

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

INTERIM REPORT

3 August 2006

The Asia Pacific Forum of National Human Rights Institutions

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

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

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

The Advisory Council of Jurists

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

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

Further information about the ACJ is available at: www.asiapacificforum.net/jurists/

The Asia Pacific Forum of National Human Rights Institutions

Level 8, 133 Castlereagh Street
Sydney NSW 2000
Australia
Telephone: +61 2 9284 9845
Facsimile: +61 2 9284 9825
E-mail: apf@asiapacificforum.net
Web: www.asiapacificforum.net

MEETING OF THE ADVISORY COUNCIL OF JURISTS

SUVA, FIJI ISLANDS

31 JULY - 3 AUGUST 2006

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

The members of the Advisory Council of Jurists are:

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

ACKNOWLEDGEMENTS

The Advisory Council of Jurists thanks its President, Justice Anthony Gates, for his skilful chairmanship of the Jurists at its meeting.

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

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

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

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.

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.¹ 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;

¹ '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

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

Relevant international instruments include but are not limited to:

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

The Advisory Council of Jurists may wish to consider:

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

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

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

INTRODUCTION

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

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

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

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

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

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

PART A

Conclusions and Recommendations

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

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

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

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

PART B
SUMMARY OF ANSWERS TO QUESTIONS
POSED BY THE REFERENCE

(i) **how international law, standards and mechanisms define the ‘right to education’, including with reference to the obligation to *respect, protect, promote and fulfil* the right to education.**

- The right to education in international instruments comprises the dual aspects of:
 - the development of the individual; and
 - the promotion of respect for human rights.

- Education enables the full development of the human personality and sense of dignity.

- Education strengthens the capacity of the individual to participate fully, effectively and responsibly and effectively in a free society in the spirit of understanding peace and tolerance.

- Education fosters respect for family, cultural identity, language and values; for the national values of the country in which the individual is living and the country from which he or she may originate; and for civilisations different from his or her own.

- Education refers to all types and levels of education and includes access to education, the standard and quality of education and the conditions under which it is given. Education should meet the four key criteria of availability, accessibility, acceptability and adaptability.

Indivisibility and interdependence

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

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

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

The obligation to respect

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

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

The obligation to protect

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

The obligation to fulfil

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

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

The obligation to promote

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

The components of the Right to Education

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

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

Immediate and Progressive Obligations

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

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

Monitoring

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

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

Availability

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

Accessibility

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

Acceptability

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

Adaptability

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

Minimum Ages

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

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

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

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

- Justiciability of the right to education is inseparable from the justiciability of other rights, such as the right to non-discrimination and the right to information.

- States should review their respective Constitutional, national and local laws relating to educational standards and policies to ensure that they are consistent with the right to education and implement and/or amend laws and policies to reflect the core features of the right.

- States must give effect to their legal obligations in relation to the right to education by providing recourse to appropriate administrative and judicial mechanisms for the assertion and enforceability of the right.

- The role of such mechanisms is to:
 - clarify and give content to the right to education;
 - interpret and apply the right in conformity with international human rights instruments and standards; and
 - impose appropriate sanctions and/or remedies in the event of a breach of the right.

- NHRI should play a key role in actively monitoring:
 - the appropriateness of policies and legislative measures ensuring the right to education;
 - the role of administrative and judicial bodies in enforcing the right;
 - the extent and nature of breaches of the right; and
 - the efficacy of available sanctions and/or remedies.

- (iv) **the nature and scope of the obligation to prioritise the introduction of compulsory and free primary education for all and to achieve progressively the full realisation of secondary, higher and fundamental education;**

Primary education

- States have an obligation to guarantee access to and completion of compulsory and free primary education of good quality which meets the four A's. Neither the State, nor parents or legal guardians, are entitled to treat as optional the decision as to whether the child should have access to primary education.

- States must ensure that their laws, policies and practices do not inhibit or prevent children from accessing primary education.

- There is an obligation to ensure the availability of primary education in public education institutions without charge to the child, parents or legal guardians. Where financial circumstances would prevent children from accessing primary education, financial assistance must be provided to the families to enable the right to be enjoyed.

- States must allocate adequate financial resources, or make equivalent arrangements, to enable the right to education to be fully enjoyed.

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

Basic or fundamental education

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

Secondary education and technical or vocational education

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

Higher or tertiary education

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

Plan of Action

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

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

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

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

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

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

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

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

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

Equality

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

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

Barriers

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

Safety

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

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

Participation

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

Health and Pregnancy

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

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

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

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

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

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

Quality

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

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

Minimum standards

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

Vital role of Teachers

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

Monitoring

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

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

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

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

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

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

Academic Freedom

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

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

Autonomy

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

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

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

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

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

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

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

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

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

APPENDIX 1
SOURCES OF INTERNATIONAL LAW

The interim report of the Advisory Council of Jurists 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* 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 Advisory Council 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 Rights²

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.

² Adopted by General Assembly resolution 217 A (III) on 10 December 1948

International Covenant on Economic, Social and Cultural Rights³

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 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 education;
 - 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 1 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.

³ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

International Covenant on Civil and Political Rights⁴

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

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 Child⁵

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

⁴ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

⁵ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

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.
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 Women⁶

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) (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.

⁶ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981.

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.

International Convention on the Elimination of All Forms of Racial Discrimination⁷

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;

⁷ Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969.

- (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.

Convention Against Discrimination in Education⁸

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.

Two International Labour Organisation instruments are also relevant. These are:

- Minimum Age Convention 1973 (No. 138);⁹ and

⁸ Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 December 1960, entry into force 22 May 1962.

⁹ 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.

- Worst Forms of Child Labour Convention 1999 (No. 182).¹⁰

(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’.¹¹ 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);¹²
- Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997);¹³

¹⁰ 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.

¹¹ 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.

¹² Paragraphs 16-20; 21-24; 25-28; 29-34; 35-41; 42-44; and 45 are relevant.

¹³ Paragraphs 6-10 and 25 (on national human rights institutions) are relevant.

- The Dakar Framework for Action: Education for All – Meeting Our Collective Commitments (2000);¹⁴ and
- Asia and Pacific Regional Framework for Action: Education for All – Guiding Principles and Targets for 2015.¹⁵

¹⁴ Adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000

¹⁵ Adopted by the Asia-Pacific Conference on EFA 2000 Assessment, Bangkok, Thailand, 17-20 January 2000

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/>