) stipulates:

Educational institutions shall work together with families, community organizations and agencies in the prevention of juvenile delinquency and in the rehabilitation and reintegration of child in conflict with the law. Schools shall provide adequate, necessary and individualized educational schemes for children manifesting difficult behavior and children in conflict with the law. In cases where children in conflict with the law are taken into custody or detained in rehabilitation centers, they should be provided the opportunity to continue learning under an alternative learning system with basic literacy programs or non-formal education accreditation equivalency system.

### Assistance for tertiary students

The Philippines Government administers and funds a number of scholarship programs for tertiary students.<sup>545</sup>

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<sup>545</sup> State Scholarship Program; National Integration Study Grant Program; Selected Ethnic Group Educational Assistance Program; CHED-DND-NPUDC Grant Program for MNLF Officer Integreees; OPAPP-CHED Study Grant for Rebel Returnees; Private Education Student Financial Assistance Program; Study-Now-Pay-Later Plan Program; Student Loan Program for the Bicol Region; Student Loan Program for Centers of Excellence; CHED Scholarship Program for Bright Mindanaoan Muslim; Student Scholarship Program in BSED Major in Science and Mathematics for Selected State Colleges and Universities; College Faculty Development Program; CHED Special Study Grant Program for Congressional Districts; College Faculty Development Program; Post Baccalaureate Scholarship Program for College Faculty Members from the Underserved

### ***12.6.2 Gender parity and gender equality***

Article II, section 15 of the Philippines Constitution states:

The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

It is unknown whether specific legislation or government policies and programs addressing gender parity and gender equality with relevance to education currently exists.

The CHRP reports that data for the school year of 2003-2004 records girls as having a higher participation rates than boys at both elementary school (girls: 82.59%; boys: 80.88%) and high school (girls: 51.19%; boys: 42.97%). Girls also recorded higher completion rates at both elementary school (girls: 66.86%; boys: 57.76%) and secondary school (girls: 63.7%; boys: 48.77%).

According to the CHRP, more women than men are entering and completing higher education in the Philippines. In the academic year 2001-2002, women represented 55% of all higher education enrolments. Women comprised 60% of all university graduates for the same period. The CHRP reports that the entry of women into 'traditional' male-dominated disciplines continues to increase. In technical-vocational education and training (TVET) there is an almost equal distribution in enrolment figures for men and women at the national level, however the CHRP notes that there are disparities between the regions.

### ***12.6.3 Physical accessibility***

There are a number of issues which impact upon physical access to schools and other educational institutions in the Philippines. The CHRP describes the geographical distribution of schools as a problem, with schools not being centrally located in most *barangays* (villages). It also notes the disruption caused by military armed operations and the impact of internal armed conflict. Schools are often used as evacuation centres during periods of armed conflict as well as at times of natural disasters.

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Islands off Luzon; CHED-Supported Second Congressional District of Davao Oriental Scholarship Program; and the UP-CHED Scholarship Program.

## 12.6.4 Economic accessibility

### Primary Education

Article XIV, Section 2 of the Philippines Constitution stipulates:

The State shall establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school-age.

The Bureau of Elementary Education is responsible for ensuring access to quality elementary education. Its focus is on the provision of social services, targeting public resources and programs towards socially disadvantaged regions and specific communities.<sup>546</sup> The Bureau's key programs and projects include:

#### **Multigrade Program in Philippine Education (MPPE)**

The MPPE program is designed to improve access to quality elementary education through the opening of complete multigrade classes and completion of incomplete schools in far-flung *barangays*. It also provides instructional materials, training, and school buildings and assists with the development of community support schemes.

#### **Preschool Service Contracting Program**

The Preschool Service Contracting Program is an alternative delivery system to provide preschool education to prospective Grade I enrollees throughout the country through contracting with private preschool providers. Preschool classes are organized in the 5th and 6th municipalities and urban poor areas and are provided preschool tuition and activities for 6 months.

#### **SPED Personnel Enhancement Program**

The SPED Personnel Enhancement Program conducts short term summer/semester courses, seminar or training workshops and national conferences with the objective of improving the capabilities of regular and special education teachers, administrators, supervisors and other service providers in addressing the educational needs of gifted children and children with disabilities.

#### **Resource Materials Development for Children with Special Needs**

The development and production of various resource and instructional materials for children with special needs include textbooks in braille and in large print, Handbook on Inclusive Education, Reference or Guide Materials for Teachers of Children with Learning Disabilities and Learning Competencies for the Gifted in Grades I-III and Enrichment materials in six learning areas including Computer Education.

#### **Early Intervention Program for Children with Disabilities**

<sup>546</sup> <[http://www.deped.gov.ph/about\\_deped/organizationlinks.asp?id=11](http://www.deped.gov.ph/about_deped/organizationlinks.asp?id=11)>

This program focuses on the training of special education teachers and social worker as facilitators to provide parents and other community volunteers with knowledge and skills on educational intervention that should be provided to infants, toddlers and preschoolers under the age of six who are disabled or those with developmental delays. The program utilizes the Filipino Adaptation of the Portage Guide to Early Education.

#### **Standards for Quality Elementary Education (SQEE)**

This project intends to generate competency standards for the workforce in all levels of elementary education. It draws upon the rationale that the improvement of instruction is influenced, to a certain degree, by setting standards for what the students, as well as other education stakeholders, should know and be able to do

### Secondary Education

Section 2 of the *Free Public Secondary Education Act of 1988* (Republic Act No. 6655) stipulates:

It is the policy of the State to provide for a free public secondary education to all qualified citizens and to promote quality education at all levels.

Section 3 of the *Act* is relevant to the issue of school fees:

Definitions — for purposes of this Act, the following terms shall mean:

- (a) Free Public Secondary Education — Means that the students enrolled in secondary course offerings in national high schools, general comprehensive high schools, trade, technical, vocational, fishery and agricultural schools, and in schools established, administered, maintained and funded by local government units, including city, provincial municipal and barangay high schools, and those public high schools which may be established by law, shall be free from payment of tuition and other schools fees;
- (b) Tuition Fee — Refers to the fee representing direct costs of instruction, training and other related activities and for the students' use of the instruction and training facilities;
- (c) Other School Fees — Refer to those fees which cover the other necessary costs supportive of instruction, including but not limited to medical and dental, athletic, library, laboratory and Citizens Army Training (CAT) fees.

However, fees elated to membership in the school community such as identification cards, student organizations and publications may be collected, provided that non-payment to these fees shall not in any case be a bar to the enrolment or graduation of any student.

The Bureau of Secondary Education (BSE) is responsible for providing access to quality secondary education. It is responsible for establishing secondary schools where there are none, and reviews the overall structure of secondary education as regards curriculum, facilities, and teachers' in-service training.<sup>547</sup> The Bureau's key programs and projects relevant to economic accessibility to secondary education include:

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<sup>547</sup> <[http://www.deped.gov.ph/about\\_deped/organizationlinks.asp?id=12](http://www.deped.gov.ph/about_deped/organizationlinks.asp?id=12)>

**GASTPE (Government Assistance to Student and Teachers in Private Education)**

The Government through the Education Service Contracting (ESC) scheme and the Tuition Fee Supplement has entered into a contract with the private schools in order to accommodate those who otherwise will not be able to access free public secondary education. As of 15 January 1999, the ESC had 374,918 student beneficiaries in 1122 participating schools, while the TSF has 162,966 grantees in 638 participating schools.

**Self-Instructional Packages in SRA (Social Reform Agenda) Provinces**

The program provides instructional materials to prevent students from quitting schools due to poverty or illness. It provides students with opportunities to make up for missed lessons and complete their high school education.

**Back to School for Out-Of-School Adults (BP-OSA)**

Age need not be a deterring factor for those who wish to pursue secondary education. The BP-OSA is a novel alternative delivery system that provides out-of-school adults high school education and assistance on entrepreneurial and employable skills for initial job opportunity. There are presently 31 secondary schools all over the country serving almost 1381 adult learners.

**Project EASE (Effective and Affordable Secondary Education)**

Project EASE caters for students who cannot attend class regularly due to personal, economic or financial reasons. It complements the existing formal system to make secondary education more accessible to students in disadvantaged situation. By providing modules, an EASE student can enter into a contract with the school to study at home for a period of time until became ready to return of formal school system.

Higher Education

The CHRP reports that the cost of higher education in the Philippines has increased substantially in recent years. It estimates that the cost of university education now ranges from PhP5000 to PhP90,000 per year. Tuition fees vary depending upon the tertiary institution. The wide range is due to the difference in the quality of education available from the different classes of tertiary education. The University of the Philippines for example charges PhP300.00 per unit.<sup>548</sup> This cost is supplemented with government support, enabling the University to provide quality education.

According to the CHRP, the issue of the cost of tertiary education is addressed to a certain extent by the large number of state universities and colleges. In 2005 there were 174 public

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<sup>548</sup> A course or subject in college is usually two or three units. One course unit is equivalent to 14 to 18 hours of lecture or class contact time.

tertiary level institutions which receive some form of public funding, including: 111 State Universities and Colleges, 47 Local Universities and Colleges, one Supervised Higher Education Institution, five Special Higher Education Institutions, and 10 Other Government Schools (OGS). Comparatively, there were 1431 private colleges and universities which are totally dependent on student tuition fees.

The CHRP notes that in addition to easing the cost of tertiary education, government-supported institutions provide broader access because they are able to reach out to students located in the rural and remote areas. Many of these institutions however suffer from inadequate and under-resources teaching faculty and facilities, impacting on the quality of education.

## **12.7 Acceptability**

### ***12.7.1 Quality education and minimum standards***

#### Relevant national institutions / Specialised Agencies

The Council for the Welfare of Children (early childhood education policies); the Department of Education (elementary and secondary education); and the Commission on Higher Education (tertiary education) have responsibility for the implementation of the right to education. In the field of non-formal education, the primary institution is the Technical Education and Skills Development Authority (TESDA) and the Department of Social Welfare and Development.

#### Indicators

The Department of Education table (below) provides an overview of indicators and statistics for elementary and secondary schools in the Philippines for the school year 2003-2004.<sup>549</sup>

#### **BASIC EDUCATION INFORMATION SYSTEM INDICATORS IN PUBLIC ELEMENTARY AND SECONDARY EDUCATION SY 2003-2004**

#### **TOTAL PHILIPPINES**

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<sup>549</sup> Department of Education, < <http://www.deped.gov.ph/factsandfigures/factslinks.asp?id=9>>. An extended description of these statistics is available in the response of the Philippines Commission on Human Rights to the APF questionnaire.

INDICATORS	ELEMENTARY			SECONDARY		
	Total (MF)	Male (M)	Female (F)	Total (MF)	Male (M)	Female (F)
GER in ECCD	10.09%	9.80%	10.38%			
% of Gr.1 w/ ECD Exp.	53.60%	52.79%	54.53%			
App. Intake Rate (AIR)	121.55%	126.97%	115.85%			
Net Intake Rate (NIR)	43.88%	41.88%	45.99%			
Gross Enro Ratio (GER)	98.25%	99.07%	97.40%	67.33%	64.34%	70.38%
Net Enro Ratio (NER)	81.72%	80.88%	82.59%	47.03%	42.97%	51.19%
CSR (Grade VI / Year IV)	63.57%	59.50%	68.13%	60.41%	53.42%	67.68%
Completion Rate	62.06%	57.76%	66.86%	56.07%	48.77%	63.70%
Coefficient of Efficiency	78.41%	74.83%	82.19%	69.95%	63.60%	76.08%
Years Input Per Graduate	7.65	8.02	7.30	5.72	6.29	5.26
Graduation Rate	97.16%	96.41%	97.88%	91.77%	89.71%	93.57%
Ave. Promotion Rate	94.53%	93.28%	95.86%	85.61%	80.58%	90.45%
Ave. Repetition Rate	2.35%	3.04%	1.62%	2.40%	3.70%	1.14%
Ave. School Leaver Rate	9.08%	10.33%	7.73%	15.50%	18.80%	12.23%
Transition Rate	96.82%	95.80%	97.86%	90.68%	93.69%	87.81%
Ave. Failure Rate	4.09%	4.98%	3.15%	8.00%	10.72%	5.37%
Retention Rate	92.72%	91.25%	94.31%	87.16%	83.40%	90.86%
Ave. Dropout Rate	1.37%	1.74%	0.99%	6.40%	8.70%	4.18%

Source: BEIS Data-Performance Indicators, SY 2003-2004  
Prepared by: RSD-OPS (1/20/2006)

### 12.7.2 Discipline

The CHRP advises that in relation to the use of disciplinary methods within the education system, the *Special Protection of Children Against Abuse, Exploitation and Discrimination Act* (Republic Act 7610) specifically prohibits all forms of child abuse. Section 2 of the Act stipulates:

The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

### 12.7.3 Curriculum

#### Human rights education

Human rights education is incorporated in elementary and secondary education curriculum as part of Values Education. In higher education curriculum, it is offered as an elective course usually integrated within public administration and social science courses.

#### ***12.7.4 Parents / Legal Guardians***

The rights of parents to choose the educational institution and program for their children are recognised under Presidential Decree No. 603 of the *Child and Youth Welfare Code*. Article 12 of the Decree stipulates:

The schools and other entities engaged in non-formal education shall assist the parents in providing the best education for the child.

In relation to cooperation between parents and teachers, Article 77 of the Decree stipulates:

Parent-Teacher Associations – Every elementary and secondary school shall organize a parent-teacher association for the purpose of providing a forum for the discussion of problems and their solutions, relating to the total school programs, and for insuring full cooperation of parents in the efficient implementation of such of such program. All parents who have children enrolled in a school are encouraged to be active members of its PTA, and to comply with whatever obligations and responsibilities such membership entails.

Parent-Teacher associations all over the country shall aid the municipal and other local authorities and school officials in the enforcement of juvenile delinquency control measures, and in the implementation of programs and activities to promote child welfare.

#### ***12.7.5 Religious and cultural practices, languages of minority groups***

Article 15 of Presidential Decree No. 603 stipulates:

Spiritual Values: The promotion of the child's spiritual well-being according to the precepts of his religion should, as much as possible, be encouraged by the State.

### **12.8 Adaptability**

#### ***12.8.1 Education and Work***

The minimum age of employment in the Philippines is 15 years of age, subject to a number of exceptions, including requirements relating to education, which are stipulated under Section 12 of the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*.

Children below fifteen (15) years of age shall not be employed except:

- 1) when a child works directly under the sole responsibility of his parents or legal guardian and where only members of the employer's family are employed: Provide, however, that his employment neither endangers his life, safety, health and morals, nor impairs his normal



- development: Provided further, that the parent or legal guardian shall provide the said minor child with the prescribed primary and/secondary education; or
- 2) Where a child's employment or participation in public entertainment or information through cinema, theater, radio or television is essential: Provided, the employment contract is concluded by the child's parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment; and Provided, that the following requirements in all instances are strictly complied with:
    - (a) The employer shall ensure the protection, health, safety, morals and normal development of the child;
    - (b) The employer shall institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and
    - (c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child

In the above exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirements.

The Department of Labor and Employment shall promulgate rules and regulations necessary for the effective implementation of this Section.”

### ***12.8.2 Education for disadvantaged groups***

#### Working Children

The CHRP reports that with the introduction of the *Free Public Secondary Education Act* (Republic Act No. 6655) in 1998, the combined effect of the availability of free secondary education and public advocacy directed at curtailing child labour, the number of working children dropped from 932,000 in 1996 to 831,000 in 1998.

#### Special Program for Students

The Special Program for Students (SPES) is a joint undertaking of the Department of Labour and Employment, the Department of Education and the Department of Finance. The objective of SPES is to provide education opportunities for children from economically disadvantaged families. The program encourages students to pursue their education by undertaking employment during the summer and Christmas vacations and using this income to support their further studies.

## Special Program for Persons with Disabilities

The TULAY program (Tulong Alalay sa Taong May Kapansanan) is a special program for persons with disabilities. TULAY is a program of the Bureau of Local Employment under RA 7277 and Proclamation No. 125 which apply the provisions of ILO Convention 159 (1983), Vocational Rehabilitation and Employment (Disabled Persons).

### ***12.8.3 Education for Women***

Article 5 of *Executive Order 209 (Family Code of the Philippines)* provides that the minimum age for marriage of males and females is 18 years.

The CHRP reports that while there is no specific legislation relating to pregnancy, reports of private schools (often Roman Catholic) expelling girls upon falling pregnant (or requiring them to take a leave of absence) are not uncommon.

## Productivity Skills Capability Building for Disadvantaged Women

The Productivity Skills Capability Building for Disadvantaged Women is a project coordinated by the Department of Social Welfare and Development. It provides skills training in sewing, rattan and toy crafts, food processing and preservation, ceramics, loom weaving, and home aide service. It also provides opportunity for women to improve their understanding and practice of maternal and personal care, self-enhancement, community participation, and livelihood as well as social communication skills development. From 1995 to 1999, a total of 164,821 disadvantaged women across the country participated in the program. Of this number, a total of 115,374 women were absorbed in the labor force either through self or open employment, sheltered workshop/community manufacturing or sub-contract jobs.

## Women's Business Council

The Women's Business Council of the Philippines has sponsored entrepreneurial development courses for women with disabilities and Business Improvement and Survival Courses to develop entrepreneurial awareness and skills among women. One of the positive gains noted in providing productivity skills and capability-building programs is that training graduates were found to be more assertive and self-confident, more active in community

activities, had improved decision-making capabilities and more aware of their rights as women and entrepreneurs.

### TESDA Women's Center

The TESDA Women's Center was established in 1998 to contribute to the improvement of the socio-economic status of women through training, research and advocacy in collaboration with public and private organizations and institutions in Asia-Pacific Region. It implements technology-based training and empowerment/social skills training that cater to the urban poor women, women from the rural areas, women youth, returning women migrant workers, wives of overseas workers/seamen, and women displaced workers.

The technology-based training has the following levels: pre-employment training (4-6 months); skills upgrading (1-2 months); comprehensive trainers training (18 months); and training methodology (80 hours). This training program covers both the traditional (food processing, crafts-gifts and housewares, garments, and hotel and restaurant management and non-traditional (automotive, ceramics, electronics, jewelry, and metals/welding) courses. Since its establishment in 1998, the TWC has produced 1,569 graduates in pre-employment skills training. The empowerment/social skills training include entrepreneurship development, gender sensitivity, leadership, work ethics and values development, cooperative development, community organizing, and advocacy and social marketing.

#### ***12.8.4 Special Needs Education***

In the Philippines, responsibility for special needs education rests with the Special Education Division of the Bureau of Elementary Education.<sup>550</sup> The Special Education Division develops policies, plans and programs for the preparation of instructional materials and the evaluation of programs in special education. It conducts studies and develops standards of programs and services for special learners. It plans for prototype in-service education programs to upgrade the competencies of administrators, supervisors, coordinators, teachers as well as the non-teaching special education personnel. It also establishes and strengthens partnerships with agencies concerned with the education and welfare of children with special needs.

The Philippine Printing House for the Blind is an attached office of the Special Education Division. It is responsible for the production of Braille books and other education materials. It

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<sup>550</sup> <http://www.deped.gov.ph/quicklinks/quicklinks2.asp?id=34>

distributes Braille books and supplies to schools with programs for the visually impaired students.

<b>2004-2005 statistics for students with special education needs</b>	
*156,270	children with special needs are enrolled in schools
77,152	are mentally gifted/fast learners (G/FL)
79,118	are children with disabilities <ul style="list-style-type: none"> <li>• 40,260 learning disabled (LD)</li> <li>• 11,597 hearing impaired (HI)</li> <li>• 2,670 visually impaired (VI)</li> <li>• 12,456 mentally retarded (MR)</li> <li>• 5,112 behavior problem (BP)</li> <li>• orthopedically handicapped (OH)</li> <li>• 5,172 autistic children (Au)</li> <li>• 912 speech defectives (SD)</li> <li>• 142 chronically ill (CI)</li> <li>• 32 children with cerebral palsy (CP)</li> </ul>
*2,149	schools offering SPED programs <ul style="list-style-type: none"> <li>• 4 national special schools</li> <li>• 450 private special schools</li> <li>• 151 recognized Special Education Centers</li> <li>• 1,544 regular schools with SPED programs</li> <li>• 4,034 Special Classes</li> </ul>

**FACT SHEET  
BASIC EDUCATION STATISTICS**

ELEMENTARY	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003 <sup>1</sup>	2003-2004 <sup>2</sup>	2004-2005 <sup>3</sup>	SECONDARY	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003 <sup>1</sup>	2003-2004 <sup>2</sup>	2004-2005 <sup>3</sup>
	<b>Schools</b>	39,071	39,539	40,242	40,885	40,948	41,348		41,654	<b>Schools</b>	7,017	7,197	7,503	7,779	7,836
Public	35,387	35,848	36,569	36,284	36,302	36,759	37,080	Public	4,116	4,214	4,335	4,427	4,393	4,439	4,509
Private	3,684	3,671	4,193	4,521	4,646	4,589	4,574	Private	2,901	2,983	3,168	3,352	3,391	3,331	3,331
<b>Enrollment</b>	12,502,924	12,707,788	12,760,243	12,878,688	12,980,743	12,986,348	13,015,487	<b>Enrollment</b>	5,135,251	5,205,446	5,401,867	5,601,008	5,644,192	5,272,099	5,312,031
Public	11,562,181	11,786,622	11,837,582	11,945,165	12,056,162	12,065,686	12,089,265	Public	3,767,159	3,833,210	4,156,185	4,519,815	4,524,789	5,027,847	5,043,776
Private	940,343	921,166	922,661	933,439	924,581	920,662	926,222	Private	1,348,092	1,274,236	1,245,682	1,081,193	1,219,403	1,244,252	1,268,255
<b>Teachers (not including lab. schs. of SUCs)</b>	359,944	359,798	364,018	366,276	371,889	376,954	380,233	<b>Teachers (not including lab. schs. of SUCs)</b>	145,977	145,561	147,728	152,826	157,612	150,728	151,074
Public	329,198	329,158	331,827	331,549	336,140	336,956	340,231	Public	107,706	107,706	109,843	112,039	115,997	110,730	115,074
Private	30,746	30,640	32,191	34,727	35,749	...	...	Private	38,271	37,855	37,885	40,787	41,615	...	...
<b>Performance Indicators :</b>								<b>Performance Indicators :</b>							
<b>Participation Rate<sup>4</sup></b>								<b>Participation Rate<sup>4</sup></b>							
(based on 7-12 yrs. population)	95.73%	96.99%	96.77%	96.33%	96.82%			(based on 13-16 yrs. population)	69.22%	69.43%	66.06%	69.39%	63.88%		
(based on 6-11 yrs. population)				90.39%	90.17%	88.77%		(based on 12-15 yrs. population)				57.99%	58.49%	59.22%	
<b>Gross Enrollment Ratio<sup>5</sup></b>								<b>Gross Enrollment Ratio<sup>5</sup></b>							
(based on 7-12 yrs. population)	118.16%	119.15%	113.45%	116.09%	...			(based on 13-16 yrs. population)	75.32%	75.34%	79.49%	83.59%	...		
(based on 6-12 yrs. population)	101.08%	101.20%	96.09%	...	...			(based on 12-15 yrs. population)				81.39%	82.47%	83.59%	
(based on 6-11 yrs. population)	116.97%	117.15%	113.57%	109.89%	108.18%	106.17%		<b>Cohort Survival Rate (6th Grade)</b>							
<b>Cohort Survival Rate (6th Grade)</b>	69.79%	69.48%	67.21%	67.13%				(based on Grade I)	47.50%	48.68%	49.76%	49.86%	42.63%		
<b>Cohort Survival Rate (EFA Grade 4)</b>	64.09%	63.46%	63.49%	69.89%	69.97%	64.35%		(based on First Year)	72.18%	72.08%	73.05%	73.16%			
								<b>Cohort Survival Rate (EFA Grade 4)</b>	78.31%	69.50%	71.68%	71.49%	66.00%	63.11%	
<b>Completion Rate (6th Grade)</b>	68.99%	68.38%	66.13%*	66.33%*	66.85%			<b>Completion Rate</b>							
<b>Completion Rate (EFA Grade 4)</b>					66.97%	62.20%		(based on Grade I)	45.12%	47.20%	48.10%*	48.39%*	50.00%		
								(based on First Year)	69.98%	69.89%	70.62%*	71.01%*	59.90%	58.22%	
<b>Dropout Rate</b>	7.57%	7.72%	7.67%	6.51%	7.30%	8.90%		<b>Dropout Rate</b>	9.88%	9.55%	8.56%	8.53%	13.03%	14.30%	
<b>Transition Rate<sup>6a</sup></b>	95.47%	95.50%	95.46%	96.24%	97.74%	97.80%		<b>Transition Rate<sup>6b</sup></b>	100.87%	99.34%	100.02%	100.75%	105.79%	101.71%	
					Grade IV	Grade IV	Grade V/7						1st Year	4th Year	
<b>Achievement Rate (MPS)<sup>7</sup></b>	50.08	49.19	51.75	...	...	...	58.73	<b>Achievement Rate (MPS)<sup>7</sup></b>	46.12	54.34	53.39	...	...	...	46.80
Mathematics	52.45	45.69	49.75	...	44.84	50.45	59.10	Mathematics	41.49	49.59	51.83	...	32.09	...	50.70
Science	49.93	48.61	49.75	...	43.98	52.59	54.12	Science	42.69	46.80	45.68	...	34.65	...	38.49
English	46.40	46.32	47.70	...	41.80	49.92	59.15	English	41.19	50.43	51.00	...	41.48	...	51.33
Hokan	51.35	55.21	33.93	...	a	a	59.35	Filipino	62.50	66.14	66.14	...	a	...	42.48
Filipino	-	58.13	37.49	...	a	a	61.75	Reading Proficiency	-	58.84	37.19	...	a	...	50.01
Percentage of Passers	79.21%	...	...	...	a	a	...	Percentage of Passers	94.76%	...	...	...	a	...	...
<b>Teacher-Pupil Ratio</b>	1:35	1:35	1:35	1:35	1:35	1:36	1:36**	<b>Teacher-Student Ratio</b>	1:35	1:35	1:36	1:38	1:38	1:42	1:41**
<b>Municipalities without Public ES</b>	4,819	4,710	4,569	3,617***	3,054***	445***	267***	<b>Municipalities without ES</b>	13	5	3	6	6	6	5

Note: The data of the laboratory schools of SUCs, CHED and TESDA supervised schools are included.

... No data available

a - Not applicable

<sup>1</sup> Private schools data are based on 90.27% and 95.00% processed school profiles for elementary and secondary schools, respectively.

<sup>2</sup> Source: BEIS-SSM & PI. Enrollment and no. of teachers in public schools does not include data of laboratory schools of SUCs, CHED & TESDA supervised schools. The no. of schools in private sector are SY 2002-2003 data and enrollment is based on projections. Performance indicators in private schools were computed based on 82.27% processed school profiles.

<sup>3</sup> Source: BEIS-Quick Counts, SY 2004-2005 (as of August 31, 2005). Enrollment and no. of teachers in public schools does not include data of laboratory schools of SUCs, CHED & TESDA supervised schools. The no. of schools in private sector are SY 2002-2003 data and enrollment is based on projections.

<sup>4</sup> The school-age population used in computing the participation rate and gross enrollment ratio in SY 2000-2001 and onwards are based on the 2000 Census of Population and Households, NSO.

<sup>5</sup> From primary (Grade IV) to intermediate (Grade V) <sup>6a</sup> From elementary to secondary level

<sup>7</sup> Source: National Education Testing and Research Center (NETRC). NEAT and NSAT were not administered in SY 2001-2002. National Achievement Test (NAT) were given in Grade IV (for elementary) and 1st year (for secondary) for Mathematics, Science and English subjects in SY 2002-2003 & SY 2003-2004. Processing of data in secondary in SY 2003-2004 is still on-going. In SY 2004-2005, NAT were given to Grade V/7 (for elementary) and Year IV (for secondary).

\* Estimates

\*\* Public only

\*\*\* Barangays not being served by an ES

## **12.9 Activities of the Philippines Commission on Human Rights**

### ***12.9.1 Mandate and Methods***

Article XIII, Section 18(7) of the Philippines *Constitution* provides the Philippines Commission on Human Rights with the power to:

Monitor the Philippine Government's compliance with international treaty obligations on human rights;

As noted above, with the Philippines a party to the ICESCR, this provision of the *Constitution* provides the CHRP with a mandate to conduct monitoring activities relevant to the protection and promotion of economic, social and cultural rights.

The CHRP reports that it uses the following methods to implement its mandate:

- Legal intervention, specifically causing the introduction of laws, decrees, executive orders, presidential memorandum orders, circulars and other similar orders relevant to the protection and promotion of human rights;
- Developing initiatives to integrate human rights into existing government education systems;
- Monitoring the compliance of the Philippines Government with its international human rights obligations, including the provision of assistance to the Education Department to implement its human rights education obligations;
- Promotion of a rights-based approach to governance by encouraging the mainstreaming of human rights in the day to day operations of government departments and agencies; and
- Acting as the central organizing agency and for the development of the Philippines Human Rights National Action Plan.

Other initiatives of the CHRP have included:

- Development of the Barangay Human Rights Action Center Program which educates local people about their rights, provides assistance to people seeking redress and mobilizes the community (including the local government) in the promotion and protection of human rights; and

- Development of Memoranda of Agreements with other government agencies as well as with civil society and other organisations to conduct human rights education and training

### ***12.9.2 Investigation of Complaints***

The CHRP advises that generally, it does not have jurisdiction to investigate all cases of violations of economic, social and cultural rights (including issues relating to the right to education). It notes in particular that in 1989 it was ordered by the Supreme Court to stop the investigation of the cases of striking public school teachers on the grounds of lack of jurisdiction over what were purely administrative cases. The CHRP reports that given this lack of jurisdiction, its investigation of cases of violations of economic, social and cultural rights has been for the purpose of monitoring compliance with international standards.

The CHRP observes that it was successful in its efforts to protect the Indigenous People's Rights Act. In its review of the legislation the Supreme Court referred extensively to an official human rights advisory published by the CHRP which stated that the Act was consistent with the Philippines Constitution. The right to education for indigenous children is protected both in the Constitution and under the Act.

### ***12.9.3 Research / Public Inquiries***

The CHRP has not conducted research and/or public inquiries on the issue of the right to education. Although it has made some progress towards integrating the study of human rights into the curricula of public elementary and secondary schools, the normative content of the right to education in relation to policies, policy implementation, learning environment, teaching and learning and the education and professional development of teachers and other personnel has not yet been formally examined.

### ***12.9.4 Identification of laws / policies / practices impacting on the right to education in the Philippines***

CHRP has identified the following laws/policies/practices that impact on the realization of the right to education:

1. Phil. Const. (Art. 14, Sec. 1) - Free Education for all from Elementary to High School
2. R.A. No. 6655 – Free Public Secondary Act of 1988
3. R.A. No. 6972 – An Act Establishing a Day Care Center in Every Barangay Instituting therein a Total Development and Protection of Children Program, Appropriating Funds Therefor, and for Other Purposes.
4. R.A. NO. 7323 – Helping Poor but Deserving Students Pursue their Education by Encouraging their Employment during Summers and/or Christmas Vacations.
5. R.A. no. 7624 – Integrating Drug Prevention and Control in the Intermediate Secondary Curricula as well as in the Non-formal, Informal and Indigenous Learning Systems and for other Purposes.
6. R.A. No. 7797 – Lengthening the School Calendar from Two Hundred (200) Days to Not More than Two Hundred Twenty (220) Class Days.
7. R.A. 8980 – An Act Promulgating A Comprehensive Policy And A National System For Early Childhood Care And Development (ECCD), Providing Funds Therefore And For Other Purposes.
8. R.A. 7880 – An Act Providing for the Fair and Equitable Allocation of the Department of Education, Culture and Sports Budget for Capital Outlay
9. R.A. 9155 – The Governance of Basic Education Act of 2001 – An Act Instituting a Framework of Governance for Basic Education, Establishing Authority and Accountability, Renaming the Department of Education, Culture and Sports as the Department of Education and for other purposes.
10. DepEd policy – Every barangay (village) shall have at least one elementary school.

### ***12.9.5 Education and Awareness Campaigns***

The CHRP has made efforts to integrate general human rights principles in the school curricula in elementary and secondary schools and also at the tertiary level. Human rights education is also provided for teachers, supervisors and principals. Education and awareness campaigns have a particular focus on children’s rights. From 1997 to 2004 the CHRP’s human rights education program has provided training for almost 12,000 teachers.

### ***12.9.6 Human Rights Education***

Since 1998 the CHRP has produced a standardised General Human Rights Curriculum and has specialised Human Rights Education and Training Programs. In conducting its programs the CHRP has focused on delivering training to the police service and armed forces and also to university academics. Training for other organisations and professions is conducted on a demand basis.

The CHRP has developed a range of training programs including a one-day human rights orientation program; a three-day human rights advocacy course; and a train-the-trainer program. The CHRP has developed training manuals and teaching exemplars for teachers and students alike. The CHRP has also conducted conferences, workshops and public consultations and has



launched popular initiatives such as human rights essay-writing contests and song-writing and painting and drawing competitions.

#### ***12.9.7 Collaboration with Civil Society***

The CHRP has collaborated with a wide range of local and international organisations on the issue of the right to education, including UNICEF, the Asian Development Bank and the International Committee of the Red Cross. Soroptimist International Philippines works with the CHRP in supporting the work of Barangays. Non-governmental organisations and other human rights groups work with the CHRP on a wide range of issues including internally displaced persons, children's rights, migrant workers and women's rights.

The CHRP has spearheaded the GO-NGO-Academe partnership for the development of the Philippines Decade Plan on Human Rights Education to produce modules and sectoral plans. The CHRP also co-organized and contributed to the SEAN Writing Workshop on Human Rights Lesson Plans for "SEAN Schools funded by CIDA-SEAFILD. The workshop included the participation of information officers and curriculum writers of ASEAN National Human Rights Institutions and Education Ministries.

## 13. Qatar

### 13.1 International Law

Qatar is a party to the CERD<sup>551</sup> and the CRC.<sup>552</sup> Qatar is not a party to the ICESCR or the CEDAW. Qatar is not a party to the UNESCO Convention Against Discrimination in Education.

Qatar is a party to the ILO Minimum Age Convention<sup>553</sup> and the Worst Forms of Child Labour Convention.<sup>554</sup>

### 13.2 National Law

#### 13.2.1 Constitution

Article 25 of the *Permanent Constitution of the State of Qatar of 2003*<sup>555</sup> stipulates:

Education is one of the basic pillars of social progress. The state shall ensure, foster, and endeavour to spread it.

Part Three of the *Constitution* articulates public rights and duties. Most relevantly, Article 49 stipulates:

All citizens have the right to education; and the State shall endeavour to make general education compulsory and free of charge in accordance with the applicable laws and regulations of the State.

Other relevant provisions of the *Constitution* include:

- Equality before the law and prohibition of discrimination on the grounds of sex, race, language or religion (Article 35)
- Freedom of expression of opinion and scientific research (Article 47)
- Freedom of press, printing and publication (Article 48)
- Freedom of religion (Article 50)

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<sup>551</sup> Qatar acceded to the CERD on 22 July 1976.

<sup>552</sup> Qatar ratified the CRC on 3 April 1995.

<sup>553</sup> Qatar ratified the Minimum Age Convention on 3 January 2006.

<sup>554</sup> Qatar ratified the Worst Forms of Child Labour Convention on 30 May 2000.

<sup>555</sup> *Permanent Constitution of the State of Qatar of 2003* (English translation, Ministry of Foreign Affairs of Qatar) <<http://english.mofa.gov.qa/details.cfm?id=80>>

With regards to the relevance of international law within the national jurisdiction, Article 6 of the *Constitution* stipulates:

The State shall respect the international charters and conventions, and strive to implement all international agreements, charters, and conventions it is party thereof.

### ***13.2.2 Legislation***

No information provided.

## **13.3 Overview of Education Policies and Programmes**

Primary and secondary school is compulsory in Qatar. Funding for schools falls into three categories:

1. Government schools receive full funding from the State and provide free and compulsory education to all children for primary and secondary schooling.
2. Independent schools are privately financed either by parents or by the government which subsidises the school fees if the parents are either Qatari or are employed by the Government of Qatar.
3. Private schools are privately financed by parents.

The following table provide the distribution of Qatar students in public and private schools across instruction levels (i.e. elementary and secondary) in the 1999/2000 school year.

Student Distribution, Enrolment and Completion: 1999/2000<sup>556</sup>

Year	1999/2000		
Public School Elementary Level			
Item	Boys	Girls	Kindergarten
Number of Students	6,757	19,129	11,827
Enrolment Rate (%)	8.1	19.1	25.4
Completion Rate (%)	91	97	95
Average Age at Enrolment	6-8	6-8	6-8
Average Age upon Completion	11 years 10 months	11 year 5 months	10 years 2 months
Public School Intermediate Level			
Item	Boys	Girls	
Number of Students	8,462	8,440	
Enrolment Rate (%)	6.3	3	
Completion Rate (%)	90	91	
Average Age at Enrolment	11-15	11-15	
Average Age upon Completion	14 years 9 months	14 years 6 months	
Public School Secondary Level			
Item	Boys	Girls	
Number of Students	6,610	7,896	
Enrolment Rate (%)	4.4	2	
Completion Rate (%)	69	84	
Average Age at Enrolment	14-18	14-18	
Average Age upon Completion	17 years 6 months	17 years 5 months	
Private Education Nursery School			
Item	Boys	Girls	
Number of Students	2,682	2,427	
Enrolment Rate (%)	74	74.2	
Completion Rate (%)	--	--	
Average Age at Enrolment	2 years 9 months	2 years 9 months	
Average Age upon Completion	5 years	5 years	
Private Education Elementary School			
Item	Boys	Girls	
Number of Students	4,593	3,072	
Enrolment Rate (%)	28	30	
Completion Rate (%)	99	100	
Average Age at Enrolment	4 years 9 months	4 years 9 months	
Average Age upon Completion	12 years 9 months	12 years 9 months	
Private Education Intermediate			
Item	Boys	Girls	
Number of Students	1,173	494	
Enrolment Rate (%)	14	23	
Completion Rate (%)	98	98	
Average Age at Enrolment	10 years 9 months	10 years 9 months	
Average Age upon Completion	17 years 9 months	17 years 9 months	
Private Education Secondary			
Item	Boys	Girls	

<sup>556</sup> Supreme Council for Family Affairs, *Report containing additional information about the initial report submitted by the State of Qatar to the Committee on the Rights of the Child on implementation of the Convention on the Rights of the Child (CRC/C/51/Add.5)*, p7-12  
 < <http://www.unhchr.ch/html/menu2/6/crc/doc/past.htm> >

Number of Students	420	483	
Enrolment Rate (%)	12	40	
Completion Rate (%)	81	82	
Average Age at Enrolment	13 years 9 months	13 years 9 months	
Average Age upon Completion	20 years 9 months	20 years 9 months	
Technical School for Boys			
Item	Business	Industry	Business Tech.
Number of Students	220	274	100
Enrolment Rate (%)	8.2	2.6	8
Completion Rate (%)	78	51	-
Average Age at Enrolment	14-18	14-18	14-18
Average Age upon Completion	19 years 2 months	18 years 11 months	--

### 13.4 Justiciability

The National Human Rights Committee of Qatar (NHRCQ) reports that there is little case law regarding the right to education. The NHRCQ has referred to a reported case of 2005 in which a child who moved from one school to another was transferred to a lower academic year. In Qatar each school has its own set of academic standards as approved by the authorities which can explain a differentiation in academic years of students between schools. Schools have the discretion to test the academic ability of students in order to assess which grade/year they are to put in.

A mechanism has been established whereby individuals who wish to voice their concerns or complain about a particular issue with reference to education are directed to the relevant authority. Complaints relating to government schools can be submitted to the Ministry of Education. Complaints relating to private and independent schools can be submitted with the Supreme Education Authority, a body which has oversight of these schools.

The Supreme Council for Family Affairs has reported on the procedure of the Ministry of Education in relation complaints:

The school social counsellor investigates students' behavioural problems and deals with them in cooperation with the legal guardian and the school. If the counsellor observes any violation of a student's rights or act of aggression against him or her, or receives a complaint from a student in this regard, he looks into the situation and sends a report about it to the Department of Students' Individual Welfare of the Social Education Department of the Ministry of Education, which is the body responsible for monitoring and counselling students with behavioural or educational

problems. In its turn, the department follows up on the case with the child's parents and refers the matter to the Ministry of the Interior, if the child's protection so requires.<sup>557</sup>

## 13.5 Availability

### 13.5.1 Expenditure

#### Overview of Government Expenditure

In its report to the Committee on the Rights of the Child in 2001, the Qatar Supreme Council for Family Affairs provided information about government expenditure on education as outlined in the table below.<sup>558</sup> In the period 1996-1999, expenditure on education was reported as accounting for 17.9 percent of the government's total expenditure.<sup>559</sup>

Qatar Government spending on education (Qatari riyals)			
Year	1996/1997	1997/1998	1998/1999
Expenditure			
Wages and salaries	957,083	1,046,489	1,089,292
Current expenditure	197,789	227,666	233,496
Capital expenditure	2,540	48,835	54,817

In its concluding observations the Committee noted the "significant investment in and increased budgetary allocation for...education..." and recommended that Qatar:

- (a) continue and strengthen its efforts to allocate the maximum available resources – human and financial – to ... education...
- (b) ...
- (c) Systematically assess the impact of budgetary allocations on the implementation of child rights.<sup>560</sup>

#### International Assistance and Cooperation

Qatar accepts international assistance and works in cooperation with international organisations with respect to the right to education. Qatar joined UNESCO on 27 January 1972. UNESCO has

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<sup>557</sup> Supreme Council for Family Affairs, *Report containing additional information about the initial report submitted by the State of Qatar to the Committee on the Rights of the Child on implementation of the Convention on the Rights of the Child (CRC/C/51/Add.5)*, p20  
< <http://www.unhchr.ch/html/menu2/6/crc/doc/past.htm>>

<sup>558</sup> Ibid. p4

<sup>559</sup> Ibid, p4

<sup>560</sup> Committee on the Rights of the Child, *Concluding Observations: Qatar*, CRC/C/15/Add.163, 6 November 2001

an office in Doha, Qatar which opened in 1976 and represents UNESCO in Bahrain, Kuwait, Oman, Saudi Arabia and Qatar.

### ***13.5.2 Infrastructure, teaching staff and teaching facilities***

According to the NCHRQ, schools in Qatar have resources available to support an adequate infrastructure, teaching staff and teaching facilities. It says that modern facilities are the standard for most schools. This modern infrastructure includes classrooms, library, sanitation facilities, safe drinking water, as well as qualified teachers for all levels of education. The Supreme Education Authority and the Ministry of Education set the standards and monitor school facilities to ensure that they comply with these standards.

## **13.6 Accessibility**

### ***13.1 Non-Discrimination***

According to the NCHRQ, government schools are available and accessible to all individuals on the basis on the anti-discrimination article in the Constitution.

### ***13.2 Gender parity and gender equality***

No information provided.

### ***13.3 Physical accessibility***

According to the NHRCQ, physical access to schools is not a significant challenge because most government schools in Qatar have a bus to provide transport services for students.

### ***13.4 Economic Accessibility***

Higher Education

The NHRCQ advises that there are fees imposed for higher education, however no further information has been provided.

### ***13.5 Non-Formal Education***

Community Learning Centres operate non-formal education programmes and are open to individuals to take up courses. Literacy courses are available free of charge.

## **13.6 Acceptability**

### ***13.6.1 Quality Education and minimum standards***

The Supreme Education Authority and the Ministry of Education are responsible for ensuring the right to education is upheld and that the education system maintains minimum standards.

### ***13.6.2 Discipline***

The Committee on the Rights of the Child has expressed concerns in relation to the use of corporal punishment within schools:

53. Noting the 1993 Ministerial Decree which bans corporal punishment in schools, the Committee remains concerned that this issue is not addressed effectively.

54. The Committee recommends that the State party raise awareness of the negative impact of corporal punishment among teachers and other professionals working in schools, and take other appropriate measures to prevent and eliminate it.<sup>561</sup>

### ***13.6.3 Curriculum***

The Committee on the Rights of the Child has made a number of observations and recommendations relevant to consideration of the education curriculum in Qatar:

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<sup>561</sup> Committee on the Rights of the Child, *Concluding Observations: Qatar*, CRC/C/15/Add.163, 6 November 2001



51. The Committee is concerned that the aims of education presented in the report do not adequately reflect the aims outlined in article 29 of the Convention, in particular that:

- (a) The system of public education continues to emphasize rote learning rather than analytical skills development and is not child-centred;
- (b) The choice of some preparatory- and secondary-level programmes may be restricted for girls; and
- (c) The development and respect for human rights, tolerance and equality of the sexes and religious and ethnic minorities are not explicitly part of the curricula.

52. The Committee recommends that the State party, taking into account the Committee's general comment No. 1 on the aims of education:

- (a) Undertake a process of curriculum and teaching methodology reform - with the full participation of children - which stresses the importance of critical thinking and problem-solving skills development;
- (b) Direct education to the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (c) Include in the curricula, human rights education, including on children's rights, particularly with respect to the development and respect for human rights, tolerance, and equality of the sexes and religious and ethnic minorities; and
- (d) Seek assistance from, among others, UNICEF and UNESCO.

## **13.7 Adaptability**

### ***13.7.1 Education and work***

Secondary school in Qatar consists of six grades and is generally completed within six years. With a starting age of 11 or 12 most students will complete their secondary schooling by the age of either 17 or 18.

Children under the age of 16 are not permitted to work. Article 86 of the *Labour Law No 14* (2004) articulates the minim age of employment:

A child who has not attained the age of sixteen may not be employed in a work of whatsoever nature and shall not be permitted to enter into any of the place of work.

The *Labour Law No. 14* provides a range of restrictions regarding the employment of individual aged between sixteen and eighteen (defined as juveniles under Article 1 as “any natural person

who has reached the age of sixteen but has not reached the age of eighteen.”) Article 87 of the Labour Law stipulates:

A juvenile may not be employed without the consent of his father or guardian and the issuance of a special permission from the Department.

If the juvenile is a Qatari pupil an approval from the Minister of Education shall be obtained. The Juveniles shall not be employed in the works, where its nature and circumstance of the performance of which may cause damage to the health, safety or morals thereof. These works shall be determined by a decision of the Minister.

The Supreme Council for Family Affairs reported in 2001 that its Committee on Maternity and the Child was overseeing the “implementation of ordinances regulating camel racing in terms of safety and security on the track.”<sup>562</sup>

### ***13.7.2 Education for women***

In its report to the Committee on the Rights of the Child in July 2001, the Supreme Council for Family Affairs reported the achievements of its Women’s Affairs Committee, which included:

The committee scrutinized the *Personal Status Bill* and helped shape the Council’s views thereon, drawing on input from experts and specialists. The committee recommended a number of amendments to the Bill which were discussed at a symposium attended by all of the interested parties from all of the relevant departments and institutions. Most of the committee’s recommendations were taken up, including a proposal about raising the minimum marrying age.

A public symposium on the Convention on the Elimination of all Forms of Discrimination against Women was convened to raise awareness of the contents and aims of the Convention.

In cooperation with the Ministry of Civil Service Affairs and Housing, the committee reviewed a new government housing project and provided input intended to assure the safety of children of divorcees and widows by providing them with suitable accommodation.<sup>563</sup>

### ***13.7.3 Special Needs Education***

In its report to the Committee on the Rights of the Child, the Supreme Council for Family Affairs noted that the achievements of its National Committee for Persons with Special Needs included

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<sup>562</sup> Supreme Council for Family Affairs, Report containing additional information about the initial report submitted by the State of Qatar to the Committee on the Rights of the Child on implementation of the Convention on the Rights of the Child (CRC/C/51/Add.5), p17.

< <http://www.unhchr.ch/html/menu2/6/crc/doc/past.htm>>

<sup>563</sup> Ibid, p18.

“efforts to integrate persons with special needs into society.”<sup>564</sup> The Supreme Council also provided a brief outline regarding Ordinance No. 49 of the Minister for Education regarding autistic children which was introduced in 1999:

Ordinance No. 49 of the Minister of Education, concerning the establishment of a committee focusing on autistic children. (The committee designs intervention programmes suitable for school children from this particular category and makes proposals concerning teaching methods, examinations, and new and appropriate educational alternatives for autistic children at regular schools).<sup>565</sup>

The Supreme Council also reported on the establishment of the Qatari Centre for gifted children:

This centre, the first of its kind in the Arab world, was set up in 2001 under the auspices of the Ministry of Education. The centre aims at offering activities, services and programmes to help gifted and exceptionally intelligent students master their intellectual abilities and use them to solve problems and make decisions. The centre is also there to help educational institutions in Qatar to design, plan and deliver educational services to gifted children. The centre further offers gifted students personalized services as well as academic and vocational counselling.<sup>566</sup>

**Number of children with disabilities, disaggregated by sex and level of educational achievement (data for the age group from birth to 18 years)**

Type of education	Sex		Total
	Male	Female	
None	504	401	905
Receiving some form of training (residing in a hospital in order to receive treatment)	21	36	47
Attending a regular school	120	100	220
Attending a special needs school	315	200	515
Grand total	960	727	1,687

Source: Qatari Association for the Treatment and Rehabilitation of Disabled Persons (July 2001)<sup>567</sup>

<sup>564</sup> Ibid

<sup>565</sup> Ibid, p25.

<sup>566</sup> Ibid, p27.

<sup>567</sup> Translator’s note: the figure in the second column, third row (36) appears to be incorrect. If changed to 26 it would be consistent with the totals given.

## 14. Republic of Korea

### 14.1 International Law

The Republic of Korea ('Korea') is a party to the ICESCR,<sup>568</sup> CERD,<sup>569</sup> CEDAW<sup>570</sup> and the CRC.<sup>571</sup> Korea is not a party to the UNESCO Convention Against Discrimination in Education.

Korea is a party to the ILO Minimum Age Convention<sup>572</sup> and the Worst Forms of Child Labour Convention.<sup>573</sup>

### 14.2 National Law

#### 14.2.1 Constitution

##### Right to education

Article 31 of the *Constitution of the Republic of Korea 1987* stipulates the right to education:

- (1) All citizens shall have an equal right to receive an education corresponding to their abilities.
- (2) All citizens who have children to support shall be responsible at least for their elementary education and other education as provided by Act.
- (3) Compulsory education shall be free of charge.
- (4) Independence, professionalism and political impartiality of education and the autonomy of institutions of higher learning shall be guaranteed under the conditions as prescribed by Act.
- (5) The State shall promote lifelong education.
- (6) Fundamental matters pertaining to the educational system, including in-school and lifelong education, administration, finance, and the status of teachers shall be determined by Act.

##### Non-discrimination and access for all

Article 11 of the *Constitution* is relevant to the issue of non-discrimination and access for all:

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<sup>568</sup> Korea acceded to the ICESCR on 10 November 1990.

<sup>569</sup> Korea ratified the CERD on 5 December 1978.

<sup>570</sup> Korea ratified the CEDAW on 27 December 1984.

<sup>571</sup> Korea ratified the CRC on 20 November 1991.

<sup>572</sup> Korea ratified the Minimum Age Convention on 28 January 1999.

<sup>573</sup> Korea ratified the Worst Forms of Child Labour Convention on 29 March 2001.

- (1) All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.
- (2) No privileged caste shall be recognized or ever established in any form.
- (3) The awarding of decorations or distinctions of honor in any form shall be effective only for recipients, and no privileges shall ensue therefrom.

### Relevance of international law in the national jurisdiction

Article 6 of the *Constitution* is relevant to the application of international law in the national jurisdiction:

- (1) Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.
- (2) The status of aliens shall be guaranteed as prescribed by international law and treaties.

### **14.2.2 Legislation**

#### Primary and Secondary Education:

Article 12 of the *Elementary and Secondary Education Act 1997 (Act No. 5438)* outlines provisions for compulsory primary and secondary education:

- (1) The State shall conduct compulsory education referred to in Article 8 (1) of the *Framework Act on Education*, and shall take necessary measures such as securing the facilities therefor.
- (2) A local government shall establish and manage elementary schools, middle schools and special schools which teach elementary and middle school courses necessary for sending all persons subject to compulsory education to school in its jurisdiction.
- (3) Where the local government has difficulty sending all persons subject to compulsory education to elementary schools, middle schools and special schools established by the local government, it may establish and manage elementary schools, middle schools or special schools jointly in consultation with any adjoining local government, or may conduct education for some persons subject to compulsory education by entrusting them to any adjoining local government or national or private elementary schools, middle schools or special schools.
- (4) Founders and managers of national or public schools and founders and managers of private schools which have been entrusted with persons subject to compulsory education pursuant to paragraph (3) shall not collect tuition fees from persons subject to compulsory education.

Article 8 of the *Framework Act on Education 1997 (Act No. 5437)* also provides:

- (1) Compulsory education shall be composed of elementary education for a period of 6 years and secondary education for a period of 3 years: Provided, That compulsory education for secondary education for a period of 3 years shall be carried out in order, taking into account the financial conditions of the State under the conditions as determined by the Presidential Decree.
- (2) Every citizen shall have a right to receive the compulsory education referred to in paragraph (1).

### Higher Education

Article 33 of the *Higher Education Act* 1997 (Act No. 5439) establishes the requirements for admission to universities and colleges:

- (1) Those who have graduated from high schools or those who have been recognized as having equivalent or higher academic background under Acts and subordinate statutes shall be qualified to enter universities and colleges (including industrial colleges, teachers' colleges, junior colleges, and air and correspondence colleges but excluding graduate school universities and colleges).
- (2) Those who hold bachelor's degree or those who have been recognized as having equivalent or higher academic background under Acts and subordinate statutes shall be qualified to enter master's degree courses and combined courses for master's degree and doctor's degree.
- (3) Those who hold master's degree or those who have been recognized as having equivalent or higher academic background under Acts and subordinate statutes shall be qualified to enter doctor's degree courses.

### Financing of Education

Article 7 of the *Framework Act on Education* 1997 (Act No. 5437) contains a general provision regarding the financing of education:

- (1) The State and local governments shall establish and execute a policy necessary to secure educational finance stability.
- (2) Matters necessary for local education subsidies and local education grants for a stable security of educational finance shall be determined by Acts.

### Minimum Age of Employment

Article 62 of the *Labor Standards Act* 1997 (Act No. 5309) establishes the minimum age of employment:

- (1) A minor under the age of fifteen shall not be employed in any work: Provided, That this shall not apply to a person with an employment permit certificate issued by the Minister of Labor under the criteria as prescribed by the Presidential Decree. <Amended by Act No. 6507, Aug. 14, 2001>

- (2) An employment permit certificate referred to in paragraph (1) shall be issued only by designating the kind of work at the request of the relevant minor himself, as far as compulsory education is not impeded.

### Minimum Age of Marriage

Article 807 and Article 808 of the *Civil Act* 1958 (Act No. 471) are relevant to the minimum age of marriage:

#### **Article 807 (Marriageable Age)**

A man who has completed his full eighteen years of age, and a woman who has completed her full sixteen years of age, may enter into matrimony.

#### **Article 808 (Marriage Requiring Consent)**

- (1) A minor shall obtain the consent of both parents in order to marry. If one parent is unable to exercise the right of consent, the minor shall obtain the consent of the other parent, and if neither parent is able to exercise the right of consent, the minor shall obtain the consent of its guardian.
- (2) An incompetent may marry by obtaining the consent of its parents or guardian.
- (3) In cases of paragraphs (1) and (2), if a minor or an incompetent does not have a parent or guardian, or its parent or guardian is unable to give consent, he may marry with the consent of its family council.  
[This Article Wholly Amended by Act No. 3051, Dec. 31, 1977]

### Minimum Age of Criminal Responsibility

Article 9 of the *Criminal Act* 1953 (Act No. 293) establishes the minimum age of criminal responsibility:

The act of a person under fourteen years of age shall not be punished.

## **14.3 Overview of Education Policies and Programs**

### ***14.3.1 Educational Framework***

The National Human Rights Commission of Korea ('NHRCK') reports that in January 2005 it expressed its support for the development of the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The NHRCK called on the government of Korea to actively participate in the process of developing the Optional Protocol.

## **14.4 Availability**

### ***14.4.1 Expenditure***

No information provided.

### ***14.4.2 Infrastructure***

No information provided.

### ***14.4.3 Teachers and Support Staff***

No information provided.

### ***14.4.4 Teaching Facilities and Materials***

No information provided.

## **14.5 Accessibility**

### ***14.5.1 Non-discrimination***

No information provided.

### ***14.5.2 Gender Parity and Gender Equality***

No information provided.

### ***14.5.3 Physical Accessibility***

The NHRCK reports that with a significant population decline in the agricultural areas and fishing districts of Korea, many schools have struggled to operate effectively. Between 1995 and



2003 there was a 14 per cent decrease in the student population (from 1.45 million to 1.24 million students) in these communities. With ‘small size’ schools accounting for more than 43 per cent of all schools in these areas of Korea, students from different grades have been required to combine classes, making the teaching of the regular curriculum difficult. The availability of teachers has also been a challenge with many schools employing under-qualified teachers. Students are therefore placed in a situation where they are not receiving the education to which they are entitled, thereby putting at risk their academic development. The NHRCK reports that the response of the government to this situation has been to combine the operations of small groups of schools that are within a short distance of each other into ‘combined schools.’

The NHRCK notes also that there are significant differences in the condition of the education system between urban areas. In particular, there is a significant difference between the southern part and northern part of Seoul in terms of education facilities, the number of students per class, the number of private education institutions, and the availability of subsidies for educational expenses provided by the local autonomous district.

#### ***14.5.4 Economic accessibility***

##### Primary Education

The NHRCK reports that in 1954 the government developed a six-year plan to guarantee free and compulsory education for elementary school in 1954 and accomplished this goal in 1959. The NHRCK notes that the scope of free and compulsory education includes fees for admission, classes, and textbooks, however, it does not cover other expenses such as school meals and transport.

##### Secondary Education

The NHRCK reports that secondary education has been free and compulsory throughout Korea since 2004. The introduction of free and compulsory education started in 1985 in Korea’s remote areas and island; it was introduced to local townships in 1994; urban areas in 2002; and then the entire country in 2004. The scope of free and compulsory secondary education includes fees for admission, classes, and textbooks. It does not however cover other expenses such as school meals and transport. The NHRCK reports that in 2004 the government spent 7,869 million Korean Won

(approx \$USD786.9 million) on fees for admission and classes and 473 million Korean Won (approx \$USD47.3 million) on textbooks.

### Higher Education

No information provided.

#### ***14.5.5 Non-formal Education***

No information provided.

## **14.6 Acceptability**

### ***14.6.1 Quality Education and Minimum Standards***

#### Measures Adopted to Provide Quality Education and Establish Minimum Education Standards and a Monitoring System

No information provided.

### ***14.6.2 Discipline***

Article 18(1) of the *Elementary and Secondary Education Act* allows for the discipline of students in primary and secondary schools:

#### **Article 18 (Discipline of Students)**

- (1) The head of a school may discipline or otherwise guide students, under the conditions as determined by Acts and subordinate statutes or school regulations, as deemed necessary for education: Provided, That he shall not expel students in the process of compulsory education from school.
- (2) Where the head of a school intends to discipline any students, he shall go through due formalities such as presenting the student concerned or his parents an opportunity to state his or their opinions.

Article 31 of the *Enforcement Decree of the Elementary and Secondary Education Act 1998* (Presidential Decree No. 15664) establishes the procedures to be followed for the discipline of students:

**Article 31 (Discipline of Students)**

- (1) The head of a school may take any of the following disciplinary actions against students as he deems necessary for education pursuant to the purview of Article 18 (1) of the Act:
  - 1.Services in the school;
  - 2.Social services;
  - 3.Completion of special education; and
  - 4.Expulsion from school.
- (2) In taking disciplinary actions referred to in paragraph (1), the head of a school shall discipline a student in an educational manner so that the student's character may be respected, and shall give him an opportunity to repent by applying the types of discipline by stages depending upon the seriousness of the cause.
- (3) The Superintendent of the Office of Education shall prepare and operate educational methods necessary to educate students subject to discipline, to have special education completed referred to in paragraph (1) 3, and shall take necessary measures such as securing teachers, facilities and equipment attendant thereupon.
- (4) An expulsion from school referred to in paragraph (1) 4 shall be taken against students other than those in the course of compulsory education, who fall under any of the following subparagraphs:
  - 1.Any person who has been deemed to have no chance of repentance due to bad conduct;
  - 2.Any person who is frequently absent from school without any justifiable cause; and
  - 3.Other persons who violate school regulations.
- (5) The head of a school may have a student do home study for a specified period before taking an expulsion from school.
- (6) Where the head of a school expels a student, he shall consult with the student and his guardian on the course in life, and shall make efforts to offer good offices for other schools or vocational training institutions in cooperation with the community.
- (7) Where the head of a school provides guidance referred to in the purview of Article 18 (1) of the Act, it shall be conducted by methods such as discipline and admonition which do not give physical pain to students, except in educationally inevitable circumstances.

The NHRCK observes that in practice, there are some cases where teachers inflict corporal punishment on their students. The NHRCK reports that in its opinion on the proposed regulation of school life, it recommend that the Ministry of Education revise Article 18(1) of the Act and Article 31(7) of the Enforcement Decree which potentially allow the use of corporal punishment.

### ***14.6.3 Curriculum***

#### Overview of Curriculum Determination

No information provided.

#### Human Rights Education

The NHRCK reports that the Ministry of Education and Human Resources Development is considering revising the current primary and secondary school curriculum to incorporate a human rights education component. The NHRCK currently provides human rights education materials to primary and secondary schools.

### ***14.6.4 Parents / Legal Guardians***

No information provided.

### ***14.6.5 Religious and Cultural Practices, Languages of Minority Groups***

No information provided.

## **14.7 Adaptability**

### ***14.7.1 Education and Work***

Under Article 13(3) of the *Elementary and Secondary Education Act 1997 (Act No. 5438)* the minimum age for the completion of compulsory secondary education is generally 15 years of age:

#### **Article 13 (Obligation to Send Children to School)**

- (1) ...
- (2) ...
- (3) Every citizen shall send his sons and daughters or children to a middle school from the beginning of the school year next to the school year in which such sons and daughters or children under his care graduate from an elementary school until the end of the school year in which they reach the

age of 15 (referring to the age of 14 in case they have attended school at the age of 5 pursuant to paragraph (2), and to the age of 15 less the pertinent number of years in case they have been promoted or graduated early pursuant to Article 27 or plus the pertinent number of years in case they have failed to be promoted or graduated due to a short of the number of attendancies).  
<Amended by Act No. 6714, Aug. 26, 2002>

- (4) The matters necessary for the fulfillment and encouragement, etc. of the obligation to send children to school referred to in paragraphs (1) through (3) shall be determined by the Presidential Decree.

As noted above, under Article 62 of the *Labor Standards Act* 1997 (Act No. 5309) the minimum age of employment is 15 years of age.

### ***14.7.2 Education for Women***

No information provided.

### ***14.7.3 Special Needs Education***

No information provided.

## **14.8 Activities of the NHRCK**

### ***14.8.1 Mandate and Methods***

The NHRCK was established under the *National Human Rights Commission Act* 2001. As Korea is a party to ICESCR, the mandate of the NHRCK for the protection and promotion of economic, social and cultural rights is established with the definition of human rights under Article 2(1) of the Act:

The term "human rights" means any of human dignity, worth, liberties and rights which are guaranteed by the Constitution and Acts of the Republic of Korea or recognized by international human rights treaties entered into and ratified by the Republic of Korea and international customary law;

The NHRCK's methods and approaches to the protection and promotion of economic, social and cultural rights include: investigation and research with respect to statutes, legal systems, policies and practices and the development of recommendations; investigation of human rights and discrimination complaints; conduct of human rights education activities; research and reporting

on accession to international human rights treaties and monitoring of compliance with such treaties; cooperation with organizations and individuals engaged in the protection and promotion of human rights; and cooperation with international human rights organizations and other national human rights institutions.

### ***14.8.2 Investigation of Complaints***

#### **Case 1: Higher Education and Age discrimination**

In 2002 a complainant filed a petition with the NHRCK alleging that he had applied to the premedical course of X University but was disqualified on the basis that he was older than the other two students who had received the same results. The complainant had applied to the university because the school recognized the excellent marks of certain sector of Korean SAT. The university disqualified the complainant even though he had achieved high marks because of the university's internal regulation which provided if there is a limit for admission and more than one person who achieved the same results, the candidate who was younger and had acquired a higher SAT level should be first allowed to pass the admission. The NHRCK recognized that the University had violated the complainant's right to equality and recommended that the University remedy the situation.

#### **Case 2: Higher Education and Sex Discrimination**

In June 2006 a complainant filed a petition with the NHRCK regarding the refusal of admission to the Y Maritime University maritime related major on the basis that a maximum of 10 per cent of students were to be female. The NHRCK found that the requirement that students must board the ship for a year cannot justify the violation of the right to learning and the right of the complainant to choose her profession. The NHRCK recommended that the University not limit the number of female students at admission and to take an appropriate action to remedy her case.

### ***14.8.3 Research / Public Inquiries***

The NHRCK has conducted a number of research inquiries relating to the right to education.

In 2002 the NHRCK conducted research and published a report, *Research on Human Rights Sensitivity of Teachers*. The report identified a lack of basic knowledge on human rights amongst teachers and recommended that they be given the opportunity to undertake further study and participate in professional development programs to improve their skills in this area.

In 2004 the NHRCK conducted research and published a report, *Research on Basic Conditions of the Right to Education to make recommendation on the National Action Plan for the Economic, Social and Cultural Rights*. The research reviewed the status of the right to education and the availability of measures to protect and promote the right to education.

In 2005 the NHRCK conducted research and published a report, *The Status on Incorporation of Education of School Age Children with Disabilities into Regular Education*. The report recommends that the government provide training for teachers to improve their sensitivity to the needs of students with disabilities and to improve their capacity to incorporate these students into regular schools.

In 2006 the NHRCK has conducted surveys on human rights conditions in middle and high schools and the use of field practice by vocational high schools.

### ***14.8.4 Identification of laws / policies / practices impacting on the right to education in Korea***

The NHRCK regularly monitors and reviews laws, policies and practices for their impact on the right to education. Examples of such monitoring and review are provided below:

In September 2002 the NHRCK recommended that the Ministry of Education and Human Resources Development take appropriate action to ensure that any regulations were in compliance with the Convention on the Rights of the Child.

In October 2002, following an ex officio investigation, the NHRCK recommended that the content of the 7<sup>th</sup> school curriculum in elementary, middle and high schools be revised to address the possible negative effects on the sensitivity of students to human rights issues.

In December 2003 the NHRCK advised the Ministry to remove sectors of school affairs, entrance and health from the Ministry's National Education Information System due to a possible violation of the right to privacy.

In 2004 the NHRCK expressed its opinion that part-time lecturers in colleges and universities should not be subject to discrimination based on social treatment, working conditions, job guarantee, and payroll.

The Commission concluded in November, 2004, proposed bills on some basic education laws should be improved to guarantee human rights in information and privacy in a sufficient manner in its opinion on the proposals.

In March 2005, the NHRCK found that the system of forcing elementary students to keep a diary and the examination by teachers of these diaries was a violation of the fundamental right to privacy, freedom and freedom of conscience.

In June 2005 the NHRCK advised schools to minimise the restrictions imposed upon students regarding the length of their hair. The NHRCK said that the basic right of students to choose how to grow their hair should be observed.

In January 2006, the NHRCK recommended in the National Action Plan on Human Rights that the government improve opportunities for people with disabilities and people from low income groups to participate in some form of education and skills training. The NHRCK also recommended the development of programs to prevent school violence.

#### ***14.8.5 Education and Awareness Campaigns***

In April 2004 the NHRCK selected elementary school in Busan, Incheon, Sunghnam, Chunahn, and Uiryong to participate in a two-year human rights education program involving students, teachers and parents. The NHRCK expects that this program will be a forerunner to the introduction of human rights education to more schools and the development of human rights education materials.

In 2002, 2004, and 2005 the NHRCK produced human rights-related short films to raise human rights awareness among the general public. These films addressed a broad range of issues including race, sex and age discrimination and the human rights violations and general challenges faced by non-regular workers, teenage family carers, immigrant workers and sexual minorities.

#### ***14.8.6 Human Rights Education***

The NHRCK reports that it has conducted a wide range of human rights education activities. At the strategic and policy development level it has advocated for the introduction of legislation to guarantee the inclusion of human rights education into the formal school curriculum. In its work



on the development of Korea's National Action Plan on Human Rights, the NHRCK recommended the inclusion of specific provisions on human rights education.

The NHRCK continues to develop human rights education materials and programmes, including materials for elementary, middle and high schools; conduct human rights activities in schools; collates information on human rights education practices and literary works; and conducts human rights training for teachers.

The NHRCK has also established cyber space for human rights education. The NHRCK reports that it has built a dedicated website for vision-impaired users with information about the human rights education.

The NHRCK has a human rights library which includes a wide range of books, resolutions, publications, press releases and other database, many of which are accessible to vision-impaired users. The NHRCK allows citizens, researchers, organizations with experts, education institutions, and visitors to borrow the library materials.

#### ***14.8.7 Collaboration with Civil Society***

The NHRCK reports that it has commissioned external expert organizations and civil society organisations to conduct surveys on the status of the right to education.

## 15. Sri Lanka<sup>574</sup>

### 15.1 International Law

Sri Lanka is a party to the ICESCR,<sup>575</sup> CERD,<sup>576</sup> CEDAW<sup>577</sup> and the CRC.<sup>578</sup> Sri Lanka is a party to the UNESCO Convention Against Discrimination in Education.<sup>579</sup>

Sri Lanka is a party to the ILO Minimum Age Convention<sup>580</sup> and the Worst Forms of Child Labour Convention.<sup>581</sup>

### 15.2 National Law

#### 15.2.1 Constitution

##### Right to Education

The *Constitution of the Democratic Socialist Republic of Sri Lanka* (1978) provides the following guarantees related to the right to education:

##### **Chapter IV – Language**

(Article 21) Medium of Instruction—

(1) A person shall be entitled to be educated through the medium of either of the National Languages: Provided that the provisions of this paragraph shall not apply to an institution of higher education where the medium of instruction is a language other than a National Language.

(2) Where one National Language is a medium of instruction for or in any course, department or faculty of any University directly or indirectly financed by the State, the other National Language shall also be made a medium of instruction for or in such course, department or faculty for students who prior to their admission to such University, were educated through the medium of such other National Language: Provided that compliance with the preceding provisions of this paragraph shall not be obligatory if such other National Language is the

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<sup>574</sup> The APF did not receive a completed questionnaire from the Human Rights Commission of Sri Lanka. This section of the paper therefore has drawn upon information available from a range of sources including *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*. The report was prepared by Professor Lal S Perera, Ministry of Education and Higher Education ([http://www2.unesco.org/wef/countryreports/sri\\_lanka/contents.html](http://www2.unesco.org/wef/countryreports/sri_lanka/contents.html))

<sup>575</sup> Sri Lanka acceded to the ICESCR on 11 June 1980.

<sup>576</sup> Sri Lanka acceded to the CERD on 18 February 1982.

<sup>577</sup> Sri Lanka ratified the CEDAW on 5 October 1981.

<sup>578</sup> Sri Lanka ratified the CRC on 12 July 1991.

<sup>579</sup> Sri Lanka ratified the Convention Against Discrimination in Education on 11 August 1983.

<sup>580</sup> Sri Lanka ratified the Minimum Age Convention on 11 February 2000.

<sup>581</sup> Sri Lanka ratified the Worst Forms of Child Labour Convention on 1 March 2001.

medium of instruction for or any like course, department or faculty either at any other campus or branch of such University or of any other like University.

(3) In this Article “University” includes any institution of higher education.

### **Chapter VI Directive Principles of State Policy and Fundamental Duties**

(Article 27) Directive Principles of State Policy—

...

(2) The State is pledged to establish in Sri Lanka a democratic society, the objectives of which include-

...

(h) the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels.

### Non-discrimination and Access for All

The *Constitution* also contains the following provisions relating to non-discrimination and access for all:

### **Chapter III - Fundamental Rights**

(Article 12) Right to Equality—

(1) All persons are equal before the law and are entitled to the equal protection of the law.

(2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds:

Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any public corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office:

Provided further that it shall be lawful to require a person to have sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.

(3) No person shall, on the grounds of race, religion, language, caste, sex or any one such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.

(4) Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.

### **Chapter VI Directive Principles of State Policy and Fundamental Duties**

(Article 27) Directive Principles of State Policy—

...

(2) The State is pledged to establish in Sri Lanka a democratic society, the objectives of which include-

(a) the full realization of the fundamental rights and freedoms of all persons;

(b) the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life;

(c) the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities:

....

(6) The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation.

## ***15.2.2 Legislation***

### Primary Education

In November 2002, in its second periodic report to the Committee on the Rights of the Child, Sri Lanka reported the introduction of the *Compulsory School Attendance Regulation* (1988) by the Minister for Education and Higher Education requiring parents to send their children aged 5 to 14 years of age to school. Sri Lanka reported that it expected that this age limit would be extended to 16 years. Sri Lanka also reported that two committees have been appointed in each local administrative unit to ensure the implementation of compulsory attendance regulations.<sup>582</sup>

### Secondary and Higher Education

Information not provided

### Minimum Age of Employment

In its report to the CRC in November 2002, Sri Lanka noted:

The minimum age of employment of children as domestic labour was raised from 12 to 14 years by an amendment to the *Women's, Young Person's and Children's Act*, No. 47 of 1956, in December 1999. At present, the minimum age of employment in all sectors other than the plantation sector is 14 years. Action is being taken by the Government to raise the age of employment in the plantation sector from 10 to 14 years. Further, the Ministry of Labour has initiated action to make payment of compensation mandatory for violating the minimum employment age requirement.<sup>583</sup>

In July 2003, in its concluding observations, the CRC welcomed Sri Lanka's ratification of ILO Conventions Nos. 138 and 182 but expressed concerns about the high proportion of

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<sup>582</sup> CRC/C/70/Add.17, 19 November 2002, para 131

<sup>583</sup> CRC/C/70/Add.17, 19 November 2002, para 243

children working as domestic servants, in the plantation sector, on the streets and in other parts of the informal sector.<sup>584</sup> The CRC recommended that Sri Lanka:

continue its efforts to eliminate child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and access to education, as well as by developing a comprehensive child labour monitoring system in collaboration with NGOs, community based organizations, law enforcement personnel, labour inspectors and ILO/IPEC.<sup>585</sup>

### Minimum Age of Marriage

In its report to the CRC in November 2002, Sri Lanka noted:

Sri Lanka, being a multi-ethnic, multireligious society, has certain personal laws which are applicable only to specified ethnic and religious groups and which defer from the general law. The minimum age of marriage under the general law is 18 years. The personal laws applicable to Kandyans have been amended to raise the minimum age of marriage to 18 years. The personal laws applicable to Muslims do not specify a minimum age of marriage. In the context of the Sri Lankan society, uniformity in personal laws has to be achieved through demands originating in the relevant communities themselves.<sup>586</sup>

In its concluding observations in July 2003, the CRC recommended:

that the State party enact, as soon as possible, a clear legal definition of the child applicable throughout the country and review existing age limits in various areas, including marriage, child labour and the Penal Code provisions on child sexual abuse, in order to bring them into compliance with international standards.<sup>587</sup>

### Minimum Age of Criminal Responsibility

The Penal Code of Sri Lanka prescribes 8 years as the minimum age of criminal responsibility.<sup>588</sup> In its concluding observations in July 2003 in relation to juvenile justice, the CRC observed:

51. The Committee reiterates its serious concern that the minimum age of criminal responsibility, set at 8 years, is too low and that children between the ages of 16 and 18 are considered by penal law as adults.
52. The Committee recommends that the State party:
  - (a) Ensure the full implementation of juvenile justice standards and in particular articles 37, 39 and 40 of the Convention, as well as the United Nations Standard Minimum Rules for the

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<sup>584</sup> CRC/C/15/Add.207, 2 July 2003, para 49

<sup>585</sup> CRC/C/15/Add.207, 2 July 2003, para 50

<sup>586</sup> CRC/C/70/Add.17, 19 November 2002, para 37

<sup>587</sup> CRC/C/15/Add.207, 2 July 2003, para 22

<sup>588</sup> Source: CRC/C/70/Add.17, 19 November 2002, para 232

Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and in the light of the Committee's 1995 day of general discussion on the administration of juvenile justice (CRC/C/46, chap. III, sect. C);

- (b) Amend the Children and Young Person's Ordinance (1939) to raise the minimum age of criminal responsibility to an internationally acceptable level and to ensure that all offenders under 18 are treated as children;
- (c) Set up a system of juvenile courts across the country;
- (d) Ensure that deprivation of liberty is used only as a last resort and for the shortest appropriate time period;
- (e) Take effective measures, including, where appropriate, the enactment of legislation, to implement the recommendations of the Law Commission on the juvenile justice system, in particular those regarding access to legal assistance, training of professionals working with children, separation of children in conflict with the law from adults at all stages of the legal process and development of alternative non-custodial methods of rehabilitation.<sup>589</sup>

## 15.3 Overview of Education Policies and Programmes

### 15.3.1 Educational Framework

Part 1 (d)-(e) and (h) of the report, *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, provides an overview of the administrative and institutional organisational framework of education in Sri Lanka:

#### (d) Education

Education is highly valued by all groups of people in Sri Lanka. This veneration for education derives from different ethno-religious traditions, such as in the case of Buddhism. The basic of its philosophy led to the establishment of the earliest universities in the world among which the Mahavihara and Abhayagiriya Universities were the most ancient ones. Traditionally the principles of free education, equity and access to education had been well established in these institutions.

The Constitution of the Democratic Socialist Republic of Sri Lanka (1978) affirms the need for the complete eradication of illiteracy and assure the citizens the right to universal and equal access to education at all levels. This policy conforms to the Article No. 26 of the Universal Declaration of Human Rights (1948) which proclaims that every citizen has a right to education. Introduction of free education from primary level up to university level, and changing the medium of instruction from English to mother tongue i.e. Sinhala and Tamil, were landmarks in this regard. Later, bringing all private and assisted schools under government control, providing free mid-day meals, subsidised transport, free text books, free uniforms and giving financial assistance through scholarships at various levels are some of the distinct measures adopted by all successive governments during the past 50 years, to accomplish the aim of widening equal educational opportunities. In 1997, the government enacted regulations to ensure compulsory attendance of children, in the age range from 5-14 years.

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<sup>589</sup> CRC/C/15/Add.207, 2 July 2003, para 51-52

The schools in Sri Lanka can be divided into two categories as non-government and government schools. Non-government schools consist of estate schools, pirivenas, special schools, approved/certified schools, pre-schools and international schools. Pirivenas are educational institutes attached to Buddhist temples, catering mainly to Buddhist monks and also conducting general education classes for male students who do not attend formal schools. Out of the total number of 11,272 schools in 1998 only 629 were non-government schools. The 10,643 government schools are categorized as follows:

1AB Schools -having classes from grade 1 –13 or 6 – 13 with advanced level classes in science, arts, commerce and aesthetic streams.

1C schools - having classes from grade 1 –13 with advanced level streams other than in science.

Type 2 schools - having classes from grade 1 –11.

Type 3 schools - having classes from grade 1 – 5.

There is another category of government schools named as "National Schools" to which mainly the 1AB schools are promoted and controlled by the Line Ministry as against the other state schools which are under the control of the Provinces. The total number of pupils is 4,260,989 (1997) where the number of girls and boys are almost equal. Around 43 percent are in the primary cycle of grade 1 to 5; twenty five percent in the junior secondary cycle of year 6 to 8; and 25 percent are in senior secondary classes of grade 9 to 11 and 7 percent in advanced level classes. About 58 percent of pupils attend type 1AB and type C schools, 42 percent are in types 2 and 3 schools. The country's teaching force consists of 179,589 teachers, (1995) two out of three being female. Around 27 percent are university graduates, 20 percent are professionally untrained and the others are trained or certified teachers.

The levels of education provided through the school system can be divided as follows:

A Primary Education Grades 1 – 5 5 years

B Junior Secondary Education Grades 6 – 9 4 years

C Senior Secondary Education Grades 10 –11 2 years

Grades 12 – 13 2 years

The first three levels comprising grades 1-11 form the free access span indicating the aim of 11 years of schooling.

Three public examinations are held during the span of 13 years. The grade 5 scholarship examination is held at the end of the primary cycle to award scholarships to students who need financial assistance and for selection to "popular schools". At the end of grade 11 the GCE (O/L) examination is held to select students for higher education and employment. The GCE (A/L) examination is the other examination held at the end of grade 13 that serves two purposes, such as selection for universities and certification for employment.

#### **(e) Administrative and supervisory structure**

The Ministry of Education and Higher Education is responsible for designing, implementation, control and maintenance of general education, teacher education and technical education in Sri Lanka. The Minister of Education and Higher Education who is the executive head of the Ministry is assisted by two Deputy Ministers. The Secretary to the Ministry who is also the Director General of Education is responsible for all supervisory and managerial activities of the entire education system. The Education Services Committee which is an independent body is responsible for recruitment, promotion, transfer and disciplinary matters of teachers and officers in the Sri Lanka Education Administrative Service. Functions such as curriculum

development, preparation of syllabi etc. are mandated to the National Institute of Education. The matters related to Universities and other Higher Education Institutes are handled by the University Grants Commission. Consequent to the enactment of the 13<sup>th</sup> Amendment to the Constitution and the establishment of Provincial Councils the Provincial Departments of Education, headed by the Provincial Director of Education (PDE) came into being. The PDE is responsible for the planning, implementation, management and direction of all educational programmes in the Province.

....

#### **(h) Pre-school Education**

Pre-school education in Sri Lanka does not come under the purview of state managed general education. However, some pre-school facilities are provided by local government authorities, non governmental organisations and by the private sector, preferably on a fee-levying basis. It is estimated that around 90 percent of children attend pre-schools for periods ranging from a few months to one or two years.<sup>590</sup>

## **15.4 Justiciability**

### Available Remedies and Enforceability

Access to the Courts is established under Article 17 of the *Constitution*:

(Article 17) Remedy for the Infringement of Fundamental Rights by Executive Action—

Every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which I such person is entitled under the provisions of this Chapter.

The CEDAW Committee has expressed its concerns however at the:

contradiction between the constitutional guarantees of fundamental rights and the existence of laws that discriminate against women. It is also concerned that constitutional provisions on fundamental rights do not create accountability for the actions of non-State actors and the private sector, and the fact there is no opportunity for judicial review of legislation pre-dating the Constitution.<sup>591</sup>

## **15.5 Availability**

### **15.5.1 Expenditure**

#### Overview of Governmental Expenditure

Part 1.7 of *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, discusses investment on Education for All since 1990:

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<sup>590</sup> *EFA 2000 Assessment* (Sri Lanka), Part 1 (d)-(e) and (h)

<sup>591</sup> A/57/38, 7 May 2002, para 274



Sri Lanka, when compared with international standards spends less on education. In the near past Sri Lanka has spent 03 percent of G.D.P. and 10 percent of total public expenditure on education. According to international standards as indicated in a World Bank document the expenditure incurred on education, averages as 05 percent of G.D.P. and 20 percent of the total public expenditure. The averages range from 4 – 8 percent of G.D.P. and 11 – 18 percent of total expenditure. The expenditure on education in Sri Lanka has increased with the expansion of the school system, but it has remained between 8 – 10 percent of the total public expenditure. In Sri Lanka it is difficult to estimate precisely the expenditure on primary and secondary levels, because of the manner the school system is organised. In many schools the primary section does not function separately. It is roughly estimated that 30 percent of total recurrent public expenditure is spent on primary education, 53 percent on secondary education and 09 percent on university education. The expenditure on primary teacher salaries has increased both in real terms and also as a percentage of total teacher salaries. Her Excellency the President as the Minister of Finance has allocated Rs. 800 million for construction of buildings and other infrastructure required for primary schools. The international organisations such as UNICEF, SIDA, GTZ, NORAD and UNESCO have contributed many millions to bring about quantitative and qualitative improvements in the primary cycle.<sup>592</sup>

Table 7 below provides an overview on public expenditure on primary education 1991-1998.

**Table 7: Public Expenditure on Primary Education 1991 - 1998**

	1991	1992	1993	1994	1995	1996	1997	1998
Public expenditure on primary education (Rs. Million)	1,942	1,995	2,001	2,008	3,885	3,813	3,650	3,520
Total public expenditure on education (Rs. Million)	10,714	10,131	11,694	11,031	15,039	16,192	17,983	21,241
Total enrolment in primary education ('000)	2,081	2,027	1,980	1,930	1,864	1,810	1,808	1,798
GNP (Rs. Million)	369,262	413,935	493,729	571,131	655,364	684,741	793,764	...
Total population ('000)	17,401	17,543	17,685	17,827	17,969	18,112	18,263	18,414
Public expenditure								

<sup>592</sup> EFA 2000 Assessment (Sri Lanka), Part 1.7

on primary education as % of total public expenditure on education	18.13	19.69	17.11	18.20	25.83	23.55	20.30	16.57
Public expenditure on primary education as % of GNP	0.53	0.48	0.41	0.35	0.59	0.56	0.46.	...
Public expenditure on primary education per pupil as % of GNP per capita	4.40	4.17	3.62	3.25	5.71	5.57	4.64	...

Data Source: School Census – Ministry of Education & Higher Education

### Role of Non-State Actors, International Assistance and Cooperation

Part 1.6 of *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, discusses the role of non-state actors and international assistance and cooperation on investment on Education for All:

In Sri Lanka, the Government is the primary provider of basic education services. With the exception of a few private schools (79) and an even smaller number of what are called "international schools". All of the country's schools are managed and financed by the government through MEHE and PMEE. Several external agencies have supported the education system and EFA strategies in the country. UNICEF continues to provide long term assistance in promoting early childhood care and development of literacy centres, and quality improvement of primary education. Currently the World Bank and the Asian Development Bank are providing substantial assistance in the strategic areas of teacher education, curriculum development, improvement in testing and assessment programmes, text book production and physical infra-structure development. These agencies have also supported studies in critical areas through the provision of consultants. The Swedish and German International Development agencies SIDA, and GTZ are among the continuously active co-operating partners and their assistance mainly in fields pertaining to disadvantaged groups, are directly relevant to EFA concerns. Under the SIDA funding project a special programme is carried out in the estate sector with the purpose of improving primary education in Estate Schools. Apart from these programmes the Department for International Development (DFID) in United Kingdom has already funded three projects in Primary Education such as, the Primary Mathematics Project, Primary English Project and Primary Education Planning Project. NORAD is another foreign donor agency which provides financial assistance for the improvement of primary education of Sri Lanka. Pre-school education is still not a MEHE function. Pre-schools are set up and managed by individuals or organisations, as private concerns. Some of the teachers hold certificates awarded by university departments of

education. Some of the pre-schools are supported by local government agencies. Sarvodya Movement a NGO has taken a keen interest in establishing pre-schools in every village where their programmes are implemented. MEHE has no direct control over this sector.<sup>593</sup>

### 15.5.2 Infrastructure

#### Availability and Adequacy

In its report to the Committee on the Elimination of Racial Discrimination in November 2000, Sri Lanka noted:

148. ...regional imbalances in school facilities and poor quality and inadequacy of teaching continue to be problems in Sri Lanka. Despite high literacy rates, the available evidence suggests that the quality of education has been deteriorating over the years....
149. The opportunities for higher education and tertiary and vocational training are limited in Sri Lanka. Admission to universities is on the basis of merit but subject to district quotas, to enable students from educationally disadvantaged districts to attend university. The establishment of three new universities, in the recent past - Sabaragamuwa University (1996), Rajarata University (1996) and South Eastern University (1995) - has increased the total student intake by 1,250. However, from the total number of students who sit the Advanced Level exam only a very small percentage receive the opportunity to enter university. In 1996, of the students who sat for the GCE Advance Level examination, 70,000 were eligible to enter university, but only 11,000 gained admission owing to the limited facilities available.<sup>594</sup>

### 15.5.3 Teachers and Support Staff

#### Availability and Adequacy

**Table 8: Percentage of Teachers qualified to teach in primary schools, 1997**

Province	Male	Female	Total
Western	34.7	47.2	46.2
Central	41.0	59.9	57.2
Southern	50.5	55.5	55.0
Northern	41.5	45.2	44.4
Eastern	51.7	57.7	55.7
North Western	56.0	59.8	59.3

<sup>593</sup> EFA 2000 Assessment (Sri Lanka), Part 1.6

<sup>594</sup> CERD/C/357/Add.3. 20 November 2000, para 148-149

North Central	49.5	63.3	59.6
Uva	50.3	58.9	57.3
Sabaragamuwa	51.2	66.5	47.7
Sri Lanka	46.6	56.5	55.2

Source: MEHE-EMIS

#### ***15.5.4 Teaching Facilities and Materials***

No information provided

### **15.6 Accessibility**

#### ***15.6.1 Non-discrimination***

No information provided

#### ***15.6.2 Gender Parity and Gender Equality***

In May 2002 the CEDAW Committee reported upon and noted progress with regard to gender parity. The Committee:

Commend[ed] the educational achievements and improved literacy rate of women, as well as the curriculum reforms and teacher training programmes to eliminate gender role stereotypes.<sup>595</sup>

The Committee also expressed its concerns:

Despite the progress in education for women and girls, the Committee is concerned about the under-representation of women in engineering and technology-related courses in tertiary education.<sup>596</sup>

#### ***15.6.3 Physical Accessibility***

##### Geographic Location and Physical Access

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<sup>595</sup> A/57/38. 7 May 2002, para 271

<sup>596</sup> A/57/38. 7 May 2002, para 280

Sri Lanka has faced significant challenges in access to infrastructure as a result of the 2004 tsunami and continuing civil conflict in the northern and eastern regions. Part 1.4 of the report, *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, observes:

The difficulty of ensuring provision of schooling under stable conditions in the Northern and Eastern provinces which are affected by unsettled conditions has hampered the efforts to improve education in all parts of the country. The government maintains the schools, pays the teachers, holds public examinations and provides free text-books and curricular guides even in respect of areas in these provinces which are subject to unsettled conditions as is also done in the case of provision of food and health care. However significant numbers of the population in these provinces are now living as refugees in the adjoining provinces utilising available schooling facilities. The schooling in areas immediately adjacent to these provinces is also adversely affected because of continuing threats of displacement and the lack of teachers.<sup>597</sup>

#### **15.6.4 Economic Accessibility**

In its report to the CERD Committee in November 2000, Sri Lanka noted:

Since the 1940s Sri Lanka has provided free education from the kindergarten to the university level, thereby providing equal educational opportunities for all its citizens. Sinhala and Tamil were made the mediums of instruction in the late 1950s. The free education system was further reinforced by several other policies which enabled poor children to participate in education. These include the free textbook scheme, the free midday meal scheme and the free school uniforms scheme. These measures, together with subsidized transport and financial assistance in the form of scholarships at secondary and higher education levels for all gifted students, have minimized the cost to parents of education. Government's expenditure on education is around 5 per cent of GNP.<sup>598</sup>

#### **15.6.5 Non-formal Education**

Part 1 (f) of the report, *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, discusses non-formal education in Sri Lanka:

Since 1970s, the Non Formal Education Unit has been functioning within MEHE. Throughout the island Adult Education Centres and Technical Education Units are established and monitored by this Unit at MEHE. A special cadre of Adult Education Officers are entrusted with the task of taking leadership in organising and managing activities and relevant courses in these centres mainly to meet the needs of adults and young school leavers. Developing income-generating skills is emphasised in some of the courses, while developing functional literacy is the major objective in certain other courses. In addition to the courses organised by the state, several non-governmental organisations too provide various Non Formal Education Programmes including adult education.<sup>599</sup>

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<sup>597</sup> *EFA 2000 Assessment* (Sri Lanka), Part 1.4

<sup>598</sup> CERD/C/357/Add. 3, 20 November, 2000, para 146

<sup>599</sup> *EFA 2000 Assessment* (Sri Lanka), Part 1(f)

## 15.7 Acceptability

### 15.7.1 Quality Education and Minimum Standards

#### Legislation, Government Policies, Practices and Programmes

Part 1.4 of the *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, discusses measures adopted to monitor and improve the quality of education:

Efforts made from the early seventies to make education more relevant contextually as well as to reduce the restrictive and constrictive influence of the public examinations were thwarted by the people who through the years have been persuaded to think of education only from an examination perspective. Recognising the need for quick and effective remedial measures the government has taken several major steps. Some of such very important steps are as follows:

- Establishing a "Primary Education Unit" at the MEHE headed by a Director especially to design, implement and monitor all activities related to primary education.
- Setting up of a separate Department of Primary Education at the National Institute of Education whose main functions are designing curriculum, preparing text books, developing teacher guides, training of teachers, organising research on pre-primary and primary education, material development leading to quality improvement in primary education.
- Establishing a separate unit under a Deputy Director of Education in each Province to be in charge of the matters related to Primary Education. Implementing and monitoring the curriculum process in primary classes within the province, organising training programmes and carrying out special programmes for under-achievers are some of the responsibilities entrusted to him. He is assisted by a group of Primary Education Officers who work at Zonal Level Education Offices.
- Appointing Special In-Service Advisors in each zone to assist the Primary Education Director in organising and carrying out primary teacher in-service training programmes and in monitoring the relevant primary education activities.
- Effecting a curriculum revision in 1995 to suit the trends and needs of the decade. In this process an Essential Learning Continuum has been developed for the grades 1 – 5, in addition to the desirable learning objectives given in the syllabi. Instructions were given to the teachers to take necessary steps to make pupils achieve at least the essential learning competency expected in each grade level.
- Joining the Monitoring Learning Achievement Project in 1994, and carrying out a survey in relation to the performance level of the grade 05 pupils who completed the primary cycle. In 1996 a further study was carried out to assess the performance of grade 03 pupils. In 1999 the grade 05 assessment was conducted again to gauge the progress made by the schools.
- Conducting a series of research studies to study various dimensions of problems envisaged in pre-primary and primary education. Some of them are given below:
  - Non-participation of students of 5 to 14 age group in Primary Education (Jayaweera, 1992; Survey : Non Formal Education Division of the MEHE, 1998)
  - Dropping out of students from the Primary Cycle (1979; Kularatne, et al, 1990; Perera et al. 1991; Kularatne 1997)
  - Teacher absenteeism ( Kularatne et al, 1990; Perera et al, 1991; Kularatne, 1997).
  - Weaknesses in teaching methodologies (Lekamge and Suranimala, 1994; Kularatne, 1997)
  - Lack of basic facilities; (Kularatne, 1997) <sup>600</sup>

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<sup>600</sup> *EFA 2000 Assessment* (Sri Lanka), Part 1.4

Part 2 of the *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, discusses literacy rates and other indicators:

According to the Central Bank data sources, in 1981 the literacy rate in Sri Lanka was estimated as 88.6 percent. The male literacy rate was 91 percent and the female literacy rate was 83 percent. By 1994 this had increased up to 90 percent. A noteworthy improvement, nevertheless, is the improvement of the gender parity from 63 percent to 96 percent during the 50 years of independence. As regards the outcomes of this pervasive commitment to improve education one may note several relevant indicators: an Education Index of 0.83 and a Human Development Index of 0.704, (UN Human Development Report, 1998), a Life Expectancy of 72.2 years, an Infant Mortality rate of 17, a Birth Rate of 1.8 and a Total Fertility Rate of 2.2. During 1990s, however, a significant decline in the school age population occurred, mainly as a result of continuous decline in the birth rates. This led to a shift in the emphasis from quantitative expansion (except at the upper, secondary and tertiary levels) to quality improvement in the education sector.<sup>601</sup>

### ***15.7.2 Discipline***

In July 2003 the Committee on the Rights of the Child expressed its concern and made a recommendation regarding the use of corporal punishment:

28. The Committee is deeply concerned that male child offenders can be sentenced to whipping or caning under the Corporal Punishment Ordinance of 1889, and that the Education Ordinance of 1939 permits corporal punishment to be used as a disciplinary measure for boys and girls in schools and that many teachers and principals consider corporal punishment to be an acceptable form of discipline.
29. The Committee reiterates its previous recommendation that the State party repeal the Corporal Punishment Ordinance of 1889 and amend the Education Ordinance of 1939 to prohibit all forms of corporal punishment. Furthermore, the Committee recommends that the State party undertake well-targeted public awareness campaigns on the negative impact corporal punishment has on children, and provide teacher training on non-violent forms of discipline as an alternative to corporal punishment.<sup>602</sup>

### ***15.7.3 Curriculum***

#### Overview of Curriculum Determination

Part 1.4 of the *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, discusses curriculum reform within the context of the EFA Strategy and Plan of Action:

A comprehensive education reform is implemented from 1998. Under this reform a competency based curriculum was designed, piloted in a sample of schools and implemented island wide in 1999. This revision focussed its attention on providing Learner-Centered activities rather than

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<sup>601</sup> *EFA 2000 Assessment* (Sri Lanka), Part 2

<sup>602</sup> CRC/C70/Add. 17, 19 November, 2002, para 28-29

book learning and desk work. Learning through enjoyable learning events was encouraged. Among other things the improvement of infrastructure of the classroom, the teaching-learning environment, improving the quality of text books and up grading of teacher training facilities are noteworthy.

- a. The counter productive examination emphasis was reduced through a School Based Assessment Programme.
- b. The PTF on Education is monitoring the implementation of Primary Education reforms and their impact monthly. In these review meetings the Provincial Education Secretaries as well as Provincial Education Directors are given necessary guidance and feedback.
- c. A monthly review meeting is held at MEHE for co-ordinators of Regional Primary Education to assess the progress of the implementation of Primary Education reforms in their respective regions. This review meeting is organised by the Department of Primary Education of the MEHE.
- d. Compulsory education regulations were enacted by Parliament in 1997 and came into force in 1998 as a means of ensuring participation of children from disadvantaged groups and as a measure of deterring child labour. Special Committees have been set up to motivate parents to admit their children to schools. To facilitate this movement some conditions related to entry
- e. requirements have been relaxed. A mass campaign using media is being carried out to ensure the provision of compulsory education.<sup>603</sup>

### Human Rights Education

The Sri Lankan government announced recently that it would introduce human rights as a subject into the curriculum at the school and higher education levels with the aim of providing access to human rights education from early childhood.<sup>604</sup> The announcement was made by the Minister of Disaster Management and Human Rights, Mahinda Samarasinghe who said that the implementation of the new curriculum would be in collaboration with the Ministry of Education. The Minister also announced the decision of the government to introduce Sinhala and Tamil languages as compulsory subjects from the primary school level.

#### ***15.7.4 Parents / Legal Guardians***

No information provided.

#### ***15.7.5 Religious and Cultural Practices, Languages of Minority Groups***

Article 19 of the Constitution stipulates the right to culture and language:

19. (1) Every citizen is entitled alone or in association with others to enjoy and promote such citizen's own culture and to use such citizen's own language.

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<sup>603</sup> *EFA 2000 Assessment* (Sri Lanka), Part 1.4

<sup>604</sup> *Human rights in Sri Lanka's school curriculum*, Colombo Page News Desk, 13 June 2006 (<http://www.colombopage.com/archive/June13112019SL.html>)



(2) Any restrictions shall not be placed on the exercise of the right declared and recognized by this

Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony or the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others.

The Sri Lankan government recently announced its decision to introduce Sinhala and Tamil languages as compulsory subjects from the primary school level. The announcement was made by the Minister of Disaster Management and Human Rights, Mahinda Samarasinghe. The government believes that the teaching of these languages will strengthen relationships and reduce conflicts among different communities.<sup>605</sup>

## **15.8 Adaptability**

### ***15.8.1 Education and Work***

#### Legislation Prescribing Age for Completion of Compulsory Education

Please refer to legislation section.

### ***15.8.2 Education for Women***

The CEDAW Committee has expressed a wide range of concerns regarding the impact of laws, policies and practices on the right to education for women. It expressed its concern at the existence of discriminatory legislation, such as the *Land Development Ordinance*, and legislative provisions allowing Muslim personal law, which, inter alia, does not provide a minimum age of marriage, as well as the nationality law which precludes Sri Lankan women from passing nationality to their children on an equal footing with men.<sup>606</sup> In its report CEDAW also discusses incidents of violence against women including situations of domestic violence, and incidents of rape and violence especially targeted towards Tamil women by police and security forces in areas of conflict. Additionally, the Committee notes that ongoing conflict in the north and east has resulted in internally displaced persons of whom the majority are women and children.

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<sup>605</sup> *Human rights in Sri Lanka's school curriculum*, Colombo Page News Desk, 13 June 2006 (<http://www.colombopage.com/archive/June13112019SL.html>)

<sup>606</sup> A/57/38, 7 May 2002, para 274

### **15.8.3 Special Needs Education**

Part 1(g) of the report, *Education for All: The Year 2000 Assessment Final Country Report of Sri Lanka*, discusses special education in Sri Lanka:

In Sri Lanka two types of programmes are implemented in relation to special education. One is the integrated special education programme under which handicapped children attend normal schools and learn with normal children. The other is the special schools programme where handicapped children learn in special schools which are mostly residential.<sup>607</sup>

In its concluding observations in July 2003 the CRC expressed its concerns that a significant number of children with disabilities, particularly girls, were not able to attend school and that not all special schools managed by non-governmental organisations were registered by the Ministry of Education. The CRC recommended that the government

- (a) Ensure that all children with disabilities, particularly girls, have access to education by increasing spending and expanding special education programmes, including non-formal special education in rural areas, and by training teachers in mainstream education about special needs;
- (b) Register and monitor all special schools run by non-State actors;
- (c) Take all necessary measures to integrate children with disabilities into society and include them in cultural and leisure activities.<sup>608</sup>

## **15.9 Activities of the HRCSL**

### **15.9.1 Mandate and Methods**

The Human Rights Commission of Sri Lanka (HRCSL) was established under the *Human Rights Commission of Sri Lanka Act, No. 21 (1996)* and became operational in September 1997. The mandate of the HRCSL for the protection and promotion of economic, social and cultural rights is established under Section 10 (functions), Section 11 (powers) and Section 33 of the Act which states:

“human right” means a right declared and recognised by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In its protection and promotion of economic, social and cultural rights, the HRCSL methods and approaches include: inquiring into fundamental rights violations; ensuring that all State procedures comply with fundamental rights guaranteed by the Constitution of Sri Lanka; advising and assisting the government in drawing up legislation, administrative directives and procedures in compliance with fundamental rights; making recommendations to the government regarding how national laws and administrative practices can be brought in line

<sup>607</sup> *EFA 2000 Assessment* (Sri Lanka), Part 1(g)

<sup>608</sup> CRC/C/15/Add.207, 2 July 2003, para 37

with international human rights obligations of Sri Lanka; advising the government on acceding to international human rights treaties; and conducting research on human rights issues and public education programmes

## 16. Thailand

### 16.1 International Law

Thailand is a party to the ICESCR,<sup>609</sup> CERD,<sup>610</sup> CEDAW<sup>611</sup> and the CRC.<sup>612</sup> Thailand is not a party to the UNESCO Convention Against Discrimination in Education.

Thailand is a party to the ILO Minimum Age Convention<sup>613</sup> and the Worst Forms of Child Labour Convention.<sup>614</sup>

### 16.2 National Law

#### 16.2.1 Constitution

##### Right to Education:

The *Constitution of the Kingdom of Thailand* (1997) contains the following relevant provisions:

##### **Chapter III: Rights and liberties of the Thai people**

*Section 42:* A person shall enjoy an academic freedom. Education, training, learning, teaching, researching and disseminating such research according to academic principles shall be protected; provided that it is not contrary to his or her civic duties or good morals.

*Section 43:* A person shall enjoy an equal right to receive the fundamental education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge.

In providing education by the State, regard shall be had to participation of local government organisations and the private sector as provided by law.

The provision of education by professional organisations and the private sector under the supervision of the State shall be protected as provided by law.

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<sup>609</sup> Thailand acceded to the ICESCR on 5 September 1999.

<sup>610</sup> Thailand acceded to the CERD on 28 January 2003.

<sup>611</sup> Thailand acceded to the CEDAW on 9 August 1985.

<sup>612</sup> Thailand acceded to the CRC on 27 March 1992.

<sup>613</sup> Thailand ratified the Minimum Age Convention on 11 May 2004.

<sup>614</sup> Thailand ratified the Worst Forms of Child Labour Convention on 16 February 2001.

*Section 53:* Children, youth and family members shall have the right to be protected by the State against violence and unfair treatment. Children and youth with no guardian shall have the right to receive care and education from the State, as provided by law.

#### **Chapter V: Directive principles of fundamental State policies**

*Section 81:* The State shall provide and promote the private sector to provide education to achieve knowledge alongside morality, provide law relating to national education, improve education in harmony with economic and social change, create and strengthen knowledge and instil right awareness with regard to politics and a democratic regime of government with the King as Head of the State, support researches in various sciences, accelerate the development of science and technology for national development, develop the teaching profession, and promote local knowledge and national arts and culture.

### Non-discrimination and the Access for All:

#### **Chapter III: Rights and liberties of the Thai people**

*Section 29:* The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein. The provisions of paragraph one and paragraph two shall apply *mutatis mutandis* to rules or regulations issued by virtue of the provisions of the law.

*Section 30:* All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.

*Section 55:* The disabled or handicapped shall have the right to receive public conveniences and other aids from the State, as provided by law.

#### **Chapter V: Directive principles of fundamental State policies**

*Section 80:* The State shall protect and develop children and the youth, promote the equality between women and men, and create, reinforce and develop family integrity and the strength of communities.

The State shall provide aids to the elderly, the indigent, the disabled or handicapped and the underprivileged for their good quality of life and ability to depend on themselves.

Additionally, the *National Education Act of 1999* guarantees the child's rights for development without discrimination. Chapter 2 (Section 10) of the *Act* stipulates:

In the provision of education, all individuals shall have equal rights and opportunities to receive basic education provided by the State for the duration of at least 12 years. Such education, provided on a nationwide basis, shall be of quality and free of charge.

Persons with physical, mental, intellectual, emotional, social, communication and learning deficiencies; those with physical disabilities; or the cripples; or those unable to support themselves; or those destitute or disadvantaged; shall have the rights and opportunities to receive basic education specially provided.

Education for the disabled in the second paragraph shall be provided free of charge at birth or at first diagnosis. These persons shall have the right to access the facilities, media, services and other forms of educational aid in conformity with the criteria and procedures stipulated in the ministerial regulations.

Education for specially gifted persons shall be provided in appropriate forms in accord with their competencies.

### Relevance of International Law in the National Jurisdiction:

Customarily, the Thai legal system subscribes to a dualistic system, whereby international treaties that are self-executing are applicable by courts and administrative authorities only through any transformation into domestic statutes.

Under Section 200(1) of the *Constitution*, the National Human Rights Commission has the power to:

examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;

### ***16.2.2 Legislation***

#### Primary and Secondary Education:

In addition to Section 10 of the *National Education Act* B.E. 2542 (1999) as outlined above, Section 17 stipulates:

Compulsory education shall be for nine years, requiring children aged seven to enrol in basic education institutions until the age of 16 with the exception of those who have already completed grade 9. Criteria and methods of calculating children's age shall be as stipulated in the ministerial regulations.

### Higher Education:

In its second report on the implementation of the Convention on the Rights of the Child, Thailand noted, with respect to higher education:

Each child has the right to receive higher education depending on his or her ability, regardless of gender, age, religion, colour, race or urban/rural area, both in the Open University and the formal university system. In the formal university system, the entrance examinations are open to all. Under the Open University system, the candidate may enrol in any faculty on the basis of his or her own interests and choice.<sup>615</sup>

### Financing of Education:

Under Section 60 of the *National Education Act (1999)* the State is required to allocate budget resources to a range of priority education policy and program areas including: general subsidies for individuals enrolled in compulsory and fundamental education; an education loan scheme for low-income families; allocation of resources for 'children-in-need'; investment in public education in accordance with national education policy and programmes and with due regard to quality and equality in opportunity; provision of a budget for higher education institutes and universities under the supervision of the State; establishment of low-interest loans for private education institutions; and the establishment of a development endowment for public and private education institutions.

### Minimum Age of Employment:

Under Section 44 of the *Labour Protection Act 1998* the minimum age of employment in Thailand is 15 years of age.

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<sup>615</sup> CRC/C/83/Add.15, 31 May 2005

### Minimum age of marriage:

Section 1448 of Book 5, Chapter II of the *Civil and Commercial Code* stipulates that a marriage can take place only when a man and woman have completed their seventeenth year of age. A court may however allow marriage to occur at an earlier age, subject to consideration of appropriate reasons.

### Minimum age of Criminal Responsibility:

Under Section 73 of the *Penal Code*, the age of criminal responsibility is stipulated as 7 years of age. Nevertheless, the child in question cannot be punished until he/she is over 14 years old. In 2003 the *Revised Penal Code No. 16* was introduced, prohibiting the application of corporal punishment and life imprisonment to an offender less than 18 years of age. In a recent report to the Committee on the Rights of the Child, the Government of Thailand reported it is considering increasing the age of criminal responsibility to 12 years of age.<sup>616</sup>

## **16.3 Overview of Education Policies and Programs**

### ***16.3.1 Educational Framework***

The framework for education policies and programs is based on the relevant provisions of the Constitution as outlined above and the *National Education Act* B.E. 2542 (1999). The *Act* outlines the administration and implementation of education and training services, including: objectives and principles; educational rights and duties; educational system; national education guidelines; educational administration and management; teachers, faculty staff and educational personnel; resources and investment for education; and technologies for education. The Office of Educational Reform was established to carry out the tasks enumerated in the *Act*.

### National Education Plan (2002-2016)

The National Education Plan (2002-2016) was adopted by the government with the objective of creating a ‘learning society’ in Thailand. The Plan provides a framework for

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<sup>616</sup> CRC/C/THA/Q/2/Add1, 29 December 2005, para 1.3, p20



the development of separate plans on basic education, higher education, religion, art and culture. The National Education Plan adopts an integrated approach, emphasising human-centred development and incorporating formal and non-formal education systems into a holistic scheme for lifelong learning. The objectives of the Plan are:

1. To achieve a knowledge-based economy and society
2. To promote continuous learning
3. To involve all segments of society in designing and decision-making concerning public activities

The policy guidelines for implementation of activities under the Plan include:

1. To enable all people to have access to learning
2. To develop learning reform for benefits of learners
3. To inculcate and to strengthen morality, integrity, ethics and desirable values and characteristics
4. To develop manpower in science and technology for self-reliance and enhanced competitiveness capacity
5. To develop a learning society to create knowledge, cognition, and integrity of people
6. To promote research and development to increase knowledge and learning of Thai people and society
7. To create, apply and disseminate knowledge and learning
8. To promote and create social and cultural capital limitation
9. To limit, decrease and eliminate structural problems for social justice
10. To manage resources and investment for education, religion, art and culture systematically

### Administration

The administration and management of education in Thailand is divided into three levels.

Firstly, at the central level, the Ministry of Education has primary responsibility for education in Thailand. The Ministry develops policies, plans and standards; it mobilises resources for education institutions and programs; it administers all levels and types of education; it coordinates matters relating to religious affairs, art, culture and sport; and it monitors, inspects and evaluates the provision of education services.

Secondly, 175 'educational service areas' located in 76 provinces across Thailand are responsible for the oversight of some 200 institutions in which there are between 300,000 and 500,000 students. Each educational service area requires an Area Committee for Education comprised of representatives of the community, private and local administration organisations; teacher's association; educational administrator's association; parent-teacher associations; and scholars in education, religion, art and culture. The Committee is responsible for (1) the management of basic education institutions; (2) coordination, promotion and support of private educational institutions; (3) management of local administration organisations to ensure education is provided in

accordance with educational policies, development plans and standards specified by responsible bodies at central level; (4) management and oversight of the provision of education by individuals and non-government organisations, including families, professional bodies, religious institutions and other organisations; and (5) allocation of budget resources.

Thirdly, there is the administration of education by the educational institutions themselves. At the basic education level the Ministry of Education decentralises authority to educational institutions through school-based management (SBM), where the institutions are responsible for academic matters, budgets, personnel and general administration. At the higher education level all higher education institutions are allowed to develop their own administration and management systems with flexibility and academic freedom under the supervision of the institutional council empowered by its own Act.

## 16.4 Availability

### 16.4.1 Expenditure

#### Overview of Government Expenditure

The National Human Rights Commission of Thailand reports that approximately 3.5 per cent of GNP or 25 per cent of the government's annual budget is generally earmarked for education. Statistics on education spending for the period 1990-1999 show that on average 44 per cent of education budget is allocated to spending on primary education:

<b>2005 Education Budget</b>	
<b>Expenditure Item</b>	<b>Amount (Million baht)</b>
primary and secondary education	184,459.9
higher education	40,308.7
general education (not indication level)	3,558.7
education management	30,706.9
other forms of education	3,905.5
<b>Total</b>	<b>262,939.7 (21.9 % of annual budget)</b>
Figures provided by National Human Rights Commission of Thailand Exchange rate: \$USD1 = THB38 (approx)	

#### Education Funding Models

Chapter 8 of the *National Education Act* B.E. 2542 (1999) contains provisions relating to resources and investment for education. Section 58(1) of the *Act* stipulates:

The State and local administration organisations capable of providing education shall mobilise resources for education. In doing so, they shall be authorised to levy educational taxes as appropriate, in accord with provisions in the law.

With reference to the provision of resources and investment in education by private organisations and civil society, Section 58 of the *Act* states:

The State and local administration organisations shall encourage and provide incentives for mobilisation of these resources by promoting, providing support and applying tax rebate or tax exemption measures as appropriate and necessary, in accord with provisions of the law.

The NHRCT reports that despite measures designed to encourage additional support from local resources, the central government remains the major source of education funding. Funding from the government for municipal schools is, on average, nearly double the funds available from local sources. Contributions from the private sector and civil society generally come from non-government organisations and private educational institutions. In the last decade, the percentage of private educational institutions providing general education at the pre-primary and primary levels was 25 per cent and 10 per cent respectively. At the basic education level, the government provides subsidies to students in both state and private schools. Private degree-level institutions do not receive government support and are required to charge higher tuition fees than similar state degree-level institutions.

Other measures adopted by the government to encourage greater investment in education by the private sector have included: property-tax exemptions to private educational institutions; reform of relevant rules and regulations to ensure equal treatment of public and private education institutions; and allowing local administration organisations to levy education taxes.

The NHRCT reports that the Minister of Education has acknowledged that improvements are needed in the distribution of education funding and resources, including: a generally more equitable distribution of funding and resources amongst schools; allocation of additional support to schools in socially disadvantaged areas and to schools with special education needs; and improved allocation of resources to small-scale schools. The Minister has also noted other areas requiring improvement, including: the need for improved contributions from and participation by local communities; and the need for education institutions to exercise more control over their respective budgets and resources.

## International Assistance and Cooperation

Section 58 of the *National Education Act* permits the use of resources and investments received from “foreign countries.” The NHCRT notes that in the acceptance of international assistance and cooperation the government operates on the principle that acceptance must not limit the capacity of the country to continue to negotiate with other states at an equal level. In the case of foreign loans, these can be done only for a commercial purpose and the conditions of the contract must not place the country in a disadvantaged position.

## Role of Non-State Actors

Following the 1997 economic crisis, the Asian Development Bank (ADB) provided a loan of \$USD5000 million for a Social Sector Program. The program was initiated by the government to support activities and policy reforms in labour, health and social welfare and the education sector. 1,000 million baht was allocated to help prevent students dropping out of study at primary level, lower secondary level, and Buddhist religious schools. Over 328,000 students received scholarships and over 136,000 students applied for student loans. In addition, 13,000 baht was set aside as loans to educational institutions. During the economic crisis, although total government budget expenditure on education dropped, the share of public expenditure for education increased sharply from 20.6 per cent to 25.2 per cent.

In recent years Thailand has developed a number of programs with international organisations and other foreign partners including UNICEF, UNESCO, the British Council and the American Field Service.

### ***16.4.2 Infrastructure***

Section 78 of the Constitution states:

The State shall ... develop local economics, public utilities and facilities systems and information infrastructure in the locality thoroughly and equally throughout the country...

In Thailand's second report to the Committee on the Rights of the Child,<sup>617</sup> the government acknowledged that the lack of equipment and education materials in schools, particularly in science and technology is a problem. The government also reported that in some instances it was not able to establish educational facilities in remote areas with small numbers of students. Students in these areas often experience difficulties with travel to and from school.

In terms of the information technology infrastructure (electricity and telephone) and the computer network system. The government is aiming to provide coverage for 56 per cent of primary schools, all secondary schools and all higher education institutions. Under the networking system EdNET, the SchoolNet (basic education level) and the UniNet (higher education level) have been able to link more educational institutions. Despite this, the ratio of computers per head of students at the basic education level remains low (1: 120), while access to computers in secondary schools is higher. The number of computers in private schools is higher than that in state schools. Access to the internet in secondary schools is highest (89.7 %) in Bangkok and lowest (24.1%) in the Northeast of the country. The basic infrastructure is required for the improvement. In 2002, 1,119 schools did not have fixed electricity and 21,591 did not have fixed telephone lines.

#### ***16.4.3 Teachers and Support Staff***

The government has reported to the Committee on the Rights of the Child that the average student-teacher ratio is 20:1.<sup>618</sup> There are teacher shortages in mathematics, science, physics, chemistry, foreign languages and computer science. Forecasting demonstrates that with the government's policy of cutting back its workforce, state primary and secondary schools are facing a shortage of experienced and qualified teachers. The NHCRT notes that of the current 374,925 teachers, about 200,000 are aged 46-55 and approaching retirement or early retirement. The Office of Basic Education Commission has conceded that there are serious challenges in providing enough skilled teachers. The NHRCT reports that presently, the government replaces only twenty per cent of all positions lost through retirement every year. The Education Council has reported that primary and secondary schools are now short of 99,570 teachers, and 21,784 schools do have not sufficient teachers. State schools still need about 50,000 more teachers. The government addressed a similar problem in the state universities with the allocation of additional funding to maintain teaching levels.

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<sup>617</sup> CRC/C/83/Add.15, 31 May 2005

<sup>618</sup> CRC/C/83/Add.15, 31 May 2005, para 391, p81

The Ministry of Education has developed programs for the recruitment of teachers and support staff. Teacher training institutions and programs haven been reformed and scholarships and improved job security have been offered in order to attract qualified students into the teaching profession. School-based training for in-service teacher development has been introduced and steps are being taken to establish the Institute for Development and Promotion of Teachers, Faculty Staff and Educational Personnel.

#### ***16.4.4 Teaching Facilities and Materials***

The government reported to the Committee on the Rights of the Child that it has allocated funds to provide teaching and learning materials for students and that it has allocated resources for other expenses as required. These other expenses included health care, textbooks, uniforms, supplementary food (milk), lunches (as in the *School Lunch Fund Act of 1992*) and transportation.

### **16.5 Accessibility**

#### ***16.5.1 Non-discrimination***

In 2001 the National Primary Education Commission conducted an extensive survey in which it identified 140,000 school-aged children as having difficulties in enrolling and remaining enrolled in school.<sup>619</sup>

Children in especially difficult circumstances are provided with welfare education. These children receive free education, accommodation, food, clothing, equipment, textbooks and other necessities. Other support schemes are also available. For example, teachers and other education professionals can be sent to teach in the remote communities. Other forms of assistance include street teachers, welfare schools and village schools. Several non-governmental organisations have provided education services to children in especially difficult circumstances, such as those in refugee camps, on the streets, living near bus terminals, under flyovers or in construction sites.

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<sup>619</sup> The majority of this group were highland children. Other groups experiencing similar difficulties included children of seafarers, homeless children, migrant and stateless children, and children affected by AIDS.

In 2005 the government allocated THB27.01 million for programs and services for children belonging to minorities and ethnic groups. THB26.98 million was provided for welfare services in highland communities and THB0.03 million was provided for education for children belonging to minority and ethnic groups.

In its report to the Committee on the Rights of the Child,<sup>620</sup> Thailand noted its progress in improving the availability and accessibility of education for children with disabilities; children from the hill-tribe and remote areas, stateless children; and children living on the streets. It also acknowledged however that there remain many children without access to education. For example, stateless children who complete compulsory education are unable to obtain certificates issued by schools due to their statelessness. As a result, they are unable to obtain employment work which requires an educational certificate.

### ***16.5.2 Physical Accessibility***

The NHRCT notes that despite the guarantees stipulated in Section 10 of the *National Education Act*, in practice, people living in remote areas, people with limited resources and minority groups of often have limited physical access to education resources.

### ***16.5.3 Economic Accessibility***

#### **Primary Education**

Although free and compulsory primary education is guaranteed under the Constitution, a common complaint is that some schools impose additional charges on parents which are not covered by government funding. Such charges might be for the use of computer equipment or for the cost of travel to school, resulting in students dropping out of school or not proceeding to the next education level. The NHCRT says that the challenge for education authorities is to limit these additional financial burdens on families so as to ensure that children are not prevented from accessing education opportunities.

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<sup>620</sup> CRC/C/83/Add.15, 31 May 2005

## Secondary Education

With the stipulation of nine years of free and compulsory education from the age of seven, the normal progress of a student means that a student will spend their first six years at primary school and the last three years a lower secondary school.<sup>621</sup>

## Higher Education

Under the government's policy of decentralisation, public higher education institutions can develop their own administration and management systems, including the setting of tuition fees and charges, with flexibility and academic freedom under the supervision of the institutional council, which will be established and empowered by its own Act.

The government has established an Income Contingency Loans Fund to assist students with the costs of higher education. The ICL Fund is designed to increase the contribution of students to the cost of their education and to produce graduates in accordance with the country's economic and social needs. Under the ICL Fund the government pays an advance tuition fee which is then paid back by students according to their future monthly income. University students who do not wish to borrow from the ICL Fund can receive a discount upon the payment of their tuition fees. The NHRCT says that despite this system, the Ministry of Education faces the issue of securing more funds from the annual budget for the ICL Fund in order to meet increasing demands from students. Suggestions have been made that the ICL Fund should be restricted to students with limited financial means.

### ***16.5.4 Non-formal Education***

Local networks of community learning centres, village reading centres, sub-district health offices and sub-district agricultural offices play an important role in the provision of informal and non-formal education. Through these networks access to opportunities for non-formal education include:

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<sup>621</sup> The Thai education system is comprised of three years of pre-primary education, six years of primary education, three years of lower-secondary education, and three years of upper-secondary education for



- community-based early-childhood development centres which provide services for families and pre-school children up to the age of six;
- literacy training for adults conducted by volunteer teachers and village tutors; promotion of the use of the Thai language by Muslim communities in southern Thailand in the South; educational services for hill tribes communities;
- general education for people who have not had access to any formal education institutions;
- vocational non-formal education which is offered through polytechnic, industrial and community colleges. These programs are coordinated by the Ministry of Education, the Ministry of Industry, the Ministry of Agriculture and Cooperatives and other relevant government agencies.

## **16.6 Acceptability**

### ***16.6.1 Quality Education and Minimum Standards***

#### Relevant institutions

As noted above, primary responsibility for education at the national level in Thailand rests with the Ministry of Education. Under Section 49 of the *National Education Act* B.E. 2542 (1999):

An Office for National Education Standards and Quality Assessment shall be established as a public organisation, responsible for development of criteria and methods of external evaluation, conducting evaluation of educational achievements in order to assess the quality of institutions, bearing in mind the objectives and principles and guidelines for each level of education as stipulated in this Act.

#### Measures Adopted by Education Authorities

The NHRCT reports that the development of educational standards and the development of a quality assurance system were introduced in 2001 to ensure improvement of educational standards, including curriculum, teaching-learning processes and quality of all learners.

There are 3 types of educational standards: 1) national educational standards; 2) educational standards for internal quality assurances and 3) educational standards for external quality assessment. The quality assurance system is comprised of quality control, quality audit and quality assurance. External quality assessment of all educational institutions is conducted by the

Office for National Education Standards and Quality Assessment (ONESQA) at least once every five years. The assessment is contracted out to qualified external assessors to train qualified people from private, professional and academic organisations. The assessment outcomes are submitted to the agencies concerned and made available to the general public.

Both internal quality assessment and external quality assurance have been applied at both basic and higher education levels. In March 2003, 34,408 schools were assessed and met the criteria. Despite this, according to the NHRCT, the quality of education is a growing concern in Thailand. According to the Thailand Millennium Goal Development Report 2004, test results undertaken by the Ministry of Education to assess academic achievement of students at different education levels revealed very low scores across regions, with results in mathematics and science subjects being particularly weak.

### Indicators

Monitoring and assessment of the realisation of the right to education is done through student enrolments, transition rates in basic education and enrolment rates from pre-primary to higher education levels as well as numbers of participants in education for children with special educational needs and non-formal education.

Thailand's Millennium Development Goals in relation to the right to education include:

- Halve, between 1990 and 2015, the proportion of people living in extreme poverty
- Ensure by 2015, that boys and girls alike, will be able to complete a full course of primary schooling
- Ensure universal lower secondary education by 2006
- Ensure universal upper secondary education by 2015
- Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.<sup>622</sup>

To achieve the above targets, the following indicators are used:

- Net and gross enrolment ratio in primary education
- Proportion of pupils starting grade 1 who reach grade 5 (retention rate)
- Net and gross enrolment ratio in lower and upper secondary education
- Retention rate in lower and upper secondary education
- National test scores of primary, lower and upper secondary students

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<sup>622</sup> The National Human Rights Commission of Thailand notes that there is a small gender gap at the primary level and that females are currently outnumbering males in higher education.

- IT literacy of 15- to 24-year-olds
- Ratio of girls to boys in primary, secondary and tertiary education
- Ratio of literate women to men of 15- to 24- year-olds

In the *Thailand Millennium Development Goals Report 2004*<sup>623</sup> Thailand is reported as having almost achieved near-universal primary education, and that the country is now focusing on expanding secondary enrolment and upgrading the quality of education. The greatest challenge is in improving the quality of education, which is weak in both skills (e.g. mathematics, science and English) and creative and critical thinking. The focus of education reform is therefore on the curriculum, learning process and teacher development with the objective of achieving interactive and student-centred education. Improvements in information and communication technology are expected to bridge the urban-rural gap and help prepare students and the community to participate in a knowledge-based society.

### ***16.6.2 Discipline***

The NHRCT reports that corporal punishment is prohibited under a Ministry of Education regulation introduced in 2000. It notes however that other forms of punishment against children by teachers, such as verbal abuse, are occasionally reported, with complaints sometimes being made to the NHRCT.

### ***16.6.3 Curriculum***

#### Overview of Curriculum Determination

Under Section 27 of the *National Education Act*:

The Basic Education Commission shall prescribe core curricula for basic education for purposes of preserving Thai identity; good citizenship; desirable way of life; livelihood; as well as for further education.

In accord with the objectives in the first paragraph, basic education institutions shall be responsible for prescribing curricular substance relating to the needs of the community and the society, local wisdom attributes of desirable members of the family, community, society and nation.

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<sup>623</sup> Office of the National Economic and Social Development Board and United Nations Country Team in Thailand, *Thailand Millennium Development Goals Report 2004*, <<http://www.undp.or.th/mdgr.htm>>

Section 28 of the Act stipulates that curriculum at all educational levels shall be diversified and suitable for each level by emphasising the development of quality of life at different ages and capacities, including for people with disabilities. Section 34 of the Act establishes the Basic Education Commission, the Higher Education Commission and the Vocational Commission with duties to propose policy, development plans, educational standards, core curriculum, supporting resources, monitoring and assessment of educational services at their respective levels.<sup>624</sup>

### Human Rights Education

Human rights education is integrated into subjects in primary and secondary schools. At higher education institutions, human rights law is taught as an elective subject in a number of universities. The NHRCT, through its Sub-Commission on Human Rights Education, has co-operated with the Ministry of Education in undertaking a number of activities to incorporate human rights into education curricula. These activities have included: development of human rights education curricula for basic education institutions, higher education institutions and vocational education institution; development of human rights education courses for universities; human rights training for primary and secondary school teachers; integration of human rights education in Thai textbooks; development of human rights education lesson plans for teachers; and providing support for human rights research.

#### ***16.6.4 Parents / Legal Guardians***

Parents and legal guardians are legally bound to have their children receive compulsory education however they can exercise their freedom of choice in selecting educational institutions and educational programmes.

#### ***16.6.5 Religious and Cultural Practices, Languages of Minority Groups***

The language of central Thailand is the official school language both in the formal and non-formal education systems. Local dialects such as hill-tribe and Yawi (used by people in the South) are also allowed. Students are permitted to dress in accordance with their religious practices while attending school.

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<sup>624</sup> Further information on the preparation of the basic education curriculum is available in the response of the National Human Rights Commission of Thailand to the APF questionnaire.

## **16.7 Adaptability**

### ***16.7.1 Education and Work***

Under Section 44 of the *Labour Protection Act 1998* the minimum age of employment in Thailand is 15 years of age.

Section 43 of the *Constitution* stipulates that the State shall provide the fundamental education for the duration of not less than twelve years. The *National Education Act* (1999), as an organic law, also provides that the state shall provide free education at least twelve years. It means that the state shall provide a nine-year compulsory education to a child as soon as he/she enters the age of seven. Basic schooling lasts until the child reaches the age of sixteen, except where he/she has completed the ninth year of compulsory education.

### ***16.7.2 Education for Women***

#### **Relevant Legislation and Overview of Strategy**

The NHRCT observes the issue of gender disparities in education is not seriously discussed in Thailand. With constitutional and legislative provisions providing for equal access to education and non-discrimination and almost equal enrolment figures for boys and girls at all levels of education, restrictions on the access of women to education are not perceived as an obvious problem. The NHRCT notes however, that in practice, male students are more likely to study mathematics, engineering and science courses while female students continue to dominate nursing and teaching courses.

Gender quotas continue to apply for certain higher education subjects such as medical and technical education. A reason given by educational institutions is concerned with the demand of labour market or services. For example, the preference for male medical doctors is linked to the attempt to address the continuing scarcity of doctors in rural and remote areas since women doctors have traditionally preferred working for hospitals in urban areas. (The only discipline that has a higher quota for female students is nursing.)

According to the NHRCT the choices of female students tend to be more limited than that of male students, largely due to the persistence of traditional attitudes. Economic affordability and the attitudes of parents impact upon women's education. Priority is often given to the son's education whilst daughters may be withdrawn from school after completing their compulsory education to work to support the family. Women are further disadvantaged through their overrepresentation in low-skilled and low-wage occupations.

### Education for Young Mothers

The formal education system does not cater for young women who become pregnant whilst enrolled in school. These women are required to leave school and are not able to continue their studies, leaving them only with the option of pursuing education through non-formal avenues or, if possible, open universities.

### Education for the Needs of Women

Non-formal and informal education is flexible and accessible to a large number of people, particularly working women and women in rural and remote areas. Non-formal education centres often operate at night or over the weekend. In many cases, the teachers, although non-degree graduates, are local experts who can impart knowledge and deliver training programs. Many training programs in the non-formal education system tend to reinforce traditional work options for women, including cooking, food preservation, handicrafts, hairdressing and dressmaking. General education programs such as literacy training, computer skills and adult education are attended by both men and women.

There are also special programs to prevent vulnerable girls and women from being entering into prostitution. The *Saema for Life* program is specifically designed for girls in Thailand's northern region. In addition, private businesses and non-government organisations provide scholarships for formal and non-formal education and on-the-job training programs for women and girls in high risk areas.

The NHRCT observes that despite the existence of a wide selection of programs for girls and women, there is a lack of strategic coordination on the education needs of women. It suggests that coherent planning and programming on women's education is required. More women, particularly in poor regions, should be encouraged and supported to participate in basic and

secondary education for adults, and to further their study in vocational and higher education, especially in science and technology.

### Special Needs Education

In September 2002 the Ministry of Education issued the *Regulation on the Rights of the Disabled to Access to Facilities, Media, Services and other Types of Educational Assistance*. The Ministry is currently in preparing a draft Bill for Establishing Education Funds for the Disabled and the Gifted. In practice, special education is provided for children with disabilities (i.e.: impaired hearing, specific learning disorders, autistic children) as well as gifted and talented children. The teaching and learning of special education is organised in both special and inclusive schools. In accordance with budget allocation for the year 2005, THB1003.72 million was spent on the provision of special education for persons with disabilities, compared with 786.37 million baht and 739.6 million baht in 2004 and 2003 respectively. In 2005, 26,541 children with disabilities attended regular schools while 12,992 attended special schools.

## **16.8 Activities of the NHRCT**

### ***16.8.1 Mandate and Methods***

Under Section 15 of the *National Human Rights Commission Act* B.E. 2542 (1999), the National Human Rights Commission of Thailand (NHRCT) has a mandate to promote compliance with human rights obligations at the domestic and international level. The NHRCT's Sub-Commission on Economic, Social and Cultural Rights is comprised of seven experts on economic, social and cultural rights from the government, the non-government sector and academia. Headed by a member of the NHRCT the Sub-Commission promotes research, raises public awareness and encourages co-operation among networks. The Sub-Commission uses a participatory approach, allowing people in local communities to gain access and provide feedback. Since 2005 it has organised seminars across all regions of Thailand as a means of recognising and realising economic, social and cultural rights within communities.

### ***16.8.2 Investigation of Complaints***

The NHRCT has received a small number of petitions concerning the right to education.

**Case 1: Right to education**

A post-graduate engineering student filed a complaint when his request for sick-leave and an extension were denied by his university. The student had a broken hand and could not write properly and first requested sick-leave and then a semester extension to allow for graduation which were both denied. The petitioner claimed that his right to education was violated and sought reinstatement of his post-graduate student status and permission to take pre-requisite courses as he had already passed advanced courses.

The NHRC contacted the university in question and inquired about the facts and possibility of the petitioner's request. The University informed the NHRC that it was impossible to reinstate the petitioner's student status because he did not pass the obligatory prerequisite courses and his dissertation did not show satisfactory progress. Therefore, even if the university granted him an extension for another semester, he would not have graduated within the university timeframe.

**Case 2: Alleged violence in school**

The mother of a primary-school student filed a complaint in relation to alleged verbal abuse of her daughter by a teacher. She claimed that her daughter had been threatened by the teacher and therefore refused to attend school. The mother's attempts to talk with the teacher and then the school principal were thwarted by the teacher. The mother moved the child to a new school due to her daughter's fear. The mother petitioned the Office of Education Service Area in Nakhon Si Thammarat province and through Channel 11. She also notified the police but the teacher pleaded not guilty. The mother also claimed that the teacher's influence was known among villagers and that no party would be prepared to get involved in the conflict and that similar incidents had occurred in the past.

Upon receipt of the complaint, the NHRC contacted the school and the alleged teacher concerning the issue for fact-finding. The case is currently proceeding.

***16.8.3 Education and Awareness Campaigns***

In 2005 the NHRCT's Sub-Commission on Education and Development conducted two seminars on the issue of the right to education with the objective of raising awareness about the right to education and to develop capacity-building on how to exercise the right. The seminar was attended by approximately 200 participants from government authorities, NGOs and the NHCRT. The NHCRT also held a second seminar on the importance of informal and non-formal education.

***16.8.4 Human Rights Education***

Human rights education is one of five areas of focus for the National Human Rights Commission of Thailand under its Strategic Plan and is managed by the Human Rights Education Sub-Commission.



In its work with the Ministry of Education to integrate human rights education into the school curriculum the Sub-Commission has identified various shortcomings in general information materials, textbooks, and with teachers. Teachers lack human rights teaching skills and appropriate teaching materials. Higher education curriculum has also been identified as requiring further development and improvements.

Since 2004 the Sub-Commission has organised a series of seminars across Thailand aimed at raising awareness and understanding of human rights among teachers, school directors and education officers. A second phase of seminar has been organised with training for groups of teachers from the mainstream and non-formal educational systems and education officers from the Ministry of Education. The Bangkok Education Service Area 1 (under the Ministry of Education) in collaboration with the Sub-Commission set up methods on how to teach human rights and sustainable economic theory in schools. These methods were introduced to participants to encourage integration into their lesson plans.

In partnership with UNESCO, the Sub-Commission has developed and translated and a model “human rights lesson plan for South East Asian countries” which provides an outline for teachers to apply in their classrooms.

#### ***16.8.5 Annual Reports***

The NHRCT’s 2003 Annual Report records that 1.86 per cent of complaints handled related to the right to education. In the report on the human rights situation in Thailand during the period 2001-2003, the NHRCT described the situation of children and young people and their right to life, survival and development. The NHRCT expressed its concern that there are still groups of children who cannot get access to education despite existing laws and policies. These include children of hill-tribe and ethnic minority, street children and children in remote areas. The number of children leaving schools is also high due to factors including poverty, commitment of legal offences, migration with parents, and desertion following parental imprisonment for drugs offences.

#### ***16.8.6 Contribution to Reports to Treaty Body Committees***

The NHRCT reports that it submitted a shadow report to the Human Rights Committee in 2004, parts of which were indirectly concerned with the right to education. The report emphasised the importance of human-centred development and the right of people to freely pursue their economic, social and cultural development, and urged the government to allow meaningful participation of people in the development of public policy and programs. The report also referred to complaints concerning the citizenship of highlanders and ethnic minorities, many of whom request identity cards, claiming that they encounter various forms of discrimination and violation of their rights (including access to education and health care) when without them. The report also noted that children who have completed basic education (taught by local community members) cannot access higher education and that discrimination preventing access to basic education also affects people suffering from HIV/AIDS, refugees, displaced persons, and asylum seekers. Furthermore, the report noted the importance of human rights education as a life-long learning process (both formal and non-formal) at schools, universities, government institutions, and through mass media, the private sector and communities.

#### ***16.8.7 Collaboration with Civil Society***

The NHRCT works with academic institutions and civil society groups. The Sub-Commissions appointed by the NHRC, including the Sub-Commission on Economic, Social and Cultural Rights and the Sub-Commission on Education and Development, are comprised of a number of academics and civil society members. In terms of co-operation with international organisations, the NHRCT has received financial support from Canadian International Development Agency (CIDA) to implement human rights education projects.

## 17. Timor-Leste

### 17.1 International Law

Timor Leste is a party to the ICESCR,<sup>625</sup> CERD,<sup>626</sup> CEDAW<sup>627</sup> and the CRC.<sup>628</sup> Timor Leste is not a party to the UNESCO Convention Against Discrimination in Education.

Timor Leste is not a party to the ILO Minimum Age Convention or the Worst Forms of Child Labour Convention.

### 17.2 National Law

#### 17.2.1 Constitution

##### Right to Education

The *Constitution of the Democratic Republic of East Timor 2002* provides the following guarantees on the right to education:

(Section 59) Education and culture—

- (1) The State shall recognise and guarantee that every citizen has the right to education and culture, and it is incumbent upon it to promote the establishment of a public system of universal and compulsory basic education that is free of charge in accordance with its ability and in conformity with the law.
- (2) Everyone has the right to equal opportunities for education and vocational training.
- (3) The State shall recognise and supervise private and co-operative education.
- (4) The State should ensure the access of every citizen, in accordance to their abilities, to the highest levels of education, scientific research and artistic creativity.
- (5) Everyone has the right to cultural enjoyment and creativity and the duty to preserve, protect and value cultural heritage.

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<sup>625</sup> Timor Leste acceded to the ICESCR on 16 April 2003.

<sup>626</sup> Timor Leste acceded to the CERD on 16 April 2003.

<sup>627</sup> Timor Leste acceded to the CEDAW on 16 April 2003.

<sup>628</sup> Timor Leste acceded to the CRC on 16 April 2003.

## Non-discrimination and Access for All

The *Constitution* also contains the following provisions relating to non-discrimination and access for all:

### **Part II Fundamental Rights, Duties, Freedoms and Guarantees** **Title I General Principles**

(Section 16) Universality and Equality—

- (1) All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties.
- (2) No one shall be discriminated against on grounds of colour, race, marital status, gender, ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.

(Section 17) Equality between women and men—

Women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life.

(Section 18) Child protection—

- (1) Children shall be entitled to special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation.
- (2) Children shall enjoy all rights that are universally recognised, as well as all those that are enshrined in international conventions commonly ratified or approved by the State.
- (3) Every child born inside or outside wedlock shall enjoy the same rights and social protection.

(Section 19) Youth—

- (1) The State shall promote and encourage youth initiatives towards the consolidation of national unity, reconstruction, defence and development of the country.
- (2) The State shall promote education, health and vocational training for the youth as may be practicable.

## Relevance of International Law in the National Jurisdiction

Section 9 of the *Constitution* stipulates the relevance of international law within the national jurisdiction:

- (1) The legal system of East Timor shall adopt the general or customary principles of international law.
- (2) Rules provided for in international conventions, treaties and agreements shall apply the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.

- (3) All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

### ***17.2.2 Legislation***

#### **Primary, Secondary and Higher Education**

In April 2005 the Ministry of Education, Youth, Culture and Sports and the Secretariat of State for Labour and Solidarity released a report, *Education and Training: Priorities and Proposed Sector Investment Program*. The report discusses the inadequate legal framework for education in Timor-Leste:

At present there is an inadequate legal basis for activities of the various government-controlled institutions, communities and church organizations in the education sector. Additional legislation must be prepared and enacted to ensure effective governance arrangements for the sector. These include the following:

- Basic law on education;
- Organic law for the Ministry of Education, Youth, Culture and Sports;
- Regulation to govern tertiary education institutions;
- Law or charter to provide the legal basis and future development of the National University;
- Regulations to govern the establishment and operation of non-government schools.

Introduction of necessary legislation and regulations will facilitate specification of the respective roles to be played by the government, church, NGOs, local communities and parents in the management of education. The formulation of the basic law on education and the organic law for the Ministry is underway with assistance from TFET, while the other above-mentioned regulations will need to be undertaken with support from CFET and future donor assistance.<sup>629</sup>

#### **Financing of Education**

Please refer to discussion above.

#### **Minimum Age of Employment**

No information provided

#### **Minimum Age of Marriage**

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<sup>629</sup> Ministry of Education, Youth, Culture and Sports and the Secretariat of State for Labour and Solidarity, *Education and Training: Priorities and Proposed Sector Investment Program*, April 2005, Part A, p17

No information provided

### Minimum Age of Criminal Responsibility

No information provided

## **17.3 Overview of Education Policies and Programmes**

### **17.3.1 Educational Framework**

The 2005 *Education and Training* report outlines the efforts of Timor-Leste to meet its educational needs, especially after the outbreak of violence in 1999:

After the violence resulting from the independence referendum in 1999, the educational system was in disarray and on the verge of collapse. Almost 90 percent of schools and educational facilities, including practically all furniture and teaching materials, were destroyed or had disappeared. About 20 percent of teachers in primary education and about 80 percent of teachers in post-primary education, mostly non-Timorese, left the country. This included almost all educational administrators and managers who were also non-Timorese. With the help of teachers who were left and a big outpouring of local leaders and volunteers from Timorese civil society, as well as generous support from the international community who undertook emergency rehabilitation of schools, hired new teachers, and provided teaching supplies and materials, the situation quickly stabilized. By October 2000, it was possible to open a regular school year, including re-opening the former private university as a government one.

Table 1: Comparative Indicators for Education

Indicator	Timor-Leste			Indonesia	East Asia & Pacific	Low Income Countries
	1999	2001	2003			
<b>School Enrolment</b>						
Net primary enrolment (% of children of official primary school age)	51	67	75	99	99	76
Net secondary enrolment (% of children of official secondary school age)	27	21	26	43	67	51
Gross primary enrolment (% of population regardless of age)	89	113	117	113	107	91
Gross secondary enrolment (% of population regardless of age)	34	39	44	48	69	
<b>Literacy</b>						
Youth literacy rate (% of population aged 15-24)	79	77		98	97	76
Adult literacy (% of population aged 15 years and older)	48	48		87	86	62
<b>Gender</b>						
Ratio of girls to boys in primary and secondary schools (%)	83	97		91	93	
Ratio of young literate females to males (% of population aged 15-24)	97	96		98	97	

Source: Government of Timor-Leste & World Bank, *Development Indicators*, 2002.

The response of the population was dramatic. There was a significant increase in enrolment in primary education compared to the level in 1999, largely accounted for by increases in enrolment among girls, and the rural population. The increase was attributed to the temporary suspension of school fees, the introduction of some limited school feeding, and a newly found optimism of the

population upon gaining independence. The gross enrolment ratio (GER) in primary education significantly increased from 89 percent before the transition to 113 percent by 2001, and the net enrolment ratio (NER) increased from 51 percent to 67 percent. This was a very significant achievement, given the severe destruction of school facilities and the hardships encountered by the population in recovering from the crisis. By the time of the restoration of Independence in 2002, the educational situation had normalized for most children with educational services having been restored at all levels, including technical-vocational and tertiary education. Moreover, a modest adult literacy and non-formal education program had been launched with the assistance of donors.

Despite these achievements, the level of education in Timor-Leste is low by regional and international standards (Table 1). Based on a survey in 2001, 57 percent of the adult population had little or no education, 23 percent had only some primary education, 18 percent had some secondary education and only 1.4 percent had some post-secondary education. The implication is that more than half of the adult population of the country is unable to read and write. Moreover, the links between the incidence of poverty and education are strong. Close to one in two persons are poor in households where the head of the household has not completed primary school. This compares with less than one in seven where the head has at least senior secondary education.<sup>630</sup>

The *Education and Training* report also outlines Timor-Leste's vision for education and its guiding principles and policies:

***The Vision: Goals and Objectives for Education***

The Ministry has adopted the following vision for the sector:

*We want to be well educated; and highly productive, democratic and patriotic as the result of our education. We want education for all, particularly for the poor, the disabled, the elderly and women so that we can become literate and skilled to help build our country economically, socially and culturally.*

The main goals for the formal education system, as enunciated in the National Development Plan (NDP), are as follows:

- Easier access to education for all, and establish at least one primary school in each suco (village).
- Better quality of teaching and learning.
- Higher school completion and retention rates.
- Develop school curricula, particularly for technical training, relevant to the conditions and needs of East Timor.
- Reintroduce Portuguese and Tetun in schools

The key objectives of education adopted in the NDP are as follows:

- Continued enrolment expansion with a particular priority for basic education, while also providing for post school development of human capital.
- Improving the quality of instruction while dealing with the needs of linguistic diversity and change.
- Improving the management of the sector, from the institutional level to the centre, in view of the serious lack of professional staff capacity, and
- Achieving sustainability of public sector finance while faced with large demands for resources.

***Guiding Principles and Policies***

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<sup>630</sup> Ministry of Education, Youth, Culture and Sports and the Secretariat of State for Labour and Solidarity, *Education and Training: Priorities and Proposed Sector Investment Program*, April 2005, Part A, pp1-2

With the most pressing needs for reconstruction of the education system largely dealt with and about 250,000 children in school by 2003, the Ministry turned its attention to development of a strategic framework for the sector. During the past year, and after extensive consultations with stakeholders, the Ministry formulated the Education Policy Framework for Timor-Leste. The Framework outlines the basic vision, mission, guiding principles and broad and specific policies and strategic priorities to be pursued, particularly in the medium term. It also outlines the human resources development priorities of the sector, the guiding principles for organization and management and, given the competing demand for services and severely constrained resource picture for the medium term, the framework for financing education in a sustainable manner. The resulting framework is intended to provide directions for sustainable improvements in service delivery and quality, including an effective partnership with key stakeholders. It has been presented to the Council of Ministers for adoption.

***Guiding principles for education.*** The Ministry has adopted the following guiding principles in the formulation and implementation of educational policies, plans and programs:

- Education as a human right, including adherence to the provisions of the
- Constitution and international covenants and agreements adopted by Timor-Leste such as Child Rights, Millennium Development Goals, and Education For All.
- Child and learner-focus, with emphasis on developing a conducive learning
- environment, including freedom of the child from violence and threats;
- Equity and accessibility of services, particularly with respect to gender, the poor,
- rural and ethnic communities and other disadvantaged sectors of society;
- Quality and relevance through a curriculum that promotes learning achievement
- and the development of a balanced individual with respect to economic, social,
- cultural, moral, political and spiritual aspects; and promotes a sense of national
- identity and pride;
- Efficiency and effectiveness, to maximize benefits from limited resources;
- Participation and consultation with key stakeholders, particularly with parents and
- communities, non-government providers, and civil society groups;
- Transparency and accountability, particularly with respect to the allocation and
- utilization of resources, and the exercise of authority and decision-making; and
- Sustainability, in view of the high dependence on outside resources and the country's limited resources.

***Policy framework for education.*** The Education Policy Framework provides specific policies and strategies for the various sub-sectors, levels and areas of education. The first key element of the policy framework is that the Ministry will ensure, either through direct provision or through support of other providers such as the Church, quality basic education of international standard to all children legally resident in Timor-Leste, regardless of their economic condition, gender, religion, ethnicity or geographic location. The priorities for basic education are as follows:

- Basic education is defined as the first nine years of schooling, with primary education accorded the highest priority for resource allocation particularly in the medium term. The policy also prescribes the correct starting age of primary education as age six. The policy emphasizes the importance of achieving universal quality primary education, in line with the provisions of the Timor-Leste Constitution, and the country's commitments to international covenants such as the Convention on the Rights of the Child (CRC), and the Millennium Development Goals (MDG). The objective is to ensure that by 2015 children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.
- Pre-secondary education will be accorded the second highest priority for allocation of resources. In line with this policy, public pre-secondary education shall not be free in the medium term, but with targets for more State support in the longer term as finances improve.



- Early childhood education (ECE) is important in promoting child development and reducing eventual drop out and repetition in primary education. Recognizing the State's limited resources, however, ECE shall be promoted as a community-based, privately financed activity with the State providing support for teacher training and development of prototype teaching materials, and the enabling environment for private initiative.

Second, the Ministry will provide the policy framework for post-basic education, including secondary, technical-vocational and tertiary. The Ministry will promote and regulate the provision of post basic education through both government and private institutions, ensuring equity of access for all citizens according to their individual capacity and the development needs of the country. Within this framework, technical and vocational education will be accorded the next highest priority after provision for basic education.

Third, the Ministry will develop the capacity of the education system to achieve effective planning and implementation of its policies and programs. Emphasis will be given to building the capacity of educational institutions and personnel in the areas of planning and service delivery. Key elements in this part of the policy framework include:

- The importance of developing a curriculum that responds to the learning needs of the population, as well as positive values formation and the need for developing national identity, unity and patriotism.
- The urgent need for developing and accelerating the implementation of a fully formulated language policy, based on the official languages.
- Recognizing the special role of teachers in ensuring the quality of education, and providing specific strategies for improved qualification standards, training, career development and welfare.
- Setting minimum standards to be met by all schools, both public and private, and providing for mechanisms for monitoring compliance.

Fourth, the Ministry will mobilize and coordinate inputs from all stakeholders in the sector, in accordance with the priorities set, and report regularly on its progress to all interested parties. In this connection, the important role of non-government educational service providers is recognized, as is the need to provide a regulatory and an appropriate incentive framework for their operations. The importance of parent and community participation in education is also recognized, along with the need for an enabling framework that promotes participation and consultation. The Ministry will work with children, parents and the community to deliver education services within the principles of transparency, participation and democratic processes.<sup>631</sup>

## 17.4 Justiciability

### Available Remedies and Enforceability

Section 26 of the *Constitution* establishes access to the Courts:

(Section 26) Access to courts—

Access to courts is guaranteed to all for the defence of their legally protected rights and interests.

Justice shall not be denied for insufficient economic means.

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<sup>631</sup> Education and Training report, pp10-13

## 17.5 Availability

### 17.5.1 Expenditure

#### Overview of Governmental Expenditure

The *Education and Training* report outlines the current level of expenditure on education:

Over the past five years, total spending on the formal education sector has amounted to about \$167 million, with donors accounting for almost 60 percent of the outlays (Table 14). Total spending rose to about \$40 million a year in FY2000/01 and FY2001/02, mainly as a result of substantial outlays by donors on rehabilitation of educational facilities throughout the country and large expenditures on a Portuguese language program; but in the past two years expenditures have been relatively stable at about \$34 million a year. About \$50 million has been spent on rehabilitation of school facilities and equipment. An increasingly important issue for future budget allocations will be the maintenance, replacement and periodic rehabilitation of facilities.

Table 14: Donor and CFET Expenditures on the Formal Education Sector (In US\$)

Funding source	Annual disbursements					Total	
	FY1999/00	FY2000/01	FY2001/02	FY2002/03	FY2003/04	Amount	Percent
Donor programs	7,026,722	28,546,066	27,402,721	16,880,316	20,007,911	99,863,736	59.8
CFET appropriations	11,100,000	12,445,000	12,435,000	16,355,000	14,837,260	67,172,260	40.2
Total	18,126,722	40,991,066	39,837,721	33,235,316	34,845,171	167,035,996	100.0
<b>Memo items:</b>							
Rehabilitation outlays	5,297,654	13,236,458	16,918,498	11,287,202	8,425,912	55,165,724	33.0
Language programs	-	5,603,440	25,396	-	-	5,628,836	
Recurrent outlays	12,829,068	22,151,168	22,893,827	21,948,114	26,419,259	106,241,436	63.6
CFET as % of total	61.2	30.4	31.2	49.2	42.6	40.2	

Source: Annex Table 1.

Table 15 indicates clearly that the highest priority has been accorded to primary education, which accounted for about \$90 million of the spending on the formal education system during FY1999/00 through FY2003/04. Spending on secondary education amounted to about \$40 million or a quarter of the program, while outlays for tertiary education amounted to \$11 million, a large part of which was for rehabilitation of facilities at the UNTL.<sup>632</sup>

<sup>632</sup> Ibid, p24

Table 15: Allocation of Donor and CFET Expenditures Among Programs, FY1999/00 Through FY2003/04 (In US\$)

Program category	Funding source		Total	
	CFET	Donors	Amount	Percent
Policy, planning, management	5,572,260	5,789,519	11,361,779	6.8
Early childhood development	465,000	2,055,252	2,520,252	1.5
Primary education	35,989,000	53,995,603	89,984,603	53.9
Secondary education	18,504,000	21,137,734	39,641,734	23.7
Tertiary education	5,094,000	12,736,124	17,830,124	10.7
Teacher training	1,356,000	595,694	1,951,694	1.2
Youth, sports & other	192,000	3,553,810	3,745,810	2.2
Total	67,172,260	99,863,736	167,035,996	100.0

Source: Annex Table 1.

The *Education and Training* report also includes information on proposed expenditure programs:

As the foregoing discussion indicates, past spending concentrated heavily on the rehabilitation of the education system and on re-establishing primary education services throughout the country. For the medium-term, the highest priority will continue to be accorded to primary education in particular and to junior secondary schooling as part of the longer-term objective of providing nine years of basic education to all children. A particular concern for the medium-term is improving access to basic education for the 87,000 children of 6-14 years of age who continue to be outside the school system, improving the quality of education through teacher training, curriculum development, improved instructional materials and related programs, and improving the internal efficiency of the education system and thereby lowering the unit cost of educational services.

Table 16 [below] provides a summary of the proposed program for FY2004/05 through FY2008/09. Over the five-year period, total spending on the formal education sector would be about \$170 million, which is slightly larger than in the past five years. Primary education continues to account for the largest share of the spending on education. Over the five-year period, the program calls for outlays of \$75 million, compared with about \$90 million in the previous five years. The higher levels of spending in the past stemmed from the large outlays on rehabilitation of facilities. As Table 17 below indicates, recurrent spending on primary education over the next five years would be about 10 percent than in the past. The primary school program also includes some \$18 million for rehabilitation of existing schools, construction of new ones and construction of teacher housing and other facilities.

Under the donor-supported Transition Support Program (TSP), the Government has undertaken to ensure that funding for primary education is greater than 45 percent of the core CFET budget for Education.<sup>4</sup> The average for the past five years was 47.5 percent and for FY2004/05 through FY2008/09 it is 48 percent, fully in line with the undertaking given by the Government. The same commitment is being applied to the combined donor and CFET expenditure program.

A number of other important aspects of the proposed program emerge from Table 16. First, total expenditures on secondary education would amount to \$60 million over the five-year period. The program includes about \$20 million for rehabilitation of existing facilities and construction of 15 new junior secondary schools as outlined earlier in this report. The remaining \$40 million would cover the rising recurrent costs of secondary education that stem from the Government's ambitious program to increase access to secondary education throughout the country. Second, the

rehabilitation work on UNTL calls for new capital outlays of about \$6.4 million, which is slightly more than the past five years. Third, spending on early childhood development would rise moderately, while allocations for teacher training would go up sharply along the lines discussed in the previous Chapter. Outlays on planning, policy and management would decline.<sup>633</sup>

Table 16: Proposed Expenditures for the Formal Education Program (In US\$)

Program	Annual disbursements					Total	
	FY2004/05	FY2005/06	FY2006/07	FY2007/08	FY2008/09	Amount	Percent
<b>Policy, planning, management</b>							
Donor programs	201,698	-	-	-	-	201,698	0.1
CFET appropriations	1,451,000	1,565,000	1,749,000	1,831,000	1,922,000	8,518,000	5.0
Proposed new programs	300,000	400,000	400,000	-	-	1,100,000	0.7
Sub-total	1,952,698	1,965,000	2,149,000	1,831,000	1,922,000	9,819,698	5.8
<b>Early childhood development</b>							
Donor programs	1,388,482	926,272	-	-	-	2,314,754	1.4
CFET appropriations	146,000	156,000	161,000	162,000	165,000	790,000	0.5
Proposed new programs	90,000	100,000	100,000	-	-	290,000	0.2
Sub-total	1,624,482	1,182,272	261,000	162,000	165,000	3,394,754	2.0
<b>Primary education</b>							
Donor programs	7,450,284	2,437,690	-	-	-	9,887,974	5.8
CFET appropriations	7,748,000	8,100,000	8,527,000	8,828,000	9,150,000	42,353,000	25.0
Proposed new programs	250,000	4,521,000	7,247,000	6,426,000	4,335,000	22,779,000	13.5
Sub-total	15,448,284	15,058,690	15,774,000	15,254,000	13,485,000	75,019,974	44.4
<b>Secondary education</b>							
Donor programs	4,776,986	-	-	-	-	4,776,986	2.8
CFET appropriations	4,753,000	5,112,000	5,376,000	5,556,000	5,755,000	26,552,000	15.7
Proposed new programs	-	7,563,000	9,487,000	7,805,000	3,630,000	28,485,000	16.8
Sub-total	9,529,986	12,675,000	14,863,000	13,361,000	9,385,000	59,813,986	35.4
<b>Tertiary education</b>							
Donor programs	1,853,549	-	-	-	-	1,853,549	1.1
CFET appropriations	685,000	693,000	706,000	713,000	720,000	3,517,000	2.1
Proposed new programs	220,000	670,000	2,220,000	2,550,000	1,400,000	7,060,000	4.2
Sub-total	2,758,549	1,363,000	2,926,000	3,263,000	2,120,000	12,430,549	7.4
<b>Teacher training</b>							
Donor programs	167,200	-	-	-	-	167,200	0.1
CFET appropriations	204,000	210,000	232,000	248,000	270,000	1,064,000	0.6
Proposed new programs	1,000,000	1,578,000	1,700,000	500,000	500,000	5,278,000	3.1
Sub-total	1,371,200	1,788,000	1,932,000	748,000	770,000	6,609,200	3.9
<b>Youth, sports &amp; other</b>							
Donor programs	301,399	-	-	-	-	301,399	0.2
CFET appropriations	114,000	120,000	130,000	140,000	150,000	654,000	0.4
Proposed new programs	320,000	320,000	410,000	-	-	1,050,000	0.6
Sub-total	735,399	440,000	540,000	140,000	150,000	2,005,399	1.2
<b>Total</b>							
Donor programs	16,139,598	3,363,962	-	-	-	19,503,560	11.5
CFET appropriations	15,101,000	15,956,000	16,881,000	17,478,000	18,132,000	83,548,000	49.4
Proposed new programs	2,180,000	15,152,000	21,564,000	17,281,000	9,865,000	66,042,000	39.1
Grand total	33,420,598	34,471,962	38,445,000	34,759,000	27,997,000	169,093,560	100.0

Source: Annex Table 1.

## Education Funding Models

The *Education and Training* report describes Timor-Leste's sources of funding:

<sup>633</sup> Ibid, pp24-25

The education sector in Timor-Leste has benefited from strong support from the donor community over the past five years. As Table 19 indicates, donors have disbursed a total of \$100 million in this period and a further \$20 million will disburse during the next two years from projects and programs that are ongoing. TFET, Portugal, UNICEF, Japan and the European Union have accounted for almost 40 percent of total funding. A number of other donors, including Australia, United States and New Zealand have also provided significant support. CFET<sup>634</sup> allocations to the formal education sector have also accounted for a substantial part of total expenditures. Over the past four years, CFET accounted for 40 percent of outlays and currently accounts for almost 50 percent of annual spending.

Table 19: Sources of Funding for the Formal Education Program  
(In US\$)

Funding source	FY1999/00-FY2003/04		FY2004/05-FY2008/09		Total	
	Amount	Percent	Amount	Percent	Amount	Percent
<b>Donors</b>						
TFET	31,523,155	18.9	268,579	0.2	31,791,734	9.5
Portugal	25,439,973	15.2	5,518,621	3.3	30,958,594	9.2
UNICEF	9,018,971	5.4	6,727,924	4.0	15,746,895	4.7
Japan	11,572,129	6.9	3,930,390	2.3	15,502,519	4.6
European Union	10,935,262	6.5	-	-	10,935,262	3.3
Australia	4,585,810	2.7	-	-	4,585,810	1.4
United States	1,675,593	1.0	-	-	1,675,593	0.5
New Zealand	894,470	0.5	640,876	0.4	1,535,346	0.5
Other donors	4,218,373	3	2,417,170	1.4	6,635,543	2.0
Sub-total	99,863,736	59.8	19,503,560	11.5	119,367,296	35.5
CFET appropriations	67,172,260	40.2	83,548,000	49.4	150,720,260	44.8
Total	167,035,996	100.0	103,051,560	60.9	270,087,556	80.4
Proposed new programs						
New CFET allocations			12,168,000	7.2	12,168,000	3.6
New donor programs			53,874,000	31.9	53,874,000	16.0
Sub-total			66,042,000	39.1	66,042,000	19.6
Grand total	167,035,996	100.0	169,093,560	100.0	336,129,556	100.0

Source Annex Tables 2 and 4.

A little over \$100 million of the proposed program of \$169 million for FY2004/5 through FY2008/09 would be funded by CFET appropriations and donor programs already ongoing. The balance of \$66 million would have to be funded from new programs. Mobilizing the proposed additional \$54 million from donors will pose a challenge for the Government, because TFET, the largest donor, will not be a source of new funding in the future. The Government hopes to attract support from other members of the donor community that have shown a strong interest in the sector in the past, as well as potential new donors. As noted earlier, an additional \$12 million of CFET funding would be required to accommodate growth and quality improvements in the primary and secondary education systems.<sup>635</sup>

### 17.5.2 Infrastructure

The *Education and Training* report makes the following observations regarding education infrastructure:

<sup>634</sup> Consolidate Fund for East Timor

<sup>635</sup> Ibid, p27

With extensive help from the donor community, the formal school system, by and large, was rebuilt within about 18 months of the destruction in 1999. By early 2001, about 86 percent of classrooms were rehabilitated and useable. Some 922 schools were in operation, of which 82 percent offered primary education, 11 percent provided junior secondary education, three percent provided senior secondary education, and the rest provided other types of education. As well as widespread destruction of the infrastructure, there was also disruption to the enrolment and schooling of children. Both gross and net enrolment rates fell during this period. However they have now more than recovered for primary schooling.

The profile of the school network in primary and secondary education in Timor-Leste in FY2002/03 is set out in Table 3. At that time there were about 244,000 children in 899 schools. More than five out of six schools are government operated. Most of the remaining schools are operated by the Catholic Church, along with a few private schools, mostly in Dili. One in eight schools and teachers at the primary level is in the Catholic system. Catholic schools make up about a quarter and a third of schools at junior and senior secondary levels respectively. The education network is most widespread at the primary level and schools at this level are on average smaller with fewer teachers. At each step up, the size of the schools and staffing increases.<sup>636</sup>

Table 3: Summary of School Statistics for FY2002/03

Type of School	Schools		Students		Teachers		Students per School	Students per Teacher	Teachers per School
	Number	Percent	Number	Percent	Number	Percent			
<b>Primary</b>									
Government	645	86.1	159,610	86.0	3,591	84.5	247	44	6
Catholic	104	13.9	25,984	14.0	657	15.5	250	40	6
Sub-total	749	100.0	185,594	100.0	4,248	100.0	248	44	6
<b>Junior secondary</b>									
Government	78	71.6	27,854	74.7	827	74.4	357	34	11
Catholic	31	28.4	9,422	25.3	284	25.6	304	33	9
Sub-total	109	100.0	37,276	100.0	1,111	100.0	342	34	10
<b>Senior secondary</b>									
Government	24	58.5	14,043	67.5	422	68.3	585	33	18
Catholic	17	41.5	6,775	32.5	196	31.7	399	35	12
Sub-total	41	100.0	20,818	100.0	618	100.0	508	34	15
<b>Total</b>									
Government	747	83.1	201,507	82.7	4,840	81.0	270	42	6
Catholic	152	16.9	42,181	17.3	1,137	19.0	278	37	7
Total	899	100.0	243,688	100.0	5,977	100.0	271	41	7

Source: Ministry of Education, Youth, Culture and Sports.

The World Bank's 2004 report on Timor-Leste, *Education Since Independence: From Reconstruction to Sustainable Improvement*, commented on the poor condition of physical infrastructure:

<sup>636</sup> Ibid, p4

Although over 80 percent of the country's classrooms were restored and useable within 18 months of their destruction, many schools were not in good condition even by 2003. In many schools, there were no windows that could be closed to prevent rain from sweeping across the room, making the classrooms unusable during the monsoon season. Most classrooms were dark, as few schools had electricity. Most schools had no water or toilets, which adversely affected girls' attendance in particular. Only 81 percent of the students had a desk and a chair to use in class.<sup>637</sup>

### ***17.5.3 Teachers and Support Staff***

#### Availability of Qualified Teachers and Staff

The World Bank report commented on the deficiencies in the teaching profession:

Timorese teachers were poorly prepared for their profession for two reasons. First, under the Portuguese and Indonesian administrations, people with limited academic backgrounds were able to enter the profession, which resulted in serious issues of quality. From this pool came the current stock of primary school teachers. Second, due to historical under-investment in education, the pool of well-educated people in the country as a whole is extremely small, and even fewer are qualified to teach. Several attempts to recruit teachers through examinations have yielded only a very limited number. For example, the vast majority of successful candidates for the 3,000 positions filled by recruitment through examination<sup>21</sup> in 2000 had varying qualifications. In 2003, of the 620 positions budgeted, only 200 were filled.

The appointment of secondary teachers followed a different process because there are very few qualified Timorese teachers in the system, particularly in mathematics, physics, chemistry, Tetum, English, and Portuguese. Well-qualified English teachers tended to go for better-paying jobs elsewhere. The majority of Timorese Portuguese language teachers had completed Portuguese primary school, which only had four grades. Because of the shortage of qualified teachers, only university graduates, or those who had had at least six semesters of tertiary education or, those tertiary-qualified primary school teachers at the D2 level (the Indonesian qualification of two-year post-secondary teacher training), were invited to apply for a teaching position. Even at this relaxed standard, very few people applied. The difficulty of recruiting qualified teachers is an enormous constraint on how fast the system can expand and improve qualitatively. Poor teacher quality, exacerbated by the lack of teaching materials in large classes, does little to engage students in the learning process.

#### *High Student-Teacher Ratios in Primary Schools*

Due to the difficulty in recruiting teachers, the STR remained high. From an average of 25:1 in 1999, the STR rose to 62:1 in 2000, before falling to 52:1 in 2001 and 47:1 in 2002. However, the STRs varied widely across districts, from 44:1 in Ermera to 52:1 in Manufahi (see Annex 2.2). The STRs also varied between urban and rural schools, between public and private schools, and among grades.<sup>638</sup>

Teacher and student absenteeism is also a problem:

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<sup>637</sup> *Timor-Leste: Education Since Independence From Reconstruction to Sustainable Improvement*. December 2004. World Bank Report No. 29784-TP, p32

<sup>638</sup> World Bank report, pp29-30

Only 63 percent of students reported that their teachers were present all the time, and 31 percent reported that they themselves were present almost all the time. About 7 percent of students reported that their teachers were absent all the time. Student absenteeism was also a problem, with more students from better-off families being absent than those from poor families. Teacher and student absenteeism affects the opportunity to learn, contributing to student disengagement, low achievement, and eventual dropout.<sup>639</sup>

### Availability and Adequacy of Teaching Facilities and Materials

The World Bank report also noted the inadequacy and poor quality of teaching facilities and materials:

Poor quality or inadequate inputs usually contribute to high repetition and dropout rates. An analysis of TLSS 2001 revealed the following problems: lack of textbooks and learning materials, too few hours of instruction, poor teacher quality, high student-teacher ratios in primary schools, inadequate preparation for the language of instruction, poor condition of physical infrastructure, and high student and teacher absenteeism...

More than half of students had no book at all from which to learn, between 30 and 40 percent had some books, and fewer than 10 percent had a full set of books. There was much variation among quintiles—for example, only 2 percent of students in the middle quintile had a complete set of books. Because of the lack of books, teaching and learning had to take the form of teachers copying their notes on the blackboard and students copying them into their exercise books. The government distributes free exercise books to schools; without this subsidy, some students would not even have a notebook to write in. Few schools reported having a library or a reading corner. Even when schools did receive textbooks, they tended to lock them up in a cabinet because there were insufficient copies to distribute to all students. The number of hours of homework was minimal, about one hour per week on average. The lack of reading materials made it difficult for children to develop literacy. Very few students had access to any reading material outside of the school. This problem was exacerbated by the introduction of a new language of instruction...

Officially, schools are required to provide five hours of instruction per day for 180 days a year. Each session in Grades 1–3 lasts for half an hour and each session in the upper grades for 40 minutes. Even if the full required hours are delivered, the total number of instructional hours is 900, lower than the 1,000 hours recommended by the Education for All Fast Track Initiative. In practice, some schools divided those five hours into two shifts—two hours (8–10 AM) for Grades 1–3 and three hours (10 AM–1 PM) for Grades 4–6. This arrangement was erroneously called “multi-grade teaching” and was substantially different from double-shifting, which provided morning and afternoon sessions of five hours each. (The so-called multi-grade sessions were taught by teachers in their respective homogeneous-grade classes.) However, whether they taught for two, three, or five hours, teachers were paid the same amount. There was little rotation of grades among primary teachers, who covered all of the subjects in the grade that they taught.<sup>640</sup>

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<sup>639</sup> World Bank report, p32

<sup>640</sup> World Bank report, pp28-29



## **17.6 Accessibility**

### ***17.6.1 Non-discrimination***

#### Relevant Legislation, Government Policies and Programmes

Please refer to Constitutional provisions.

### ***17.6.2 Gender Parity and Gender Equality***

The World Bank report notes gender disparities between over-age students and the influence of socio-economic considerations:

Poor children tended to be concentrated in the lower grades, whereas children from upper quintiles tended to be distributed more evenly across all grades. Even if both rich and poor children attended school for the same number of years, those from the richest quintile tended to have a higher level of attainment because more of them remained in school long enough to reach the upper grades. Only 10 percent of children from the poorest quintile started Grade 1 at the age of 7, and 26 percent of them started at the age of 9.... By contrast, 29 percent of children of the richest quintile started Grade 1 at the age of 7.... Boys were doing worse than girls on the whole. Although 22 percent of boys started Grade 1 at the age of 7 (compared with 14 percent of girls), there were more girls than boys at the age of 9 by Grade 3 because they had lower repetition rates. Rural children were worse off than urban children. Only 16 percent of rural children started Grade 1 at the age of 7 compared with 28 percent of urban children. By Grade 4, only 6 percent of rural children were of the right age for their grade compared with 12 percent of urban children.<sup>641</sup>

The *Education and Training* report discusses the issues of general equality and gender parity in Timor Leste:

The Government recognizes the importance of addressing the gender dimensions of educational development and has included a number of goals in the MDGs that will promote gender equality. The gender imbalance in educational participation in Timor-Leste is modest in primary education, where girls' participation is estimated at about 98 percent. At higher levels in the educational ladder, girls' participation declines more steeply. In adult literacy programs, it has also been observed that the participation rate of females is much less than that of males, despite conscious efforts of program organizers to target more female participants to address the higher illiteracy rates of the former. A number of factors contribute to lower participation rates in schooling among females, most of which are socio-cultural in nature, such as the very traditional and stereotyped view of women and girls' role in the family and the community.<sup>642</sup>

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<sup>641</sup> World Bank report, p27

<sup>642</sup> *Education and Training*, op cit, p13

### 17.6.3 Physical Accessibility

The long distance between homes and schools in Timor-Leste is a key factor in the non-enrolment of children in school. Referring to its research data, the World Bank report noted:

Almost all children walked to school, including children from the richest quintile. Although the average time that children took to get to school was only about half an hour, this average implies that some children might have taken twice as long while others took much less.<sup>643</sup>

The table below provides an overview of the geographic distribution of out-of-school children in Timor-Leste.<sup>644</sup> The World Bank observes:

Some 46% of out-of-school children lived in the rural areas of the country, and another fifth lived in the rural east...In both these regions, the share of out-of-school children exceeded the share of the school-age population. Urban areas accounted for 15 percent of all out-of-school children, lower than their share of the population of school-age children.<sup>645</sup>

**Table 0.4: Geographic Distribution of Out-of-School Children under the Age of 15, 2001**

	Dili/ Baucau	Other Urban	Rural Center	Rural East	Rural West
% of school age population	12.5	9.9	39.8	18.8	18.9
% of out-of-school children	8.0	7.4	45.9	20.6	18.1

Source: TLSS 2001

### 17.6.4 Economic Accessibility

#### Primary Education

The *Education and Training* report discusses the state of primary education in Timor-Leste:

**Pre-school education** is not compulsory, but is available for children four to five years of age. At present there are 57 preschools enrolling 4,700 children with 139 teachers. Only eight of the schools are public and most are in urban areas. With less than 10 percent of children aged 4-5 year attending pre-school at this stage, there is considerable scope for expansion as demand increases.

**The primary education system.** Children at age six or seven can enrol in six years of primary education. After the strong growth in enrolments in 2000 and 2001, the numbers in primary school have now stabilized at about 185,000, with large numbers of overage children in the system. The average school size is about 248 students with an average of six teachers per school. Within these overall totals, there are districts with higher and lower growth than the national average, resulting

<sup>643</sup> World Bank report, op cit, p23

<sup>644</sup> Ibid

<sup>645</sup> Ibid, p22

from very significant population movement highlighted by the 2004 census and from poor rural areas where there was low enrolment pre independence. Some districts, such as Dili, have larger school sizes, which give greater flexibility and the opportunity for single teacher classes and some specialization. Teacher numbers have grown strongly, but are also now stabilizing. The primary teacher population of more than 4,000 is the single largest category in the government workforce. Students returned to school in great numbers before all teachers could be recruited, which explains the lag and consequent mismatch in student and teacher growth rates. The average pupil-teacher ratio (PTR) is 44:1, having declined from 47:1 in 2001. The average is slightly lower in Catholic schools.

The most pressing needs in primary education are those associated with access and efficiency. Table 4 highlights these concerns.

Table 4: Selected Indicators for Primary Education

Indicator	2000/01	2001/02	2002/03	2003/04
<b>Enrolments</b>				
Total students	164,729	175,000	185,594	186,700
Students of correct age	85,710	95,605	106,150	111,975
Overage students	79,019	79,395	79,444	74,725
<b>Enrolment ratio (%)</b>				
Gross enrolment ratio	123.0	126.3	129.4	125.9
Net enrolment ratio	64.0	69.0	74.0	75.5
<b>Schools</b>				
Number of schools	719	734	749	
Students per school	229	238	248	
<b>Teachers</b>				
Number of teachers	3,470	3,860	4,248	
Students per teacher	47	45	44	
Teachers per school	5	5	6	
<b>Memo item:</b>				
No. children 6-11 years	133,950	138,550	143,450	148,300

Source: Ministry of Education, Culture Youth & Sports.

First, overage children in the primary school system, account for almost 40 percent of enrolments. Many parents feel their children are too young at these ages to enrol and wait until they are older. As a result of this practice, high repetition, and the backlog of older children with insufficient primary education, there are about 80,000 overage children in primary schools. Substantial amounts of budgetary resources are required to keep these children in school. Second, high repetition and significant drop out levels (20 percent and 10 percent, respectively) mean that less than 50 percent of children reach and complete Grade 6. The high repetition and drop out rates, combined with the late starting age for schooling lowers the net enrolment ratios. Third, the net enrolment ratio of 75 percent implies that there are some 37,000 children in the 6-11 year age group that are still not in school. The implication is that each year some 7,000 children continue to reach adulthood with no formal education. Fourth, although the student teacher ratio in primary schools has improved, at 44:1 it is still high. Further reductions, in combination with improved

teacher training and availability of teaching materials, will contribute to improved quality of primary education.<sup>646</sup>

## Secondary Education

The *Education and Training* report discusses the state of secondary education in Timor-Leste:

**Junior secondary schools.** Post-primary education in Timor-Leste is divided into three years of pre-secondary education and three years of secondary. The policy of the Government is to move towards a system of nine years of basic education for all children. One “Escola Basica” has already been established by the Government to provide both primary and junior secondary education. Additional schools will gradually be added or converted to provide these nine years of basic education. The number of junior secondary schools in Timor Leste is now 120, of which 31 are operated by the Catholic Church (Table 5).

Table 5: Selected Indicators for Junior Secondary Education

Indicator	2000/01	2001/02	2002/03	2003/04
<b>Enrolments</b>				
Total students	37,276	38,820	40,368	43,250
Students of correct age	12,102	15,115	17,027	19,184
Overage students	25,174	23,705	23,341	24,066
<b>Enrolment ratio (%)</b>				
Gross enrolment ratio	59.3	59.7	59.9	62.1
Net enrolment ratio	19.2	23.2	25.3	27.5
<b>Schools</b>				
Number of schools	109	115	120	
Students per school	342	338	336	
<b>Teachers</b>				
Number of teachers	1,111	1,360	1,606	
Students per teacher	34	29	25	
Teachers per school	10	12	13	
<b>Memo item:</b>				
No. children 12-14 years	62,870	65,050	67,350	69,650

Source: Ministry of Education, Culture, Youth & Sports.

Dili and Baucau account for a third of the schools at this level, with more schools, though fewer students, in Baucau. On average junior secondary schools are larger than primary schools, with half the grades and an average of 13 teachers per school. The typical junior secondary school has a student population of over 330, with two or more streams for each grade in the school. The range is from 255 in Baucau, which has a large number of Catholic junior secondary schools to over 500 in Dili, which has the advantage of population concentration and high demand for such schooling. Larger schools are even more of an advantage in efficiency terms at the secondary level where teachers typically specialize in one or two subjects. If the syllabus is too rigid and the number of subjects too great, then small schools can be quite inefficient with teachers having low weekly hours of teaching. More than 40,000 students are now enrolled in junior secondary school. This number will continue to grow strongly in the next few years because junior secondary schools that are still starting or re-starting have only one or two of the three grades operating. However, as with primary education, overage children account for more than half of students in junior secondary

<sup>646</sup> Education and Training report, pp5-6

schools. Moreover, with a net enrolment ratio at 27 percent, the implication is that some 50,000 children in the 12-14 year age group do not attend junior secondary education...during the period 2004-2010 the number of children in the 12-14 age group will increase by about 8,500. If the net enrolment ratio is to be raised to 40 percent in this period for example, thereby gradually moving towards the long-term target of nine years of basic education for all, some 32,000 children in the 12-14 age group would need to be enrolled. There is sufficient capacity in the existing school system to accommodate this number of students, but only if there is a reduction in the number of overage children. The number of junior secondary teachers has risen sharply over the past three years to more than 1,600 last year. As a result, the student teacher ratio has declined from 34:1 to 25:1, which is quite favorable by the standards of most developing countries. However, the range is much wider than for primary schools, varying from 20:1 in Viqueque to 49:1 in Ainaro. This mismatch could be due to continued volatility in the numbers as student growth in the sub-sector ranged from minus seven per cent in Manufahi to plus 82 per cent in Aileu.

**Senior secondary schools.** There are far fewer senior secondary schools - 55 in 2003, 17 of which were Catholic. Nearly half of all the schools and students are found in Dili. The TLSS confirmed the association between poverty and length of education, and Dili appears to have a substantial proportion of the households who desire and can afford senior secondary education for their children. The average senior secondary school is larger than the average junior secondary school, with about 380 students and 20 teachers per school. There are about 21,500 students in senior secondary school, about half the number of junior secondary students. The PTR is 19:1 which is very favorable by most developing country standards. Staffing has been particularly difficult at this level as the previous system depended heavily on teachers from Indonesia. Their withdrawal has not been followed by large-scale recruitment because of the lack of appropriately qualified candidates. However as at other levels there are volunteer teachers in the system. In fact, one in three teachers at senior secondary level is a volunteer. These teachers are not on the Government payroll, but are paid by parental contributions and other funds raised by the school. Some are not well qualified. Continued heavy reliance on these volunteers to meet the demand for senior secondary education poses a number of challenges for the Government's efforts to improve the quality of senior secondary education. The problem of overage students is also apparent at the senior secondary level. As Table 6 indicates, only half of the students are in the 15-17 year age group, and with a net enrolment ratio of 18 percent, only 10,500 of the 57,000 children aged 15-17 years attend senior secondary schools. The combination of demand for senior secondary schooling, part of which is generated by overage students, and the need to rely heavily on volunteers, some of whom are not well qualified, translates into less than adequate quality of instruction for many of the 15-17 year old children in senior secondary schools.<sup>647</sup>

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<sup>647</sup> Education and Training report, pp6-7

Table 6: Selected Indicators for Senior Secondary Education

Indicator	2000/01	2001/02	2002/03	2003/04
<b>Enrolments</b>				
Total students	20,818	20,920	21,023	21,500
Students of correct age	8,360	9,155	9,817	10,505
Overage students	12,458	11,765	11,206	10,995
<b>Enrolment ratio (%)</b>				
Gross enrolment ratio	40.1	39.0	37.9	37.5
Net enrolment ratio	16.1	17.1	17.7	18.3
<b>Schools</b>				
Number of schools	41	48	55	
Students per school	508	436	382	
<b>Teachers</b>				
Number of teachers	618	855	1,093	
Students per teacher	34	24	19	
Teachers per school	15	18	20	
<b>Memo item:</b>				
No. children 15-17 years	51,890	53,650	55,500	57,350

Source: Ministry of Education, Culture, Youth & Sports.

### Higher Education

The *Education and Training* report discusses the state of higher education:

[T]here has been progress in rebuilding the tertiary education system of Timor-Leste. Tertiary education is now provided at the National University of Timor Leste (UNTL) and a large number of other higher education institutions. The former University of East Timor was re-opened in October 2000 as UNTL, with an enrolment of almost 4,000 students. The original intent was a small publicly funded university with an annual intake of about 600 students, but pressure from graduating senior secondary students has led to higher annual intakes. UNTL now has about 7,000 students. The UNTL faces significant funding problems and difficulties in retaining and compensating competent staff. There is a clear need to upgrade staff qualification and establish proper bibliographic and laboratory facilities. The UNTL library currently has some 30,000 volumes, mainly in English, Bahasa Indonesia and Portuguese, most of which have been donated by well-meaning individuals and institutions, but whose coverage bears little relation to the courses being taught.

One of the main issues confronting the higher education sector is the respective roles of public and private institutions. There are now 18 private institutions of higher learning currently in operation with an enrolment of about 4,000 students. A number of problems have emerged with these institutions that point to the need for significant reform. Some of these institutions provide higher education of appropriate quality. Many of the ... private institutions have few resources. The lack of regulation means that the quality of these institutions is unknown, but it appears that they have little likelihood of establishing proper academic credentials. In response to this situation the Government has begun drafting regulations and statutes regulating standards and cooperation in higher education. These are expected to become law in the year ahead.

The issue of language poses another major challenge for the tertiary education sector. Portuguese is to become the standard of instruction in less than ten years' time when the current cohort of fifth-year primary school students reaches university age. At the present time, most university students use Bahasa Indonesia as the main language and nearly all are still expected to write their

theses in that language, even though Indonesian has been dropped from the school and university curriculum since 1999. With no formal teaching in over four years, many university students are now all but illiterate in academic Indonesian, with adverse consequences for reporting on their research programs.<sup>648</sup>

### ***17.6.5 Non-formal Education***

The *Education and Training* report discusses the need for significant reform and development of non-formal education in Timor-Leste:

[A]bout 265,000 people 15 years and older are illiterate, and each year there are another 10,000 children who reach adulthood without the benefit of any formal schooling, or who have had only minimal schooling and are functionally illiterate. The Ministry of Education currently operates a program of adult education that reaches about 6,000 adults a year. The CFET budget allocation for adult education in FY2004/05 is \$70,000, which implies an average outlay of about \$10 per person under the existing program. The current size of the program is clearly inadequate. It is not sufficient to cover even the functionally illiterate children who reach adulthood each year, let alone reduce the number of existing adults who are illiterate. A substantial increase in the size of the program is required to have a significant impact on the problem of adult illiteracy.

Apart from the size of the program, a clear-cut strategy for youth and adult education programs remains to be developed. [T]he bulk of the funding for these activities has come from the donor community over the past four years. At least eight donors have been involved with such programs during the period, most of which have been small, uncoordinated interventions. The assistance has not been guided by any overall policy framework or strategy. While needs have been acknowledged, there has been little in the Ministry of Education, Youth, Culture and Sports in the way of systematic development of policies for the delivery of youth and adult education programs, or for raising the literacy and skill levels of significant sections of the population, including for example subsistence farmers and rural women. There is an increasing need for an appropriate policy framework for non-formal education and for clear strategies that target particular groups among the youth and adult population.<sup>649</sup>

## **17.7 Acceptability**

### ***17.7.1 Quality Education and Minimum Standards***

#### Relevant Institutions

The *Education and Training* report outlines the role of the Ministry of Education, Culture, Youth and Sports and the Secretariat of State for Labour and Solidarity in ensuring quality education and minimum standards:

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<sup>648</sup> Education and Training report, pp9-10

<sup>649</sup> Education and Training report, p37

Having successfully weathered the emergency, the Government has now trained its sights on the longer-term development challenges for education and training...To better prepare for this effort, the Ministry of Education, Culture, Youth and Sports (MECYS) has formulated and adopted an Education Policy Framework...The MECYS and Office of the Secretary of State for Labour and Solidarity (SSLS) have jointly prepared a comprehensive strategy for the medium term for national programs of vocational and adult education.<sup>650</sup>

## Indicators

The *Education and Training* report discusses the adoption by Timor-Leste of the Millennium Development Goals and its use of education indicators:

Timor-Leste has adopted the Millennium Development Goals (MDG) as a basis for pursuing its development objectives outlined in the NDP. The relevant MDGs for education are: (i) achieving universal primary education by 2015; and (ii) achieving gender equality. The targets are set out in Table 9. The Government recognises that Timor-Leste must mount a major effort to achieve a number of the targets associated with the MDGs. The priorities and strategies to improve access and quality that are outlined in the education policy framework are designed to address this problem.<sup>651</sup>

Table 9: Millennium Development Goals and Indicators

MDG Goals and targets	MDG Indicators (%)	2003	2007	2010	2015
<b>Achieve universal primary education</b> Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling	Net enrolment ratio in primary education	74	81	86	95
	Proportion of pupils starting grade 1 who reach grade 6	47	63	75	95
	Literacy rate of 15 to 24 year olds	84	88	91	95
<b>Promote gender equality and empower women</b> Eliminate gender disparity in primary and secondary education preferably by 2005 and in all levels of education no later than 2015	Ratio of girls to boys in primary, secondary, and tertiary education	98* 99**	98 99	99 99	100 100
	Ratio of literate females to males among 15 to 24 year olds	92	94	98	100

\* Targets for primary education; \*\* Targets for junior secondary education.

<sup>650</sup> Education and Training report, p.v

<sup>651</sup> Education and Training report, pp13-14



### ***17.7.2 Discipline***

No information provided

### ***17.7.3 Curriculum***

The *Education and Training* report outlines the challenges for curriculum reform in Timor-Leste:

In view of its central role in any educational improvement effort, the Government recognizes that improved quality of education is vital in achieving basic literacy for its citizens; equipping the future labour force with the needed knowledge, skills and orientation to be adaptable and productive; and developing good citizenship. A diagnostic study of student achievement in selected primary grades conducted by the Ministry in 2003 revealed very low achievement scores, particularly in Grade 3, with girls generally scoring lower than boys. While the study was limited and could not provide definitive findings on the important factors affecting educational quality, there is no doubt about the importance of quality as a vital issue. These issues must be addressed through curriculum redesign, supply of instructional materials, training of teachers and increased parental and community involvement in schools.

The educational system faces two major transitional challenges in this regard: (i) overhauling the old curriculum at all levels, which is recognized as outmoded and not responsive to the emerging needs of the new nation, but which is still largely the basis for teaching in most schools; and (ii) effectively bridging the transition to the new languages of instruction i.e. Tetum and Portuguese, which are the official languages adopted in the Constitution.

Curriculum review and reform is currently on-going, with assistance from donors such as TFET and UNICEF, while efforts to bridge the language transition has received substantial support from Portugal through the provision of teachers, teacher training and teaching materials. However, this effort is expected to need substantial and sustained resources both in the medium and longer term, as it will involve not only developing relevant and appropriate curriculum standards as a first step but, more importantly, steady investment in the related requirements of teacher re-training and development, textbook and teaching materials development, and regular monitoring and evaluation for continuing improvement. A related major challenge in this effort is capacity building for local curriculum development institutions and specialists, which needs to be built almost from scratch, and will also need sustained investment in the medium term and long term.

<sup>652</sup>

### ***17.7.4 Parents / Legal Guardians***

The World Bank report discusses the role of decision-making by parents in the enrolment of children in school:

According to the 2001 TLSS, about 70 percent of parents of out-of-school children between the ages of 5 and 6 considered their children to be below the school age. Among the parents of out-of-

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<sup>652</sup> *Education and Training*, p16

school children between the ages of 7 and 12, about 22 percent considered that their children were not of the right school age. (We interpreted “below school age” to include those children who were not of the right age or were over-age.) The parents of about 32 percent of the poorest and 26 percent of the richest 7–12-year-olds had “no interest” in schooling.

Given the very small percentage of wage employment in the economy, it is difficult for many parents to understand that their children will earn more as adults if they attend school while they are young. Thus, in spite of the high national priority accorded to education by the people in theory, there was a weak demand for schooling among those who did not attend.<sup>653</sup>

### ***17.7.5 Religious and Cultural Practices, Languages of Minority Groups***

The World Bank report discusses the problems associated with the introduction of Portuguese as the language of instruction in Timor-Leste:

The Constitution of Timor-Leste designates Portuguese and Tetum as the official languages, with Bahasa Indonesia and English as working languages. The MECYS mandates Portuguese as the language of instruction. This was introduced in Grades 1 and 2 in 2000 and has progressively moved up one grade per year since then, reaching Grade 5 in the school year 2003/04. In those grades where Portuguese has been introduced, Indonesian books have been withdrawn. However, there were not enough Portuguese books to replace them. Meanwhile, teachers have been allowed to use Tetum to explain lessons to children.

Changing the language of instruction has had many complications. First, only those teachers who finished their primary education before 1975 had learned Portuguese; the vast majority of teachers were educated in Bahasa Indonesia. The government organizes training courses for learning Portuguese for a few hours every week and expects teachers to become proficient enough to communicate effectively with their students, to impart knowledge and skills, and to observe and evaluate students across a range of school subjects. This ambitious goal has yet to be met. Second, students studying under teachers who themselves are not proficient in Portuguese are less likely to master the language. Since language governs thoughts and the cognitive process, a teacher’s less than full proficiency in the language of instruction is likely to impede his or her students’ mastery of concepts, discourage classroom interaction, and undermine their performance. Third, for many students, Portuguese is the third or fourth language. Tetum is only one of the 22 indigenous languages of Timor-Leste and is the mother tongue of only 16 percent of the population, although it has become the new country’s *lingua franca*. Children whose mother tongue is not Tetum will need to learn it. But because there are large numbers of people who speak varieties of Tetum, the language appears to be not too difficult to learn. Nonetheless, this means that many children will learn their mother tongue at home and then Tetum (if it is not their mother tongue), and then Portuguese to understand instruction in school. Students who started school before 1998 also learned Bahasa Indonesia. This multilingual environment is extremely challenging to any learner, especially when language-learning materials are in short supply.

...

In the 2001/02 school year, about 46 percent of students reported that Tetum was used as the language of instruction in their school, 46 percent reported the use of Bahasa Indonesia, and 8 percent reported the use of Portuguese (TLSS 2001). Tetum was more commonly used in the schools attended by children from the poorest quintile, whereas a higher proportion of schools

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<sup>653</sup> *Timor-Leste: Education Since Independence From Reconstruction to Sustainable Improvement*. December 2004. World Bank Report No. 29784-TP. Section 2.1

attended by students from the richest quintile use Portuguese. The introduction of Portuguese as a language of instruction in school is likely to adversely affect the poor more than the rich, further exacerbating the socioeconomic inequality in learning outcomes (see Table 2.7).<sup>654</sup>

**Table 0.7: Language of Instruction by Quintile, 2001**

(%)

Language	Poorest	Quintile 2	Quintile 3	Quintile 4	Richest	Total
Tetum	52	54	42	47	37	47
Bahasa Indonesia	44	42	48	43	53	46
Portuguese	4	5	10	10	10	8
Total	100	100	100	100	100	100

Source: TLSS 2001

## 17.8 Adaptability

### 17.8.1 Education and Work

No information provided.

### 17.8.2 Education for Women

Please refer to section on gender parity.

### 17.8.3 Special Needs Education

No information provided.

## 17.9 Activities of the Provedor

### 17.9.1 Mandate

The Timor-Leste Provedor de Direitos Humanos e Justica (the Office of the Ombudsman (Provedor) for Human Rights and Justice - PDHJ) was established on 26 May 2004 with the passage by the National Parliament of *Law No. 7/2004, Approving the Statute of the Office of the Ombudsman for Human Rights and Justice*.

<sup>654</sup> World Bank report, pp30-32

The mandate of the PDHJ for the protection and promotion of economic, social and cultural rights is established under Article 1(g) of Law No.7/2004 and Part II (Title III) of the *Constitution*.

Article 1(g) of Law No.7/2004 provides:

*“Fundamental human rights and freedoms”* means the rights, freedoms and guarantees referred to in Part II of the Constitution of Timor-Leste and the rights embodied in the United Nations instruments on Human Rights, all interpreted in accordance with the Universal Declaration of Human Rights;

Part II (Title III) of the *Constitution* contains comprehensive provisions relating to economic, social and cultural rights and duties. As outlined above, Section 59 establishes rights relating to education and culture.

The Provedor’s mandate with regard to human rights is wide in that it deals with cases of human rights violations, complaints, education and promotion, monitoring and generally integrating human rights into legislation and practices of Timor-Leste.

## **Conclusions and Recommendations**

### **Conclusion – Chapter one**

As already outlined in this chapter, the dimensions of the right to education and corresponding State obligations are clearly established by international law. At the same time, it is also important to make certain that there is not a “single formula” approach to guaranteeing and implementing the right to education at the domestic level. In this regard, the lack of coherence in educational policies, laws and programmes have made the process of formulating an integrated approach to the realisation of the right to education more complicated than it should be.

Since the formulations of the right to education are more advanced than they are usually perceived to be at this stage, most of the work – defining, monitoring and promotion – in relation to the right education must take place at the national level. For this reason, and in agreement with UNSRE, the challenge for NGOs, government institutions and NHRIs is to find means and ways to: (i) challenge the notion that education is “a negotiable service”; (ii) ensure national plans on education/learning/information are undertaken from a rights based approach (4As, non-discrimination and substantive equality); (iii) promote the right to education in accordance to maximums instead of minimums (progressive implementation); and (iv) adapt policies and strategies to improve the quality of education in ways that strengthen all other dimensions of human rights.

### **Recommendations for NHRIs**

There are a number of recommendations in relation to NHRIs and the protection and promotion of the right to education that may be considered by the ACJ in the course of its deliberations. As a starting point, in relation to the issues addressed in Chapter 1, some of the following may be explored:

- (i) NHRIs are in a position to develop conceptual clarity around ESCR in general and the right to education in particular. More specifically, NHRIs can play a role in ensuring that all branches of government (judiciary, legislature and executive) are aware of the sources of international law that delineate the right to education.

- (ii) NHRIs that do not have an express mandate on ESCR may consider, at a minimum, addressing the non-discrimination and equality dimensions of the right to education. In this connection, NHRIs may explore the possibility of initiating investigations into “grave” and/or “systematic” violations of the right to education.<sup>655</sup>
- (iii) NHRIs may have a role to play in ensuring the right to education is recognised by law and policy. In certain circumstances, NHRIs may be required to recommend appropriate mechanisms for redress with regard to violations of the right to education.
- (iv) NHRIs have a role to play in human rights education and should be enabled to lead national awareness/information/education campaigns through adequate resource allocations. NHRIs are in a privileged position to advise government bodies in regard to curricula and programs on human rights education that should be incorporated into the formal education systems.
- (v) NHRIs may monitor government policy/action as well as resource allocations for the effective implementation of the right to education in order to ensure the effects are not discriminatory. In special circumstances, NHRIs should recommend the adoption of specific mitigating measures.
- (vi) NHRIs can raise awareness on the right to education and human rights education and could potentially develop tools/resources on the human rights approach to education. NHRIs should explore the benefits of adopting approaches and methodologies in relation to ensuring the progressive implementation of the right to education. In particular, the study of temporary special measures and special measures may contribute to the realisation of the right to education of marginalised groups.

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<sup>655</sup> In this regard, international mechanisms of complaint such as the Optional Protocol of CEDAW contain language on “grave” and “systematic” violations of human rights. A grave violation of the right to education would constitute severe abuse, for example, teachers physically abusing of children with special needs. The term 'systematic' refers to the scale or prevalence of violations, or to existence of scheme or policy directing violations, for example, a situation in which universities have been closed for an extended period of time in order to prevent student protests. For more information see: <http://www.iwraw-ap.org/protocol/inquiry.htm>

- (vii) NHRIs should continue to contribute information to international mechanisms aimed at monitoring the effective implementation of the right to education
  
- (viii) NHRIs should consider promoting an optional protocol to the ICESCR and lead discussions on mechanisms for redress for violations of ESCR at the national level. Once the drafting process of the OP-ICESCR begins, representation of NHRIs in the open-ended working group on the OP-ICESCR may be required.

## Supplementary Information on the Right to Education

### Appendix I: Selected Articles of Main UN Human Rights Treaties that include references to elements of the right to education

Treaty	Article(s)	Link to Full Text of Treaty
ICCPR	18 (4) 19	<a href="http://www.ohchr.org/english/law/ccpr.htm">http://www.ohchr.org/english/law/ccpr.htm</a>
ICESCR	13 14	<a href="http://www.ohchr.org/english/law/cescr.htm">http://www.ohchr.org/english/law/cescr.htm</a>
CEDAW	10 13 14(d) 16(e)	<a href="http://www.ohchr.org/english/law/cedaw.htm">http://www.ohchr.org/english/law/cedaw.htm</a>
CERD	13 14	<a href="http://www.ohchr.org/english/law/cerd.htm">http://www.ohchr.org/english/law/cerd.htm</a>
CRC	13 17 28 29	<a href="http://www.ohchr.org/english/law/crc.htm">http://www.ohchr.org/english/law/crc.htm</a>
ICRMW	30	<a href="http://www.ohchr.org/english/law/cmw.htm">http://www.ohchr.org/english/law/cmw.htm</a>



## Appendix II: Exploring a Framework for the Realization of the Right to Education (4-A Scheme)<sup>656</sup>

<b>Availability</b>	Primary Schools	Establishment/closure of schools Freedom to establish schools Funding for public schools Public funding for private schools
	Other levels of Education and TVE	Mechanisms for participation/consultation Supervision/Monitoring Special measures Temporary special measures Funding for public institutions
	Teachers	Criteria for recruitment Fitness for teaching Labour rights Trade Union Freedoms Professional responsibilities Academic freedoms
	Accountability mechanisms	Right to seek and receive information Establishing mechanisms for redress/remedies Impact assessment and feedback mechanisms
<b>Accessibility</b>	Compulsory	All-encompassing Free-of-charge Assured Attendance Parental Freedom of Choice Equitable distribution
	Post Compulsory	Elimination of discrimination Temporary special measures Special Measures Criteria for admission Recognition of Foreign Diplomas Upgrading and Updating skills over time
	Information	Right to seek, receive and impart Related to human rights education On components of basic education... Available in audio, visual, print, electronically, etc Gathering of collecting and distribution data
<b>Acceptability</b>	Regulation and Supervision	Minimum standards Respect for diversity Language of instruction Orientation and contents

<sup>656</sup> Adapted from table 2 page 14 of Right to Education Primer No 3. The author has added other components based on research and the work of other special rapporteurs that have clarified the content of ESCR in general.

		School discipline Rights of learners Non-discrimination/equality
	Content of education	Pluralism/diversity Equality/non stereotypical Non-discriminatory Contributing to aims of education Long-life learning Human Rights Education
	Quality of education	Learning materials, facilities and programmes/services must be of good/comparable quality -minimum standards- Non-discrimination/equality
<b>Adaptability</b>	Special Needs	Children with disabilities children living with HIV/AIDS and malnutrition children that have survived abuse young mothers, girl children (in countries where gap is critical) Equitable distribution Non-discrimination/equality
	Special Circumstance/out-of school education	Working children Pregnant /married girls Street children Internally displaced/refugee/stateless children Children deprived of their liberty or institutionalised Adult education
	Emerging issues	Human rights education should become more inclusive over time (updated)  It is necessary to adapt educational strategies bearing in mind advances in science and technology that may enhance the life long learning

## Appendix III: Rights-Based Indicators<sup>657</sup>

<b>AVAILABILITY</b>	Correspondence between the PROFILE OF THE INTAKE and INPUT	The PROFILE to include disaggregation by all internationally prohibited grounds of discrimination;
	Correspondence between BUDGETARY ALLOCATIONS and human rights obligations	BUDGETARY ALLOCATIONS at the central and local level should correspond to the guarantee of free and compulsory education for all children up to the minimum age for employment and progressive realization of the right to education;
	Governmental supervision of EDUCATIONAL INSTITUTIONS to ensure minimum standards and foster INCLUSION	Licensing, supervision and funding of EDUCATIONAL INSTITUTIONS should correspond to human rights law, including the objective of enhancing ALL-INCLUSIVE EDUCATION ;
	Professional EDUCATORS	The status of PROFESSIONAL EDUCATORS should correspond to their internationally recognized rights and trade union freedoms;
	PARENTAL CHOICE OF EDUCATION for their children	Recognition and enforcement of PARENTAL CHOICE should conform to international human rights law.
<b>ACCESSIBILITY</b>	COMPULSORY EDUCATION: elimination of all obstacles to access to education for all school-aged children	Elimination of OBSTACLES: legal and administrative; direct, indirect and opportunity cost of education; transportation;
	POST-COMPULSORY EDUCATION: non-discriminatory access and affordability	Identification of obstacles regarding POST-COMPULSORY EDUCATION corresponding to internationally prohibited grounds of discrimination;  Review of access to post-compulsory education by the criterion of AFFORDABILITY in accordance with international human rights law.
<b>ACCEPTABILITY</b>	MINIMUM STANDARDS	MINIMUM STANDARDS for quality, safety or environmental health should be enforced;
	TEACHING PROCESS	Human rights law should guide the TEACHING PROCESS, especially the purpose, contents and methods of instruction, academic freedom or discipline;
	LEARNING PROCESS	

<sup>657</sup> Source: SRE 2002 report page 13.

		The LEARNING PROCESS requires the elimination of barriers, such as poverty-induced obstacles, language of instruction, ability/disability.
<b>ADAPTABILITY</b>	<p>CONCORDANCE OF AGE-DETERMINED RIGHTS</p> <p>OUT-OF-SCHOOL EDUCATION for categories who cannot access educational institutions</p> <p>Safeguarding HUMAN RIGHTS THROUGH EDUCATION by adapting education to the enjoyment of all human rights</p>	<p>CONCORDANCE between the school-leaving age and the minimum age for employment, marriage, military recruitment, criminal responsibility;</p> <p>OUT-OF-SCHOOL EDUCATION for children and young people deprived of their liberty, refugees, internally displaced people, working children, nomadic communities;</p> <p>THE IMPACT OF EDUCATION ON ALL HUMAN RIGHTS to be assessed by indices such as graduate unemployment or increasing</p>

## Appendix IV: Adjudicating the Right to Education - Some Examples

Name of Case/Complaint	Decided by	Date of views/judgement
Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v Togo	HRC	12 July 1996 Communications No 422/1990, 423/1990 and 424/1990.
Waldman v. Canada	HRC	3 November 1999, communication No 694/1996
Belgian Linguistics Case	European Court of Human Rights	23 July 1968
Delicia Yean and Violeta Bosica v Dominican Republic	Interamerican Commission of Human Rights	Case No 12.189 22 February 2001
Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Inter africaine des Droits de l'Homme, Les Temoins de Jehovah v. Zaire	African Commission on Human Rights and Peoples Rights	7-10 July 1996, Communications No25/89, 47/90. 56/91 and 100/93
Pablo Enrique Torres Gutierrez and Jose Prieto Restrepo v. Instituto Ginebra la Salle	Supreme Court of Colombia	24 March 1998 ( T-147493)
Christian Education South Africa v. Minister of Education	Constitutional Court of South Africa	18 August 2000
Hong Kong Equal Opportunities Commission v. Director of Education	Hong Kong	Case No HCAL 1555/2000 22 June 2001
State of Maharashtra v. Vikas Sahebrao Roundale and Others	Supreme Court of India	11 August 1992
Ebralinag v. the Division Superintendent of School of Cebu	Supreme Court of Philippines	1 March 1993 and 29 December 1995
Campaign for Fiscal Equality at al v. the State of New York et al	Supreme Court of New York	719 NYS 2d 475 Insert gull details

There are also a number of individual complaints that have been submitted to international human rights bodies that, although declared inadmissible, touch on elements of the right to education. In this regard it is worth noting: (i) Tadman et al v. Canada (ICCPR Communication No 816/1998) and (ii) Rahine Kayhan v. Turkey (CEDAW Communication No 8/2005).

Some cases are available through: <http://www.escr-net.org/EngGeneral/caselawlist.asp>. Others are listed in the reports of the independent expert on the justiciability of ESCR and other documents presented to the UN Open Ended Working Group on Options to an Optional Protocol to the ICESCR. Also, all the reports of the UNSRE, including the right to education primers prepared by the K. Tomasevsky contain references to cases on the right to education. Finally, it is also important to note that there are also plans for a UN database on emerging jurisprudence on the right to education.

## **Appendix V: Electronic Resources**

The following electronic resources on the right to education and on case law on the right to education are recommended:

### **Specific resources:**

The Right to Education Project

<http://www.right-to-education.org/>

UNESCO: The Right to Education

[http://portal.unesco.org/education/en/ev.php-URL\\_ID=9019&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php-URL_ID=9019&URL_DO=DO_TOPIC&URL_SECTION=201.html)

UNESCO: Education for All Global Monitoring Report

[http://portal.unesco.org/education/en/ev.php URL\\_ID=35874&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php URL_ID=35874&URL_DO=DO_TOPIC&URL_SECTION=201.html)

UNICEF: Information by Country

<http://www.unicef.org/infobycountry/index.html>

OHCHR Database on Human Rights Education and Training

<http://193.194.138.190/hredu.nsf>

### **General resources:**

Anne Bayefsky.com

<http://www.bayefsky.com/>

ESCR-NET Case Law Database

[http://www.escr-net.org/EngGeneral/Case\\_law.asp](http://www.escr-net.org/EngGeneral/Case_law.asp)

People's Movement on Human Rights Education

<http://www.pdhre.org/>

University of Minnesota Human Rights Library

<http://www1.umn.edu/humanrts/>

### **Additional resources:**

COHRE: Litigating ESCR: Achievements, Challenges and Strategies

COHRE: Leading ESCR Cases: Summaries

[http://www.cohre.org/litigation\\_content.htm](http://www.cohre.org/litigation_content.htm)

Optional Protocol to the ICESCR:

<http://www.escrprotocolnow.org>

United Nations Enable

<http://www.un.org/esa/socdev/enable/index.html>

# ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

## Eleventh Annual Meeting

31 July – 3 August 2006

(Last updated 08.08.06)

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