ADVISORY COUNCIL OF JURISTS

THE ASIA PACIFIC FORUM
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

…a partnership for human rights in our region

Reference on the Right to Education

31 July – 3 August 2006
Suva, Fiji Islands

FINAL REPORT

April 2007

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 (NHRIs) 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/

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Meeting of the Advisory Council of Jurists

Suva, Fiji Islands

31 July - 3 August 2006

This is the final 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[1] 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)

The Advisory Council wishes to welcome new members, Dr Qasem Hashimzai and Associate Professor Durbach and to farewell and thank Professor Gillian Triggs who retired from the Council this year.

[1] The jurists at the meeting were: Justice Anthony Gates, Associate Professor Andrea Durbach, Mr Fali S Nariman, Professor Jacob E Sahetapy, Mr Jugnee Amarsanaa, Justice Susan Glazebrook. The report has, however, been circulated to the other jurists and their comments taken into account.

Acknowledgements

The Advisory Council of Jurists thanks its President, Justice Anthony Gates, for his skilful chairmanship of the Jurists at its meeting. The Jurists were greatly aided at the meeting in their 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 Ratuvili, Ms Deveena Sudhakar-Herman, Ms Sova Colavanua and Ms Vanessa Chang.

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 are grateful to the MacArthur Foundation for the financial support it provided for the preparation of the background paper and the meeting of the Council in Suva.

Finally, the Advisory Council would like to acknowledge Justice Susan Glazebrook and the New Zealand Court of Appeal clerks and interns Claire McGuinness, Christine Watkins, Katarina Boras, Torge Keck and Jane Standage for their work on drafting the final answers to the questions in the terms of reference, to Associate Professor Andrea Durbach for her work on the Appendices and Mr Stephen Clark for his tireless efforts in his work on the country reports and collating the final report.

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.[2] 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;
>
> (v) the nature and scope of the obligation of the State to use the maximum of its available resources;

[2] '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

(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;[3]
(ix) The Dakar Framework for Action;[4]
(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); and
(iii) European Social Charter (revised 1996) and the Additional Protocol thereto.

[3] See appendix 3 for background information.
[4] See appendix 3 for background information.

Introduction

The right to education is a fundamental human right. Every individual, without discrimination, is entitled to basic education. The ACJ notes that during the last decade the progressive development of a framework for the realisation of the right to education has advanced. In particular, the ACJ commends the preamble of the *Asia and Pacific Regional Framework for Action: Education for All*,[5] 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 and of itself, for improving the quality of life, and as an essential part of social and human development. The 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.

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.[6] It is timely, therefore, for National Human Rights Institutions (NHRIs) to analyse the ways the right to education has been elaborated on and to consider their potential role in the realisation of this right.

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 final report, the ACJ provides a series of conclusions and recommendations for NHRIs in relation to the right to education, a summary of answers to the questions posed by the terms of reference and specific recommendations for APF member countries. Part B of the final report provides

[5] See Appendix 3 for more information.

detailed answers to the questions posed by the terms of reference. Part C discusses the position in each of the forum States.

[6] See for example, UNESCO "2006 UNESCO Education for All Global Monitoring Report: Literacy for Life" http://unesdoc.unesco.org/images/0014/001416/141639e.pdf (last accessed 4 April 2007).

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
Asia-Pacific Regional Framework	Asia and Pacific Regional Framework for Action: Education for All; Guiding Principles, Specific Goals and Targets for 2015
CADE	(UNESCO) Convention against Discrimination in Education
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
Dakar Framework	Dakar Framework for Action; Education for All: Meeting Our Collective Commitments
Declaration on Minorities	(UN) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
Disabilities Convention	(UN) International Convention on the Rights of Persons with Disabilities
ECHR	European Court of Human Rights
EFTA	European Free Trade Association
ESCR	Economic, Social and Cultural Rights
European Social Charter	Council of Europe, European Social Charter (revised 1996)
EU	European Union

HRC	(UN) Human Rights Committee
IACHR	Inter-American Commission on Human Rights
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
Maastricht Guidelines	Maastricht Guidelines on Violations of Economic, Social and Cultural Rights
MDGs	(UN) Millennium Development Goals
OAS	Organization of American States
OAS Charter	Charter of the Organization of American States as amended by the Protocol of Buenos Aires
OECD	Organization for Economic Cooperation and Development
OHCHR	(UN) Office of the High Commissioner for Human Rights
OIC	Organisation of the Islamic Conference
Protocol of San Salvador	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights
SAARC	South Asian Association for Regional Cooperation
Special Rapporteur	UN Special Rapporteur on the right to education
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

UN Plan of Action	Plan of Action for the United Nations Decade for Human Rights Education
Vienna Declaration	Vienna Declaration and Programme for Action
WTO	World Trade Organisation

Part A

Executive Summary

General Recommendations and Observations

1. An important role for National Human Rights Institutions (NHRIs)[7] 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 able to be achieved immediately, NHRIs must encourage the progressive realisation of the right, to maximum standards and within the shortest period reasonably attainable.

4. NRHIs should ensure that National EFA Plans and other education sector strategies are devised, monitored and implemented from a human rights perspective (non-discrimination and substantive equality and the five A's; availability, accessibility, acceptability, adaptability and accountability[8]).

5. NRHIs should assist their governments in the review of progress towards the Education for All goals of 2015[9] by ensuring that rights-based indicators, recently developed by UNESCO and UNICEF, are utilised in the review.

[7] See Appendix 4 for background information on NHRIs and the right to education.
[8] We are grateful to Mr Sheldon Shaeffer of UNESCO for his suggestion of the final "A" of accountability.

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 for All. 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.

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[9] The Dakar Forum agreed on six goals relating to: early childhood care and education; universal primary education; learning needs of all young people and adults; adult literacy; gender equality; and education quality.

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. NRHIs 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.[10]

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.

[10] See appendix 3 for more information.

Recommendations in Relation to APF States

Afghanistan

The ACJ recommends that the Afghanistan Independent Human Rights Commission (AIHRC) urge its Government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention and the Worst Forms of Child Labour Convention;
- the necessity to allocate additional budget resources to the education sector and to minimise the imposition of fees and additional costs on parents;
- the lack of access to schools and other education facilities for girls and married women, particularly in rural areas;
- the need to improve education infrastructure including classrooms, libraries, laboratories and sanitation facilities;
- the need to increase the availability of qualified, experienced and properly remunerated teachers and to provide teachers with access to additional training;
- the need to adopt measures to address gender disparity and gender inequality in education at all levels, particularly for girls and women in rural areas; and
- the need to adopt measures to prohibit the use of corporal punishment and to adopt alternative non-violent forms of discipline at all levels of education.

Australia

The ACJ recommends that the Australian Human Rights and Equal Opportunity Commission (HREOC) urge its government to address the following issues:

- the need to provide adequate infrastructure for schools in rural and remote communities, including information technology, library and sporting facilities and maintenance support;
- the need to improve the recruitment and retention of teachers in rural and remote areas (and some metropolitan areas) and to improve the representation of prospective teachers from Indigenous and other cultural, social and ethnic groups;
- the need to improve access to education services in rural and remote areas for students with disabilities;
- the need to develop a coherent and consistent approach to human rights education with a formal role in the education system; and

- the need to ensure that children detained in immigration detention facilities, including unaccompanied minors, have access to and are encouraged to participate in educational services appropriate to their age, intellectual and English-language abilities.

Fiji

The ACJ recommends that the Fiji Human Rights Commission (FHRC) urge its government to address the following issues:

- consider signing the ICESCR and the UNESCO Convention Against Discrimination in Education;
- the need to provide additional support to improve the availability and quality of education infrastructure and teaching resources in rural and remote areas;
- the need to adopt measures to minimise the impact of school fees and other education costs on the accessibility of education;
- the need to improve access to qualitative data and improved evaluation of gender disparities in education in Fiji;
- the need to review school curriculum and teaching materials to identify and eliminate gender bias;
- the need to provide improved career counselling for female students to address traditional attitudes and to encourage broader career choices; and
- the need to ensure that human rights education is included within the National Curriculum Framework.

India

The ACJ recommends that the National Human Rights Commission of India (NHRCI) urge its government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention and the Worst Forms of Child Labour Convention;
- the need to improve the quality of education infrastructure and education facilities, including sanitation and safe drinking-water facilities and classrooms and libraries;
- the need to continue efforts to improve gender equality and gender parity throughout the education system;

- the need to continue efforts to improve access to education facilities for students with disabilities;
- the need to ensure universal access to secondary education, with an emphasis on the enrolment of girls and minimising economic barriers such as fees and other education costs;
- the need to continue efforts to provide access to non-formal education programmes for people outside of the formal education system; and
- the need to introduce measures to ensure equal access to education for women and to amend the *Child Marriage Restraint Act* 1929 to prevent the practice of child marriage.

Indonesia

The ACJ recommends that the Indonesian National Commission on Human Rights (Komnas HAM) urge its government to address the following issues:

- the necessity to allocate additional budget resources to the education sector and to minimise the imposition of fees and additional costs on parents;
- the need to address the high pupil-teacher ratio and the need to strengthen measures to improve the qualifications of teachers;
- the need to adopt measures to address the low level of participation of girls and women in the education system and to address their high levels of illiteracy, particularly in rural areas;
- the need to adopt measures to eliminate the use of corporal punishment in schools and to address high levels of violence and bullying;
- the need to adopt measures to minimise child labour and to ensure that working children have access to alternative primary and secondary education opportunities;
- the need to review the *Marriage Act* (1974) and to adopt measures to ensure education opportunities are provide for married children and pregnant teenagers; and
- the need to increase the availability of special education services for children with disabilities and also children in marginalised circumstances including homeless children and refugee and internally displaced children.

Jordan

The ACJ recommends that the Jordan National Centre for Human Rights (JNCHR) urge its government to address the following issues:

- the need to adopt measures to minimise the imposition of school fees and additional education costs on parents and students;
- the need to ensure the availability of accessibility and quality education services for refugee children and their families;
- the need to adopt measures to minimise child labour and to ensure that working children have access to alternative primary and secondary education opportunities; and
- the need to adopt measures to encourage girls and women to pursue broader educational and career choices.

Malaysia

The ACJ recommends that the Human Rights Commission of Malaysia (SUHAKAM) urge its government to address the following issues:

- consider signing the ICESCR, CERD and the UNESCO Convention Against Discrimination in Education;
- the need to allocate resources to improve education infrastructure and facilities, particularly at schools located in rural and remote areas;
- the need to improve the availability of effective, accessible and safe transport options for children to attend school
- the need to improve the accessibility of education infrastructure and facilities for disabled students;
- the need to review the legal status of the children of undocumented migrant workers and to adopt measures to ensure that they have the opportunity to access the education system;
- the need to minimise the imposition of school fees and other education costs on parents and students; and
- the need to increase the number of qualified special education teachers and to address issues of discrimination against students with special needs.

Mongolia

The ACJ recommends that the National Human Rights Commission of Mongolia (NHRCM) urge its government to address the following issues:

- the need to allocate resources to improve education infrastructure and facilities, including heating systems, sanitation facilities and medical services, as well as school dormitories, and classroom furniture;

- the need to allocate resources to improve the availability of teaching materials, including textbooks and to invest in school libraries, reading facilities and books for children;
- the need to adopt measures to address the low rates of participation in the education system by boys and men, particularly at the secondary and higher education levels;
- the need to improve the availability of special education schools, particularly in rural areas and to improve the accessibility of all schools for students with disabilities; and
- the need to develop standards for evaluating and monitoring the human rights environment of schools.

Nepal

The ACJ recommends that the National Human Rights Commission of Nepal (NHRCN) urge its government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education;
- the need to allocate resources to improve education infrastructure and facilities, particularly at schools located in rural and remote areas;
- the need to adopt measures to improve the availability of qualified, experienced and properly resources teachers and to provide opportunities for additional training and support;
- the need to adopt measures to increase the level of enrolments of children at the primary and secondary education levels;
- the need to improve the coordination and management of vocational education and training programmes;
- the need to adopt measures to improve access to all levels and forms of education for girls and women and to improve access to literacy programmes;
- the need to minimise the imposition of school fees and other education costs on parents and students;
- the need to adopt measures to eliminate the practice of corporal punishment in schools;
- the need to adopt measures to minimise child labour and to ensure that working children have access to alternative primary and secondary education opportunities; and
- the need to adopt measures to address the impact of domestic violence and child marriage on educational opportunities for girls and women; and
- the need to increase the accessibility of education services at all levels for students with disabilities and other special needs.

New Zealand

The ACJ recommends that the New Zealand Human Rights Commission (NZHRC) urge its Government to address the following issues:

- the need to adopt measures to ensure sufficient support for the training of early childhood education teachers;
- the need to maintain current programmes and identify new initiatives to support the participation and success of Māori and Pacific students at all levels of the education system;
- the need to adopt measures to improve literacy standards for boys and to improve their general engagement with the education system at all levels;
- the need to adopt measures to support and strengthen special needs education programmes, resources and facilities; and
- the need to adopt best-practice guidelines to support the participation of people with disabilities at all levels of the education system.

Palestinian Territories

The ACJ recommends that the Palestinian Independent Commission for Citizens' Rights (PICCR) urge its government to address the following issues:

- the need to minimise the imposition of school fees and other education costs on parents and students;
- the need to continue improving education infrastructure and facilities, including libraries, lecture halls, science laboratories, computer facilities, canteens and sports playgrounds;
- the need to improve the accessibility of the education system for students with disabilities through the upgrading of school buildings and facilities; training of additional special education teachers; provision of Braille printers and sign language facilities; provision of appropriate transport options such as appropriately equipped school buses; and the provision of access to extra-curricular activities;
- the need to adopt measures to reduce the level of drop-out rates by students; and
- the need to adopt measures to provide education opportunities for pregnant teenagers.

Philippines

The ACJ recommends that the Commission on Human Rights of the Philippines (CHRP) urge its government to address the following issues:

- the necessity to allocate additional budget resources to the education sector and to minimise the imposition of fees and additional costs on parents;
- the need to adopt measures to improve the participation of boys and men at all levels of the education system;
- the need to adopt measures to improve physical access to schools and other educational institutions, particularly in rural and remote communities; and
- the need to adopt measures to minimise child labour and to provide educational opportunities for working children.

Qatar

The ACJ recommends that the National Human Rights Committee of Qatar (NHRCQ) urge its government to address the following issues:

- consider signing the ICESCR, CEDAW and the UNESCO Convention Against Discrimination in Education;
- the need to adopt measures to improve the availability of information on education expenditure;
- the need to adopt measures to eliminate the use of corporal punishment in schools and other educational institutions and to encourage the use of alternative non-violent forms of discipline; and
- the need to adopt measures to reform the education curriculum and teaching methodology, taking into account the development of and respect for human rights, tolerance and equality of the sexes and religious and ethnic minorities.

Republic of Korea

The ACJ recommends that the National Human Rights Commission of the Republic of Korea (NHRCK) urge its government to address the following issues:

- the need to consider signing the UNESCO Convention Against Discrimination in Education;
- the need to adopt measures to minimise parents' burden of educational costs;
- the need to adopt measures to ensure access to education in rural and remote areas;
- the need to incorporate human rights education in the curriculum; and
- the need to adopt measures to eliminate corporal punishment in schools and to encourage non-violent forms of discipline.

Sri Lanka

The ACJ recommends that the Human Rights Commission of Sri Lanka (HRCSL) urge its government to address the following issues:

- the need to adopt measures to address regional imbalances in school facilities and to improve the quality and availability of teachers and support staff;
- the need to adopt measures to ensure that internally displaced persons have access to education opportunities;
- the need to adopt measures to eliminate the use of corporal punishment in schools and other educational institutions and to encourage the use of alternative non-violent forms of discipline.
- the need to adopt measures to incorporate human rights education into the national curriculum;
- the need to adopt measures to minimise child labour and to provide educational opportunities for working children, including young mothers;
- consider increasing the minimum age of criminal responsibility to an internationally acceptable level; and
- the need to adopt measures to improve access to special education schools and programmes, particularly for students with disabilities.

Thailand

The ACJ recommends that the National Human Rights Commission of Thailand (NHRCT) urge its government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education;

- the need to adopt measures to ensure a more equitable distribution of funding and resources amongst schools, particularly schools in socially disadvantaged areas and schools with special education needs;
- the need to adopt measures to improve school infrastructure, materials and resources, including science and technology facilities;
- the need to adopt measures to improve the availability and quality of teachers and support staff;
- the need to adopt measures to minimise the imposition of fees and additional costs on parents; and
- the need to adopt measures to improve education opportunities for girls and women, including pre-natal and post-natal women.

Timor-Leste

The ACJ recommends that the Timor-Leste Provedor for Human Rights and Justice (PDHJ) urge its government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention and the Worst Forms of Child Labour Convention;
- the need to adopt a basic law on education;
- the need to identify and secure adequate sources of funding to enable the primary and secondary education systems to grow and develop;
- the need to improve basic education infrastructure, including classrooms and sanitation facilities;
- the need to adopt measures to improve the quality and availability of teachers and support staff;
- the need to adopt measures to minimise the imposition of fees and additional costs on parents;
- the need to adopt measures to ensure the full participation of girls and women at all levels of education; and
- the need to adopt measures to improve the availability of non-formal education.

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.

- International human rights instruments affirm 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.
- The right to education embodies the principles of the universality, indivisibility and interdependence of all human rights.
- 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. In particular, the right to education comprises four levels of education: primary or elementary education; secondary education; higher or tertiary education; and basic or fundamental education.
- The tripartite framework of State obligation imposes three types of obligations on State parties: to respect, protect and fulfil the right to education. In turn, the obligation to fulfil requires parties to facilitate, provide and promote 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.

Immediate and progressive obligations

- In providing the right to education States have both immediate and progressive obligations.
- Immediate obligations include the guarantee that the right to education will be exercised without discrimination and the obligation "to take steps" towards the full realisation of the right to education.

- If a country has sufficient available resources, it must fulfil immediately all of the obligations set out in article 13(2) of ICESCR and article 29(1) of CRC.
- If a country is unable to achieve this immediately due to financial constraints, the full realisation of the right to education is a progressive undertaking. However, each State has a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to education
- States must avoid all retrogressive measures which directly or indirectly adversely affect the current standard and availability of education in the State.
- States must adopt a detailed plan of action aimed at securing the progressive implementation of the right to compulsory and free primary education without undue detriment to other levels of education.

Essential features of the right to education

- Education in all its forms and at all levels should meet the four interrelated and essential features of availability, accessibility, acceptability and adaptability (the four A's).
- Availability requires the capacity of educational institutions and programmes to be matched to the number of students needing such facilities.
- Accessibility requires the removal of all obstacles (both direct and indirect) to a student's participation in education. In particular, education must be physically and economically accessible to everyone without discrimination.
- Acceptability means that the form and substance of education, including curricula and teaching methods, must be acceptable to students and parents. In particular, education must meet a minimum quality standard and be appropriate to the individual student.
- Acceptability also requires education to be provided in safe and educationally appropriate facilities.
- Adaptability requires education to be flexible so that it can adapt to the changing needs of society and communities and to technological and scientific advances.

Minimum Ages

- 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.
- The minimum age for employment and marriage should allow students to complete their primary and secondary (or technical and vocational) education.

(iii) <u>the question of the justiciability of the right to education.</u>

- Increasingly, jurisprudence has supported the justiciability of the right to education.
- The justiciability of the right to education is inseparable from the justiciability of other rights as all rights are interdependent.
- It is fundamental to the existence and continued strengthening of the right to education that individuals have the opportunity to invoke the right to education before a judicial or quasi-judicial body.
- Where the justiciability of the right to education is guaranteed in State legislation, accountability of the State for breaches of the right to education will be ensured.
- States must give effect to their obligations in relation to the right to education by providing recourse to appropriate judicial, quasi-judicial and administrative 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;
    - Impose appropriate sanctions and/or remedies in the event of a breach of the right; and
    - Explore, where necessary, innovative solutions to solidify the justiciability of the right to education.
- 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.
- The consequences of making economic, social and cultural rights an enforceable part of a constitution are that human rights norms aimed at seeking social or distributive justice will find a degree of permanence, and access to justice will increase.
- States should consider adopting the Optional Protocol to the ICESCR as this would allow the CESCR to act as a safety-net and a forum for identifying areas where states have failed to fulfil obligations.
- It is necessary to educate the general public about the right to education and the remedies available and to ensure that the legal profession and the judiciary have on - going education on the developments in this field.

(iv) <u>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.</u>

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.
- States must ensure that their laws, policies and practices do not inhibit or prevent children from accessing primary education.
- States are obliged to eliminate school fees and minimise indirect costs imposed on students and parents or legal guardians.

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 and, in particular, by the progressive introduction of free education
- Tertiary education should have flexible curricula and a variety of delivery systems 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.

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.
- 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, youths and adults.

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.

(v) <u>the nature and scope of the obligation of the State to use the maximum of its available resources.</u>

- Each State must take steps, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights to education.
- States are not obliged to allocate all of their resources to education.
- Regardless of the level of economic development, including in times of extreme resource constraints, States still have an obligation to protect the right to education.
- Where available resources are insufficient to fulfil the State's obligations, the State must seek international cooperation and assistance.

(vi) <u>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.</u>

- 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.
- Guarantees of non-discrimination and equality mandate both formal and substantive equality.
- Affirmative action may be necessary in order to diminish or eliminate conditions which cause or help to perpetuate prohibited discrimination.
- States are required to provide appropriate education to internally displaced children and child refugees.
- States are required to meet the needs of children with disabilities.

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

- 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. This mandates both formal and substantive equality.
- States must ensure the same conditions for career and vocational guidance, for access and admission to studies and for the achievement of qualifications for males and females. States may, however, take into account existing economic, social, cultural and gender inequalities.
- Progress on gender equality is related to the content and quality of education. States must ensure access to the same curricula, examinations and teaching standards. Further, curricula must promote equality and non-discrimination.
- States must identify and eradicate barriers to females' education, including socio-cultural factors, discrimination and financial disadvantage.
- States must ensure the safety of children both while travelling to and from and while attending school.
- States should take measures to ensure that girls' education is not interrupted or terminated by early marriage and motherhood.
- States should provide access to education on health and hygiene matters for both sexes.

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

- No educational institution, whether State-funded or not, may discriminate on any prohibited ground.
- The State must ensure that the religious and cultural identity of students is respected and accommodated in educational programmes and institutions.
- Religious and cultural tolerance should be promoted by all educational institutions.
- Children have a right to express themselves in their language in all educational institutions.
- Subject to the availability of adequate resources and where there are no significant practical impediments, all children should be given the opportunity to gain initial literacy in their mother tongue in State-funded institutions.
- States must lead the way and provide State-funded education in minority languages, especially for indigenous people, wherever possible.

- While restrictions may be imposed on wearing religious symbols in schools, States must take into account, to the fullest extent possible, children's freedom of religion when imposing such restrictions.
- No child should be forced to wear religious symbols.

(ix) <u>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.</u>

- Curricula and teaching methods must be of good quality and learner-centred.
- Quality education requires an environment and curricula that are sensitive to human rights.
- 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.
- Governments must regulate education by setting and enforcing minimum standards to which all educational institutions must conform.
- States are obliged to establish and maintain a transparent and effective system to monitor whether or not educational objectives are being met.
- NHRIs should develop a National Plan of Action on the Right to Education which would be complementary to the National EFA Plan.

(x) <u>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.</u>

- One of the dual aims of education is the strengthening of respect for human rights and fundamental freedoms.
- Human rights education should strengthen the 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.
- Human rights education should involve more than the provision of information and should constitute a life-long process by which all people learn respect for the dignity of others.
- 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.

(xi) <u>the nature and scope of the obligation to ensure academic freedom and the autonomy of educational institutions.</u>

- The right to education can only be fully enjoyed if it is accompanied by the academic freedom of staff and students.
- Members of the academic community must be free to pursue, develop and disseminate knowledge and ideas.
- In addition, there must be an appropriate degree of self-governance by educational institutions. The school system must, however, be accountable to learners, parents and communities.

(xii) <u>the nature and scope of the obligation to respect parents' and legal guardians' freedom of choice of educational institution and educational programme.</u>

- Children (subject to their age and maturity), their parents and legal guardians have the right to choose education which accords with their own beliefs and convictions.
- This choice is subject to the obligation to promote the best interests of the child.
- States must respect the freedom of individuals to provide religious or linguistic instruction in schools established by members of that religion or culture.
- Parents, legal guardians and children (subject to their age and ability) should be able to choose between specialised or mainstream schools for children with disabilities or special learning needs.

(xiii) <u>the nature and scope of the obligation of States to receive and to provide international assistance and cooperation.</u>

- States have an obligation to seek international assistance and co-operation, especially economic and technical, if their resources are not sufficient to fulfil their obligations in relation to the right to education.
- The international community has an obligation to assist and co-operate in the realisation of the right to education and must commit funds and expertise in this regard.
- Economic assistance and co-operation should include providing funds and debt relief.
- The provision of technical assistance and co-operation requires States to exchange information, experiences and innovations. In addition, States should provide assistance in

the preparation of educational laws, programmes and policies and assist in preventing violations of the right to education.

- Developed States are required to co-operate and assist developing States in fulfilling the core obligations.
- Developing States are required to use the resources received to satisfy the core obligations as a matter of priority and must give priority to the most vulnerable and disadvantaged groups within society.
- Both the international community and States must refrain from adopting policies which obstruct or violate the right to education in developing countries.

(xiv) <u>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.</u>

- 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 transnational 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.

Part B

Detailed 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.

Summary

- International human rights instruments affirm 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.
- The right to education embodies the principles of the universality, indivisibility and interdependence of all human rights.
- 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. In particular, the right to education comprises four levels of education: primary or elementary education; secondary education; higher or tertiary education; and basic or fundamental education.
- The tripartite framework of State obligation imposes three types of obligations on State parties: to respect, protect and fulfil the right to education. In turn, the obligation to fulfil requires parties to facilitate, provide and promote the right to education.

Discussion

Definition of the right to education

International human rights instruments

The right to education is affirmed in a significant number of international human rights instruments.[11] These instruments express the right to education in general terms and as

[11] See the articles listed in Appendix 1.

applying universally. For example, article 26(1) of the Universal Declaration on Human Rights 1948 (UDHR) states that "[e]veryone has the right to education".

The term "education" is expressly defined in the Convention against Discrimination in Education (CADE), while several other international instruments set out the aims of education. The articulation of such aims can, however, be seen in a broader sense as defining the term "education". Article 1(2) of the CADE defines education in wide and inclusive terms:

> 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.

Rather than providing similar definitions, most human rights instruments set out the aims of education. The right to education in international instruments comprises the dual aspects of development of the individual and promotion of respect for human rights.

Article 26(2) of UDHR provides that:[12]

> 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 the activities of the United Nations for the maintenance of peace.

Article 13(1) of the ICESCR reaffirms article 26(2) of the UDHR and adds two more aspects to the right to education: education shall be directed also to the sense of dignity of the human personality and education shall enable all persons to participate effectively in a free society.

The CRC expands on the dual aims of education further, touching on respect both for one's own culture and nation and for other civilisations, as well as diversity in society and respect for the environment. Article 29(1) of the CRC requires the education of the child to be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

[12] The CADE expresses the aims of education in the same terms as the UDHR. See article 5(1) of the CADE set out in Appendix 1.

(c) 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 civilisations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and

(e) The development of respect for the natural environment.

Regional human rights instruments

The right to education is also affirmed in regional human rights instruments.[13] The Asia-Pacific Regional Framework affirms that "[e]ducation is a fundamental human right of all people – of value in and of itself, for improving the quality of life, and as an essential part of social and human development."[14]

Other human rights bodies

The aims of education have been further reaffirmed and elaborated on by government and other human rights organisations at the international and regional level. In 1990 the World Conference on Education for All adopted the World Declaration on Education for All.[15] This Declaration expresses the right to education using different language to the instruments discussed above. Article 1 provides that every person shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools and basic learning content.[16] The article goes on to state that another fundamental aim of educational development is the transmission and enrichment of common cultural and moral values. Thus, basic education is more than an end in itself; it is the foundation for lifelong learning and human development.

[13] For example, the IACHR, which is an autonomous organ of the OAS, has affirmed the right to education and has expressed the dual aims of education in similar terms to the UN human rights conventions: see article 13(2) of the Protocol of San Salvador.

[14] Preamble to the Asia and Pacific Regional Framework for Action: Education for All, Guiding Principles, Specific Goals and Targets for 2015; Adopted by the Asia-Pacific Conference on EFA 2000 Assessment Bangkok, Thailand, 17-20 January 2000.

[15] See http://www.unesco.org/education/efa/ed_for_all/index.shtml (last accessed 13 March 2007) for an explanation on the Education for All movement.

[16] Basic learning needs will be discussed in more detail under term of reference (iv).

In April 2000 the World Education Forum[17] adopted the Dakar Framework.[18] Article 6 of the Dakar Framework states:

> Education is a fundamental human right. It is the key to sustainable development and peace and stability within and among countries, and thus an indispensable means for effective participation in the societies and economies of the twenty-first century, which are affected by rapid globalization. Achieving EFA goals should be postponed no longer. The basic learning needs of all can and must be met as a matter of urgency.

Finally, the World Conference on Human Rights[19] has reaffirmed the dual aims of education. In this regard, the Vienna Declaration and Programme for Action (Vienna Declaration) provides that 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.[20]

General Comments and Recommendations

Both the CESCR and the Children's Committee have affirmed the dual aims of education.[21] In 1999, the Children's Committee stated that every child has a right to an education designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The CESCR referred to the educational aims and objectives identified in the ICESCR and the UDHR and considered that perhaps the most fundamental objective is that "education shall be directed to the full development of the human personality".

The CESCR took the view that States must ensure that education conforms to the aims and objectives identified in the ICESCR, as interpreted in the light of the World Declaration on Education for All, the CRC, the Vienna Declaration and the Plan of Action for the United

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[17] See Education for All Meeting Our Collective Commitments, Text adopted by the World Education Forum, Dakar Senegal, 26 – 28 April 2000, Expanded Commentary on the Dakar Framework for Action, Paris 23 May 2000 at http://www.unesco.org/education/efa/wef_2000/expanded_com_eng.shtml *(last accessed* 13 March 2007) for an explanation of the World Education Forum and the Dakar Framework for Action.

[18] The Dakar Framework for Action, Education for All: Meeting Our Collective Commitments; Adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000. See also appendix 3 for more information.

[19] See http://www.unhchr.ch/html/menu6/1/initiatives.htm (last accessed 13 March 2007) for an explanation of the United Nations Decade for Human Rights Education, including the World Conference on Human Rights and the Vienna Declaration.

[20] Vienna Declaration, Part II at para 79. See also Part I at para 33.

[21] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at paras 4 – 5 and Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at para 2.

Nations Decade for Human Rights Education (UN Plan of Action).[22] These texts include elements which are not expressly provided for in article 13(1) of the ICESCR, such as specific references to gender equality and respect for the environment. The Committee considered that these new elements are implicit in, and reflect a contemporary interpretation of article 13(1) of the ICESCR.

Dual aims of education

Development of the individual

The first main aim of education is the development of the individual. Education enables the full development of the human personality and sense of dignity. The Children's Committee has discussed this aim in more detail, insofar as it relates to children.[23] According to the Children's Committee, the goal is to empower the child by developing his or her personality, skills, learning and other capacities, human dignity, self-esteem and self-confidence. Education therefore goes far beyond formal schooling (such as literacy and numeracy) to embrace the broad range of life experiences and learning processes which enable children to develop their personalities, talents and abilities and to live a full and satisfying life within society. Life skills, which include the ability to make well-balanced decisions, to think critically and to develop a healthy lifestyle, good social relationships and responsibility, ensure that children are equipped to face the challenges of life and to pursue their options in life.

Promotion of respect for human rights

The second main aim of education is respect for human rights and fundamental freedoms. As stated in the CRC, education strengthens the capacity of the individual to participate fully, effectively and responsibly in a free society in a spirit of understanding, peace and tolerance. Education fosters respect for family, cultural identity, language and values, for the national values of the individual's country and for civilisations different from his or her own.[24]

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[22] See for an explanation of the Human Rights Questions Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, UN Plan of Action, A/51/506/Add.1, 51st session, 12 December 1996, A/51/506/Add.1. See also appendix 3 for more information.

[23] See Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at paras 2 and 9.

[24] See CRC, article 29(1)(c)-(d), set out at page 30 above.

Since "respect for human rights and fundamental freedoms" is one of the main aims of the right to education, human rights education should be considered as a means for affirming the values and vision established in international human rights documents. The obligation to ensure the realisation of the right to human rights education for all will be discussed in more depth under term of reference (x).

Universality, indivisibility and interdependence

The right to education embodies the principles of the universality, indivisibility and interdependence of all human rights. These principles were affirmed in the Vienna Declaration, which provides that:[25]

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, 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 principle of universality means that 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.[26] Since the need for knowledge, skills and information is universal, every individual has an inherent right to access and benefit from education. Thus the right to education is a universal entitlement and is equally applicable to all.

Many international human rights documents, mechanisms and experts have asserted the importance of a holistic approach to the realisation of human rights.[27] Both the CESCR and the Special Rapporteur on the right to education have stated that education is a civil, cultural, economic, political and social right.[28] It therefore requires integrated, rather than fragmented,

[25] See Vienna Declaration, Section I, para 5.
[26] The right to equality and non-discrimination constitutes a central component of the right to education. This aspect of the right to education is discussed in more detail under term of reference (vi).
[27] See, for example, Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at paras 5 – 7.
[28] See CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 2 and Report of the Special Rapporteur on the right to education E/CN.4/2003/9 21 January 2003 at para 29. See also Annual Report of the Special Rapporteur on the right to education E/CN.4/2002/60 7 January 2002 at para 58 and Annual Report of the Special Rapporteur on the right to education E/CN.4/2001/52 11 January 2001 at para 6.

analytical approaches.[29] In this respect, the right to education epitomises the indivisibility and interdependence of all human rights.[30] It is, therefore, important to study the link between the right to education and other human rights.

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 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.[31] In regard to the right to work, 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.

Finally, since human rights do not exist in a vacuum, national plans of action for the implementation of each right should be interrelated. When 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 or her family's income in order to buy food, forcing the same child to go to school might lead to hunger in his or 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. Such a response ensures that neither the right to education nor the right to food is compromised.

Components of the right to education

A clearly defined set of elements and components of the right to education can be garnered from international human rights law. The right to education comprises four levels of education: primary or elementary education; secondary education, including technical and vocational education; higher or tertiary education; and basic or fundamental education.[32]

[29] Report of the Special Rapporteur on the right to education E/CN.4/2003/9 21 January 2003 at para 29.
[30] CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 2.
[31] Some authors 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 "In Search of the Core Content of the Right to Education" in Chapman and Russel (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 217 at 219.
[32] Each of these levels of education will be discussed in more detail under term of reference (iv).

Although the right to education is holistic and encompasses all levels and kinds of education, a general analysis of the international human rights instruments shows that the requirements of each level of education are prioritised and expressed differently:[33]

- Primary or elementary education must be compulsory and available free to all.[34]
- 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.[35]
- 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.[36]
- Basic education must be encouraged or intensified for those persons who have not received or completed the whole period of their primary education.[37]

Further, 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.

Additional elements and components of the right to education are:

- The best interests of the child are a primary consideration in the education of those aged under 18 years.[38]
- 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.[39]
- States must make educational and vocational information and guidance available and accessible to all children and take measures to encourage regular attendance at schools and the reduction of dropout rates.[40]

[33] Article 13(2)(a)-(d) of the ICESCR and article 28(1)(a)-(c) of the CRC.
[34] See UDHR, article 26(1); ICESCR, article 13(2)(a); CRC, article 28(1)(a); Protocol of San Salvador, article 13(3)(a); African Children's Charter, article 11(3)(a).
[35] Article 13(2)(b) of the ICESCR and article 28(1)(b) of the CRC. See also article 26(1) of the UDHR and article 13(3)(b) of the Protocol of San Salvador.
[36] Article 13(2)(c) of the ICESCR and article 28(1)(c) of the CRC. See also article 26(1) of the UDHR (which refers to access to higher education on the basis of "merit") and article 13(3)(c) of the Protocol of San Salvador.
[37] Article 13(2)(d) of the ICESCR and article 13(3)(d) of the Protocol of San Salvador.
[38] Article 3 of the CRC.
[39] Article 13(2)(e) of the ICESCR.
[40] Article 28(1)(d)-(e) of the CRC.

Further components of the right to education which will be discussed elsewhere in this report include non-discrimination and equality, the right to information, freedom to choose and to establish academic institutions, academic freedom and respect for cultural diversity.

The best interests of the child

All children below eighteen years of age are entitled to the rights covered in the CRC.[41] The CRC establishes that the "best interests of the child" is a primary consideration in all actions concerning children. In this regard, article 3(1) reads:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The principle of the best interests of the child is, therefore, a primary consideration when analysing and implementing the right to education in the context of children. The Children's Committee has also emphasised the child-centred nature of the CRC in relation to the right to education.[42] The Committee has stated that, consistent with the CRC's emphasis on the importance of acting in the best interests of the child, article 29(1) requires education to be child-centred, child-friendly and empowering, as the key goal of education is the development of the individual child's personality, talents and abilities.[43] Teaching methods must, therefore, be tailored to the different needs of each child. Further, the child must be given an opportunity to express his or her views and provide input into decisions related to his or her education.[44]

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

In the late 1990s, the CESCR and various UN independent experts consistently began to incorporate the "tripartite" framework of State obligation in relation to economic, social and cultural rights rights. This framework imposes three types of obligations on State parties: to respect, to protect and to fulfil human rights.[45] Failure to perform any of these obligations constitutes a violation of the right.

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[41] Article 1 of the CRC.
[42] See Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at paras 2 and 9.
[43] See article 29 set out above at 30.
[44] Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at para 22.
[45] The tripartite framework of State obligation was included in the Maastricht Guidelines on Violations of Economic, Cultural and Social Rights (22-26 January 1997) (Maastricht Guidelines). Paragraph 6

The CESCR has confirmed that the right to education, like all human rights, encompasses these levels of State obligation.[46] The Committee stated that "States have obligations to respect, protect and fulfil each of the 'essential features' (availability, accessibility, acceptability, adaptability) of the right to education."[47]

In addition, each of the obligations incorporates obligations of both conduct and result.[48] The obligation of conduct requires action reasonably calculated to realise the enjoyment of the right to education. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard.

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.[49] Thus, States must avoid taking measures that hinder or prevent the enjoyment of the right to education.[50] This requires States to recognise freedoms linked to the full enjoyment of the right to education. For example, a State must respect the availability of education by not closing private schools.[51]

The obligation to respect includes the following measures on the part of States:[52]

- States have an obligation to remove or amend statutory provisions and correct administrative practices that involve discrimination in education.

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states that "[l]ike 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." The obligations to respect, protect and fulfil have been referred to consistently by the UN in the context of social, economic and cultural rights since 1999. The first reference by the CESCR to the tripartite framework was made in CESCR *General Comment No. 12: The right to adequate food* E/C.12/1999/5 12 May 1999 at para 15. The UN special rapporteurs with mandates on economic, social and cultural rights now use this typology consistently.

[46] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 46.

[47] See CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 50.

[48] Maastricht Guidelines at para 7.

[49] Maastricht Guidelines at para 6.

[50] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 47.

[51] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 50.

[52] These obligations reflect those in article 3 of the CADE, which sets out the obligations of State parties in order to eliminate and prevent 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.[53] Coomans adds that it "requires the State to guarantee the exercise of the right to education in horizontal relations (among private groups or individuals)."[54]

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 mental or physical disabilities.[55] In addition, the State has an obligation to ensure that private educational institutions design and implement entrance exams on the basis of non-discrimination. The steps that States can take to meet their 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
- ongoing monitoring of the actions of relevant third parties.

[53] See CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 47 and Maastricht Guidelines at para 6.
[54] Coomans "In Search of the Core Content of the Right to Education" in Chapman and Russel (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 217 at 243.
[55] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at 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."

The obligation to fulfil

States have principal responsibility for the direct provision of education in most circumstances.[56] Thus, 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.[57] In turn, the obligation to fulfil incorporates three elements: an obligation to facilitate, an obligation to provide and an obligation to promote.

Fulfil (facilitate)

As part of the obligation to fulfil, States are required to facilitate the right to education by taking positive measures which enable and assist individuals and communities to enjoy the right to education within a context that is appropriate and acceptable to the particular circumstances of the respective State.[58] Consequently, measures adopted will vary between States. By way of illustration, the CESCR has said that a State must facilitate the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all.[59]

Fulfil (provide)

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. According to the CESCR,[60] States are obliged to provide a specific right in the ICESCR when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal. The extent of this obligation is subject to the text of the Covenant. In this respect, the CESCR emphasised, first, that States have principal responsibility for the direct provision of education in most circumstances and, secondly, that, given the differential wording in relation to primary, secondary, higher and fundamental education, the parameters of a State's obligation to provide are not the same for all levels of education. Accordingly, in light of the text of the

[56] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 48.
[57] Maastricht Guidelines at para 6.
[58] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 47.
[59] The example of fulfil (facilitate) in CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 50, is "taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality to all."
[60] See CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at paras 47 – 48.

Covenant, States parties have an enhanced obligation to fulfil (provide) regarding the right to education, but the extent of this obligation is not uniform for all levels of education.

The CESCR went on to give the following examples of the State's obligation to provide education:

- A State must fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world.
- A State must fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries.

Fulfil (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.

(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.**

Summary

Immediate and progressive obligations

- In providing the right to education States have both immediate and progressive obligations.
- Immediate obligations include the guarantee that the right to education will be exercised without discrimination and the obligation "to take steps" towards the full realisation of the right to education.
- If a country has sufficient available resources, it must fulfil immediately all of the obligations set out in article 13(2) of ICESCR and article 29(1) of CRC.
- If a country is unable to achieve this immediately due to financial constraints, the full realisation of the right to education is a progressive undertaking. However, each State has a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to education
- States must avoid all retrogressive measures which directly or indirectly adversely affect the current standard and availability of education in the State.
- States must adopt a detailed plan of action aimed at securing the progressive implementation of the right to compulsory and free primary education without undue detriment to other levels of education.

Essential features of the right to education

- Education in all its forms and at all levels should meet the four interrelated and essential features of availability, accessibility, acceptability and adaptability (the four A's).
- Availability requires the capacity of educational institutions and programmes to be matched to the number of students needing such facilities.

- Accessibility requires the removal of all obstacles (both direct and indirect) to a student's participation in education. In particular, education must be physically and economically accessible to everyone without discrimination.
- Acceptability means that the form and substance of education, including curricula and teaching methods, must be acceptable to students and parents. In particular, education must meet a minimum quality standard and be appropriate to the individual student.
- Acceptability also requires education to be provided in safe and educationally appropriate facilities.
- Adaptability requires education to be flexible so that it can adapt to the changing needs of society and communities and to technological and scientific advances.

Minimum ages

- 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.
- The minimum age for employment and marriage should allow students to complete their primary and secondary (or technical and vocational) education.

Discussion

Immediate and progressive obligations

In providing the right to education States have both immediate and progressive obligations.[61] The provision of progressive realisation acknowledges that States may be under financial constraints that prevent the immediate realisation of the right to education.

Article 2 of the ICESCR sets out the obligations of State parties to the Covenant:

> 1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

[61] Article 2 of the ICESCR. See also CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 1 and CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 43.

> 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In addition, article 3 of the ICESCR provides that:

> The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Immediate obligations

Two immediate obligations are particularly important: the guarantee that the right to education will be exercised without discrimination and the obligation "to take steps" towards the full realisation of the right to education.[62] First, under article 2(2), States undertake to guarantee that the right to education "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." This is an immediate obligation[63] and is, therefore, subject to neither progressive realisation nor the availability of resources.[64] This guarantee will be discussed in greater detail under term of reference (vii).

Secondly, article 2(1) of the ICESCR requires States to take steps with a view to achieving progressively the full realisation of the right to education by all appropriate means, including particularly the adoption of legislative measures. Thus, while the full realisation of the right to education may be achieved progressively, States have an obligation to begin immediately to take steps towards that goal.[65] The CESCR has said that such steps must be deliberate, concrete and targeted as clearly as possible towards the full realisation of the right to education.[66]

"Appropriate means" to achieve the right to education include legislative, administrative, judicial, economic, social and educational measures.[67] Although legislative measures are

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[62] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at paras 1 – 2 and CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 43.
[63] See Limburg Principles at para 35.
[64] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 31. See also Limburg Principles at paras 22 and 23.
[65] See Limburg Principles at para 16.
[66] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 2 and CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 43.
[67] Limburg Principles at para 17.

necessary to the full realisation of the right to education, legislation alone is not sufficient to fulfil the obligations in the Covenant.[68] In addition, measures adopted must include express recognition of violations of the right to education (at a minimum non-discrimination and freedom guarantees) as well as effective remedies including, where appropriate, judicial remedies.[69]

Additionally, the framework of the ICESCR indicates that:[70] (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.

The CESCR has expanded on the immediate obligation of State parties to take steps towards the realisation of secondary, higher and fundamental education for all those within its jurisdiction. The Committee said that:[71]

> At a minimum, the State party is required to adopt and implement a national educational strategy which includes the provision of secondary, higher and fundamental education in accordance with the Covenant. This strategy should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.

If a country has sufficient available resources, it must fulfil immediately 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.

Progressive obligations

If a country is unable to achieve immediately the article 13(2) and article 29(1) rights[72] due to financial constraints, 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. The concept of progressive realisation recognises that full realisation of all economic, social and cultural rights will generally not be achievable in a short period of time.[73] The CESCR noted that the obligation differs significantly from that contained in

[68] See Limburg Principles at para 18.
[69] Limburg Principles at para 19.
[70] Sepulveda 'The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights' (2003) at 335 – 360.
[71] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 52.
[72] These articles set out the obligations in relation to each of the four levels of education: see term of reference (iv) for a detailed discussion of these obligations.
[73] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 9.

article 2 of the ICCPR, which embodies an immediate obligation to respect and ensure all of the relevant rights.

The CESCR has emphasised that the realisation of the right to education over time, that is "progressively", should not be interpreted as depriving States' obligations of all meaningful content. Rather, according to the Committee, progressive realisation means that States have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full realisation of the right to education contained in article 13.[74]

The CESCR is of the view that each State party has a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to education.[75] According to the Committee, in the context of article 13, this includes the following core obligations:[76]

> …to ensure the right of access to public educational institutions and programmes 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)).

Thus, a State party in which any significant number of individuals is deprived of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.[77] The CESCR noted, however, that any assessment as to whether a State has discharged its minimum core obligations must also take account of resource constraints applying within the country concerned. The Committee said that, in order for a State party to attribute its failure to meet at least its minimum core obligations 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. This

[74] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 9 and CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 44. See also Limburg Principles at para 21.
[75] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 10.
[76] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 57.
[77] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 10.

is in accordance with the obligation of the progressive realisation of the right to education and the requirement that each State party take steps "to the maximum of its available resources".[78]

The CESCR has observed that the obligations of States in relation to primary, secondary, higher and fundamental education are not identical.[79] Rather, given the wording of article 13(2), States are obliged to prioritise the introduction of compulsory, free primary education. Although the CESCR has stated that the obligation to provide primary education for all is an immediate duty of all State parties, article 14 of the ICESCR makes it clear that this obligation is progressive.

Retrogressive measures

Since the realisation of the right to education needs to evolve progressively 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. Thus, States must avoid all retrogressive measures which directly or indirectly adversely affect the current standard and availability of education in the State. The CESCR has said that, if any deliberately retrogressive measures are taken, the State must show that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the ICESCR and in the context of the full use of the State's maximum available resources.[80]

In this regard, after a detailed analysis of the practice and views of the CESCR, Sepulveda notes:[81]

> 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.

[78] See term of reference (v) for a discussion of the requirement that each State party take steps "to the maximum of its available resources.

[79] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 51.

[80] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 45. See also CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 9.

[81] Sepulveda 'The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights' (2003) at 321.

Plans of action

The ICESCR requires States to adopt a detailed plan of action aimed at securing the progressive implementation of the right to compulsory and free primary education. In this regard, article 14 of the ICESCR provides that:

> Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, 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.

The CRC and the CESCR have emphasised the importance and relative inflexibility of the obligation to develop comprehensive national plans of action aimed at "free and compulsory" levels of education.[82] More specifically, this is an immediate and continuing obligation that cannot be ignored by State parties to the CRC and the ICESCR. The plan of action must cover all the actions which are necessary in order to secure each of the requisite component parts of the right and must be sufficiently detailed so as to ensure the comprehensive realisation of the right. The plans should contain specific goals and targets that can be measured both quantitatively and qualitatively on a regular basis. To this end, the plan of action must include a means for periodic review and accountability to monitor and measure the progress of its implementation.

In addition, if a country lacks sufficient available resources to achieve immediately the article 13(2) and article 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 to other levels of education. The plan of action should, therefore, also include a commitment to the progressive realisation of free and compulsory secondary education. These plans should complement the National Education for All (EFA) plans.[83] They must be implemented by all available legislative and executive measures and periodically reviewed. Where a State does not have the financial resources and/or the technical expertise to develop

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[82] Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at para 23; CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at paras 8 – 11.

[83] See http://portal.unesco.org/education/en/ev.php-URL_ID=10813&URL_DO=DO_TOPIC&URL_SECTION=201.html (last accessed 13 March 2007) for a discussion of these plans.

and implement a plan of action, development agencies and developed countries will assist and co-operate.

Essential features of the right to education

The 4-A scheme: availability, accessibility, acceptability and adaptability

Education in all its forms and at all levels should meet the four interrelated and essential features of availability, accessibility, acceptability and adaptability (the four A's).[84] The criteria of accountability, which could be regarded as a fifth 'A', will be discussed in term of reference (iii). We are grateful to Dr Sheldon Shaeffer, Director of UNESCO Bangkok, for suggesting this fifth A.

Ensuring each of these features is a precondition for the full realisation of the right to education. The CESCR has said that, when considering the appropriate application of the four A's, the best interests of the student shall be a primary consideration.[85] A State's failure to meet any one of the four A's constitutes a violation of the right to education.

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. According to the CESCR, what educational institutions and programmes require to function depends on numerous factors, including the developmental context within which they operate.[86] The Committee said that, for example, all institutions and programmes are likely to require:

> …buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

[84] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 6. The four A's were formulated by the Special Rapporteur on the right to education and were first employed by her in relation to primary education: see 1999 report at para 50. The four A's have also been applied to other economic, social and cultural rights: see, for example, CESCR *General Comment No. 14: The right to the highest attainable standard of health* E/C.12/2000/4 11 August 2000 at para 12.
[85] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 7. See also article 3(1) of the CRC.
[86] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 6(a).

Availability should take into account not only enrolment in institutions but also retention of students in the education system. Further, education must be provided in a non-discriminatory and inclusive manner with particular attention focused on vulnerable, disadvantaged and marginalised groups such as girl children and children with special needs.

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.

The most recent report of the Special Rapporteur on the Right to Education made various recommendations to States in relation to the four A's. In relation to the availability of education, this Report included recommendations that States should:[87]

- Increase education budgets to at least 6 per cent of gross national product, in accordance with international standards.
- Guarantee a significant and growing budget to bolster programmes for the construction and improvement of school infrastructure until all national needs are met. That infrastructure must be sited within communities and include a drinking water supply and separate, private, safe sanitation services for girls.

Accessibility

According to the CESCR, accessibility means that educational institutions and programmes must be accessible to everyone, without discrimination, within the jurisdiction of the State party.[88] The CESCR went on to outline the three following overlapping dimensions of accessibility:

1. Non-discrimination: Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.

[87] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at paras 127 – 134. This report focused on girls' right to education and will therefore be discussed in more detail under term of reference (vii).

2. Physical accessibility: Education must be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme).

3. Economic accessibility: Education must be affordable to all. This dimension is subject to the differential wording of article 13(2) in relation to primary, secondary and higher education. Whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education.

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

Acceptability

The CESCR has stated that the feature of acceptability means that "the 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".[89] Education must therefore meet a minimum quality standard and be provided by appropriately trained and fully resourced teachers. 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.

Further, in order to be acceptable, the content and quality of education must contribute to the dual aims of education: the development of the individual and the promotion of respect for human rights. In particular, the Special Rapporteur has recommended that States take the legal, technical and administrative action necessary to comply with the first phase of the World Programme for Human Rights Education, and provide high quality education based on the learning of human rights and their application to life in keeping with the principles of equality and non-discrimination.[90]

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[88] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 6(b).
[89] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 6(c).
[90] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 142.

Acceptability also requires education to be provided in safe and educationally appropriate facilities. In this regard, article 19 of the CRC relevantly provides that:

> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Children must be free from violence and harassment, both physical and sexual, 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.[91] If necessary, more child-friendly positive forms of discipline should be employed.[92]

Adaptability

The knowledge, skills and values that the generation of future adults will need in their lifetime is not only unknown but also unknowable.[93] Education must therefore be flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.[94] Accordingly, as education experts develop better tools and methodologies to accommodate the learning styles and any special needs of all students, the content and approaches of education need to be revised.

In addition to the ongoing need to realign education to the goals of human rights and human development, education must be able to adapt to technological and scientific advances. Thus, a culture of continuous improvement must be fostered.

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[91] See Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at para 8. Increasingly, national courts are developing jurisprudence prohibiting physical punishment in schools on the basis that it is humiliating and degrading treatment. For further discussion on the prohibition on corporal punishment, see term of reference (i) Advisory Council of Jurists Reference on Torture Final Report (2005), available at http://www.asiapacificforum.net/jurists/references/torture/ report/index.html (last accessed 4 April 2007).

[92] See article 28 of the CRC which requires States to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the CRC. UNESCO has developed a toolkit on inclusive, learning-friendly environments which includes a module on positive discipline: see Positive Discipline in the Inclusive, Learning-Friendly Classroom: A Guide for Teachers and Teacher Educators (Embracing Diversity: Toolkit for Creating Inclusive, Learning-Friendly Environments, Specialized Booklet 1) (UNESCO Bangkok 2006).

[93] Preliminary Report of the Special Rapporteur on the right to education E/CN.4/1999/49 13 January 1999 at para 72.

[94] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 6(d).

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. Thus, 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.

Minimum age of employment

The ILO Minimum Age Convention requires States to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. Thus, 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.[95] Notwithstanding, a State whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years.[96]

The ILO Minimum Age Convention provides that national laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work or the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling if the work:

[95] Article 2(3) of the ILO Minimum Age Convention. However, article 3(1) provides that the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years. Further, article 6 states that the Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings where such work is an integral part of –

(a) a course of education or training for which a school or training institution is primarily responsible;
(b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
(c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

[96] Article 2(4) of the ILO Minimum Age Convention. Such a State is required to include in its reports to the Constitution of the ILO a statement (a) that its reason for doing so subsists; or (b) that it renounces its right to avail itself of the provisions in question as from a stated date.

- is not likely to be harmful to their health or development; and
- will not prejudice their attendance at school, their participation in vocational orientation or training programmes or their capacity to benefit from the instruction received.[97]

The CRC and ICESCR also contain provisions relating to the interplay between the right to education and employment. These treaties establish that children must be protected from economic 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 their health or development.[98] In particular, States must provide for minimum ages for admission to employment and provide remedies for any breach of these obligations.

Minimum age of marriage

The minimum age for marriage should be set.[99] 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."[100] The African Protocol on Women's Rights is more specific, establishing that the minimum age of marriage for women is 18.

Minimum age of criminal responsibility

States should establish a minimum age below which children are presumed incapable of violating penal law.[101] 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,

[97] Article 7(1) of the ILO Minimum Age Convention. The State authority is required to determine the activities in which such employment or work may be permitted and to prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.
[98] Article 32 of the CRC and article 10(3) of the ICESCR.
[99] The CEDAW has stated that restrictions may be placed on a woman's right to marry based on her youth. See CEDAW *General Recommendation No. 21: Equality in marriage and family relations* (13th session, 1994) at para 16.
[100] In practice, young women and girls that choose or are forced to marry discontinue their education. See Report of the Special Rapporteur on the right to education *Girls' right to Education* E/CN.4/2006/45 8 February 2006 at para 71.
[101] Article 40(3)(a) of the CRC.

education and vocational training must be available to children that have infringed penal law.[102] This enables them to assume a more constructive role in society in the future.

[102] Article 40(3)(a) of the CRC.

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

Summary

- Increasingly, jurisprudence has supported the justiciability of the right to education.
- The justiciability of the right to education is inseparable from the justiciability of other rights as all rights are interdependent.
- It is fundamental to the existence and continued strengthening of the right to education that individuals have the opportunity to invoke the right to education before a judicial or quasi-judicial body.
- Where the justiciability of the right to education is guaranteed in State legislation, accountability of the State for breaches of the right to education will be ensured.
- States must give effect to their obligations in relation to the right to education by providing recourse to appropriate judicial, quasi-judicial and administrative 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;
    - Impose appropriate sanctions and/or remedies in the event of a breach of the right; and
    - Explore, where necessary, innovative solutions to solidify the justiciability of the right to education.
- 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.
- The consequences of making economic, social and cultural rights an enforceable part of a constitution are that human rights norms aimed at seeking social or distributive justice will find a degree of permanence, and access to justice will increase.
- States should consider adopting the Optional Protocol to the ICESCR as this would allow the CESCR to act as a safety-net and a forum for identifying areas where states have failed to fulfil obligations.

- It is necessary to educate the general public about the right to education and the remedies available and to ensure that the legal profession and the judiciary have on - going education on the developments in this field.

Discussion

Introduction

A right is considered to be justiciable if an individual can invoke that right before a national, regional or international judicial or quasi-judicial body.[103] Increasingly jurisprudence has confirmed the justiciability of the right to education.[104] The justiciability of the right to education has also been supported by many international bodies and legal experts.[105] This has been reinforced especially by the reports of the Special Rapporteur on the right to education which bear witness to the importance attached to these rights by the majority of UN Member States.[106] Further, the Special Rapporteur sees the growing litigation at the national and regional levels as demonstrating that violation of economic, social and cultural rights, including the right to education, leads to judicial recourse.[107]

The right to education has been and continues to be litigated at the domestic, regional and international levels.[108] The existing body of jurisprudence lays down principles for the

[103] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006, at para 2.
[104] *Dilcia Yean y Violeta Bosica* (Case No 12 189) Inter-American Commission on Human Rights, 22 February 2001; *Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645, at para 183, page 738; *Autism Europe v France* Complaint No. 13/2002 Committee of Social Rights. Freeman, Van Ert, *International Human Rights Law: Essentials of Canadian Law*, Irwin Law Publishers, 2004, at 79; UNESCO CESCR General Comment no. 3 *The nature of State party obligations* Article 2, 5th session 14 December 1990, http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument (last accessed 27 March 2007) at para 2.
[105] CESCR *Status of the International Covenants on Human Rights, Report by Mr Hatem Koltrane independent expert on the question of a draft optional protocol to the ICESCR*, 59th session E/CN.4/2003/53, 13 January 2003 http://www.hri.ca/fortherecordcanada/documentation/commission/e-cn4-2003-53.htm (last accessed 27 March 2007).
[106] UN Special Rapporteur on the Right to Education, E/CN.4/2005/50, 17 December 2004, http://daccessdds.un.org/doc/UNDOC/GEN/G04/171/40/PDF/G0417140.pdf?OpenElement (last accessed 27 March 2007) paras 51 – 59. This report points to increasing case law. See also United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, Opening Address by Ms Mary Robinson High Commissioner for Human Rights, 17 November 2001 http://www.unhchr.ch/huricane/huricane.nsf/view01/5962093D418A5BCFC1256B74003E0080?opendocument (last accessed 24 March 2007) at 3. *Dilcia Yean y Violeta Bosica* (Case No 12 189) Inter-American Commission on Human Rights, 22 February 2001.
[107] UN Special Rapporteur on Education, E/CN.4/2005/50, 17 December 2004, http://daccessdds.un.org/doc/UNDOC/GEN/G04/171/40/PDF/G0417140.pdf?OpenElement (last accessed 27 March 2007) at para 53.
[108] 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. See also the report of the UN Special

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 progressively being interpreted, clarified and affirmed by judicial and quasi-judicial processes. The longer countries have legally guaranteed the right, the more jurisprudence can be found in that country.[109]

It has been established that the justiciability of the right to education is inseparable from the justiciability of other rights.[110] This has been demonstrated in some jurisdictions where the right to education has been forged from other rights such as the right to life.[111] The adoption of a rigid classification of civil and political rights as enforceable and economic, social and cultural rights as unenforceable, is arbitrary and incompatible with the principle that all human rights are indivisible and interdependent.[112]

States have a duty to implement their treaty obligations into their domestic legal system, and to enforce the right to education effectively.[113] This duty is part of the three-fold obligation to respect, protect and fulfil.[114] However, states have tended to place less importance on the need to enforce so-called positive economic, social and cultural rights than the need to enforce so-called negative civil and political rights. In relation to civil and political rights, governments generally agree that judicial remedies for violations are essential. However, in relation to economic, social and political rights, the opposite is presumed. This perception is not justified by the nature of the rights. The CESCR states that parties to the ICESCR must: "take steps"; use the maximum of available resources to realise economic, social and cultural

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Rapporteur on the Right to Education, E/CN.4/2005/50, 17 December 2004, http://daccessdds.un.org/doc/UNDOC/GEN/G04/171/40/PDF/G0417140.pdf?OpenElement (last accessed 27 March 2007), paras 51 - 59 points to increasing case law.

[109] Katarina Tomasevski "Has the Right to Education a Future within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education" (2005) 5 Hum Rts L Rev 205, 231.

[110] UNESCO Bangkok, Asia Pacific Forum of National Human Rights Institutions http://www.unescobkk.org/index.php?id=5089 (last accessed 1 April 2007). United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi 17 – 18 November 2001, Statement of Conclusions, http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 25 March 2007) at para 10.

[111] *Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645, at para 183, page 738 and *Mohini Jain v State of Karnatak* (1992) Supreme Court Cases 666.

[112] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 10.

[113] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006, at para 1.

[114] CESCR General Comment 13 *Right to Education (Art 13 of the Covenant),* 21st session, E/C.12/1999/10, 2 December 1999 http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument (last accessed 27 March 2007) at para 1.

rights progressively (including the right to education); and provide judicial remedies.[115] However, there is a lack of international enforcement power to ensure that this occurs, except for political sanctions and monitoring by international organisations such as CESCR.[116] Where the justiciability of the right to education is guaranteed in State legislation, accountability of the State for breaches of the right to education will be ensured.

Individuals must be able to have legal recourse where their right to education has been violated, as they are the beneficiaries of the right.[117] The ability for individuals to invoke the right to education before a judicial or quasi-judicial body is fundamental to the existence and continued strengthening of the right. It is critical that individuals know about the avenues for redress and possible remedies.[118] To achieve this, individuals must receive minimum basic education so that they are empowered to seek redress.[119] This somewhat circular proposition means that where individuals receive minimum basic education, the justiciability of the right to education will be assured as the judicial processes are more likely to be accessible to all.[120]

Interaction between domestic law and international instruments on the right to education

As discussed above, jurisprudence has increasingly confirmed the justiciability of the right to education.[121] However, the enforceability of the right to education depends on where the right

[115] UN Special Rapporteur on Education, E/CN.4/2005/50 17 December 2004, http://daccessdds.un.org/doc/UNDOC/GEN/G04/171/40/PDF/G0417140.pdf?OpenElement (last accessed 27 March 2007) para 52; see also CESCR *General Comment 3: The nature of States parties obligations,* 5th session 14 December 1990 http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument (last accessed 27 March 2007) especially at paras 2, 5, 9. The Supreme Court of India interprets the right to education to encompass a citizen's right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development – *Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645, at 737 para 181, 182.

[116] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006, at paras 3, 7 and 10. Some international instruments include a specific time limit for the implementation of certain aspects of the right to education – Freeman, Van Ert, *International Human Rights Law*, 2004, at 79.

[117] UNESCO (CR)/ECOSOC (CESCR) Joint Expert Group on the Monitoring of the Right to Education, *Justiciability of the Right to Education* 175EX/28 12 - 13 May 2006, para 1.

[118] UNESCO (CR)/ECOSOC (CESCR) Joint Expert Group on the Monitoring of the Right to Education, *Justiciability of the Right to Education* 175EX/28 12 - 13 May 2006, para 19.

[119] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justitiability of the Right to Education* 175 EX/28 12 - 13 May 2006, at para 19.

[120] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justitiability of the Right to Education* 175 EX/28 12 - 13 May 2006, at para 19.

[121] *Dilcia Yean y Violeta Bosica* (Case No 12 189) Inter-American Commission on Human Rights, 22 February 2001 and *Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645, at para 183, page 738. *Autism Europe v France* Complaint No. 13/2002 Committee of Social Rights. Freeman, Van Ert, *International Human Rights Law*, 2004, at 79; UNESCO CESCR General Comment no. 3 *The nature of State party obligations* Article 2, 5th session 14 December 1990, http://www.unhchr.ch/tbs/do

is contained within the legal framework. In many countries, the right to education is protected by statute, constitution or has been created by the courts.[122] Even in those countries where the right to education does form part of the domestic law or constitution, however, there remains uncertainty as to when the courts may intervene. For instance in South Africa, although the right to education is contained in the Constitution, the words "reasonable access" do not mean that an individual has an automatic entitlement to this right.[123] This makes it difficult to ascertain when a breach has occurred.[124] In order for rights to be enforceable in practice and justiciable in the fullest sense of the word, these ambiguities need to be addressed. International instruments could play an integral part in clarifying these ambiguities in favour of protecting the right to education.[125] The right to education as expressed in international instruments often goes further in scope than the right to education expressed in domestic legislation.[126] Therefore these international rights can help to craft a stronger basis for the right to education either by incorporation into municipal law or as an aid to interpretation.[127] However the justiciability of international instruments containing the right to education varies in different jurisdictions depending on whether they are dualist or monist jurisdictions.

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c.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument (last accessed 27 March 2007) at para 2.

[122] In Australia, see 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. In Fiji, see section 39 of the Constitution of the Republic of the Fiji Islands 1997. In India, see article 21A of the Constitution of India 1950. In Malaysia see section 8 Constitution of Malaysia 1957. In the Philippines, see article II s 17 Constitution of the Philippines 1987. Israel's basic laws do not enshrine a right to education or equality. However, Israel's Supreme Court has acknowledged a right to education – Coursen-Neff "Discrimination Against Palestinian Arab Children in the Israeli Education System" N. Y. U. J. Int'l L & Pol 36(4) 2004, 749 at 751. See also Knight, "Proposition 187 and International Human Rights Law: Illegal Discrimination in the Right to Education" 19 Hastings Int'l & Comp. L. Rev (1995) 183, at 192.

[123] Goldstone, "A South African Perspective on Social and Economic Rights" http://www.wcl.american.edu/hrbrief/13/2goldstone.pdf?rd=1 (last accessed 7 March 2007) former justice of the South African Supreme Court at 4.

[124] Goldstone, "A South African Perspective on Social and Economic Rights" http://www.wcl.american.edu/hrbrief/13/2goldstone.pdf?rd=1 (last accessed 7 March 2007) former justice of the South African Supreme Court at 4.

[125] In Israel, attempts have been made to create a right to education out of the rights of equality and human dignity. Although the Supreme Court failed to utilise these rights to protect Palestinian children from discrimination, the Supreme Court has ruled that the right to education exists, albeit not a constitutional one, drawing on both domestic and international law. Coursen-Neff, "Discrimination Against Palestinian Arab Children in the Israeli Education System" 36(4) N. Y. U. J. Int'l L & Pol 749 at 803 to 804.

[126] For instance see New Zealand Education Act 1989 s 3 and compare with ICESCR article 13.

[127] Poudyal, Kedar Prasad, The protection of socio-economic rights with special reference to the right to food, right to education and right to health www.interights.org/doc/WS2_Poudyal_final.doc (last accessed 26 March 2007) at 14.

In order to look at the dualist and monist approaches, it is important to distinguish between justiciability (which refers to those matters which are appropriately resolved by the courts) and norms which are self-executing (capable of being applied by the courts without further elaboration). While the general approach of each legal system needs to be taken into account, the right to education possesses at least some significant justiciable dimensions.[128]

Dualist paradigm: right to education

Dualism is the theory that international law forms a separate body of law to domestic law. In countries that follow the dualist paradigm, treaties that have not been incorporated into the municipal law do not form part of the legal framework of the country.[129] This means that an international treaty provision conferring the right to education cannot, of itself, found the basis for an action in the domestic courts. However, even in dualist jurisdictions where international instruments have not been explicitly incorporated, domestic legislation should be interpreted as far as is possible in accordance with the right to education as expressed in the international instruments.[130] International treaties involving the right to education can be persuasive in this context and used more generally by judges as an aid to interpretation.[131]

Monist paradigm: right to education

Monism is the theory that international law and national law form part of the same stream of law. International rights, once ratified, may be enforced by the national courts even when the international instrument has not been incorporated into the domestic legal framework. This is

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[128] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 10.

[129] *Bradley v The Commonwealth* (1973) 128 CLR 557 at 582 (HCA), *Attorney-General for Canada v Attorney-General for Ontario* [1937] AC 326 at 347 and 348 (PC), *New Zealand Air Line Pilots' Association Inc v Attorney-General* [1997] 3 NZLR 269 (CA), *CND v Prime Minister of the UK and Others* [2002] EWHC 2777 (Admin) at paras 36 and 47. Galligan and Sandler, "Implementing Human Rights" in Halliday and Schmidt (eds) *Human Rights Law in Perspective: Human Rights Brought Home Socio-Legal Perspectives on Human Rights in the National Context*, Hart Publishing Oxford and Portland Oregon, 2004 at 24 to 25. UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justitiability of the Right to Education* 175 EX/28 12-13 May 2006, at para 2.

[130] However, it is important to note that domestic laws, even incompatible ones, override international obligations. *Mewes v Attorney-General* [1979] 1 NZLR 648, (SC) at 666. *New Zealand Airline Pilots' Association Inc v Attorney-General* [1997] 3 NZLR 269, at 289 (CA). *Polites v Commonwealth* (1945) 70 CLR 60 (HCA); Keith J for the Court.

[131] *Abbasi v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598 at para 57 per Lord Phillips MR. *Tavita v Minister of Immigration* [1994] 2 NZLR 257 (CA), *Reg v Secretary of State for Home Department, Ex parte Brind* [1991] 1 AC 696 at 761 and 748-9 (HL(E)). The Supreme Court of the United States in *Murray v The Schooner Charming Betsy* 6 US (2 Cranch) 64 (1804) used the innovative "Charming Betsy" principle to hold that any legislation passed after the

referred to as self-execution or immediate applicability.[132] Therefore, in monist jurisdictions, some provisions of international instruments are immediately applicable. For example, articles 13(3) and 13(4)[133] of the ICESCR are considered to be immediately justiciable as they do not require the state to make resources available.[134] These rights can be guaranteed immediately without any further legislative intervention. The right to have access to education at all levels without discrimination is also seen as generally justiciable.[135]

However, the justiciability of some of the rights may depend on whether a particular country has established the requisite educational infrastructure. For example, the right to have access to education at any level is dependent on whether a state has already set up educational infrastructure providing such educational opportunities.[136] If there is no such infrastructure, there is less likelihood that a court will see this right as justiciable, as it involves policy choices which would violate separation of powers. Therefore, even in monist jurisdictions, specific legislation may be necessary in order to give concrete content to the right to education and to make it fully justiciable. On the other hand, even countries without sufficient educational infrastructure have an obligation to work towards creating such

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United State's accession to a treaty should be interpreted to be consistent with that treaty, unless Congress includes a specific directive that the United States intends to contravene international law.

[132] However, this approach means that it is less clear where in the hierarchy of laws the provisions of the international instrument are placed.

[133] ICESCR Article 13(3) states that "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions." Article 13(4) states: "No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

[134] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 10. Article 13(2)(a) is also considered to be justiciable by the CESCR even though it does require allocation of resources: "primary education shall be compulsory and available free to all".

[135] See commentary of Mr Ariranga Pillay, Chief Justice of the Supreme Court of Mauritius and member of the CESCR in the UN Economic, Social and Cultural Rights Report of the High Commissioner for Human Rights Addendum, Report on the Workshop on the Justiciability of Economic, Social and Cultural Rights, with particular reference to the draft optional protocol to the ICESCR, 57th session, E/CN.4/2001/62/Add.2, 22 March 2001 http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/9715c4f1d48ad8c2c1256a1e004e5288/$FILE/G0112109.pdf (last accessed 26 March 2007). Beiter, *The Protection of the Right to Education by International Law*, at 399 and 475.

[136] Beiter, *The Protection of the Right to Education by International Law* at 81 and 398-399, UNESCO CESCR General Comment no. 3 *The nature of State party obligations* Article 2, 5th session 14 December 1990, http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument (last accessed 27 March 2007) at para 5. The Committee thinks that ss 13(2)(a), (3) and (4) are justiciable. This is not binding, but its views carry persuasive authority.

infrastructure using the maximum resources available.[137] Further, the allocation of these resources in a non-discriminatory manner is immediately a justiciable matter.[138] The imposition of retrogressive measures may also be justiciable especially where there is a duty to take progressive measures to introduce free education.

The role of the judiciary and administrative measures

The judiciary has played a part in clarifying and giving content to the right to education, however, their most important role has been to give victims of breaches of the right to education the opportunity to "seek and obtain an authoritative finding that a government has violated [that] right."[139] Where appropriate remedies are utilised, this can act as a strong catalyst for change. Court decisions in many jurisdictions have played a major role in enforcing economic, social and cultural rights by ensuring that governments implement constitutionally guaranteed rights.[140] For this to occur, the judicial process needs to be supported by effective enforcement mechanisms to ensure that states comply with their minimum core obligations for making basic education accessible to all.[141]

The courts play a role in the provision of appropriate and effective remedies for breaches of the right to education. However, the right to an effective remedy need not always entail the provision of a judicial remedy.[142] Rights of individuals will often be satisfied by

[137] ICESCR article 2(1) "Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

[138] UNESCO *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements, Report of the Secretary-General Conclusions and Recommendations of the Expert Meeting on National Human Rights Education in the Asia-Pacific Region* (Bangkok, 20-22 October 2005) *and the subregional workshop for judges and lawyers on the justiciability of economic, social and cultural rights in South-East Asia* (Manila, 3-5 November 2004), E/CN.4/2006/100/Add.1, 13 December 2006 http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm (last accessed 27 March 2007) at 9 para 11.

[139] Katarina Tomasevski "Has the Right to Education a Future within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education (2005) 5 Hum Rts L Rev 205, 231.

[140] Draft Conclusions and Recommendations of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic Social and Cultural Rights in the Pacific Region, Suva, Fiji, 1 - 3 June 2006 http://www.interights.org/page.php?dir=News#Pacificcolloquium%20headline (last accessed 26 March 2007) at para 8.

[141] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006, at para 2.

[142] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 9.

administrative remedies, which must be accessible, affordable, timely and effective.[143] The legitimate expectations of individuals must be protected in the administrative decision-making process by ensuring that the requirements of the right to education are taken into account.[144] The right of judicial review of administrative procedures is also desirable.[145] However, there are some obligations, for instance, those concerning non-discrimination, that require a judicial remedy. The general principle should be that where a right cannot be sufficiently protected without judicial intervention, judicial remedies are necessary.[146]

International remedies

Currently there is no judicial or quasi-judicial procedure for invoking economic, social and cultural rights at the international level unless the Optional Protocol to the ICESCR is adopted.[147] This Optional Protocol would allow the Committee to consider communications regarding rights recognised under the ICESCR.[148] Adoption would enable individuals as right-holders to enforce rights recognised in the ICESCR, including the right to education, before the CESCR.[149] This would enhance State accountability, continue to clarify the nature and content of State obligations under the Covenant, and act as a catalyst for improvements in the effectiveness of domestic legal remedies.[150] The UN report of the High Commissioner for

[143] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 9.
[144] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 9.
[145] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 9.
[146] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 9.
[147] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006, at para 2. It may be possible for litigants to have their claims heard by regional bodies where these exist – see UN Special Rapporteur on Education, E/CN.4/2005/50, 17 December 2004, http://daccessdds.un.org/doc/UNDOC/GEN/G04/171/40/PDF/G0417140.pdf?OpenElement (last accessed 27 March 2007) at para 56. For a ruling of such a regional body see *Autism Europe v France* (Complaint Number 13/2002 European Committee of Social Rights). However the rulings of these regional bodies are not binding, and are only persuasive due to the political pressure they exert - UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006 at para 20.
[148] UN Special Rapporteur on Education, E/CN.4/2005/50, 17 December 2004,http://daccessdds.un.org/doc/UNDOC/GEN/G04/171/40/PDF/G0417140.pdf?OpenElement (last accessed 27 March 2007) at para 53.
[149] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justitiability of the Right to Education* 175 EX/28 12-13 May 2006, at para 9.
[150] UNESCO *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements, Report of the Secretary-General Conclusions and Recommendations of the Expert*

Human Rights on the Workshop on Justiciability of Economic, Social and Cultural Rights stated that there was wide support for the decisions of the CESCR to include a legal finding as well as recommendations for remedial action and changes in law, policy and practice.[151] However, the Optional Protocol is not intended to be a panacea, but to act as a safety net and a forum for identifying areas where States need practical assistance.[152]

Innovative mechanisms used by the courts to enforce the right to education absent specific legislation

One of the most important forums for strengthening the right to education is the judicial forum. The judiciary play a crucial role in ensuring the justiciability of the right to education via judicial innovation.[153] Some of these innovative practices are discussed below.

In some jurisdictions, the right to education has been mined from the bedrock of other rights. The Supreme Court of India, for example, held that the right to education is implicit in the right to life because of its inherent fundamental importance.[154] Economic, social and cultural rights in India are not enforceable as stand-alone rights, but are enforceable when they are projected as supplying the content of a fundamental right.[155] This innovation has been noted by the United Nations and the members of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic, Social and Cultural Rights in the Pacific Region as

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Meeting on National Human Rights Education in the Asia-Pacific Region (Bangkok, 20-22 October 2005) *and the subregional workshop for judges and lawyers on the justiciability of economic, social and cultural rights in South-East Asia* (Manila, 3-5 November 2004), E/CN.4/2006/100/Add.1, 13 December 2006 http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm (last accessed 27 March 2007) at 8 para 6.

[151] UN Economic and Social Council, Economic, Social and Cultural Rights Report of the High Commissioner for Human Rights Addendum, Report on the Workshop on Justiciability of Economic, Social and Cultural Rights, with particular reference to the draft optional protocol to the ICESCR 57th session, E/CN.4/2001/62/Add.2, 22 March 2001 http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/9715c4f1d48ad8c2c1256a1e004e5288/$FILE/G0112109.pdf (last accessed 26 March 2007) at para 43.

[152] UN Economic and Social Council, Economic, Social and Cultural Rights Report of the High Commissioner for Human Rights Addendum, Report on the Workshop on Justiciability of Economic, Social and Cultural Rights, with particular reference to the draft optional protocol to the ICESCR 57th session, E/CN.4/2001/62/Add.2, 22 March 2001 http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/9715c4f1d48ad8c2c1256a1e004e5288/$FILE/G0112109.pdf (last accessed 26 March 2007) at para 44.

[153] Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, 17 - 18 November 2001, Statement of Conclusions http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 25 March 2007).

[154] *Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645, at para 183, page 738 and *Mohini Jain v State of Karnatak* (1992) Supreme Court Cases 666.

[155] Circle of Rights Economic, Social and Cultural Rights Activism: A Training Resource "Justiciability of ESC Rights - The Indian experience", available at http://www1.umn.edu/humanrts/edumat/IHRIP/circle/justiciability.htm (last accessed 12 March 2007), at page 9. See similarly, *Soobramoney v Minister of Health (KwaZulu-Natal)* [1997] ICHRL 118 (27 November 1997) where it was held by the South African Constitutional Court that where there was no emergency situation, the

being an effective way to enforce economic, social and cultural rights such as the right to education.[156]

The right to education has also been enforced in the negligence sphere. In the English case of *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504, the right to education was presupposed in the context of an action in negligence.[157] In that case, the finding of a breach rested on whether there was a duty to exercise reasonable care and skill in providing education. Therefore, an action in negligence may be another avenue to strengthen the justiciability of the right to education. The most striking effect of *Phelps* was that the House of Lords held that education authorities owed a duty of care to assess and cater for individual students' needs. However, it is questionable whether liability in negligence could properly constitute "enforcement" or "justiciability" of the right to education.

Another innovative mechanism is the utilisation of provisions protecting against discrimination. These can be used as a basis for upholding economic, social and cultural rights, including the right to education.[158] For instance in the case of *Swann v Charlotte-Mecklenburg Board of Education* 402 U.S. 1 (1971), the right to education in the context of segregation was based on an equal protection clause.

Furthermore, where a state has ratified the First Optional Protocol to the ICCPR, an individual may have the opportunity to bring a case involving the right to education under the

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Court had no power to order the hospital to provide more dialysis equipment unless there was an unconstitutional violation of equality i.e. if the waiting list favoured those of a particular race.

[156] UNESCO *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements, Report of the Secretary-General Conclusions and Recommendations of the Expert Meeting on National Human Rights Education in the Asia-Pacific Region* (Bangkok, 20 –22 October 2005) *and the subregional workshop for judges and lawyers on the justiciability of economic, social and cultural rights in South-East Asia* (Manila, 3 – 5 November 2004), E/CN.4/2006/100/Add.1, 13 December 2006 http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm (last accessed 27 March 2007) at 9 para 13. Draft Conclusions and Recommendations of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic Social and Cultural Rights in the Pacific Region, Suva, Fiji, 1 - 3 June 2006 http://www.interights.org/page.php?dir=News#Pacificcolloquium%20headline (last accessed 26 March 2007) at para 9.

[157] However, the New Zealand Court of Appeal declined to hold that *Phelps* supported a substantive right to education in *Attorney-General v Daniels* [2003] 2 NZLR 742 (CA). In the High Court, Baragwanath J found that there was a justiciable right to education to the extent that such education must be suitable, regular and systematic. However, the Court of Appeal characterised the right as only existing on statutory-based grounds.

[158] *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v Belgium (Merits)* Judgment 23 July 1968, Publications of the European Court of Human Rights, Series A, Vol 6, at 35 – non-discrimination is inseparable from the right to education (Article 14 must be read together with Article 2 of the Protocol). See also *Timishev v Russia* (App no 55762/00 and 55974/00) [2005] ECHR 858 (13 December 2005) where a child was denied the right to attend a school as the child's father had no migrant card to confirm his status as a forced migrant from Chechnya. The Court held that Russian law did not allow a child's right to education to be made conditional on the registration of their parents' residence. See also Poudyal, Kedar Prasad, *The protection of socio-*

umbrella of discrimination.[159] An individual could possibly rely on article 26 of the ICCPR to approach a judicial or other tribunal to adjudicate on whether his or her economic, social or cultural rights have been infringed (including his or her right to education).[160] According to the Human Rights Committee, which supervises the ICCPR, article 26 protects against discrimination in general, not only in respect of rights contained in the ICCPR.[161]

Customary international law may provide another avenue for protection of the right to education. Once customary law is established, it is binding on all States so far as it does not directly conflict with domestic law.[162] It has been argued that a customary international right to equal education exists.[163] If that is the case, this will also increase the justiciability of the right to education.[164]

Barriers to justiciability

A barrier to the justiciability of the right to education in the past has been the fact that the courts have been reluctant to enforce the right to education where they might be encroaching on the government's power to make policy and allocate resources.[165] A distinction is often made between positive and negative rights. Negative rights are seen as rights which protect individuals from interference. They are therefore more readily seen as enforceable by the courts. On the other hand, positive rights such as the right to education, are seen as more

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economic rights with special reference to the right to food, right to education and right to health www.interights.org/doc/WS2_Poudyal_final.doc (last accessed 26 March 2007) at 14.

[159] Office of the United Nations Commissioner for Human Rights http://ohchr.org/english/bodies/petitions/1503.htm#_ftnref10 (last accessed 9 March 2007).

[160] Beiter, *The Protection of the Right to Education by International Law,* at 407.

[161] F. *H. Zwann-de Vries v The Netherlands*, HRC Communication No 182/1984, 09/04/1987, UN Doc. CCPR/C/29/D/182/1984 SWM, *Broeks v The Netherland*, HRC Communication No 172/1984, 09/04/1984 UN Doc. CCPR/C/29/D/172/1984.

[162] This usually applies even in monist States – see for example *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 (CA) at 57 – 62. However, in England, customary international law must be incorporated first – see *R v Secretary of State for the Home Department ex parte Thakrar* [1974] QB 684 at 701F (CA). In Australia, customary international law is binding as long as it does not conflict with domestic law– *see Polites v The Commonwealth* (1945) 70 CLR 60, 68 – 69 (HCA), and *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, at 287 (HCA).

[163] Connie de la Vega, *The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?* 11 Harv Blackletter LJ 37 (1994); Knight, *Proposition 187 and International Human Right Law: Illegal Discrimination in the Right to Education*, 19 Hastings Int'l & Comp. L. Rev. 183, at 187.

[164] *Filartiga v Pena Irala* 630 F 2d 876 (2nd Cir 1980).

[165] The following cases show the reluctance of the courts in this sphere. In the *Numerus Clausus Case* German Constitutional Court (1972) 33 BVErfGE 303, the Court explicitly refused to rule on the issue of whether the State was under a constitutional mandate to provide sufficient educational capacities for all courses of study, which could form a basis of an enforceable claim for an individual. In *Missouri v Jenkins* 515 US 70 (1995) the judge stopped educational programmes for under-achieving children as the Court held that the measures involving significant expenditure were an encroachment on the powers of the Federal and State governments.

controversial, because they involve decisions on allocation of resources.[166] It is seen as inappropriate for unelected courts to interfere with social and economic policy. Therefore in practice, the justiciability of unincorporated international instruments to date, even in monist jurisdictions, has largely been limited to those instances where state parties do not satisfy their negative duty not to discriminate in education.[167]

However, this is a false dichotomy. All rights are indivisible.[168] The adoption of a rigid classification of economic, social and cultural rights as so-called unenforceable positive rights puts them beyond the reach of the courts. This rationale is arbitrary and is incompatible with the principle that all human rights are indivisible and interdependent.[169] There is no foundation for a categorical distinction between positive rights (economic, social and cultural) on the one hand and negative rights (civil and political) on the other.[170] Often decisions made by judges are based on a negative right but in fact the decision results in a positive obligation on the government which involves significant expenditure.[171] For instance, a judge may order the improvement of prison conditions or make orders regarding legal aid.[172] These orders may be intended to protect the rights of prisoners and defendants but actually entail a positive obligation on the government requiring significant expenditure.[173] Therefore many decisions made by judges have implications on the spending of public money.[174]

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[166] Goldstone, "A South African Perspective on Social and Economic Rights" http://www.wcl.american.edu/hrbrief/13/2goldstone.pdf?rd=1 (last accessed 7 March 2007) former Justice of the South African Supreme Court at 4

[167] Beiter, *The Protection of the Right to Education by International Law* at 400.

[168] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi 17 - 18 November 2001, Statement of Conclusions, http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 25 March 2007) at para 10.

[169] UNESCO CESCR General Comment no. 9 *The domestic application of the Covenant*, 19th session, 3 December 1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation/tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 10.

[170] Draft Conclusions and Recommendations of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic Social and Cultural Rights in the Pacific Region, Suva, Fiji, 1 - 3 June 2006 http://www.interights.org/page.php?dir=News#Pacificcolloquium%20headline (last accessed 26 March 2007) at para 8.

[171] Goldstone, "A South African Perspective on Social and Economic Rights" http://www.wcl.american.edu/hrbrief/13/2goldstone.pdf?rd=1 (last accessed 7 March 2007) former Justice of the South African Supreme Court, at 4.

[172] Langford, "Judging social rights" Human Rights Tribune des droits humains 11(3) http://www.hri.ca/tribune/onlineissue/V11-3-2005/Social_Rights.html (last accessed 1 April 2007).

[173] Goldstone, "A South African Perspective on Social and Economic Rights" http://www.wcl.american.edu/hrbrief/13/2goldstone.pdf?rd=1 (last accessed 7 March 2007) former Justice of the South African Supreme Court, at 4.

[174] Goldstone, "A South African Perspective on Social and Economic Rights" http://www.wcl.american.edu/hrbrief/13/2goldstone.pdf?rd=1 (last accessed 7 March 2007) former justice of the South African Supreme Court, at 4. UNESCO CESCR General Comment no. 9 *The domestic application of the Coven*

There is no reason in principle why courts should not be able to analyse the funding allocation for education and decide whether the allocations respect the right to education.[175] This approach is seen in the Philippines case of *Guingona Fr v Caragues* G.R No 94571, 22 April 1991, where the Supreme Court was prepared to review budgetary allocations for education. In South Africa, this issue has been dealt with by applying the standard of reasonableness to problems of enforceability of positive obligations.[176] The courts have a primary role in protecting human rights including economic, social and cultural rights and to deny the courts the opportunity to fulfil this role, would, in our view, be harmful to the rule of law.

Several other barriers to the justiciability of the right to education were highlighted in the Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in New Delhi in 2001.[177] It was concluded that the justiciability of economic, social and cultural rights is inextricably linked to questions of enforcement and the existence of adequate remedies.[178] Other issues discussed at the workshop which have a negative impact on the justiciability of economic, social and cultural rights are:

- the courts' reluctance to encroach on policy and resource allocation matters as discussed above;
- the inability of a large number of persons in society to access justice;
- the lack of awareness about international human rights standards;
- the lack of understanding of the nature of the legal and policy implications of international commitments;
- the absence of awareness of state officials in the implementation of international commitments;
- inadequate follow-up to public commitments made in international forums; and

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ant, 19th session, 3 December1998 E/C.12/1998/24 http://www.hri.ca/forthereCord1998/documentation /tbodies/e-c12-1998-24.htm (last accessed 27 March 2007) at para 10.

[175] United Nations High Commissioner for Human Rights (OHCHR) Statement by Ms Louise Arbour, High Commissioner for Human Rights to the 3rd session of the Open Ended WG OP IESCR 6 February 2006 available at http://www.unhchr.ch/huricane/huricane.nsf/0/B662E58D469FACE2C1257111003E5BC1?opendocument (last accessed 12 March 2007).

[176] Justice Arthur Chaskalson, (former Chief Justice) Constitutional Court of South Africa, Judicial Enforcement of Socio - Economic Rights: the South African Experience http://www.interights.org/page.php?dir=icl&page=fijidoclis.php (last accessed 26 March 2007) at 11 – 12.

[177] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi 17 - 18 November 2001, Statement of Conclusions, http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 25 March 2007) at para 10.

[178] United Nations "Workshop for Judges on the Justiciability of Economic, Social and cultural Rights in South Asia – Statement of Conclusions" (18 November 2001) *Press Release* at para 7.

- the lack of ratification and full implementation of the ICESCR in some states.[179]

The future

To combat these difficulties, UNESCO advocates for countries to introduce constitutionally guaranteed provisions setting out the right to education.[180] This would establish a concrete right for legislative and executive actions to be measured against and also allow victims of alleged breaches to bring those breaches before a constitutional court.[181] Further, it is difficult to monitor and enforce obligations without legislation. The consequences of making economic, social and cultural rights an enforceable part of a constitution are that human rights norms aimed at seeking social or distributive justice will find a degree of permanence, and access to justice will increase.[182]

States must develop and modernise national laws, promote the right to education, educate the general public about the available remedies, and also educate judges on the justiciability of the right, as these are critical elements of strengthening the right to education. Furthermore, the justiciability of the right to education is inseparable from the question of its enforceability and the existence of adequate remedies.[183]

The judiciary can also play a key role in strengthening the right to education. Increasingly, judges have been taking advantage of the jurisprudence of other jurisdictions to support the justiciability of the right to education.[184] This solidarity will be instrumental in raising the awareness of governments and creating international pressure for the need to make this right fully justiciable. It may also be desirable for the judiciary to take into account guidance

[179] United Nations "Workshop for Judges on the Justiciability of Economic, Social and cultural Rights in South Asia – Statement of Conclusions" (18 November 2001) *Press Release*, n 11.
[180] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006, at para 8.
[181] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006, at para 8.
[182] Dr Justice D Y Chandrachud "Bridging the Chasm between Human Rights' Doctrine and Enforcement: The Role and Remedies for Judicial Institutions" www.interights.org/doc/Fiji%20Colloquium%2006/paper1%20Fiji.doc (last accessed 27 March 2007) at 5 – 6.
[183] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, 17 - 18 November 2001 Statement of Conclusions, http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 26 March 2007) at para 7.
[184] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, Opening Address by Ms Mary Robinson High Commissioner for Human Rights, 17 November 2001 http://www.unhchr.ch/huricane/huricane.nsf/view01/5962093D418A5BCFC1256B74003E0080?opendocument (last accessed 24 March 2007) at 2.

offered as to the scope of those rights in the relevant General Comments by the CESCR.[185] For these objectives to be fulfilled, an independent judiciary is essential.[186]

Questions relating to institutional mechanisms and judicial/quasi-judicial systems for enforcing the right to education need to be addressed in a broader perspective.[187] Promoting research and studies on constitutional law and the right to education as well as the exchange of practical examples and experience are of prime importance.[188] Experience and knowledge at the regional level regarding the justiciability of the right to education is also important.[189] Moreover, possibilities mutually to reinforce the institutional mechanisms existing at both the regional and the international levels must be examined.[190] The role of tribunals and human rights institutions must also be considered. These bodies are important in enforcing the right to education as they examine breaches of the right and apply political and legal pressure to the authorities and institutions responsible for enforcing it.[191]

Several major recommendations have been put forward by various workshops and symposia on ways to increase the justiciability of economic, social and cultural rights which are also relevant to the right to education. These include:

- that the judiciary interpret domestic law in conformity with international human rights instruments;[192]

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[185] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, Opening Address by Ms Mary Robinson High Commissioner for Human Rights, 17 November 2001 http://www.unhchr.ch/huricane/huricane.nsf/view01/5962093D418A5BCFC1256B74003E0080?opendocument (last accessed 24 March 2007) at 3.

[186] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, Statement of Conclusions, 17 - 18 November 2001 http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 24 March 2007) at 2. Draft Conclusions and Recommendations of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic Social and Cultural Rights in the Pacific Region, Suva, Fiji, 1 – 3 June 2006 http://www.interights.org/page.php?dir=News#Pacificcolloquium%20headline (last accessed 26 March 2007) at para 8.

[187] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006 at para 18.

[188] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006 at para 18.

[189] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006 at para 20.

[190] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006 at para 20.

[191] UNESCO(CR)/ECOSOC(CESCR) Joint Expert Group on the Monitoring of the Right to Education *Justiciability of the Right to Education* 175 EX/28 12-13 May 2006 at para 20.

[192] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, Statement of Conclusions, 17 - 18 November 2001 http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 24 March 2007) at para 13. Draft Conclusions and Recommendations of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic Social and Cultural Rights in the

- that the judiciary develop new strategies and innovative mechanisms to enforce rights;[193]
- that there should be a right of judicial review for breaches of the right to education;[194]
- that a regional or sub-regional human rights mechanism be created to enforce the justiciability of economic, social and cultural rights;[195]
- that governments enact legislation to give effect and content to the right to education as soon as possible;[196]
- that governments take all necessary steps to ensure that their domestic legal framework provides for effective legal remedies regarding violations;[197]
- that law societies, bar associations and judicial training bodies keep the legal profession, including the judiciary, abreast of current developments in international and comparative human rights jurisprudence;[198]

Pacific Region, Suva, Fiji, 1 - 3 June 2006 http://www.interights.org/page.php?dir=News#Pacificcolloquium%20headline (last accessed 26 March 2007) at para 22.

[193] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, Statement of Conclusions, 17 - 18 November 2001 http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 24 March 2007) at para 17.

[194] UNESCO *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements, Report of the Secretary-General Conclusions and Recommendations of the Expert Meeting on National Human Rights Education in the Asia-Pacific Region (Bangkok, 20-22 October 2005) and the subregional workshop for judges and lawyers on the justiciability of economic, social and cultural rights in South-East Asia* (Manila, 3-5 November 2004), E/CN.4/2006/100/Add.1, 13 December 2006 http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm (last accessed 27 March 2007) at 9 para 14.

[195] UNESCO *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements, Report of the Secretary-General Conclusions and Recommendations of the Expert Meeting on National Human Rights Education in the Asia-Pacific Region* (Bangkok, 20-22 October 2005) *and the subregional workshop for judges and lawyers on the justiciability of economic, social and cultural rights in South-East Asia* (Manila, 3-5 November 2004), E/CN.4/2006/100/Add.1, 13 December 2006 http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm (last accessed 27 March 2007) at para 21.

[196] United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, Statement of Conclusions, 17 - 18 November 2001 http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 24 March 2007) at para 23.

[197] UNESCO *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements, Report of the Secretary-General Conclusions and Recommendations of the Expert Meeting on National Human Rights Education in the Asia-Pacific Region* (Bangkok, 20-22 October 2005) *and the subregional workshop for judges and lawyers on the justiciability of economic, social and cultural rights in South-East Asia* (Manila, 3-5 November 2004), E/CN.4/2006/100/Add.1, 13 December 2006 http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm (last accessed 27 March 2007)at para 23. Draft Conclusions and Recommendations of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic Social and Cultural Rights in the Pacific Region, Suva, Fiji, 1 - 3 June 2006 http://www.interights.org/page.php?dir=News#Pacificcolloquium%20headline (last accessed 26 March 2007) at para 16.

[198] UNESCO *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements, Report of the Secretary-General Conclusions and Recommendations of the Expert Meeting on National Human Rights Education in the Asia-Pacific Region* (Bangkok, 20-22 October 2005) *and the subregional workshop for judges and lawyers on the justiciability of economic, social and cultural rights in South-East Asia* (Manila, 3-5 November 2004), E/CN.4/2006/100/Add.1, 13 December 2006 http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm (last accessed 27

- that national human rights institutions monitor, sensitise and educate the public, government officials, lawyers and judges about the right to education and remedies for breaches of this right.[199]

March 2007) at para 34. Draft Conclusions and Recommendations of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic Social and Cultural Rights in the Pacific Region, Suva, Fiji, 1 - 3 June 2006 http://www.interights.org/page.php?dir=News#Pacificcolloquium%20headline (last accessed 26 March 2007) at para 18.

[199] UNESCO *Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements, Report of the Secretary-General Conclusions and Recommendations of the Expert Meeting on National Human Rights Education in the Asia-Pacific Region* (Bangkok, 20-22 October 2005) *and the subregional workshop for judges and lawyers on the justiciability of economic, social and cultural rights in South-East Asia* (Manila, 3-5 November 2004), E/CN.4/2006/100/Add.1, 13 December 2006 http://www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm (last accessed 27 March 2007) at para 32. United Nations Workshop for Judges on the Justiciability of Economic, Social and Cultural Rights in South Asia, New Delhi, Statement of Conclusions, 17 - 18 November 2001 http://www.unhchr.ch/huricane/huricane.nsf/(Symbol)/OHCHR.STM.01.77.En?OpenDocument (last accessed 24 March 2007) at para 15. Draft Conclusions and Recommendations of the Colloquium and Workshop for Judges and Lawyers on the Justiciability of Economic Social and Cultural Rights in the Pacific Region, Suva, Fiji, 1 - 3 June 2006 http://www.interights.org/page.php?dir=News#Pacificcolloquium%20headline (last accessed 26 March 2007) at para 13.

(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.

Summary

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.
- States must ensure that their laws, policies and practices do not inhibit or prevent children from accessing primary education.
- States are obliged to eliminate school fees and minimise indirect costs imposed on students and parents or legal guardians.

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 and, in particular, by the progressive introduction of free education
- Tertiary education should have flexible curricula and a variety of delivery systems 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.

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.
- 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, youths and adults.

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.

Discussion

Primary Education

Primary education must be compulsory, free and available to all

International human rights instruments make it clear that a minimum level of education must be compulsory, free and available to all.[200] International instruments variously employ the terms "primary", "elementary", "basic" or "fundamental" to describe the level of education that States are obliged to provide.

The term "primary education" as used in the ICESCR and CRC corresponds to the term "elementary education" contained in the UDHR.[201] This level of education can be distinguished from basic or fundamental education, although there is a close connection between the two levels.[202]

The right to primary education is "so fundamental for the development of a person's abilities that it can be rightfully defined as a minimum claim."[203] A minimum level of education is,

[200] The vast majority of treaties that refer to the right to education contain provisions requiring compulsory and free education. See UDHR, article 26(1); ICESCR, article 13(2)(a); CRC, article 28(1)(a); Protocol of San Salvador, article 13(3)(a); African Children's Charter, article 11(3)(a).
[201] Article 13(2)(a) of the ICESCR and article 29(1)(a) of the CRC state that primary education shall be "compulsory and available free to all", while article 26(1) of the UDHR states that elementary education shall be compulsory and free.
[202] Fundamental or basic education extends to those who have not received or completed primary education. It is discussed below as a separate component of the right to education.
[203] Coomans "In Search of the Core Content of the Right to Education" in Chapman and Russel (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 217 at 225 – 226.

therefore, one of the core elements of the right to education. It is, however, important to keep in mind that the provision of such education does not in itself translate to the realisation of the right to education.

"Primary" or "elementary" education

The terms "primary education" and "elementary education" are not clearly defined in international human rights treaties. Usually, primary or elementary education is aimed at children within the framework of formal primary schooling, but the right to enjoy a minimum level of education is not necessarily confined to formal education. It also includes, for example, education within the home and the community.

The CESCR has obtained guidance on the proper interpretation of the term "primary education" from the World Declaration on Education for All.[204] Article 5 of the World Declaration provides:

> ***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.
>
> [Emphasis in original.]

"Basic learning needs" is defined by article 1 of the World Declaration as comprising both the essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, 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 satisfaction of these needs empowers individuals and confers upon them a responsibility, among other things, to respect and build upon their collective cultural, linguistic and spiritual heritage, to be tolerant towards different social, political and religious systems, and to work for international peace and solidarity.

Primary education has two distinctive features: it must be "compulsory" and "available free to all". As there has been extensive debate on the nature and scope of human rights obligations

relating to compulsory and free levels of education, it is necessary to consider these elements in further detail.

Compulsory

The requirement for compulsory primary education means that no one should prevent a child from obtaining a minimum level of education. The CESCR has stated 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."[205] In addition, States are obliged to take positive steps to ensure that primary education is freely available and compulsory. It is, therefore, not sufficient for States simply to affirm that primary education is compulsory.

The compulsory component of primary education has a close connection to the prohibition on discrimination in education. The CADE establishes that "discrimination" includes any distinction which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of depriving children from accessing elementary levels of education.[206] However, in reality, millions of children around the world, particularly female 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.

Attention must also be drawn to the quality and duration of legally required compulsory education. In this regard, the CESCR has emphasised that the education offered must be adequate in quality, relevant to the child and must promote the realisation of the child's other rights.[207] Further, compulsory primary education may be too short to constitute the realisation of the right to education. The Special Rapporteur has stated that the right to education requires a definition of its guaranteed duration in accordance with all other rights of the child, especially regarding work, marriage or military service.[208] Thus, primary schooling must be

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[204] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 9.
[205] CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 6.
[206] Article 1(a) of the CADE. The prohibition on discrimination in education will be discussed in more detail under term of reference (vi).
[207] CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 6.
[208] Report of the Special Rapporteur on the right to education E/CN.4/2004/45 15 January 2004 at para 21. See also Progress Report of the Special Rapporteur on the right to education E/CN.4/2000/6, 1 February 2000 at paras 46 – 48.

compulsory but the assumption that compulsory schooling equals primary education in length is, however, no longer valid.[209]

Free

The CESCR has stated that the nature of the requirement that primary education be free of charge is unequivocal.[210] The right is expressly formulated so as to ensure the availability of primary education in public education institutions without charge to the child, parents or legal guardians. The requirement that primary education be free is a corollary of the requirement that education be compulsory and accessible to all. If primary education were not free, there would be barriers to entry, as children whose parents cannot afford to pay or are not willing to pay would be excluded from education. Any costs would, therefore, jeopardise the realisation of the enjoyment of the right to education.

The Special Rapporteur has emphasised the link between free primary education and poverty reduction.[211] School fees prevent poor children from accessing education because they cannot afford the cost, closing off their pathway out of poverty.[212] The Special Rapporteur has stated that facilitating the elimination of school fees involves two steps:[213]

1. Investigating the incidence and prevalence of school fees and other financial obstacles in primary education and their detrimental human rights impact.
2. Properly defining "school fees" so as to encompass all financial obstacles, and determining the child's entitlement to a specified duration and quality of education with the requirement that all financial obstacles be eliminated.

The Special Rapporteur has conducted a global review of the charging of fees in primary education.[214] This showed school fees are charged in 91 countries, although the Governments of 11 of these countries have made a commitment to eliminate school fees. The pattern of

[209] This duration of compulsory education, particularly in relation to other rights of the child, has been discussed in more detail under term of reference (ii).
[210] CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 7.
[211] Report of the Special Rapporteur on the right to education E/CN.4/2004/45 15 January 2004 at para 15.
[212] The importance of poverty-based exclusion from education has focused the Special Rapporteur on the elimination of fees in primary school. See Report of the Special Rapporteur on the right to education E/CN.4/2003/9 21 January 2003 at para 8.
[213] See Report of the Special Rapporteur on the right to education E/CN.4/2004/45 15 January 2004 at para 19.
[214] See Report of the Special Rapporteur on the right to education E/CN.4/2004/45 15 January 2004 at para 27 and Table 1 at 11.

charging school fees shows that they are poverty, rather than policy, based. School fees are particularly widespread in Africa and Asia, but no school fees have been found in the 34 members of the OECD, the EU and the EFTA. Further, government reports under human rights treaties routinely refer to their inability, rather than unwillingness, to introduce free education for all children of compulsory school age.

The requirement that education be free should be read widely so that all financial obstacles facing parents, legal guardians and children are eliminated. There are two main types of financial obstacle to the enjoyment of the right to education: the direct and indirect costs of education and the opportunity costs of education.

The costs, both direct and indirect, of education include:[215]

- School fees imposed by the Government, the local authorities or the school for enrolment, tuition and examinations;
- School fees in different guises, such as where fees have been nominally eliminated and replaced with homework correction or desk-use fees or "voluntary" financial contributions;
- Charges levied for the use of educational facilities and materials (such as laboratories, computers or sports equipment), or for extra-curricular activities (such as excursions or sports), or generally for supplementing teachers' salaries or school maintenance; and
- The cost of textbooks, supplies and equipment (notebooks, sketchbooks, pens and pencils), transportation, meals and school uniforms (where these are required for school attendance or represent a custom whose breach would penalise children without uniforms).

The combination of direct and indirect fees and expenditure can be prohibitively expensive and prevent children from enrolling or force them to drop out, thus jeopardising the realisation of the right to education.[216] As well as having an obligation to eliminate school fees, States must minimise, and where possible eliminate, indirect costs imposed on students

[215] See CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 7 and Report of the Special Rapporteur on the right to education E/CN.4/2004/45 15 January 2004 at paras 22 and 26.

[216] Report of the Special Rapporteur on the right to education E/CN.4/2004/45 15 January 2004 at para 26. Further, economic exclusion in the form of school fees affects girls much more than boys: Report of the Special Rapporteur on the right to education E/CN.4/2004/45 15 January 2004 at paras 19 and 26. Gender parity will be discussed in more detail under term of reference (vii).

and parents or legal guardians.[217] Where financial circumstances would prevent children from accessing primary education or participating in extra activities, financial assistance must be provided to the families to enable the full enjoyment of the right to education. The elimination of the costs of primary education must be addressed by the required plan of action.

In addition to eliminating direct and indirect costs, States must address the opportunity costs of schooling. In this regard, financial obstacles can be overcome by providing financial incentives, such as free meals and transportation, for poor families to send their children to school and keep them at school.[218]

The privatisation of education has also gained international attention. The private schooling system supplements but does not replace the public schooling system. While some governments and international financial institutions consider privatisation is the most efficient means to finance the school system, others strongly disagree. In this connection, the HRC has held that the State does not discriminate when it provides more subsidies to public schools than to private schools.[219] Similarly, the ECHR has held that States are not required to subsidise private education of a particular type or level.[220]

Secondary education, including technical and vocational education, must be made generally available and accessible to all

Human rights instruments state that secondary and vocational or technical training should be generally available and accessible to all.[221] Article 13(2)(b) of ICESCR provides that:

> 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.

It is clear, therefore, that States have, at minimum, an obligation to regulate secondary and 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. It was traditionally

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[217] The CESCR has said, however, that some indirect costs may be permissible, subject to the Committee's examination on a case-by-case basis: see CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 7.

[218] Report of the Special Rapporteur on the right to education E/CN.4/2004/45 15 January 2004 at para 22.

[219] *Blom v Sweden* Communication No. 191/1985 4 April 1988 at 10.3 (HRC).

[220] *Simpson v United Kingdom* Application No. 14688/89 (1989) 64 DR 188 (ECHR).

[221] Article 13(2)(b) of the ICESCR and article 28(1)(b) of the CRC. See also article 26(1) of the UDHR and article 13(3)(b) of the Protocol of San Salvador.

understood that the provisions in international law requiring a minimum level of "compulsory and free" education generally applied only to primary education. However, the language used in the ICESCR implies that, over time, as the minimum level of education is realised, opportunities to complete secondary education and vocational and technical training should be extended to all children.

Further, as a result of the extension of the minimum age of employment and marriage, a global trend points to extending the number of years of compulsory education beyond primary school and into secondary education.[222] To the extent that this is done, such secondary education must also be free to ensure that it is accessible to all. Indeed, many States have included secondary education and technical and vocational training as part of the minimum level of compulsory and free education that should be made available and accessible to all children.

Secondary education[223]

According to the CESCR "secondary education" includes completion of basic education and consolidation of the foundations for life-long learning and human development. It prepares students for vocational and higher educational opportunities. The content of secondary education will, however, vary among States and over time. Article 13(2)(b) applies to secondary education "in its different forms", recognising that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings.

The CESCR has commented on the components of the article 13(2)(b) obligation. The phrase "generally available" signifies, first, that secondary education is not dependent on a student's apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all. Next, secondary education should be both physically and economically "accessible" to everyone without discrimination. The phrase "every appropriate means" reinforces the point that State parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts. The obligation of "progressive introduction of free education" means that while States must prioritise the provision of free primary education,

[222] Coomans "In Search of the Core Content of the Right to Education" in Chapman and Russel (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 217 at 227; see also, in general, the body of work of the Special Rapporteur on the right to education.

[223] This section is based on CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at paras 12 – 14.

they also have an obligation to take concrete steps towards achieving free secondary and higher education.

Technical and Vocational Education

According to article 1(a) of the UNESCO Convention on Technical and Vocational Education (1989), "technical and vocational education" consists of:

> …all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life.

On the basis of this definition, the CESCR has stated that the right to technical and vocational education includes the following aspects:[224]

> (a) It enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability and enhances the productivity of their families and communities, including the State party's economic and social development;
>
> (b) It takes account of the educational, cultural and social background of the population concerned; the skills, knowledge and levels of qualification needed in the various sectors of the economy; and occupational health, safety and welfare;
>
> (c) Provides retraining for adults whose current knowledge and skills have become obsolete owing to technological, economic, employment, social or other changes;
>
> (d) It consists of programmes which give students, especially those from developing countries, the opportunity to receive TVE in other States, with a view to the appropriate transfer and adaptation of technology;
>
> (e) It consists, in the context of the Covenant's non-discrimination and equality provisions, of programmes which promote the TVE of women, girls, out-of-school youth, unemployed youth, the children of migrant workers, refugees, persons with disabilities and other disadvantaged groups.

The CESCR has noted that under the ICESCR technical and vocational education forms part of both the right to education (article 13(2)(b)) and the right to work (article 6(2)).[225] Article 6(2) does not refer to technical and vocational education in relation to a specific level of education; it comprehends that technical and vocational education has a wider role, helping "to achieve steady economic, social and cultural development and full and productive

[224] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 16.
[225] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 15.

employment". Accordingly, the CESCR took the view that technical and vocational education forms an integral element of all levels of education. The CESCR has recently stated that the obligation to fulfil (facilitate) the right to work requires States parties, among other things, to take positive measures to implement technical and vocational education plans to facilitate access to employment.[226]

Finally, the European Social Charter contains detailed references to technical and vocational education. The Charter affirms that everyone has the right to vocational training. Under article 10, State parties make various undertakings, including:

- to provide or promote the technical and vocational training of all persons, including the handicapped;
- to provide or promote a system of apprenticeship and other systematic arrangements for training young people;
- to provide or promote adequate or readily available training facilities for adult workers; and
- to encourage the full utilisation of the facilities provided by appropriate measures, such as reducing or abolishing any fees or charges and granting financial assistance in appropriate cases.

The standards contained in the European Social Charter may be useful in the development of national plans of action.

Higher or tertiary education must be made equally accessible to all, on the basis of capacity, by every appropriate means

According to human rights instruments, 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.[227] As noted by the CESCR, there are three differences between the provisions relating to secondary education and those relating to higher education.[228] First, the higher education provisions do not include a reference to education "in its different forms". Secondly, the provisions do not refer specifically to

[226] CESCR *General Comment No. 18: The Right to Work* E/C.12/GC/18 6 February 2006 at para 27.
[227] Article 13(2)(c) of the ICESCR and article 28(1)(c) of the CRC. See also article 26(1) of the UDHR (which refers to access to higher education on the basis of "merit") and article 13(3)(c) of the Protocol of San Salvador.
[228] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at paras 18 – 19.

technical and vocational education. However, in the CESCR's opinion, these two omissions reflect only a difference of emphasis between the two levels of education. The Committee stated that:[229]

> If higher education is to respond to the needs of students in different social and cultural 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". As for the lack of reference in article 13(2)(c) to technical and vocational education, given article 6(2) of the Covenant and article 26(1) of the Universal Declaration, TVE forms an integral component of all levels of education, including higher education.

The third and most significant difference between the two levels of education is that while secondary education "shall be made generally available and accessible to all", higher education "shall be made equally accessible to all, on the basis of capacity". Thus, States are obligated to make higher education available only "on the basis of capacity". The "capacity" of individuals should be assessed by reference to their relevant expertise and experience.[230]

The idea that higher education should be accessible on the basis of "capacity" and "merit" has been progressively interpreted and reconsidered in light of the principle of substantive equality.[231] 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. Hence, the promotion of the rights of discriminated groups may require affirmative action to enable such groups to access higher education. Further, "merit" or "capacity" should not be used as an excuse to restrict access to higher education for the disabled or those with special learning needs.

Tertiary education should have flexible curricula and a variety of delivery systems in order to meet the needs of students in different social and cultural settings.

Fundamental or basic education shall be encouraged or intensified for those who have not completed primary education

Article 13(2)(d) of the ICESCR states that:

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[229] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 18.

[230] So far as the wording of article 13(2)(b) and (c) is the same (e.g. "the progressive introduction of free education"), see the previous comments on secondary education above.

[231] Equality of opportunity and the prohibition against discrimination in education will be discussed in more detail under term of reference (vi), including the concept of substantive equality.

> Fundamental 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.

As mentioned previously, the term "fundamental education" as used in the ICESCR is equivalent to the term "basic education" in the Protocol of San Salvador.[232] The international instruments state that fundamental education must be "encouraged or intensified as far as possible". This can be contrasted with the requirements of availability and accessibility imposed in relation to the other levels of education.

The CESCR has stated that, while primary education is not synonymous with basic education, there is a close correspondence between the two.[233] The Committee endorsed the position taken by UNICEF that "[p]rimary education is the most important component of basic education". According to the CESCR, "[i]n general terms, fundamental education corresponds to basic education as set out in the World Declaration on Education For All."[234] Thus, basic or fundamental education should provide individuals with a minimum level of knowledge, skills and information to enable them to participate and contribute to society in accordance with the broad aims of the right to education.

By virtue of article 13(2)(d), individuals "who have not received or completed the whole period of their primary education" have a right to fundamental education. However, according to the CESCR, the right to fundamental education extends to everyone who has not yet satisfied his or her "basic learning needs".[235] In this regard, the basic learning need of 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.

The right to fundamental education extends to everyone, irrespective of age, gender, race, ethnicity, nationality or ability. More specifically, the guarantee of basic or fundamental education extends to those who have been marginalised, discriminated against or socially excluded due to their lack of education such as illiterate persons, females, persons with

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[232] Article 13(3)(d) of the Protocol of San Salvador is very similar to article 13(2)(d) of the ICESCR. It reads: "Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction".

[233] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 9.

[234] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 22. See above at 80 for the definition of basic education in article 1 of the World Declaration on Education for All.

[235] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 23.

disabilities and refugees.[236] The CESCR has emphasised that enjoyment of the right to fundamental education is not limited by age.[237] It extends to children, youths and adults, including older persons. Fundamental education, therefore, is an integral component of adult education and life-long learning. The CESCR considers that, because fundamental education is a right of all age groups, curricula and delivery systems suitable for students of all ages must be devised.

[236] Equality, non-discrimination and gender parity will be discussed in more detail under terms of reference (vi) and (vii).
[237] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 24.

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

Summary

- Each State must take steps, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights to education.
- States are not obliged to allocate all of their resources to education.
- Regardless of the level of economic development, including in times of extreme resource constraints, States still have an obligation to protect the right to education.
- Where available resources are insufficient to fulfil the State's obligations, the State must seek international co-operation and assistance.

Discussion

Under the ICESCR, each State party undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant.[238] States are not obliged to allocate all of their resources to education. Rather, States must allocate resources efficiently, effectively and equitably[239] and without negatively affecting or impairing the progressive realisation of other rights.[240] An internationally recommended level of funding is either 20% of the national budget or 6% of gross national product.[241]

A minimum core obligation to ensure the satisfaction of, at the very least, the most basic forms of education is incumbent upon every State party, regardless of the level of economic development.[242] Although any assessment as to whether a State has discharged its minimum core obligations must also take account of resource constraints, a State must make every effort to use all resources at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations. In times of financial restraint, priority should be given to primary

[238] Article 2(1) of the ICESCR.
[239] Limburg Principles at para 27.
[240] See Limburg Principles at para 28.
[241] See, for example, Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 128.
[242] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 10 and Limburg Principles at para 25.

education, but without undue detriment to secondary, technical, vocational or tertiary education.

The CESCR has emphasised that, notwithstanding the demonstrable inadequacy of available resources, the obligation remains for a State to strive to ensure the widest possible enjoyment of the right to education under the prevailing circumstances. Thus, even in times of severe resource constraints, whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society must be protected by the adoption of innovative and creative low-cost targeted programmes. Further, the obligations to monitor the extent of the realisation (or the non-realisation) of the right to education, and to devise strategies and programmes for its promotion, are not in any way eliminated as a result of resource constraints.[243] 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.

Where available resources are insufficient to fulfil a State's obligations relating to the right to education, the State must seek international cooperation and assistance.[244] The Dakar Framework contains a commitment 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.[245] 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.

[243] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at paras 11 - 12.
[244] Article 2(1) of the ICESCR. In addition, para 26 of the Limburg Principles provides that "its available resources" refers to both the resources within a State and those available from the international community through international co-operation and assistance. See also CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 13.
[245] Paragraph 48 of the Dakar Framework for Action.

(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.

Summary

- 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.
- Guarantees of non-discrimination and equality mandate both formal and substantive equality.
- Affirmative action may be necessary in order to diminish or eliminate conditions which cause or help to perpetuate prohibited discrimination.
- States are required to provide appropriate education to internally displaced children and child refugees.
- States are required to meet the needs of children with disabilities.

Discussion

Defining discrimination

International instruments

Under article 2(2) of the ICESCR, States undertake to guarantee that the right to education "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The prohibited grounds of discrimination set out in article 2(2) are not, however, exhaustive.[246] Other prohibited grounds that could apply to the right to education include physical and mental disability, health status, economic condition, sexual orientation and age.

Article 1(1) of the CADE provides that the term "discrimination" includes "any distinction, exclusion, limitation or preference" which, being based on a prohibited ground of

[246] Limburg Principles at para 36.

discrimination, "has the purpose or effect of nullifying or impairing equality of treatment in education" and, in particular:

- Of depriving any person or group of persons of access to education of any type or at any level;
- Of limiting any person or group of persons to education of an inferior standard;
- Of establishing or maintaining separate educational systems or institutions for persons or groups of persons (this is subject to the provisions of Article 2);[247] or
- Of inflicting on any person or group of persons conditions which are incompatible with the dignity of humankind.

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. Further, the State is obligated to respect, protect, promote and fulfil equality and non-discrimination in education.

Intersectional discrimination

There has been an increasing awareness of the negative impact of intersectional discrimination, which occurs when multiple grounds of discrimination overlap. The concept of intersectional discrimination has been defined as "intersectional oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone."[248] For example, many women experience distinct forms of discrimination due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property,

[247] Article 2 provides that the following situations shall not be deemed to constitute discrimination:
(a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;
(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

[248] Eaton "Patently Confused, Complex Inequality and *Canada v. Mossop*" (1994) 1 Review of Constitutional Studies 203.

birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.[249] The Special Rapporteur has highlighted the incidence of intersectional discrimination in girls' right to education.[250]

International bodies have stressed recently the importance of acknowledging that intersectional discrimination must be recognised and addressed at the national level through intersectional strategies.[251] An intersectional approach takes into account the historical, social and political context and recognises the unique experience of the individual based on the intersection of all relevant grounds.[252]

Obligation of immediacy

The right to equality and non-discrimination constitutes a central component of the right to education. As mentioned under term of reference (ii), the guarantee that the right to education will be exercised without discrimination is an obligation of immediacy. The CESCR has affirmed that the prohibition against discrimination in education is subject to neither progressive realisation nor the availability of resources. It applies fully and immediately to all aspects of education.[253]

Formal and substantive equality

Discrimination and inequality can stem from both law and from practice. Guarantees of non-discrimination and equality in international human rights treaties mandate both formal (*de jure*) and substantive (*de facto*) equality. Formal equality assumes that equality is achieved if a law or policy treats different groups, such as men and women, 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.[254]

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[249] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 5.
[250] See generally Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006, in particular at paras 80 – 87.
[251] See, for example, CERD *General Comment No. 25: Gender Related Dimensions of Racial Discrimination* A/55/18 annex V 20 March 2000.
[252] Ontario Human Rights Commission "An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims" (Discussion Paper 2001) at 3.
[253] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 31. See also Limburg Principles at paras 22 and 23.

All States must, as a matter of immediate obligation, eliminate *de jure* discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission) affecting the enjoyment of the right to education.[255] States must also enact and enforce legislation that ensures that the right to education is exercised in an inclusive and non-discriminatory manner. The adoption of legislative measures is not, however, exhaustive of the obligations of States.[256] Rather, positive measures and steps are required to ensure that educational laws, policies, programmes and practices are non-discriminatory. In this regard, States must prohibit private persons and bodies from practising discrimination in the field of public education.[257]

However, substantive equality for disadvantaged groups will not be achieved simply through the enactment of laws or the adoption of policies that are, prima facie, equal and non-discriminatory.[258] Therefore, in addition, States should, as speedily as possible, bring to an end *de facto* discrimination occurring as a result of the unequal enjoyment of the right to education,[259] whether on account of a lack of resources, gender or other economic, social and cultural inequalities. The substantive model of equality goes beyond "equal access" and "equal treatment", and instead focuses on equality of results that "may be qualitative or quantitative in nature."[260]

Substantive equality can be furthered by implementing affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate prohibited discrimination.[261] Thus, the general prohibition on discrimination does not prevent temporary preferential treatment, including via policies, laws, programmes or services, to disadvantaged groups in order to ensure equality with the rest of the population. Examples of affirmative action include creating scholarships and other study programmes to enable girls or other disadvantaged groups to access higher education.[262] Such temporary special measures should be crafted and

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[254] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 7.
[255] Limburg Principles at para 37.
[256] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 4.
[257] Limburg Principles at para 40.
[258] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 8.
[259] Limburg Principles at para 38.
[260] For example see CEDAW *General Recommendation No. 25: Temporary Special Measures* (thirtieth session, 2004) at paras 8 – 9.
[261] HRC *General Comment No. 18: Non-discrimination* (thirty-seventh session, 1989) 10 November 1989 at para 10.
[262] Article 13(2)(e) of the ICESCR requires States to establish an adequate fellowship system. The CESCR has stated that this requirement should be read with the Covenant's non-discrimination and equality provisions. Thus, the fellowship system should enhance equality of educational access for

designed in order to correct the ongoing effects of discrimination. These measures must not, however, lead to the maintenance of separate standards for different groups and must not continue after their intended objectives have been achieved.[263]

Access to education for non-nationals, refugees, internally displaced persons, people living with disabilities, and other minorities

States have an obligation to extend the right to education to all individuals and groups. However, certain groups suffer disproportionate harm from violations of economic, social and cultural rights, such as lower-income groups, women, 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.[264] These groups are often excluded from the benefits of the right to education and/or not reached by educational services, institutions and programmes, including those aimed at benefiting disadvantaged groups. More specifically, inclusive education is aimed at ensuring the right to education is realised bearing in mind the specific learning needs[265] and learning circumstances[266] of each individual.

The extension of the right to education to non-nationals, refugees and internally displaced persons

Many States continue to assert that the right to education should not be extended to non-nationals, such as "stateless" persons, migrant workers and their families, refugees and trafficked persons. However, international treaties 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.[267] Further, the CESCR has confirmed that the principle of

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individuals from disadvantaged groups: see CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 26.

[263] Limburg Principles at para 39. See also CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 32.

[264] Maastricht Guidelines at para 20.

[265] For example: the learning needs of those with mental or physical disabilities; adult learning, cultural minorities.

[266] For example: children in refugee camps, children that work and youth in detention centres.

[267] Paragraph 42 of the Limburg Principles provides that, as a general rule, the ICESCR applies equally to nationals and non-nationals. The exception contained in article 2(3) of the ICESCR (which allows developing countries to determine to what extent they would guarantee economic rights to non-nationals) is limited to "economic rights" and thus, does not apply in the context of the right to education. In addition, article 8(1)(c) of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live states that aliens lawfully residing in the territory of a State shall enjoy the right to education provided that they fulfil the requirements under the relevant regulations for participation and that undue strain is not placed on the resources of the State.

non-discrimination in education extends to all persons of school age residing in the territory of a State party, including non-nationals, irrespective of their legal status.[268]

International human rights instruments require States to accord to stateless persons and refugees: (1) the same treatment as is accorded to nationals with respect to elementary education and (2) treatment as favourable as possible with respect to education other than elementary education.[269] Further, article 22 of the CRC establishes that States have an obligation to adopt measures to ensure refugees enjoy the rights set forth in the Convention, including the right to education. In addition, migrant workers and their families shall, in the State of employment, enjoy equality of treatment with nationals in relation to access to educational institutions and services and vocational guidance and training institutions and services.[270] States of employment are required to facilitate both the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language, and the teaching of the children of migrant workers their mother tongue and culture.[271]

States are, therefore, required to provide appropriate education to non-nationals, including internally displaced children, migrant children and child refugees. In providing such education, States 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.

Persons living with disabilities

States are required to meet the needs of children with mental or physical disabilities in accordance with article 23 of the CRC. This means that programmes and facilities should be adapted to accommodate the 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. In addition, States

[268] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 34. In particular, children should not be deprived of education by virtue of the immigration status of their parents.
[269] Article 22 of the Convention relating to the Status of Stateless Persons and article 22 of the Convention relating to the Status of Refugees.
[270] Article 36 and article 45(1)(a) and (b) of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. The State's obligation to respect religious and cultural practices within education will be discussed under term of reference (viii).
[271] Article 45(2) and (3) of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

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

The Disabilities Convention affirms the right of people with disabilities to education.[272] This Convention requires States to ensure an inclusive education system directed to the dual aims of education,[273] to the development of the personality, talents, creativity and mental and physical abilities of disabled people, and to enabling people with disabilities to participate effectively in a free society. In realising the right of people with disabilities to education, States shall ensure:

- That persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary and secondary education on the basis of disability;
- That persons with disabilities can access an inclusive, quality, free primary and secondary education on an equal basis with others in the communities in which they live;
- That persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others;
- Reasonable accommodation of the individual's requirements;
- That persons with disabilities receive the support required, within the general education system, to facilitate their effective education; and
- That effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.

Further, under the Disabilities Convention, States must enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. Appropriate measures in this regard include:

- Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication, orientation and mobility skills, and facilitating peer support and mentoring;

[272] United Nations International Convention on the Rights of Persons with Disabilities. The Disabilities Convention was adopted by the General Assembly on 13 December 2006 and will be open for signature and ratification by States on 30 March 2007. It will enter into force after 20 countries have ratified it. These paragraphs are based on article 24 of the Disabilities Convention.
[273] These aims are the full development of the individual and the strengthening of respect for human rights. These aims are discussed under term of reference (i).

- Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community; and
- Ensuring that the education of persons, and in particular children, who are blind, deaf and deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
- Employing teachers including those with disabilities, who are qualified in sign language and Braille, and training professionals and staff who work at all levels of education.

Affirmative action through permanent or temporary special measures can be a means of ensuring that learners with special needs and learners under special circumstances benefit equally from education. For example, the idea that higher education should be accessible on the basis of "capacity" and "merit" has been progressively interpreted and reconsidered in light of the principle of substantive equality. In this regard, arguments of "merit" or "capacity" should not be used to restrict access to higher education for individuals with special learning needs and under special circumstances.

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

Summary

- 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. This mandates both formal and substantive equality.
- States must ensure the same conditions for career and vocational guidance, for access and admission to studies and for the achievement of qualifications for males and females. States may, however, take into account existing economic, social, cultural and gender inequalities.
- Progress on gender equality is related to the content and quality of education. States must ensure access to the same curricula, examinations and teaching standards. Further, curricula must promote equality and non-discrimination.
- States must identify and eradicate barriers to females' education, including socio-cultural factors, discrimination and financial disadvantage.
- States must ensure the safety of children both while travelling to and from and while attending school.
- States should take measures to ensure that girls' education is not interrupted or terminated by early marriage and motherhood.
- States should provide access to education on health and hygiene matters for both sexes.

Discussion

Gender parity and gender equality in education

Introduction

The education of girls and women is inseparably linked to the promotion of social justice, democracy and development. Globally, the challenges to attaining gender parity and gender equality in education continue. The Special Rapporteur on the right to education has consistently raised concerns in regard to girls' exclusion from the formal schooling system.[274]

[274] In particular, the Special Rapporteur's Annual Report for 2006 focuses on the girl child and proposes a comprehensive approach for confronting gender discrimination in education: see Report of

Article 3 of the ICESCR requires States to ensure the equal right of men and women to the enjoyment of the right to education. In addition, goal 3 of the Millennium Development Goals is to promote gender equality and empower women.[275] This goal seeks to eliminate gender disparity in primary and secondary education by 2005 and over all levels of education by 2015. Goal 5 of the Dakar Framework is framed in the same terms.[276]

States are therefore under an immediate and mandatory obligation[277] to ensure gender parity and gender equality in the provision of education. Gender parity is a numerical concept: reaching gender parity implies that the same proportion of boys and girls – relative to their respective age groups – enter the education system and participate in the full primary and secondary cycles. Gender equality, on the other hand, implies that boys and girls are offered the same chances to go to school and that they enjoy teaching methods and curricula free of stereotypes and academic orientation unaffected by gender bias. It also implies equality of outcomes in terms of length of schooling, learning achievement and academic qualifications.[278] Gender equality in education must be understood in light of the standard of equality for women under the CEDAW[279] and other relevant instruments and activities of the CEDAW Committee.[280]

Link with guarantee of non-discrimination

As already discussed, the ICESCR includes a guarantee of non-discrimination on the basis of sex among other grounds. This provision and the guarantee of equal enjoyment of rights by men and women in article 3 are integrally related and mutually reinforcing. Moreover, the

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the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006.

[275] See appendix 3 for more information.

[276] However, the Special Rapporteur has reported that the goal of gender equality by 2005 was not met in 94 of the 149 countries for which information was available. Further, there are 86 countries unlikely to achieve gender parity even by the year 2015, while 76 countries have not even achieved gender parity in primary education. Girls continue to suffer from the disparities: see Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at paras 58 – 59.

[277] CESCR *General Comment No. 3: The nature of States parties' obligations* E/1991/23 14 December 1990 at para 5.

[278] UNESCO EFA Global Monitoring Report 2003/4 *Gender and Education for All: The Leap to Equality* (Summary Report) at 5. This report is available at http://www.unesco.org/education/efa_report/ (last accessed 4 December 2006).

[279] Article 10 of the CEDAW requires States to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.

elimination of discrimination is fundamental to the enjoyment of the right to education on a basis of equality.[281] The *travaux préparatoires* state that article 3 was included in the Covenant to indicate that, beyond a prohibition of discrimination, the same rights should be expressly recognised for men and women on equal footing and suitable measures should be taken to ensure that women have the opportunity to exercise their rights.[282]

Disadvantages experienced by women

Women and girls are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination. Many women experience distinct forms of discrimination due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.[283]

The Special Rapporteur has pointed out the following problems and stereotypes that keep girls in a position of subordination in education:[284]

- Teachers have low expectations of girls' intellectual skills;
- Teachers give girls less feedback;
- Teachers frequently report that they enjoy teaching boys more than girls;
- Girls have fewer expectations of themselves in and out of school, as they think that their future consists primarily of being wives and mothers;
- These low expectations are reinforced by textbooks, curricula and assessment material in which no female figures appear;
- Prizes won by girls and girls' achievements are not as widely reported or publicised as boys'; and
- There is a clear tendency to use sexist language.

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[280] Maastricht Guidelines at para 12 and Limburg Principles at para 45. The CEDAW 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.
[281] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 3.
[282] See CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 2.
[283] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 5.
[284] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at paras 103 – 104.

Formal and substantive equality

Article 3 of the ICESCR mandates both formal and substantive equality between men and women.[285] In order to ensure formal equality, constitutional provisions, legislation and governmental policies must treat men and women in a neutral manner. Substantive equality requires the equal enjoyment of the right to education for men and women in practice and is concerned with ensuring that laws, policies and practices alleviate the inherent disadvantage that women experiencing in education.[286] Thus, the application of the principle of equality will sometimes require State parties to take special measures in favour of women in education in order to attenuate or suppress conditions that perpetuate discrimination.[287]

Obligations imposed on States

Tripartite framework of State obligation[288]

The equal right of men and women to the enjoyment of the right to education, like all human rights, imposes three levels of obligations on State: the obligations to respect, to protect and to fulfil.[289] The obligation to respect requires States parties to refrain from discriminatory actions that directly or indirectly result in the denial of the equal right of men and women to their enjoyment of the right to education. The obligation to protect requires States to take steps to eliminate prejudices, customs and all other practices that perpetuate the inferiority or superiority of either of the sexes and stereotyped roles for men and women. The obligation to fulfil requires States parties to take steps to ensure that in practice, men and women enjoy their economic, social and cultural rights on a basis of equality.

Access and admission criteria

Implementing article 3 in relation to the right to education requires States to take various steps to ensure gender parity and equality in education. First, States must ensure, over all levels of education, the same conditions for career and vocational guidance, for access to studies and

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[285] See term of reference (vi) for a discussion on these terms.
[286] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at paras 7 – 9.
[287] *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 15 and CEDAW Committee *General Recommendation No. 5: Temporary Special Measures* (seventh session, 1998). See also term of reference (vi) for a discussion of affirmative action.
[288] This section is based on CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at paras 16 - 21.

for the achievement of qualifications for males and females.[290] In addition, States must adopt legislation and policies to ensure the same admission criteria for males and females at all levels of education.[291] The admission criteria may, however, in accordance with the principle of substantive equality, take into account existing economic, social, cultural and gender inequalities. In this regard, States should promote and encourage the enrolment of members of under - represented gender groups and provide support to increase the academic preparation and performance of these students.

However, school access alone does not equate to gender parity, as the mere quantification of girls registered for school does not reflect the substantive idea of "gender equality". Rather, promoting high-quality education based on the study and daily practice of human rights is essential to the mounting of an effective resistance to all forms of exclusion and discrimination.[292]

Further, States must ensure that both sexes have the same opportunities to benefit from scholarships and other study grants.[293] The elimination of de facto discrimination and inequality may require States to take affirmative action in the form of creating scholarships and other study programmes to enable girls to access higher education.

Curricula

Progress on gender equality is related to the content and quality of education.[294] States must ensure, on a basis of equality of males and females, access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.[295] Further, curricula for all students must promote equality and non-discrimination and eliminate any stereotyped concept of the roles of men and women in society.[296] Educational policies devised in accordance with human rights must promote curricular development that calls for girls to participate, with syllabuses and curricular that

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[289] See term of reference (i) for a more extensive discussion of these obligations and their content.
[290] CEDAW article 10(a) and (e).
[291] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 30.
[292] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at paras 61 and 63.
[293] CEDAW article 10(d).
[294] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at paras 98 – 99.
[295] CEDAW article 10(b).
[296] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 30 and Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 105.

always accord them full respect in classroom activity.[297] Textbooks and school programmes should be revised and teaching methods adapted to achieve these aims.[298]

Teacher training

States must ensure that teacher-training institutions improve gender parity in teacher recruitment and graduation.[299] 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.[300]

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.[301] 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 males and females from dropping out of educational institutions, in particular secondary and higher institutions, by reason of financial and other constraints. Programmes should be organised for those who have left school prematurely.[302]

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[297] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 102.
[298] CEDAW article 10(c).
[299] The Special Rapporteur has noted the absence of female teachers in some countries and their prevalence in others: see Preliminary Report of the Special Rapporteur on the right to education E/CN.4/1999/49 13 January 1999.
[300] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at paras 21 – 25.
[301] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 30.
[302] See CEDAW article 10(f), although this applies exclusively to girls and women.

Safety

States must ensure the safety of children, in particular girls, on their way to and from school.[303] 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. Girls in particular suffer sexual assault and harassment by male teachers and classmates. The education authorities are often unaware of such assaults and may even be reluctant to intervene.[304]

Participation

States must ensure that boys and girls have the same opportunities to participate actively in sports and physical education.[305] In particular, States must guarantee sufficient physical space for girls' play and sport on an equal footing with boys.[306] Further, States must allow girls and women to play an active part in identifying their educational, social and cultural needs.

Child labour

Child labour in the form of domestic work, both paid and performed in conditions of virtual slavery, is a major cause of exploitation and violence and has kept millions of girls out of school.[307] Girls' domestic obligations are rooted in customs and traditions that afford men preferential treatment, provoke school dropout at earlier ages than boys and are normally reinforced by stereotypes in textbooks and classroom activities.[308] However, in some countries, particularly in East Asia and the Pacific, a higher percentage of girls are enrolled for school than boys.[309] For example, the Philippines reports a higher boys' dropout rate,

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[303] CESCR *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 11 August 2005 at para 30.
[304] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 104.
[305] CEDAW article 10(g).
[306] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February at para 104.
[307] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 67.
[308] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 69.
[309] See *The State of the World's Children 2006: Excluded and Invisible* (UNICEF 2005) at 8 and 19. This publication is available at http://www.unicef.org/sowc06/ (last accessed 4 December 2006).

aggravated in rural and poor areas where farming requires intensive use of male labour.[310] Thus, States must establish a minimum age of employment which allows both boys and girls to complete primary and secondary education.[311]

Health, marriage and pregnancy

Patriarchal practices that limit female autonomy and keep young and teenage girls away from education usually involve early or unwanted marriages, pregnancies and motherhood. Teenage marriages are often based on a type of socialisation that reinforces the idea held by parents that the ultimate objective for girls is matrimony.[312] Thus, States should take measures to ensure that girls' education is not interrupted or terminated by early marriage and motherhood. In particular, States should set a minimum age for marriage at a level which allows both boys and girls to complete their primary and secondary education and which ensures that girls are not forced into early marriage and motherhood.[313] 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.

The Special Rapporteur has explored the issue of pregnancy as a "disciplinary offence" that may lead to the expulsion of girls from school.[314] 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. The Supreme Court of Colombia has held that "[t]he conversion of pregnancy – through school regulations – into a ground for punishment violates fundamental rights to equality, privacy, free development of personality, and to education."[315]

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[310] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 95.
[311] See term of reference (i) for further discussion on the minimum age of employment.
[312] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at paras 71 – 72.
[313] See term of reference (i) for further discussion on the minimum age of marriage.
[314] See Progress Report of the Special Rapporteur on the right to education E/CN.4/2000/6 1 February 2000 at paras 56 – 60 and Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 76.
[315] See Progress Report of the Special Rapporteur on the right to education E/CN.4/2000/6 1 February 2000 at para 59 and fn 55.

Accordingly, educational institutions must 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.[316] This should include access to information and advice on family planning. Further, States should provide private sanitation facilities for girls at educational institutions.[317]

[316] Article 10(h) CEDAW.
[317] Report of the Special Rapporteur on the right to education *Girls' right to education* E/CN.4/2006/45 8 February 2006 at para 132.

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

Summary

- No educational institution, whether State-funded or not, may discriminate on any prohibited ground.
- The State must ensure that the religious and cultural identity of students is respected and accommodated in educational programmes and institutions.
- Religious and cultural tolerance should be promoted by all educational institutions.
- Children have a right to express themselves in their language in all educational institutions.
- Subject to the availability of adequate resources and where there are no significant practical impediments, all children should be given the opportunity to gain initial literacy in their mother tongue in State-funded institutions.
- States must lead the way and provide State-funded education in minority languages, especially for indigenous people, wherever possible.
- While restrictions may be imposed on wearing religious symbols in schools, States must take into account, to the fullest extent possible, children's freedom of religion when imposing such restrictions.
- No child should be forced to wear religious symbols.

Discussion

Introduction

Education goes beyond cognitive learning and includes the social and emotional development of all those involved in the learning and teaching process.[318] To promote equal opportunities, a sense of belonging, autonomy, dignity and self-esteem, students' religion and culture must be fostered in all institutions and programmes.

The interdependence of the right to education with cultural, social and religious rights requires the accommodation of all students' religious and cultural traditions, customs and

practices in educational institutions.[319] The respect for the religious and cultural identity of all students should be included in all National Plans of Action on the Right to Education and/or National Action Plans for Education for All (EFA).

At a minimum, no educational institution, whether State-funded or not, may discriminate on any prohibited ground. The setting up of special separate schools for girls and boys or for religious and 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.[320]

In communities with great diversity, often, but not necessarily, an official or dominant culture or religion exists. In these circumstances, it is especially important to respect and accommodate cultural and religious minorities. Therefore, article 27 of the ICCPR acknowledges:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 27 of the ICCPR focuses on "persons belonging" to minorities but does not define the concept of minorities. The HRC has stated that the question whether an ethnic, religious or linguistic minority exists is an objective one, not dependent upon the decision of a State party.[321] In 1928, the Permanent Court of International Justice ruled that belonging to a minority is a question of fact not a declaration of intention. However, this does not exclude the possibility of taking a subjective element into account.[322] Whether you belong to a religious minority is a subjective question. Those belonging to religious minorities have a faith which is different to that held by the majority. People have the freedom to choose their own religion, including the right to convert from one religion to another.[323]

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[318] Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at paras 1 - 2 and 12.
[319] Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at paras 6 and 12.
[320] Article 2(b) of the CADE.
[321] Human Rights Committee *General Comment No. 23: The rights of minorities* (fiftieth session, 1994) CCPR/C/21/Rev.1/Add.5 8 April 1994; HRI/Gen/1/Rev.1 at 38 (1994) at para 5.2.
[322] Permanent Court of International Justice Advisory Judgment No 26, *Rights of Minorities in Upper Silesia (Minority Schools) PCIJ. Ser A., No. 15,* 26 April 1928 at 31 - 32 http://www.worldcourts.com/pcij/eng/decisions/1928.04.26_upper_silesia/ (last accessed on 5 March 2007).
[323] See for example art 18 UDHR.

The CRC stipulates that the education of the child shall be directed to, amongst other things, 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 civilisations different from his or her own.[324]

Other international human rights documents contain similar provisions making it clear that the right to education encompasses respect for cultural diversity and pluralism as well as the promotion of national unity and values.[325] Similarly, the UNESCO Declaration on Cultural Diversity[326] establishes in article 5 that:

> All persons have … the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

A learning environment that enhances diversity and non-discrimination on the grounds of religion[327] and culture promotes mutual understanding and tolerance and contributes to social cohesion and conflict prevention.[328] It is a prerequisite to the promotion of religious and cultural tolerance that children are made acquainted with the tenets of religious and cultures which are different from their own.

In particular, teaching on the tradition, history and values of minorities should be included in curricula.[329] There are, however, ongoing debates about what is required in terms of the obligation to promote cultural diversity in education.

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[324] Article 29(1)(c) of the CRC.
[325] See, for example, article 13(2) of the Protocol of San Salvador, article 11(2) in particular (c) – (g) of the African Children's Charter and article 4(4) of the United Nations Declaration on Minorities.
[326] Adopted by the 31st 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 article 27 and ICESCR articles 13 and 15.
[327] Jordan set a good example when reconsidering recently its Islamic teaching. After realising that schoolbooks contained passages insulting other religious, such as Judaism and Christianity, the Government set up a committee to change the curriculum to describe Islam as an open faith and to stimulate more free debate on previously forbidden questions. "Jordan Reconsiders its Islamic Teaching" (13 June 2005) at http://www.wwrn.org/article.php?idd=17313&sec=33&con=36 (last accessed 12 March 2007).
[328] Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at para 11.
[329] The United Nations Permanent Forum on Indigenous Issues suggests implementing these contents to promote indigenous knowledge, *Report on the third session (10-21 May 2004)* E/2004/43 and E/C.19/2004/23 at para 19(h).

Right to a state-funded education in a minority language

Linguistic particularism is a natural and essential component of individual identity. The cultural significance of language arises from the fact that it is the medium through which each individual and, by extension, each community understands the world and their place in it.[330] Minorities want to express a particular ethnic, religious or cultural identity through the traditional language associated with it. It appears that education is an especially contentious feature of linguistic diversity dilemmas because both the state and the minority tend to view it as central to realising their collective aspirations.[331]

The right to freedom of expression in the language of one's choice[332] is central to the idea of minority language rights. Thus there should be no restrictions on a child speaking such a language at school. As to the question of whether teaching should be conducted in a minority language, at a minimum States have an obligation to respect the freedom of individuals to teach a minority language in schools established by members of that minority[333] and to ensure that the right to use minority languages in private institutions, including schools and universities, is respected.[334]

Article 4(3) of the Declaration on Minorities provides that "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue".[335] To fully realise minority rights and to give children the chance to integrate into their community and to develop a sense of belonging, children should, where possible, be given the opportunity to gain initial literacy in their mother tongue. As far as adequate resources are available, State-funded institutions should fulfil the task, subject to there being no significant practical impediments (such as the limited number of children in any institution wishing to be taught in that language).[336]

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[330] Jackson Preece *Minority Rights – Between Diversity and Community* (2005) at 115.
[331] Jackson Preece *Minority Rights – Between Diversity and Community* (2005) at 131.
[332] Freedom of expression is guaranteed in article 13 of the CRC, although this provision does not explicitly address the issue of what language children should be able to express themselves freely in.
[333] See article 5(1)(c) of the CADE and CESCR *General Discussion: Right to education (articles 13 and 14 of the Convenant)* 30 November 1998 at para 15. See also Permanent Court of International Justice Advisory Opinion No 26 *Minority Schools in Albania* PCIJ Ser. A./B., No, 64, 6 April 1935 at para 22.
[334] See for example article 5 (c) of the CADE.
[335] Declaration on Minorities adopted by General Assembly resolution 47/135, 18 December 1992. Similar provisions can be found in article 14 of the European Framework Convention for the Protection of National Minority.
[336] We consider that requirements have moved on since the European Court of Human Rights ruled that the right to education (in article 2 of Protocol 1 to the European Convention on Human Rights) does not have the effect of guaranteeing to a child or to his or her parents the right to obtain instruction in a

Children who have been taught in their mother tongue must receive the opportunity to make a successful transition to the national or official language of the State but, where practicable, they should still have the opportunity to continue to learn their mother tongue.[337]

Indigenous peoples

Often priority is given to languages that are traditionally used within the territory of a State rather than to the imported languages of immigrants. Article 30 of the CRC does not differentiate between the rights of different minorities:

> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

It has, however, been accepted that communities of indigenous people form a specific category of minorities due to their special relationship with their traditional territory.[338] Although the basic right of access to education is guaranteed for migrant workers, their families and refugees,[339] indigenous minorities have special needs.[340] The UN Declaration on the Rights of Indigenous Peoples provides that:[341]

> 1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. …
>
> 3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

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language of his or her choice. See the case "*Relating to certain aspects of the laws on the use of languages in education in Belgium" v Belgium (Merits)* ECHR Series A vol. 6 (1968) 31.

[337] European Community Council Resolution of 30 November 1998 point 5.

[338] See for example and for further references Shaw, *International Law* (2003) at 277.

[339] Article 30 of the ICRMW confers on the children of migrant workers a "basic right of access to education on the basis of equality of treatment with nationals." Similarly, article 22(1) of the Convention relating to the Status of Refugees advises the States to "accord to refugees the same treatment as [they accord] to nationals with respect to elementary education". See term of reference (vi) for a discussion of these Conventions.

[340] In this regard, a United Nations Permanent Forum on Indigenous Issues has been established, which reports to the United Nation's Economic and Social Council. Also, the first International Decade of the World's Indigenous People "Indigenous people: partnership in action" (1995-2004) was proclaimed with the main objective of strengthening international co-operation to provide solutions to problems faced by indigenous peoples in areas such as education.

[341] United Nations Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council on 29 June 2006 article 14.

The Declaration sets standards concerning the rights of indigenous people and represents one of the most important developments in the promotion and protection of the basic rights and fundamental freedoms of indigenous peoples.[342] Although the Permanent Forum on Indigenous Issues recognised that there is currently no right to state-funded education conducted in a person's mother tongue in any legally binding international instrument,[343] it published recommendations requiring education to be provided in the language of indigenous minorities.[344] States must lead the way and provide State-funded education in minority languages, especially for indigenous people, wherever possible.

Religious dimension of the right to education

International instruments

Article 14 of the CRC states as follows:

> 1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
>
> 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or moral, or the fundamental rights and freedoms of others.

Thus, the CRC recognises not only the child's freedom of religion but also the parent's right to provide direction to their children. Respect for the rights of parents and guardians is a principle that resounds throughout the CRC.[345] This is also confirmed in article 18(4) of the ICCPR, article 13(3) of the ICESCR and article 12(4) of the ICRMW which directs States to have "respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions".

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[342] OHCHR Fact Sheet No.9 (Rev.1) The Rights of Indigenous Peoples Introduction - Standard-setting.
[343] Press Release HR/4749 (11 May 2004) *Quality Education must Incorporate Indigenous Culture and Knowledge* at the Permanent Forum on Indigenous Issues 3rd session, 3rd and 4th meetings, "Panel Discussion on Education – Forum Member Ms. Tove Skutnabb-Kangas".
[344] Permanent Forum on Indigenous Issues *Report on the third session (10-21 May 2004)* E/2004/43 and E/C.19/2004/23 at paras 17(e), 19(g), (i) and (o) and 20(d); article 19(i) calls for "developing programmes based on the child's mother tongue (first language) as a foundation for learning and aiming at the maintenance and continued use of indigenous languages".

The question arises as to what is to be done where a child's wishes as to religion and that of his or her parents do not coincide. In our view, where there is such a clash, then the child's wishes should prevail, subject to the level of maturity of the child[346] and subject to the need to promote tolerance of other cultures and religions.

Definition of religion

A broad interpretation of what constitutes religion is necessary to ensure that all beliefs will receive equal protection alongside the dominant religions. Consequently, traditional religions of indigenous people, which may not be codified or structured in the same way as Christianity or Islam but instead embody local myths, memories, and rituals, must be equally accommodated in educational institutions.

The role of States

Freedom of religion is not only an individual right but also has a community dimension.[347] National systems exhibit different levels of connection between religion and the state.[348] Whereas some States are religiously based or recognise a State religion, others are secular or anti-religious.[349]

Whatever their nature, States must accept and affirm religious diversity. Some argue that a multicultural approach to religion is characterised by a "[s]tates' willingness to accommodate such diversity while maintaining a position of neutrality between competing beliefs".[350] In our view, however, States may support a particular religion as long as the religious beliefs of others (and the right to convert to another faith) are also accepted and affirmed. The State must strive for a "fair balance" taking into account the religious freedom of various groups and the demands of public order.[351] However, only real dangers can justify measures restricting or prohibiting religious practices.

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[345] See article 5 of the CRC; see also article 5 (b) of the CADE.
[346] See the discussion in *Gillick v West Norfolk West Norfolk & Wisbech Area Health Authority* [1986] AC 112 (HL(E)).
[347] See for example article 18 (1) ICCPR which affirms everyone's right "individually or in community with others and in public or private, to manifest his religion or belief".
[348] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* (2006) at 23.
[349] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* (2006) at 22.
[350] Jackson Preece *Minority Rights – Between Diversity and Community* (2005) at 38.
[351] ECHR Grand Chamber *Leyla Şahin v Turkey* [2006] ELR 73 (10 November 2005) at para 108. See also art 14(3) of CRC and McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* (2006) at 27 in respect to the function of the identical provision of the ICCPR (article 18(3)).

Religious symbols

The wearing and adorning of religious symbols in school is the subject of heated debate in many countries. Some symbols such as Muslim dress items and the Christian cross are clearly perceived as religious symbols, even though it is not always clear that the particular religion requires their use. The ECHR has recognised, however, that the definition as to what item of dress is required must be left to the respective religious groups.[352]

Even if a symbol is recognised as religious, the motivations for wearing these items are diverse. There is potential to use religious symbols as political symbols.[353] Often in western countries, the wearing of the burqa is seen as a visible indicator of religious extremism and insufficient integration.[354] Also, the religious meaning can be used to justify the oppression of women.[355] Conversely, the items can also be worn as a fashion accessory. Since it is difficult to examine the motivation for wearing the symbols, an objective definition is necessary rather than a concentration on motive.[356]

Wearing of religious symbols in educational institutions by students

The right of children to wear religious symbols is an essential part of the right to practice religion. [357] Restrictions may be placed on students' rights in this regard only where necessary to ensure children's safety,[358] their right to religious freedom and emancipation from unwanted religious doctrinal control,[359] undue hardship,[360] or (arguably) the

[352] *Metropolitan Church of Bessarabia and Others v Moldova* Application No 45701/99, judgment 31 December 2001 at para 117: "in principle the right to freedom of religion … excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed."
[353] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 12.
[354] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 15-19.
[355] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 13.
[356] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 113.
[357] Office of the High Commission for Human Rights, General Comment No 22, The Right to Freedom of Thought, Conscience, and Religion (Art 18): 30/07/93 (CPR/C/21/Rev.1/Add.4, 48th Session 1993 at para 4. In the General Comment written by the High Commissioner for Human Rights on the right to freedom of thought, conscience and religion, the report confirms that the right to manifest religion extends to the "wearing of distinctive clothing or head-covering".
[358] United Nations Economic and Social Council 62nd session E/CN.4/2006/5.Add.4 8 March 2006, at paras 54 -55.
[359] The French law described above was instituted to provide an opportunity especially for young French women to emancipate themselves from wearing religious garb - United Nations Economic and Social Council 62nd session E/CN.4/2006/5.Add.4 8 March 2006, at para 56.
[360] Ontario Human Rights Commission's *Policy on Creed and the Accommodation of Religious Observances* states that, short of undue hardship, a school or organization has a duty to accommodate a person's religious head-covering.

achievement of educational goals.[361] Any restrictions should be as limited as possible in order to achieve these aims. Children also have the right to choose not to wear religious symbols.[362]

The issue of students wearing religious symbols has, however, been controversial and has given rise to much litigation and much debate.[363] In 2004, France passed a law which prohibits the wearing of religious symbols in an ostentatious manner in public schools. [364] The Special Rapporteur to the United Nations Economic and Social Council, in discussing this law, stated that students have a right to wear a religious symbol to school as part of their religious beliefs.[365] The report went on to say that the right to education should be guaranteed and that it should be made clear that the right to wear religious symbols is an essential part of one's right to manifest one's religion that can only be limited under restrictive conditions. Furthermore, the government should provide redress for those persecuted due to religious intolerance.[366]

The Children's Committee has raised concerns that the law could neglect the fundamental principle of the best interests of the child and recommended that the situation be monitored closely.[367] The Committee felt that children may be excluded or marginalised by this law and they suggested that the schools themselves may be the best place to deal with issues of dress code. The Committee advocated for mediation to ensure that the secular character of the school was retained rather than the utilisation of legislative intervention.

Turkey has taken a secular[368] stance, stressing equality and the freedom of religion. It imposed a ban on Muslim headscarves in all public places including educational institutions. Turkey asserted that this was to avoid confrontations and to protect female students from

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[361] United Nations Economic and Social Council 62nd session E/CN.4/2006/5.Add.4 8 March 2006, at para 58; Committee on the Rights of the Child: (36th session) Consideration of the Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child: France CRC/C/15/Add.240, 30 June 2004 at paras 25 – 26.

[362] In the case of a religious school it may be acceptable to require the wearing of religious symbols, provided the child who does not wish to do so has the choice of attending another acceptable, accessible educational institution.

[363] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 277; see also article 28(2) of the CRC which provides that school discipline is to be administered in a manner consistent with the child's human dignity and conformity with the CRC.

[364] Law (loi) 2004-228, 15 March 2004; United Nations Economic and Social Council 62nd session E/CN.4/2006/5.Add.4 8 March 2006, at 51.

[365] United Nations Economic and Social Council 62nd session E/CN.4/2006/5.Add.4 8 March 2006, at para 99.

[366]United Nations Economic and Social Council 62nd session E/CN.4/2006/5.Add.4 8 March 2006, at paras 103 – 104.

[367] Committee on the Rights of the Child: (36th session) Consideration of the Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child: France CRC/C/15/Add.240 30 June 2004 at paras 25 – 26.

pressures of religious groups.[369] This ban was examined by the ECHR in the case of *Leyla Şahin v Turkey*.[370] The Court stated that article 9 of the European Convention does not always guarantee the right to behave in the public sphere in a religious way[371] and that educational bodies have a margin of appreciation for regulations.[372] The Court saw the role of States as the neutral and impartial organiser of the exercise of various religions.[373]

It confirmed that the secular approach was consistent with the freedom of religion and held that Turkey's ban on religious symbols in universities was within the State's margin of appreciation. Therefore the ban on wearing the headscarf (the hijab) was held not to be a violation of the student's right to education under article 2 of Protocol I of the European Convention on Human Rights. However, the Grand Chamber made this assessment on the basis of article 9 of the European Convention on Human Rights and held that article 2 of Protocol I did not change the assessment. In our opinion, article 2 of Protocol I is different in that it provides a more concrete basis for the right to wear religious symbols or garb as it refers to the right to receive education and the right of parents to ensure that such education is in conformity with their own religious and philosophical convictions.

The dissenting opinion of Judge Tulkens found that article 9 of the European Convention (freedom of religion) and article I of the Protocol 2 of the European Convention (right to education) were violated, since, in the Judge's view, young adults in universities were less amenable to pressure and therefore did not need the protection of a totally secular environment.[374] In her opinion the regulation in universities was out of the State's margin of appreciation.[375]

The HRC has considered the compatibility of a Muslim headscarf ban at universities in Uzbekistan with the ICCPR.[376] It concluded that the ban violated students' freedom of thought, conscience and religion as guaranteed in article 18(2) of the ICCPR due to lack of

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[368] Secularism is widely understood as the exclusion of religion in public forums and institutions.
[369] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 149.
[370] ECHR Chamber, Fourth Section *Leyla Şahin v Turkey* [2004] ELR 520 (29 June 2004); and ECHR Grand Chamber *Leyla Şahin v Turkey* [2006] ELR 73 (10 November 2005).
[371] ECHR Grand Chamber *Leyla Şahin v Turkey* [2006] ELR 73 (10 November 2005) at para 105.
[372] ECHR Grand Chamber *Leyla Şahin v Turkey* [2006] ELR 73 (10 November 2005) at para 122.
[373] ECHR Grand Chamber *Leyla Şahin v Turkey* [2006] ELR 73 (10 November 2005) at para 107.
[374] ECHR Grand Chamber *Leyla Şahin v Turkey* [2006] ELR 73 (10 November 2005) Judge Tulkens at para 3.
[375] ECHR Grand Chamber *Leyla Şahin v Turkey* [2006] ELR 73 (10 November 2005) Judge Tulkens at para 3.
[376] HRC *Communication No. 931/2000: Uzbekistan* CCPR/C/82/D/931/2000 18 January 2005.

justification by the Government.[377] However, this decision indicates that the States may be able to justify a ban when they have properly considered students' freedom of religion.[378] In Canada, however, the Supreme Court ruled in favour of a Sikh student that an absolute prohibition, including the small metal ceremonial sword worn by Sikhs, was not justifiable.[379] This suggests that, while restrictions may be acceptable (such as restrictions on size and visibility), a total ban is not. We agree.

In the United Kingdom, the wearing of religious symbols is generally accommodated by schools.[380] In the case of *Begum, R (on the application of) v. Denbigh High School* [2006] UKHL 15, the school offered three uniform options to accommodate students' religious beliefs.[381] The uniforms had been carefully designed after consulting Islamic parents and scholars and all prospective students were instructed on the uniform policy. A female Muslim student insisted on wearing a more traditional dress than those provided by the school. The House of Lords held that the uniform policy was within the school's margin of discretion, pointing out that the girl had the opportunity to choose another school.[382]

The burqa[383] (and, to a lesser extent, Muslim headscarves) encounter special difficulties. Whereas some States require women to wear the burqa,[384] other States prohibit wearing it in public.[385] Often the authorities, in introducing such a ban, purport to be concerned about this item being used to conceal identity or hide weapons.[386] In schools, the exclusion has been justified by the fact that the face must be shown for identity purposes, as well as on the grounds that the burqa is an instrument of oppression of women, that it is a political symbol and on the basis that other students may be disturbed by the presence of students in burqas.

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[377] HRC *Communication No. 931/2000 : Uzbekistan* CCPR/C/82/D/931/2000 18 January 2005 at para 6.2.
[378] HRC Communication No. 931/2000 : Uzbekistan CCPR/C/82/D/931/2000 18 January 2005 at para 6.2 and see McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 228 - 230.
[379] *Multani v Commission scolaire Marguerite-Bourgeoys* [2006] 1 SCR 256.
[380] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 64 and 178 - 180.
[381] *Begum, R (on the application of) v. Denbigh High School* [2006] UKHL 15 at paras 6 – 7.
[382] *Begum* [2006] UKHL 15.
[383] A burqa (also burka or burqua) is an all-enveloping outer garment worn by some Muslim women. It is only removed when the women return to the household.
[384] The former government in Afghanistan imposed such a requirement. In Iran even foreign women are obliged to wear a headscarf. None of the international human rights bodies has yet considered the issue.
[385] In some parts of the United States, Belgium and Italy. There is consideration of a complete ban in the Netherlands. See McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 214.

In our view, a requirement to show one's face before entering the classroom would be equally effective as far as identity issues are concerned (to the extent these are of concern outside of an examination situation). This would curtail the students' freedom of religion much less. The teaching of tolerance and understanding for all religions may reduce issues relating to children's safety and the educational needs of other children.[387] Further, issues relating to the equality of women may be better tackled in a manner other than restricting students' rights to manifest their religious beliefs for instance via education.[388]

Teachers wearing religious symbols

In our view, it may be legitimate to distinguish between teachers and students wearing religious symbols. The rationale for the distinction between the rights of teachers and the rights of students to wear religious symbols is that it is part of students' freedom of religion to wear religious symbols and this freedom can be constrained if they are taught by people wearing religious symbols.[389] Since education must be child-centred, the restraint of teachers' liberty to wear religious symbols may be acceptable. In *Dahlab* v. *Switzerland*, the ECHR upheld the Swiss government's right to require a Muslim teacher to remove her headscarf because the ordinance did not target the complainant's religious beliefs, but rather aimed to protect the freedom of others as well as public order.[390] It has also been held by the European Court of Human Rights that employers can impose limits on an employee's rights if the employment is voluntarily accepted.[391] Any restrictions should, however, be the minimum

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[386] See McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 214 and 225.
[387] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 80 and 268.
[388] Council of Europe, Document 8270 27 November 1998 Committee on Culture and Education, Religion and Education, http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc98/EDOC8270.htm (last accessed on 6 March 2007) at para 10, McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 268.
[389] See McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 282 - 283.
[390] European Court of Human Rights *Dahlab* v. *Switzerland* Application No 42393/98, ECHR 2001-V.
[391] McGoldrick *Human Rights and Religion: The Islamic Headscarf Debate in Europe* at 283; *Kalac v Turkey* application No 20704/91, (1999) 27 EHRR 252, and *Ahmed and Others v UK* Application No 22954/93, (2000) 29 EHRR I.

required to ensure the childrens' freedom of religion.[392] Similar considerations apply to religious symbols in school facilities.[393]

From the perspective of religious schools, another issue has emerged as to whether teachers can be *required* to wear religious symbols in religious schools.[394] Where a school has a special character, in our view, it may be acceptable to require a teacher to wear any religious symbol considered necessary to manifest the religious character of the school. This assumes that employment in the school is voluntary and that alternative employment is available for the teacher in another school.

Content of curricula

Children must not be obliged to attend compulsory religious education or worship.[395] In 2001, the UN Special Rapporteur on Religious Freedom admonished Greece for its compulsory instruction in the Orthodox religion in Greek public schools.[396] Ideally, religious education calls for children to study the main religions within their society as well as secular philosophies such as humanism but not to be forced into religious education or worship.[397]

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[392] In Germany, for example, the Constitutional Court ruled that there was no statutory basis for saying that teachers who intend to wear a headscarf at school lack the necessary aptitude for service at the school. However it was held that the state legislatures had the power to lay down new laws to restrict the wearing of religious symbols by teachers. BverfG, 2 BvR 1436/02 (24 September 2003). However, States must treat all religions equally. In this regard German courts have allowed a Muslim teacher to wear the headscarf as long as nuns are allowed to wear their veils. Verwaltungsgericht Stuttgart 18K 3562/05 (07.07.2006) VBIBW 2006, 400; see also "Court Strikes Down Ban on Muslim Headscarf" (9 July 2006) http://www.gult-times.com/site/topics/article.asp?cu_no=2&item_no=96346&version=1&template_id=39&parent_id=21 (last accessed 7 March 2007).

[393] We note that the German Constitutional Court has held that presence of crosses in classrooms is inconsistent with the pupils' freedom of religion BverfG, BverfGE 93, 1 (16 May 1995). Conversely, an Italian Court confirmed the legal requirement for crosses in classrooms, since it regarded the cross as a cultural rather than religious symbol. Cited in D Mosseri "Italian Jews' Crucifix Stand" (23 August 2005) http://www.ejpress.org/article/2490 (last accessed 12 March 2007).

[394] For an alternative view see http://www.expatica.com/actual/article.asp?subchannel_id=19&story_id=25353 (last accessed 5 March 2007). In 2005, the Netherlands Equality Commission ruled in favour of a female Muslim teacher who refused to wear the headscarf at the Islamic College in Amsterdam. Given that the school had a special character, in our view, it would have been acceptable to require a teacher to wear a religious symbol considered necessary to manifest the religious character of the school. We note, however, that since the Commission's decision was not binding, the College ignored the ruling and removed the teacher.

[395] Again, it may be acceptable to require children in special religious school to attend worship. This is subject to children having the alternative of attending another accessible, acceptable educational institution. It also does not relieve the religious school of the obligation to promote religious tolerance.

[396] Economic and Social Council, Report on communications sent by the Special Rapporteur and replies received from States since the publication of the report submitted to the Commission on Human Rights at its fifty-sixth session E/CN.4/2001/63 13 February 2001 at para 49.

[397] This is provided, for example, in the 2004 framework for religious education in the United Kingdom. The United Nations Permanent Forum on Indigenous Issues suggests implementing these contents to promote indigenous knowledge, *Report on the third session (10-21 May 2004)* E/2004/43 and E/C.19/2004/23 at para 19(h).

(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.

Summary

- Curricula and teaching methods must be of good quality and learner-centred.
- Quality education requires an environment and curricula that are sensitive to human rights.
- 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.
- Governments must regulate education by setting and enforcing minimum standards to which all educational institutions must conform.
- States are obliged to establish and maintain a transparent and effective system to monitor whether or not educational objectives are being met.
- NHRIs should develop a National Plan of Action on the Right to Education which would be complementary to the National EFA Plan.

Discussion

Introduction

The Special Rappoteur has commented on the State's obligation to provide quality education and to establish and monitor minimum education standards:[398]

> [The] Government['s] obligation to define and ensure the quality of education requires an assessment of the existing conditions against the postulated goals of education, a definition of standards that should be in place everywhere, and an identification of institutions and procedures whereby these standards will be implemented, monitored and enforced.

Quality education

Quality education at all levels is critical to economic and social development and is therefore a national imperative. The "acceptability" feature of the right to education requires curricula

and teaching methods to be of good quality.[399] 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. Further, 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.

The Special Rapporteur considers that an environment and curricula that are sensitive to human rights are essential conditions for a quality education.[400] Education that proceeds from and is rooted in human rights is vital to proper character development. In turn, character development strengthens self-esteem and dignity and promotes the formation of knowledge, abilities, skills and values, enabling individuals to advance peacefully towards the realisation of universal human rights. The integration of human rights into education systems must involve education as a whole, not just isolated parts of the curriculum. Therefore, the right to a quality education implies a need to direct learning processes and the entire school environment and infrastructure towards the development of knowledge, abilities and skills within a body politic primed to respect dignity and the higher values of humanity, diversity, peace, solidarity and mutual co-operation.

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. Teachers must be trained to make learning environments attractive, more inclusive and welcoming to students. Educational institutions must support these efforts.

The CESCR has urged States to ensure that all teaching staff enjoy the conditions and status commensurate with their role and to report on measures they are taking in this regard.[401]

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[398] Report of the Special Rapporteur on the Right to Education E/CN.4/2004/45 15 January 2004 at para 47.
[399] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 6(c).
[400] This paragraph is based on Report of the Special Rapporteur on the Right to Education E/CN.4/2005/50 17 December 2004 at paras 102 – 107.
[401] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 27.

There must be ongoing training of existing teachers and support for professional development, including the provision of paid study leave.

Article 13(2)(e) of the ICESCR requires States continuously to improve the material conditions of teaching staff. Notwithstanding this obligation, the CESCR has noted that in practice the general working conditions of teachers have deteriorated, and reached unacceptably low levels, in many States in recent years. Not only is this inconsistent with article 13(2)(e), but it is also a major obstacle to the full realisation of students' right to education.[402]

Minimum education standards

Governments must regulate education by setting and enforcing minimum standards to which all educational institutions must conform.[403] 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. Therefore, the State must identify appropriate quality standards for all levels of education and review and update these periodically.

Article 13(3) requires States to have respect for the liberty of parents and legal guardians to choose other than public schools for their children, provided the schools conform to such "minimum educational standards" as may be laid down or approved by the State. The complementary provision article 13(4) affirms "the liberty of individuals and bodies to establish and direct educational institutions", provided the institutions conform to the educational objectives set out in article 13(1) and minimum standards laid down by the State. Minimum standards may relate to issues such as admission, curricula and the recognition of certificates and must be consistent with the educational objectives set out in article 13(1).[404]

[402] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 27.
[403] Preliminary Report of the Special Rapporteur on the right to education E/CN.4/1999/49 13 January 1999 at paras 25 and 62.
[404] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 29.

Monitoring

Progress towards the realisation of the right to education should be monitored systematically and continuously.[405] In this regard, the State must develop responsive, participatory and accountable systems of educational governance and management. States are obliged to establish and maintain a transparent and effective system to monitor whether or not the educational objectives set out in article 13(1) are being met by the State and by individual educational institutions.[406] Educational management should be more decentralised and participatory. The Dakar Framework recommends that States:

- establish better regulatory frameworks and administrative mechanisms for managing all levels of education;
- more sharply delineate responsibilities among different levels of government;
- ensure that decentralisation does not lead to inequitable distribution of resources;
- make more efficient use of existing human and financial resources;
- improve capacities for managing diversity, disparity and change;
- integrate programmes within education and strengthen their convergence with those of other sectors, especially health, labour and social welfare; and
- provide training for school leaders and other education personnel.

In order to fulfil its immediate obligation "to take steps" towards the realisation of the right to education, a State is required, at a minimum, to adopt and implement a national educational strategy which includes the provision of all levels of education. This strategy should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.[407] In particular, States should 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. 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

[405] This paragraph is based on paras 55 and 56 of the Dakar Framework.
[406] See also CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 49.
[407] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 52.

National EFA Plans and achievements.[408] These can be adapted and used by States to monitor progress towards the realisation of the right to education.

NHRIs will also have a vital role in documenting violations of the right to education and monitoring progressive steps taken towards its realisation. NHRIs should develop a National Plan of Action on the Right to Education which would be complementary to the National EFA Plan and should assist in revising the latter from a rights-based perspective. The ACJ recommends that States 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.

The Maastricht Guidelines require the documenting and monitoring of violations of the right to education to be carried out by all relevant actors, including NGO's, national governments and international organisations.[409] According to the CESCR, a State's failure to maintain a system to monitor progress towards educational objectives will constitute a violation of article 13.[410]

In addition, 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.

[408] The EFA Development Index (EDI) is contained in the Education for All Global Monitoring Report 2006, available at http://www.unesco.org/education (last accessed 3 October 2006). The EDI constituents and related indicators are:

- universal primary education: total primary net enrolment ratio;
- adult literacy: literacy rate of the group aged 15 and over;
- gender: gender-specific EFA index (GEI, the arithmetical mean of the GPIs for the primary and secondary gross enrolment ratios and the adult literacy rate);
- education quality: survival rate to grade 5.

[409] Maastricht Guidelines at para 32.

[410] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 59.

(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.

Summary

- One of the dual aims of education is the strengthening of respect for human rights and fundamental freedoms.
- Human rights education should strengthen the 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.
- Human rights education should involve more than the provision of information and should constitute a life-long process by which all people learn respect for the dignity of others.
- 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.

Discussion

Dual aims of education

As discussed under term of reference (i), education is directed to the dual purposes of the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.[411] Human rights education is a means of affirming the values and vision established in international human rights documents. Accordingly, the aims of the right to education and the goals of human rights education are sometimes articulated similarly.

Sources of human rights education

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education.[412] One of the most comprehensive sources outlining human rights education is the Vienna Declaration from the 1993 World Conference

[411] UDHR, article 26(2); ICESCR, article 13(1); CRC, article 29(1); CADE, article 5(1). See term of reference (i) for a discussion of the first purpose, namely development of the human personality.

on Human Rights.[413] The World Conference emphasised that human rights education, training and public information are essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace. The World Conference called 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. It said that human rights education should include peace, democracy, development and social justice, as set forth in human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.

In addition, the UN Plan of Action[414] defines "human rights education" as training, dissemination and information aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes and directed to:

- The strengthening of respect for human rights and fundamental freedoms;
- The full development of the human personality and the sense of its dignity;
- The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- The enabling of all persons to participate effectively in a free society;
- The furtherance of the activities of the United Nations for the maintenance of peace.[415]

In addition, human rights education should be directed at enabling all persons to protect themselves and others from human rights violations.

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).

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[412] Article 15 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
[413] See Vienna Declaration, Part II at paras 78 - 82. See http://www.unhchr.ch/html/menu6/1/initiatives.htm (last accessed 13 March 2007) for an outline of the UN Decade for Human Rights Education, including the Vienna Declaration.
[414] See Human Rights Questions Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, UN Plan of Action, A/51/506/Add.1, 51st session, 12 December 1996, A/51/506/Add.1 for an explanation of the UN Plan of Action.
[415] UN Plan of Action at para 2.

Link to freedom of expression

The goal of human rights education is also linked to freedom of expression and, in particular, the right to information, as States are under an obligation to inform citizens about human rights. The ICCPR and CRC discuss the components of the right to information. These Conventions affirm the 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 the person's choice.[416]

Substantive content of the obligation

Human rights education should involve more than the provision of information and should take place within the family, schools and communities. In addition to obtaining information on the content of human rights treaties, children should learn about human rights by seeing human rights standards implemented in practice. Thus, human rights education should start with the reflection of human rights values in the daily life and experiences of children.[417]

Human rights education should constitute a life-long, integrated and holistic 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.[418] 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.[419]

Despite ongoing efforts, including a UN decade on human rights education, this dimension of the right to education continues to pose challenges. Katarina Tomasevski has observed that "[w]ithout a clear vision of the inter-relationship between the right *to* education and rights *in* education, promoting human rights education or human rights through education remains impossible."[420]

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[416] See article 19(2) of the ICCPR and article 13(1) of the CRC.
[417] Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at paras 13 and 15.
[418] General Assembly Resolution *United Nations Decade for Human Rights Education* A/RES/49/184 6 March 1995 and Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at paras 13 and 15.
[419] General Assembly Resolution *United Nations Decade for Human Rights Education* A/RES/49/184 6 March 1995.
[420] Tomasevski Right to Education Primer No 3: *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (Raoul Wallenberg Institute of Human Rights and

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

Summary

- The right to education can only be fully enjoyed if it is accompanied by the academic freedom of staff and students.
- Members of the academic community must be free to pursue, develop and disseminate knowledge and ideas.
- In addition, there must be an appropriate degree of self-governance by educational institutions. The school system must, however, be accountable to learners, parents and communities.

Discussion

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.[421] The enjoyment of academic freedom is linked closely to freedom of expression.[422] 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.[423] Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies and to enjoy all internationally recognised human rights.[424] In recognition of academic freedom, the State should actively support a free

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Humanitarian Law 2001) at 42 – 43. Katarina Tomasevski was the Special Rapporteur on the Right to Education from 1998 – 2004.

[421] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 38.

[422] Article 19 of the ICCPR and article 13 of the CRC guarantee the right to freedom of expression. This right includes 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: see article 19(2) of the ICCPR and article 13(1) of the CRC.

[423] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 39.

[424] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 39

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 every person without discrimination on any of the prohibited grounds.[425]

Autonomy

The enjoyment of academic freedom requires the autonomy of educational institutions. There must be an appropriate degree of self-governance by educational institutions in relation to their academic work, standards, management and related freedoms.[426] However, an appropriate balance must be struck between institutional autonomy and public accountability, especially in light of State funding. The school system must be accountable to learners, parents and communities. In this regard, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.[427] In addition, for institutions providing basic education, any autonomy must be subject to compliance with national standards and curriculum frameworks.

[425] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 39.
[426] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 40.
[427] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 40.

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

Summary

- Children (subject to their age and maturity), their parents and legal guardians have the right to choose education which accords with their own beliefs and convictions.
- This choice is subject to the obligation to promote the best interests of the child.
- States must respect the freedom of individuals to provide religious or linguistic instruction in schools established by members of that religion or culture.
- Parents, legal guardians and children (subject to their age and ability) should be able to choose between specialised or mainstream schools for children with disabilities or special learning needs.

Discussion

International human rights instruments affirm that parents and legal guardians have the right to choose educational programmes, institutions or services for their children which accord with their own beliefs and convictions.[428] Further, States must assure that children who are capable of forming their own views have the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.[429]

However, in reality, in many countries there is limited or no opportunity for education of one's choice: either there is only State-controlled education, or in a mixed system, private education is too expensive for parents.[430] Also, in general, rural areas and poorer areas tend to have fewer educational institutions, programmes and services available, which limits choices further.

[428] See UDHR, article 26(3); ICESCR, article 13(3); CADE, article 5(1)(b) and (c).
[429] Article 12(1) of the CRC. The Children's Committee confirmed that this article applies to the right to education: see Children's Committee *General Comment No. 1: The Aims of Education* CRC/GC/2001/1 17 April 2001 at paras 6 – 7.
[430] Coomans "In Search of the Core Content of the Right to Education" in Chapman and Russel (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 217 at 229 - 230.

The principle of the best interests of the child potentially could conflict with parental rights to choose education for their children.[431] Although parents have freedom over their choice of education for their children, this guarantee is not absolute. Due to the "best interests" principle and the requirement for basic levels of education to be compulsory and free, the State must ensure that parents' choices do not exclude children from enjoying their right to education. Thus, freedom of 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.[432] In the case of a conflict between parental choice and the best interests of the child, the latter prevail. This is because the rationale behind parental choice is not to legitimise their denial of their children's right to education; rather, choice prevents State monopoly over education and protects pluralism.[433]

States must respect the freedom of individuals to provide religious instruction in schools established by members of that religion.[434] States also 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.[435] Of course, education in such schools must be directed to the dual aims of education and must conform to minimum educational standards.

[431] See term of reference (i) for a discussion on the best interests of the child.
[432] See CRC, articles 3 and 29(2); ICESCR article 13(3); CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 6(c).
[433] Report of the Special Rapporteur on the right to education E/CN.4/2003/9 21 January 2003 at para 17.
[434] ICESCR, article 13(3); ICCPR, article 18(4); CADE, article 5(1)(b). See term of reference (viii) for a discussion of the obligation of States to respect religious practices within educational institutions.
[435] CADE, article 5(1)(c). See term of reference (viii) for a discussion of the obligation of States to respect cultural practices within educational institutions.

In order to facilitate freedom of choice, any admission policies for educational institutions (including those based upon residential qualifications) must be non-discriminatory as described above in term of reference (vi). In particular, parents, legal guardians and children (subject to their age and ability) should be able to choose between specialised or mainstream schools for children with disabilities.[436] In this regard, the European Committee of Social Rights has ruled that France failed to fulfil its educational obligations to persons with autism under the European Charter due to both the lack of integration in mainstream education and the extreme shortage of specialised educational institutions.[437] Further, in order to give disabled people an effective choice regarding their education, the State has an obligation to provide appropriate facilities and programmes (and additional support, including, for example, teacher-aides) which cater for their disabilities and enable those children to realise their full potential.[438]

[436] Article 24(2)(a) of the UN Draft Disabilities Convention requires States to ensure that persons with disabilities are not excluded from the general education system on the basis of disability.
[437] *Autism-Europe v France* Complaint No. 13/2002 4 November 2003 (ECSR).
[438] See term of reference (vi) for further discussion on the right of disabled persons to education.

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

Summary

- States have an obligation to seek international assistance and co-operation, especially economic and technical, if their resources are not sufficient to fulfil their obligations in relation to the right to education.
- The international community has an obligation to assist and co-operate in the realisation of the right to education and must commit funds and expertise in this regard.
- Economic assistance and co-operation should include providing funds and debt relief.
- The provision of technical assistance and co-operation requires States to exchange information, experiences and innovations. In addition, States should provide assistance in the preparation of educational laws, programmes and policies and assist in preventing violations of the right to education.
- Developed States are required to co-operate and assist developing States in fulfilling the core obligations.
- Developing States are required to use the resources received to satisfy the core obligations as a matter of priority and must give priority to the most vulnerable and disadvantaged groups within society.
- Both the international community and States must refrain from adopting policies which obstruct or violate the right to education in developing countries.

Discussion

International human rights instruments

Several international human rights instruments touch on the obligation of States to receive and to provide international assistance and co-operation. In particular, under the ICESCR, each State undertakes to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources", with a view to achieving progressively the full realisation of the right to education.[439] This

[439] ICESCR, article 2(1). See also ICESCR articles 11(1) and 23. Although other treaties contain general provisions on international co-operation (for example, articles 55 and 56 of the United Nations Charter require international solutions and co-operation), the ICESCR is the only UN human rights treaty with clear indication of this obligation. A detailed analysis of article 2(1) is included in the

obligation is reinforced by several other international instruments.[440] The reference to "maximum available resources" is not limited to those existing at the national level, but also to resources available from the international community through international assistance and co-operation.[441]

Economic assistance and co-operation

The Special Rapporteur has 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.[442] She found that aid for education has (at least during the 1990s) increased within a diminishing volume of aid and that, contrary to common belief, most aid for education goes to higher rather than primary education.[443]

The Dakar Framework affirms that no country seriously committed to Education for All will be thwarted in achieving this goal by lack of resources. The international community acknowledges that many countries currently lack the resources to achieve Education for All within an acceptable timeframe. Consequently, new financial resources, preferably in the form of grants and concessional assistance, must be mobilised by bilateral and multilateral funding agencies, including the World Bank and regional development banks, and the private sector.[444]

According to the Dakar Framework, initiatives of the international community aimed at developing the strategies and mobilising the resources needed to provide effective support to national efforts could include:[445]

- increasing external finance for education, in particular basic education;
- ensuring greater predictability in the flow of external assistance;

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following books: Craven *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (1990) at 144 – 150; Hodgson *The Human Right to Education* (1998) at 211 – 213; Sepulveda *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) at 370 – 372.

[440] See Limburg Principles at para 32; World Declaration on Education for All, article 10; Vienna Declaration and Programme of Action, Part I at para 34.

[441] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 13. This implies that the principle of equitable distribution of resources domestically also has meaning at the global level.

[442] See reports of the Special Rapporteur from 1999-2004.

[443] Report of the Special Rapporteur on the right to education E/CN.4/2000/6 1 February 2000 at paras 13 and 15.

[444] Dakar Framework at para 10.

[445] Dakar Framework at para 11.

- facilitating more effective donor coordination;
- strengthening sector-wide approaches;
- providing earlier, more extensive and broader debt relief, and/or debt cancellation for poverty reduction; and
- undertaking more effective and regular monitoring of progress towards Education for All goals and targets.

Achieving Education for All will require additional financial support by countries and increased development assistance and debt relief for education by bilateral and multilateral donors, estimated to cost in the order of $8 billion a year.[446] The Dakar Framework therefore calls for new financial commitments to be made by national governments and bilateral and multilateral donors,[447] and for alternative and innovative ways to increase the resources available to support Education for All.[448]

Technical assistance and co-operation

International technical assistance and co-operation can also facilitate the full realisation of the right to education. Countries with less developed strategies must be given the support they need to achieve more rapid progress towards Education for All.[449] Several international instruments, although not all specifically dealing with the right to education, expand on the substantive content of the requirement to provide "technical assistance and co-operation". In particular, the World Declaration on Education for All notes that all nations have valuable knowledge and experiences to share for designing effective educational policies and programmes.[450] Similarly, the Asia-Pacific Regional Framework requires governments and all stakeholders to promote an equitable exchange of information and experiences about successfully developed educational innovations. This exchange could cover a wide range of educational dimensions including policy reform, planning and management, resource mobilisation, curriculum, teacher training, measurement and evaluation, community participation and linkages between education and poverty alleviation.[451]

[446] Dakar Framework at paras 10 and 21.
[447] The Dakar Framework at para 21.
[448] Expanded Commentary on the Dakar Framework for Action at para 21. The Asia-Pacific Framework suggests, for example, transferring budget allocation from the defense sector towards education: see Part IV.B at para 1.
[449] Dakar Framework at para 12.
[450] World Declaration on Education for All, article 10(1).
[451] Paragraph 8 of the Asia-Pacific Regional Framework.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)[452] contains provisions relating to technical co-operation that could be helpful in the sphere of education. By analogy with TRIPS, States should provide assistance in the preparation of laws, programmes and policies relating to education. Further, States should assist in preventing violations of the right to education. States should also provide support for the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.[453]

TRIPS also requires developed countries to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to less developed country members in order to enable them to create a sound and viable technological base.[454] Similarly, the Revised Recommendations concerning Technical and Vocational Education require States to share intellectual property, including research and development, for the benefit of learners in all countries and situations.[455]

International community

According to internationally recognised principles, the international community, including international organisations and NGOs, has an obligation to assist and co-operate in the realisation of the right to education[456] and, in particular, to alleviate the constraints that prevent some countries from achieving the goal of Education for All.[457] The international community must take responsibility for the coordination of international assistance activities. New efforts and commitments are necessary. The international community must commit funds and expertise, including technical expertise and resources, in order to contribute to the realisation of the aims of education. This will require the adoption of measures that augment the national budgets of the poorest countries or serve to relieve heavy debt burdens, since the

[452] TRIPS is a WTO agreement which sets down minimum standards for the protection of intellectual property rights in the WTO member States. TRIPS requires States to provide technical and financial co-operation in favour of developing and least-developed country Members.
[453] See TRIPS, article 67.
[454] TRIPS, article 66(2). Similarly, Agenda 21 includes a chapter on the transfer of environmentally sound technology. Agenda 21 is a comprehensive plan of action established by the UN Department on Economic and Social Affairs to be taken globally, nationally and locally by organisations of the United Nations system, governments, and major groups in every area in which humans impact on the environment.
[455] Revised Recommendations concerning Technical and Vocational Education, article 93(c).
[456] For example, the CESCR has stated that where a State is clearly lacking in the financial resources and/or expertise required to "work out and adopt" a detailed plan of action for the progressive implementation of free and compulsory education, the international community has a clear obligation to assist: CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 9. See also para 34 of the Limburg Principles.
[457] World Declaration on Education for All, article 10(2).

capacity of many developing countries to respond effectively to education will be greatly helped by finding solutions to the debt problem.[458] According to the Dakar Framework, international agencies should aim to double their financial support for least developed countries, such as Sub-Saharan Africa.[459]

Conversely, States are obliged to participate in international organisations, and in particular to use their influence to ensure that violations do not result from the programmes and policies of these organisations. Further, international organisations, including international financial institutions, must correct their policies and practices so that they do not result in deprivation of the right to education. Member States of such organisations should encourage the organisations to revise their programmes and policies to take into account issues of economic, cultural and social rights.[460] In addition, States should take steps to ensure that international agreements do not adversely impact upon the right to education.[461]

Developed and developing States

Due to the fact that the obligations of international assistance and co-operation are different for wealthier States which are in a position to assist and for States which are recipients of such assistance and co-operation, the analysis is often divided between "developed" and "developing" States.[462] The CESCR's work suggests that commitments in regard to international assistance and co-operation are closely linked with the obligations to comply with the "core obligations" (i.e. obligations that ensure the minimum core content of each right).[463] Developed States are, therefore, required to co-operate and assist developing States in fulfilling the core obligations. Conversely, developing States are required to use the resources received from the international community to satisfy the core obligations as a matter of priority.

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[458] World Declaration on Education for All, article 10(2).
[459] Education for All, A Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century; Adopted by the Regional Conference on Education for All for Sub-Saharan Africa, Johannesburg, South Africa, 6-10 December 1999 at para 5.9.
[460] Maastricht Guidelines at para 19.
[461] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 para 56.
[462] Sepúlveda *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) at 370.
[463] Sepúlveda *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) at 371. See, for example, CESCR *General Comment No. 11: Plans of action for primary education* E/C.12/1999/4 10 May 1999 at para 27.

Developed States

The CESCR has emphasised that international co-operation is particularly incumbent upon those States which are in a position to assist others.[464] Thus, developed States are required to provide expertise and commit financial resources aimed at realising the right to education. Further, developed States are obliged to abstain from adopting any policy that may impede or violate the full realisation of the right to education in other countries.[465] In this regard, developed States are obliged to ensure their foreign aid policies do not cause unintended negative effects. It is important to note that, irrespective of differences in their political, economic and social systems, States are required to co-operate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries.[466]

Developing States

States that lack resources to provide for the full realisation of the right to education are obliged to seek international assistance. Developing States may actively seek assistance from: (i) wealthier States; (ii) UN specialised agencies such as UNESCO and UNICEF; and (iii) other inter-governmental or non-governmental organisations, including international financial institutions such as the World Bank.[467] The funds and assistance received should be directed by developing States to satisfying basic needs associated with the progressive realisation of the right to education. Further, in accordance with the principle of substantive equality, developing States receiving international assistance must prioritise the education needs of the most vulnerable and disadvantaged groups within society.[468] As the focus is on the equitable distribution of funds, States should ensure that the realisation of the right to education has not been jeopardised by efforts to realise another right. In addition, States must refrain from obstructing international organisations in their legitimate efforts to assist people within that State to achieve guaranteed levels of education.[469]

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[464] CESCR *General Comment No. 3: The nature of States parties obligations* E/1991/23 14 December 1990 at para 14.
[465] Sepúlveda *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) at 373.
[466] Limburg Principles at para 31
[467] Sepúlveda *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) at 376.
[468] Sepúlveda *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) at 377.
[469] Sepúlveda *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) at 388.

Good governance of international assistance directed towards the right to education is essential.[470] In this regard, States should establish mechanisms to ensure an effective use of the international assistance received, to facilitate the distribution of the assistance received, to ensure that the intended recipients receive the assistance provided and to implement an effective monitoring regime.[471]

[470] See, for example, Expanded Commentary on the Dakar Framework for Action at para 55.
[471] Sepúlveda *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) at 377.

(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.

Summary

- 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, NGOs and other organisations.
- 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.

Discussion

Introduction

The realisation of the right to education requires a concerted national effort involving the full participation of all sectors of society including:[472]

- individuals, their families and their communities;
- all of society, including the private sector, mass media and religious institutions;
- international organisations, including, regional bodies and international agencies; and
- transnational corporations, NGOs and other organisations.

The Special Rapporteur has reported an increasing involvement of diverse actors from all over the world vindicating the right to education. Increasing commitments to economic and social rights by governmental and non-governmental actors are a particularly welcome development.[473]

[472] See Limburg Principles at para 11. See also CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 60. As much of the material overlaps, see also term of reference (xiii) for a discussion of the obligation of States to receive and to provide international assistance and co-operation.

Maastricht Guidelines

The Maastricht Guidelines provide that the obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights, including the right to education.[474] States are responsible for violations of the right to education that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors.[475] Accordingly, 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.

The Maastricht Guidelines point out that violations of the right to education can occur through the direct action of States or other entities insufficiently regulated by States, as well as through the omission or failure of States to take necessary measures stemming from legal obligations.[476] Examples of contributions that non-State actors could make towards the realisation of the right to education are:

- educational programmes and institutions must not adopt measures and regulations which are inconsistent with the right to education;
- communities should not promote ideas that actively deny the right of children with disabilities to their right to education; and
- activities undertaken by the media should not undermine the aims of education.

When examining the reports of States, the CESCR will consider the effects of the assistance provided by both State and non-State actors on the ability of States to meet their obligations relating to the right to education.[477]

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[473] See Report of the Special Rapporteur on the right to education E/CN.4/2003/9 21 January 2003 at para 32.
[474] Maastricht Guidelines at para 18.
[475] Maastricht Guidelines at para 18.
[476] Maastricht Guidelines at paras 14 and 15.
[477] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 60.

International organisations

United Nations agencies

The CESCR has emphasised the important role of United Nations agencies in relation to the realisation of the right to education.[478] United Nations bodies, including UNESCO, the United Nations Development Programme, UNICEF, ILO, the World Bank, the regional development banks and the IMF, should enhance their cooperation for the implementation of the right to education at the national level, with due respect to their specific mandates, and building on their respective expertise. In particular, international financial institutions, notably the World Bank and 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.[479] The adoption of a human rights-based approach by United Nations specialised agencies, programmes and bodies will greatly facilitate implementation of the right to education.

Financial organisations

The World Bank provides financial and technical assistance to developing countries for education, amongst other purposes. This assistance includes low-interest loans, grants, policy advice and knowledge sharing. The World Bank's support for education has a dual focus:[480] first, to help countries achieve universal primary education (i.e. Education for All) and, secondly, to help countries build the higher-level skills needed to compete in today's dynamic, knowledge-driven world (which the World Bank calls Education for the Knowledge Economy).

Notwithstanding these efforts, the Special Rapporteur has been engaged in a continuing dialogue with the World Bank to encourage the mainstreaming of human rights in the World

[478] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 60.
[479] CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 60. See also CESCR *General Comment No. 2: International technical assistance measures* E/1990/23 2 February 1990 at para 9 which draws attention to the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries. Under the approach advocated by the CESCR, the goal of protecting the rights of the poor and vulnerable is a basic objective of economic adjustment.
[480] The World Bank database contains over 200 documents and reports related to education, which are mainly produced by the World Bank's Education Group of the Human Development Network including, for example, a report on user fees in primary education: Bentaouet Kattan and Burnett *User Fees in Primary Education* World Bank: Education Sector Human Development Network (2004).

Bank's education policies.[481] In particular, the Special Rapporteur has recommended that the World Bank assess whether the failure to incorporate a human rights perspective, and specifically the right to education, is an inhibiting factor in the social and economic impact that it seeks to achieve through its actions and loans.[482]

The Asian Development Bank (ADB) has also made significant investments in education. The ADB supports Education for All and the achievement of the MDGs, including universal primary education, within the Asia and Pacific region by 2015. The ADB has prepared an education policy to complement the objectives of the MDGs and focus its efforts to support educational development, and to link this support more closely to poverty reduction.[483] Accordingly, ADB support for education at all levels concentrates on policies and activities that directly contribute to overall programmes for poverty reduction.

States as members of international organisations

As members of international organisations, States have "joint" as well as "individual" obligations regarding the promotion of the realisation of the right to education. The Maastricht Guidelines provide that the obligations of States to protect economic, social and cultural rights extend also to their participation in international organisations, where they act collectively. States should use their influence to ensure that international organisations, including international financial institutions, correct their policies and practices so that they take due account of, and do not result in deprivation of, the right to education.[484] In addition, the CESCR has stated that States should ensure that international agreements do not adversely impact upon the right to education.[485]

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[481] See, for example, Special Rapporteur on the Right to Education E/CN.4/2005/50 17 December 2004 at paras 3, 128 and 129, Report of the Special Rapporteur on the right to education E/CN.4/2003/9 21 January 2003 at para 9, Annual Report of the Special Rapporteur on the right to education E/CN.4/2002/60 7 January 2002 at para 16, Annual Report of the Special Rapporteur on the right to education E/CN.4/2001/52 11 January 2001 at paras 37 – 41.

[482] Special Rapporteur on the Right to Education E/CN.4/2005/50 17 December 2004 at para 129. See also Report of the Special Rapporteur on the Right to Education E/CN.4/2003/9 21 January 2003 at para 9.

[483] Asian Development Bank *Education Policies and Strategies* (August 2002), available at http://www.adb.org/Documents/Policies/Education/ (last accessed 14 December 2006).

[484] Maastricht Guidelines at para 19. See also CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 56.

[485] See CESCR *General Comment No. 13: The right to education* E/C.12/1999/10 8 December 1999 at para 56.

Other organisations

Non-governmental organisations

NGOs also have an important role in protecting and promoting the right to education. The involvement of NGOs in the realisation of the right to education is increasing, with NGOs undertaking several initiatives in this regard. In particular, the Collective Consultation of NGOs on Education for All[486] helped facilitate the integration of NGOs and other organizations into the process leading to the World Education Forum and the Dakar Framework. In addition, the UNESCO/NGO Collective Consultation on Higher Education[487] assists UNESCO in the orientation and implementation of its higher education programme. Further, NGO-initiated campaigns have emerged, such as the Global Campaign for Education.[488]

Transnational corporations

The UN Human Rights Norms for Businesses[489] recognise that even though States have primary responsibility regarding human rights obligations, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting, securing, respecting and protecting human rights[490] within their respective spheres of activity and influence.[491] In particular, transnational corporations and other business enterprises must ensure equality of opportunity and treatment for the purpose of eliminating discrimination based on the prohibited grounds or other status unrelated to the inherent requirements to

[486] This body is an UNESCO/NGO partnership within UNESCO's Education Sector. It was created to facilitate reflection, continuous dialogue and joint action between NGOs and UNESCO in the area of Education for All.

[487] This body is also a UNESCO/NGO partnership. It consists of 60 organisations representing all areas of the higher education community: regional university associations, student organisations, women's groups, teachers' associations, as well as organisations specialised in counselling, research, educational assessment and exchange.

[488] See http://www.campaignforeducation.org/ (last accessed 14 December 2006).

[489] Commission on Human Rights *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights* E/CN.4/Sub.2/2003/12/Rev.2 26 August 2003 (UN Human Rights Norms for Businesses).

[490] The phrase "human rights" includes economic, social and cultural rights, as well as civil and political rights, rights set forth in other human rights treaty and other rights recognised by international law: see para 23.

[491] UN Human Rights Norms for Businesses at para 1 and Preamble. The term "transnational corporation" refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries: see para 20. The phrase "other business enterprise" includes any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation, contractor, subcontractor, supplier, licensee or distributor. The Norms are presumed to apply, as a matter of practice, if the business enterprise has any relation with a transnational corporation or the impact of its activities is not entirely local: see para 21.

perform the job.[492] Further, such entities must respect the rights of children to be protected from economic exploitation forbidden by national and international law.[493]

Transnational corporations and other business enterprises must refrain from any activity which supports, solicits or encourages States or any other entities to abuse human rights.[494] Transnational corporations and other business enterprises must respect economic, social and cultural rights and contribute to their realisation, in particular the right to education, and refrain from actions which obstruct or impede the realisation of those rights.[495]

The UN Human Rights Norms for Businesses also contain general provisions for the implementation of the Norms.[496] Each transnational corporation or other business enterprise must adopt, disseminate and implement internal rules of operation in compliance with the Norms. Further, they are required to report periodically on and take other measures fully to implement the Norms and apply and incorporate the Norms in their contracts or other arrangements and dealings. Transnational corporations and other business enterprises must be subject to transparent and independent periodic monitoring by United Nations, other international and national mechanisms regarding application of the Norms. Finally, transnational corporations and other business enterprises must provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with the Norms.

[492] UN Human Rights Norms for Businesses at para 2.
[493] UN Human Rights Norms for Businesses at para 6.
[494] UN Human Rights Norms for Businesses at para 11.
[495] UN Human Rights Norms for Businesses at para 12.
[496] See UN Human Rights Norms for Businesses at paras 15 – 19.

Part C

Position in APF States[497]

Afghanistan[498]

ACJ Recommendations

The ACJ recommends that the Afghanistan Independent Human Rights Commission (AIHRC) urge its Government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention and the Worst Forms of Child Labour Convention;
- the necessity to allocate additional budget resources to the education sector and to minimise the imposition of fees and additional costs on parents;
- the lack of access to schools and other education facilities for girls and married women, particularly in rural areas;
- the need to improve education infrastructure including classrooms, libraries, laboratories and sanitation facilities;
- the need to increase the availability of qualified, experienced and properly remunerated teachers and to provide teachers with access to additional training;
- the need to adopt measures to address gender disparity and gender inequality in education at all levels, particularly for girls and women in rural areas; and
- the need to adopt measures to prohibit the use of corporal punishment and to adopt alternative non-violent forms of discipline at all levels of education.

International Law

Afghanistan is a party to the ICESCR,[499] CERD,[500] CEDAW[501] and the CRC.[502] Afghanistan is not a party to the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention or the Worst Forms of Child Labour Convention.

[497] The information in this section is based on responses by APF members to a detailed questionnaire. Further information is available in the *Background Paper on the Right to Education* which is available from the APF website. Statistical information in this section should be read in conjunction with UNESCO statistics available at Appendix 7 of this report.
[498] 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/>
[499] Afghanistan acceded to the ICESCR on 24 January 1983.
[500] Afghanistan acceded to the CERD on 6 July 1983.

National Law

The right to education is provided for under Article 43 of the *Constitution of Afghanistan 2004*, which provides that "[e]ducation, being the right of all citizens of Afghanistan, shall be offered up to the BA level in the state educational institutes free of charge by the state." Other provisions of the *Constitution* are directed to education for women,[503] curriculum development,[504] and the establishment of education institutions.[505] The *Constitution* also contains provisions relevant to non-discrimination and access for all, including Article 22 which states "[a]ny 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 law."

Achievement of the Right to Education

The Afghan Independent Human Rights Commission (AIHRC) reports that free education for all was first made available in Afghanistan in 1935. Today, the targets of the Millennium Development Goal for Education in Afghanistan are to: (i) ensure that by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary education; and (ii) eliminate gender disparity in primary and secondary education preferably by 2005 and to all level of education no later than 2015.

The Ministry of Education's mandate is to provide instruction through the formal education system, literacy education for adults, and formal religious schools throughout the country. 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.

Under the *Constitution*, the state provides education facilities up to the levels of Bachelor of Arts and Bachelor Science free of charge throughout the capital and provinces. This support covers tuition fees, textbooks (particularly for primary schools and high schools), and some accommodation. The state also provides technical education free of charge within its

[501] Afghanistan acceded to the CEDAW on 5 March 2003.
[502] Afghanistan ratified the CRC on 28 March 1994.
[503] *Constitution of Afghanistan 2004*, Article 44
[504] *Constitution of Afghanistan 2004*, Article 45
[505] *Constitution of Afghanistan 2004*, Article 46

institutions. 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.

The AIHRC reports that although it is government policy to provide education facilities for both men and women, current circumstances (including cultural restraints) dictate but the 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, 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.

Availability

The availability of education can be measured in part by government expenditure and education funding models. The AIHRC reports that in order to achieve its educational targets the Ministry of Education requires a budget of $USD2.7 billion over the next seven years. There is however a significant funding gap. Of the $USD250 million requested by the Government of Afghanistan in its 2003 *National Development Budget*, only $USD77.47 million has been committed to by donors leaving a gap of $USD172.53 million. The 2006 education budget was $USD125.4 million which represented 18.5 per cent of the total annual development budget. The AIHRC observes that without foreign assistance in the education sector, the government would not be able to achieve the targets identified in the Millennium Development Goals. 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.

During a 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 construction, 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 facilities. Very few schools are equipped with laboratories or libraries and most schools have no sport facilities. Healthy drinking water is not available in most schools and sanitation conditions are very poor. About 95 per cent of schools have open-air latrines. Classroom space is generally inadequate: often 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 per day while some schools operate three shifts.

The availability of qualified and experienced teachers is a problem in Afghanistan. The AIHRC reports that 2003 statistics show that there were 74,205 school teachers nationwide, and that an estimated 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. The qualification of teachers is a significant concern. 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 training 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. 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.

Accessibility

Article 22 of the *Constitution* prohibits "any kind of discrimination and distinction between citizens of Afghanistan." The school curriculum is generally conducted in the major language of province in which it is situated. The government has attempted to prepare textbooks for primary schools in different local languages. Enrollment in schools is open to students from minority groups, internally displaced 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 to enable prisoners to continue their education upon their release.

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.[506] 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 absence 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 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 limiting the access of girls or boys to school there is a practice of having female high school students attend separate schools or alternatively, attending 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.

Physical access to schools in rural Afghanistan is difficult. 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.

With regards to economic accessibility, 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. At the higher education level, the government fully funds the cost of Bachelor of Arts and Bachelor of Science courses at universities for eligible students. 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. 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.

In the area of 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 provide facilities for informal education in urban and rural areas free of charge, or at a minimal cost. Mosques and religious madrasas provide religious education free, through the support of religious donations.

[506] The AIHRC quotes figures from Central Statistic Organization which show that of the 3,705,233

Acceptability

The Ministry of Education and the Ministry of 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.

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.

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 primacy 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. The AIHRC reports that it is working with the Ministry of Education to incorporate human rights topics in school textbooks.

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

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school students enrolled in 2003, 1,171,963 were female.

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.

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 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.

Adaptability

The AIHRC notes that the required age of enrolment in the primary school 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. Many children attend school in the morning or afternoon and spend the other part of the day at work. There are a few NGOs which conduct outreach work to provide literacy and other skills training to working children.

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. 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.

Activities of the AIHRC

The mandate of the AIHRC is outlined under Article 58 of the *Constitution*. Under the *Law of the Commission*, the AIHRC has a broad authority for the protection and promotion of human rights. To protect and promote 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.

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. It 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.

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.

The AIHRC conducts a wide range of human rights education activities. It is working with the Ministry of Education to include human rights issues in the curriculum. It has convened training courses for students in the Faculty of Journalism at Kabul University. It has conducted human rights training for the Kabul Police Academy and for prison officers. It has organised workshops on human rights and humanitarian law

for the National Security Department and the National Army. In 2005, 21,537 people participated in the AIHRC's workshops and meetings, which were targeted at the clergy, women, community workers and school teachers.

Australia

ACJ Recommendations

The ACJ recommends that the Australian Human Rights and Equal Opportunity Commission (HREOC) urge its government to address the following issues:

- the need to provide adequate infrastructure for schools in rural and remote communities, including information technology, library and sporting facilities and maintenance support;
- the need to improve the recruitment and retention of teachers in rural and remote areas (and some metropolitan areas) and to improve the representation of prospective teachers from Indigenous and other cultural, social and ethnic groups;
- the need to improve access to education services in rural and remote areas for students with disabilities;
- the need to develop a coherent and consistent approach to human rights education with a formal role in the education system; and
- the need to ensure that children detained in immigration detention facilities, including unaccompanied minors, have access to and are encouraged to participate in educational services appropriate to their age, intellectual and English-language abilities.

International Law

Australia is a party to the ICESCR,[507] CERD,[508] CEDAW,[509] CRC[510] and the UNESCO Convention Against Discrimination in Education.[511] Australia is a not a party to the ILO Minimum Age Convention or the Worst Forms of Child Labour Convention.

National Law

The right to education in Australia is guaranteed by legislation in the six States and two Territories. Each State and Territory has its own legislation governing the delivery of primary

[507] Australia ratified the ICESCR on 10 December 1975
[508] Australia ratified the CERD on 30 September 1975.
[509] Australia ratified the CEDAW on 28 July 1983.
[510] Australia ratified the CRC on 17 December 1990.
[511] Australia ratified the Convention Against Discrimination in Education on 29 November 1966.

and secondary education.[512] Primary and secondary schooling is compulsory from age 6 to 15 except in Tasmania, South Australia and Western Australia where it extends to 16.[513]

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).

Achievement of the Right to Education

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 education as well as vocational and educational training).

The eight State and Territory government education departments are responsible for developing and implementing primary and secondary education policy and regulating and managing the government school system in their state or territory.[514] The Commonwealth

[512] 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) Regulation1989 (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).

[513] 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 commence their secondary schooling at the age of 12 or 13 and this continues for either five or six years, depending on the State.

[514] 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]

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.[515]

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).[516] VET is available in all three sectors of the education system—school, postsecondary and higher education. [517] 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.

The Federal Government has administrative, regulatory, funding and legislative responsibility for the university higher education sector[518] 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.[519]

Availability

The availability of education in Australia can be measured in part by government expenditure and education funding models. Primary responsibility for funding government school education in the States and Territories rests with the respective governments who provide

[515] *States Grants (Primary and Secondary Education Assistance) Act* 2000 (Cth)
[516] 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)
[517] 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 viewed 5 May 2006
[518] 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)
[519] In 2004, 900,000 students were studying at Australian universities www.dfat.gov.au/aib/education.html viewed 5 May 2006

about 88 per cent of their public funding. 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 $AUD19,490m which accounted for 56.2 per cent of total education expenses. [520]

Tertiary education is funded primarily by the Commonwealth. For 2000-2001, the total operating expenses on tertiary education for all Australian governments were $AUD12,769m 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).[521] Of this, the total operating expenses on education by the Commonwealth Government were $AUD10,881m with $AUD9,889m (90.9 per cent) comprising grants to other levels of government (including universities).

Commonwealth funds make up approximately one third of public expenditure on the VET system 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.[522] The government provides around $AUD21.3 million per year in direct funding to VET in Schools and $AUD4m for School Skill Centres.[523]

The Australian Human Rights and Equal Opportunity Commission (HREOC) reports that although Australian schools generally have adequate educational infrastructure, there are exceptions in certain parts of Australia where facilities are of a lesser and unacceptable standard. In particular, the *HREOC Inquiry into Rural and Remote Education* found that students attending rural and remote schools had limited sporting and library facilities and insufficient access to appropriate technology infrastructure and maintenance support. [524]

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http://abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyReleaseDate/3A1EA5484BB3D47BCA256B9F00046B19?OpenDocument

521 Ibid.

522 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.

523 www.dest.gov.au/NR/rdonlyres/DA7C8375-A076-4561-9E...

524 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.

Responsibility for the qualifications and employment of teachers rests with both government and non-governmental education authorities in each State and Territory.[525] In Australia, the key issues that impact on the availability of qualified teachers and support teachers are the aging workforce,[526] over-representation of female teachers in the profession,[527] inadequate supply of teachers for certain secondary specialisations – including physics, 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)[528] 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.[529]

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 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, particularly schools in remote or rural areas.

Accessibility

Non-discrimination

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[525] 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

[526] 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/

[527] 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

[528] 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*

[529]
http://www.dest.gov.au/sectors/school_education/policy_initiatives_reviews/reviews/teaching_teacher_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 opportunity in education, on the basis of sex, race and disability, unlawful.[530]

In 2005 the Australian Government enacted *Disability Standards for Education*.[531] 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 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. All State and Territory Education Departments have programmes and policies to facilitate educational access for people living with disabilities.

State and Territory Education Departments operate education and training units in juvenile detention centres which are governed by State and Territory legislation.[532] In NSW, for example, the Department of Juvenile Justice and the Department of Education and Training together deliver educational programmes.

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.

The significantly poorer educational outcomes of Indigenous students, compared to non-Indigenous students (particularly in rural and remote areas in Australia) are well documented.

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[530] The *Racial Discrimination Act* 1975 (Cth), the *Sex Discrimination Act* 1984 (Cth), *Disability Discrimination Act* 1992 (Cth) and the *Age Discrimination Act* 2004 (Cth).; *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).

[531] http://www.ag.gov.au/agd/WWW/agdHome.nsf/AllDocs/1821B1CD1293253DCA2570610014D867?OpenDocument

[532] See for example, the Children (Detention Centres) Act 1987 (NSW) and the Children (Detention Centres) Regulation 2000.

In order to improve educational accessibility for Indigenous students a National Aboriginal and Torres Strait Islander Education Policy has been 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.[533] Individual State and Territory Education Departments also have specific programmes and policies for providing Indigenous education.

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.[534] 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 per cent. As in previous years, the retention rate for females (81.0 per cent) was significantly higher than the rate for males (69.9 per cent). The Year 10 to Year 12 rate for females in 2005 was again considerably higher than that for males (81.6 per cent and 71.5 per cent respectively).[535] 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.[536]

Physical Access

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.[537] The main issues

[533] http://www.dest.gov.au/sectors/school_education/School_education_summary2.htm
[534] UNICEF, *The State of the World's Children 1999*, New York, 1998 pp. 106-109.
[535] Australian Bureau of Statistics, *Schools, Australia 2005;* http://www.abs.gov.au/Ausstats/abs@.nsf/b06660592430724fca2568b5007b8619/1e44bcdef87bca2fca2568a9001393e7!OpenDocument
[536] See https://www.det.nsw.edu.au/policies/student_serv/equity/gender_equity/PD20040018.shtml
[537] 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%

identified in HREOC's *National Inquiry into Rural and Remote Education*[538] included 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;[539] poorer educational outcomes and school performance; reduced school retention rates; a paucity of funding assistance (only about 5 per cent of students attend schools which qualify for the Commonwealth's Country Areas Programme (CAP) funding and fewer than 1 per cent of Australian students receive the Commonwealth's Assistance for Isolated Children);[540] 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 per cent of tertiary students in Australia.[541] Policies and initiatives have been introduced to address these issues including the establishment of the School of the Air[542] 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.

Access to schooling 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 for families or prospective students about educational options and funding availability and application procedures; lack of equivalence and inadequacy of transitional programmes and 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).[543]

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of students attend rural and remote schools. See http://www.humanrights.gov.au/human_rights/rural_education/index.html#5

[538] http://www.humanrights.gov.au/human_rights/rural_education/index.html#5

[539] ibid, p.43

[540] ibid, pp.10-11

[541] ibid. p.12

[542] 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.

[543] See http://www.hreoc.gov.au/disability_rights/education/barriers_96.htm

Additional issues for children with physical disabilities accessing education in rural and remote areas include 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.[544]

Economic Access

State and Territory Education Acts stipulate that primary and secondary education at government schools is free.[545] For example, in NSW the *Education Act* stipulates that "The instruction provided in government schools is to be free of charge."[546] 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.[547] Non-governmental organisations have raised concerns however that voluntary fees and levies in Australian primary and secondary schools undermine the

[544] http://www.humanrights.gov.au/human_rights/rural_education p.52
[545] 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.
[546] Section 31 of the *Education Act* 1990 (NSW)
[547] For example: Department of Education and Training (Victoria), Executive Memorandum No. 2005/29 - School materials charges and parent voluntary contributions (15 November 2005)

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.[548] 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.

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 Loan Programme (HELP). Students studying postgraduate courses are generally required to pay full up-front fees. HELP is administered by the Commonwealth Department of Education, Science and Training, the Australian Tax Office and higher education institutions. It 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 HELP upfront directly to their university (and receive a 25 per cent discount) or they can chose to defer payment and take out a loan with the Commonwealth Government at a real interest rate of zero.[549] 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.[550]

All Australian State and Territory education departments provide non-formal adult and community education programmes.[551] 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

[548] ASERP, Australia's Compliance with the UN Covenant on Economic, Social And Cultural Rights 2000 pp. 50-51
[549] For more information see the Dept of Education Science and Training website http://www.goingtouni.gov.au/
[550] For further details please refer to the *Background Paper on the Right to Education.*
[551] See http://www.education.gov.au/goved/browse/0,15500,15974,15941

Community Grants Programmes. ACE offers courses to all adults at hundreds of locations in New South Wales, regardless of age or previous education.

Acceptability

Quality education and minimum standards are monitored and enforced in Australia by a range of national institutions and specialised agencies. 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.[552] The Australian National Training Authority's Ministerial Council leads the national VET system. 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.[553]

The *Declaration on the National Goals for Schooling in the Twenty-First Century,*[554] 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 in literacy and numeracy.[555] All States and Territories have agreed to report student achievement data against the benchmarks to the Australian community through the MCEETYA annual National Report on Schooling in Australia.[556] 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

[552]There are numerous other national institutions are 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.

[553] These include the ACT Office of Training and Adult Education, the Western Australia Training Accreditation Council, the South Australia Further Education, Employment, Science and Technology Organisation, the Office of Training & Tertiary Education, the Tasmanian Office of Post-Compulsory Education & Training, Tasmanian Qualifications Authority and the NSW Board of Vocational Education and Training.

[554] http://www.dest.gov.au/sectors/school_education/policy_initiatives_reviews/national_goals_for_schooling_in_the_twenty_first_century.htm

[555] 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.

[556] http://www.dest.gov.au/...lish_literacy_and_numeracy_strategy.htm

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.

In relation to VET, the quality of the education delivered is standardised and monitored by the Australian Qualifications Framework 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 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.

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.[557]

With regards to discipline, 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. Corporal punishment is not allowed in Australian schools. Despite reforms over the past decade, 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.[558]

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 each year. The curriculum is developed in conjunction with a range of teachers and teacher and parent organisations,

[557] For more information see http://www.aqf.edu.au/aboutaqf.htm
[558] T*he 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

school principals and principals' organisations as well as academic authorities and is reviewed regularly. 'Human rights education' 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 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.[559]

State and Territory Education departments have a variety of policies and programmes targeting respect for 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.[560] 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.[561]

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 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).[562]

[559] A copy of the report is available at:
<http://www.aph.gov.au/house/committee/jfadt/HRGoodGov/GoodGovIndx.htm>
[560] www.sofweb.vic.edu.au/lem/lmerc/index.htm
[561] http://www.aboriginaleducation.sa.edu.au/

[562] http://www.deet.nt.gov.au/education/indigenous_education/indigenous_languages_culture_report/

Adaptability

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.[563] 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."[564] 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.[565] 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.

Commonwealth, State and Territory anti-discrimination legislation provide for equal access to education for women in Australia. All Australian States and Territories education and related government departments have 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.

Australian primary and secondary schools are expected to be able to adapt to the special education needs of individual students. 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

[563] *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
[564] Durbach and Moran, op cit, p.14
[565] http://www.det.wa.edu.au/schoolleavingage/

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.

Justiciability[566]

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.[567] 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.[568]

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;[569] whether education institutions are required to provide information in an accessible and convenient format;[570] 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

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566 Article 13 of the ICESCR is not justiciable in the national courts of Australia because ICESCR has not been incorporated into Australian domestic law. 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.

567 *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).

568 The *Racial Discrimination Act* 1975 (Cth), the *Sex Discrimination Act* 1984 (Cth), *Disability Discrimination Act* 1992 (Cth) and the *Age Discrimination Act* 2004 (Cth).

569 *Hurst and Devlin* v *Education Queensland* (Federal Court 15 April 2005); *Clarke* v *Catholic Education Office* (Federal Court, 8 October 2003)

570 *Hinchcliffe* v *University of Sydney* [2004] FMCA 85 (17 August 2004)

behaviour manifesting itself because of a brain injury is disability discrimination[571] and the obligation of a private primary school to accept the request for enrolment of a child with a physical disability.[572]

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[573] 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.

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.

Activities of HREOC

HREOC uses a number of methods and approaches for protecting and promoting human rights, as defined in the *Human Rights and Equal Opportunity Commission Act* 1986. HREOC can receive complaints regarding the right to education under each of the laws it administers.[574] The majority of complaints relating to education are lodged under the *Disability Discrimination Act 1992*.

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571 *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)

572 *Hills Grammar School* v *HREOC* (18 May 2000)

573 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.

574 Racial Discrimination Act 1975; Sex Discrimination Act 1984; Disability Discrimination Act 1992; Age Discrimination Act 2004; Human Rights and Equal Opportunity Commission Act 1986.

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. The *National Inquiry into Children in Immigration Detention* was conducted between 2001 and 2003, with a final report released in 2004.[575] In relation to education, 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.[576] The 1999 *National Inquiry into Rural and Remote Education* investigated the provision of education for children in rural and remote Australia. The inquiry published four main reports, the two most relevant of which were: *Emerging Themes* and *Recommendations*.[577]

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.[578]

[575] 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>
[576] http://www.humanrights.gov.au/human_rights/children_detention_report/report/chap12.htm
[577] All four reports are available on the HREOC website at:
http://www.humanrights.gov.au/human_rights/rural_education/index.html
[578] HREOC's human rights education resources are available on its website at
<http://www.humanrights.gov.au>

Fiji

ACJ Recommendations

The ACJ recommends that the Fiji Human Rights Commission (FHRC) urge its government to address the following issues:

- consider signing the ICESCR and the UNESCO Convention Against Discrimination in Education;
- the need to provide additional support to improve the availability and quality of education infrastructure and teaching resources in rural and remote areas;
- the need to adopt measures to minimise the impact of school fees and other education costs on the accessibility of education;
- the need to improve access to qualitative data and improved evaluation of gender disparities in education in Fiji;
- the need to review school curriculum and teaching materials to identify and eliminate gender bias;
- the need to provide improved career counselling for female students to address traditional attitudes and to encourage broader career choices; and
- the need to ensure that human rights education is included within the National Curriculum Framework.

International Law

Fiji is a party to the CERD,[579] CEDAW,[580] CRC,[581] the ILO Minimum Age Convention[582] and the Worst Forms of Child Labour Convention.[583] Fiji is a not a party to the ICESCR or the UNESCO Convention Against Discrimination in Education.

National Law

The right to education is guaranteed by Section 39 of the *Constitution of the Republic of the Fiji Islands 1997*, which provides that every person has the right to basic education and to

[579] Fiji succeeded to the CERD on 11 January 1973.
[580] Fiji acceded to the CEDAW on 28 August 1995.
[581] Fiji ratified the CRC on 13 August 1993.
[582] Fiji ratified the Minimum Age Convention on 3 January 2003.
[583] Fiji ratified the Worst Forms of Child Labour Convention on 17 April 2002.

equal access to educational institutions. Section 38 of the *Constitution* contains comprehensive anti-discrimination and equality of access provisions. Under Part XI, Section 28 of the *Education Act*, the Minister of Education may make orders and regulations directed to the provision of free and compulsory education. The *Compulsory Education Regulations 1997* require parents and/or guardians of children ensure that every child of compulsory school age receives suitable and relevant education by regular attendance at school.

Achievement of the Right to Education

The *Suva Declaration on Education* sets out Fiji's national goals for education for the period 2006-2015, 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 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 and the Millennium Development Goals. [584]

Availability

The availability of education in Fiji can be measured in part by government expenditure and education funding models. Financing of education is shared 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 Ministry of Education's *Strategic Plan 2006-2008* states that the government's allocation for education

[584] Ministry of Education, *Educating the Child Holistically for a Peaceful and Prosperous Fiji: Strategic Plan 2006-2008*

funding in the 2006 budget increased to $FJD301 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.[585] Government funding for schools is supplemented 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.

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. In recent years, donor programmes have included funding from foreign government agencies such as AusAID, the European Union, New Zealand Aid and JICA.[586]

There are wide variations in pupil-teacher ratios in schools across Fiji. 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 bachelors 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 bachelors degree.

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.

[585] Ibid, p9

Accessibility

Comprehensive anti-discrimination and equality of access provisions are contained in Section 38 of the *Constitution*. With respect to the accessibility of education, the provisions are supplemented by section 17(3)(j) of the *Human Rights Commission Act* 1999 which prohibits discrimination in "access to, and participation in, education." Under section 44(1)(a) of the *Constitution* the Parliament is required to make provision for social justice and affirmative action programmes with respect to 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 initiatives administered by various government departments, including the Ministry of Education. The individual programmes identify target persons and/or groups; eligibility criteria; programme goals; means of assistance; and performance indicators. [587] 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.

With regards to gender parity and gender equity, National Goal 1.3 of the *Suva Declaration on Education* expresses the principle of gender equality in all areas of education. The FHRC observes that the government 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.

In its 2006-2008 Strategic Plan, the Ministry of Education acknowledged the disparity of access to education between urban and rural areas as a challenge for the government. A lack of school infrastructure in rural and remote communities at all levels of the education system accentuates a pattern of low enrolment in these areas. As a consequence, there are a large number of students living in poor socio-economic and over-populated urban areas. [588] In rural

[586] Ibid
[587] Schedule (Section 4) Affirmative Action Programs, *Social Justice Act* 2001
[588] Ministry of Education, *Strategic Plan 2006-2008*, p10

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.[589] 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 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.[590]

In terms of economic accessibility, the FHRC says that although primary education is notionally free and compulsory, it is not monitored adequately by the Ministry of Education. 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 to ensure that the formula for tuition fee-free grants is reviewed to avoid the widening gap between small/medium schools and large schools.

Individual primary schools can 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 is neither free nor compulsory in Fiji. Apart from grants from the Ministry of Education, schools can levy parents with a wide range of fees to cover administration, books, library services,

[589] Program No. 3, Schedule (Section 4) Affirmative Action Programs, *Social Justice Act* 2001

buildings, sports and recreation activities and other miscellaneous costs. University tuition fees vary between programs and courses. For example, the Bachelor of Arts and the Bachelor of Science programmes at the University of the South Pacific could be expected to cost more than $FJD10,000.[591] 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.

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.

Acceptability

Quality education and minimum standards are monitored and enforced in Fiji by the Ministry of Education. The Ministry is guided by its policy document, *Standards Monitoring in Schools: Policy Framework and Guide*, which stipulates:

> 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.[592]

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. 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.

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[590] Program No. 5, Schedule (Section 4) Affirmative Action Programs, *Social Justice Act* 2001
[591] University of the South Pacific, *2006 Calendar*, Suva (2006), p93 and p421
[592] Ministry of Education, *Standards Monitoring in Schools: Policy Framework and Guides*, p2

Corporal punishment was declared invalid and unconstitutional by the High Court of Fiji in 2001 in *Naushad Ali v State*.[593] In a submission to the High Court, the Fiji Human Rights Commission submitted that all corporal punishment was a breach of Section 25(1) of the *Constitution*. In its judgment the High Court said:

> 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.[594]

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. The FHRC 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 has been 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.

The principle that education should be acceptable to parents and legal guardians is stipulated in Section 3 of the *Education Act 1978 (Cap 262)*, which provides that the education of pupils, so far as is compatible with the provisions of efficient instruction and training and the avoidance of unreasonable public expenditure, should be in accordance with the wishes of their parents.

Respect for religious and cultural practices with respect to education is protected by section 35 and section 39 of the *Constitution*. With regards to language, 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. 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

[593] C.C.P.No. 0001 of 2001L

the student with English being taught as a separate subject. From Year Three, all instruction is in English. In schools with a combination of races, all subjects are taught in English from Year One.

Adaptability

The minimum age of employment of employment is 12 years of age, with section 59(1) of the *Employment Ordinance* creating an exception for the employment of any child "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." 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. The *Employment Ordinance* contains other protections relevant to the employment of children, including: guarantee of proper and regular payment;[595] security of residence with parents or guardian;[596] protection from unhealthy, dangerous or unsuitable employment;[597] and hours of work.[598]

The minimum age of criminal responsibility is ten years of age.[599] The maximum age of presumption against criminal responsibility is 12 years of age.[600]

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. Section 12 of the *Marriage Act* 1969 stipulates sixteen as the minimum age of marriage for women.

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.

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[594] 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>
[595] Employment Ordinance, s60(1)(a)
[596] Employment Ordinance, s60(1)(b)
[597] Employment Ordinance, s61(1)
[598] Employment Ordinance, s64
[599] Penal Code, Section 14(1)
[600] Penal Code, Section 14(2)

Justiciability

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.

Activities of the FHRC

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 FHRC 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*. In December 2001 the FHRC held 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 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 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.' A number of publications are available in three languages. 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.

ACJ Recommendations

The ACJ recommends that the National Human Rights Commission of India (NHRCI) urge its government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention and the Worst Forms of Child Labour Convention;
- the need to improve the quality of education infrastructure and education facilities, including sanitation and safe drinking-water facilities and classrooms and libraries;
- the need to continue efforts to improve gender equality and gender parity throughout the education system;
- the need to continue efforts to improve access to education facilities for students with disabilities;
- the need to ensure universal access to secondary education, with an emphasis on the enrolment of girls and minimising economic barriers such as fees and other education costs;
- the need to continue efforts to provide access to non-formal education programmes for people outside of the formal education system; and
- the need to introduce measures to ensure equal access to education for women and to amend the *Child Marriage Restraint Act* 1929 to prevent the practice of child marriage.

International Law

India is a party to the ICESCR,[601] CERD,[602] CEDAW[603] and the CRC.[604] India is a not a party to the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention or the Worst Forms of Child Labour Convention.

National Law

The topic of education was dealt with in Part IV of the *Constitution of India 1950* (Directive Principles of State Policy) under Article 41 and 45. The Directive Principles are fundamental

[601] India acceded to the ICESCR on 10 April 1979.
[602] India ratified the CERD on 3 December 1968.
[603] India ratified the CEDAW on 9 July 1983.
[604] India acceded to the CRC on 11 December 1992.

in the governance of the country and it is the duty of the State to apply these principles in making laws, however the principles contained in Part IV are not enforceable in any court.[605]

> **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.

More than fifty years after the establishment of the Constitution, Parliament adopted the *Constitution (Eighty-Sixth Amendment) Act* 2002, adding Article 21A (following Article 21 – the right to life and liberty):

> **Article 21A - 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.

By the same *Constitutional Amendment Act* of 2002, Article 45 was amended as such:

> **Article 45 – Provision of early childhood care and education to children below the age of six years**
>
> The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Amongst the Fundamental Duties contained in Article 51A, clause (k) was added as follows:

> **Article 51A – Fundamental Duties**
>
> It shall be the duty of every citizen of India
> …
> (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years.

Fundamental rights provisions of the *Constitution of India 1950* relevant to the Right to Education include Article 28 (freedom as to attendance at religious instruction or religious worship in certain educational institutions); Article 29 (protection of interests of minorities); and Article 30 (right of minorities to establish and administer educational institutions). Other

[605] *Constitution of India 1950*, Article 37

provisions of the *Constitution* relevant to the Right to Education include: in Part IV, Article 46 (Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections); in Part XVII, Article 350A (Facilities for instruction in mother-tongue at primary stage)

The *Constitution's* anti-discrimination provision, Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) stipulates:

> (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.

Constitutional amendments have enabled both the Union Parliament and State Legislatures to pass laws with respect to education. In the *Constitution of India 1950*, education was a State subject (Entry 11, List II), that is, within the exclusive competence of State Legislatures and not for the Union. Parliament Entry 11 List II reads as follows:

> 11. Education including universities subject to the provision of entries 63, 64, 65, and 66 of List I and entry 25 of List III.

By the *Constitution (Forty-Second Amendment) Act* 1976 'Education' was transferred to the Concurrent List (Entry 25 – List III) – enabling both the Union Parliament and State Legislatures to pass laws with respect to education. Education was broadened to include technical and medical education and universities. Entry 11 of List II was deleted and Entry 25 of List III (Concurrent List) was added to read as follows:

> 25. Education including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I[606]; vocational and technical training of labour.

[606] Certain specified educational institutions and institutions for scientific and technical education financed by the Government of India and professional vocational or technical training including the training of police officers.

In *Mohini Jain v State of Karnataka 1992(3) SCC 666* the Supreme Court of India extended the scope of Article 21[607] of the *Constitution* so as to include the 'right to education' as comprehended in the 'right to life.' In *JP Unnikrishnan & Ors. v State of Andhra Pradesh & Ors. etc 1993 (1) SCC 645*, the Court declared education of children up to the age of fourteen years as a fundamental right.

In *State of Himachal Pradesh v Himachal Pradesh State recognised and aided Schools Managing Committees 1995 (4) SCC 507 (3J)* the Court emphasised the need for the States and the Union of India to increase the budget allocation under the head 'Education.'

In *Murlidar Kesekar v Viswanath Barde 1995 (Supp 2) SCC 549 (2J)* the Court declared that the right to life under Article 21 comprehends within its ambit the right to education, health, speedy trial, equal wages for equal work as fundamental rights. The Court reiterated the right to education is a fundamental right in the following cases:

(a) *Avinash Nagra v Navodaya Vidyalaya Samiti 1997 (2) SCC 534 (2J)*
(b) *University of Delhi v Anand Vardhan Chandal 2000 (10) SCC 648* (Constitution Bench); and
(c) *Dental Council of India v Subharti KKB Charitable Trust 2001 (5) SCC 486*

In 2002 a Constitution Bench (of Eleven Judges) in *TM Pai Foundation v State of Karnataka 2002 (8) SCC 481* held that the establishment and management of educational institutions was part of the fundamental right to carry on an "occupation" as envisaged under Article 19(1)(g) of the *Constitution*. In a recent decision *State of Bihar v Project Uchcha Vidya 2006 (2) SCC 545 at 574*, the Court has reiterated that establishment and management of educational institutions was part of the fundamental right to carry on an occupation as envisaged under Article 19(1)(g) of the *Constitution*.

Achievement of the Right to Education

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 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 has established a *National Charter for Children* which has the objective of ensuring that no child remains illiterate.

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 aged 6-14 by 2010. *Sarva Shiksha Abhiyan* has a 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

[607] Article 21 – Protection of life and personal liberty – No person shall be deprived of his life or

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.

Availability

The availability of education in India can be measured in part by government expenditure and education funding models. The Central and State governments are responsible for the majority of education funding in India. 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 for non-formal education. The 2004-05 Budget Estimate records that the combined total expenditure on education by Central and State Governments was 3.49 per cent of GDP. The 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.

Fees are not charged in State-funded primary schools. Students at these schools are provided with textbooks, uniforms and midday 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 these schools do not receive land, water and other necessary facilities at Government subsidised rates. The same distinction 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

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personal liberty except according to procedure established by law.

by Christian, Muslims, Sikhs and other regional groups which enjoy constitutional status by virtue of Article 29 and 30 of the *Constitution.*

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.

The NHRCI notes that there is generally a large source of qualified and competent teachers at all levels of education in India. 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.

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 also notes that sport and recreation facilities and equipment are being upgraded at the primary, secondary and higher education levels.

Accessibility

The *National Policy on Education* and the *National Policy for the Empowerment of Women* (2001) have the objectives 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[608] 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; and Balika Smriddhi Yojana.

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 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.

Although Article 21A of the *Constitution* guarantees free and compulsory primary education, secondary education in India 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 employment. 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.[609]

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,

[608] For details on these programmes please refer to http://www.wcd.nic.in and http://www.education.nic.in

[609] Additional information is also available at http://www.education.nic.in

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 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.

Non-formal education programmes were introduced in 1977-78 on a pilot basis under the *Scheme of Non-Formal Education* and subsequently expanded to focus on out-of-school children aged 6-14 who have remained outside the formal system due to socio-economic and cultural factors. In 2000 the programme was renamed the *Education Guarantee Scheme* and *Alternative and Innovative Education*. The *National Literacy Mission* was established in 1988 to improve the literacy levels of people 15-35 years of age.

Acceptability

Quality education and minimum standards are monitored and enforced in India by national and State institutions and specialised agencies. These include: the Central Advisory Board of Education (the highest advisory body to advise the Central and State Governments on education); the National Commission on Higher Education; the Central Board of Secondary Education, the All India Council for Technical Education and the University Grants Commission. These institutions and agencies are guided by the National Policy on Education and Programme of Action (1992); the State Programmes of Action; and the Constitution of the Bharat Shiksha Kosh.[610] Indicators used include the rate of enrolment, drop-out rate, gender disparity in enrolment, availability of neighbourhood institutions, midday meals and other incentives, school building and infra-structural facilities and the teacher-student ratio.

Corporal punishment is banned in India although occasional incidents do occur for which remedial measures are immediately taken.

With regards to curriculum development, 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, 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 is part of social science education at the primary school level and is part of civics education at the secondary school level. At the 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.

Parents and legal guardians are only able to exercise freedom of choice with regards to educational institutions and programmes subject to their particular ward or their child's successful completion of the entrance admission test procedure prescribed by the concerned educational institution.

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.

Adaptability

The *National Literacy Mission* was established in 1988 with the aim of improving functional literacy for people aged 15-35 years, but also for younger people, particularly children aged 9-14 who have dropped out of school. Other education initiatives include the *Continuing Education Scheme* which provides further learning opportunities people in rural and remote areas. These initiatives are targeted at children and young people who have missed out on opportunities for a regular education.

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[610]For details please see the website of the Department of Secondary and Higher Education, Ministry of

Articles 23 and 24 of the *Constitution* provide protection against exploitation such as human trafficking, beggar[611] and other forced labour and child employment in factories. In *M.C. Mehta v. State of Tamil Nadu & ors.* (AIR 1997 SC 699) the Apex Court issued extensive directions and created new penalties for the employment of children in hazardous workplaces, including the requirement to withdraw children from hazardous workplaces while ensuring their admission into formal or non-formal schools. The minimum age of criminal responsibility is seven years of age.[612] 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.

Girls and young women in India are often 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 law reform action so as to ensure gender justice as well as facilitate their entry into the mainstream of the society. Under the *Child Marriage Restraint Act* 1929 the minimum age of marriage for women is 18 years and 21 years for men. The NHRCI reports that it has proposed major amendments to the Act as a means of preventing the practice of child marriage.

To cater to the needs of children with disabilities, the *Integrated Education for Disabled Children* (IEDC) scheme was launched in 1974 and 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

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Human Resource Development, Government of India http://www.education.nic.in

[611] Under the old zamindari system, the tenants were sometimes forced to render free service to their landlords. This was called begar.

[612] *Indian Penal Code*, Section 82

the assistance of non government organisations. The NHRCI observes that schools are generally able to adapt to the special education needs of individual students. [613]

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 a number of peak bodies have been established to conduct specialised courses to train professionals in the different areas of disability.[614]

Justiciability

Under Articles 32, 226, 227 of the *Constitution*, remedies are available to citizens for denial of the constitutionally guaranteed rights to education.

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.

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[613]For more information please log on to the website of Ministry of Social Justice and Empowerment, Government of India www.socialjustice.nic.in, and see earlier discussions on accessibility.

[614] These peak bodies include: 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;

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.

Activities of the NHRCI

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. 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.

The NHRCI has addressed the right to education in the context of child labour.[615] In 2005 the NHRCI prepared a Status Paper on Human Rights Education to investigate the integration of human rights education into the existing school curriculum.

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. 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.

National Institute for Rehabilitation Training and Research, Cuttack; Institute for the Physically Handicapped, New Delhi;

[615] NHRCI 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. Available at <http://www.nhrc.nic.in>

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 arisen from common complaints; training programmes, workshops and seminars for civil servants, police officers, prison officials, judicial officers, paramilitary and armed forces officials, educators, NGOs and human rights activists.

Indonesia[616]

ACJ Recommendations

The ACJ recommends that the Indonesian National Commission on Human Rights (Komnas HAM) urge its government to address the following issues:

- the necessity to allocate additional budget resources to the education sector and to minimise the imposition of fees and additional costs on parents;
- the need to address the high pupil-teacher ratio and the need to strengthen measures to improve the qualifications of teachers;
- the need to adopt measures to address the low level of participation of girls and women in the education system and to address their high levels of illiteracy, particularly in rural areas;
- the need to adopt measures to eliminate the use of corporal punishment in schools and to address high levels of violence and bullying;
- the need to adopt measures to minimise child labour and to ensure that working children have access to alternative primary and secondary education opportunities;
- the need to review the *Marriage Act* (1974) and to adopt measures to ensure education opportunities are provide for married children and pregnant teenagers; and
- the need to increase the availability of special education services for children with disabilities and also children in marginalised circumstances including homeless children and refugee and internally displaced children.

International Law

Indonesia is a party to the ICESCR,[617] CERD,[618] CEDAW,[619] CRC,[620] the UNESCO Convention Against Discrimination in Education,[621] the ILO Minimum Age Convention[622] and the Worst Forms of Child Labour Convention.[623]

[616] 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.
[617] Indonesia acceded to the ICESCR on 23 February 2006.
[618] Indonesia acceded to the CERD on 25 June 1999.
[619] Indonesia ratified the CEDAW on 13 September 1984.
[620] Indonesia ratified the CRC on 5 September 1990.
[621] Indonesia ratified the Convention Against Discrimination in Education on 10 January 1967.
[622] Indonesia ratified the Minimum Age Convention on 7 June 1999.

National Law

The right to education is guaranteed under Article 31(1) of the *Constitution of the Republic of Indonesia* (1945) which provides that every citizen has a right to education and Article 31(2) which provides that '[e]very citizen has the obligation to undertake basic education and the government has the obligation to fund this." These provisions are supplemented by Article 5(1) of the *National Education System Act No. 20* (2003) which stipulates that "[e]very citizen has equal rights to receive quality education." The *Constitution* has a wide range of human rights and anti-discrimination provisions, including Article 28I(2) which provides that "[e]very 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."

Achievement of the Right to Education

In the foreword to the *National Education System, Act No. 20* (2003), the Minister of Education states:

> The Law creates a legal framework for the major educational goals, policies and plans…The Law seeks to open access to education at all levels and all forms - formal, non-formal, as well as informal – for all citizens of Indonesia. Its main thrust is to make education relevant to societal needs; to develop further community-based education; and to enhance participation by community in supporting basic education. It provides rights and obligations of citizens, parents, community and Government.[624]

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.[625] The first nine years of basic education (primary and lower secondary education) is compulsory. Indonesia's formal education system is based on six years primary education, three years of lower secondary, three years of upper secondary education and four years of higher education. The starting age for formal education is seven years.[626] Lower and upper secondary education each have two tracks, one that is general and another which is vocational. Higher education includes diploma courses which are available in colleges offering one to four-year courses and bachelor degrees which are available at four-year universities. There are also post-graduate programs, doctoral programs and Open Universities

[623] Indonesia ratified the Worst Forms of Child Labour Convention on 28 March 2000.
[624] *Act of the Republic of Indonesia, Number 20, Year 2003 on National Education System*, p2
[625] Ministry of National Education, *The Background Report of Indonesia*, UNESCO/OECD Early Childhood Policy Review Project, August 2004, ED/BAS/EIE/05/A
[626] Ibid, para1.3.1

distance higher education programs.[627] Early childhood services are available at kindergartens for children aged 4-6 years, although this is not part of the official education system.[628]

Availability

The availability of education in Indonesia can be measured in part by government expenditure and education funding models. 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. [629] The three main sources of education funding are the central government, local government and parents. Decentralised government education budgets generally only cover teacher's salaries. Local governments are permitted to raise taxes for the purpose of education funding however their spending patterns tend to vary greatly.[630]

Article 45 of Chapter XII of the *National Education System, Act No. 20* (2003) requires education institutions to provide the requisite educational facilities and infrastructure.

Chapter XI of the *National Education System, Act No. 20* (2003) provides a legal framework for the organisation of teachers and support staff. In its concluding observations in January 2004 however, the Committee on the Rights of the Child expressed its concern at the high teacher-pupil ratio and the low level ability of teachers and recommended the development of measures to improve the level of properly trained teachers.[631]

Accessibility

The Children's Committee has expressed its concerns in relation to non-discrimination in education, observing in a 2004 report 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."[632]

In a 1998 report the CEDAW Committee noted barriers to gender parity with respect to education. It expressed a concern about the low level of participation of women in

[627] Ibid, para 1.3.2
[628] Ibid, para 1.3.3
[629] *Background Report of Indonesia* (August 2004), para 5.1.3
[630] *Background Report of Indonesia* (August 2004), p15
[631] CRC/C/15/Add. 223, 30 January 2004, para 60-63
[632] CRC/C/15/Add.223, 30 January 2004, para 30

education and the high level of illiteracy among women, particularly in rural areas. The Committee recognised efforts to make education available to "poor but gifted" children but expressed its concern about the access to education of all children, including those from minority groups.[633]

Article 31 of the *National Education System, Act No. 20* (2003) provides for distance education as a means of overcoming obstacles to the physical access to education.

With regards to economic access to education, in a 2006 report on education fees, Katarina Tomasevski observed that in Indonesia "[t]here is little country-wide information available on the financing of education and what is available points to inequalities." In some parts of the country primary education is free, in other areas fees are charged. Tomasevski notes that legal reforms aimed at transforming budgetary allocations for education from discretionary to obligatory have yet to be translated into government policy. In its 2005 budget the government noted that existing constitutional and legal guarantees "have yet to be met". According to Tomasevski, "merely 12% of the budget was allocated to education, much less than the law mandates." In its concluding observations in January 2004 the Children's Committee expressed its concern that education is not free, even at primary level, and that education is not affordable for many families.

With regards to the accessibility non-formal education, Article 26(1) of the *National Education System, Act No. 20* (2003) stipulates that "[n]on-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.

Acceptability

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). The Government, through its Ministry of National Education is responsible for determining national education policy and national education standards. Local government and regional and city governments have a role to play in the implementation of national education policies. Community involvement in the education system is through Boards of Education and School / Madrasa Committees.

[633] A/53/38/Rev.1, 1998, para 282 & 291.

With regards to the use of discipline in schools in Indonesia, in its 2004 report the Children's Committee expressed its concerns about the widespread use and acceptance of corporal punishment in schools. It recommended that corporal punishment be prohibited in the family, school and other childcare settings. It also recommended the implementation of public education campaigns about the negative consequences of corporal punishment and the promotion of alternative non-violent forms of discipline.[634] The Children's Committee also expressed concerns about the prevalence of violence against children in schools, including student fighting and student bullying, and recommended that measures be taken to reduce the violence.[635]

Article 36(1) of the *National Education System, Act No. 20* (2003) stipulates that "[t]he development of curriculum is based on national education standards in the pursuit of national education goals." Article 36(2) provides that "[t]he 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."

Under Article 7(1) of the *National Education System, Act No. 20* (2003) "[p]arents 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.

With regards to religious education, the Children's Committee has expressed a concern that although the *Human Rights Act 1999* recognises the right to freedom of religion and worship, "the rights of children belonging to a minority or ethnic group are not recognised by [the Act] and that these children do not have adequate access to education, health and social services.[636]

Adaptability

The widespread phenomenon of child labour in Indonesia impacts upon the enjoyment of the right to education. This is despite the fact that under the *Employment Act 1995* the minimum age of employment is 15 years and 18 years for employment in hazardous occupations. 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

[634] CRC/C/15/Add.223,30 January 2004, para 43-44
[635] CRC/C/15/Add. 223, 30 January 2004, para 60-63
[636] CRC/C/15/Add.223, 30 January 2004, para 90

in the oil, shoe, fishing, restaurant and hotel service sectors.[637] 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.

In its 2004 report the Children's Committee recommended that education opportunities be provided for married children and pregnant teenagers, many of whom generally do not continue their education.[638] The Commitee expressed concerns about the provisions of the *Marriage Act* (1974) under which the legal age to marry is discriminatory between females and males (sixteen and nineteen years respectively). The Commitee observed that a large number of children, particularly girls, are married by the age of 15 years and are legally considered to be adults, meaning that the CRC no longer applies to them. [639]

Article 32(1) of the *National Education System, Act No. 20* (2003) stipulates that "[s]pecial 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." The Children's Committee has acknowledged the development of special services and rehabilitation centres for children with disabilities, however it has also expressed concern about their limited availability. [640] It has also expressed concerns about a wide range of other issues, including the situation of refugee and internally displaced children living in refugee camps; children deprived of a family environment; and children affected by armed conflict, sexual exploitation, abuse and drug use.[641]

Activities of the Indonesian National Commission on Human Rights

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

[637] "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
[638] CRC/C/15/Add. 223, 30 January 2004, para 60-63
[639] CRC/C/15/Add. 223, 30 January 2004, para 26
[640] CRC/C/15/Add.223, 30 January 2004, para 53
[641] Ibid, para 41, 49, 53, 65, 67, 69, 73, 79, 81

Komnas HAM with a mandate for the protection and promotion of economic, social and cultural rights.

Komnas HAM has a mandate to conduct human rights education and disseminate information about human rights at the national and international level; monitor international treaties on human rights that the Commission may propose to the government for their ratification or accession; 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 continuously improve the observance of human rights; and cooperate with regional and international agencies for the continuous protection of human rights.

Komnas HAM has a series of sub-committees which focus on human rights education and promotion; law reform and international treaties; human rights monitoring and implementation; and complaints and mediation.

ACJ Recommendations

The ACJ recommends that the Jordan National Centre for Human Rights (JNCHR) urge its government to address the following issues:

- the need to adopt measures to minimise the imposition of school fees and additional education costs on parents and students;
- the need to ensure the availability of accessibility and quality education services for refugee children and their families;
- the need to adopt measures to minimise child labour and to ensure that working children have access to alternative primary and secondary education opportunities; and
- the need to adopt measures to encourage girls and women to pursue broader educational and career choices.

International Law

Jordan is a party to the ICESCR,[642] CERD,[643] CEDAW,[644] CRC,[645] UNESCO Convention Against Discrimination in Education,[646] ILO Minimum Age Convention[647] and the Worst Forms of Child Labour Convention.[648]

National Law

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

[642] Jordan ratified the ICESCR on 28 May 1975.
[643] Jordan acceded to the CERD on 30 May 1974.
[644] Jordan ratified the CEDAW on 1 July 1992.
[645] Jordan ratified the CRC on 24 May 1991.
[646] Jordan ratified the Convention Against Discrimination in Education on 6 April 1986.
[647] Jordan ratified the Minimum Age Convention on 23 March 1998.
[648] Jordan ratified the Worst Forms of Child Labour Convention on 20 April 2000.

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.

Article 33(i) and (ii) of the Constitution is relevant to the application of international law in the national jurisdiction:

(Article 33)
(i) [649]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.

Article 10 of *Education Act No. 3* (1994) provides in relation to primary and secondary (basic) education:

(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).

Achievement of the Right to Education

The Jordan National Centre for Human Rights (JNCHR) reports that Jordan has made significant strides in education in recent decades, despite the influx of hundreds of thousands of refugees and a very large share of the national budget assigned to the armed forces. 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.

649 As amended in the Official Gazette No. 1396 dated 1/9/1958.

There are three types of schools in Jordan: government schools, private schools, and the schools for refugee children operated by the United Nations Relief and Works Agency (UNRWA). The majority of the students attend government schools. Schooling consists of six years of elementary, three years of preparatory, and three years of secondary education.

The education system is 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. At the end of grade 10, student performance from 8th, 9th and 10th 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 which develop student's skills through apprenticeship programmes run by the Vocational Training Corporation or the Ministry of Education. 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.

Availability

The availability of education in Jordan can be measured in part by government expenditure and education funding models. According to *The Development of Education in the Hashemite Kingdom of Jordan 1995-1996 National Report,*[650] education is primarily 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. 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.[651]

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

[650] Presented to the 45th session of the International Conference on Education, Geneva, 30 September – 5 October 1996
[651] Source: *The Development of Education In The Hashemite Kingdom of Jordan 1995-1996 National Report*.

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.

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 10th class and for comprehensive secondary education; equipping schools with computers for information technology courses for the 10th 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 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.

Accessibility

Article 6(i) of the *Constitution* stipulates that Jordanians are equal before the law, however its grounds for non-discrimination are restricted to race, language and religion. The *Law on the Care of the Disabled Number 12* (1993) extends anti-discrimination protections to people living with disabilities, including the right to participate, the right to medical care, and the right to education. In providing access to all students, 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.

In relation to economic accessibility, 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.

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 an 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 a number of non-formal education initiatives were implemented, including 576 literacy centres (55 for males and 521 for females) serving 10,518; 57 evening class centres for adults to continue formal education; and experimental literacy centres. The JNCHR notes that cultural centres also play an important role in the provision of non-formal education and training.

Acceptability

Quality education and minimum standards are monitored and enforced in Jordan by national institutions and specialised agencies. The Education Supervision unit within the Ministry of Education is responsible for the monitoring and supervision of schools. The Ministry of Education works with the 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.

The Ministry of Education conducts teaching training programmes as part of its educational development plan. In-service certification programmes are provided at universities 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. Primary-school teachers must hold an associate degree (community college diploma) and an educational qualification certificate. 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 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.

The Ministry of Education uses a range of indicators to monitor the realisation of the right to education in Jordan. These indicators include promotion, failure and drop-out rates for basic and secondary cycles; pupil-teacher ratio indicators; and gender equality and gender parity measures. The Ministry also draws on information obtained from the results of student's tests and examinations and administrative reports for evaluation purposes.

With regards to the use of 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.

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.[652] 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.

In a 2005 report[653] 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:

[652] Source: *The Development of Education in the Hashemite Kingdom of Jordan 1995-1996 National Report*.
[653] An in depth analysis is available in *The Status of Teaching Human Rights in Jordan*. December 2005. Available upon request.

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.

Adaptability

The minimum age of employment in Jordan for any occupation is 16 years of age and for hazardous employment it is 17 years of age.[654] The JNCHR's 2005 Status Report[655] 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.

With regards to education for women, in its 2005 Status Report 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.[656]

The JNCHR 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 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.[657]

Special programmes have been introduced for gifted students, including the promotion of gifted students, where appropriate, to higher classes; the establishment by the Noor Al-

[654] Labour Code, *Law No. 8* (1996), Articles73-74
[655] *Status Report of Human Rights The Hashemite Kingdom of Jordan 2005*. National Centre for Human Rights
[656] Ibid
[657] http://www.usaidjordan.org/sectors.cfm?inSector=17

Hussein Foundation of the Jubilee School of 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.

Activities of the JNCHR

The JNCHR was established under *Provisional Law No. 75 of 2002 - Law of the National Center for Human Rights*. 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 reports that it has handled 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.

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*.

The JNCHR 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. The JNCHR 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.

ACJ Recommendations

The ACJ recommends that the Human Rights Commission of Malaysia (SUHAKAM) urge its government to address the following issues:

- consider signing the ICESCR, CERD and the UNESCO Convention Against Discrimination in Education;
- the need to allocate resources to improve education infrastructure and facilities, particularly at schools located in rural and remote areas;
- the need to improve the availability of effective, accessible and safe transport options for children to attend school
- the need to improve the accessibility of education infrastructure and facilities for disabled students;
- the need to review the legal status of the children of undocumented migrant workers and to adopt measures to ensure that they have the opportunity to access the education system;
- the need to minimise the imposition of school fees and other education costs on parents and students; and
- the need to increase the number of qualified special education teachers and to address issues of discrimination against students with special needs.

International Law

Malaysia is a party to the CEDAW,[658] CRC,[659] the ILO Minimum Age Convention[660] and the Worst Forms of Child Labour Convention.[661] Malaysia is not a party to the ICESCR, CERD or the UNESCO Convention Against Discrimination in Education.

National Law

The right to compulsory primary education is provided under section 29A of the *Education Act 1996* which requires parents to enrol their children in primary school upon reaching six years of age and that their children remain enrolled as pupils for the full period of compulsory

[658] Malaysia acceded to the CEDAW on 5 July 1995.
[659] Malaysia acceded to the CRC on 17 February 1995.
[660] Malaysia ratified the Minimum Age Convention on 9 September 1997
[661] Malaysia ratified the Worst Forms of Child Labour Convention on 10 November 2000

primary education. Article 12 of the *Constitution of Malaysia 1957* prohibits discrimination in the area of education on the grounds of religion, race, descent or place of birth, with respect to the administration of any educational institution maintained by a public authority and with respect to the provision of financial aid by public authorities. More generally, Article 8 of the *Constitution* stipulates that "[a]ll persons are equal before the law and entitled to the equal protection of the law" and that discrimination is prohibited on the grounds 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.

Achievement of the Right to Education

The Ministry of Education's *National Education Philosophy* 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.[662]

Compulsory education at the primary level is required under the *Education Act*. 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. 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. 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.

[662] Ministry of Education, National Education Philosophy, located at http://www.moe.gov.my/tayang.php?laman=falsafah&bhs=en (28 May 2006)

Availability

The availability of education in Malaysia can be measured in part by government expenditure and education funding models. The Human Rights Commission of Malaysia (SUHAKAM) has reported that between 1996 and 2000, pre-school, primary and secondary education received the largest share of the Ministry of Education's development allocation from the Federal Government.[663]

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.

The Teacher Education Division of the 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.

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 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.

Accessibility

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. Gender focal point officers have been appointed 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).

With regards to physical access to education, 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. Another physical 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.

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.

With regards to economic accessibility, public primary education in Malaysia is not entirely free. Although school fees are not charged, school administrations 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

[663] Human Rights Commission of Malaysia**,** *The Human Rights Approach to the Millennium*

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 program 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 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.

Non-formal education programmes provide alternative opportunities to access education. These include adult literacy programmes developed by the Ministry of Rural Development and other ministries. The Community Education Division within the Department of Community Development Department (or KEMAS), provides Computer Literacy Education, Family Prosperity Education and Skills Education programmes. ERA Consumer Malaysia (the Education and Research Association for Consumers, Malaysia) has established community centres for the empowerment of Indian women in Malaysia. 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).

Acceptability

Quality education and minimum standards are enforced in Malaysia by national institutions and specialized agencies. 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.

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.[664]

In 2005 the Ministry of Education began implementing a new subject in schools, *Civics and Citizenship*. Civics and Citizenship education is designed to provide awareness to students of their role, rights and responsibilities to the community and country. SUHAKAM has highlighted several areas where human rights education can be integrated into the curriculum of the subject. 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.

National religious secondary schools offer Islamic religious education and Arabic Studies as well as science and technology subjects. Under article 12(2) of the *Constitution,* religious groups have the right to establish institutions for the education of children in their respective religion. The Federal or State governments may establish or assist in the establishment of Islamic institutions "or provide or assist in providing instruction in the religion of Islam." Article 12(3) states that "[n]o person shall be required to receive instruction in or take part in any ceremony or act of worship of a religion other than his own." Article 12(4) stipulates that "the religion of a person under the age of eighteen years shall be decided by his parent or guardian."

Bahasa Melayu (Malay language), the country's national language, is the main medium of instruction, however since 2003 English has been taught as a compulsory subject. 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 permitted to use Mandarin or Tamil as the medium of instruction.[665]

Adaptability

Attendance at primary school is compulsory in Malaysia. 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. Section 8 of the *Islamic Family Law (Federal Territories) Act* 1984 stipulates the minimum age for marriage for men is eighteen years of age and for women it is sixteen years of age. Under section 82 of the *Penal Code* (Revised 1997) the minimum age of criminal responsibility is ten years of age.

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.

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.

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[664] 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)
[665] 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)

Justiciability

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 declared that the UDHR "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."

Activities of SUHAKAM

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 the right to education, including through the activities of its Economic, Social and Cultural Rights Working Group and its Human Rights Education and Promotion Working Group. SUHAKAM has received several complaints in recent years relating to the right to education, however given that the subject matter of many of these complaints have been outside its jurisdiction, SUHAKAM has referred the complaints to the Ministry of Education and other relevant authorities.

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.

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; and 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. Human rights education activities have included: human rights awareness programmes, poster

competitions, CRC training workshops, training for young teachers, human rights school camps, seminars and roundtable discussions on the right to education for indigenous persons and also for people with disabilities, and training programmes for police officers and prison officers.

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.

ACJ Recommendations

The ACJ recommends that the National Human Rights Commission of Mongolia (NHRCM) urge its government to address the following issues:

- the need to allocate resources to improve education infrastructure and facilities, including heating systems, sanitation facilities and medical services, as well as school dormitories, and classroom furniture;
- the need to allocate resources to improve the availability of teaching materials, including textbooks and to invest in school libraries, reading facilities and books for children;
- the need to adopt measures to address the low rates of participation in the education system by boys and men, particularly at the secondary and higher education levels;
- the need to improve the availability of special education schools, particularly in rural areas and to improve the accessibility of all schools for students with disabilities; and
- the need to develop standards for evaluating and monitoring the human rights environment of schools.

International Law

Mongolia is a party to the ICESCR,[666] CERD,[667] CEDAW,[668] the CRC,[669] the UNESCO Convention Against Discrimination in Education,[670] the ILO Minimum Age Convention[671] and the Worst Forms of Child Labour Convention.[672]

National Law

The right to education is guaranteed by both constitutional and legislative provisions. Article 16(7) of the *Constitution of Mongolia 1992* provides that the state will provide general education free of charge. Article 39 (paragraph 2.3) of the *Law on Education 2002* provides that everyone shall be provided with free and compulsory basic education up to the age of 17

[666] Mongolia ratified the ICESCR on 18 November 1974.
[667] Mongolia ratified the CERD on 6 August 1969.
[668] Mongolia ratified the CEDAW on 20 July 1981.
[669] Mongolia ratified the CRC on 5 July 1980.
[670] Mongolia ratified the Convention Against Discrimination in Education on 4 November 1964.
[671] Mongolia ratified the Minimum Age Convention on 16 December 2002.
[672] Mongolia ratified the Worst Forms of Child Labour Convention on 26 February 2001.

years. Fundamental human rights and freedoms are protected in Chapter Two of the *Constitution*, including article 14 which prohibits discrimination on the basis of ethnic origin, race, age, sex, social origin or status, property, occupation or post, religion, opinion or education. This is supported by article 5.1.4 of the *Law on Education 2002* which provides that education shall be accessible to all citizens regardless of nationality, language, skin colour, age, sex, social and property status, work and official position, religion, and opinions. It also stipulates that citizens "shall be provided with conditions to learn in his/her native language." Article 16(14) of the *Constitution* provides for protection against violation of rights through the courts.

Achievement of the Right to Education

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, promoting access to social services, and reducing 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 developed a Mid-Term National Action Plan for Improving Education for All in Mongolia (2002-2005)[673] which had 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.

[673] The full text of the MNA is available upon request.

Theses 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.

In October 2003 the Parliament of Mongolia adopted the *National Human Rights Action Programme* (NHRAP). The NHRAP 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 a range of commitments relevant to education, including: legislative reform; reducing education disparities between rural and urban areas and eliminating illiteracy; introduction of vocational education training in schools; strengthening of pre-school education; preservation of native languages, history and cultural traditions; improved training and monitoring of teachers; and increased collaboration between public education authorities and non-governmental and community organisations.

The government has also developed a *National Programme of Action for the Development and Protection of Children 2002-2010* to address a wide range of 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.

Availability

The availability of education in Mongolia can be measured in part by government expenditure and education funding models. 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 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.[674]

According to the NHRCM, a significant proportion of the government's education budget for primary and secondary schools is absorbed by indirect 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). The regular allocation of funds to schools in remote schools and small urban centres is often insufficient.

The NHRCM reports that inadequate or non-existent infrastructure and a lack of teaching materials impacts upon the availability of education. 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 have started to operate three daily shifts. Classrooms sizes of 45 to 50 students have negatively impacted on the quality of education for both teachers and students. In the *Alternative Report of the National Coalition of NGO's on the Rights of the Child in Mongolia*[675] teachers and students complained of unhygienic sanitation facilities and inadequate heating systems. Teachers also identified a lack of medical services and access to regular medical examinations for children. Under the *Education Sector Development Programme*, funded by the Asian Development Bank, the government is taking measures to repair school buildings and to provide public funding for school dormitories.

The NHRCM notes that in addition to poor infrastructure, many students lack school uniforms, textbooks and other teaching materials. The Ministry of Education, Culture and Science require textbooks to have a minimum five-year usage lifespan and has introduced measures to improve textbook development and distribution, however quality remains poor. 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 a complete absence of literature for

[674] *Background Paper on the Right to Education 2006*, pp250-251. The source of the National Human Rights Commission of Mongolia (NHRCM) statistical information is the Ministry of Education, Culture and Science, Economic and Finance Department (April 2005) and the Ministry of Finance (2004).
[675] Alternative report of the National Coalition of NGO's on the Rights of the Child in Mongolia, 2004

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.

The availability of education in Mongolia can also be measured by the quality and availability of teaching and support staff. Teachers at general education schools and kindergartens receive advanced training courses and expenses for professional training courses. The *Education Sector Development Programme* provides resources for the retraining and professional development of teachers. 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.

Accessibility

In accordance with article 14 of the *Constitution* and article 5.1.4 of the *Law on Education 2002*, education must be accessible to all in Mongolia and without discrimination on any of the prohibited grounds.

In 2003 the Ministry of Education, Culture and Science, the Ministry of Health and the Ministry of Social Welfare and Labour developed the *Programme on Inclusive Education for Children with Developmental Problems and Special Needs*. A unit responsible for developing national policy on inclusive education for disabled children has been established under the Department of Primary and Secondary Education within the Ministry of Education, Culture and Science. A *National Programme on Equal Education for Disabled Children* has been developed by the Ministry of Education, Culture and Science and Ministry of Health, which aims to improve access to regular schools for children with developmental difficulties. Programme activities include: training courses for parents and teachers; publication of manuals and materials; and the development of an advocacy campaign. An evaluation system for teachers and students has also been developed and in accordance with the Ministry of Infrastructure's 2004 Strategy Paper, provisions have been made for barrier-free access to buildings. The government has been assisted by Save the Children (UK) which has commenced the *Inclusive Education* project to assist with policy reform relating to children with disabilities.

In relation to 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 (Source: 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.[676]

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 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.[677] 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.[678]

In relation to physical accessibility, the availability of boarding facilities is crucial to providing access to primary education in rural areas and reducing the drop-out rate. The financial management of school boarding facilities collapsed in the early 1990s and attempts 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, with

[676] Human Development Report Mongolia, 2003
[677] Population and Housing census 2000, "Education and literacy", 2002
[678] The package of educational laws were revised and updated in 2002

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 by the Social Development Center in four provinces 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.

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.

In relation to economic accessibility 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. 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 additional fees and charges.

Economically accessible education has been made available through 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 recent 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.

Acceptability

Quality education and minimum standards are monitored and enforced in Mongolia by national institutions and specialised agencies. 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 focuses 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 includes three main components: (1) development of a national curriculum framework and aligned education standards; (2) improving teaching and learning environments in primary and secondary schools; and (3) promoting demand-driven vocational education for youth.

The NHRCM notes 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.

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's 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.
There are a number of other specialised agencies and authorities which play a role in monitoring the right to education. 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.

At the local government level, Provincial Governors and City Mayors have a wide range of responsibilities including 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. At the community level 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.

In relation to discipline, 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 can be charged if his or her use of corporal punishment amounted to a criminal offence.

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, 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. Primary considerations in the curriculum development process 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. 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.[679] 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. Human rights have been taught as an optional subject in university law schools since 1997. 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 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.

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. In relation to religious and cultural practices and the languages of minority groups, the *National Human Rights Action 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.

Adaptability

The minimum age of employment in Mongolia is 14 years of age, however the employment contract must be "for the purpose of acquiring vocational training and work experience" and requires the consent of a parent or guardian.[680] 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.

The minimum age of criminal responsibility in Mongolia is 14 years of age.[681] 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.

In relation to 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*. 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.

The 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.

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[679] The NHRCM reports that the government will move to a 12-year education system in 2009-2010.
[680] *Labour Law 1999*, Article 109.3

Activities of the NHRCM

The primary 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.

In 2002 the NHRCM conducted a study on the status of vulnerable communities in Mongolia, which 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"[682] and 58.4 per cent said that this practice occurred "from time to time." The NHRCM notes that parents often complain about additional 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.

In 2005 the NHRCM conducted a study *Human Rights Education in Secondary Schools* with the support of UNESCO. 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.[683] The NHRCM has contributed to the development of a human rights textbook for secondary school students. 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 improve human rights education, particularly for teachers in rural areas.

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[681] *Criminal Code of Mongolia*, Article 21.2

[682] 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.

[683] 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

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.

With the support of the Canada Fund, the NHRCM has developed a *Model Human Rights Curriculum* for university law schools, with the purpose of improving 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.

Nepal

ACJ Recommendations

The ACJ recommends that the National Human Rights Commission of Nepal (NHRCN) urge its government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education;
- the need to allocate resources to improve education infrastructure and facilities, particularly at schools located in rural and remote areas;
- the need to adopt measures to improve the availability of qualified, experienced and properly resources teachers and to provide opportunities for additional training and support;
- the need to adopt measures to increase the level of enrolments of children at the primary and secondary education levels;
- the need to improve the coordination and management of vocational education and training programmes;
- the need to adopt measures to improve access to all levels and forms of education for girls and women and to improve access to literacy programmes;
- the need to minimise the imposition of school fees and other education costs on parents and students;
- the need to adopt measures to eliminate the practice of corporal punishment in schools;
- the need to adopt measures to minimise child labour and to ensure that working children have access to alternative primary and secondary education opportunities; and
- the need to adopt measures to address the impact of domestic violence and child marriage on educational opportunities for girls and women; and
- the need to increase the accessibility of education services at all levels for students with disabilities and other special needs.

International Law

Nepal is a party to the ICESCR,[684] CERD,[685] CEDAW,[686] CRC,[687] the ILO Minimum Age Convention[688] and the Worst Forms of Child Labour Convention.[689] Nepal is not a party to the UNESCO Convention Against Discrimination in Education.

[684] Nepal acceded to the ICESCR on 14 May 1991.
[685] Nepal acceded to the CERD on 30 January 1971.
[686] Nepal ratified the CEDAW on 22 April 1991.

National Law

Article 4 of the *Children's Act* (1992) requires parents to provide education for their children "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.[690]

Achievement of the Right to Education[691]

The Ministry of Education and Sports (MOES) has primary responsibility for the development and implementation of education policies and programs in Nepal. The Ministry has oversight of a wide range of offices which address specific education requirements. 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.

The Department of Education was established in 1999 to coordinate basic and primary (formal and non-formal) 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. 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.

The National Human Rights Commission of Nepal (NHRCN) observes 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."

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[687] Nepal ratified the CRC on 14 September 1990.
[688] Nepal ratified the Minimum Age Convention on 30 May 1997.
[689] Nepal ratified the Worst Forms of Child Labour Convention on 3 January 2002.
[690] Ministry of Education and Sports: http://www.moe.gov.np/planning_document.php
[691] Sources: Ministry of Education http://www.moe.gov.np/index.php and Department of Education http://www.doe.gov.np

Availability

The availability of education in Nepal can be measured in part by government expenditure and education funding models. 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.[692] 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.

Schools and other education institutions in Nepal suffer from poor infrastructure. The *ICESCR Nepal NGO Report* observes that many school buildings have leaking roofs and poor sanitation. Some schools do not have desks and chairs for students and teachers and others do not have buildings at all.

In its *Ninth Five Year Plan* (1997-2002) the government acknowledged a wide range of problems and challenges regarding the education system in Nepal. 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. At the primary level, approximately one third 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.

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

[692] *Education in Nepal 2003*, Ministry of Education and Sports

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. 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.

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 employment opportunities for graduates.

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.

Teachers in Nepal lack necessary training, are underpaid, and often do not report for teaching duties. In 2001 the World Bank's Human Development Unit for the South Asia Region noted concerns regarding teacher adequacy.[693] It reported 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.

[693] 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/Rendered/PDF/multi0page.pdf>

Accessibility

Students belonging to marginalised groups such as the children of Dalits and ethnic minorities are likely to face inadequate education services. 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 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. 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 encourage women to enter the teaching profession and complete their secondary level education. The *Ninth Five Year Plan* made a 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. Statistics collated by the Central Bureau of Statistics illustrate a clear disparity in literacy rates between males and females in Nepal. For example, the literacy rate for males aged six years and above in 2001 was 65.1 per cent, compared with 42.5 per cent for females.

In terms of physical access to education, 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. As noted by the Library of Congress 1991 Country Study of Nepal, if rural families are serious about the education of their children, they are forced to send them to urban areas, a very expensive proposition that the vast majority of rural households cannot afford.

Efforts to provide a free compulsory education are often undermined by poor quality and reputation. Government schools tend to offer low quality education services especially when compared to private schools whose fees are too expensive for most Nepalese families. Government schools are considered only suitable for children from lower-class families. Furthermore, many families choose to have their children work and contribute to family income, particularly in rural subsistence agriculture areas, instead of attending school. Even if free education is provided, in many cases the additional 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.

Non-formal education, including village-based *Chelibeti* and *Sikchya Sadan* for out-of-school children age 6 to 14 is a part of the national education strategy. 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.

Acceptability

Quality education and minimum standards are enforced in Nepal by national institutions and specialised agencies. The Ministry of Education and Sports works closely with other government departments and agencies to collate statistics on literacy, enrolment and gender parity and gender equality.

With regards to the use of discipline in schools, 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.

Responsibility for the development of school curriculum rests with the Curriculum Development Centre (CDC), which 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. 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.

Adaptability

The ICESCR Nepal NGO Report (May 2006) observes that work is a major impediment to the attendance and successful completion of primary school. Working children tend to have low enrolment and high absenteeism and drop-out rates. The government has made education to the grade ten free of tuition fees, however these free public schools tend to be very poorly managed and provide low quality education. 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,[694] and a child aged between 14 and 16 is not permitted to work as a labourer between 6:00pm and 6:00am.[695] 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.[696] 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.

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. Violence against women is prevalent, including domestic violence, (including rape and incest particularly in rural areas) killing of brides for defaulted and/or inadequate dowry payments and trafficking into forced prostitution abroad.

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[694] Children's Act 1991, article 17(1)
[695] Children's Act 1991, article 17(2)
[696] 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*.

The *Ninth Five Year Plan* (1997-2002) notes that people with disabilities are a target group for special education programmes which are to 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.

Activities of the NHRCN

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*.

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. The NHRCN also 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. In the conduct of its monitoring activities the NHRCN has issued recommendations that schools not be used for any military purposes and be treated as 'zones of peace.'

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.

ACJ Recommendations

The ACJ recommends that the New Zealand Human Rights Commission (NZHRC) urge its Government to address the following issues:

- the need to adopt measures to ensure sufficient support for the training of early childhood education teachers;
- the need to maintain current programmes and identify new initiatives to support the participation and success of Māori and Pacific students at all levels of the education system;
- the need to adopt measures to improve literacy standards for boys and to improve their general engagement with the education system at all levels;
- the need to adopt measures to support and strengthen special needs education programmes, resources and facilities; and
- the need to adopt best-practice guidelines to support the participation of people with disabilities at all levels of the education system.

International Law

New Zealand is a party to the ICESCR,[697] CERD,[698] CEDAW[699] and the CRC,[700] the UNESCO Convention Against Discrimination in Education,[701] and the ILO Worst Forms of Child Labour Convention.[702] It is not a party to the ILO Minimum Age Convention.

National Law

The right to education is guaranteed by s 3 of the *Education Act* 1989, which provides that everyone has the right to free primary and secondary education until they reach 15 years of age.[703] Fundamental human rights and freedoms are affirmed in the *New Zealand Bill of Rights Act* 1990 (Bill of Rights), which applies to acts done by the legislative, executive or

[697] New Zealand ratified the ICESCR on 28 December 1978.
[698] New Zealand ratified the CERD on 22 November 1972.
[699] New Zealand ratified the CEDAW on 10 January 1985.
[700] New Zealand ratified the CRC on 6 April 1993.
[701] New Zealand ratified the Convention Against Discrimination in Education on 12 February 1963.
[702] New Zealand ratified the Worst Forms of Child Labour Convention on 14 June 2001.

judicial branches of the government, or by any person or body in the performance of any public function, power or duty conferred or imposed on that person or body by or pursuant to laws. Section 19(1) of the Bill of Rights provides that "[e]veryone has the right to freedom from discrimination on the grounds of discrimination in the *Human Rights Act* 1993."[704] The *Human Rights Act* 1993 (HRA) prohibits unlawful discrimination in the area of education on 13 different grounds: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, employment status, family status and sexual orientation. Statutes and perhaps the common law must be given a meaning that is consistent with the rights and freedoms contained in the Bill of Rights where possible. Where statutes cannot be interpreted consistently with the Bill or Rights, it is possible that the courts have the power to make a declaration of inconsistency with the Bill of Rights, although the statute would continue to apply in accordance with its terms if Parliament decided not to amend or repeal it.[705]

The Treaty of Waitangi is regarded by many as the founding document of New Zealand.[706] Under the Treaty, Māori gave the Crown rights to govern and to develop British settlement, while the Crown guaranteed Māori full protection of their interests and status, and full citizenship rights. Māori consider the right to education to be a fundamental element of the realisation of rangatiratanga (self-determination). Maori are calling for greater autonomy in shaping and determining educational success. However, varying views exist among Māori about how to achieve the right to education, whether through partnership with the state, independence or a combination of both.

Achievement of the Right to Education

New Zealand supports social welfare rights through a wide range of laws, policies and programmes, reflecting a general commitment to the promotion and protection of economic, social and cultural rights despite the lack of specific legislation to give effect to the ICESCR. A strong common law tradition, the Bill of Rights, and an independent judiciary safeguard

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[703] The right to education is also protected by the Education Act 1964, the Education Act 1989, the Education Standards Act 2001, and the Private Schools Conditional Integration Act 1975.

[704] Section 19 is subject to the "reasonable limitation" provision in s 5 of the New Bill of Rights Act 1990.

[705] Formal declarations of inconsistency are explicitly provided for under s 92J of the Human Rights Act 1993 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.

[706] The Treaty of Waitangi is unincorporated in domestic legislation and lacks formal status in law, although a number of statutes now explicitly refer to the "principles" of the Treaty in achieving the purpose of the enactment. The Treaty's legal status is controversial; proposals to delete statutory

most civil and political rights. In August 2004 the New Zealand Human Rights Commission (NZHRC) published Human Rights in New Zealand Today Nga Tiki Tangata o Te Motu, a status report on human rights in New Zealand.[707] The right to education was assessed on the basis of a set of four broad standards for assessing the achievement of the right to education: availability, accessibility, acceptability and adaptability. While New Zealand is meeting the availability standard in providing a wide range of educational opportunities, education is still not fully accessible, acceptable and adaptable.

Availability

The availability of education in New Zealand can be measured in part by government expenditure and education funding models. The Ministry of Education estimates that overall government spending on education for the period from 2006 to 2010 will average 5.33 per cent of the nominal Gross Domestic Product. It is projected that, of the Vote Education Budget, 27 per cent will be spent on tertiary education, 23 per cent on primary education and 18 per cent on secondary education.[708] The government intends to provide $NZ40M in 2007 to support Adult and Community Education, the government-funded programme that supports non-formal education.

Early childhood education (ECE) is subsidised by the government through the ECE Funding Subsidy in accordance with its ECE Strategic Plan for increased participation and improved quality. ECE is not fully funded, requiring many services to seek other sources of income. Supplementary funding is available through equity funding,[709] and the Childcare Subsidy.[710] Currently only the head teacher in ECE centres must be trained and qualified. The government has set a target of 2012 for all ECE teachers to be appropriately qualified and trained. ECE centres employ their own staff and no shortages are reported.

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, and by accepting foreign fee paying students. The government provides all state and state-integrated schools with both in-kind and cash resources. This model of formula-based funding aims to improve transparency, flexibility and efficiency of resource use and

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references to it are advanced regularly, while others seek to establish it as New Zealand's fundamental constitutional document.

[707] See http://www.hrc.co.nz/report/chapters/chapter15/education01.html

[708] Source: Ministry of Education.

[709] Equity funding is paid to community owned services that face additional costs of teaching low socio-economic groups, those with special needs or those in isolated communities.

allocation. School Boards of Trustees are expected to manage their resources to meet the requirements of the National Education Guidelines, including curriculum requirements. Resources are provided to cover the three main components of teacher staffing, operational funding and property. The government sets formularised teaching staffing entitlements annually based on the number of students at each year level. Primary and secondary schools teachers must be fully qualified and registered with the New Zealand Teachers Council.[711] There is currently an oversupply of trained and qualified primary school teachers. The government uses incentive schemes to attract adequately qualified and trained teachers in shortage subjects, such as mathematics and physical sciences.[712] Additional staffing, in the form of resource teachers, is allocated to meet the needs of students with high and very high special education needs, students learning in Māori language for more than half time, students with literacy, learning and behaviour needs, Māori, and the visually impaired.

Operational funding is the cash resource provided according to a school's size, type and student characteristics. Other funding components include: 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; property maintenance; and costs associated operating isolated 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. The Crown owns the the vast majority of state school buildings in New Zealand, but not state-integrated schools' property. 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. State-integrated schools own and are responsible for their own new capital development but are funded to maintain their land and buildings. State-integrated schools are able to charge fees to cover the costs of their school property.

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[710] The Childcare Subsidy is primarily targeted at working families with low and modest incomes.

[711] An exception is for short-term relieving staff who are employed on a "limited authority to teach" basis. These staff hold only about 2 per cent of teaching positions at any one time.

[712] 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.

[712] For further information: http://www.minedu.govt.nz. These shortage subjects are taught in some schools by qualified teachers teaching 'out of field'.

The government provides additional resources in cash or in kind to meet the particular needs of students, teachers and schools. Special Education 2000 was introduced in 1996 with the aim of improving educational opportunities and outcomes for children with disabilities and special educational needs. Culture-specific learning materials, English-language learning support, in-kind professional development resources for teachers, principals and Boards of Trustee members, information and communication technology tools improve teaching, learning and administrative processes within schools, school transport, boarding allowances and bursaries provide assistance facilitate access to education for students disadvantaged by distance from an educational institution or by special circumstances. The government also provides school improvement and school support resources for a number of community-based schooling improvement projects, or to schools with serious financial, governance or other difficulties.

Accessibility

All education institutions in New Zealand are required to have policies that encourage and implement equal treatment and equal opportunity. However, education achievement indicators highlight concerns that a disproportionate percentage of Māori and Pacific students are failing within current education structures. Successful participation rates for Māori are disproportionately low; Māori have higher stand-down, suspension, exclusion and expulsion rates than students of other ethnicities, and have lower achievement rates. The Ministry of Education provides specific services and programmes for Māori; education in the Māori language is available through total immersion schools and early childhood services, and through bi-lingual units in schools that validate Māori knowledge structures, processes, learning styles, and administration practices. Funding has traditionally been made available to support the specific needs and rights of Māori, but over the past twelve months the government has committed to systematically removing funding which is separately tagged for specific racial groups that are not achieving education outcomes. Following the implementation of the 2001 Pasifika Education Plan, the government launched a new action plan in June 2006 aimed at improving educational achievement among Pacific students. The plan commits additional funding 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 provide professional development for teachers.

In New Zealand children with disabilities and special educational needs have the same rights to enrol and attend state schools as all other children.[713] Special education 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. The Ministry of Education initiative Group Special Education, together with schools and early childhood education services, provides services to children and young people with special educational needs. In April 2001 the government launched the New Zealand Disability Strategy 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 responsiveness and accountability of schools, developing effective educational settings, and creating post-compulsory opportunities.[714] However, the NZHRC has continued to receive complaints about the capacity and capability of mainstream schools to meet the needs of disabled students and the issue of the availability of and equitable distribution of resources between different disability groups. A New Zealand Education Review Office report in June 2005 identified a wide range in the level of effectiveness and performance in schools' use of government policies such as Special Education Grants and the Ongoing and Reviewable Resourcing Schemes to improve special needs student's outcomes.

People recognised as refugees in New Zealand are able to exercise the same rights as 'permanent residents', which includes the right to education.[715] 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 which outlines the importance of access to information and services, including education. Resource teachers provide extra support for students who are English speakers of other languages.

Government policies and programs exist for the education of children in detention and the education of people held in regular adult prisons. Prisoners who were consulted during the development of the New Zealand Action Plan for Human Rights expressed positive attitudes about the available educational courses, but also identified a lack of opportunity for mainstream education and raised concerns about the cost of non-compulsory education.

[713] Education Act 1989, s 8.
[714] See http://www.odi.govt.nz/nzds
[715] See http://www.immigration.govt.nz/community/stream/support/nzimmigrationsettlementstrategy

The focus of gender parity and equality issues has recently shifted to the achievement disparity of boys. Over the 1990s girls' achievement matched or had even overtaken boys in subjects where they had previously been under-achieving. Currently education statistics reveal that 10 per cent more female students than male students are achieving at the top attainment levels.[716] The Ministry of Education's Boys' Educational Achievement Reference Group, established in 2004, has identified problems with literacy standards for boys, a failure to establish key relationships with teachers, disengagement with academic learning and an increase in behaviour which negatively impacts on their general well-being and employability.

In terms of economic accessibility, the NZHRC suggests that the formal and informal costs of education create barriers for students at all levels of New Zealand's education system. In the mid-1990s the government introduced 'decile funding' to rank schools according to the level of wealth of their local community, based on the average household income, crowding, education and skills of parents, reliance on benefits, and the proportion of Maori and Pacific students on the school roll.[717] Decile ratings are used in allocating a variety of funding and support programs for schools, with additional funding going to lower decile schools.

The right to free enrolment and education for local students prevents a state school's Board of Trustees from charging fees, including fees for the cost of tuition or teaching materials.[718] The proprietors of integrated schools may charge attendance dues. The NZHRC has identified those students whose families cannot afford to pay for their participation in school trips and activities as being particularly disadvantaged. Government assistance through the Ministry of Social Development 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. Projects such as Recycled computers - Learning Power (CAN Trust) and Computers in Homes (2020 Communications Trust) in partnership with the Ministry of Education aim increase accessibility for students, families and communities of low-decile schools who face the additional costs associated with the introduction of information and communications technologies into the school curriculum.

[716] See http://educationcounts.edcentre.govt.nz/statistics/schooling/school-leavers-2005.html.
[717] Current efforts to remove 'race-based' funding have removed those factors based on ethnicity.
[718] Charges may be imposed on students for subjects involving a practical component where materials used result in an end product belonging to the student or for activities such as fieldwork in geography and biology and outdoor education programmes.

The costs of tertiary education are shared by the government and students. Students pay tuition fees that currently represent around 26 per cent of full tertiary education costs. The government sets upper limits on fees in each field of study to prevent tertiary education providers from raising fees sharply. Government loans are available to nearly all New Zealand students[719] through the Student Loan Scheme. Students may borrow tuition fees and part of their course-related costs, and full-time students may also borrow to help meet their living costs. Loan repayment is managed through the tax system and is income contingent. Since 2005 student loans have been interest-free for the borrower who remains in New Zealand. Approximately 53 per cent of all students and 74 per cent of all full-time students access loans from the Student Loan Scheme annually. Student Allowances are government grants made to full-time students who meet targeting criteria that help meet the costs of living while studying. 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. Before students loan became interest-free in 2005, there were complaints that Student Loan Scheme discriminated against women; because women take longer 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.

The Tertiary Education Commission funds non-formal education programmes through Adult and Community Education. ACE targets learners whose initial learning was unsuccessful, aiming to raise foundation skills and encourage life-long learning while strengthening communities and social cohesion by meeting community needs. The government also funds non-formal learning opportunities through 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. Various non-governmental organisations provide life-long learning and adult and community education. The NZHRC has received positive comments on the range of opportunities for lifelong learning and second-chance education for adults, although some note the lack of opportunities for adults to acquire new skills or improve existing ones and the difficulty for those without past school qualifications to catch up.

Acceptability

Quality education and minimum standards are enforced in New Zealand by national institutions and specialised agencies. 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. Every primary and secondary school has a Board of Trustees that is elected by the local school community and has the discretion to control the management of the school as it thinks fit, subject to any enactment or the general law of New Zealand.[720] The National Education and Administration Guidelines require schools to follow the National Curriculum. The Ministry of Education provides National Curriculum Statements[721] Assessment information to measure the success of each school's programme and to provide information for each school's planning and development. Minimum standards are protected by five accountability measures: school is compulsory for all children until the age of 15 and parents are subject to prosecution if they fail to send their children to school; Boards of Trustees are required to submit and report on annual school charters, as well as three-five year strategic plans, that set out how they will meet the requirements contained in the National Guidelines;[722] the Education Review Office regularly reviews schools for compliance with the Guidelines; the Ministry of Education has powers to intervene in the operations of schools;[723] a wide range of agencies and institutions can exercise external scrutiny including: the Office of the Ombudsman, the Controller and Auditor-General; the responsible government Ministers; and Parliament.

Tertiary institutions are guaranteed academic freedom and autonomy under the Education Act.[724] All tertiary education institutions (universities, polytechnics, colleges of education, specialist colleges and Wananga[725]) are expected to operate in a competitive environment with as much freedom as possible. This institutional autonomy and academic freedom is to

[719] There are some restrictions on loan access for students undertaking very small quantities of study and for students whose courses/qualifications that do not meet threshold conditions for access to loans.
[720] Education Act 1989, s 75.
[721] National Curriculum Statements describe the areas of knowledge, understanding and skills to be achieved by students during their primary and secondary schooling years.
[722] Education Act 1989, s 87. A charter is an undertaking by the Board of Trustees to the Minister of Education to take all reasonable steps to ensure that the school is managed and administered according to its charter purposes and that the school, its students and community achieve the charter's aims and objectives.
[723] Education Act 1989, s 78I. 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.
[724] Education Act 1989, ss 160 and 161.
[725] Wānanga deliver are tertiary educational programmes within a Māori environment.

be balanced by an appropriate level of accountability.[726] The current accountability regime requires each tertiary education institution to annually provide a profile of its key policies, objectives and proposed activities for the next three years to the Tertiary Education Commission.[727] Universities and other tertiary institutions also have powers to develop their own subordinate legislation. Tertiary education 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.[728]

Education Counts is an on-line resource designed to increase the availability and accessibility of information about education statistics and research.[729] Education sector indicators focus on educational and learning outcomes, participation, and different methods of student engagement. In October 2006 the Ministry of Education published New Zealand Schools Ngā Kura o Aotearoa 2005 a report on the compulsory schools sector in New Zealand.[730] The report shows that New Zealand's education system compares well internationally and that New Zealand students consistently perform as well as or better than students in comparable countries. However there is considerable disparity in the achievement levels of Māori and Pacific students, students who are English speakers of other languages and students in low-decile schools. A disproportionate number of the students involved in alternative education[731] are young, male, and Māori.

Corporal punishment was banned from New Zealand schools in 1990.[732] The use of physical force against students is permitted only for the purpose of self-defence or to prevent the assault of other persons. Detention is a common form of discipline that can be used by schools either during the regular lunch break or, with the consent of parents or guardians, after school. Other forms of behaviour management include stand-down, suspension, exclusion or expulsion. In 2001 the Ministry of Education introduced intervention and monitoring programs to reduce suspensions and stand-downs in secondary schools. Although recent reports suggest that the proportion of students being stood down and suspended are falling, males and Māori students in particular, continue to be over-represented. The Suspension Reduction Initiative was established to address the high proportion of Māori

[726] Education Act 1989, ss 160 and 161.
[727] Education Act 1989, s 191.
[728] Education Act 1989, ss193-194.
[729] See http://educationcounts.edcentre.govt.nz/indicators/edachievmnt/index.html
[730] See http://educationcounts.edcentre.govt.nz/publications/schooling/nz-schools2005.html
[731] Available for those who have difficulties engaging in learning at mainstream schools.
[732] Education Act 1989, s 139A.

suspensions in secondary schools. There is no law that says that a student with a conviction cannot study or can be suspended.[733]

The Ministry of Education describes its national curriculum policy as being student-centred. Human rights education is located in the social sciences and health and physical education curricula for primary and secondary students.[734] 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. New Zealand's official languages are Te Reo Māori, English and New Zealand Sign. 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 ages 11 – 18. From 2008 New Zealand schools with students aged 10 – 14 will be required to offer those children the opportunity to learn a second language.[735] Parents are free to enrol their child at the state school of their choice.[736] Enrolment in particular early childhood services is a matter between the parent and the services, although the HRA prevents services from discriminating against parents in relation to the enrolment of their child.

New Zealand's compulsory education system is basically secular. Religious instruction may be given at state schools by voluntary instructors outside of teaching hours,[737] and state-integrated religious schools receive public funding conditional on the terms of the integration agreement.[738] 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

[733] The University of Otago has introduced a Code of Student Conduct. Once enrolled as a student, any anti-social behaviour covered by the Code committed on- or off-site could be punished by the University. The Code may breach the right to freedom of expression, of movement, and of association under the Bill of Rights, and undermine the right to be free from double jeopardy.
[734] See http://www.tki.org.nz/r/socialscience/curriculum/SSOL/
[735] See Human Rights Commission Race Relations Report 2005 at http://www.hrc.co.nz/home/hrc/newsandissues/racerelationsreporturgesaction.php and Managing Cultural Diversity in New Zealand secondary Schools 2005 at http://www.educationnz.org.nz/eeidf/ManagingCulturalDiversityfinal.pdf
[736] Evceptions include: 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 to prevent overcrowding and the child does not meet the criteria under the scheme; the school is one with a special character (eg religious or philosophical) and the parents do not meet the special character requirements; if it is a special school the parents must obtain the consent of the Secretary for Education.
[737] Education Act 1964, s 78.

particular class or subject on religious or cultural grounds.[739] The NZHRC has received complaints regarding the wearing of religious dress in schools.

Adaptability

While there is no minimum age of employment in New Zealand, attendance at primary and secondary school is compulsory until the child is 16 years old. 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.[740] The minimum age of criminal responsibility in New Zealand is ten years of age. [741] The prosecution of children normally takes place in a separate youth justice system, except for murder and manslaughter prosecutions.[742] The youth justice system operates on the principle that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter.[743] The Youth Court is part of the District Court and only deals with young persons aged up to 16 years of age. The Court has specially appointed judges who are used to dealing with young persons. A young person may only be charged in the Youth Court if they have been arrested or if a Family Group Conference has met and decided that a charge should be laid.[744] The Court will appoint a youth advocate if the young person does not have a lawyer.[745] The Court may appoint a lay advocate such as a family or whanau member who has, by reason of personality, cultural background, knowledge, and experience, sufficient standing in the culture of the young person to appear in support of the young person.[746] While the Youth Court hears most cases to do with young persons, exceptions include where the young person is charged with murder and manslaughter, and where a young person elects trial by jury or the

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[738] The Private Schools Conditional Integration Act 1975, s 32.
[739] For example parents may request that their child be excluded from tuition in specified parts of the health curriculum that relate to sexuality education.
[740] Regulation 54 of the Health and Safety in Employment Regulations 1995 provides that every employer must ensure that no employee under the age of 15 works in an area where goods are manufactured, or where construction work or logging work is undertaken, or where harm is likely to the health or safety of that young person. However, young persons under the age of 15 are eligible to work in office areas or areas that are only used for the sale of goods and services. The Regulations provide a safeguard against child labour.
[741] The Crimes Act 1961, s 21. However, s 22 provides that no person shall be convicted of an offence by reason of any act done or omitted by him when between the ages of 10 and 14 years, unless he knew either that the act or omission was wrong or that it was contrary to law.
[742] Children, Young Persons, and their Families Act 1989, s 272(1). The Act established graduated minimum ages for criminal prosecution limiting the number of children under the age of 17 years who are called to account in an adult setting for any offending.
[743] Children, Young Persons, and their Families Act 1989, s 208.
[744] Children, Young Persons, and their Families Act 1989, s 245.
[745] Children, Young Persons, and their Families Act 1989, s 159.
[746] Children, Young Persons, and their Families Act 1989, s 163.

Court discharges the case.[747] In any case where the young person is going to be tried in an adult court the preliminary hearing of the charge still takes place before a Youth Court.[748]

The New Zealand Parliament's Law and Order 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,[749] 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. The Bill is not sponsored by the Government; it was put forward by a private member of Parliament. The Minstry of Justice has advised the Attorney-General that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. The Bill was debated in Parliament and subsequently passed to Select Committee stage, giving members of the public a chance to comment. However, there is significant opposition to the Bill because of the serious implications it would have for child offenders.

In some urban areas opportunities exist for families to send their daughters to single-sex schools. Female students are out-performing boys in many areas in senior secondary schools. In 2004 women represented 58.3 per cent of tertiary education enrolments and 63 per cent of enrolments in Adult and Community Education. 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.[750] People under 18 years of age, who are not widowed, require the consent of parents or guardian.[751] In the absence of a parent of guardian, consent may be sought from a relative acting in the place of a parent or from a Family Court Judge.[752] Under the *Civil Union Act* 2004, a person who has not reached 16 years of age is prohibited from entering a civil union.[753] The minimum age of consent for sexual connection whether heterosexual or homosexual is 16 years of age.[754]

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[747] Children, Young Persons, and their Families Act 1989, s 273. A person may elect trial by jury if the offence is punishable by a term of imprisonment exceeding 3 months under s 66 of the Summary Proceedings Act 1957.
[748] Children, Young Persons, and their Families Act 1989, s 274.
[749] Doli incapax is the maximum age of presumption against criminal responsibility.
[750] Marriage Act 1955, s 17
[751] Marriage Act 1955, s 18 and Marriage Amendment Act 2005, s 3
[752] Marriage Act 1955, s 18(6)
[753] Civil Union Act 2004, s 7
[754] Civil Union Act 2004, s 7. The Civil Union Act provides the criteria, rules and processes for two people to have their relationship solemnised as a civil union (by way of formal ceremony) and officially registered in New Zealand. A civil union may be entered into by couples of the same sex or different sexes. Source: Department of Internal Affairs.

Although the *Education Act* recognises the equal right of students with special educational needs to participate in education,[755] the NZHRC, the Office of the Children's Commission and a number of disability-focused non-government agencies indicate that this is not a reality. Students with special needs experience difficulties with the attitudes and behaviour of staff and students who lack understanding of their needs, and are patronising or openly discriminatory. There are complaints of insufficient specialist services, equipment and lack of funding and a need for more specialist teachers to work with people with a range of disabilities. Parents can choose to send their child to a special school that is specifically equipped to support children with special educational needs, if the Secretary of Education agrees and the school is geographically accessible.[756] The statutory process of gaining the Secretary's approval aims to balance parental choice with the obligation of publicly funded schools to support the needs of all local students 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. Every school receives a Special Education Grant. Children with high and very high level needs may be individually resourced by the High Health Needs Fund in connection with the Ongoing and Reviewable Resourcing Scheme.[757] Resource Teachers provide advice and support to classroom teachers of students with moderate learning and behaviour needs. Direct support specialist services are available through Group Special Education. The government is currently conducting a review of Long-Term Disability Supports with a view to making recommendations to ensure overall coherency in government-provided Disability Supports. A small number of non-governmental organisations provide direct special education support. While tertiary institutions increased the rate of participation of people with disabilities, the NZHRC suggests that the development of best practice guidelines would ensure further progress. 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.

Justiciability

The Court of Appeal has considered the justiciability and nature of the right to education in the context of special needs education.[758] The plaintiffs were concerned that their children's

[755] Education Act 1989, s 8.
[756] Education Act, 1989, s 9.
[757] Funding schems such as the ORRS are contestable so that not all disabled children and young people have access to this funding.
[758] *Attorney-General v Daniels* [2003] 2 NZLR 742 (CA).

special educational needs were not being met since the disestablishment of special education facilities in favour of the incorporation of special needs students within the conventional school setting. The plaintiffs sought judicial review[759] of the Minster of Education's decision. The Court held that the Education Act explicitly guaranteed to special needs students the equal right to education but did not recognise a common law right to education.[760] The Court ruled that the Minister had improperly exercised his discretion in making his decision to disestablish the special classes, units and services.

The Ministry of Education monitors national education standards and achievement through the National Education Monitoring Project, covering all essential learning areas and skills in the curriculum. Boards of Trustees of primary and secondary schools formulate their own staff and student complaints procedures in relation to expulsion and other disciplinary measures, and must report annually on these matters to the Minister of Education. The New Zealand Qualifications Authority[761] may issue compliance notices to secondary school and post-school education providers regarding registrations, course approvals or accreditations. The Minister of Education is informed of any compliance failure and a report is tabled in Parliament. The Office of the Ombudsmen[762] may review any decision, recommendation, act or omission by a central or local government department or organisation affecting persons in their personal capacity. The Ombudsman may propose a range of recommendations relating to the complaint, but does not have the power to enforce them. Breaches of the HRA are subject to general remedies such as declarations,[763] restraining orders, damages and orders for specific performance.

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[759] Judicial review is review by the court of an administrative decision; an act or order taken by a government official or entity or some other legally appointed person or body. When conducting a judicial review, the court is concerned with the legality of the decision in terms of the process of decision-making, rather than the substance or merits of the decision itself.

[760] *Attorney-General v Daniels* (CA) at [69]. The Court of Appeal recognised a statutory right to education that comprised the right to receive an education, in accordance with the curriculum, until the age of 15.

[761] The NZQA quality-assures secondary and tertiary qualifications and education providers, evaluates overseas qualifications and administers the New Zealand Register of Quality Assured Qualifications, the National Qualifications Framework and the National Certificate of Educational Achievement.

[762] Ombudsmen are appointed by the New Zealand Parliament. Their primary purpose is to inquire into complaints raised against New Zealand central, regional and local government organisations or agencies. They are independent review authorities and are accountable to Parliament, not the Government of the day.

[763] 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. The Education Standards Act 2001 also ensures compliance with human rights standards particularly in areas of gender, marital status and disability.

Activities of the NZHRC

The primary functions of the NZHRC under the HRA are to promote respect for human rights and encourage harmonious relationships between individuals and among the diverse groups in New Zealand society. In 2001 the HRC's Complaints Division and related investigation functions were removed and replaced with an informal dispute resolution service.[764] However, the NZHRC may still appear or bring proceedings before a court or tribunal or apply to be appointed as an intervener in court proceedings, where doing so would facilitate the HRC's statutory functions.[765]

The NZHRC provides numerous human rights education programs, projects and activities in many areas of public and private life.[766] In the New Zealand Action Plan for Human Rights,[767] the NZHRC identified two specific projects for its education work programme: investigating the specific issue of costs as a barrier to the free and compulsory school sector; and encouraging early childhood centres and schools as human rights communities. The NZHRC provides annual reports on its activities and functions, and will commence reporting against the New Zealand Right to Education Framework in the 2007 Annual Report. The NZHRC has contributed to New Zealand's periodic treaty body reports by providing review and comments on the draft reports. Non-governmental organisations also invite the NZHRC to comment on their shadow reports.

[764] Human Rights Amendment Act 2001.
[765] Human Rights Act 1993, s 5(2)(i) and (j).
[766] See the Background Report on the Right to Education for more detail.
[767] Source: http://www.hrc.co.nz/report/actionplan

Palestine

ACJ Recommendations

The ACJ recommends that the Palestinian Independent Commission for Citizens' Rights (PICCR) urge its government to address the following issues:

- the need to minimise the imposition of school fees and other education costs on parents and students;
- the need to continue improving education infrastructure and facilities, including libraries, lecture halls, science laboratories, computer facilities, canteens and sports playgrounds;
- the need to improve the accessibility of the education system for students with disabilities through the upgrading of school buildings and facilities; training of additional special education teachers; provision of Braille printers and sign language facilities; provision of appropriate transport options such as appropriately equipped school buses; and the provision of access to extra-curricular activities;
- the need to adopt measures to reduce the level of drop-out rates by students; and
- the need to adopt measures to provide education opportunities for pregnant teenagers.

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.

With regards to Israel's responsibilities under international law as an occupying power, the Palestinian Independent Commission for Citizen's Rights (PICCR) has made the observation that 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. The PICCR says that as Israel continues to exercise effective control over the Occupied Territories it is therefore responsible for implementing its obligations under international human rights law. [768]

[768] 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

National Law

The 'constitution' governing the Palestinian Territories is the *Palestinian Basic Law 2003*. The right to education is guaranteed under Article 24(1) of the *Basic Law* which stipulates "[e]very 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." Article 9 of the Basic Law also provides that "[a]ll 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 18 October 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.

Achievement of the Right to Education

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; (2) education as a basic component of citizenship; (3) education as a tool for social and economic development; (4) education as the basis for social and moral values and democracy; and (5) education as a continuous, renewable, participatory process.

Availability

The availability of education in the Palestinian Territories can be measured in part by the government's expenditure and education funding models. The Palestinian Authority's

education budget for 2005 was more than $USD293m, as reported by the Ministry of Finance, representing more than fourteen per cent of the overall budget and second only to the budget of the Ministry of Interior (which includes the security agencies). UNRWA's education budget for 2005, covering the West Bank and Gaza was more than $USD97.8m. 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.

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.[769] Exemptions are provided for cases of financial hardship. Schools also receive financial and in-kind support from the local community. UNWRA 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.

The Palestinian Authority's capacity to support the higher education sector has declined significantly as it has faced increased financial constraints.[770] The Ministry of Higher Education and Scientific Research has developed a financing strategy designed to make universities more self-sufficient. A "Budget Trade-off Model" requires universities 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.

The Ministry of Education and Higher Education continued its 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

[769] 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.
[770] 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.

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. Since 1994 the Ministry of Education has built an additional 484 schools (a 53.8 per cent increase) and has increased the public school population from 418,807 in 1994/1995 to 729,340 in 2004/2005 (a 68.9 per cent increase). The average annual school population growth is 6.9 per cent (for the secondary school cycle it is 13.5 per cent). Approximately 98 per cent of school-aged children are currently enrolled in the compulsory education cycle. Although there have been significant infrastructure improvements over the last decade, there is still a large number of schools that do not have libraries, lecture halls, science laboratories, computer facilities, canteens and sports playgrounds. Although the practice of running three daily class shifts in schools has been eliminated, approximately 25 per cent of schools continue to run on a double shift basis.

The number of teachers in Palestinian schools increased from 19,844 in 1994 to 38,907 in 2005, an overall increase of 87.5 per cent. The average ratio of pupils to teacher is 26.8. In the period 1994-2005, the appointment of teachers with two-year diplomas *decreased* from 64.1 per cent to 35.3 per cent and the appointment of teachers with bachelor degrees *increased* from 54.8 per cent to 64.5 per cent. In terms of gender break-down, 45.9 per cent of school teachers are male and 54.1 per cent are females.

Accessibility

The PICCR has noted that there are substantive disparities in the accessibility of education between 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.

Education opportunities for people living with disabilities in the Palestinian Territories remain unsatisfactory. 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 has observed

that government schools lack a special manual to inform disabled students on the requirements of the academic assessment process and has recommended that such a manual can be prepared in either an audible format 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.

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.

The PICCR reports that 38 per cent of schools are located in major urban areas, 51.3 per cent are located in villages and 10.7 per cent 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 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.

With regards to economic accessibility, 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 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 is of two years duration (grades 11 and 12) and although

it is not compulsory, it is however free. 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 vary from one faculty to the other, with science colleges being the most expensive. In 2001 the Ministry introduced the Students Revolving Lending Fund to which students can 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.

Acceptability

Quality education and minimum standards are enforced in the Palestinian Territories by the Ministry of Education and UNRWA. 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 Ministry employs only qualified university graduates in the education sector and 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. 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.[771]

Although there is no law or administrative regulations prohibiting the use of corporal punishment in public schools, 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.

With regards to curriculum development, the PICCR reports that the Ministry of Education adopted a participatory approach. Political representatives, educators, civil society organisations and others are involved in the Ministry's consultations. 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. 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.

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 prefer to have their children educated in local areas. 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.

Adaptability

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.. With a starting age of 5 years and basic compulsory education in Palestine covers ten years of schooling, the effective minimum age for employment is therefore 15 years of age. The phenomenon of early school-leavers is not currently a significant problem, with a recent decline in drop-out rates attributed to external factors such as a lack of employment opportunities due to border closures and operations of the Israeli military. The PICCR has however expressed a concern that the drop-out rate may increase once again unless specific policies are adopted by the Ministry of Education. The PICCR recommends the main priority is to introduce legislation to prevent dropping out from the basic education stage, with penalties to be imposed on the students' parents if they force their sons or

[771] Metagora Project, < http://www.metagora.org/html/index.html>

daughters to drop out from compulsory schooling. 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. 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.

Justiciability

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. 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 restrictions on the freedom of movement, 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.

Activities of the PICCR

The PICCR has a broad mandate to address all cases of human rights violations. 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 infrastructure; the imposition of excessive 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.

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. The PICCR observed however that much remains to be done and recommended 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.

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.

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. The PICCR reported that the right to education had suffered under occupation by Israel. Students, teachers and education staff are often barred from crossing check-points or leaving their towns, often facing 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

Philippines

ACJ Recommendations

The ACJ recommends that the Commission on Human Rights of the Philippines (CHRP) urge its government to address the following issues:

- the necessity to allocate additional budget resources to the education sector and to minimise the imposition of fees and additional costs on parents;
- the need to adopt measures to improve the participation of boys and men at all levels of the education system;
- the need to adopt measures to improve physical access to schools and other educational institutions, particularly in rural and remote communities; and
- the need to adopt measures to minimise child labour and to provide educational opportunities for working children.

International Law

The Philippines is a party to the ICESCR,[772] CERD,[773] CEDAW,[774] CRC,[775] the UNESCO Convention Against Discrimination in Education,[776] the ILO Minimum Age Convention[777] and the Worst Forms of Child Labour Convention.[778]

National Law

The right to education is provided for under Article XIV (Section 1) of the *Constitution of the Philippines 1987*, which stipulates "[t]he 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" and Section 2(2) which provides that the State shall "[e]stablish and maintain a system of free public education in the elementary and high school levels" and that "elementary education is compulsory for all children of school age." These constitutional provisions are supplemented by section 2 of the *Free Public Secondary Education Act of 1988* (Republic Act No. 6655) which stipulates "[i]t is the policy of the State to provide for a

[772] The Philippines ratified the ICESCR on 7 June 1974.
[773] The Philippines ratified the CERD on 15 September 1967.
[774] The Philippines ratified the CEDAW on 5 August 1981.
[775] The Philippines ratified the CRC on 21 August 1990.
[776] The Philippines ratified the Convention Against Discrimination in Education on 19 November 1964.
[777] The Philippines ratified the Minimum Age Convention on 4 June 1998.
[778] The Philippines ratified the Worst Forms of Child Labour Convention on 28 November 2000.

free public secondary education to all qualified citizens and to promote quality education at all levels."

Achievement of the Right to Education

The framework of the education policies and programs of the Philippines Government is shaped by the provisions of the *Constitution* relating to the right to education, including Article II (Section 17), Article VI (Section 28(3) and Article XIV (Sections 1-5, 18).

Availability

The availability of education in the Philippines can be measured in part by government expenditure and education funding models. The approach to education funding is guided by section 4(2) of Article XIV of the *Constitution* which requires educational institutions to be solely owned by Filipino citizens or corporations or associations comprised of at least 60 per cent Philippines-owned capital.[779] The Commission on Human Rights of the Philippines (CHRP) reports that the Philippines Government 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 per cent during the period 2000-2004.

Responsibility for the development of education infrastructure is shared by 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 are also responsible for the construction and repair of classrooms and school-buildings located within their jurisdiction. The Countrywide Development Fund and the Priority Development Assistance Fund enables members of the Philippines Senate and the House of Representatives to fund school infrastructure projects

within their electorates. Other initiatives include the Department of Labour and Employment's *Classroom Galing sa Mamamayang Pilipino Abroad* (CGMA) project which constructs classrooms with contributions from expatriate Filipinos. The Department of Education operates the Adopt-A-School Program, the objective of which is to generate private sector support for the public basic education system. The Department of Education's Brigada Eskwela (School Brigade) programme uses community volunteers to maintain school infrastructure. The Armed Forces of the Philippines have also been involved in school construction projects.

With regards to the availability of 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. Centers of Excellence in Teacher Education have been established to improve the quality and the competence of the teaching profession. 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. 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.

The Department of Education conducts regular in-service training for teachers at the division and regional levels. 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.

Accessibility

The government provides, through the Department of Education, the Commission on Higher Education (CHED), and the Technical Education and Skills Development Authority

[779] Exceptions apply to educational institutions operated by religious institutions and institutions for the education of temporary foreign residents.

(TESDA), special educational services including non-formal education, technical-vocational education, work education, and special 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 provided for out-of-school youths and adults in remote communities. The government administers the Philippine Education Placement Test (PEPT) for young adults who may not have completed their school education. PEPT measures and accredits the non-formal learning experiences of the out-of-school youth so that the can qualify for re-entry and placement in the formal school system. The *Select Ethnic Group Educational Assistance Program* provides adult education programmes for indigenous communities, with basic literacy and mathematics classes. An alternative education programme for indigenous children has been developed by the Department of Education.

With regards to gender parity and gender equality, 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.

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. 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) has been established 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.

In terms of economic accessibility, Article XIV, Section 2 of the *Constitution* provides that "[t]he State shall establish and maintain a system of free public education in the elementary and high school levels." 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.[780] The Bureau has a number of key programs and projects which are designed to improve access to education for students in remote areas, for students with disabilities and for students with special education needs.

The Bureau of Secondary Education 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.[781] The Bureau's key programs and projects relevant to economic accessibility to secondary education include: GASTPE (Government Assistance to Student and Teachers in Private Education); Self-Instructional Packages in SRA (Social Reform Agenda) Provinces; Back to School for Out-Of-School Adults (BP-OSA) and Project EASE (Effective and Affordable Secondary 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 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

[780] <http://www.deped.gov.ph/about_deped/organizationlinks.asp?id=11>
[781] <http://www.deped.gov.ph/about_deped/organizationlinks.asp?id=12>

institutions however suffer from inadequate and under-resourced teaching faculty and facilities, impacting on the quality of education.

Acceptability

Quality education and minimum standards are enforced in the Philippines by national institutions and specialised agencies. These include: 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). 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.

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, exploitation and discrimination, including by teachers, and provides for intervention by the State as required.

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.

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 that schools and other organisations involved in non-formal education shall assist parents to provide the best education for their children. Article 77 of the Decree provides for the establishment and operation of Parent-Teacher Associations. With regards to religious practices, Article 15 of the Decree encourages the promotion of "the child's spiritual well-being according to the precepts of his religion."

Adaptability

The CHRP reports that there have been a number of initiatives aimed at improving the capacity of disadvantaged groups to receive an education. The introduction of the *Free Public Secondary Education Act* (Republic Act No. 6655) in 1998, combined with an effective public advocacy campaign aimed at curtailing child labour, reportedly resulted in a reduction in the number of working children from 932,000 in 1996 to 831,000 in 1998. 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 years of age are not permitted to be employed except where they work under the sole responsibility of a parent or legal guardian who is required to provide the required primary and/or secondary education.

In a joint undertaking, the Department of Labour and Employment, the Department of Education and the Department of Finance have developed the Special Program for Students (SPES), the objective of which 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.

There are a large number of special programmes and initiatives designed to encourage and enable women to access education. 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. The TESDA Women's Center is another initiative which 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 Productivity Skills Capability Building for Disadvantaged Women, coordinated by the Department of Social Welfare and Development, provides skills training in sewing, rattan and toy crafts, food processing and preservation, ceramics, loom weaving, and home aide service. It also provides opportunities 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.

Responsibility for special needs education rests with the Special Education Division of the Bureau of Elementary Education.[782] 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-

[782] http://www.deped.gov.ph/quicklinks/quicklinks2.asp?id=34

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 distributes Braille books and supplies to schools with programs for the visually impaired students.

Justiciability

Philippines jurisprudence has emphasised the importance of the right to education as articulated in the *Constitution*.

In relation to education expenditure, the Supreme Court of the Philippines held in *Guingona v Caragüe, 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.

The Supreme Court has also recognised the importance of quality education. 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.

In relation to the imposition of disciplinary sanctions on students, the Supreme Court held in *Guzman v National University, 142 SCRA 69* (reiterated in *Ateneo de Manila University v Capulong, supra*) articulated minimum standards of procedural due process must be satisfied, the requirements of which included: students to be informed in writing of the nature and cause of the accusation against them; the right of students to answer charges against them; the right to be informed of the evidence against them; and the right to adduce evidence on their own behalf.

Activities of the CHRP

In accordance with Article XIII, Section 18(7) of the *Constitution,* the CHRP has a mandate to conduct monitoring activities relevant to the protection and promotion of economic, social and cultural rights. The CHRP reports that 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 also reviews legislation and government policies and practices that impact upon the realisation of the right to education.

Since 1998 the CHRP has produced a standardised General Human Rights Curriculum and has developed specialised Human Rights Education and Training Programs. 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. In conducting its training programs the CHRP has focused on delivering training for the police service and armed forces and also to university academics.

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. 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.

ACJ Recommendations

The ACJ recommends that the National Human Rights Committee of Qatar (NHRCQ) urge its government to address the following issues:

- consider signing the ICESCR, CEDAW and the UNESCO Convention Against Discrimination in Education;
- the need to adopt measures to improve the availability of information on education expenditure;
- the need to adopt measures to eliminate the use of corporal punishment in schools and other educational institutions and to encourage the use of alternative non-violent forms of discipline; and
- the need to adopt measures to reform the education curriculum and teaching methodology, taking into account the development of and respect for human rights, tolerance and equality of the sexes and religious and ethnic minorities.

International Law

Qatar is a party to the CERD,[783] the CRC,[784] the ILO Minimum Age Convention[785] and the Worst Forms of Child Labour Convention.[786] Qatar is not a party to the ICESCR, CEDAW or the UNESCO Convention Against Discrimination in Education.

National Law

The right to education in Qatar is guaranteed under article 49 of the *Permanent Constitution of the State of Qatar of 2003*[787] which 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.

[783] Qatar acceded to the CERD on 22 July 1976.
[784] Qatar ratified the CRC on 3 April 1995.
[785] Qatar ratified the Minimum Age Convention on 3 January 2006.
[786] Qatar ratified the Worst Forms of Child Labour Convention on 30 May 2000.
[787] *Permanent Constitutio6-8n of the State of Qatar of 2003* (English translation, Ministry of Foreign Affairs of Qatar) <http://english.mofa.gov.qa/details.cfm?id=80>

This constitutional right is underpinned by the general principle in relation to education, as articulated in article 25 of the *Constitution*, which states:

> 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 a number of public rights and duties relevant to the right to education, including: 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); and freedom of religion (Article 50). 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.

Availability

The availability of education in Qatar can be measured in part by government expenditure and education funding models. 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.

Up-to-date information on education expenditure is not readily accessible.[788] 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.[789] In the period 1996-1999, expenditure on education was reported as accounting for 17.9 percent of the government's total expenditure.[790]

[788] Recent UNESCO statistics on education expenditure do not include data for Qatar. See Appendix 7.
[789] Op cit, Report of the Supreme Council for Family Affairs, p4
[790] Ibid

Qatar Government spending on education (Qatari riyals)			
Year **Expenditure**	**1996/1997**	**1997/1998**	**1998/1999**
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 Children's 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.[791]

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 an office in Doha, Qatar which opened in 1976 and represents UNESCO in Bahrain, Kuwait, Oman, Saudi Arabia and Qatar.

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.

Accessibility

The NHRCQ observes that government schools are available and accessible to all individuals and are not permitted to discriminate on the basis of sex, race, language or religion, in accordance with article 35 of the *Constitution*.

The NHRCQ reports that physical access to schools is not a significant challenge because most government schools in Qatar provide bus transport services for students.

[791] Committee on the Rights of the Child, *Concluding Observations: Qatar*, CRC/C/15/Add.163, 6 November 2001

Information about the economic accessibility of education is not readily available. The Government of Qatar has however described to the Committee on the Elimination Against Racial Discrimination (CERD) the existence of education fees:

> Education is basically free of charge, its cost being met from the State budget with the exception of some minor fees which were recently imposed due to the difficult economic circumstances that the State faced in the last few years. These fees, consisting of nominal amounts for educational services provided, are charged in respect of the children of foreign residents.[792]

The NHRCQ advises that there are fees imposed for higher education. Community Learning Centres operate non-formal education programmes and are open to the public. Literacy courses are available free of charge.

Acceptability

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.

The Children's Committee 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.[793]

The Committee has also made a number of observations and recommendations relevant to consideration of the education curriculum in Qatar:

> 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

[792] UN Doc. CERD/C/360/Add 1 (2001), para 58
[793] Committee on the Rights of the Child, *Concluding Observations: Qatar*, CRC/C/15/Add.163, 6 November 2001

> (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.

Adaptability

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."[794]

In relation to education for girls and women, in its report to the Children's Committee 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.[795]

With regards to special needs education, in its report to the Children's Committee, the Supreme Council for Family Affairs noted that the achievements of its National Committee for Persons with Special Needs included "efforts to integrate persons with special needs into society."[796] 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).[797]

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

[794] 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>
[795] Ibid, p18.
[796] Ibid
[797] Ibid, p25.

> 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.[798]

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)[799]

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

[798] Ibid, p27.
[799] 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.

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.[800]

[800] 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>

ACJ Recommendations

The ACJ recommends that the National Human Rights Commission of the Republic of Korea (NHRCK) urge its government to address the following issues:

- the need to consider signing the UNESCO Convention Against Discrimination in Education;
- the need to adopt measures to minimise parents' burden of educational costs;
- the need to adopt measures to ensure access to education in rural and remote areas;
- the need to incorporate human rights education in the curriculum; and
- the need to adopt measures to eliminate corporal punishment in schools and to encourage non-violent forms of discipline.

International Law

The Republic of Korea is a party to the ICESCR,[801] CERD,[802] CEDAW,[803] CRC,[804] the ILO Minimum Age Convention[805] and the Worst Forms of Child Labour Convention.[806] Korea is not a party to the UNESCO Convention Against Discrimination in Education.

National Law

The right to education is guaranteed by Article 31 of the *Constitution of the Republic of Korea 1987*, which stipulates that "[a]ll citizens shall have an equal right to education corresponding to their abilities"[807] and that "[c]ompulsory education shall be free of charge."[808] Article 11(1) of the *Constitution* provides that "[a]ll citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on the grounds of sex, religion or social status." Article 8 of the *Framework Act on Education (Amended in 2005, Act No. 7685)* and Article 12 of the *Elementary and Secondary Education*

[801] Korea acceded to the ICESCR on 10 November 1990.
[802] Korea ratified the CERD on 5 December 1978.
[803] Korea ratified the CEDAW on 27 December 1984.
[804] Korea ratified the CRC on 20 November 1991.
[805] Korea ratified the Minimum Age Convention on 28 January 1999.
[806] Korea ratified the Worst Forms of Child Labour Convention on 29 March 2001.
[807] *Constitution of the Republic of Korea 1987*, Article 31(1)
[808] *Constitution of the Republic of Korea 1987*, Article 31(3)

Act (Amended in 2005, Act No. 7802) contain provisions for compulsory primary and secondary education.

Achievement of the Right to Education

Education nationwide is governed at three levels: the Ministry of Education and Human Resources Development at the national level; superintendents of education at the provincial and metropolitan levels; and district boards of education at the local level. The Ministry plans and coordinates education policies, publishes school textbooks, provides administrative and financial support to educational institutions including national universities, operates teacher training systems, and develops human resource policies. Subsidiary organizations of the Ministry include the National Institute of Korean History, the National Institute for International Education Development, the Appeal Commission for Teachers, and the Korea Institute for Special Education. The Ministry also supervises the National Academy of Sciences.

The education system in the Republic of Korea consists of non-compulsory pre-school; compulsory elementary school (6 years); compulsory middle school (3 years); high school (3 years), and either four-year university or two to three-year junior college and vocational college. High school students study in either general high schools or vocational high schools. Tertiary education institutions include four-year universities, two-year vocational colleges, open universities, and other schools equivalent to college level such as nursing schools and theological seminaries.

Availability

The availability of education in Korea can be measured in part by government expenditure and education funding models. Main sources of education funding are revenues of central and local governments, and the independent resources of private institutions. Reliance upon the payment of school fees by parents remains high.

The education budget of the central government funds the Ministry of Education and Human Resources Development, which governs primary and secondary school education and the administration of teacher salaries. The education budget covers the operational funding of national universities and financial support for private universities, research institutions and educational administrative organizations. The education budget of local governments, which

is earmarked mostly for elementary and secondary education, comes primarily from subsidies disbursed by the central government. According to the statistical note of the Ministry of Education and Human Resources Development, the total revenue of the 16 provincial and metropolitan governments for education in 2006 estimates 31.14 trillion KRW (approximately 31.14 billion USD).

Private institutions exist at all levels of education from elementary school to college. Particularly, private institutions are prevailing at the tertiary level, taking up to almost 80 percent of junior colleges and universities. Private schools are funded through tuition fees, financial support from central or local governments, and resources from school foundations. The government has exempted private schools from taxes for the purpose of acquisition and sale of properties, and has provided subsidies to cover shortfalls in remuneration and operating costs. Loans are provided to help private schools with expansion and renovation of facilities. The government increasingly offers research grants, scholarships, annuities as well as financial support for student activities.

According to *Brief Statistics on Korean Education of 2005* published by Korean Educational Development Institute, the ratio of students to teaching staff in educational institutions estimates 17.5 in kindergartens, 25.1 in elementary schools, 19.4 in middle schools and 15.1 in high schools. Article 31(6) of the *Constitution* provides that fundamental matters relating to the status of teachers shall be determined by law. Articles 13 and 80 of the *Framework Act on Education* enunciate that the economic and social conditions of teachers shall be respected in the proper way and their status shall be duly guaranteed. Teachers in primary and secondary education enjoy lifetime employment until they reach the legal retirement age of 65, and they are entitled to a special social security scheme provided under a series of law including the *Educational Civil Servant Act*, the *Medical Security Act for Civil Servants and Private School Teaching Staff*, the *Civil Servant Pension Act,* and *the Pension Act for Private School Teaching Staff.*

Accessibility

The government has developed and implemented non-discrimination policies to address the right to education for children with disabilities, children in remote areas, and children of mixed race and migrant workers. The Ministry of Education and Human Resources Development has directed primary and middle schools to enrol non-nationals including children of refugees and undocumented migrants to ensure their access to free education. In light of this, the Ministry of Justice has granted temporary visas to enable school enrolment.

Education is available to those held in prison or juvenile protection facilities. The inmates in those facilities can benefit from educational curriculum that includes general subjects, arts, information technology and foreign languages. To narrow the education gap between different socio-economic groups and between urban and rural areas, the Ministry of Education and Human Resources Development has developed an 'e-learning system' and a cyber schooling program. The Ministry intends to tackle the high costs incurred to households due to private schooling by providing such online public education programs.

According to the analysis of Ministry of Education and Human Resources Development in its "5-Year Plan of Participatory Welfare(2004)", significant population decline in the agricultural and fishing areas led to 14.5 percent decrease in the student population from 1.45 million to 1.24 million students in these communities between 1999 and 2003. In these areas, as a result, "downsized" schools became prevalent, accounting for more than 43 per cent of all schools in agricultural and finishing province. Students of different grades are often put in one classroom. The availability of teachers has also been a big challenge in such schools, resulting in employment of under-qualified teachers. Students are therefore placed in a situation where they are not receiving the education of good quality to which they are entitled, thereby putting at risk their academic growth. In response, the government has been merging the "downsized" schools lodged in vicinity.

Admission fees, tuition, and textbooks are free of charge under the free and compulsory primary and secondary education scheme in Korea. However, it does not cover other expenses such as meals and transport. It was year 2004 when middle school education became free and compulsory. The NHRCK reports that in 2004 the government spent 7.869 billion KRW (approximately 7.869 million USD) on admission fees and tuition and 473 million KRW (approximately 0.473 million USD) on textbooks. Higher secondary school is currently neither free nor compulsory. Most of tertiary education institutions are private institutions, and tuition fees are relatively high. In case of medical colleges, the tuition costs more than 10 million KRW (approximately 10,000 USD) per year. Under Article 28 of the *Framework Act on Education*, the government is responsible for the provision of scholarships to support students who have financial difficulties in paying tuition.

Acceptability

The government focuses on the training of teachers to ensure quality education. While 'national universities of education' are designed to grow primary school teachers, aspiring

secondary school teachers receive their training in education colleges or graduate schools of education in regular universities. The government funds the training programs and is making efforts to build a quality assurance training system. The government is also expanding distance training programs and offers training opportunities abroad.

The Ministry of Education and Human Resources Development is responsible for the development of primary and secondary curriculum and textbooks. By virtue of *Regulations on the textbooks* (Regulation No.18429) and *Regulations on the Curriculum* (Regulation No. 19193), the government established the 'Deliberation Committee for Textbooks' and 'Deliberation Committee for Curriculum' respectively. The Committees study, develop and implement the school curriculum in accordance with the *Primary and Secondary Education Act*. The current school curriculum, revised in 1997, introduces ten basic subjects, individual projects and special activities to set up a ten-year education continuum from the first year of elementary school to the first year of high school. It also includes new elective subjects for the final two years of high school that are devised to usher students into discovering their interests and options for future careers. The National Human Rights Commission of Korea (hereinafter, the NHRCK) notes that the Ministry of Education and Human Resources Development is considering revising the current primary and secondary school curriculum to incorporate human rights education components in it. The NHRCK currently provides human rights educative materials to primary and secondary schools.

The disciplinary measures including corporal punishment are guided by Article 18(1) of the *Primary and Secondary Education Act* and Article 31 of the *Enforcement Decree of the Primary and Secondary Education Act.* The NHRCK has recommended that the Ministry of Education and Human Resources Development forbid all types of corporal punishment and guide 'school regulations on student life' to ensure that the rights of students are respected in accordance with the *Convention on the Rights of the Child*. In 2004, the Supreme Court ruled that corporal punishment was acceptable "on the exceptional situations in accordance with principles of proportionality and necessity, as last resort for the purpose of educational discipline." Although surveys have shown that more than half of respondent schools prohibit corporal punishment, excessive corporal punishment still exists. Some call for an explicit prohibition of corporal punishment.

Adaptability

Under Article 13(3) of the *Primary and Secondary Education Act,* the minimum age to complete compulsory secondary education, referred to as 'middle school', is generally 15

years of age. Under Article 62 of the *Labour Standards Act,* the minimum age of employment is 15 years. For those students who have reached the regular school age and have not yet completed their school education, the civic school system provides education opportunities, as stipulated under Articles 40 and 44 of the *Primary and Secondary Education Act*. In order to support working students who cannot afford the high school fees, alternative educational programs such as 'open high schools' or high school programmes affiliated to workplaces are available. (*Primary and Secondary Education Act*, Articles 51 and 52). According to the *Analysis of Education Statistics 2005* published by Korean Educational Development Institute, there are 39 open high schools with 13,085 students, and 9 schools affiliated with industrial firms with 525 students and 19 special courses also affiliated with industrial firms with 1,104 students.

The *Framework Act on Education* stipulates non-discrimination based on sex. The government has established a Deliberation Committee on Gender Equality in Education to promote the gender-specific curriculum.

The *Framework Act on Education* (Articles 143-145) and the *Special Education Promotion Act* provide an overall education system for the children with disabilities. Since 2003, vocational training in special education institutions has been provided to students with disabilities to help them secure jobs. The Ministry of Education and Human Resources Development is trying to amend the *Special Education Promotion Act* to provide compulsory and free education from kindergarten to high school for children with disabilities.

Activities of the NHRCK

The National Human Rights Commission of Korea (NHRCK) was established under the *National Human Rights Commission Act of* 2001. It is mandated to promote and protect human rights in all aspects of life by receiving individual complaints of human rights violations, and resultant investigation and remedial measures. It also examines domestic legislation, judicial systems, policies and practices and recommends the modification in favour of human rights. The NHRCK is also tasked to monitor the domestic implementation of international human rights treaties, and to cooperate with international human rights organizations and national human rights institutions worldwide.

The NHRCK has proceeded with a number of inquiries relating to the right to education. In 2006, it surveyed human rights conditions in middle and high schools. In a 2005 research report on the status on the education of school age children with disabilities, the NHRCK

recommended that the government provide training for teachers to boost their sensitivity to the needs of students with disabilities and to improve their capacity to embrace these students in regular schools. A 2004 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*, reviewed the status of the right to education and the availability of measures to promote and protect the right to education. A 2002 report, *Research on Human Rights Sensitivity of Teachers,* identified a lack of knowledge on human rights amongst teachers, and recommended that they be given the opportunities to undertake further study and participate in professional development programs to improve their skills in this area.

The NHRCK regularly reviews laws, policies and practices to assess their impact on the right to education. For example, in January 2006, the NHRCK recommended in the National Action Plan on Human Rights that the government ensure the education opportunities for people with disabilities and people from low income groups to participate in certain forms of education including skills training.

Since its inception, the NHRCK has conducted a wide range of human rights education activities. Strategically, it has advocated for the introduction of legislation to guarantee the inclusion of human rights education into the formal school curriculum, and it also recommended the codification of human rights education in law. The NHRCK continues to develop human rights education programmes and materials; expands human rights activities in schools; collects information on human rights education practices; and conducts human rights training for teachers and education practitioners. The NHRCK has established a special section on its website for human rights education[809] as well as a website for vision-impaired users.

[809] Please refer to the NHRCK website at: http://edu.humanrights.go.kr

Sri Lanka[810]

ACJ Recommendations

The ACJ recommends that the Human Rights Commission of Sri Lanka (HRCSL) urge its government to address the following issues:

- the need to adopt measures to address regional imbalances in school facilities and to improve the quality and availability of teachers and support staff;
- the need to adopt measures to ensure that internally displaced persons have access to education opportunities;
- the need to adopt measures to eliminate the use of corporal punishment in schools and other educational institutions and to encourage the use of alternative non-violent forms of discipline.
- the need to adopt measures to incorporate human rights education into the national curriculum;
- the need to adopt measures to minimise child labour and to provide educational opportunities for working children, including young mothers;
- consider increasing the minimum age of criminal responsibility to an internationally acceptable level; and
- the need to adopt measures to improve access to special education schools and programmes, particularly for students with disabilities.

International Law

Sri Lanka is a party to the ICESCR,[811] CERD,[812] CEDAW,[813] CRC,[814] the UNESCO Convention Against Discrimination in Education,[815] the ILO Minimum Age Convention[816] and the Worst Forms of Child Labour Convention.[817]

[810] 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)
[811] Sri Lanka acceded to the ICESCR on11 June 1980.
[812] Sri Lanka acceded to the CERD on 18 February 1982.
[813] Sri Lanka ratified the CEDAW on 5 October 1981.
[814] Sri Lanka ratified the CRC on 12 July 1991.
[815] Sri Lanka ratified the Convention Against Discrimination in Education on 11 August 1983.
[816] Sri Lanka ratified the Minimum Age Convention on 11 February 2000.

National Law

The legal foundation for the right to education is contained in Article 27(2)(h) of the *Constitution of the Democratic Socialist Republic of Sri Lanka* (1978) which stipulates

> the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels.

Other provisions of the Constitution relevant to the right to education are directed to the language of instruction (Article 21) and non-discrimination and access for all (Article 12). Article 12 articulates the 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.

In relation to equality of opportunity, Article 27(6) stipulates:

> 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.

Achievement of the Right to Education

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**
>
> …
>
> 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 …. 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.
>
> The schools in Sri Lanka can be divided in to two categories as non-government and government schools. Non-government schools consist of estate schools, pirivenas, special

[817] Sri Lanka ratified the Worst Forms of Child Labour Convention on 1 March 2001.

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 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.

(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 13th 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. [818]

Availability

The availability of education in Sri Lanka can be measured in part by government expenditure and education funding models. 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:

[818] *EFA 2000 Assessment* (Sri Lanka), Part 1 (d)-(e) and (h)

> 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. [819]

With regard to the adequacy of education infrastructure, in its report to the Committee on the Elimination of Racial Discrimination in November 2000, Sri Lanka observed that there were regional imbalances in school facilities as well as noting the poor quality and inadequacy of teaching and support staff. [820]

Accessibility

In May 2002 the CEDAW Committee reported upon and noted Sri Lanka's progress with regard to gender parity in education. 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.[821]

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.[822]

With regards to physical accessibility 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

[819] *EFA 2000 Assessment* (Sri Lanka), Part 1.7
[820] CERD/C/357/Add.3. 20 November 2000, para 148-149

[821] A/57/38. 7 May 2002, para 271
[822] A/57/38. 7 May 2002, para 280

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.[823]

With regards to economic accessibility, in its report to the CERD Committee in November 2000, Sri Lanka observed:

> 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. [824]

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. [825]

Acceptability

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:

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[823] *EFA 2000 Assessment* (Sri Lanka), Part 1.4
[824] CERD/C/357/Add. 3, 20 November, 2000, para 146
[825] *EFA 2000 Assessment* (Sri Lanka), Part 1(f)

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) [826]

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

[826] *EFA 2000 Assessment* (Sri Lanka), Part 1.4

quantitative expansion (except at the upper, secondary and tertiary levels) to quality improvement in the education sector. [827]

In relation to the use of discipline in schools, in July 2003 the Children's Committee 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.[828]

With regards to curriculum development, 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 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

[827] *EFA 2000 Assessment* (Sri Lanka), Part 2
[828] CRC/C70/Add. 17, 19 November, 2002, para 28-29

e. requirements have been relaxed. A mass campaign using media is being carried out to ensure the provision of compulsory education.[829]

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.[830] 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.

With regards to religious and cultural practices and languages of minority groups, Article 19 of the *Constitution* stipulates:

> 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.
>
> (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.[831]

Adaptability

In November 2002, in its second periodic report to the Children's Committee, 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. It also reported that two committees have been appointed in each local

[829] *EFA 2000 Assessment* (Sri Lanka), Part 1.4
[830] *Human rights in Sri Lanka's school curriculum*, Colombo Page News Desk, 13 June 2006 (http://www.colombopage.com/archive/June13112019SL.html)

[831] *Human rights in Sri Lanka's school curriculum*, Colombo Page News Desk, 13 June 2006 (http://www.colombopage.com/archive/June13112019SL.html)

administrative unit to ensure the implementation of compulsory attendance regulations.[832] The minim age of employment in the plantation sector is 10 years of age. In all other sectors it is 14 years of age.[833] In its report to the Children's Committee, Sri Lanka noted:

> 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.[834]

In its concluding observations in July 2003, the Children's Committee welcomed Sri Lanka's ratification of ILO Conventions Nos. 138 and 182 but expressed concerns about the high proportion of children working as domestic servants, in the plantation sector, on the streets and in other parts of the informal sector.[835] The Committee 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.[836]

The Penal Code of Sri Lanka prescribes 8 years as the minimum age of criminal responsibility.[837] In its concluding observations in July 2003 in relation to juvenile justice, the Children's Committee expressed its "serious concern" that the minimum age of criminal responsibility was set too low. The Committee recommended minimum age of criminal responsibility be raised to an internationally acceptable level. It also recommended that Sri Lanka:

> 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.[838]

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

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[832] CRC/C/70/Add.17, 19 November 2002, para 131
[833] *Women's, Young Person's and Children's Act*, No. 47 of 1956; CRC/C/70/Add.17, 19 November 2002, para 243
[834] CRC/C/70/Add.17, 19 November 2002, para 243
[835] CRC/C/15/Add.207, 2 July 2003, para 49
[836] CRC/C/15/Add.207, 2 July 2003, para 50
[837] Source: CRC/C/70/Add.17, 19 November 2002, para 232

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.[839] 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.

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. [840]

In its concluding observations in July 2003 the Children's Committee 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 Committee 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.[841]

Justiciability

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 such person is entitled under the provisions of this Chapter.

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[838] CRC/C/15/Add.207, 2 July 2003, para 51-52
[839] A/57/38. 7 May 2002, para 274
[840] *EFA 2000 Assessment* (Sri Lanka), Part 1(g)
[841] CRC/C/15/Add.207, 2 July 2003, para 37

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.[842]

[842] A/57/38, 7 May 2002, para 274

Thailand

ACJ Recommendations

The ACJ recommends that the National Human Rights Commission of Thailand (NHRCT) urge its government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education;
- the need to adopt measures to ensure a more equitable distribution of funding and resources amongst schools, particularly schools in socially disadvantaged areas and schools with special education needs;
- the need to adopt measures to improve school infrastructure, materials and resources, including science and technology facilities;
- the need to adopt measures to improve the availability and quality of teachers and support staff;
- the need to adopt measures to minimise the imposition of fees and additional costs on parents; and
- the need to adopt measures to improve education opportunities for girls and women, including pre-natal and post-natal women.

International Law

Thailand is a party to the ICESCR,[843] CERD,[844] CEDAW,[845] the CRC,[846] the ILO Minimum Age Convention[847] and the Worst Forms of Child Labour Convention.[848] Thailand is not a party to the UNESCO Convention Against Discrimination in Education.

National Law

The right to education is guaranteed under Chapter 2 (Section 10) of the *National Education Act of 1999* which provides that "all individuals shall have equal rights and opportunities to receive basic education provided by the State for the duration of at least 12 years." This education will be "of quality and free of charge."

[843] Thailand acceded to the ICESCR on 5 September 1999.
[844] Thailand acceded to the CERD on 28 January 2003.
[845] Thailand acceded to the CEDAW on 9 August 1985.
[846] Thailand acceded to the CRC on 27 March 1992.
[847] Thailand ratified the Minimum Age Convention on 11 May 2004.
[848] Thailand ratified the Worst Forms of Child Labour Convention on 16 February 2001.

Achievement of the Right to Education

The National Education Plan (2002-2016) provides a framework in Thailand for 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 administration and management of education in Thailand is divided into three levels. Firstly, at the central level, the Ministry of Education develops education 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 has an Area Committee for Education which is responsible for the management of basic education institutions; the coordination, promotion and support of private educational institutions; the management of local administration organisations to ensure education is provided in accordance with educational policies, development plans and standards specified by the central authorities; the management and oversight of the provision of education by individuals, non-government organisations and religious institutions; and the allocation of budget resources.

Thirdly, at the basic education level the Ministry of Education decentralises authority to educational institutions through school-based management, where institutions are responsible for academic matters, budgets, personnel and general administration. At the higher education level all higher education institutions are permitted to develop their own administration and management systems with flexibility and academic freedom.

Availability

The availability of education in Thailand can be measured in part by government expenditure and education funding models. The National Human Rights Commission of Thailand (NHRCT) 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 for the period 1990-1999 show that on average 44 per cent of the education budget was allocated to spending on primary education. 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. 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.

The NHRCT reports that the government 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 government 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.

With regards to education infrastructure, in Thailand's second report to the Committee on the Rights of the Child,[849] 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.

Basic electricity and telecommunications infrastructure requires improvement. The government is aiming to provide electricity and telephone coverage for 56 per cent of primary schools, all secondary schools and all higher education institutions. 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 in Bangkok (89.7 percent) and lowest in the Northeast of the country (24.1 percent). In 2002, 1,119 schools did not have fixed electricity and 21,591 did not have fixed telephone lines.

[849] CRC/C/83/Add.15, 31 May 2005

The average student-teacher ratio is 20:1.[850] There are teacher shortages in mathematics, science, physics, chemistry, foreign languages and computer science. 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 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.

Accessibility

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.[851] 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.

In its report to the Committee on the Rights of the Child,[852] 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

[850] CRC/C/83/Add.15, 31 May 2005, para 391, p81
[851] 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.
[852] CRC/C/83/Add.15, 31 May 2005

streets. It also acknowledged however that there remain many children without access to education, for example, stateless children.

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. 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.

With regards to economic accessibility, 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. 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. [853]

Higher education institutions can set their own tuition fees and charges. The government has established an Income Contingency Loans Fund to assist students with the costs of higher education. 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

[853] 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

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 challenge of securing more funds from the annual budget for the ICL Fund in order to meet increasing demands from students.

Access to non-formal education is available through local networks of community learning centres, village reading centres, sub-district health offices and sub-district agricultural offices.

Acceptability

Quality education and minimum standards are enforced in Thailand by national institutions and specialised agencies. Educational standards and 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 three 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.

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. In the *Thailand Millennium Development Goals*

Report 2004[854] 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.

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.

The Basic Education Commission, the Higher Education Commission and the Vocational Commission are responsible for the development of education policy, development plans, educational standards, core curriculum, providing resources and the monitoring and assessment of educational services at their respective levels.[855] Section 28 of the *National Education 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. 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.

Parents and legal guardians are legally bound to have their children receive compulsory education however they can exercises their freedom of choice in selecting educational institutions and educational programmes. 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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[854] 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>

[855] 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.

Adaptability

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 for 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. Under Section 44 of the *Labour Protection Act 1998* the minimum age of employment in Thailand is 15 years of age.

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 pursing education through non-formal avenues or, if possible, open universities. 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. 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.

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 (impaired hearing, specific learning disorders, and autistic children) as well as gifted and talented children. The delivery of special education is organised in both special and inclusive schools.

Activities of the NHRCT

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 has a received a small number of petitions concerning the right to education and its Sub-Commission on Economic, Social and Cultural Rights and its Sub-Commission on Education and Development have been actively involved in addressing the right to education.

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 and conducting capacity-building on how to exercise the right. The NHCRT also held a second seminar on the importance of informal and non-formal education. 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. 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. In partnership with UNESCO, the Sub-Commission has developed and translated and a model "human rights lesson plans for South East Asian countries" which provides an outline for teachers to apply in their classrooms.

The NHRCT submitted a shadow report to the Human Rights Committee in 2004, parts of which were indirectly concerned with the right to education. 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.

ACJ Recommendations

The ACJ recommends that the Timor-Leste Provedor for Human Rights and Justice (PDHJ) urge its government to address the following issues:

- consider signing the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention and the Worst Forms of Child Labour Convention;
- the need to adopt a basic law on education;
- the need to identify and secure adequate sources of funding to enable the primary and secondary education systems to grow and develop;
- the need to improve basic education infrastructure, including classrooms and sanitation facilities;
- the need to adopt measures to improve the quality and availability of teachers and support staff;
- the need to adopt measures to minimise the imposition of fees and additional costs on parents;
- the need to adopt measures to ensure the full participation of girls and women at all levels of education; and
- the need to adopt measures to improve the availability of non-formal education.

International Law

Timor Leste is a party to the ICESCR,[856] CERD,[857] CEDAW[858] and the CRC.[859] Timor Leste is not a party to the UNESCO Convention Against Discrimination in Education, the ILO Minimum Age Convention or the Worst Forms of Child Labour Convention.

National Law

The right to education is guaranteed by s 59 of the *Constitution of the Democratic Republic of East Timor 2002* which includes the provision that "[t]he State shall recognise and guarantee that every citizen has the right to education and culture, and it is incumbent upon it to

[856] Timor Leste acceded to the ICESCR on 16 April 2003.
[857] Timor Leste acceded to the CERD on 16 April 2003.
[858] Timor Leste acceded to the CEDAW on 16 April 2003.
[859] Timor Leste acceded to the CRC on 16 April 2003.

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." Section 59 includes other provisions relating to education and vocational training, private education and higher education. Fundamental human rights and freedoms are guaranteed under Part II of the *Constitution*. Section 16(1) provides that "[a]ll citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties" and s 16(2) provides that "[n]o 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."

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 discussed the inadequate legal framework for education in Timor-Leste, and pointed to the need for a basic law on education; an organic law for the Ministry; regulations to govern tertiary education institutions; a law or charter to establish the legal basis and future development of the National University; and regulations to govern the establishment and operation of non-government schools. It is understood that the development of the basic law on education and the organic law for the Ministry has commenced. [860]

Achievement of the Right to Education

In its 2005 *Education and Training* report, the Ministry of Education, Youth, Culture and Sports outlined its guiding principles for education. These include education as a human right; a child and learner focus; equity and accessibility of services; quality and relevance through a curriculum that promotes learning achievement; efficiency and effectiveness; participation and consultation with key stakeholders; and transparency, accountability and sustainability.

The main goals for the formal education system, as outlined in the National Development Plan include: easier access to education for all and the establishment of at least one primary school in each suco (village); better quality of teaching and learning; higher school completion and retention rates; development of school curricula relevant to the conditions and needs of Timor Leste; and the reintroduction of Portuguese and Tetum in schools.

[860] 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 (hereafter, *Education and Training report*)

The key objectives of education adopted in the NDP include: continued expansion of enrolments, with a particular priority for basic education; improving the quality of instruction while dealing with the needs of linguistic diversity and change; improving the management of the education sector; and achieving the sustainability of public sector finance while faced with large demands for resources.[861]

Availability

The availability of education in Timor-Leste can be measured in part by government expenditure and education funding models. The Ministry of Education's *Education and Training* report notes that donors have accounted for almost 60 percent of education spending in the five years to 2005. An increasingly important issue for future budget allocations will be the maintenance, replacement and rehabilitation of education facilities.

From 1999/2000 to 2003/2004, total expenditure on primary education was 53.9 percent; on secondary education was 23.7 percent; and on tertiary education was 10.7 percent. Expenditure on early childhood development was 1.5 percent and expenditure on policy, planning and management was 6.8 percent. [862]

The Ministry of Education reports that over 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. [863]

The *Education and Training* report notes that in the five year period to 2005, international donors have disbursed $US100 million in education funding with a further $US20 million to be made available for existing projects over the following two years. The Ministry of Education reports that donor funds made available through the Consolidated Fund for East Timor (CFET) have accounted for almost 50 percent of annual education spending. With a proposed program of $US169 million for 2004/2005 through to 2008/2009, the Ministry of

[861] Education and Training report, pp10-13
[862] Ibid, p24
[863] Ibid, pp24-25

Education has acknowledged that it needs to identify additional sources of funding to enable growth and improvement in its primary and secondary education systems. [864]

In relation to the availability of infrastructure, the *Education and Training* report noted that by early 2001, about 86 percent of classrooms were rehabilitated and useable. [865] The World Bank's 2004 report on Timor-Leste, *Education Since Independence: From Reconstruction to Sustainable Improvement*, observed however that in many schools, there are no windows that can be closed to prevent rain from sweeping across the room, making classrooms unusable during the monsoon season. Many classrooms are dark as few schools have electricity. Many schools have no water or toilets, adversely affecting girls' attendance in particular. Only 81 per cent of the students had a desk and a chair to use in class.[866]

The World Bank report also commented on the deficiencies in the teaching profession, attributing this to the admission of poorly qualified teachers into the profession under the previous Indonesian and Portuguese administrations as well as a general under-investment in education. The report notes that teachers with varying qualifications have been recruited recently, however in 2003, of the 620 budgeted positions, only 200 were filled. At the secondary level, there are very few qualified Timorese teachers, particularly in mathematics, physics, chemistry, Tetum, English, and Portuguese. Well-qualified English teachers tend to take up better-paying positions elsewhere. Poor teacher quality is exacerbated by the lack of teaching materials and high student-teacher ratios. Many students do not have access to textbooks at school or any reading materials outside of school. The student-teacher ratio varies widely across districts, from 44:1 in Enerma to 52:1 in Manufahi.[867] Teacher and student absenteeism is also a problem.

Accessibility

On the issue of gender equality and gender equity, the Ministry of Education's *Education and Training* report says that whilst the gender imbalance in educational participation in Timor-Leste is modest in primary education, where the participation of girls is estimated at about 98 percent, the participation rates declines more steeply at other education levels. The report suggests that a range of factors contribute to lower participation rates in schooling among

[864] Ibid, p27
[865] Ibid, p4
[866] *Timor-Leste: Education Since Independence From Reconstruction to Sustainable Improvement*. December 2004. World Bank Report No. 29784-TP, p32

[867] Ibid, pp29-30

females, most of which are socio-cultural in nature, such as traditional and stereotyped views of the role of women and girls in the family and the community.[868]

In relation to economic accessibility, the World Bank has observed that after many schools were rehabilitated and became operational, some schools resumed charging fees in order to have some discretionary resources for school supplies, minor repairs, or even teacher salaries. This was often done in consultation with parents. Anecdotal evidence suggests that parental contribution has been on a voluntary basis in public schools, and students were not penalised if their parents could not afford to pay. In 2003, rural schools charged parents $1-$3 per month; some as much as $5-$10. For schools serving poor communities, parents were hard pressed to contribute.[869]

The long distance between homes and schools in Timor-Leste is a key factor in the non-enrolment of children in school. The World Bank reports that almost all children walk to school and although the average time taken to walk to school is half an hour, for many children it is much longer. [870]

The Ministry of Education's *Education and Training* report recognises the need for significant reform and development of non-formal education in Timor-Leste. The report notes that there are more than 260,000 people aged 15 years and older who are illiterate and another 10,000 children reaching adulthood without the benefit of any formal schooling, or who have had only minimal schooling and who are functionally illiterate. The Ministry operates an adult education program which reaches about 6000 people each year. The government's budget allocation for adult education for the year 2004/2005 was $US70,000 which the Ministry acknowledges is inadequate. The Ministry notes that a substantial increase in the size of the program is required to have a significant impact on the problem of adult illiteracy. Furthermore, apart from the size of the program, a clear-cut strategy for youth and adult education programs remains to be developed. [871]

Acceptability

The Ministry of Education is responsible for the development and coordination of national policies, plans, and programs in education and the monitoring of all aspects of the educational system in the country. The Ministry is also responsible for the development of curricula and

[868] *Education and Training*, op cit, p13
[869] World Bank report, op cit, pp xviii, 12 and 84
[870] Ibid, p23

text-books; international aspect of education development and planning; external examinations; development of instructional technology; promotion and coordination of education research; the national language and other languages used for official purposes including medium of instruction; and the management of national educational institutions and organizations and their funding. The Ministry has developed an Education Policy Framework and a strategy for national programs of vocational and adult education.[872]

The Ministry of Education, in its *Education and Training* report, has highlighted the importance of overhauling the old education curriculum at all levels and the need to bridge the transition to the new languages of instruction, Tetum and Porteguese, which are the official languages adopted in the Constitution. Curriculum review and reform is currently on-going, while efforts to bridge the language transition has received substantial support from donors through the provision of teachers, teacher training and teaching materials. A major challenge 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. [873]

The World Bank reports that a 2001 survey indicated that 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. It observed that 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. [874]

Activities of the Provedor for Human Rights and Justice

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.* 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:

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[871] Education and Training report, p37
[872] Education and Training report, p v
[873] *Education and Training report,* p16
[874] *Timor-Leste: Education Since Independence From Reconstruction to Sustainable Improvement*. December 2004. World Bank Report No. 29784-TP. Section 2.1

> "*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. 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.

Appendix 1

Sources of International Law

The final report of the ACJ on the right to education draws upon a wide range of sources of international law, including international human rights declarations and instruments, the General Comments and Recommendations of the United Nations' human rights treaty body committees and a selection of internationally-recognised principles, guidelines and declarations and programmes of action.

Specific articles and provisions from the international human rights declarations and instruments considered by the CJ have been extracted below.

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

(i) International human rights instruments and treaties relevant to the right to education

Universal Declaration of Human Rights[875]

Article 26:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
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 the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

International Covenant on Economic, Social and Cultural Rights[876]

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the

[875] Adopted by General Assembly resolution 217 A (III) on 10 December 1948
[876] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

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.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
   a) Primary education shall be compulsory and available free to all;
   b) 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 e.ducation;
   c) Higher education shall 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;
   d) Fundamental 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;
   e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3 The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4 No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, 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.

International Covenant on Civil and Political Rights[877]

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

[877] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Convention on the Rights of the Child[878]

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
    a) To diminish infant and child mortality;
    b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
    c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
    d) To ensure appropriate pre-natal and post-natal health care for mothers;
    e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
    f) To develop preventive health care, guidance for parents and family planning education and services.

[878] Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
    a) Make primary education compulsory and available free to all;
    b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
    c) Make higher education accessible to all on the basis of capacity by every appropriate means;
    d) Make educational and vocational information and guidance available and accessible to all children;
    e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
    a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
    b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
    c) 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;
    d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
    e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 32

1. States Parties recognize the right of the child to be protected from economic 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 health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
    a) Provide for a minimum age or minimum ages for admission to employment;
    b) Provide for appropriate regulation of the hours and conditions of employment;
    c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
    (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
    (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
        (i) To be presumed innocent until proven guilty according to law;
        (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
        (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
        (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
        (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
        (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
        (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
    (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
    (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Convention on the Elimination of All Forms of Discrimination against Women[879]

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
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;
e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
g) The same Opportunities to participate actively in sports and physical education;
h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
   i. The same right to enter into marriage;
   ii. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   iii. The same rights and responsibilities during marriage and at its dissolution;
   iv. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
   v. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
   vi. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
   vii. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
   viii. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

[879] Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981.

International Convention on the Elimination of All Forms of Racial Discrimination[880]

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;
(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
(d) Other civil rights, in particular:
    (i) The right to freedom of movement and residence within the border of the State;
    (ii) The right to leave any country, including one's own, and to return to one's country;
    (iii) The right to nationality;
    (iv) The right to marriage and choice of spouse;
    (v) The right to own property alone as well as in association with others;
    (vi) The right to inherit;
    (vii) The right to freedom of thought, conscience and religion;
    (viii) The right to freedom of opinion and expression;
    (ix) The right to freedom of peaceful assembly and association;
(e) Economic, social and cultural rights, in particular:
    (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
    (ii) The right to form and join trade unions;
    (iii) The right to housing;
    (iv) The right to public health, medical care, social security and social services;
    (v) The right to education and training;
    (vi) The right to equal participation in cultural activities;
(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

[880] Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969.

Convention against Discrimination in Education[881]

1. For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
   a) Of depriving any person or group of persons of access to education of any type or at any level;
   b) Of limiting any person or group of persons to education of an inferior standard;
   c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
   d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.
2. 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.

UNESCO Convention Against Discrimination in Education

1 The States Parties to this Convention agree that:
   (a) 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 the activities of the United Nations for the maintenance of peace;
   (b) It 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 in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;
   (c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

      (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its - activities, or which prejudices national sovereignty;

      (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

      (iii) That attendance at such schools is optional.

2. The States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article.

[881] Adopted by the General Conference of the United Nations Educational, Scientific and Cultural

Two International Labour Organisation instruments are also relevant. These are:

- Minimum Age Convention 1973 (No. 138);[882] and
- Worst Forms of Child Labour Convention 1999 (No. 182).[883]

(ii) General Comments

Specific provisions in each of the ICESCR, CRC and CEDAW relating to the right to education have been elaborated on in 'General Comments'.[884] These General Comments include:

- CESCR - General Comment No. 3 on the nature of States parties obligations;
- CESCR - General Comment No. 13 on the right to education;
- CESCR - General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights;
- CRC - General Comment No. 1 on the aims of education; and
- CEDAW - General recommendation No. 3.

(iii) Supplementary Sources

The following principles, guidelines, declarations and programmes of action have been adopted by bodies of experts and are a useful supplementary source of international law on economic, social and cultural rights and the right to education:

- Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986); [paras 16-20; 21-24; 25-28; 29-34; 35-41; 42-44; 45; and other paras]
- Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) [para 6, 7, 8, 9, 10, etc; also – para 25 on NHRIs]
- The Dakar Framework for Action: Education for All – Meeting Our Collective Commitments (2000);[885] and

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Organization on 14 December 1960, entry into force 22 May 1962.

[882] Adopted on 26 June 1973 by the General Conference of the International Labour Organisation at its fifty-eighth session, entry into force 19 June 1976.

[883] Adopted on 17 June 1999 by the General Conference of the International Labour Organization at its eighty-seventh session, entry into force 19 November 2000.

- Asia and Pacific Regional Framework for Action: Education for All – Guiding Principles and Targets for 2015.[886]

[884] Each of the committees established under international human rights instruments has the power to prepare General Comments. These are designed to guide States Party in how to implement specific requirements of the particular treaty in question.
[885] Adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000
[886] Adopted by the Asia-Pacific Conference on EFA 2000 Assessment, Bangkok, Thailand, 17-20 January 2000

Appendix 2: Table 1 - Status of Ratifications of Principal International Instruments Relevant to the Right to Education

Table 1: 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
Afghanistan	X	X	X	X			
Australia	X	X	X	X	X		
Fiji		X	X	X		X	X
India	X	X	X	X			
Indonesia	X	X	X	X	X	X	X
Jordan	X	X	X	X	X	X	X
Malaysia			X	X		X	X
Mongolia	X	X	X	X	X	X	X
Nepal	X	X	X	X		X	X
New Zealand	X	X	X	X	X		X
Palestinian Territories	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Philippines	X	X	X	X	X	X	X
Qatar		X		X			X
Republic of Korea	X	X	X	X		X	X
Sri Lanka	X	X	X	X	X	X	X
Thailand	X	X	X	X		X	X
Timor-Leste	X	X	X	X			

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 treaty

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
ILO: http://www.ilo.org/public/english/standards/norm/whatare/fundam/

Appendix 3

Programmes on the right to education

UNESCO's Education for All movement

The Education for All movement is a global commitment under the lead of UNESCO to provide quality basic education for all children, youth and adults.

The movement was launched at the World Conference on Education for All in 1990. Delegates from 155 countries, as well as representatives from organisations, agreed to universalise primary education and massively reduce illiteracy before the end of the decade. For this purpose, the World Declaration on Education for All was adopted.

Ten years later, far away from reaching the goal, the international community met again at the World Education Forum and affirmed their commitment to achieving education for all, stressing the needs of disadvantaged children such as girls and those belonging to minorities. The Dakar Framework for Action was adopted, which included a pledge from donor countries and institutions that "no country seriously committed to basic education will be thwarted in the achievement of this goal by lack of resources".

The Dakar Framework for Action

The framework identified six key education goals to reach by the year 2015:

(1) expansion of early childhood care and education;

(2) access of all children to primary education of good quality;

(3) equitable access of all young people and adults to appropriate learning and life-skills programmes;

(4) a 50 per cent improvement in levels of adult literacy and equitable access to basic education for all adults;

(5) eliminating gender disparities in primary and secondary education with a focus on girls' full and equal access to education of good quality;

(6) improving all aspects of the quality of education and ensuring excellence of all so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.

The UN Millennium Development Goals

In September 2000, at the United Nations Millennium Summit, a set of time-bound and measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against woman was established. The eight Millennium Development Goals ('MDGs') form a blueprint agreed to by all the world's countries and the world's leading development institutions. Besides goals such as halving extreme poverty and the reduction of under-five and maternal mortality, the MDGs also aim to achieve universal primary education and to empower woman by reducing illiteracy.

The UN provides practical advice and assistance to their Member States in designing policies and building capacities. While developing countries pursue sustained political and economic reform, they are directly supported from the developed world in the form of aid, trade, dept relief and investment. Awareness-raising Millennium Campaigns promote the goals within the single countries to galvanise public opinion. The UN monitors the progress and publishes regularly global and regional reports, as well as conducting studies focusing on the financial framework for faster global progress in primary education.

United Nations Decade for Human Rights Education (1995-2004)

In June 1993, 7000 participants, including academics, treaty bodies, national institutions and representatives of 171 States and more than 800 NGOs, came to Vienna for the World Conference on Human Rights. For the strengthening of human rights work around the world, they adopted by consensus the Vienna Declaration and Programme of Action. This document reaffirms the principles evolving from the Universal Declaration of Human Rights and marks the beginning of a renewed effort to strengthen and further implement human rights. Pursuant to a suggestion of the World Conference, the United Nations General Assembly proclaimed the 10-year period beginning on 1 January 1995 the United Nations Decade for Human Rights Education, and welcomed the Plan of Action for the Decade.

One of the objectives of the Vienna Declaration and Programme of Action was the human right to education. The Conference recommended that states should strive to eradicate illiteracy and should direct education towards the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It called 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.

The Vienna Declaration also made concrete recommendations for strengthening and harmonising the monitoring capacity of the United Nations system. Thereupon, the Office of the High Commissioner for Human Rights ('OHCHR') was mandated to promote and protect the realisation of human rights following the priorities set out in the Vienna Declaration and Programme of Action.

The UN World Programme on Human Rights Education (2005 ongoing)

In December 2004, the General Assembly of the United Nations proclaimed the World Programme for Human Rights Education to advance the implementation of human rights education programmes in all sectors. Building on the achievements of the United Nations Decade for Human Rights Education, the World Programme provides a concrete framework for action and strengthens the cooperation from the international level down to the grass roots.

Unlike the specific time frame of the Decade, the World Programme is structured around an ongoing series of phases, the first of which covers the period 2005-2007 and focuses on the primary and secondary school systems. Developed by a broad group of education and human rights practitioners from all continents, the Plan of Action for the First Phase proposes a concrete strategy and practical ideas for implementing human rights education nationally.

Appendix 4

The right to education and national human rights institutions (NHRIs)

A minimum requirement for a NHRI to join the APF is that it meets the Paris Principles.[887] 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
- 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."[888] Also, it is widely accepted that NHRIs should actively advocate in favour of a rights-based approach to the implementation of economic, social and cultural rights. At an international roundtable in New Delhi in 2005 on the role of NHRIs in the implementation of economic, social and cultural rights, it was noted the importance for national institutions to:

[887] 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.
[888] ICESCR General Comment No 10, para. 3.

(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.[889]

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.

[889] 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 (last accessed 4 April 2007).

Appendix 5: Table 2 - Constitutional provisions relevant to the right to education

Country	Right to Education	Non-Discrimination / Equality of Access	Access to Justice	Freedom of Religion	International Law	Justiciability	Other
Afghanistan	Art 43-46	Art 22-24, 29			Art7-8		
Australia	s51(xxiiiA)			s116	s51(xxix)		
Fiji	s39	ss4, 38, 44		ss35, 39			
India	Art 41, 45, 51A	Art 15, 29, 30, 46		Art 28	Art51, 253		
Indonesia	Art 28C, 28E, 31. Also Art 5, 8, 9, 12 & 45	Art27, 28A, B, D, G & I		Art12(1)(a)		Art24C	
Jordan	Art6(ii), 19, 20	Art6(i)			Art33		
Malaysia	Art12	Art8			Art74(1)		
Mongolia	Art16(7)	Art14			Art10 and16(14)		
Nepal	-	-	-	-	-	-	-
New Zealand							
Palestinian Territories	Art24	Art9			Art10(2)		
Philippines	ArtII, s17	ArtXIV, ss1-5, 18					
Qatar	Art25, 49	Art35		Art50	Art6		Art47-48
Republic of Korea	Art31	Art11			Art6		
Sri Lanka	ChVI, Art27	ChIII, Art12; ChIV, Art 21					
Thailand[890]							
Timor Leste	s59	s16, 17, 19			s9		

[890] *Constitution of the Kingdom of Thailand (Interim Edition) of B.E. 2549* (An unofficial translation from the Bangkok English-language daily, The Nation, as of 2 October 2006) <http://nationmultimedia.com/2006/10/02/headlines/headlines_30015101.php>

Appendix 6: Table 3 - School Age / Marriage / Employment / Criminal Responsibility

COUNTRY	CATEGORY	SOURCE: CONSTITUTION / LEGISLATION
Afghanistan	**School Age** Primary (Grade 1-9) - free and compulsory Secondary (Grade 10-12) - free but not compulsory	
	Marriage Female: 16 years; Male: 18 years	Civil Law
	Employment Government practice is to not employ persons under 18 Private sector employs apprentices and workers aged under 18	
	Criminal Responsibility No criminal responsibility under the age of 12	Article 5, *Law of Investigation of Children's Violation*
Australia	**School Age** Primary and Secondary - compulsory from age 6 to 15 except in Tasmania, South Australia and Western Australia where it extends to 16.	For example: s22, *Education Act 1990* (NSW)
	Marriage Female and Male: 18 years (16 years in exceptional circumstances)	ss11-12, *Marriage Act 1961* (Cth)
	Employment There is no Commonwealth legislation that specifically regulates the minimum age of employment of children or the conditions of children's employment. 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.	

	Criminal Responsibility In the Commonwealth, State and Territory jurisdictions there is no criminal responsibility under the age of 10. In most jurisdictions there is a presumption against criminal responsibility between 10 and 14 years.	s5, *Children (Criminal Proceedings) Act 1987* (NSW) ss25-26, *Criminal Code 2002* (ACT) s29, *Criminal Code 1899* (Qld)
Fiji	**School Age**	
	Minimum Age of Marriage Female: 16 years; Male: 18 years	s12, *Marriage Act 1969*
	Minimum Age of Employment 12 years - unless the child is employed in light work suitable to his capacity in an agricultural undertaking owned and operated by his/her family.	Section 59, *Employment Ordinance* It is noted that as a party to the ILO Minimum Age Convention, Fiji has specified 15 years as the minimum age of admission to employment.
	Minimum Age of Criminal Responsibility No criminal responsibility under the age of 10. Between the age of 10 and 12 years there is no criminal responsibly unless it is proven that the child had capacity to know, at the time of doing the act or omission, that it was wrong	s14, *Penal Code*
India	**School Age** Education is free and compulsory for all children aged 6-14 years.	Article 21A, *Constitution of India 1950*
	Minimum Age of Marriage Female: 18 years; Male: 21 years	*Child Marriage Restraint Act 1929*
	Minimum Age of Employment	Articles 23 and 24 of the *Constitution* provide protection against exploitation such as human trafficking, beggar and other forced labour and child employment in factories. These articles prevent 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.

	Minimum Age of Criminal Responsibility No criminal responsibility under the age of 7 years. Between the age of 7-12 years, no act will constitute an offence if it can be shown that the child lacks sufficient maturity or understanding to judge the nature and consequence of his/her conduct	ss82-83, *Indian Penal Code*
Indonesia	**School Age** The starting age for formal education is 7 years. The first 9 years of primary and lower secondary education is compulsory basic education. 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.	Chapter VI, *National Education System Act No. 20* (2003)
	Minimum Age of Marriage Female: 16 years; Male: 19 years. Legal consent to marriage from parents is required until the age of 21.	*Marriage Act* (1974)
	Minimum Age of Employment The minimum age for employment is 15 years of age. The minimum age for employment in hazardous occupations is 18 years of age.	*Employment Act (1995)*
	Minimum Age of Criminal Responsibility No criminal responsibility under the age of 8 years.	*Juvenile Court Act* (1997)
Jordan	**School Age** Primary and Secondary: compulsory and free of charge at Government schools from the age of 6 to 17.	Article 20, *Constitution of the Hashemite Kingdom of Jordan* Article 10, *Education Act No. 3* (1994)
	Minimum Age of Marriage	*Personal Status Act No. 61* (1976)

	Female: 15 years; Male: 16 years. Eligibility for marriage is conditional upon 'soundness of mind.'	
	Minimum Age of Employment The minimum age of employment is 16 years of age. The minimum age of employment for occupations that are hazardous, strenuous or detrimental to health is 17 years of age.	Articles 73-74, Labour Code, *Law No. 8* (1996)
	Minimum Age of Criminal Responsibility No criminal responsibility under the age of 7 years. Special courts have been established to hear cases involving juveniles, with set conditions and restrictions, including the requirement that cases be heard expeditiously.	Article 18, *Juveniles Act No. 24* (1968) (read with the amending Act No. 7 (1983))
Malaysia	**School Age** Free and compulsory from the age of 6 years. Upon completion of primary education at public schools, pupils are generally promoted to the secondary level education at public secondary schools for another five years of free education.	*Education Act* (1996)
	Minimum Age of Marriage Female: 16 years; Male: 18 years. Exceptions can be granted in writing by the Syariah Judge in certain circumstances.	*Islamic Family Law (Federal Territories) Act* 1984
	Minimum Age of Employment Children (defined as persons less than 14 years of age) may be employed in light work done within the family, specified public entertainment, apprenticeships, and work sponsored by the government. Children and young persons (defined as persons less than 16 years) cannot be employed in night work and underground work. The Minister responsible for labour may declare employment suitable for children or young persons if he is satisfied that such employment poses no threat to the life, limb, health or morals of the employee.	*Children and Young Persons (Employment) Act* 1966 (Revised 1988)

	Minimum Age of Criminal Responsibility No criminal responsibility under the age of 10 years. Between the ages of 10-12 years, there is no criminal responsibility without sufficient maturity or understanding to judge the nature and consequence of his conduct on that occasion.	ss82-83 *Penal Code* (Revised 1997)
Mongolia	**School Age** Free and compulsory education from the age of 8-17 years. Children aged 6-7 may enrol by forming classes or groups if certain special circumstances and conditions are met.	*Mongolian Law on Primary and Basic Education* Article 39, (paragraph 2.3), *Law on Education 2002*
	Minimum Age of Marriage Female and Male: 18 years	*Family Law* 1999
	Minimum Age of Employment • A person aged 14 may enter into an employment contract for the purpose of acquiring vocational training and work experience, with the consent of his/her parents or guardians and the relevant government authority. • A person aged 15 may enter into an employment contract with the permission of his/her parents of guardians. • At 16 years, a person can enter into an employment contract.	Articles 109.1- 109.3, *Labour Law 1999*
	Minimum Age of Criminal Responsibility Persons aged 16 years at the time of committing a criminal offence shall be subject to criminal liability. Persons aged 14-16 years shall be subject to criminal liability for homicide, deliberate infliction of a severe bodily injury, rape, theft in aggravating circumstances, misappropriation, robbery, deliberate destruction or damage of property, and hooliganism in aggravating circumstances,	Article 21, *Criminal Code*

Nepal	**School Age** Education is not compulsory however the general starting age is 6 years.	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.
	Minimum Age of Marriage Female: 18 years (16 with parental consent); Male: 21 years (18 with parental consent)	*Marriage Registration Act* (1970)
	Minimum Age of Employment Children aged under 14 years are not permitted to work as labourers. Children aged between 14 and 16 years are not permitted to work as labourers between 6pm and 6am.	*Children's Act* (1991) *Labour Act* (1992) and *Labour Rules* (1993) *Child Labour (Prohibition and Regulation) Act* (1999) *Self-Governance Act* (1997)
	Minimum Age of Criminal Responsibility No criminal responsibility under the age of 10 years. A child aged 10-14 years may be warned or imprisoned for up to six months depending on the offence. A child aged 14-16 years may be punished with the imposition of half of the penalty that would otherwise be imposed on a person who gas attained maturity.	Article 11, *Children's Act* (1991)
New Zealand	**School Age** Free primary and secondary education from the age of 5 years until the first day of January after the person's 19th birthday.	s3, *Education Act* (1989)
	Minimum Age of Marriage Female/Male: 16 years No marriage will be deemed invalid merely by infringement of the minimum age provision. People less than 18 years who are not widowed require the consent of parents or guardian. In the absence of a parent of guardian, consent may be sought	*Marriage Act 1955* *Civil Union Act 2004*

	from a relative acting in the place of a parent or from a Family Court Judge. Civil Union: Female/Male: 16 years	
	Minimum Age of Employment There is no minimum age of employment in New Zealand.	
	Minimum Age of Criminal Responsibility No criminal responsibility under 10 years of age. No person aged 10-14 years shall be convicted of an act or omission unless he/she knew it was wrong or contrary to the law.	ss21-22, *Crimes Act* *Children, Young Persons, and their Families Act* (1989) Establishes graduated minimum ages for criminal prosecution limiting the number of children, who are called to account in an adult setting for any offending. s272(1), *Children, Young Persons and Their Families Act* 1989 Prohibits the initiation of formal criminal proceedings against children except for murder or manslaughter.
Palestine	**School Age**	Article 24, *Palestinian Basic Law 2003*
	Minimum Age of Marriage Female/Male: 16 years	
	Minimum Age of Employment N/A	
	Minimum Age of Criminal Responsibility N/A	

Philippines	**School Age**	**Article XIV, Section 2, *Constitution of the Philippines 1987*** Elementary education is compulsory for all children of school age. The State establishes and maintains a system of free public education in the elementary and high school levels. **Section 2, *Free Public Secondary Education Act of 1988* (Republic Act No. 6655)** 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.
	Minimum Age of Marriage Female/Male: 18 years	Executive Order 209 (*Family Code of the Philippines*)
	Minimum Age of Employment The minimum age of employment is 15 years, with exceptions for employment by parents or guardians subject to a safe working environment and the provision of primary and secondary education; and/or employment in the entertainment industry, 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.	s12, *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*
	Minimum Age of Criminal Responsibility N/A	
Qatar	**School Age** N/A	
	Minimum Age of Marriage N/A	
	Minimum Age of Employment The minimum age of employment is 16 years. Person aged	Article 86, *Labour Law No 14* (2004)

	between 16 and 18 years: 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.	
	Minimum Age of Criminal Responsibility N/A	
Republic of Korea	**School Age** Compulsory education is composed of elementary education for a period of 6 years and secondary education for a period of 3 years	Article 31, *Constitution of the Republic of Korea 1987* Article 12, *Elementary and Secondary Education Act 1997 (Act No. 5438)* Article 8, *Framework Act on Education* 1997 (Act No. 5437)
	Minimum Age of Marriage Female: 16 years; Male: 18 years. Minors may marry with parental or guardian consent, or if unable to do so, with consent of its family council.	Civil Act 1958 (Act No. 471)
	Minimum Age of Employment The minimum age of employment is 15 years, with exceptions for persons holding an employment permit certificate issued by the Minister of Labour under the criteria as prescribed by the Presidential Decree, without compulsory education being impeded.	Article 62, *Labour Standards Act* 1997 (Act No. 5309)
	Minimum Age of Criminal Responsibility	Article 9, *Criminal Act* 1953 (Act No. 293)

	No criminal responsibility under the age of 14 years.	
Sri Lanka	**School Age** Primary and secondary school is compulsory from 5-14 years of age.	*Compulsory School Attendance Regulation* (1988)
	Minimum Age of Marriage Female/Male: 18 years	General Law Personal Law (Muslims) - minimum age not specified.
	Minimum Age of Employment 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	
	Minimum Age of Criminal Responsibility No criminal responsibility under the age of 8 years.	*Penal Code*
Thailand	**School Age** Primary and secondary schooling is free and compulsory from 7-16 years of age.	Chapter III, section 43, *Constitution of the Kingdom of Thailand* (1997) Ch 2, Section 10, *National Education Act of 1999* Ch 2, Section 17, *National Education Act of 1999*
	Minimum Age of Marriage Female/Male: 17 years. A Court may grant exceptions subject to consideration of appropriate reasons.	*Civil and Commercial Code*
	Minimum Age of Employment The minimum age of employment is 15 years.	s44, Labour Protection Act 1998
	Minimum Age of Criminal Responsibility The minimum age of criminal responsibility is 7 years, however a child cannot be punished until he/she is aged over 14 years. Corporal punishment and life imprisonment is prohibited against offenders under the age of 18 years.	s73, *Penal Code* *Revised Penal Code No. 16*
Timor Leste	**School Age**	Section 59, *Constitution of the Democratic Republic of East Timor 2002*

	Government policy prescribes the starting age for primary education as 6 years of age.	(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.
	Minimum Age of Marriage N/A	
	Minimum Age of Employment N/A	
	Minimum Age of Criminal Responsibility N/A	

Appendix 7

Comparative Education Statistics

The Advisory Council of Jurists has sourced education statistics for APF states from the UNESCO Institute for Statistics.[891]

The APF country profiles provide general statistical information as well as statistics on participation in education, progression and completion in education, education resources and literacy rates.

For important information on the data presented in the country profiles please refer to the UNESCO Institute for Statistics' Interpreting the Country Profiles document.[892]

More detailed education statistics are available from the UNESCO Global Education Digest 2005.[893]

[891] UNESCO Institute for Statistics, < http://www.uis.unesco.org/profiles/selectCountry_en.aspx>
[892] UNESCO Institute for Statistics, *Interpreting the Country Profiles*, < http://www.uis.unesco.org/template/pdf/EducGeneral/InterpretingCountryProfiles.pdf>
[893] *Global Education Digest 2005: Comparing Education Statistics Across the World*, UNESCO Institute for Statistics, Montreal, 2005

AFGHANISTAN

Education in Afghanistan — Education - all levels

South and West Asia

General information

2004

Total population (000)	28 574
Annual population growth rate (%)*	...
Population 0-14 years(%)	47
Rural population (%)*	...
Total fertility rate (births per woman) *	...
Infant mortality rate (0/00) *	...
Life expectancy at birth (years) *	...

HIV rate (%) in adults (15-49 years)*	...
Poverty (% of pop. on less than $2 a day) *	...
GDP per capita (PPP) US$ *	...
GDP growth rate (%)*	...
Total debt service as a % of GNI *	...
Children of primary school-age who are out-of-school (%)	...

** World Bank World Development Indicators*

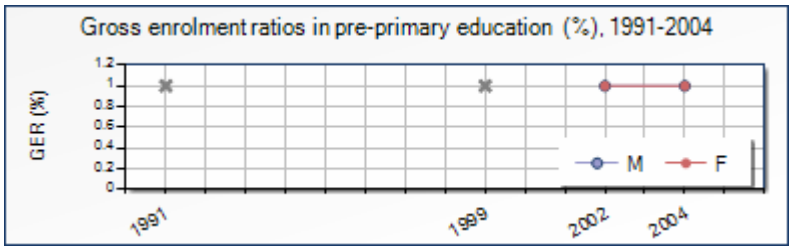
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

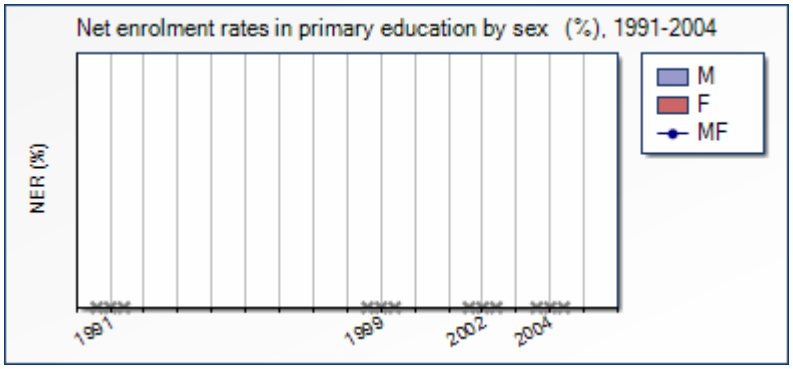
" 1 % of children are enrolled in pre-primary school

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	...	...	(1) 1	(1) 1	32
	M	...	...	(1) 1	(1) 1	33
	F	...	...	(1) 1	(1) 1	32



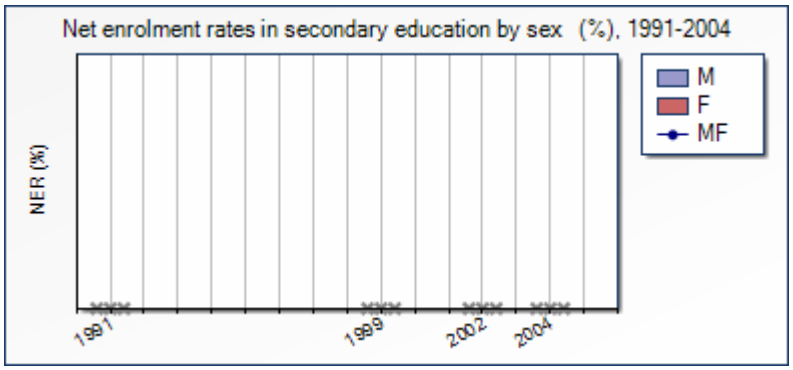
Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	25	25	62	93	110
	M	32	46	84	127	115
	F	18	4	39	56	105
NER (%)	MF	...	...	...	...	89
	M	...	...	...	...	93
	F	...	...	...	...	86



Secondary enrolment

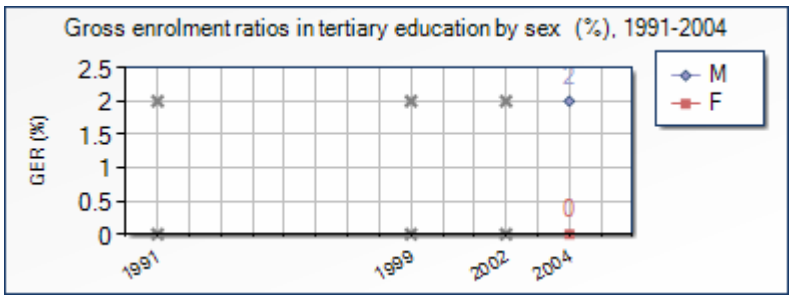
Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	14	...	...	16	51
	M	18	...	...	25	56
	F	9	...	...	5	46
NER (%)	MF	...	...	...	...	
	M	...	...	...	...	
	F	...	...	...	...	



Tertiary enrolment

" 1 % of the population of tertiary age in tertiary education

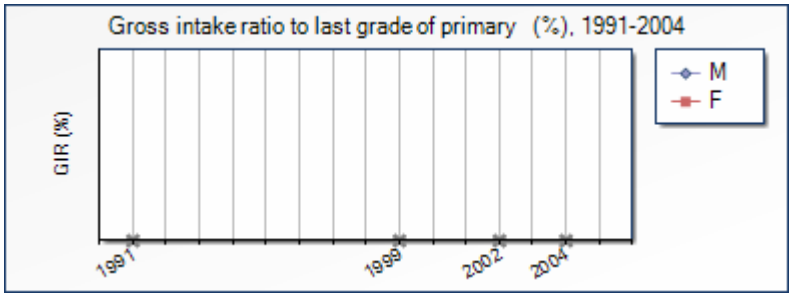
Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	...	...	...	1	11
	M	...	...	...	2	12
	F	...	...	...	-	9



Progression and completion in education

2004

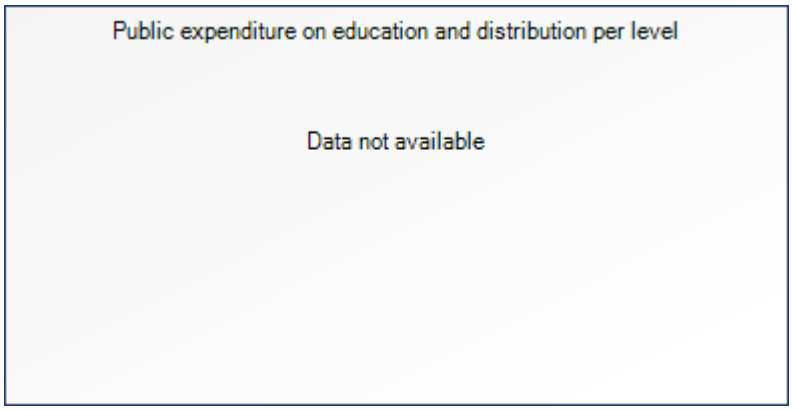
School life expectancy ISCED 1-6 (years)	(1) 7
Percentage of repeaters, primary (%)	...
Survival rate to grade 5 (%)	...
Gross intake ratio to last grade of primary (%)	...
Primary to secondary transition rate (%)	...



Resources for education

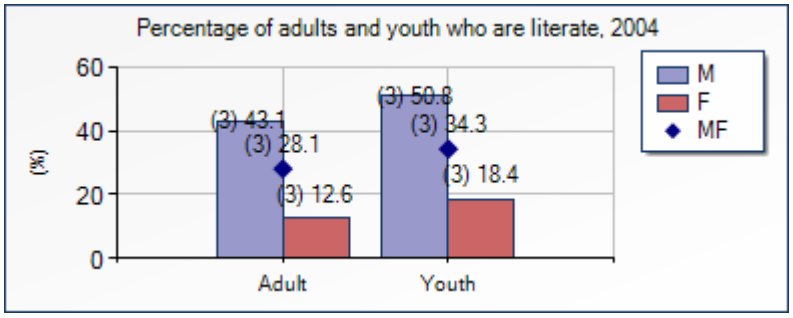
2004

Pupil / teacher ratio (primary)	65
Public expenditure on education :	
as % of GDP	...
as % of total government expenditure	...
Distribution of public expenditure per level (%) :	
pre-primary	...
primary	...
secondary	...
tertiary	...
unknown	...



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	...	(3) 28.1	61.8
	M	...	(3) 43.1	73.7
	F	...	(3) 12.6	49.2
Youth (15-24) %	MF	...	(3) 34.3	75.8
	M	...	(3) 50.8	83.6
	F	...	(3) 18.4	67.3



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Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) UIS estimation
(2) Data refer to 1998
(3) Data refer to 2000

June, 2006

AUSTRALIA

Education in Australia — **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)	19 942
Annual population growth rate (%)*	(1) 1.1
Population 0-14 years(%)	20
Rural population (%)*	(1) 8
Total fertility rate (births per woman) *	(1) 1.8
Infant mortality rate (0/00) *	(2) 5
Life expectancy at birth (years) *	(1) 80

HIV rate (%) in adults (15-49 years)*	(1) 0.1
Poverty (% of pop. on less than $2 a day) *	...
GDP per capita (PPP) US$ *	(1) 29 632
GDP growth rate (%)*	(1) 3.8
Total debt service as a % of GNI *	...
Children of primary school-age who are out-of-school (%)	4

** World Bank World Development Indicators*

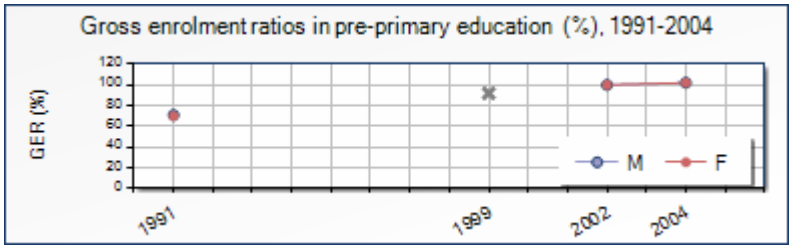
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	71	...	100	102 (3)	40
	M	71	...	100	102 (3)	41
	F	70	...	100	102 (3)	39

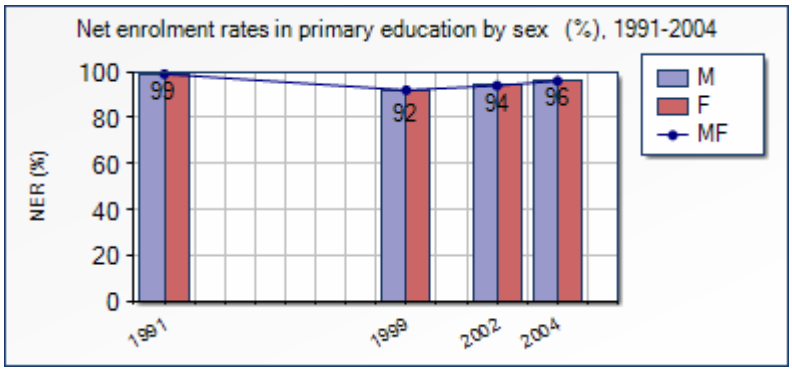
" 102 % of children are enrolled in pre-primary school



Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	108	98	101	103	113
	M	108	98	101	103	114
	F	108	98	101	103	112
NER (%)	MF	99	92	94	96 (3)	94
	M	99	92	94	96 (3)	94
	F	99	92	94	96 (3)	94

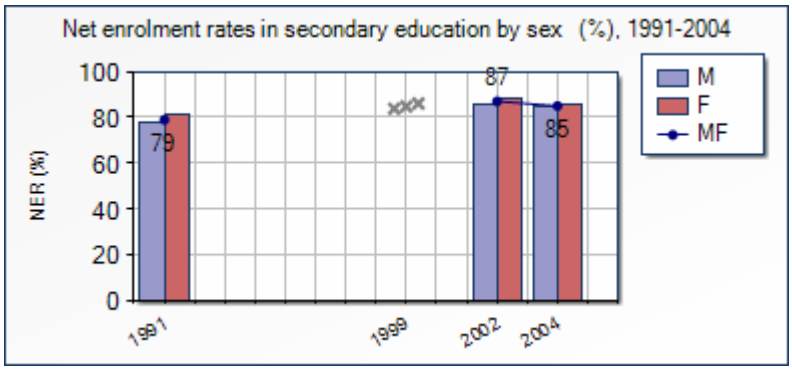
" 96 % of girls and 96 % of boys are in primary school



Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	83	154	152	149	73
	M	81	154	154	152	73
	F	84	154	149	145	73
NER (%)	MF	(4) 79	...	(3) 87	(3) 85	(3) 69
	M	(4) 78	...	(3) 86	(3) 85	
	F	(4) 81	...	(3) 88	(3) 86	

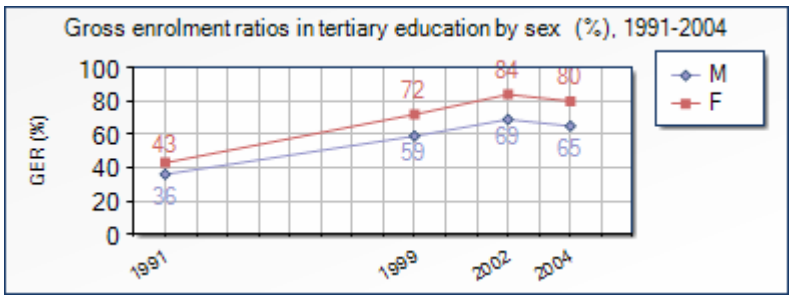
" 86 % of girls and 85 % of boys are in secondary school



Tertiary enrolment

" 72 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	39	66	76	72	23
	M	36	59	69	65	24
	F	43	72	84	80	21

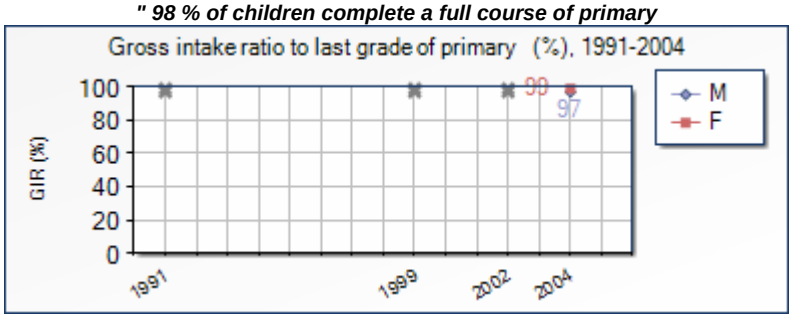


Progression and completion in education

" 98 % of children complete a full course of primary

2004

School life expectancy ISCED 1-6 (years)	20
Percentage of repeaters, primary (%)	...
Survival rate to grade 5 (%)	(3)(1) 86
Gross intake ratio to last grade of primary (%)	98
Primary to secondary transition rate (%)	(3)(2) 100

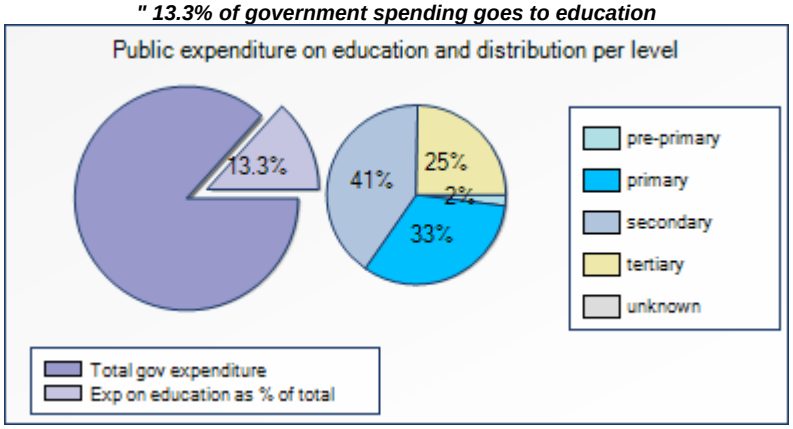


Resources for education

" 13.3% of government spending goes to education

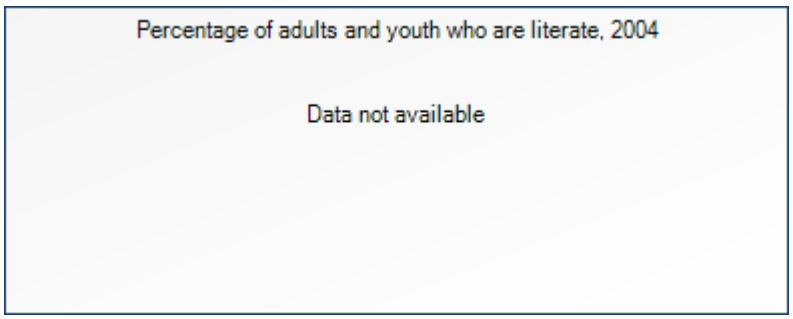
2004

Pupil / teacher ratio (primary)	(6) 18
Public expenditure on education :	
as % of GDP	(1) 4.8
as % of total government expenditure	(5) 13.3
Distribution of public expenditure per level (%) :	
pre-primary	(3)(1) 2
primary	(3)(1) 33
secondary	(3)(1) 41
tertiary	(3)(1) 25
unknown	(3)(1) 0



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	...	...	90.8
	M	...	...	94.7
	F	...	...	86.8
Youth (15-24) %	MF	...	...	97.9
	M	...	...	98.2
	F	...	...	97.5



Symbols used :	
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Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Data refer to 2002
(3) UIS estimation
(4) Partial estimation
(5) Data refer to 2000
(6) Data refer to 1998

June, 2006

FIJI

Education in Fiji — **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)	841
Annual population growth rate (%)*	(1) 1.4
Population 0-14 years(%)	32
Rural population (%)*	(1) 48
Total fertility rate (births per woman) *	(1) 2.6
Infant mortality rate (0/00) *	(1) 16
Life expectancy at birth (years) *	(1) 70

HIV rate (%) in adults (15-49 years)*	(1) 0.1
Poverty (% of pop. on less than $2 a day) *	...
GDP per capita (PPP) US$ *	(1) 5 880
GDP growth rate (%)*	(1) 4.8
Total debt service as a % of GNI *	(1) 1.4
Children of primary school-age who are out-of-school (%)	1

** World Bank World Development Indicators*

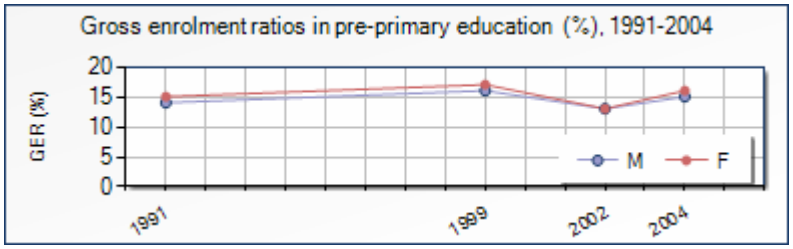
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	14	17	13	16 (3)	40
	M	(2) 14	16	13	15 (3)	41
	F	(2) 15	17	13	16 (3)	39

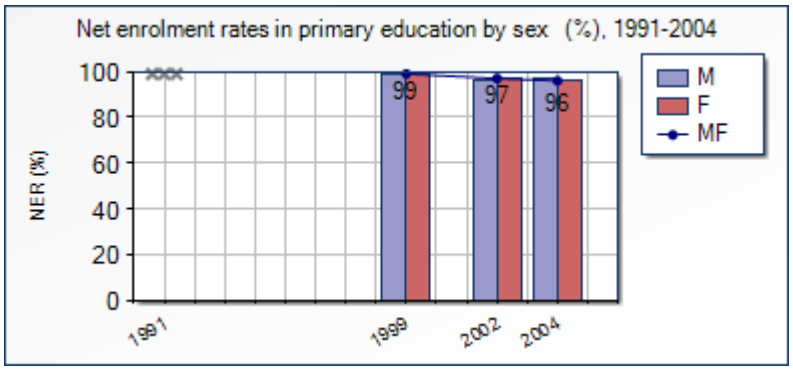
" 16 % of children are enrolled in pre-primary school



Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	133	110	108	106	113
	M	133	111	108	107	114
	F	133	110	108	105	112
NER (%)	MF	...	99 (3)	97	96 (3)	94
	M	...	99 (3)	96	97 (3)	94
	F	...	99 (3)	97	96 (3)	94

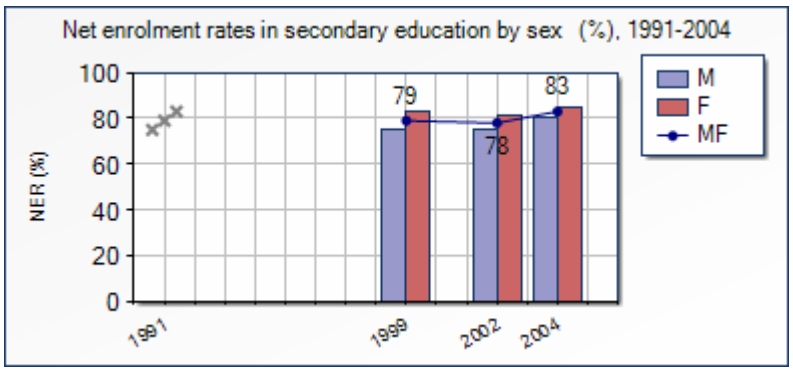
" 96 % of girls and 97 % of boys are in primary school



Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	64	81	82	88	73
	M	65	77	79	85	73
	F	62	85	86	91	73
NER (%)	MF	...	(3) 79	(3) 78	(3) 83	(3) 69
	M	...	(3) 75	(3) 75	(3) 80	
	F	...	(3) 83	(3) 81	(3) 85	

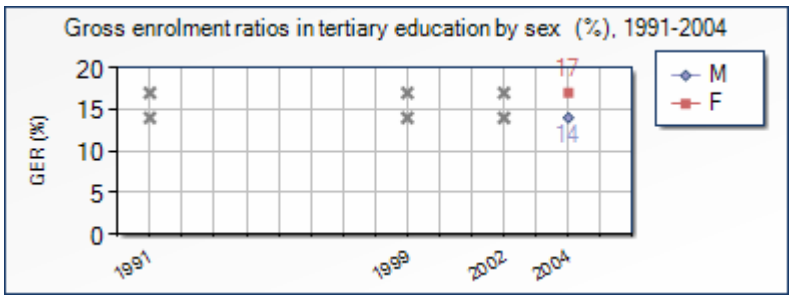
" 85 % of girls and 80 % of boys are in secondary school



Tertiary enrolment

" 15 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	12	...	...	15	23
	M	...	...	...	14	24
	F	...	...	...	17	21

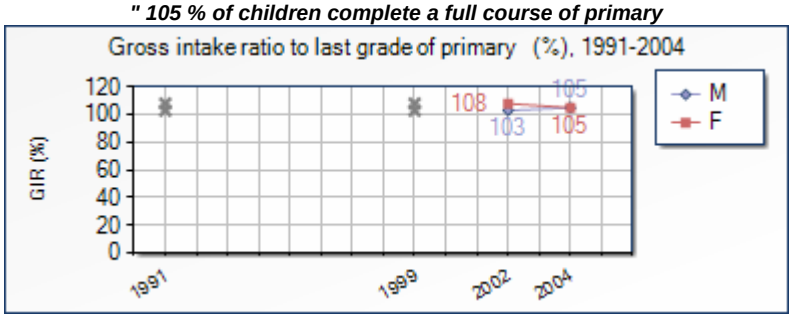


Progression and completion in education

2004

School life expectancy ISCED 1-6 (years)	(3) 13
Percentage of repeaters, primary (%)	2
Survival rate to grade 5 (%)	(1) 99
Gross intake ratio to last grade of primary (%)	105
Primary to secondary transition rate (%)	(1) 99

" 105 % of children complete a full course of primary

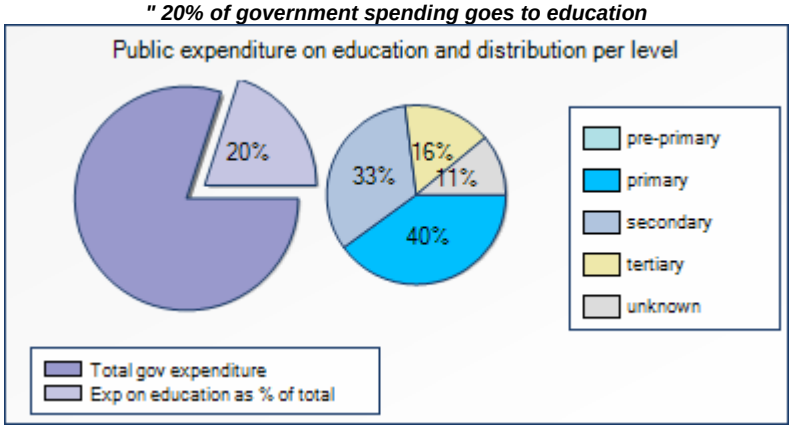


Resources for education

2004

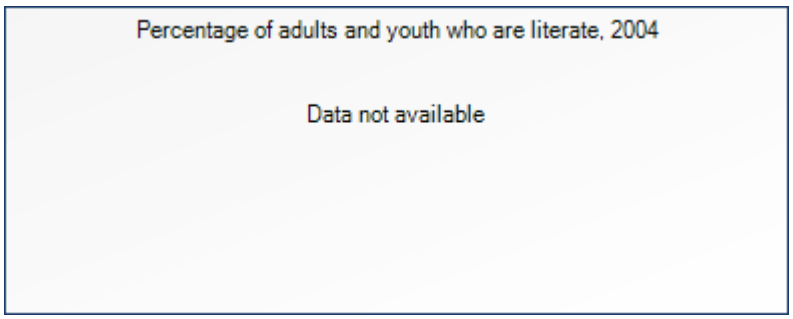
Pupil / teacher ratio (primary)	28
Public expenditure on education :	
as % of GDP	6.4
as % of total government expenditure	(4) 20.0
Distribution of public expenditure per level (%) :	
pre-primary	0
primary	40
secondary	33
tertiary	16
unknown	11

" 20% of government spending goes to education



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	88.6	...	90.8
	M	91.6	...	94.7
	F	85.5	...	86.8
Youth (15-24) %	MF	97.8	...	97.9
	M	98.1	...	98.2
	F	97.6	...	97.5



Symbols used :	
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...	*Data not available*
.	*Category not applicable*
x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Partial estimation
(3) UIS estimation
(4) Data refer to 2002

June, 2006

INDIA

Education in India — **Education - all levels**

South and West Asia

General information

2004

Total population (000)	1087 124
Annual population growth rate (%)*	(1) 1.5
Population 0-14 years(%)	32
Rural population (%)*	(1) 72
Total fertility rate (births per woman) *	(1) 2.9
Infant mortality rate (0/00) *	(1) 63
Life expectancy at birth (years) *	(1) 63

HIV rate (%) in adults (15-49 years)*	(1) 0.9
Poverty (% of pop. on less than $2 a day) *	(2) 81
GDP per capita (PPP) US$ *	(1) 2 892
GDP growth rate (%)*	(1) 8.6
Total debt service as a % of GNI *	(1) 3.4
Children of primary school-age who are out-of-school (%)	...

** World Bank World Development Indicators*

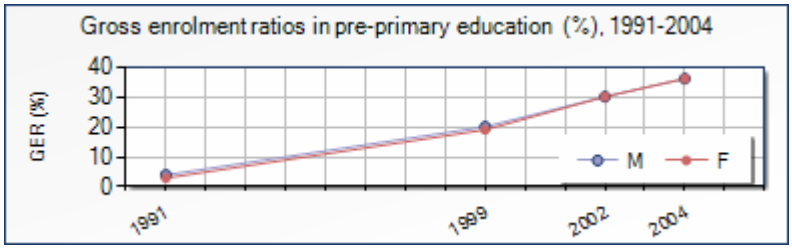
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	3	20	30	36	32
	M	4	20	30	36	33
	F	3	19	30	36	32

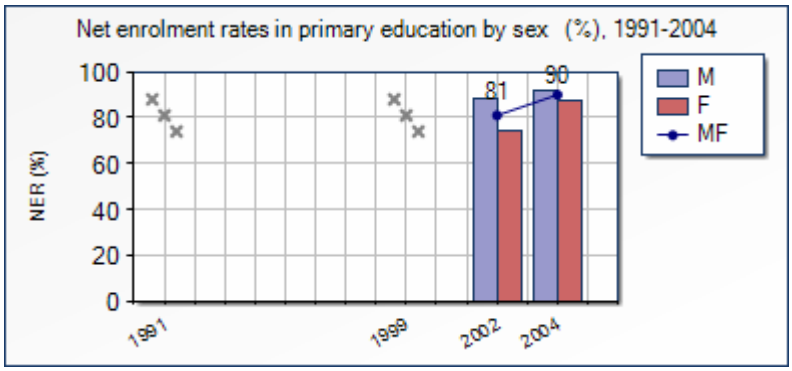
" 36 % of children are enrolled in pre-primary school



Primary enrolment

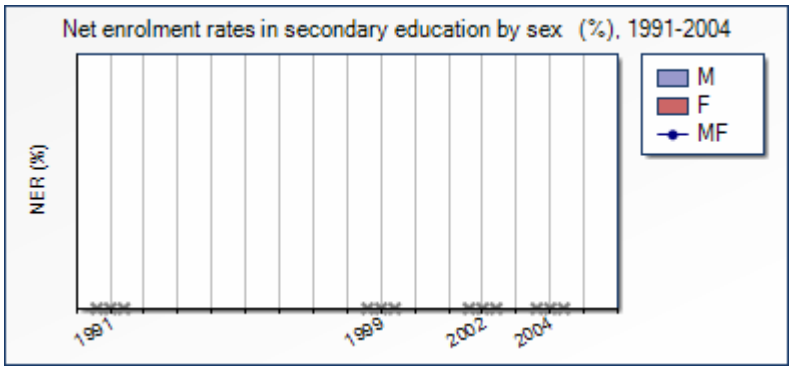
Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	98	97	99	(3) 116	110
	M	111	107	107	(3) 120	115
	F	84	87	90	(3) 112	105
NER (%)	MF	...	...	(3) 81	(3) 90	89
	M	...	...	(3) 88	(3) 92	93
	F	...	...	(3) 74	(3) 87	86

" 87 % of girls and 92 % of boys are in primary school



Secondary enrolment

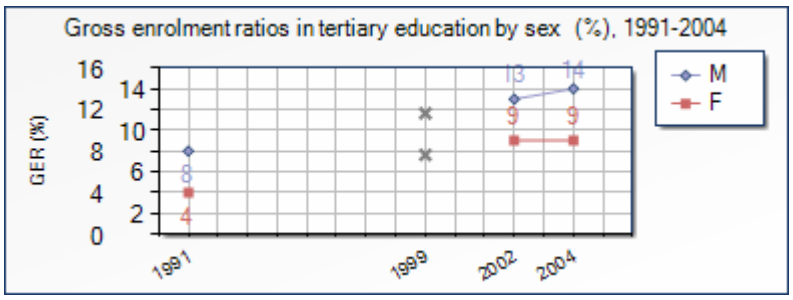
Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	(4) 44	46	50	54	51
	M	(4) 55	54	57	59	56
	F	(4) 33	38	42	47	46
NER (%)	MF	...	...	...	...	
	M	...	...	...	...	
	F	...	...	...	...	



Tertiary enrolment

" 12 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	6	...	11	12	11
	M	8	...	13	14	12
	F	4	...	9	9	9

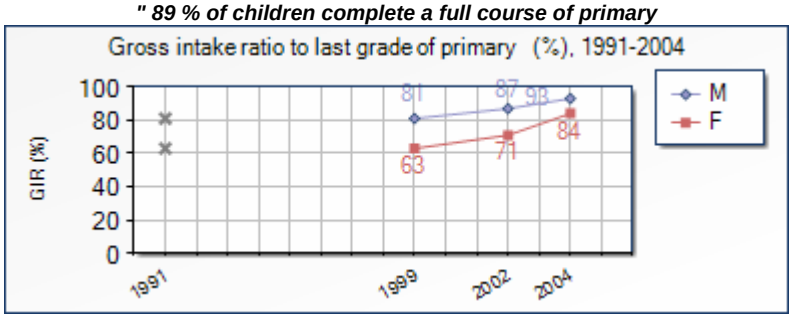


Progression and completion in education

" 89 % of children complete a full course of primary

2004

School life expectancy ISCED 1-6 (years)	(3)	10
Percentage of repeaters, primary (%)	(3)	3
Survival rate to grade 5 (%)	(1)	79
Gross intake ratio to last grade of primary (%)		89
Primary to secondary transition rate (%)	(1)	85

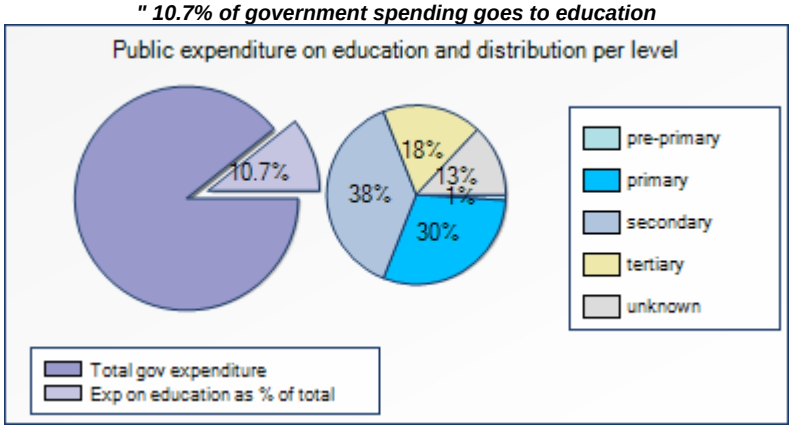


Resources for education

" 10.7% of government spending goes to education

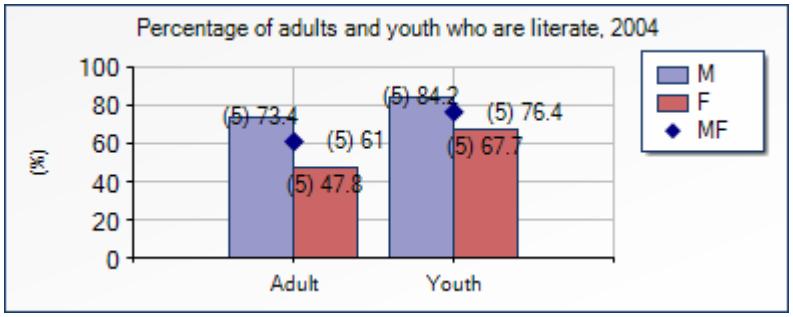
2004

Pupil / teacher ratio (primary)	(3)	40
Public expenditure on education :		
as % of GDP	(1)	3.3
as % of total government expenditure	(1)	10.7
Distribution of public expenditure per level (%) :		
pre-primary	(3)(2)	1
primary	(3)(2)	30
secondary	(3)(2)	38
tertiary	(3)(2)	18
unknown	(3)(2)	13



Literacy rates

Literacy rates		1990	2000-2004		2000-2004 Regional average
Adult (15+) %	MF	49.3	(5)	61.0	61.8
	M	61.9	(5)	73.4	73.7
	F	35.9	(5)	47.8	49.2
Youth (15-24) %	MF	64.3	(5)	76.4	75.8
	M	73.4	(5)	84.2	83.6
	F	54.2	(5)	67.7	67.3



Symbols used :	
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Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Data refer to 1999
(3) UIS estimation
(4) Partial estimation
(5) Data refer to 2001

June, 2006

Indonesia

Education in Indonesia — **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)	220 077
Annual population growth rate (%)*	(1) 1.3
Population 0-14 years(%)	29
Rural population (%)*	(1) 56
Total fertility rate (births per woman) *	(1) 2.4
Infant mortality rate (0/00) *	(1) 31
Life expectancy at birth (years) *	(1) 67

HIV rate (%) in adults (15-49 years)*	(1) 0.1
Poverty (% of pop. on less than $2 a day) *	(2) 52
GDP per capita (PPP) US$ *	(1) 3 361
GDP growth rate (%)*	(1) 4.1
Total debt service as a % of GNI *	(1) 9.3
Children of primary school-age who are out-of-school (%)	1

** World Bank World Development Indicators*

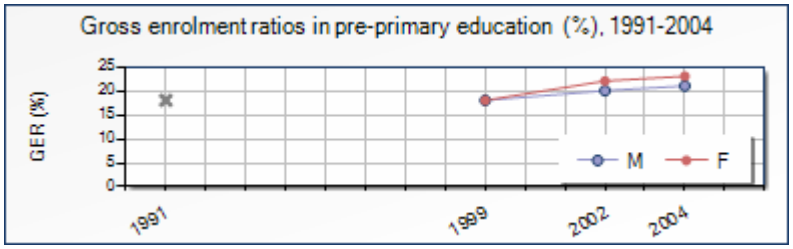
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

" 22 % of children are enrolled in pre-primary school

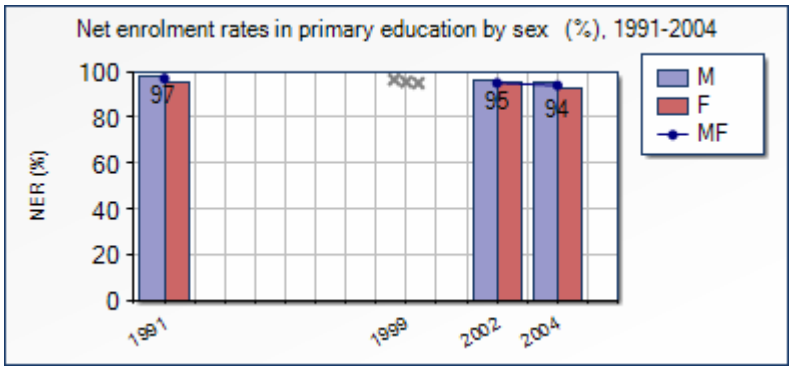
Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	18	(3) 18	21	22	(3) 40
	M	...	(3) 18	20	21	(3) 41
	F	...	(3) 18	22	23	(3) 39



Primary enrolment

" 93 % of girls and 95 % of boys are in primary school

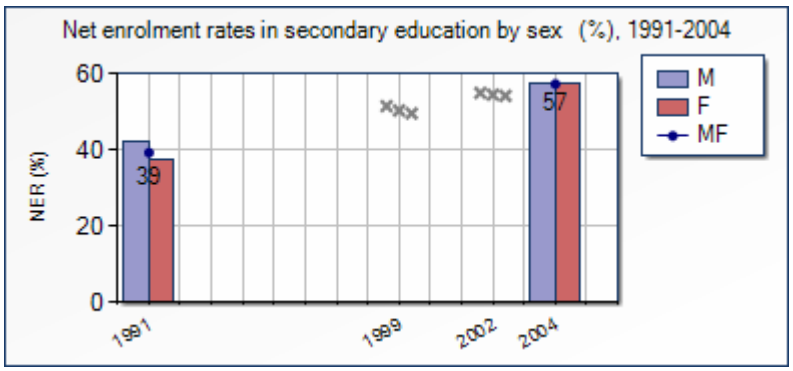
Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	114	...	115	117	113
	M	116	...	116	118	114
	F	113	...	114	116	112
NER (%)	MF	97	...	95	94	(3) 94
	M	98	...	96	95	(3) 94
	F	95	...	95	93	(3) 94



Secondary enrolment

" 57 % of girls and 57 % of boys are in secondary school

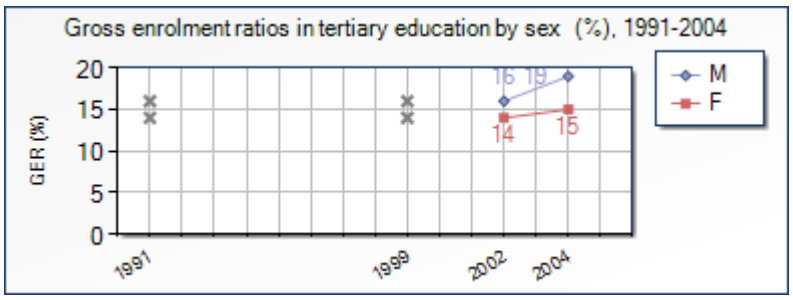
Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	46	...	59	64	73
	M	50	...	59	64	73
	F	41	...	58	64	73
NER (%)	MF	39	...	...	57	(3) 69
	M	42	...	...	57	
	F	37	...	...	57	



Tertiary enrolment

" 17 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	(4) 9	...	15	17	23
	M	...	...	16	19	24
	F	...	...	14	15	21

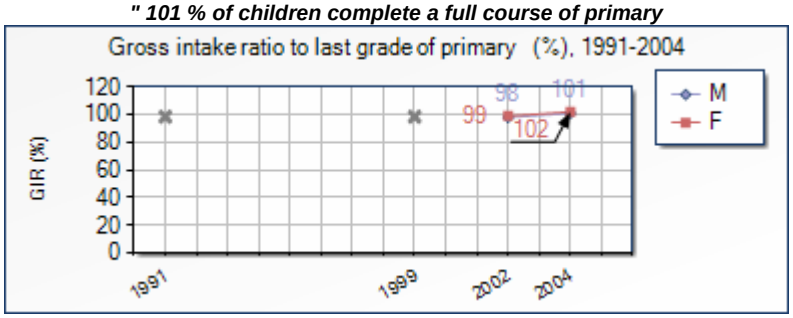


Progression and completion in education

" 101 % of children complete a full course of primary

2004

School life expectancy ISCED 1-6 (years)	12
Percentage of repeaters, primary (%)	3
Survival rate to grade 5 (%)	(1) 92
Gross intake ratio to last grade of primary (%)	101
Primary to secondary transition rate (%)	(1) 84

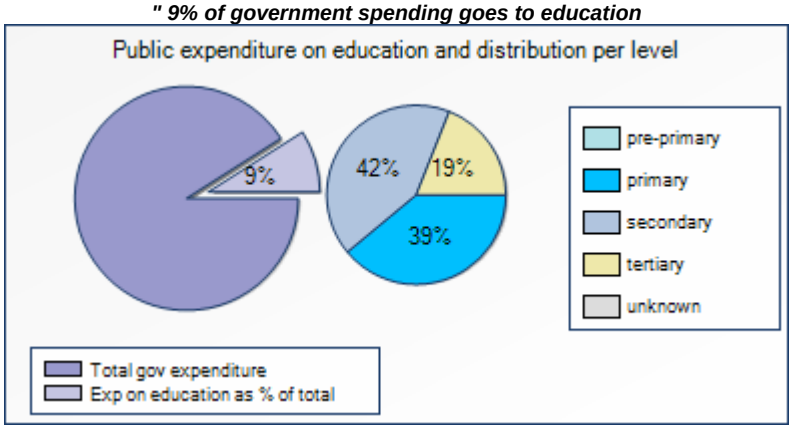


Resources for education

" 9% of government spending goes to education

2004

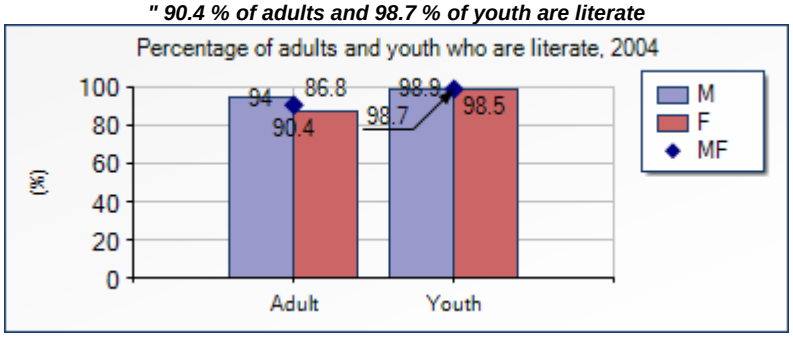
Pupil / teacher ratio (primary)	20
Public expenditure on education :	
as % of GDP	(1) 0.9
as % of total government expenditure	(3)(2) 9.0
Distribution of public expenditure per level (%) :	
pre-primary	(3)(1) 0
primary	(3)(1) 39
secondary	(3)(1) 42
tertiary	(3)(1) 19
unknown	(3)(1) -



Literacy rates

" 90.4 % of adults and 98.7 % of youth are literate

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	79.5	90.4	90.8
	M	86.7	94.0	94.7
	F	72.5	86.8	86.8
Youth (15-24) %	MF	95.0	98.7	97.9
	M	96.6	98.9	98.2
	F	93.4	98.5	97.5



Symbols used :	
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x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Data refer to 2002
(3) UIS estimation
(4) Partial estimation

June, 2006

Jordan

Education in Jordan — **Education - all levels**

Arab States

General information

2004

Total population (000)		HIV rate (%) in adults (15-49 years)*	(1) 0.1
Annual population growth rate (%)*	(1) 2.6	Poverty (% of pop. on less than $2 a day) *	...
Population 0-14 years(%)	38	GDP per capita (PPP) US$ *	(1) 4 320
Rural population (%)*	(1) 21	GDP growth rate (%)*	(1) 3.2
Total fertility rate (births per woman) *	(1) 3.5	Total debt service as a % of GNI *	(1) 11.8
Infant mortality rate (0/00) *	(1) 23	Children of primary school-age who are out-of-school (%)	5
Life expectancy at birth (years) *	(1) 72		

** World Bank World Development Indicators*

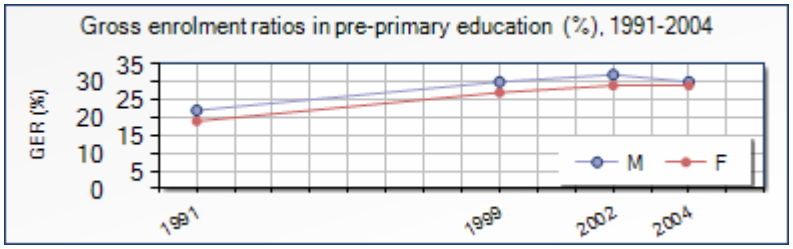
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	20	29	31	30	16
	M	22	30	32	30	17
	F	19	27	29	29	15

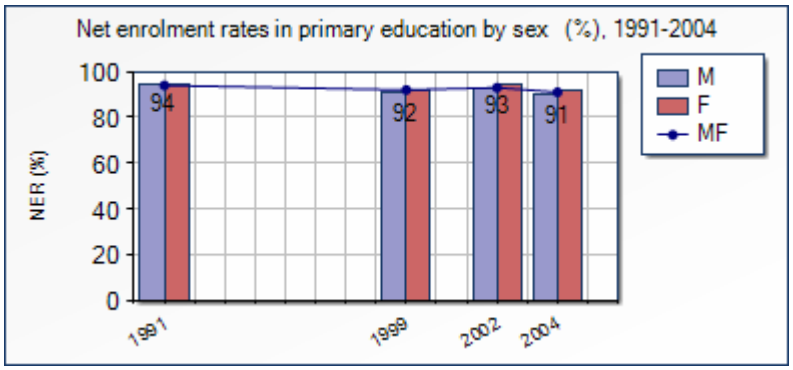
" 30 % of children are enrolled in pre-primary school



Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	101	99	101	98	93
	M	100	99	101	98	98
	F	101	99	101	99	88
NER (%)	MF	94	92	93	91	82
	M	94	91	93	90	85
	F	94	92	94	92	78

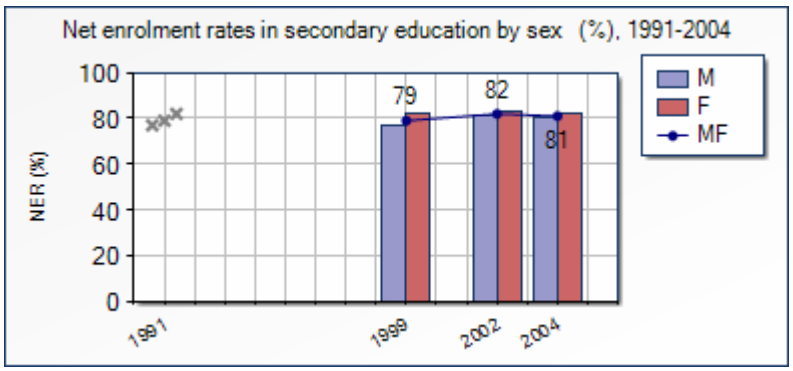
" 92 % of girls and 90 % of boys are in primary school



Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	63	88	88	87	66
	M	62	87	88	87	69
	F	65	89	89	88	63
NER (%)	MF	...	(2) 79	82	81	(2) 56
	M	...	(2) 77	81	80	(2) 58
	F	...	(2) 82	83	82	(2) 54

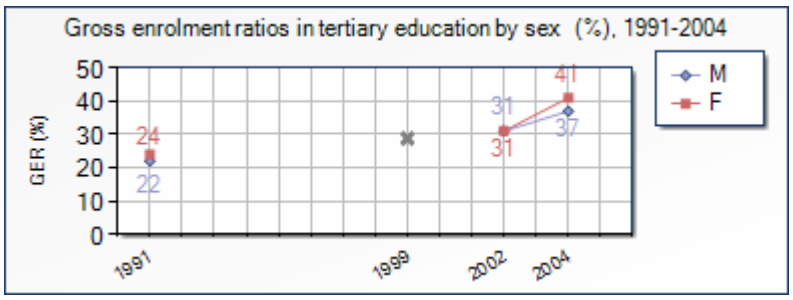
" 82 % of girls and 80 % of boys are in secondary school



Tertiary enrolment

" 39 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	23	...	31	39	21
	M	22	...	31	37 (2)	21
	F	24	...	31	41 (2)	20

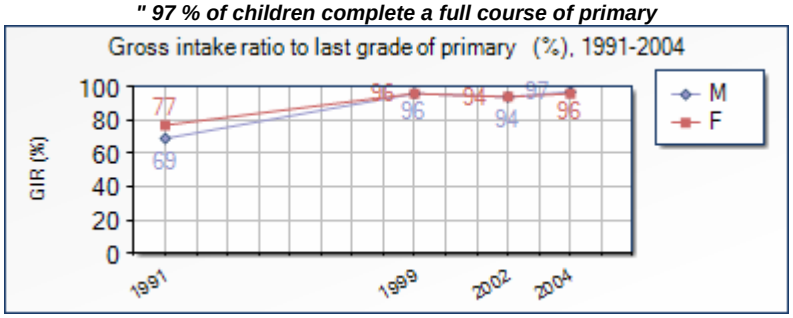


Progression and completion in education

" 97 % of children complete a full course of primary

2004

School life expectancy ISCED 1-6 (years)	(2) 13
Percentage of repeaters, primary (%)	(1) -
Survival rate to grade 5 (%)	(1) 99
Gross intake ratio to last grade of primary (%)	97
Primary to secondary transition rate (%)	(1) 97

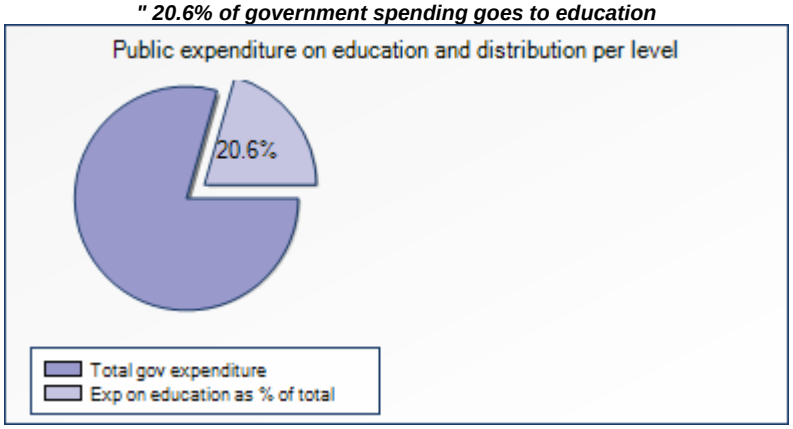


Resources for education

" 20.6% of government spending goes to education

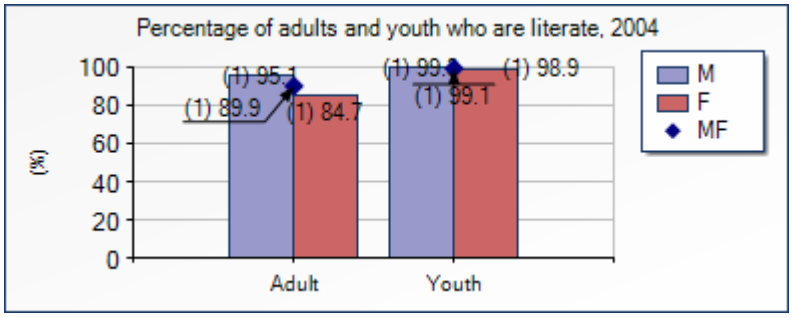
2004

Pupil / teacher ratio (primary)	(2)(1) 20
Public expenditure on education :	
as % of GDP	(4) 5.0
as % of total government expenditure	(4) 20.6
Distribution of public expenditure per level (%) :	
pre-primary	...
primary	...
secondary	...
tertiary	...
unknown	...



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	81.5	(1) 89.9	68.6
	M	90.0	(1) 95.1	78.5
	F	72.1	(1) 84.7	58.7
Youth (15-24) %	MF	96.7	(1) 99.1	84.9
	M	97.9	(1) 99.3	89.9
	F	95.3	(1) 98.9	80.1



Symbols used :	
-	*Magnitude nil or negligible value*
...	*Data not available*
.	*Category not applicable*
x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) UIS estimation
(3) Data refer to 1998
(4) Data refer to 1999

June, 2006

Malaysia

Education in Malaysia — **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)	24 894
Annual population growth rate (%)*	(1) 1.9
Population 0-14 years(%)	33
Rural population (%)*	(1) 41
Total fertility rate (births per woman) *	(1) 2.8
Infant mortality rate (0/00) *	(1) 7
Life expectancy at birth (years) *	(1) 73

HIV rate (%) in adults (15-49 years)*	(1) 0.4
Poverty (% of pop. on less than $2 a day) *	...
GDP per capita (PPP) US$ *	(1) 9 512
GDP growth rate (%)*	(1) 5.3
Total debt service as a % of GNI *	(1) 9.7
Children of primary school-age who are out-of-school (%)	(1) 7

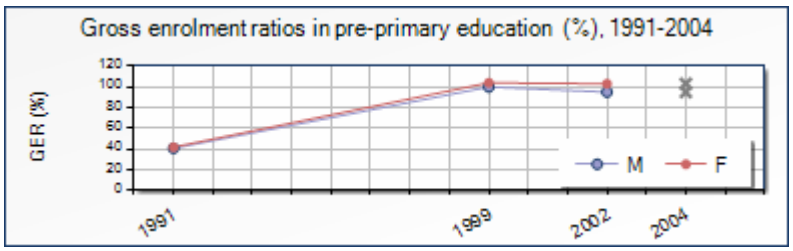
** World Bank World Development Indicators*

Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

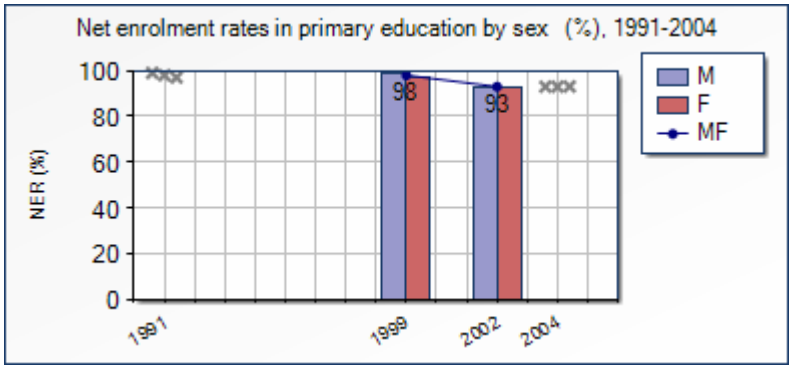
Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	42	102	99	...	(2) 40
	M	41	100	95	...	(2) 41
	F	42	104	103	...	(2) 39



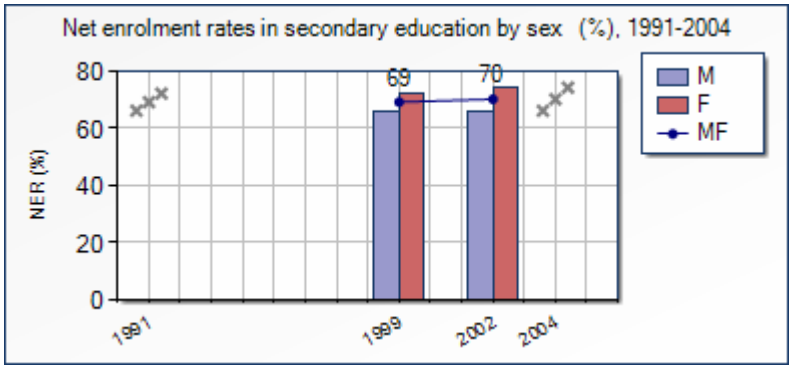
Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	95	100	93	...	113
	M	96	101	93	...	114
	F	95	99	93	...	112
NER (%)	MF	...	98	93	...	(2) 94
	M	...	99	93	...	(2) 94
	F	...	97	93	...	(2) 94



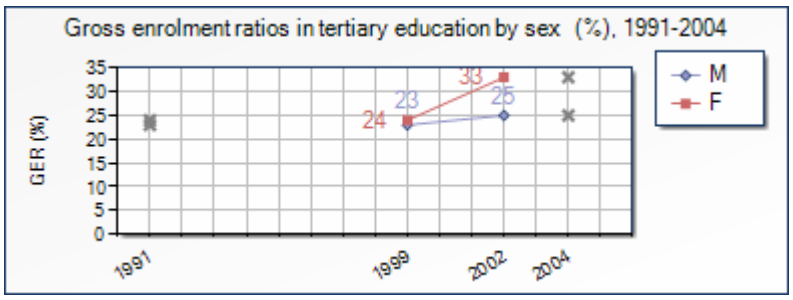
Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	57	69	70	...	73
	M	56	66	67	...	73
	F	58	73	74	...	73
NER (%)	MF	...	69	70	...	(2) 69
	M	...	66	66	...	
	F	...	72	74	...	



Tertiary enrolment

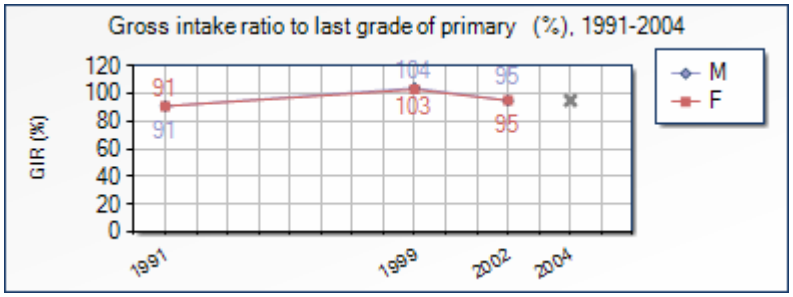
Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	8	23	29	...	23
	M	...	23	25	...	24
	F	...	24	33	...	21



Progression and completion in education

2004

School life expectancy ISCED 1-6 (years)	(1)	13
Percentage of repeaters, primary (%)		...
Survival rate to grade 5 (%)	(3)	98
Gross intake ratio to last grade of primary (%)	(1)	91
Primary to secondary transition rate (%)	(4)	100

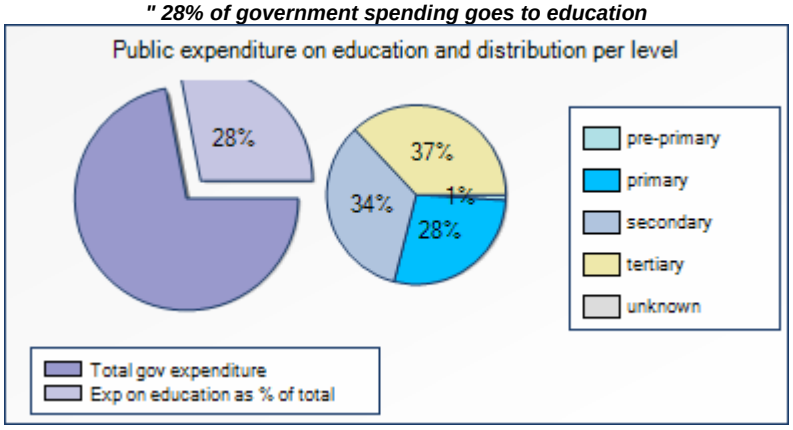


Resources for education

" 28% of government spending goes to education

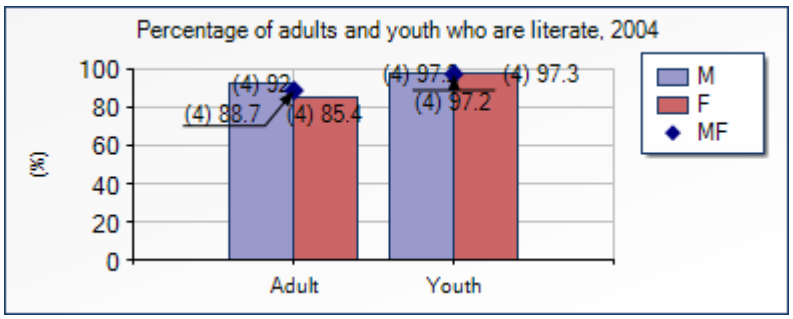
2004

Pupil / teacher ratio (primary)	(1)	18
Public expenditure on education :		
as % of GDP	(1)	8.0
as % of total government expenditure	(1)	28.0
Distribution of public expenditure per level (%) :		
pre-primary	(2)(1)	1
primary	(2)(1)	28
secondary	(2)(1)	34
tertiary	(2)(1)	37
unknown	(2)(1)	0



Literacy rates

Literacy rates		1990	2000-2004		2000-2004 Regional average
Adult (15+) %	MF	80.7	(4)	88.7	90.8
	M	86.9	(4)	92.0	94.7
	F	74.4	(4)	85.4	86.8
Youth (15-24) %	MF	94.8	(4)	97.2	97.9
	M	95.3	(4)	97.2	98.2
	F	94.2	(4)	97.3	97.5



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Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) UIS estimation
(3) Data refer to 2002
(4) Data refer to 2000

June, 2006

Mongolia

Education in Mongolia — **Education - all levels**

Central Asia

General information

2004

Total population (000)	2 614
Annual population growth rate (%)*	(1) 1.3
Population 0-14 years(%)	31
Rural population (%)*	(1) 43
Total fertility rate (births per woman) *	(1) 2.4
Infant mortality rate (0/00) *	(1) 56
Life expectancy at birth (years) *	(1) 66

HIV rate (%) in adults (15-49 years)*	(1) 0.1
Poverty (% of pop. on less than $2 a day) *	(2) 75
GDP per capita (PPP) US$ *	(1) 1 850
GDP growth rate (%)*	(1) 5.6
Total debt service as a % of GNI *	(1) 23
Children of primary school-age who are out-of-school (%)	11

** World Bank World Development Indicators*

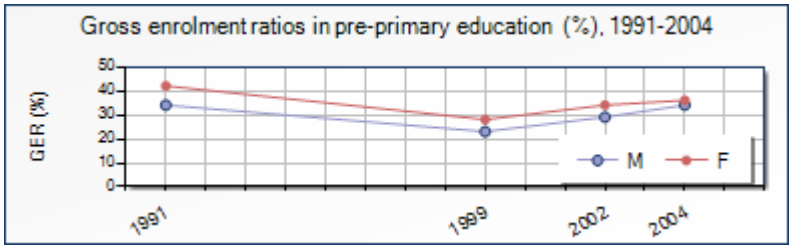
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	38	25	32	35	27
	M	34	23	29	34	28
	F	42	28	34	36	26

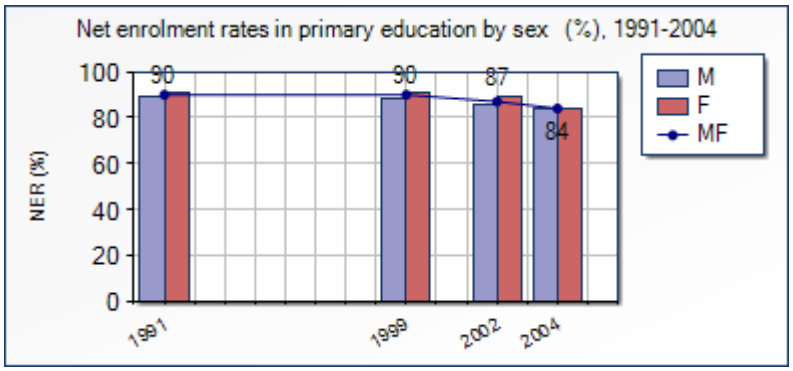
" 35 % of children are enrolled in pre-primary school



Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	97	98	99	104	102
	M	96	97	98	104	102
	F	98	100	101	105	101
NER (%)	MF	(3) 90	90	87	84	(3) 92
	M	(3) 89	88	86	84	(3) 92
	F	(3) 91	91	89	84	(3) 91

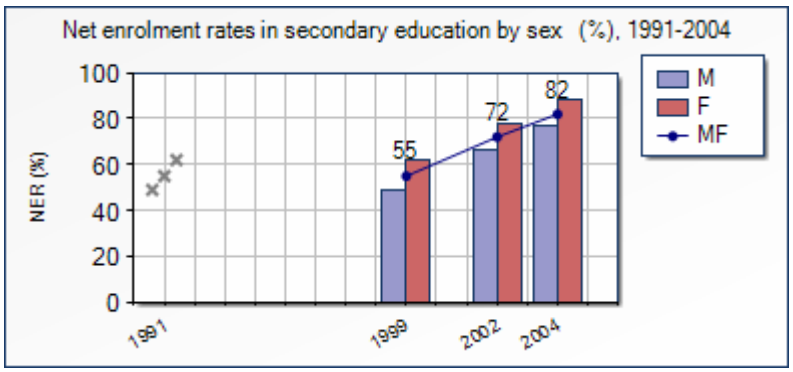
" 84 % of girls and 84 % of boys are in primary school



Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	82	58	76	90	90
	M	77	51	69	84	92
	F	88	65	83	95	88
NER (%)	MF	...	(3) 55	72	82	(3) 85
	M	...	(3) 49	66	77	(3) 86
	F	...	(3) 62	78	88	(3) 84

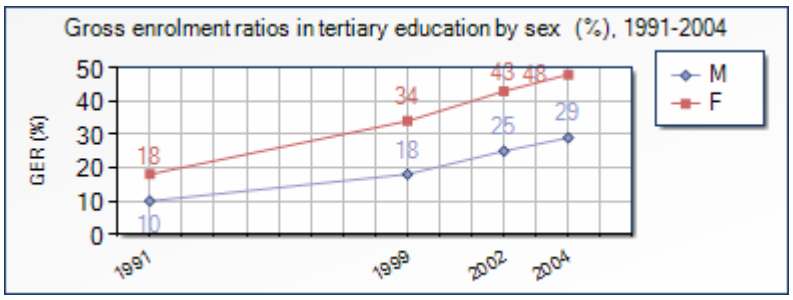
" 88 % of girls and 77 % of boys are in secondary school



Tertiary enrolment

" 39 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	14	26	34	39	25
	M	10	18	25	29	24
	F	18	34	43	48	26

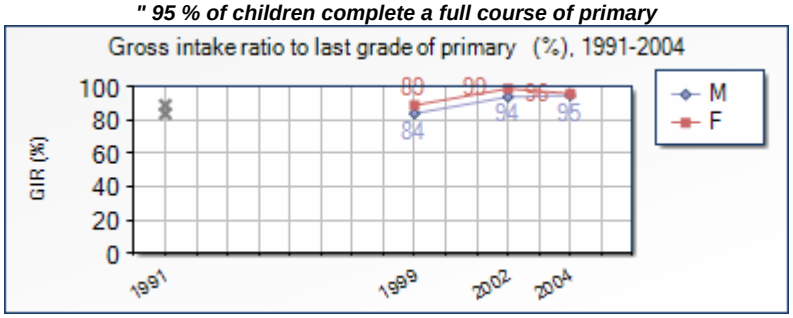


Progression and completion in education

" 95 % of children complete a full course of primary

2004

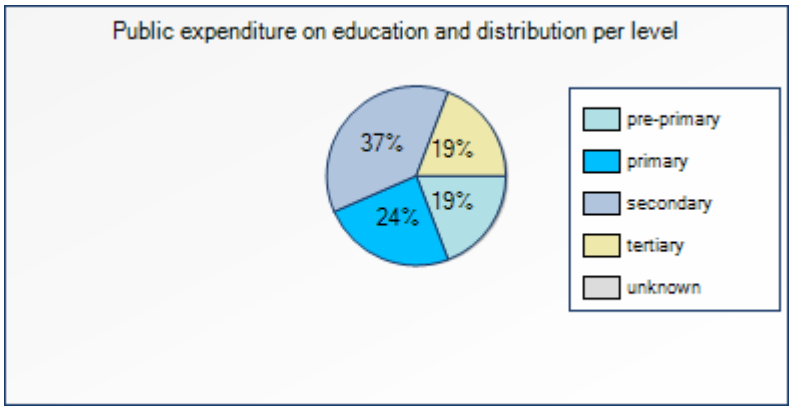
School life expectancy ISCED 1-6 (years)	12
Percentage of repeaters, primary (%)	1
Survival rate to grade 5 (%)	...
Gross intake ratio to last grade of primary (%)	95
Primary to secondary transition rate (%)	(1) 99



Resources for education

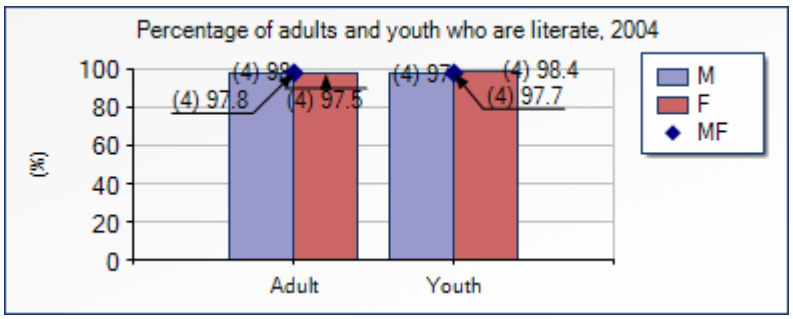
2004

Pupil / teacher ratio (primary)	33
Public expenditure on education :	
as % of GDP	5.6
as % of total government expenditure	...
Distribution of public expenditure per level (%) :	
pre-primary	19
primary	24
secondary	37
tertiary	19
unknown	-



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	...	(4) 97.8	99.1
	M	...	(4) 98.0	99.5
	F	...	(4) 97.5	98.8
Youth (15-24) %	MF	...	(4) 97.7	99.7
	M	...	(4) 97.0	99.6
	F	...	(4) 98.4	99.8



Symbols used :	
-	*Magnitude nil or negligible value*
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Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Data refer to 1998
(3) UIS estimation
(4) Data refer to 2000

June, 2006

Nepal

Education in Nepal — **Education - all levels**

South and West Asia

General information

2004

Total population (000)	26 591	HIV rate (%) in adults (15-49 years)*	(1) 0.5
Annual population growth rate (%)*	(1) 2.2	Poverty (% of pop. on less than $2 a day) *	...
Population 0-14 years(%)	39	GDP per capita (PPP) US$ *	(1) 1 420
Rural population (%)*	(1) 87	GDP growth rate (%)*	(1) 3.1
Total fertility rate (births per woman) *	(1) 4.1	Total debt service as a % of GNI *	(1) 1.9
Infant mortality rate (0/00) *	(1) 61	Children of primary school-age who are out-of-school (%)	...
Life expectancy at birth (years) *	(1) 60		

** World Bank World Development Indicators*

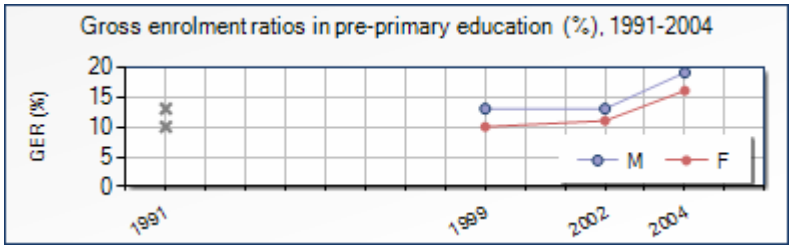
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

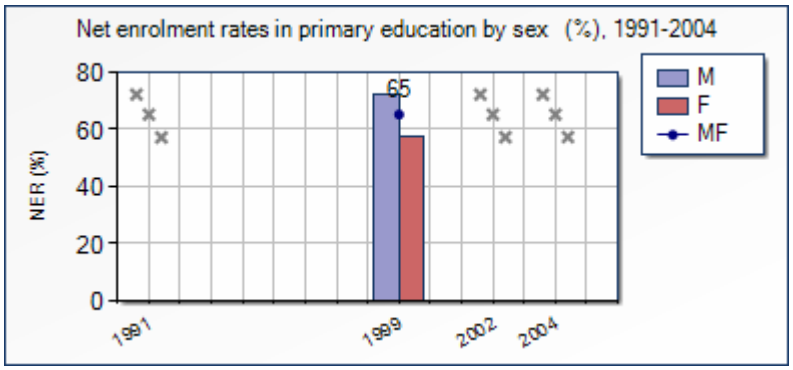
" 18 % of children are enrolled in pre-primary school

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	...	(2) 11	12	18	32
	M	...	(2) 13	13	19	33
	F	...	(2) 10	11	16	32



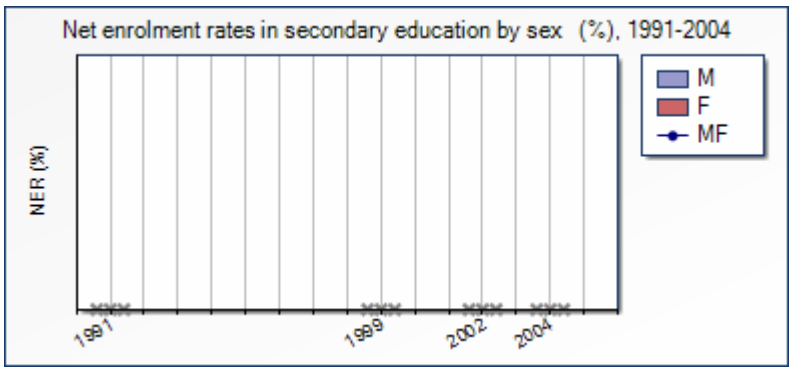
Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	110	114	114	114	110
	M	133	128	122	121	115
	F	85	98	105	106	105
NER (%)	MF	...	(3) 65	...	...	89
	M	...	(3) 72	...	...	93
	F	...	(3) 57	...	...	86



Secondary enrolment

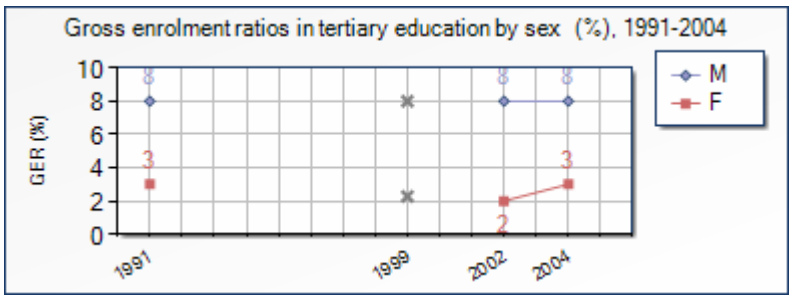
Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	34	34	42	...	51
	M	46	40	48	...	56
	F	21	28	36	...	46
NER (%)	MF	...	...	...	...	
	M	...	...	...	...	
	F	...	...	...	...	



Tertiary enrolment

" 6 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	6	...	5	6	11
	M	8	...	8	8	12
	F	3	...	2	3	9

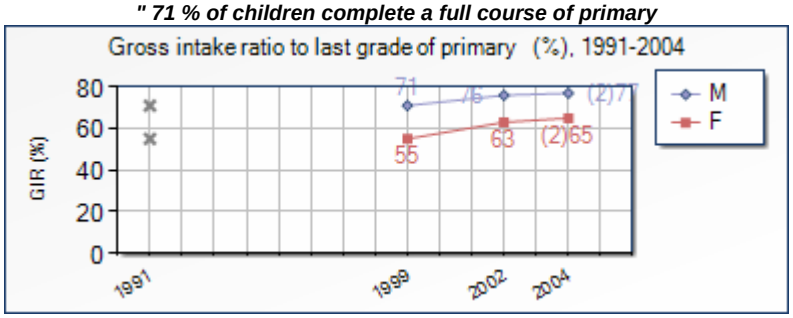


Progression and completion in education

2004

School life expectancy ISCED 1-6 (years)	(2)(1)	9
Percentage of repeaters, primary (%)	(2)	22
Survival rate to grade 5 (%)	(2)	61
Gross intake ratio to last grade of primary (%)	(2)	71
Primary to secondary transition rate (%)	(2)(1)	76

" 71 % of children complete a full course of primary

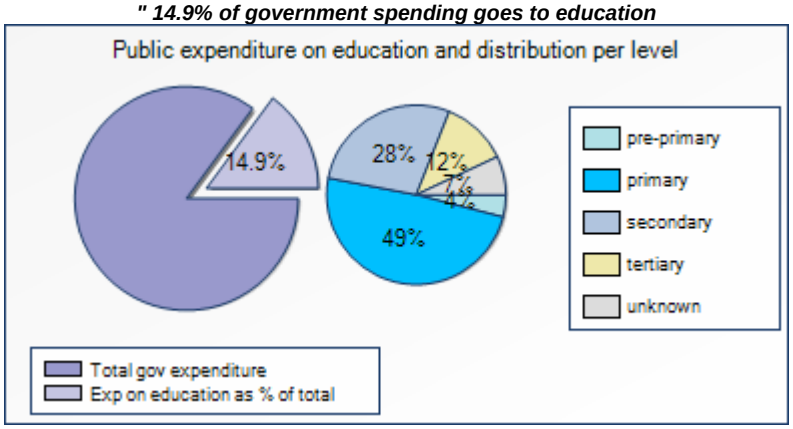


Resources for education

2004

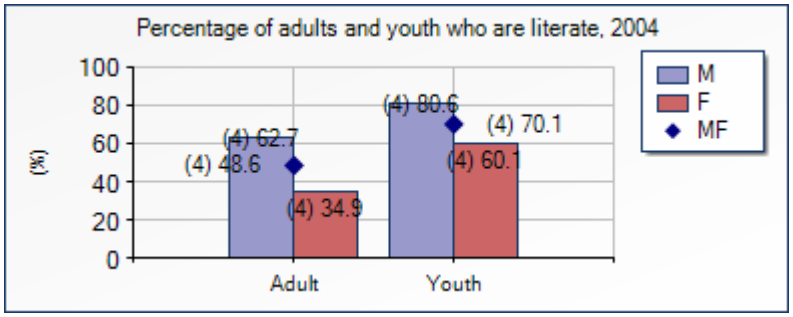
Pupil / teacher ratio (primary)		36
Public expenditure on education :		
as % of GDP	(1)	3.4
as % of total government expenditure	(1)	14.9
Distribution of public expenditure per level (%) :		
pre-primary	(2)(1)	4
primary	(2)(1)	49
secondary	(1)	28
tertiary	(1)	12
unknown	(1)	7

" 14.9% of government spending goes to education



Literacy rates

Literacy rates		1990	2000-2004		2000-2004 Regional average
Adult (15+) %	MF	30.4	(4)	48.6	61.8
	M	47.4	(4)	62.7	73.7
	F	14.0	(4)	34.9	49.2
Youth (15-24) %	MF	46.6	(4)	70.1	75.8
	M	67.0	(4)	80.6	83.6
	F	27.3	(4)	60.1	67.3



Symbols used :	
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x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) UIS estimation
(3) National estimation
(4) Data refer to 2001

June, 2006

New Zealand

Education in New Zealand — **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)	3 989
Annual population growth rate (%)*	(1) 1.8
Population 0-14 years(%)	22
Rural population (%)*	(1) 14
Total fertility rate (births per woman) *	(1) 1.9
Infant mortality rate (0/00) *	(1) 5
Life expectancy at birth (years) *	(1) 79

HIV rate (%) in adults (15-49 years)*	(1) 0.1
Poverty (% of pop. on less than $2 a day) *	...
GDP per capita (PPP) US$ *	(1) 22 582
GDP growth rate (%)*	(1) 3.6
Total debt service as a % of GNI *	...
Children of primary school-age who are out-of-school (%)	1

** World Bank World Development Indicators*

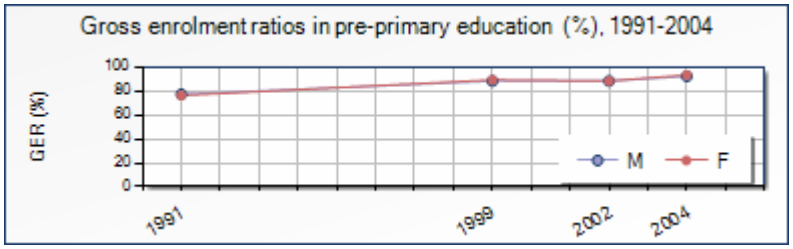
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	76	88	88	92	(2) 40
	M	77	88	88	92	(2) 41
	F	76	89	88	93	(2) 40

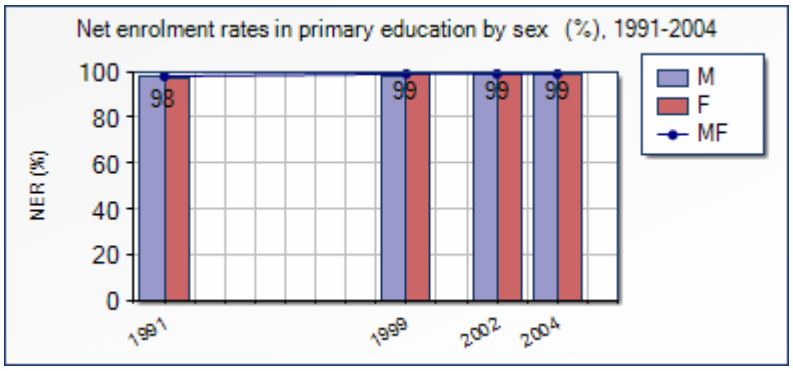
" 92 % of children are enrolled in pre-primary school



Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	101	102	103	102	113
	M	102	102	(2) 103	102	114
	F	101	103	(2) 103	102	112
NER (%)	MF	98	99	(2) 99	99	(2) 94
	M	98	98	(2) 99	99	(2) 94
	F	97	99	(2) 99	99	(2) 94

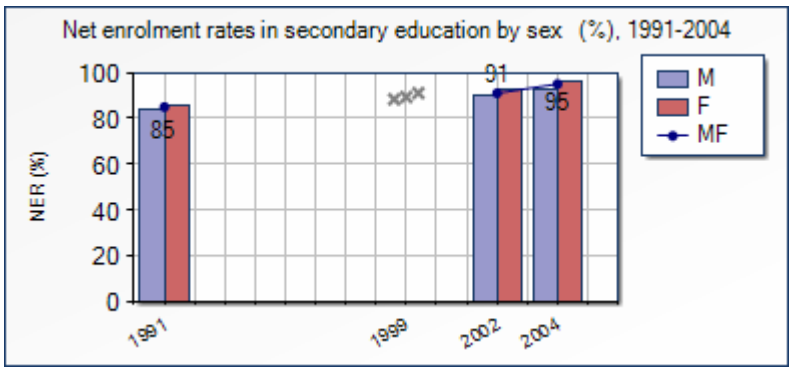
" 99 % of girls and 99 % of boys are in primary school



Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	90	110	116	114	73
	M	89	107	109	110	73
	F	91	113	123	119	73
NER (%)	MF	85	...	91	95	(2) 69
	M	84	...	90	93	
	F	86	...	93	96	

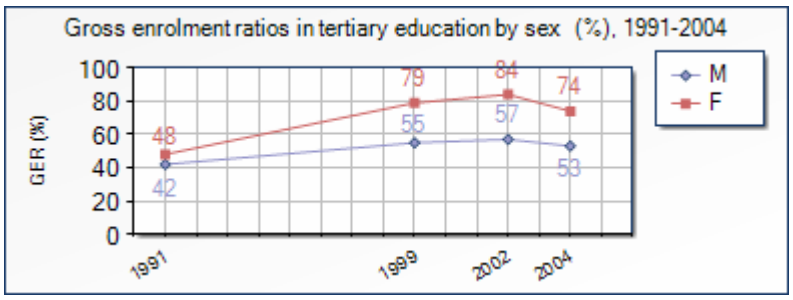
" 96 % of girls and 93 % of boys are in secondary school



Tertiary enrolment

" 63 % of the population of tertiary age in tertiary education

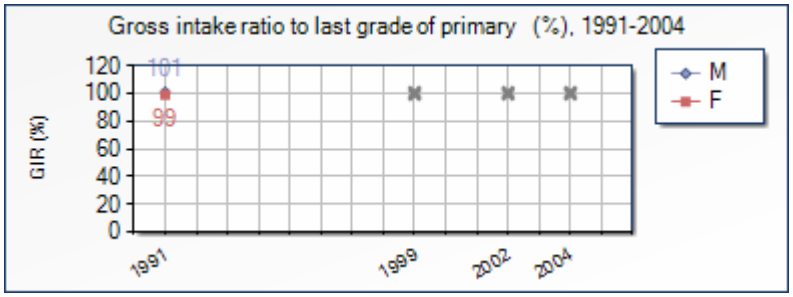
Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	45	67	70	63	23
	M	42	55	57	53	24
	F	48	79	84	74	21



Progression and completion in education

2004

School life expectancy ISCED 1-6 (years)	18
Percentage of repeaters, primary (%)	...
Survival rate to grade 5 (%)	...
Gross intake ratio to last grade of primary (%)	...
Primary to secondary transition rate (%)	...

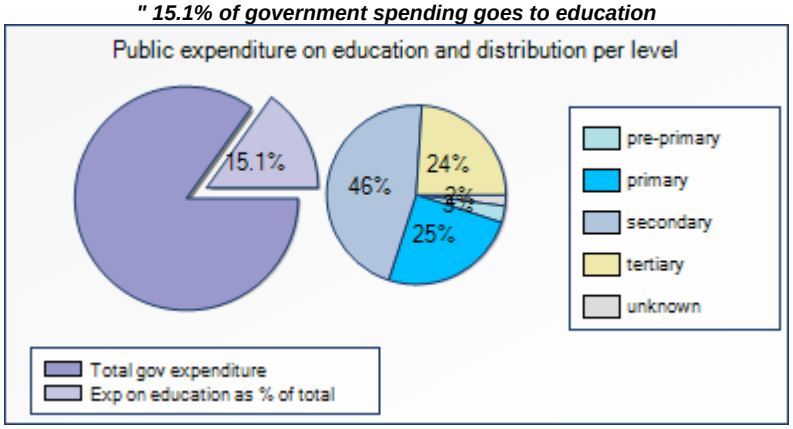


Resources for education

2004

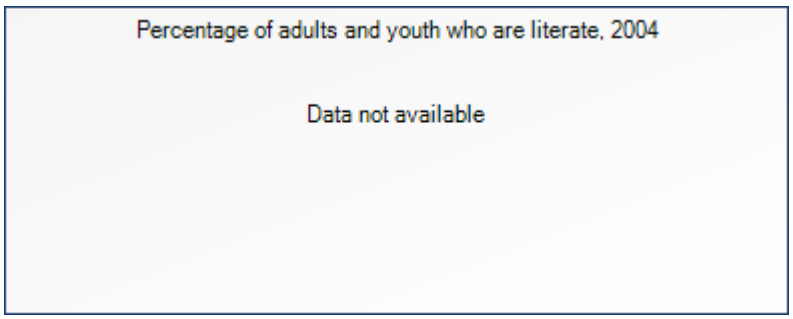
Pupil / teacher ratio (primary)		16
Public expenditure on education :		
as % of GDP		6.9
as % of total government expenditure	(1)	15.1
Distribution of public expenditure per level (%) :		
pre-primary	(2)	3
primary	(2)	25
secondary	(2)	46
tertiary	(2)	24
unknown	(2)	2

" 15.1% of government spending goes to education



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	...	...	90.8
	M	...	...	94.7
	F	...	...	86.8
Youth (15-24) %	MF	...	...	97.9
	M	...	...	98.2
	F	...	...	97.5



Symbols used :	
-	*Magnitude nil or negligible value*
...	*Data not available*
.	*Category not applicable*
x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) UIS estimation

June, 2006

Palestinian Territories

Philippines

Education in Philippines — **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)	81 617	HIV rate (%) in adults (15-49 years)*	(1) 0.1
Annual population growth rate (%)*	(1) 1.9	Poverty (% of pop. on less than $2 a day) *	(2) 47
Population 0-14 years(%)	36	GDP per capita (PPP) US$ *	(1) 4 321
Rural population (%)*	(1) 39	GDP growth rate (%)*	(1) 4.5
Total fertility rate (births per woman) *	(1) 3.2	Total debt service as a % of GNI *	(1) 11.9
Infant mortality rate (0/00) *	(1) 27	Children of primary school-age who are out-of-school (%)	6
Life expectancy at birth (years) *	(1) 70		

** World Bank World Development Indicators*

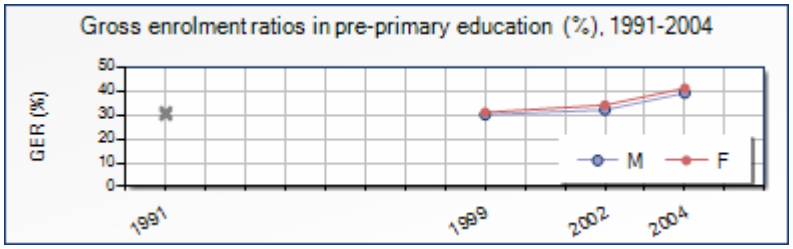
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

" 40 % of children are enrolled in pre-primary school

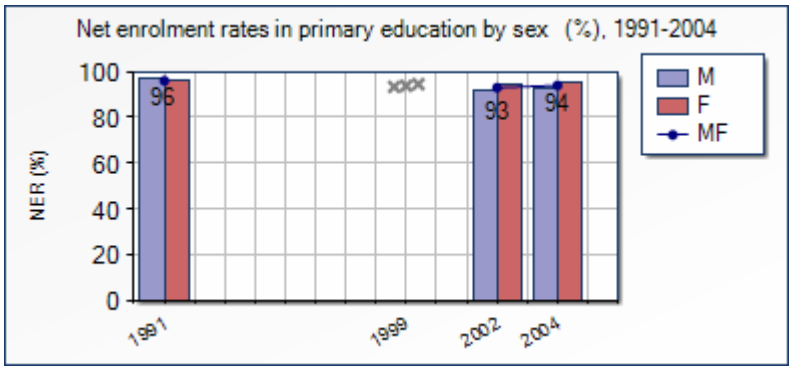
Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	12	31	33	40 (3)	40
	M	...	30	32	39 (3)	41
	F	...	31	34	41 (3)	39



Primary enrolment

" 95 % of girls and 93 % of boys are in primary school

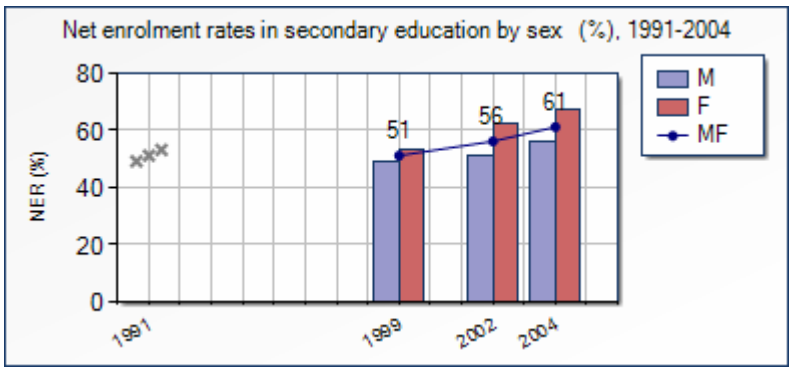
Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	109	113	112	112	113
	M	110	113	113	113	114
	F	109	113	111	111	112
NER (%)	MF	(3) 96	...	93	94	(3) 94
	M	(3) 97	...	92	93	(3) 94
	F	(3) 96	...	94	95	(3) 94



Secondary enrolment

" 67 % of girls and 56 % of boys are in secondary school

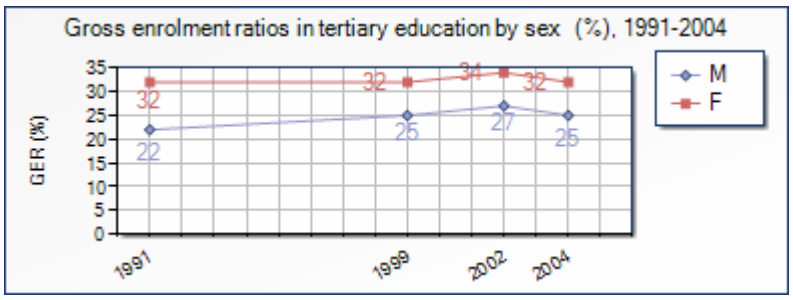
Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	71	76	82	86	73
	M	(4) 69	73	78	82	73
	F	(4) 72	79	86	90	73
NER (%)	MF	...	51	56	61	(3) 69
	M	...	49	51	56	
	F	...	53	62	67	



Tertiary enrolment

" 29 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	27	29	30	29	23
	M	(4) 22	25	27	25	24
	F	(4) 32	32	34	32	21

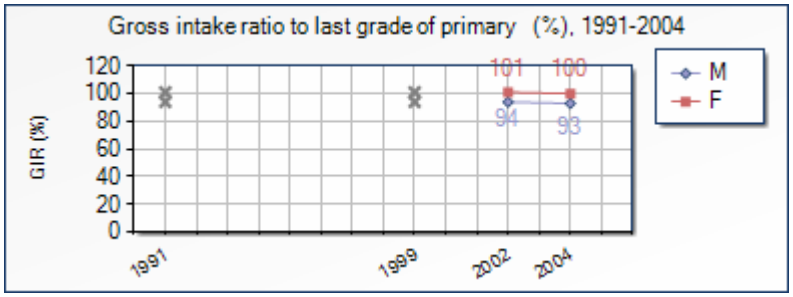


Progression and completion in education

2004

School life expectancy ISCED 1-6 (years)	(3) 12
Percentage of repeaters, primary (%)	2
Survival rate to grade 5 (%)	(1) 75
Gross intake ratio to last grade of primary (%)	97
Primary to secondary transition rate (%)	(1) 97

" 97 % of children complete a full course of primary

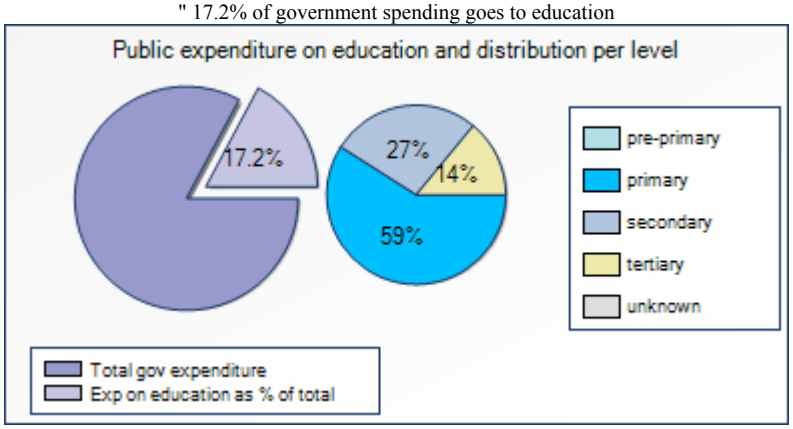


Resources for education

2004

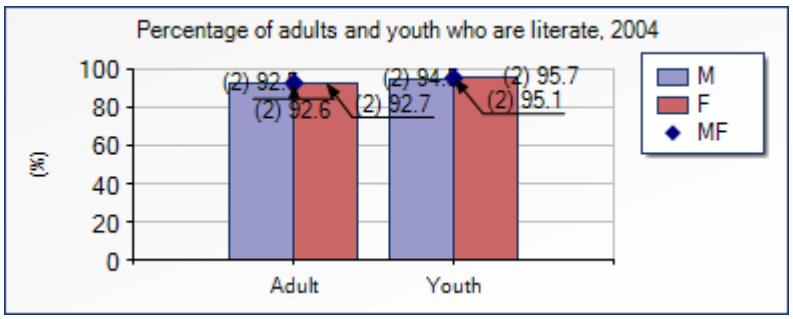
Pupil / teacher ratio (primary)	35
Public expenditure on education :	
as % of GDP	(1) 3.2
as % of total government expenditure	(1) 17.2
Distribution of public expenditure per level (%) :	
pre-primary	(3)(1) 0
primary	(3)(1) 59
secondary	(3)(1) 27
tertiary	(3)(1) 14
unknown	(3)(1) 0

" 17.2% of government spending goes to education



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	91.7	(2) 92.6	90.8
	M	92.2	(2) 92.5	94.7
	F	91.2	(2) 92.7	86.8
Youth (15-24) %	MF	97.3	(2) 95.1	97.9
	M	97.1	(2) 94.5	98.2
	F	97.4	(2) 95.7	97.5



Symbols used :	
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Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Data refer to 2000
(3) UIS estimation
(4) Partial estimation

June, 2006

Qatar

Education in Qatar — **Education - all levels**

Arab States

General information

2004

Total population (000)		777
Annual population growth rate (%)*	(1)	2.1
Population 0-14 years(%)		22
Rural population (%)*	(1)	7
Total fertility rate (births per woman) *	(1)	2.5
Infant mortality rate (0/00) *	(1)	11
Life expectancy at birth (years) *	(1)	75

HIV rate (%) in adults (15-49 years)*	...
Poverty (% of pop. on less than $2 a day) *	...
GDP per capita (PPP) US$ *	...
GDP growth rate (%)*	...
Total debt service as a % of GNI *	...
Children of primary school-age who are out-of-school (%)	1

** World Bank World Development Indicators*

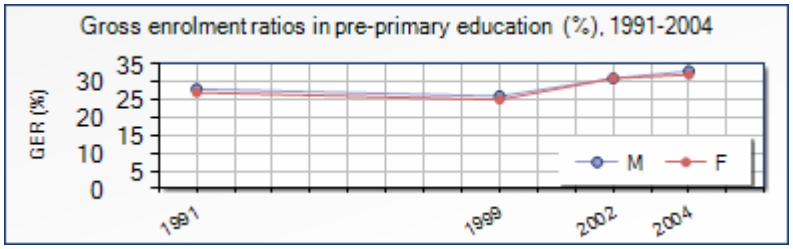
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	28	25	31	32	16
	M	28	26	31	33	17
	F	27	25	31	32	15

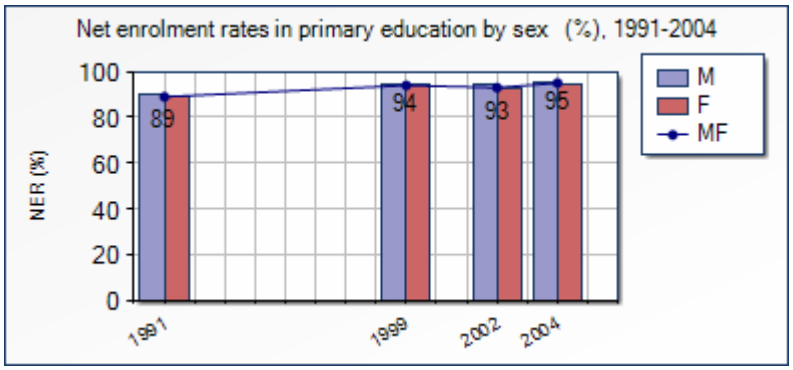
" 32 % of children are enrolled in pre-primary school



Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	101	105	105	102	93
	M	104	107	107	102	98
	F	97	103	103	101	88
NER (%)	MF	89	94	93	95	82
	M	90	94	94	95	85
	F	89	94	93	94	78

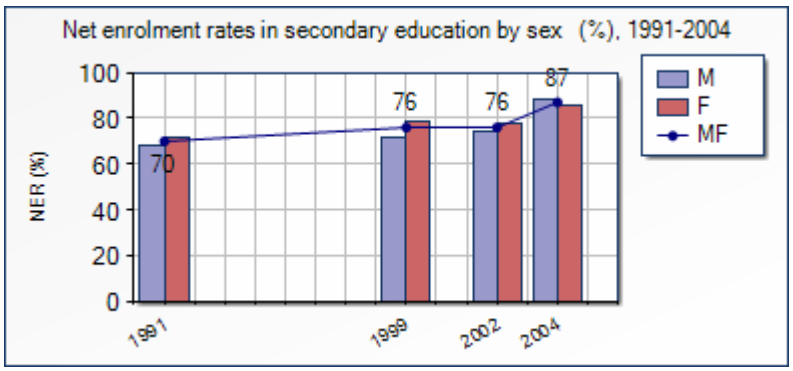
" 94 % of girls and 95 % of boys are in primary school



Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	84	90	88	97	66
	M	81	87	86	98	69
	F	86	93	90	95	63
NER (%)	MF	70	76 (2)	76	87 (2)	56
	M	68	72 (2)	74	88 (2)	58
	F	72	79 (2)	78	86 (2)	54

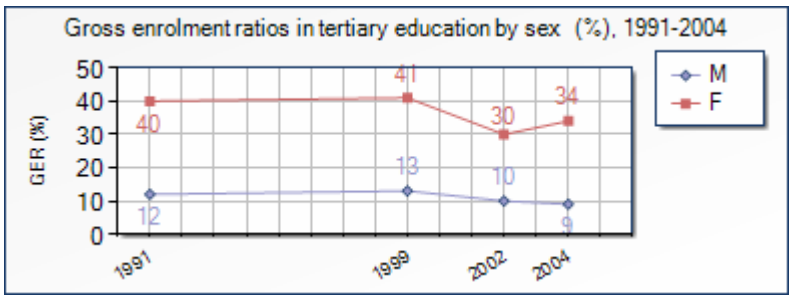
" 86 % of girls and 88 % of boys are in secondary school



Tertiary enrolment

" 19 % of the population of tertiary age in tertiary education

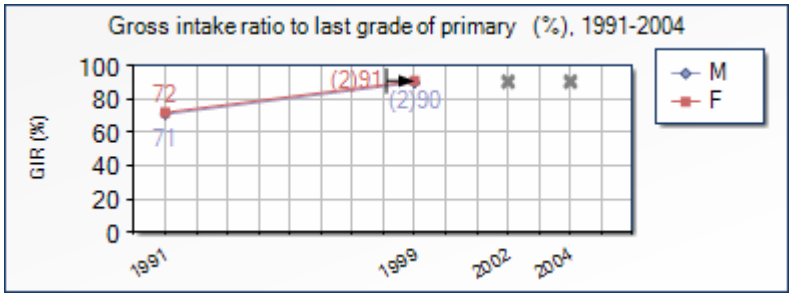
Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	23	(2) 25	20	19	21
	M	12	(2) 13	10	9	(2) 21
	F	40	(2) 41	30	34	(2) 20



Progression and completion in education

2004

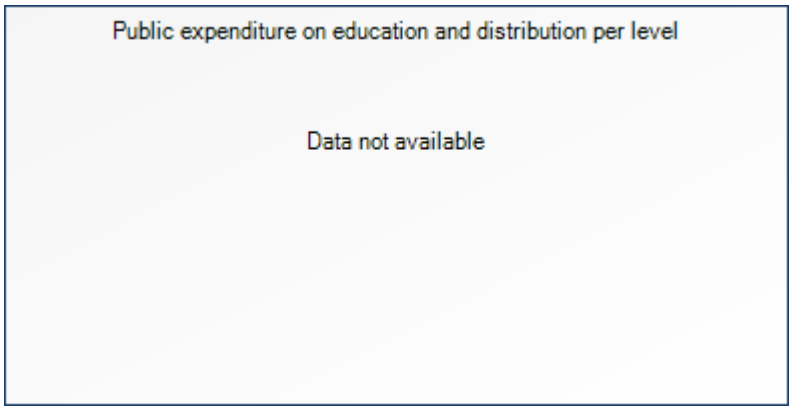
School life expectancy ISCED 1-6 (years)	13
Percentage of repeaters, primary (%)	(2)(3) 3
Survival rate to grade 5 (%)	...
Gross intake ratio to last grade of primary (%)	(2)(1) 92
Primary to secondary transition rate (%)	(2)(4) 96



Resources for education

2004

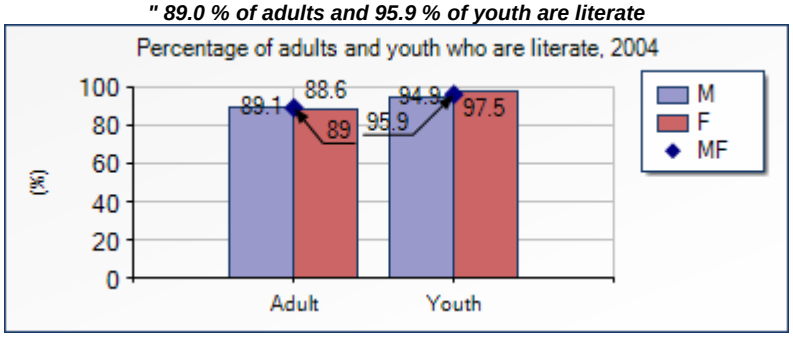
Pupil / teacher ratio (primary)	9
Public expenditure on education :	
as % of GDP	(6)(5) 3.6
as % of total government expenditure	...
Distribution of public expenditure per level (%) :	
pre-primary	...
primary	...
secondary	...
tertiary	...
unknown	...



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	77.0	89.0	68.6
	M	77.4	89.1	78.5
	F	76.0	88.6	58.7
Youth (15-24) %	MF	90.3	95.9	84.9
	M	88.3	94.9	89.9
	F	93.0	97.5	80.1

" 89.0 % of adults and 95.9 % of youth are literate



Symbols used :	
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Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) UIS estimation
(3) Data refer to 1999
(4) Data refer to 2000
(5) Data refer to 1998
(6) National estimation

June, 2006

Republic of Korea

Education in Republic of Korea — **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)		HIV rate (%) in adults (15-49 years)*	(1) 0.1
Annual population growth rate (%)*	(1) 0.6	Poverty (% of pop. on less than $2 a day) *	(2) 2
Population 0-14 years(%)	19	GDP per capita (PPP) US$ *	(1) 17 971
Rural population (%)*	(1) 16	GDP growth rate (%)*	(1) 3.1
Total fertility rate (births per woman) *	(1) 1.4	Total debt service as a % of GNI *	...
Infant mortality rate (0/00) *	(1) 5	Children of primary school-age who are out-of-school (%)	0
Life expectancy at birth (years) *	(1) 74		

** World Bank World Development Indicators*

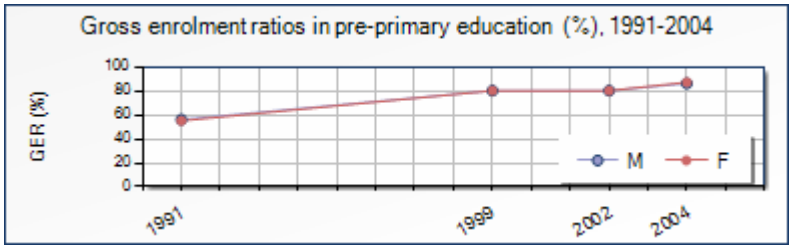
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

" 87 % of children are enrolled in pre-primary school

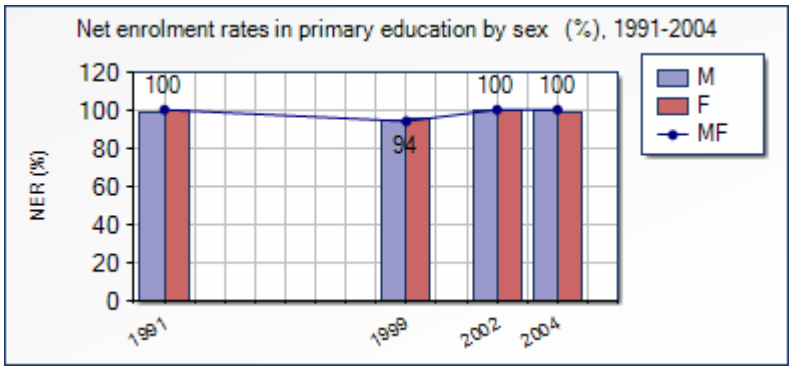
Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	55	80	80	87 (3)	40
	M	56	80	80	86 (3)	41
	F	55	80	80	87 (3)	39



Primary enrolment

" 99 % of girls and 100 % of boys are in primary school

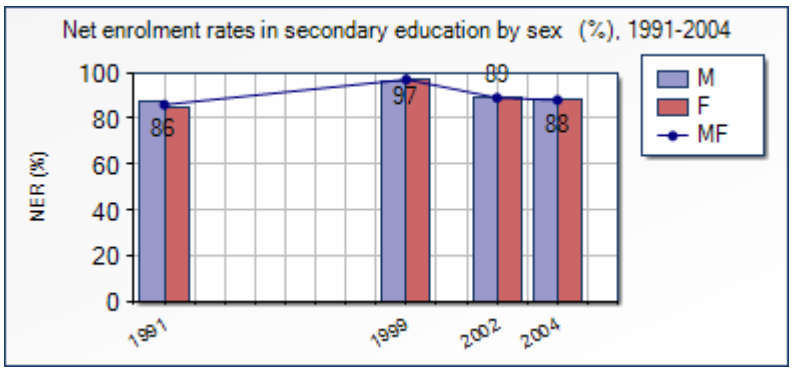
Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	105	95	102	105	113
	M	105	95	102	105	114
	F	105	96	102	105	112
NER (%)	MF	100	94	100	100 (3)	94
	M	99	94	100	100 (3)	94
	F	100	95	100	99 (3)	94



Secondary enrolment

" 88 % of girls and 88 % of boys are in secondary school

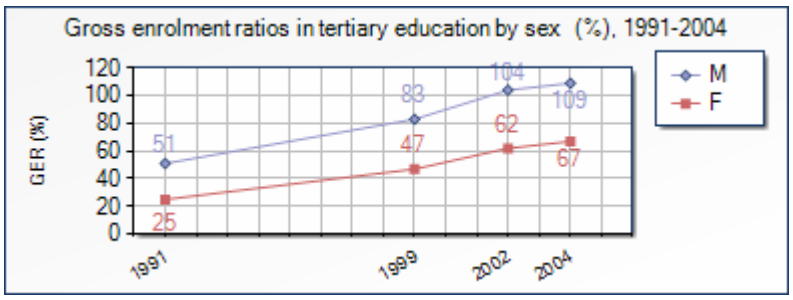
Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	90	100	91	91	73
	M	91	100	91	91	73
	F	88	100	91	91	73
NER (%)	MF	86	97	89	88 (3)	69
	M	87	96	89	88	
	F	85	97	89	88	



Tertiary enrolment

" 89 % of the population of tertiary age in tertiary education

Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	39	66	83	89	23
	M	51	83	104	109	24
	F	25	47	62	67	21

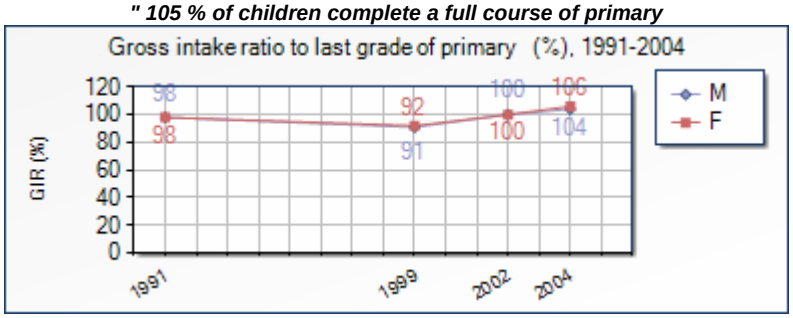


Progression and completion in education

" 105 % of children complete a full course of primary

2004

School life expectancy ISCED 1-6 (years)	16
Percentage of repeaters, primary (%)	...
Survival rate to grade 5 (%)	98
Gross intake ratio to last grade of primary (%)	105
Primary to secondary transition rate (%)	99

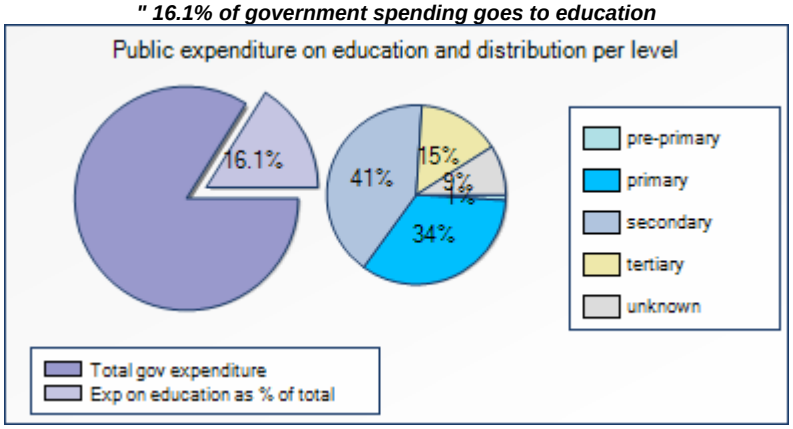


Resources for education

" 16.1% of government spending goes to education

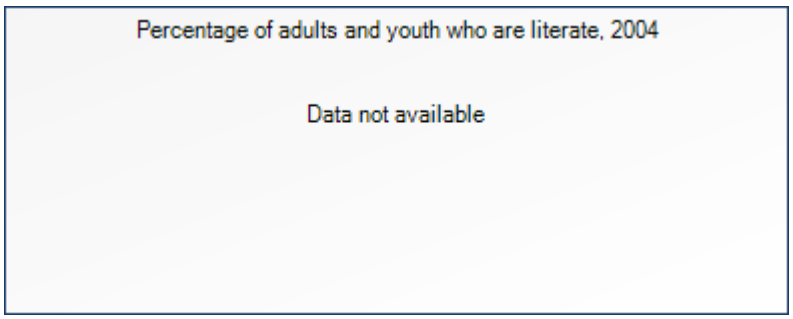
2004

Pupil / teacher ratio (primary)		30
Public expenditure on education :		
as % of GDP	(1)	4.6
as % of total government expenditure	(1)	16.1
Distribution of public expenditure per level (%) :		
pre-primary	(3)(1)	1
primary	(3)(1)	34
secondary	(3)(1)	41
tertiary	(3)(1)	15
unknown	(3)(1)	9



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	...	...	90.8
	M	...	...	94.7
	F	...	...	86.8
Youth (15-24) %	MF	...	...	97.9
	M	...	...	98.2
	F	...	...	97.5



Symbols used :	
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x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Data refer to 1998
(3) UIS estimation

June, 2006

Sri Lanka

Education in Sri Lanka — Education - all levels

South and West Asia

General information

2004

Total population (000)	20 570
Annual population growth rate (%)*	(1) 1.2
Population 0-14 years(%)	24
Rural population (%)*	(1) 76
Total fertility rate (births per woman) *	(1) 2.0
Infant mortality rate (0/00) *	(1) 13
Life expectancy at birth (years) *	(1) 74

HIV rate (%) in adults (15-49 years)*	(1) 0.1
Poverty (% of pop. on less than $2 a day) *	(2) 51
GDP per capita (PPP) US$ *	(1) 3 778
GDP growth rate (%)*	(1) 5.9
Total debt service as a % of GNI *	(1) 3.3
Children of primary school-age who are out-of-school (%)	(3) 3

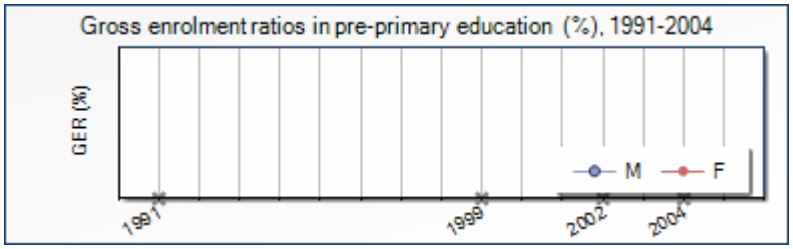
** World Bank World Development Indicators*

Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

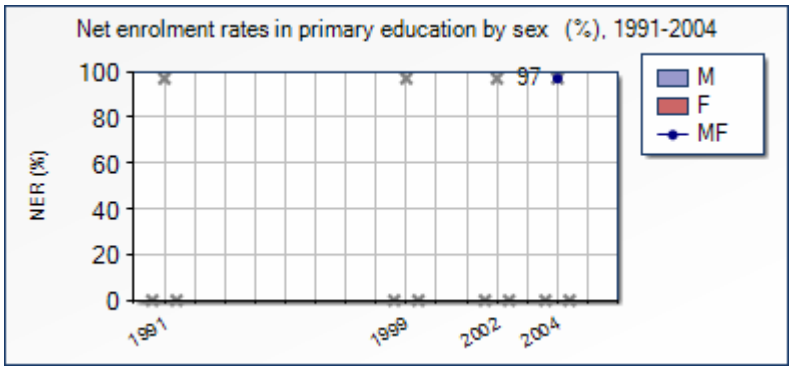
Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	...	...	...	...	32
	M	...	...	...	...	33
	F	...	...	...	...	32



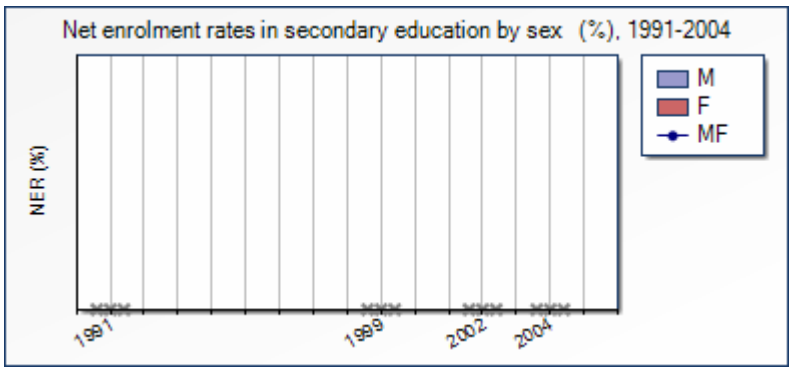
Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	107	...	(3) 104	(3) 98	110
	M	110	...	(3) 105	...	115
	F	105	...	(3) 103	...	105
NER (%)	MF	...	...	...	(3) 97	89
	M	...	...	...	...	93
	F	...	...	...	...	86



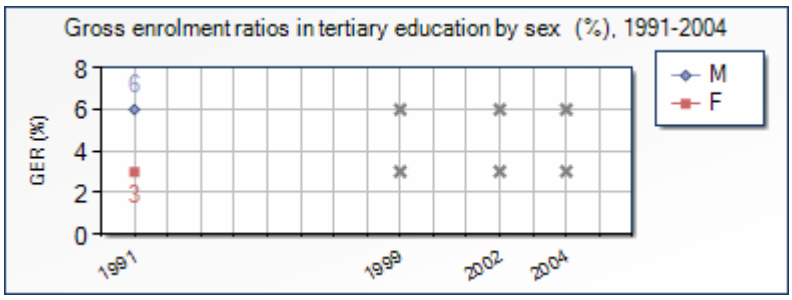
Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	71	...	(3) 81	(3) 83	51
	M	68	...	(3) 79	(3) 82	56
	F	73	...	(3) 83	(3) 83	46
NER (%)	MF	...	...	...	...	
	M	...	...	...	...	
	F	...	...	...	...	



Tertiary enrolment

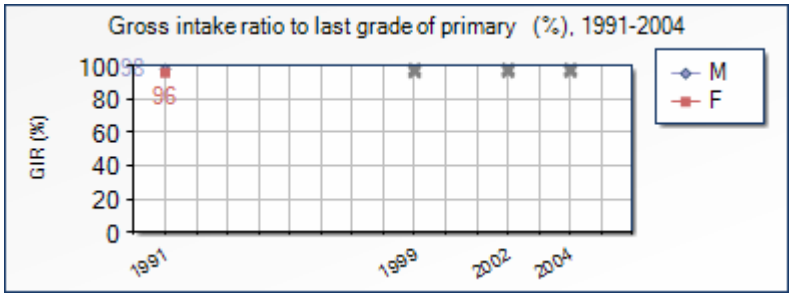
Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	(4) 4	...	...	...	11
	M	(4) 6	...	...	...	12
	F	(4) 3	...	...	...	9



Progression and completion in education

2004

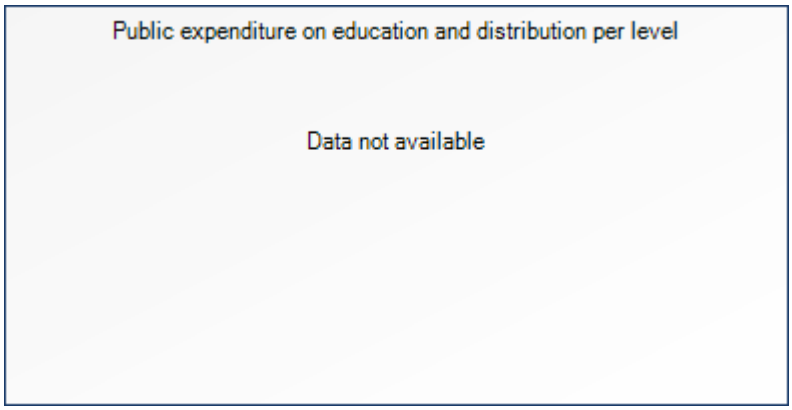
School life expectancy ISCED 1-6 (years)	...
Percentage of repeaters, primary (%)	(5) 5
Survival rate to grade 5 (%)	...
Gross intake ratio to last grade of primary (%)	(5) 92
Primary to secondary transition rate (%)	(3)(6) 97



Resources for education

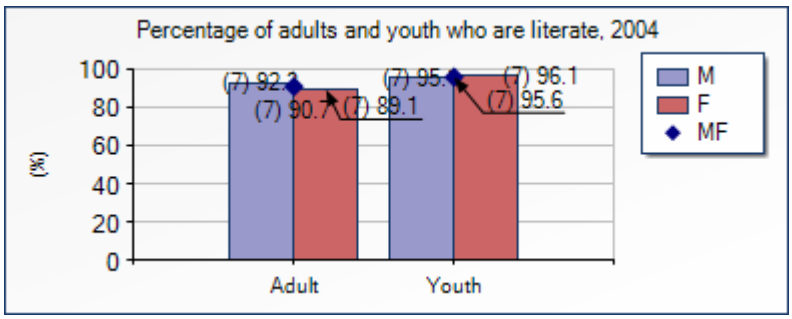
2004

Pupil / teacher ratio (primary)	(3) 22
Public expenditure on education :	
as % of GDP	(5) 3.1
as % of total government expenditure	...
Distribution of public expenditure per level (%) :	
pre-primary	...
primary	...
secondary	...
tertiary	...
unknown	...



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	88.7	(7) 90.7	61.8
	M	92.9	(7) 92.3	73.7
	F	84.7	(7) 89.1	49.2
Youth (15-24) %	MF	95.1	(7) 95.6	75.8
	M	95.9	(7) 95.1	83.6
	F	94.2	(7) 96.1	67.3



Symbols used :	
-	*Magnitude nil or negligible value*
...	*Data not available*
.	*Category not applicable*
x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Data refer to 2000
(3) UIS estimation
(4) Partial estimation
(5) Data refer to 1998
(6) Data refer to 2002
(7) Data refer to 2001

June, 2006

Thailand

Education in Thailand | **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)	63 694
Annual population growth rate (%)*	(1) 0.6
Population 0-14 years(%)	24
Rural population (%)*	(1) 80
Total fertility rate (births per woman) *	(1) 1.8
Infant mortality rate (0/00) *	(1) 23
Life expectancy at birth (years) *	(1) 69

HIV rate (%) in adults (15-49 years)*	(1) 1.5
Poverty (% of pop. on less than $2 a day) *	(2) 32
GDP per capita (PPP) US$ *	(1) 7 595
GDP growth rate (%)*	(1) 6.9
Total debt service as a % of GNI *	(1) 10.7
Children of primary school-age who are out-of-school (%)	...

** World Bank World Development Indicators*

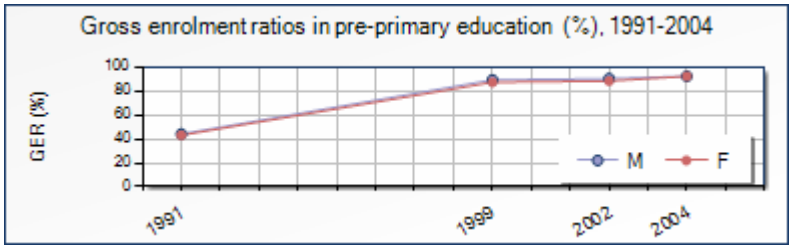
Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

Pre-primary enrolment

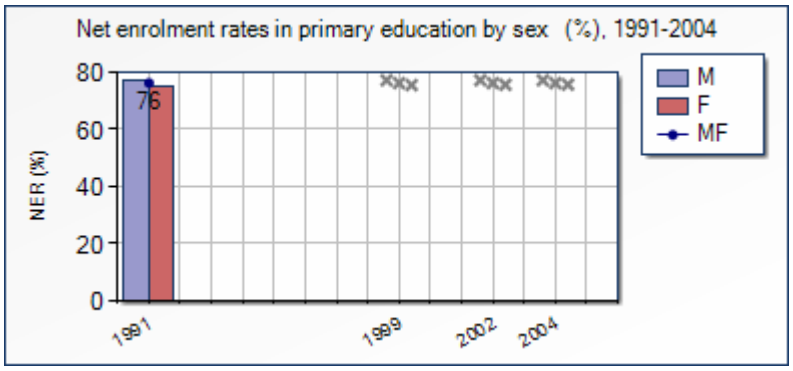
" 92 % of children are enrolled in pre-primary school

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	43	88	89	(3) 92	(3) 40
	M	44	89	90	(3) 92	(3) 41
	F	43	87	88	(3) 92	(3) 39



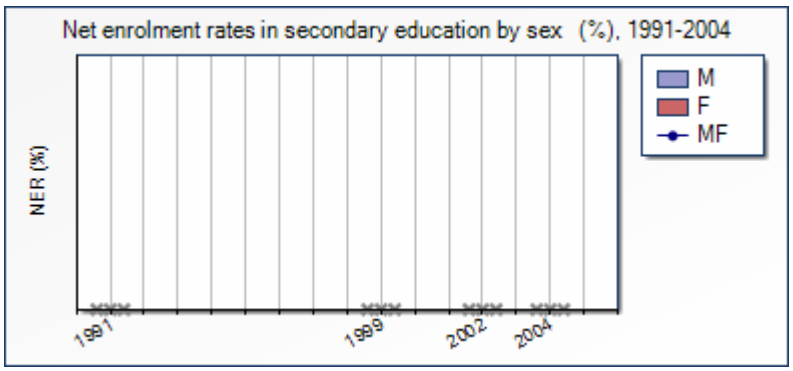
Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	98	94	98	99	113
	M	100	97	100	101	114
	F	96	92	96	96	112
NER (%)	MF	(3) 76	...	...	...	(3) 94
	M	(3) 77	...	...	...	(3) 94
	F	(3) 75	...	...	...	(3) 94



Secondary enrolment

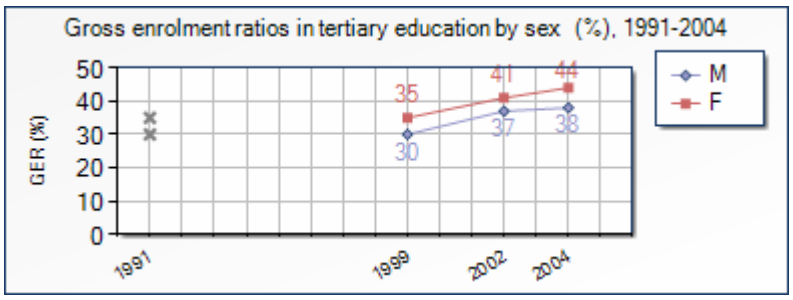
Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	31	...	...	77	73
	M	32	...	...	77	73
	F	30	...	...	77	73
NER (%)	MF	...	...	...	...	(3) 69
	M	...	...	...	...	
	F	...	...	...	...	



Tertiary enrolment

" 41 % of the population of tertiary age in tertiary education

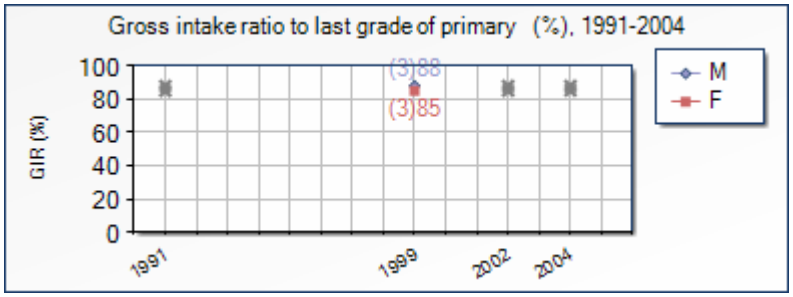
Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	...	32	39	41	23
	M	...	30	37	38	24
	F	...	35	41	44	21



Progression and completion in education

2004

School life expectancy ISCED 1-6 (years)	(3)	13
Percentage of repeaters, primary (%)	(4)	3
Survival rate to grade 5 (%)		...
Gross intake ratio to last grade of primary (%)	(3)(4)	86
Primary to secondary transition rate (%)		...

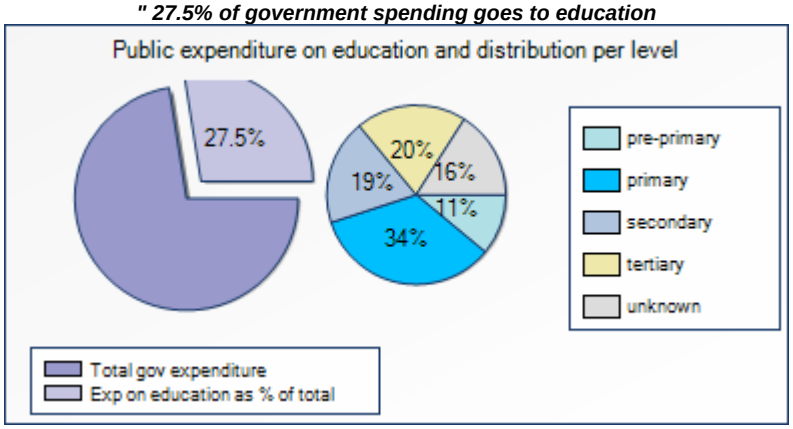


Resources for education

" 27.5% of government spending goes to education

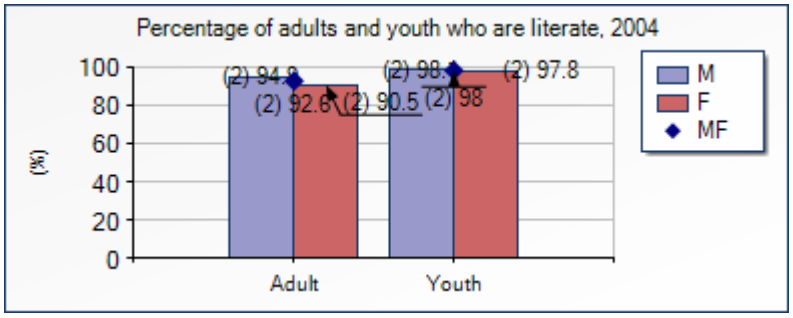
2004

Pupil / teacher ratio (primary)	(3)(1)	21
Public expenditure on education :		
as % of GDP		4.2
as % of total government expenditure		27.5
Distribution of public expenditure per level (%) :		
pre-primary	(3)(5)	11
primary	(3)(5)	34
secondary	(3)(5)	19
tertiary	(3)(5)	20
unknown	(3)(5)	16



Literacy rates

Literacy rates		1990	2000-2004		2000-2004 Regional average
Adult (15+) %	MF	...	(2)	92.6	90.8
	M	...	(2)	94.9	94.7
	F	...	(2)	90.5	86.8
Youth (15-24) %	MF	...	(2)	98.0	97.9
	M	...	(2)	98.1	98.2
	F	...	(2)	97.8	97.5



Symbols used :	
-	*Magnitude nil or negligible value*
...	*Data not available*
.	*Category not applicable*
x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) Data refer to 2003
(2) Data refer to 2000
(3) UIS estimation
(4) Data refer to 1999
(5) Data refer to 2001

June, 2006

Timor-Leste

Education in Timor-Leste — **Education - all levels**

East Asia and the Pacific

General information

2004

Total population (000)	887
Annual population growth rate (%)*	...
Population 0-14 years(%)	42
Rural population (%)*	...
Total fertility rate (births per woman) *	...
Infant mortality rate (0/00) *	...
Life expectancy at birth (years) *	...

HIV rate (%) in adults (15-49 years)*	...
Poverty (% of pop. on less than $2 a day) *	...
GDP per capita (PPP) US$ *	...
GDP growth rate (%)*	...
Total debt service as a % of GNI *	...
Children of primary school-age who are out-of-school (%)	...

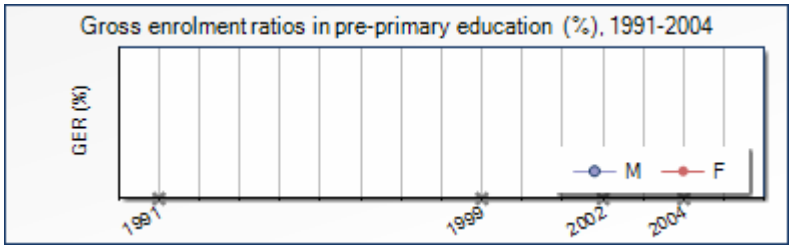
** World Bank World Development Indicators*

Participation in education

Percentages of children in school are represented by Gross Enrolment Ratios (GER) and Net Enrolment Rates (NER). GER is the number of pupils enrolled in a given level of education regardless of age expressed as a percentage of the population in the theoretical age group for that level of education. NER is the number of pupils in the theoretical age group who are enrolled expressed as a percentage of the same population.

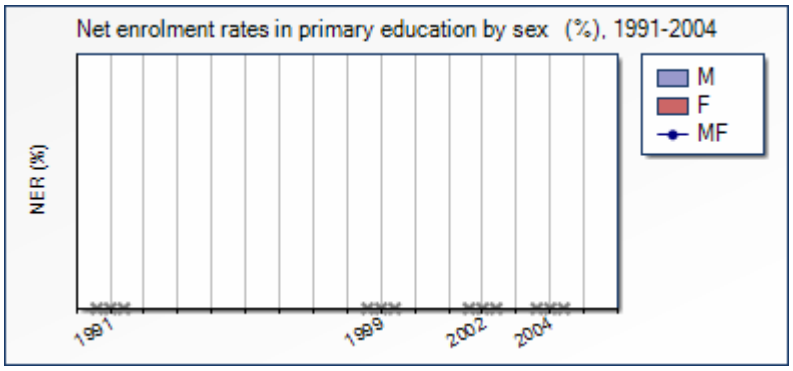
Pre-primary enrolment

Pre-primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	...	...	11	...	(1) 40
	M	...	...	...	...	(1) 41
	F	...	...	...	...	(1) 39



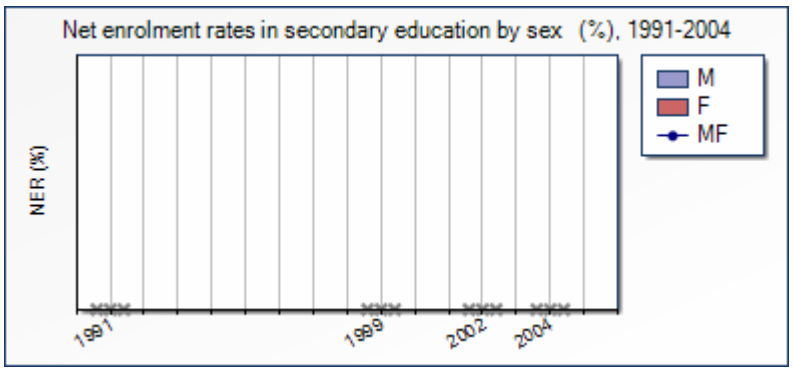
Primary enrolment

Primary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	...	...	140	...	113
	M	...	...	...	...	114
	F	...	...	...	...	112
NER (%)	MF	...	...	...	...	(1) 94
	M	...	...	...	...	(1) 94
	F	...	...	...	...	(1) 94



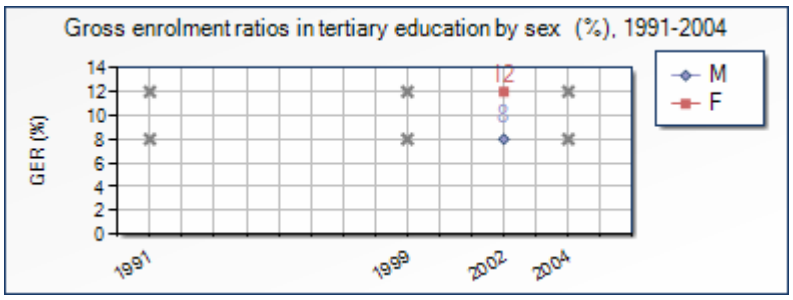
Secondary enrolment

Secondary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	...	...	34	...	73
	M	...	...	...	...	73
	F	...	...	...	...	73
NER (%)	MF	...	...	...	...	(1) 69
	M	...	...	...	...	
	F	...	...	...	...	



Tertiary enrolment

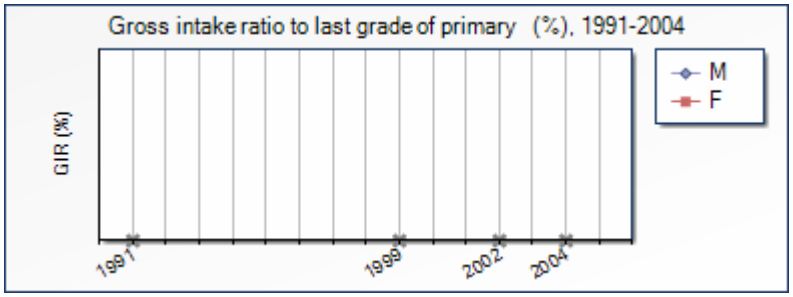
Tertiary		1991	1999	2002	2004	2004 Regional average
GER (%)	MF	-	...	(2) 10	...	23
	M	-	...	(2) 8	...	24
	F	-	...	(2) 12	...	21



Progression and completion in education

2004

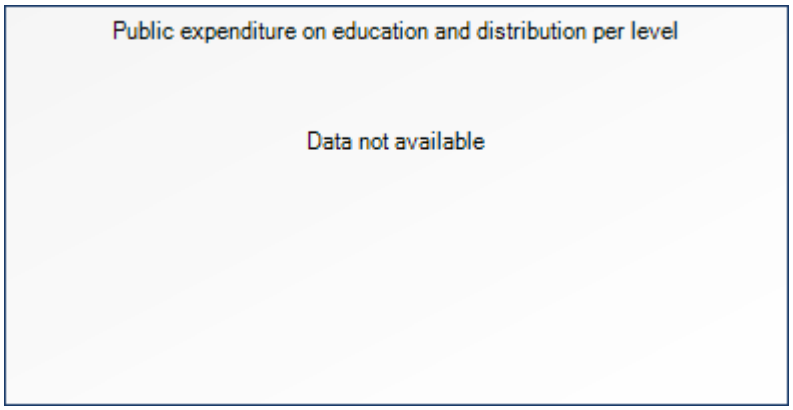
School life expectancy ISCED 1-6 (years)	(1)(3) 11
Percentage of repeaters, primary (%)	...
Survival rate to grade 5 (%)	...
Gross intake ratio to last grade of primary (%)	...
Primary to secondary transition rate (%)	...



Resources for education

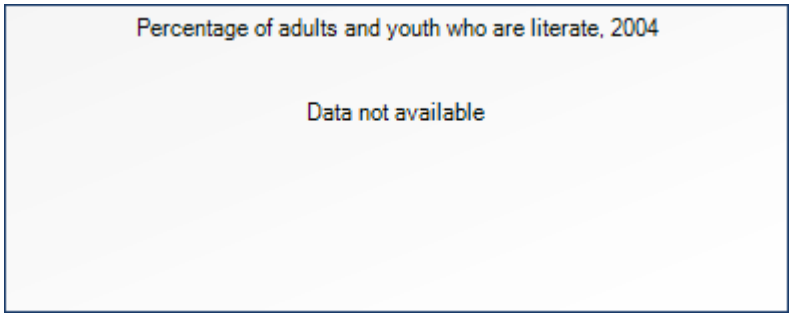
2004

Pupil / teacher ratio (primary)	(5) 47
Public expenditure on education :	
as % of GDP	...
as % of total government expenditure	...
Distribution of public expenditure per level (%) :	
pre-primary	...
primary	...
secondary	...
tertiary	...
unknown	...



Literacy rates

Literacy rates		1990	2000-2004	2000-2004 Regional average
Adult (15+) %	MF	...	...	90.8
	M	...	...	94.7
	F	...	...	86.8
Youth (15-24) %	MF	...	...	97.9
	M	...	...	98.2
	F	...	...	97.5



Symbols used :	
-	*Magnitude nil or negligible value*
...	*Data not available*
.	*Category not applicable*
x	*Charts symbol: Data not available*

Footnotes :

For more information about the calculation of rates of out-of-school children, see the UIS website.

(1) UIS estimation
(2) National estimation
(3) Data refer to 2002
(4) Data refer to 1998
(5) Data refer to 2003

June, 2006