

## EDUCATION - RIGHT TO EDUCATION

### II. GENERAL COMMENTS AND RECOMMENDATIONS

- CERD General Recommendation XXX (Sixty-fifth session, 2004): Discrimination Against Non-Citizens, A/59/18 (2004) 93 at paras. 29-31.

...

[The Committee recommends]...that the States parties to the Convention, as appropriate to their specific circumstances, adopt the following measures:

...

29. Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health;

30. Ensure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in the territory of a State party;

31. Avoid segregated schooling and different standards of treatment being applied to non-citizens on grounds of race, colour, descent, and national or ethnic origin in elementary and secondary school and with respect to access to higher education;

...

- ICESCR General Comment 11 (Twentieth session, 1999): Article 14: Plans of Action for Primary Education, E/2000/22 (1999) 99 at paras. 1-4 and 6-11.

#### Plans of action for primary education (article 14 of the Covenant)

1. Article 14 of the Covenant requires each State party which has not been able to secure compulsory primary education, free of charge, to undertake, 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 primary education free of charge for all. In spite of the obligations undertaken in accordance with article 14, a number of States parties have neither drafted nor implemented a plan of action for free and compulsory primary education.

2. The right to education, recognized in articles 13 and 14 of the Covenant, as well as in a variety of other international treaties, such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, is of vital importance. It has been variously classified as an economic right, a social right or a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights.

## EDUCATION - RIGHT TO EDUCATION

3. In line with its clear and unequivocal obligation under article 14 of the Covenant, every State party is under a duty to present to the Committee a plan of action drawn up along the lines specified in paragraph 8 below. This obligation needs to be scrupulously observed in view of the fact that in developing countries, 130 million children of school age are currently estimated to be without access to primary education, of whom about two thirds are girls. a/ The Committee is fully aware that many diverse factors have made it difficult for States parties to fulfil their obligation to provide a plan of action. For example, the structural adjustment programmes that began in the 1970s, the debt crises that followed in the 1980s and the financial crises of the late 1990s, as well as other factors, have greatly exacerbated the extent to which the right to primary education is being denied. These difficulties, however, cannot relieve States parties of their obligation to adopt and submit a plan of action to the Committee, as provided for in article 14.

4. Plans of action prepared by States parties to the Covenant in accordance with article 14 are especially important as the work of the Committee has shown that the lack of educational opportunities for children often reinforces their subjection to various other human rights violations. For instance, these children, who may live in abject poverty and not lead healthy lives, are particularly vulnerable to forced labour and other forms of exploitation. Moreover, there is a direct correlation between, for example, primary school enrolment levels for girls and major reductions in child marriages.

...

### The compulsory character of primary education

6. The element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education. Similarly, the prohibition of gender discrimination in access to education, required also by articles 2 and 3 of the Covenant, is further underlined by this requirement. It should be emphasized, however, that the education offered must be adequate in quality, relevant to the child and must promote the realization of the child's other rights.

### Free of charge

7. The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. Their elimination is a matter which must be addressed by the required plan of action. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category. Other indirect costs may be permissible, subject to the Committee's examination

## **EDUCATION - RIGHT TO EDUCATION**

on a case-by-case basis. This provision of compulsory primary education in no way conflicts with the right recognized in article 13, paragraph 3 of the Covenant for parents and guardians to choose for their children schools other than those established by the public authorities.

### Adoption of a detailed plan

8. The State party is required to adopt a plan of action within two years. This must be interpreted as meaning within two years of the Covenant's entry into force of the State concerned, or within two years of a subsequent change in circumstances which has led to the non-observance of the relevant obligation. This obligation is a continuing one and States parties to which the provision is relevant by virtue of the prevailing situation are not absolved from the obligation as a result of their past failure to act within the two-year limit. The plan must cover all of 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 realization of the right. Participation of all sections of civil society in the drawing up of the plan is vital and some means of periodically reviewing progress and ensuring accountability are essential. Without those elements, the significance of the article would be undermined.

### Obligations

9. A State party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available. If the obligation could be avoided in this way, there would be no justification for the unique requirement contained in article 14 of the Covenant which applies, almost by definition, to situations characterized by inadequate financial resources. By the same token, and for the same reason, the reference to "international assistance and cooperation" in article 2, paragraph 1 and to "international action" in article 23 of the Covenant are of particular relevance in this situation. Where a State party is clearly lacking in the financial resources and/or expertise required to "work out and adopt" a detailed plan, the international community has a clear obligation to assist.

### Progressive implementation

10. The plan of action must be aimed at securing the progressive implementation of the right to compulsory primary education, free of charge, under article 14 of the Covenant. Unlike the provision in article 2, paragraph 1, however, article 14 specifies that the target date must be "within a reasonable number of years" and moreover, that the time-frame must "be fixed in the plan". In other words, the plan must specifically set out a series of targeted implementation dates for each stage of the progressive implementation of the plan. This underscores both the importance and the relative inflexibility of the obligation in question. Moreover, it needs to be stressed in this regard that the State party's other obligations, such as non-discrimination, are required to be implemented fully and immediately.

## EDUCATION - RIGHT TO EDUCATION

---

11. The Committee calls upon every State party to which article 14 of the Covenant is relevant to ensure that its terms are fully complied with and that the resulting plan of action is submitted to the Committee as an integral part of the reports required under the Covenant. Further, in appropriate cases, the Committee encourages States parties to seek the assistance of specialized institutions and relevant international agencies, including the International Labour Organization (ILO), the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF), the International Monetary Fund (IMF) and the World Bank, in relation both to the preparation of plans of action under article 14 and their subsequent implementation. The Committee also calls upon the specialized institutions and relevant international agencies to assist States parties to the greatest extent possible to meet their obligations on an urgent basis.

---

### Notes

a/ See generally UNICEF, *The State of the World's Children 1999*.

---

- ICESCR General Comment 13 (Twenty-first session, 1999): Article 13: The Right to Education, E/2000/22 (1999) 111 at paras. 1, 2 and 4-60.

---

1. Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to range freely and widely, is one of the joys and rewards of human existence.

2. The International Covenant on Economic, Social and Cultural Rights devotes two articles to the right to education, articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law. The Committee has already adopted General Comment No. 11 (1999) on plans of action for primary education (art. 14 of the Covenant) (see annex V above); General Comment No. 11 (1999) and the present general comment are complementary and should be considered together. The Committee is aware that, for millions of people throughout the world, the enjoyment of the right to education remains a distant goal. Moreover, in many cases, this goal is becoming increasingly remote. The

## EDUCATION - RIGHT TO EDUCATION

Committee is also conscious of the formidable structural and other obstacles impeding the full realization of article 13 of the Covenant in many States parties.

...

### I. NORMATIVE CONTENT OF ARTICLE 13 OF THE COVENANT

#### Article 13, paragraph 1: Aims and objectives of education

4. State parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13, paragraph 1. The Committee notes that these educational objectives reflect the fundamental purposes and principles of the UN as enshrined in articles 1 and 2 of the Charter. For the most part, they are also found in article 26, paragraph 2, of the Universal Declaration of Human Rights, although article 13, paragraph 1, of the Covenant adds to the Declaration in three respects: education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all ethnic groups, as well as "nations and racial and religious groups". Of those educational objectives which are common to article 26, paragraph 2, of the Universal Declaration of Human Rights and article 13, paragraph 1, of the Covenant, perhaps the most fundamental is that "education shall be directed to the full development of the human personality".

5. ...Accordingly, the Committee takes the view that state parties are required to ensure that education conforms to the aims and objectives identified in article 13, paragraph 1, of the Covenant as interpreted in the light of the World Declaration on Education for All a/ (art. 1), the Convention on the Rights of the Child (art. 29, para. 1), the Vienna Declaration and Programme of Action b/ (paragraphs 33 and 80), and the Plan of Action for the United Nations Decade for Human Rights Education c/ (para. 2). While all these texts closely correspond to article 13, paragraph 1, of the Covenant, they also include elements which are not expressly provided for in article 13, paragraph 1, such as specific references to gender equality and respect for the environment. These new elements are implicit in, and reflect a contemporary interpretation of, article 13, paragraph 1. The Committee obtains support for this point of view from the widespread endorsement that the previously mentioned texts have received from all regions of the world. d/

#### Article 13, paragraph 2: The right to receive an education - some general remarks

6. While the precise and appropriate application of the terms will depend upon the prevailing conditions in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features: e/

(a) Availability. Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function

## EDUCATION - RIGHT TO EDUCATION

depends upon numerous factors, including the developmental context within which they operate; 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.

(b) Accessibility. Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

(i) 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 (see paragraphs 31-37 on non-discrimination);

(ii) Physical accessibility: education has to 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);

(iii) Economic accessibility: education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13, paragraph 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;

(c) Acceptability. The form and substance of education, including curricula and teaching methods, has to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13, paragraph 1, and such minimum educational standards as may be approved by the State (see article 13, paragraphs 3 and 4);

(d) Adaptability. Education has to be flexible so 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.

7. When considering the appropriate application of these "inter-related and essential features" the best interests of the student shall be a primary consideration.

### Article 13 paragraph 2 (a): The right to primary education

8. Primary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels (see paragraph

## EDUCATION - RIGHT TO EDUCATION

6 above).

9. The Committee obtains guidance on the proper interpretation of the term "primary education" from the World Declaration on Education for All which states: "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" (art. 5). "(B)asic learning needs" are defined in article 1 of the World Declaration. f/ While primary education is not synonymous with basic education, there is a close correspondence between the two. In this regard, the Committee endorses the position taken by the United Nations Children's Fund: "Primary education is the most important component of basic education." g/

10. As formulated in article 13, paragraph 2 (a), primary education has two distinctive features: it is "compulsory" and "available free to all". For the Committee's observations on both terms, see paragraphs 6 and 7 of General Comment No. 11 (1999) on plans of action for primary education (art. 14 of the Covenant).

### Article 13, paragraph 2 (b): The right to secondary education

11. Secondary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels (see paragraph 6 above).

12. While the content of secondary education will vary among States parties and over time, it includes completion of basic education and consolidation of the foundations for lifelong learning and human development. It prepares students for vocational and higher educational opportunities. h/ Article 13 paragraph 2 (b) applies to secondary education "in its different forms", thereby recognizing that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. The Committee encourages 'alternative' educational programmes which parallel regular secondary school systems.

13. According to article 13, paragraph 2 (b), 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". The phrase "generally available" signifies, firstly, 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. For the Committee's interpretation of "accessible", see paragraph 6 above. The phrase "every appropriate means" reinforces the point that States parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts.

## EDUCATION - RIGHT TO EDUCATION

14. "[P]rogressive introduction of free education" means that while States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education. For the Committee's general observations on the meaning of the word "free", see paragraph 7 of General Comment No. 11 (1999) on plans of action from primary education (art. 14 of the Covenant).

### Technical and vocational education

15. Technical and vocational education forms part of both the right to education and the right to work (art. 6, para. 2 of the Covenant). Paragraph 2 (b) presents technical and vocational education as part of secondary education, reflecting the particular importance of it at this level of education. Article 6, paragraph 2, however, 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 employment". Also, the Universal Declaration of Human Rights states that "[t]echnical and professional education shall be made generally available" (art. 26, para. 1). Accordingly, the Committee takes the view that technical and vocational education forms an integral element of all levels of education. *i/*

16. An introduction to technology and to the world of work should not be confined to specific technical and vocational education programmes but should be understood as a component of general education. According to the Convention on Technical and Vocational Education adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in November 1989, technical and vocational education consists of "all forms 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" (art. 1, para. (a)). This view is also reflected in certain International Labour Organization (ILO) Conventions. *i/* Understood in this way, the right to technical and vocational education includes the following aspects:

(a) It enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability, and enhance 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) It provides retraining for adults whose current knowledge and skills have become obsolete due to technological, economic, employment, social or other changes;



## EDUCATION - RIGHT TO EDUCATION

(d) It consists of programmes which give students, especially those from developing countries, the opportunity to receive technical and vocational education 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 technical and vocational education of women, girls, out-of-school youth, unemployed youth, the children of migrant workers, refugees, persons with disabilities, and other disadvantaged groups.

### Article 13, paragraph 2 (c): The right to higher education

17. Higher education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels (see paragraph 6 above).

18. While article 13, paragraph 2 (c) is formulated on the same lines as article 13, paragraph 2 (b), there are three differences between the two provisions. Article 13, paragraph 2 (c) does not include a reference to either education "in its different forms" or specifically to technical and vocational education. In the Committee's opinion, these two omissions reflect only a difference of emphasis between article 13, paragraphs 2 (b) and (c). 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, paragraph 2 (c) to technical and vocational education, given article 6, paragraph 2, of the Covenant and article 26, paragraph 1, of the Universal Declaration of Human Rights, technical and vocational education forms an integral component of all levels of education, including higher education (see paragraph 15 above).

19. The third and most significant difference between article 13, paragraphs 2 (b) and (c) 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". According to article 13, paragraph 2 (c), higher education is not to be "generally available", but only available "on the basis of capacity". The "capacity" of individuals should be assessed by reference to all their relevant expertise and experience.

20. Insofar as the wording of paragraph 2 (b) is the same as (c) (e.g. "the progressive introduction of free education"), see the previous comments on paragraph (2) (b) (paragraphs 11 to 16 above).

### Article 13, paragraph 2 (d): The right to fundamental education

## EDUCATION - RIGHT TO EDUCATION

---

21. Fundamental education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels (see paragraph 6 above).

22. In general terms, fundamental education corresponds to basic education as set out in the World Declaration on Education For All (see paragraph 9 above). By virtue of article 13, paragraph 2 (d), individuals "who have not received or completed the whole period of their primary education" have a right to fundamental education, or basic education as defined in the World Declaration on Education For All.

23. Since everyone has the right to the satisfaction of their "basic learning needs" as understood by the World Declaration, the right to fundamental education is not confined to those "who have not received or completed the whole period of their primary education". The right to fundamental education extends to all those who have not yet satisfied their "basic learning needs".

24. It should be emphasized that enjoyment of the right to fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons. Fundamental education, therefore, is an integral component of adult education and lifelong learning. Because fundamental education is a right of all age groups, curricula and delivery systems must be devised which are suitable for students of all ages.

Article 13, paragraph 2 (e): A school system; adequate fellowship system; material conditions of teaching staff

---

25. The requirement that the "development of a system of schools at all levels shall be actively pursued" means that a State party is obliged to have an overall developmental strategy for its school system. The strategy must encompass schooling at all levels, but the Covenant requires States parties to prioritise primary education (see paragraph 51 below). "[A]ctively pursued" suggests the overall strategy should attract a degree of governmental priority and, in any event, must be implemented with vigour.

26. The requirement that "an adequate fellowship system shall be established" should be read with the Covenant's non-discrimination and equality provisions; the fellowship system should enhance equality of educational access for individuals from disadvantaged groups.

27. While the Covenant requires that "the material conditions of teaching staff shall be continuously improved", in practice the general working conditions of teachers have deteriorated, and reached unacceptably low levels, in many States parties in recent years. Not only is this inconsistent with paragraph 2 (e), but it is also a major obstacle to the full realization of students' right to education. The Committee also notes the relationship between article 13, paragraph 2 (e), article 2, and paragraphs 2,3 and 6 to 8 of the Covenant,

## **EDUCATION - RIGHT TO EDUCATION**

including the right of teachers to organize and bargain collectively; draws the attention of States parties to the Recommendation concerning the Status of Teachers held by UNESCO in October 1966 and the Recommendation concerning the Status of Higher-Education Teaching Personnel adopted in November 1997 by the General Conference of UNESCO; and urges States parties to report measures they are taking to ensure all teaching staff enjoy the conditions and status commensurate with their role.

### Article 13, paragraphs 3 and 4: The right to educational freedom

28. Article 13, paragraph 3, has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions. j/ The Committee is of the view that this element of paragraph 3 permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13, paragraph 3, unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

29. The second element of paragraph 3 is the liberty of parents and 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". This has to be read with the complementary provision, article 13, paragraph 4, which affirms "the liberty of individuals and bodies to establish and direct educational institutions", provided the institutions conform to the educational objectives set out in paragraph 1 and certain minimum standards. These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in paragraph 1.

30. Under article 13, paragraph 4, everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to "bodies" i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in paragraph 4 does not lead to extreme disparities of educational opportunity for some groups in society.

### Article 13: Special topics of broad application

#### Non-discrimination and equal treatment

31. The prohibition against discrimination enshrined in article 2, paragraph 2 is subject to

## EDUCATION - RIGHT TO EDUCATION

neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination. The Committee interprets article 2, paragraph 2 and article 3 of the Covenant in the light of the Convention against Discrimination in Education adopted by UNESCO in December 1960, the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child and ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, and wishes to draw particular attention to the following issues.

32. The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.

33. In some circumstances, separate educational systems or institutions for groups defined by the categories in article 2, paragraph 2, shall be deemed not to constitute a breach of the Covenant. In this regard, the Committee affirms article 2 of the Convention against Discrimination in Education. k/

34. The Committee takes note of article 2 of the Convention on the Rights of the Child and article 3, paragraph (e), of the Convention Against Discrimination in Education and confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.

35. Sharp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant.

36. The Committee affirms paragraph 35 of its General Comment No. 5 (1994), concerning persons with disabilities and the right to education, and paragraphs 36 to 42 of its General Comment No. 6 (1995) on economic, social and cultural rights and the right of older persons to education and culture (art.s 13-15 of the Covenant).

37. States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated on the prohibited grounds of discrimination.

Academic freedom and institutional autonomy l/

## EDUCATION - RIGHT TO EDUCATION

38. In the light of the Committee's examination of numerous States parties' reports, it has formed the view that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Accordingly, even though the issue is not explicitly mentioned in article 13, it is appropriate and necessary for the Committee to make some observations about academic freedom. The following remarks give particular attention to institutions of higher education because, in the Committee's experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom. The Committee wishes to emphasize, however, that staff and students throughout the education sector are entitled to academic freedom and many of the following observations have general application.

39. Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. 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 the internationally recognized human rights applicable to other individuals in the same jurisdiction. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds.

40. The enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public accountability, especially in respect of funding provided by the State. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.

### Discipline in schools m/

41. In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the preamble to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural rights, particularly the dignity of the individual. n/ Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant on Economic, Social and Cultural Rights, such as the right to food. A State party is required to take measures to ensure that discipline, which is

## EDUCATION - RIGHT TO EDUCATION

inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some States parties which actively encourage schools to introduce 'positive', non-violent approaches to school discipline.

### Limitations on article 13

42. The Committee wishes to emphasize that the Covenant's limitations clause, article 4, is primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State. Consequently, a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4.

## II. STATES PARTIES' OBLIGATIONS AND VIOLATIONS

### General legal obligations

43. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to education, such as the "guarantee" that the right "will be exercised without discrimination of any kind" (art. 2, para. 2) and the obligation "to take steps" (art. 2, para. 1) towards the full realization of article 13. Such steps must be "deliberate, concrete and targeted" towards the full realization of the right to education. o/

44. The realization of the right to education over time, that is "progressively", should not be interpreted as depriving States parties' obligations of all meaningful content. Progressive realization means that state parties have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full realisation of article 13. p/

45. There is a strong presumption against the permissibility of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving 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 Covenant and in the context of the full use of the State party's maximum available resources. q/

46. The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.

## EDUCATION - RIGHT TO EDUCATION

47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.

48. In this respect, two features of article 13 require emphasis. First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the "development of a system of schools at all levels shall be actively pursued" (art. 13, para. 2 (e)). Secondly, given the differential wording of paragraph 2 in relation to primary, secondary, higher and fundamental education, the parameters of a State party's obligation to fulfil (provide) are not the same for all levels of education. Accordingly, in light of the text of the 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 Committee observes that this interpretation of the obligation to fulfil (provide) in relation to article 13 coincides with the law and practice of numerous States parties.

### Specific legal obligations

49. States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1). <sup>r/</sup> They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13, paragraph 1.

50. In relation to article 13, paragraph 2, States have obligations to respect, protect and fulfil each of the "essential features" (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a State must respect the availability of education by not closing private schools; it must protect the accessibility of education by ensuring third parties, including parents and employers, do not stop girls from going to school; it must fulfil (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; it must fulfil (provide) the adaptability of education by designing and resources for curricula which reflect the contemporary needs of students in a changing world; and it 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.

## EDUCATION - RIGHT TO EDUCATION

51. As already observed, the obligations of States parties in relation to primary, secondary, higher and fundamental education are not identical. Given the wording of article 13, paragraph 2, States parties are obliged to prioritise the introduction of compulsory, free primary education. s/ This interpretation of article 13, paragraph 2 is reinforced by the priority accorded to primary education in article 14. The obligation to provide primary education for all is an immediate duty of all States parties.

52. In relation to article 13, paragraphs (2) (b) to (d), a State party has an immediate obligation "to take steps" (art. 2, para. 1) towards the realisation of secondary, higher and fundamental education for all those within its jurisdiction. 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.

53. Under article 13, paragraph 2 (e), States parties are obliged to ensure that an educational fellowship system is in place to assist disadvantaged groups. t/ The obligation to actively pursue the "development of a system of schools at all levels" reinforces the principal responsibility of States parties to ensure the direct provision of the right to education in most circumstances. u/

54. States parties are obliged to establish "minimum educational standards" to which all educational institutions established in accordance with article 13, paragraphs 3 and 4 are required to conform. They must also maintain a transparent and effective system to monitor such standards. A State party has no obligation to fund institutions established in accordance with article 13, paragraphs 3 and 4; however, if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination on any of the prohibited grounds.

55. States parties have an obligation to ensure that communities and families are not dependent on child labour. The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7, paragraph 2 of the ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. v/ Additionally, given article 2, paragraph 2 of the Covenant, States parties are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.

56. In its General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1 of the Covenant), the Committee drew attention to the obligation of all States parties to take steps, "individually and through international assistance and co-operation, especially economic and technical" (art. 2, para. 1), towards the full realisation of the rights recognized in the Covenant, such as the right to education. w/ Article 2, paragraph 1 and 23



## EDUCATION - RIGHT TO EDUCATION

of the Covenant, Article 56 of the Charter of the United Nations, article 10 of the World Declaration on Education for All, and Part I, paragraph 34, of the Vienna Declaration and Programme of Action all reinforce the obligation of States parties in relation to the provision of international assistance and cooperation for the full realization of the right to education. In relation to the negotiation and ratification of international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to education. Similarly, States parties have an obligation to ensure that their actions as members of international organisations, including international financial institutions, take due account of the right to education.

57. In General Comment No. 3 (1990), the Committee confirms that States parties have "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels" of each of the rights enunciated in the Covenant, including "the most basic forms of education". In the context of article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure education conforms to the objectives set out in article 13, paragraph 1; to provide primary education for all in accordance with article 13, paragraph 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, paras. 3 and 4).

### Violations

58. When the normative content of article 13 (Part I above) is applied to the general and specific obligations of States parties (Part II), a dynamic process is set in motion which facilitates identification of violations of the right to education. Violations of article 13 may occur through the direct action of States parties (acts of commission) or through their failure to take steps required by the Covenant (acts of omission).

59. By way of illustration, violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of curricula inconsistent with the educational objectives set out in article 13, paragraph 1; the failure to maintain a transparent and effective system to monitor conformity with article 13, paragraph 1; the failure to introduce, as a matter of priority, primary education which is compulsory and available free to all; the failure to take deliberate, concrete and targeted measures towards the progressive realisation of secondary, higher and fundamental education in accordance with article 13, paragraphs 2 (b) to (d); the prohibition of private educational institutions; the failure to ensure private educational

## EDUCATION - RIGHT TO EDUCATION

institutions conform to the "minimum educational standards" required by article 13, paragraphs 3 and 4; the denial of academic freedom of staff and students; the closure of educational institutions in times of political tension in non-conformity with article 4.

### III. OBLIGATIONS OF ACTORS OTHER THAN STATES PARTIES

60. Given article 22 of the Covenant, the role of the United Nations agencies, including at the country level through the United Nations Development Assistance Framework, is of special importance in relation to the realization of article 13. Co-ordinated efforts for the realization of the right to education should be maintained to improve coherence and interaction among all the actors concerned, including the various components of civil society. UNESCO, the United Nations Development Programme (UNDP), UNICEF, ILO, the World Bank, the regional development banks, the International Monetary Fund (IMF) and other relevant bodies within the United Nations system 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, the 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. x/ When examining the reports of States parties, the Committee will consider the effects of the assistance provided by all actors other than States parties on the ability of States to meet their obligations under article 13. The adoption of a human rights-based approach by United Nations specialized agencies, programmes and bodies, will greatly facilitate implementation of the right to education.

---

#### Notes

a/ *Final report of the World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 5-9 March 1990*, Inter-Agency Commission (UNDP, UNESCO, UNICEF, World Bank) for the World Conference on Education for All, New York, 1990, appendix 1.

b/ Adopted by the World Conference on Human Rights, held at Vienna from 14-25 June 1993 (A/CONF.157/24 (Part I), Chap. III).

c/ A/51/506/Add.1, appendix.

d/ The World Declaration on Education for All was adopted by 155 governmental delegations; the Vienna Declaration and Programme of Action was adopted by 171 governmental delegations; the Convention on the Rights of the Child has been ratified or acceded to by 191 States parties; the Plan of Action of the United Nations Decade for Human Rights Education was welcomed by the General Assembly in its resolution 49/184.

## EDUCATION - RIGHT TO EDUCATION

e/ This approach corresponds with the Committee's analytical framework adopted in relation to the rights to adequate housing and food, as well as the work of the Special Rapporteur on Human Rights on the right to education. In its General Comment No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant), the Committee identified a number of factors which bear upon the right to adequate housing, including availability of services, materials, equipment and infrastructure, affordability, accessibility and cultural adequacy. In its General Comment No. 12 (1999) on the right to adequate food (art. 11 of the Covenant), the Committee identified elements of the right to adequate food, such as availability, acceptability and accessibility. In her preliminary report to the Commission on Human Rights (E/CN.4/1999/49), the Special Rapporteur on the right to education sets out four essential features that primary schools should exhibit, namely availability, accessibility, acceptability and adaptability.

f/ The World Declaration defines "basic learning needs" as: "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" (art. 1).

g/ See *The State of the World's Children 1999*.

h/ See UNESCO, *International Standard Classification of Education*, November 1997, para. 52.

i/ A view also reflected in ILO Convention No. 142 (1975) concerning Vocational Guidance and Vocational Training in the Development of Human Resources and ILO Convention No. 117 (1962) concerning Basic Aims and Standards of Social Policy.

j/ This replicates article 18, paragraph 4 of the International Covenant on Civil and Political Rights and also relates to the freedom to teach a religion or belief as stated in paragraph 1. (See Human Rights Committee General Comment No. 22 (48) adopted by the Committee in 1993 (A/48/40 (Part I, annex VI)). The Human Rights Committee notes that the fundamental character of article 18 of the International Covenant on Civil and Political Rights is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4, paragraph 2 of that Covenant.

k/ According to article 2 of the Convention:

"When permitted in a State, the following situations shall not be deemed to constitute

## EDUCATION - RIGHT TO EDUCATION

discrimination, within the meaning of article 1 of this Convention:

“(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.”

l/ See Recommendation Concerning the Status of Higher-Education Teaching Personnel (paragraph 27 above).

m/ In formulating this paragraph, the Committee has taken note of the practice evolving elsewhere in the international human rights system, such as the interpretation given by the Committee on the Rights of the Child to article 28, paragraph 2, of the Convention on the Rights of the Child, as well as the Human Rights Committee's interpretation of article 7 of the International Covenant on Civil and Political Rights.

n/ The Committee notes that, although it is absent from article 26, paragraph 2 of the Universal Declaration of Human Rights, the drafters of International Covenant on Economic, Social and Cultural Rights expressly included the dignity of the human personality as one of the mandatory objectives to which all education is to be directed (art. 13, para. 1).

o/ See paragraphs 1 and 2 of the Committee's General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1, of the Covenant).

p/ See paragraph 9 of the Committee's General Comment No. 3 (1990).

q/ Ibid.

## EDUCATION - RIGHT TO EDUCATION

r/ There are numerous resources to assist state parties in this regard, such as the UNESCO Guidelines on Textbook Research and Textbook Revision. One of the objective of article 13, paragraph 1 is to “strengthen the respect of human rights and fundamental freedoms”. In this particular context, States parties should examine the initiatives developed within the framework of the United Nations Decade for Human Rights Education. Especially instructive is the Plan of Action for the Decade, noted by the General Assembly in its resolution 51/104 of 12 December 1996, and the Guidelines for National Plans of Action for Human Rights Education (A/52/469/Add.1/Corr.1), developed by the Office of the United Nations High Commissioner for Human Rights to assist States in responding to the Decade.

s/ On the meaning of “compulsory” and “free”, see paragraphs 6 and 7 of the Committee’s General Comment No. 11 (1999) on plans of action for primary education (art. 14 of the Covenant).

t/ In appropriate cases, such a fellowship system would be an especially appropriate target for the international assistance and co-operation anticipated by article 2, paragraph 1.

u/ In the context of basic education, UNICEF has observed: "Only the State...can pull together all the components into a coherent but flexible education system" (*The State of the World's Children 1999: “The education revolution”,* p.63).

v/ According to article 7, paragraph 2 of the Convention, "(e)ach Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: [...] (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour".

w/ See paragraphs 13-14 of the Committee’s General Comment No. 3 (1990).

x/ See paragraph 9 of the Committee's General Comment No. 2 (1990) on international technical assistance measures (art. 22 of the Covenant).

- 
- CERD General Recommendation XXIX (Sixty-first session, 2002): On Article 1, Paragraph 1, of the Convention (Descent), A/57/18 (2002) 111 at paras. rr and ss. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.
  - ICCPR General Comment 28 (Sixty-eighth session, 2000): Article 3: Equality of Rights Between Men and Women, A/55/40 vol. I (2000) 133 at paras. 15 and 28. For text of

## **EDUCATION - RIGHT TO EDUCATION**

General Comment, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - General**.

- ICESCR General Comment 5 (Eleventh session, 1994): Persons with Disabilities, E/1995/22 (1994) 99. For text of General Comment, see **DISABILITY**.
- ICESCR General Comment 6 (Thirteenth session, 1995): The Economic, Social and Cultural Rights of Older Persons, E/1996/22 (1995) 97 at paras. 36 and 37. For text of General Comment, see **EQUALITY AND DISCRIMINATION - OLD AGE**.
- ICESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116 at paras. 4 and 30. For text of General Comment, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - General**.
- CRC General Comment 1 (Twenty-sixth session, 2001): Article 29 (1): The Aims of Education, CRC/C/103 (2001) 150 at paras. 2, 5, 8-10, 14 and 22. For text of General Comment, see **CHILDREN'S RIGHTS - EDUCATION**.
- CRC General Comment 3 (Thirty-second session, 2003): HIV/AIDS and the Rights of the Child, A/59/41 (2004) 89 at paras. 6, 7, 9, 11, 18, 31 and 32. For text of General Comment, see **CHILDREN'S RIGHTS - GENERAL**.
- CRC General Comment 4 (Thirty-third session, 2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, A/59/41 (2004) 102 at paras. 17, 19, 29 and 39(a). For text of General Comment, see **CHILDREN'S RIGHTS - HEALTH**.
- CRC General Comment 6 (Thirty-ninth session, 2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, A/61/41 (2005) 15 at paras. 3, 40-43, 63 and 90. For text of General Comment, see **CHILDREN'S RIGHTS - GENERAL**.