

# **Right to Education and Equality of Educational Opportunities**

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## **Abstract**

One witnesses unprecedented disparities in access to education in terms of educational attainments. This constitutes a major limitation on the realization for the right to education without discrimination or exclusion. It calls for greater emphasis upon the fulfillment of State obligations to ensure that the fundamental principle of equality of opportunity in education which is common to almost all international human rights treaties is given effect to. It also calls for intensifying normative action with emphasis on affirmative action and social protection measures for achieving equality of opportunities in education, both in law and in fact. A strong regulatory framework for public and private education systems grounded in the principle of equality of opportunity provides the essential basis for the establishment of an entire range of programmes and policies, guided by equitable approaches in favour of the marginalized, in particular the children from poor families.

## **Introduction**

Centrality of education in people's lives is being increasingly recognized in today's globalized world. Education is invaluable for empowering individuals and for social transformation. It has a key role in preparing children for democratic citizenship and responsibilities of future. Education is also central to poverty eradication strategies and the achievement of global commitments for sustainable development. It is fundamental building block for human development. As the Human Development Report 2012 mentions, the growth in Human Development Index is associated with growth in public spending on education. (UNDP, 2012, p.78). As such, a central place must be accorded to the right to education in development thinking.

One witnesses unprecedented disparities in access to education, as well as in terms of educational attainments of those in schools. "(...) Extreme inequality persists and in some cases has widened." (UNESCO, 2013, p.14). This must be seen in the context of "persistent and considerable disparities between rich and poor, both within and among countries, and about the adverse implications of these disparities for the promotion of human development throughout the world." (United Nations General Assembly Resolution on International Human Order, 2012). As Mr. Atal Bihari Vajpayee, former Prime Minister of India stated at the third meeting of the High Level Group on Education for All, organized in Delhi in 2003, "the difference between the poor man's school and the

rich man's school is becoming starker with each passing year.”

In many parts of the world, inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with wealth or economic status becoming the most important criterion to access a quality education. Even basic education is becoming a privilege of the wealthy, whereas it should progressively be made free at all levels in line with international legal obligations of States.

As such, States must be reminded of their core obligation that ensuring the right to education without discrimination or exclusion is fully respected and fulfilled. They must abide by the fundamental principles of non-discrimination and equality of opportunity for all in education.

### **Human Rights Law and Equality of Opportunity in Education**

Education is both a human right in itself and an indispensable means of realizing other human rights. As proclaimed in article 26 of the Universal Declaration of Human Rights, the right to education is an inalienable human right of every child – boys and girls alike. UNESCO's Convention against Discrimination in Education (1960) is the first instrument which provides for the right to education comprehensively. It establishes the fundamental principles of universal access to education and ensuring equality of educational opportunities. The Convention reflects UNESCO's mission of instituting collaboration among nations to “advance the ideal of equality of educational opportunities without regard to race, sex or any distinctions, economic or social.” The Constitution of UNESCO expresses the belief of its founders in “full and equal opportunities for education for all.” Under Article 4 of the Convention, the States Parties to this Convention undertake to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education.

The right to education is also comprehensively covered in article 13 of the International Covenant on Economic, Social and Cultural Rights. States have the principal responsibility for the direct provision of education, with core obligations clearly related to the principle of equality of opportunity: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis and to provide primary education for all in accordance with article 13 (2) (a) of the International Covenant.<sup>1</sup>

The right of every child to education on the basis of equal opportunity is also established in article 28 of the Convention on the Rights of the Child. The Committee on the Rights of the Child has recognized the need for identifying and giving priority to marginalized and disadvantaged groups of children, while not neglecting or diluting in any way the obligations which States parties have accepted under the Convention.

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<sup>1</sup> General Comment 13 on the right to education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. E/C.12/1999/10, (para.6). Emphasis added.

Other human rights treaty bodies have also stressed obligations connected to ensuring equality of opportunity in education. Article 10 of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW, 2004) contains detailed provisions related to equality of opportunity in education and “the equal rights of women and men in the field of education.” Furthermore, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. The Committee on the Elimination of Racial Discrimination addresses *inter alia* “measures in the field of education”, pursuant to article 5 of the Convention on the Elimination of All Forms of Racial Discrimination which protects the right to education and training for everyone without discrimination. The Committee has especially addressed issues of access to education, quality of education, drop-out rates, and special measures to ensure inclusion of communities which face discrimination (CERD, 2000; 2002).

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) specifically mentions in Article 3 equality of opportunity as a general provision of the treaty. Article 24 of the Convention has detailed provisions concerning the right of persons with disabilities to education “without discrimination and on the basis of equal opportunity.” Of particular importance is Article 24 (2) (b) which provides that “States shall ensure that ... persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others ....”

The right to education on a basis of equality is also protected by the International Convention on the Rights of All Migrant Workers and Members of their Families. Specifically, Article 30 provides that “[e]ach child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned.” Articles 43 and 45 further emphasize equality of treatment for migrant workers and members of their families in relation to access to educational institutions, as well as vocational training.

Thus, equality of opportunity in education is a fundamental principle, common to almost all international human rights treaties. It enjoins upon States parties to these treaties international obligations of permanent nature for promoting and protecting the right to education without discrimination or exclusion in a way that it is fully respectful of equality of opportunity in education. Free and compulsory primary education is an inalienable right of every child, and a *core* obligation of States under international human rights treaties. Beyond primary education, the right to education also extends to secondary education as well as the progression towards higher education. Its enjoyment is subject to the criteria of merit or capacity, while respecting the fundamental principles of non-discrimination and equality. The obligations assumed by States under human rights treaties range from ensuring universal access to primary education to progressive access to secondary education and higher education on the basis of capacity. The right to education is not only recognized as an *entitlement*, but as a source of *empowerment*.

## **State Obligations for Ensuring Equality of Opportunity in Education**

Fulfilling international legal obligations is a determinant factor in achieving the right to education. In order to implement the right to education, the States obligations under the international instruments must be incorporated into domestic legal order. The effective enforcement of the right to education is dependent upon how the State obligations under existing instruments are incorporated into national legal system; and on how remedies are available in case of their non-fulfillment. This necessitates normative action at national level, giving full recognition to the fundamental principles of equality of educational opportunities and universal access to education without discrimination or exclusion. Such normative action should strengthen the foundations of the right to education as a fundamental human right in national legal system. Considerations pertaining to the constitutional and legislative bases of the right to education are vitally necessary. Education laws must be further modernized in order to overcome the growing disparities in universal access to basic education. Education must be accessible to all, especially the most vulnerable groups, *in law and fact*, without discrimination and “educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party.”<sup>2</sup>

Education as a human right was also reaffirmed by the international community in its collective commitments made at the World Conference on Education for All at Jomtien (Thailand), in 1990 to the Education for All (EFA) agenda. The EFA goals clearly correspond to various provisions for the right to education that are detailed in well-known international human rights treaties that exist over decades. Similarly, the commitments by Governments to education related Millennium Development Goals (MDGs) must be seen in relation to international obligations for the right to education as a fundamental human right. This is also reflected in the resolutions on the right to education adopted by the Human Rights Council. The Resolution 20/7 on the Right to Education adopted in June 2012 gives expression to “the role that the full realization of the right to education plays in helping to achieve Millennium Development Goals.” The resolution 23/4 on the right to education adopted in June 2013 reiterates this and underlines “the need to ensure that the right to education is central in the context of the post-2015 agenda.” Promoting and protecting the right to education and promoting equality and non-discrimination are clearly interrelated duties of governments in accordance to human rights norms.

## **Equality of Opportunity in Education as a Permanent Challenge**

As mentioned above, bringing about equality of opportunity in education both in law and fact is a continuing challenge for all States. Normative action must be intensified

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<sup>2</sup> General Comment 13 on the right to education (Article 13 of the Covenant) op. cit. (para.6). Emphasis added.

for giving full effect to the fundamental principle of non-discrimination and equality of opportunity in education. This requires not only the elimination of discriminatory practices but the adoption of special promotional measures aimed at supporting all those who remain deprived of their right to education as a fundamental human right. The application of the principle of equality of opportunity in education calls for greater emphasis upon the fulfilment of State obligations. As the Report to UNESCO of the International Commission on Education for the Twenty-first Century: “Learning: The Treasure Within” (UNESCO, 1996) states, “Education is a human right and an essential tool for achieving the goals of equality, development and peace.” The recommendation of the Commission advance the concept that “Basic education is the first step in attempting to attenuate the enormous disparities affecting many groups – women, rural populations, the urban poor, marginalized ethnic minorities and the millions of children not attending school and working” (UNESCO, 1996, pp.13-14 and 118). A strong regulatory framework for public and private education systems grounded in the principle of equality of opportunity provides the essential basis for the establishment of an entire range of programmes and policies, guided by equitable approaches in favour of the marginalized, in particular the children from poor families. (United Nations Special Rapporteur on the Right to Education, 2011).

Despite universal State obligations to provide universal primary education and fair access to secondary and higher education through all appropriate means, education is not fully accessible for many people around the world. The promotion of equality of opportunity in education is of paramount importance for the full realization of the right to education, as attaining *de facto* equality of opportunity in education remains a permanent challenge for almost all countries in the world. Understanding and removing obstacles that impede the universal enjoyment of the right to education are urgent challenges for the entire international community.

Developing countries face particularly acute challenges with regard to great social and economic inequalities, but developed countries also encounter challenges when attempting to ensure equal educational opportunities for all. Concerns relating to equality of opportunity in education are understood as relating both to guaranteeing equal opportunities in access to different levels of education as established by human rights norms as well as equal opportunities to evolve within education systems.

### ***Overcoming Marginalization and Inclusion in Education***

Challenges faced in achieving equality of opportunity in education have been described in reports submitted by States regarding implementation of the UNESCO's Convention against Discrimination in Education<sup>3</sup>--even in countries where educational

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<sup>3</sup> “Results of the Seventh Consultation of Member States on the measures taken for implementation of UNESCO's Convention and the Recommendation (1960)”, Document 177 EX/36, UNESCO, Paris.

opportunities are in general widely available; inequalities remain in the ability of all social groups to fully avail themselves of such opportunities. Social and cultural barriers and unequal opportunities manifested in access to quality education remain one of the most serious difficulties of national educational policies. Closing the attainment gap among children from different ethnic groups and differing socioeconomic backgrounds appears as a common challenge in these reports.

Inequalities in education have also been a persistent constraint on also the EFA process. In 2009, the EFA Global Monitoring Reports stated that “Progress towards the EFA goals is being undermined by a failure of governments to tackle persistent inequalities” based on income, gender, location and ethnicity, language etc. (UNESCO, 2004, pp.4, 7 and 29). In the subsequent year, the report indicated that "Governments are failing to address the root causes of marginalization in education" (UNESCO, 2012, p.22) and showed how mutually reinforcing layers of disadvantage create extreme and persistent deprivation that undermine equal opportunities in education (p.137). In all such circumstances, different types of barriers emerge as central factors for the limited enjoyment of the right to education of these various population groups. Understanding these different obstacles and their inter-relations is a permanent challenge for developing effective education policies to ensure non-discrimination and equal opportunities in education.

A statement of the Joint Expert Group UNESCO (CR) and ECOSOC (CESCR) on the Monitoring of the Right to Education (2008) highlights that in overcoming inequalities and eliminating disparities in education, emphasis should be placed on the inclusive dimensions of the right to education, which does not admit of any discrimination or exclusion. The work of human rights treaty bodies over the last years has indicated areas of action at national and international levels to ensure equality of opportunity in education. Similarly, recommendations to States undergoing the Universal Periodic Review process also address aspects such as guaranteeing the right to education to marginalized and underprivileged groups, combating poverty, ensuring the right to education for all, removing gender-based imbalances in education, strengthening efforts to expand opportunities for (basic) education, etc.(Human Right Council, 2011).

### ***Empowering Girls and Women***

Girls and women constitute a majority of those who remain deprived of education as evidenced by the low level of their education and the prevailing obstacles to their access to education at all levels, especially at secondary and tertiary levels. Human rights framework is pivotal in the struggle against multiple forms of discrimination from which women and girls in vulnerable and marginalized situations suffer. Educating women and girls should, *à priori*, be viewed as a human rights imperative, rather than being undertaken solely because of potential benefits to their children or to society.

The CEDAW-Committee in its General Recommendation 28 has specified that

temporary special measures are necessary, not as an exception to the prohibition of discrimination, but as a central part of a strategy to achieve substantive or de facto equality between women and men. The Committee has also specifically referred to the equal rights of girls in the area of basic education as part of the Core Obligations of States Parties. In this respect, it is also important to note as a follow up to the *Ministerial Declaration at the 2010 High-Level Segment of the ECOSOC* for supporting "legislative developments," specific laws for women's empowerment through education within the framework of the Convention on the Elimination of All Forms of Discrimination against Women should receive high consideration.

As regards equal opportunities between men and women, the Beijing Platform for Action, adopted at the Fourth World Conference for Women in 1995, includes women and education as one of the Platform's 12 critical areas of concern recognizing, *inter alia*, that "Equality of access to and attainment of educational qualifications is necessary if more women are to become agents of change." The Platform for Action calls on Governments to, *inter alia*, "advance the goal of equal access to education by taking measures to eliminate discrimination in education at all levels," and to "create a gender-sensitive educational system in order to ensure equal educational and training opportunities."

### ***Poverty Eradication: Creating Educational Opportunities for the Victims of Poverty***

The right to education is often available least to those who need it most. Poverty is the greatest obstacle to the enjoyment of the right to education as well as the right to development. It is an affront to humanity. Education is one of the key instruments for putting an end to the intergenerational transmission of poverty. Poverty is also gross violation of all human rights and of human dignity. So long as poverty remains so widely prevalent, development cannot be sustainable.

It is now being recognized that the eradication of poverty is the foremost concern of the international community and of Post-2015 Development Agenda. Poverty eradication is indeed an overriding development concern. It is imperative to create a global movement which urges all the Governments of the world to abide by the pledges they made when they adopted the UN Millennium Development Goals in 2000, and to take utmost seriously the future pledges for total eradication of poverty before 2030.

The strategies for poverty eradication should be guided by equitable approaches, along with social protection measures for enabling children from poor household to avail of their fundamental right to education. This requires permanent support to the enjoyment of the universal right to education in the form of grants and bursaries to be provided to the children who are victims of exclusion, in particular those who are victims of extreme poverty. Such affirmative action and promotional measures have normative basis in international human rights conventions. Article 13 of the International Covenant on Economic, Social and Cultural Rights provides for "an adequate fellowship system"

among its provisions on the right to education”<sup>4</sup>. Similarly, UNESCO’s Convention against Discrimination in Education, mentioned above, lays down in Article 3(c) the criteria of 'merit or need' with respect to grant of scholarships or other forms of assistance to pupils”.

### **Barriers to Achieving Equality of Opportunity in Education**

In face of all these challenges, it is important to emphasize the importance of State obligations under international human rights law relating to equality of opportunity in education in an endeavor to mitigate prevailing inequities. Inclusive education is key to building inclusive societies. The adoption of positive measures such as affirmative action and social protection schemes, targeting disadvantaged and vulnerable groups to ensure their access to education, provides leverage in eliminating barriers which hinder achieving equality of opportunity in education

#### ***Financial barriers***

Surveys in various countries point to financial constraints - direct and indirect costs of schooling - as a central reason for children being out of school or dropping out (UNESCO, 2010, p.166). Tuition fees appear as the most obvious financial obstacle, and the accumulation of indirect costs such as those related to transportation, school materials; uniform and other indirect contributions undermine access to education opportunities. Besides, disparities in provisions for public education contribute to unequal opportunities for many students receiving education in poorly resourced schools, as compared to well-resourced ones.

Even if primary or basic education were to be accessible free of cost, such access cannot be universalized effectively unless financial support in the form of grants and bursaries is provided to the children who are victims of exclusion, in particular those who are victims of extreme poverty. Targeting elimination of child labour in order to safeguard mandatory education is particularly relevant.

While significant efforts have been undertaken to improve access to free primary schooling, less efforts have been made in relation to higher levels of education. Students with limited resources thus have very limited prospects to progress to secondary education and beyond. States have the responsibility to alleviate this financial burden and ensure access to secondary education subject to availability, and equally accessible to all, also

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<sup>4</sup> “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.” General Comment 13 on the right to education (Article 13 of the Covenant), *opt. cit.* (Para 26).



make higher education available on the basis of merit or capacity<sup>5</sup>.

### ***Linguistic and cultural barriers***

The lack of education in mother-tongue or native languages is often a source of exclusion. This is particularly relevant for minorities and migrants. Estimates indicate that around 221 million children speak a different language at home from the language of instruction in school, limiting their ability to develop foundations for later learning (UNESCO, 2010, pp.10-11). The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, establishes in Article 4(3) that States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. Moreover, available experience shows that a child learns better in his or her mother tongue in the formative stages and initial period of education.

States take appropriate measures, wherever possible, to ensure that persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. These measures are deemed to be most critical in preschool and primary schools, but may extend to subsequent stages of education.<sup>6</sup> Respecting the richness of linguistic and cultural diversity, education policies in today's globalized world should give high consideration to mother-tongue based-multilingual education.

Respecting the diversity of national education systems, the UNESCO's Convention against Discrimination in Education protects the educational rights of national minorities. The States Parties to this Convention agree that "It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however, (a) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty; (b) That the standard of education is not lower than the general standard laid down or approved by the competent authorities." (Article 5 (1) c). The States Parties to this Convention have undertaken to take all necessary measures to ensure the application of the principles enunciated above.

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<sup>5</sup> According to the International Covenant on Economic, Social and Cultural Rights, "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"; and (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." (Art.13 (b)).

<sup>6</sup> UN Doc A/HRC/10/11/Add.1, Para 58

## **Legal Enforcement of Equality of Opportunity**

Judicial systems play an essential role in protecting and enforcing the right to education as an entitlement. The enforcement of legal mechanisms guaranteeing equality of opportunity in education is crucial in safeguarding such entitlement. In the case of violation of the right to education, and denial of equality of opportunity, everyone must be able to have recourse before courts or administrative tribunals on the basis of international legal obligations as well as to existing constitutional provisions on the right to education. Decisions by courts across regions demonstrate how courts have upheld the right to education and equality of opportunities in education. Case law from several countries shows that individuals can claim their entitlement to equality of opportunity in education.

The right to education is often least available to those who need it most – disadvantaged and marginalized groups, and above all, children from poor families. The right to education as an entitlement is a justiciable right, which must be safeguarded and enforced in cases of its violation or breach. All providers of education - public or private-remain accountable for respecting the right to education in its various dimensions. It is vital to improve access to justice for all those whose right to education is not fully protected and respected.

The international and regional legal instruments offer important frameworks to stake a claim for protecting the right to education; they also are indispensable for pursuing accountability in cases of its violations. These instruments must be brought into domestic law to ensure they are enforced. Countries should adopt legislation which explicitly incorporates the right to education. They can also ensure that the right to education is effectively enforced through judicial and quasi-judicial mechanisms. Necessary measures must be taken with a view to empowering the national human rights institutions, tribunals, ombudsmen or other mechanism to monitor, investigate and address complaints of violations of the right to education, and facilitating to bring violations to courts where necessary. In this respect, it is important to strength the rule of law to ensure an independent judiciary and well trained legal profession to effectively enforce national laws and standards. (United Nations Special Rapporteur on the Right to Education, 2013).

It is incumbent upon governments to take a number of measures as a follow up to the Resolution 23/4 on the Right to Education, adopted by the Human Rights Council on 19 June 2013. This Resolution urged all countries to adopt legislation on the right to education, to create independent institutions and mechanisms to enforce such rights, and to ensure that lawyers, judges and administrators are adequately trained on how such rights are to be enforced.

In the historic ruling of *Brown v. Board of Education* the Supreme Court of the United States of America emphatically declared that separate educational facilities for white and black children are “inherently unequal”. Even where physical facilities and other objective factors are equal, a segregated school system denies equal educational

opportunities to the minority group.<sup>7</sup> The Supreme Court noted that “Providing public schools ranks at the very apex of the function of a State,” and “education is perhaps the most important function of State and local governments.”<sup>8</sup> The right to equal educational opportunity in mixed race and mixed gender schools has since been codified through the establishment of the Equal Educational Opportunities Act.<sup>9</sup>

In India jurisprudence also underlines State obligations relating to the right to education and the equality of educational opportunities. The Supreme Court of India has interpreted the provisions on equality before the law in article 14 of India’s Constitution to promote equality *in law* and *in fact*. Equality in law must ultimately find its *raison d’être* in the equality in fact.<sup>10</sup> A Constitution Bench of the Indian Supreme Court held that “What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. [...] The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed...”<sup>11</sup>

The Constitutional Court of Colombia in 1994 ruled that by excluding pupils on an economic basis, schools violate their right to education.<sup>12</sup> The Constitutional Court of South Africa held in 1995 that “affirmative action in education, which would give preference to previously disadvantaged persons to gain admission (to university), is allowed by section 9(2) of the Constitution.”<sup>13</sup> Other rulings from the same court in South Africa in 1996 also protect the right to education and language rights.<sup>14</sup>

Administrative tribunals and national human rights institutions also reinforce judicial and quasi-judicial mechanisms to safeguard the equality of opportunities in education and right to education. National Human Rights institutions also have an important role to play. In Mauritius, for example, the ombudsperson is entrusted with powers to investigate any type of educational discrimination. The Equality and Anti-Discrimination Ombudsman in Norway and the Equal Opportunities Ombudsman in Sweden also have such competence.

## Some Forward Looking Measures

The application of the principle of equality of opportunity in education, which is

<sup>7</sup> *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct.686, 98 L.Ed.873 (1954), as cited in *Education Law, Education Series, Chapter 4, ‘Students Rights’*, Law Journal Press, New York, 2002.

<sup>8</sup> *Wisconsin, v. Yoder*, 406 U.S.205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972), as cited in *Education Law, Education Series, Ibid.*

<sup>9</sup> 20 U.S.C. paragraph 1701-1758 (cited in *Education Law, Education Series, Chapter 4, ‘Students Rights’*, Law Journal Press, New York, 2002.

<sup>10</sup> See *Pradeep Jain v. Union of India* (1984), 3 SCC 654.

<sup>11</sup> *Km. Chitra Ghosh and Another vs. Union of India and Others* [(1969) 2 SCC 228]

<sup>12</sup> *Sentencia C-560/97, Demanda de inconstitucionalidad contra el artículo 203 (parcial) de la Ley 115 de 1994*

<sup>13</sup> *Motala and another v. University of natal – 1995 (3) BCLR 374 (D)*

<sup>14</sup> *The Constitutional Court - The Gauteng provincial legislature – 1996 CCT 39/95*

common to various international human rights treaties, calls for greater emphasis upon the fulfillment of State obligations. It is clear that, taking into consideration the continuing challenges in bringing about equality of opportunity in education *both in law and in fact*, normative action needs to be intensified. Such action should be guided by the Human Rights Council Resolution on the Right to Education (Human Rights Council, 2011). This resolution urges “all States to give full effect to the right to education by, inter alia, promoting equality of opportunity in education in accordance with their human rights obligations, including by:

- (a) Ensuring adequate legal protection of the right to education and its equal enjoyment;
- (b) Addressing multiple forms of inequality and discrimination in education through comprehensive policies;
- (c) Ensuring adequate resource allocation, including through the identification and implementation of innovative financing mechanisms;
- (d) Supporting national mechanisms that promote the realization of the right to education, such as national human rights institutions;
- (e) Increasing efforts to achieve the goals of the Education for All agenda and the commitments relating to education contained in the Millennium Development Goals and their review process, with a human rights-based approach;
- (f) Promoting a coordinated approach when considering follow-up to the concluding observations adopted by the United Nations human rights treaty bodies, the recommendations formulated by the special procedures and recommendations accepted within the universal periodic review process; and
- (g) Integrating a gender perspective in all policies and programmes relating to education with a view to eliminate gender disparities at all levels of education.”

As described by the United Nations Special Rapporteur on the Right to Education in his Report on the Promotion of Equality of Opportunity in Education (April 18, 2011), equal opportunities in education on the basis of a human rights framework can be promoted in a number of ways:

*First and foremost, adequate legal protection to the right to education and its equal enjoyment in all its inclusive dimensions must be ensured*

States are required to incorporate their obligations under international human rights conventions into their domestic legal order.<sup>15</sup> Governments should recognize the key

<sup>15</sup> In this respect, Ecuador is a good example of elaborate framework on the right to education. Ecuador’s Constitution (2008) ushered in a new model for the State, with development that focuses on people. It establishes education as a right of all persons and a core duty of the State, recognizing that education constitutes a priority area for public policy making and State investment. With its focus on equality, and social inclusion, the Constitution provides that education “shall guarantee holistic human development, within the framework of respect for human rights, a sustainable environment, and democracy.”

importance of adequate legal frameworks on equality of opportunity in education in line with international standards for ensuring such equality. A strong regulatory framework for public and private education systems grounded in the principle of equality of opportunity provides the essential basis for the establishment of an entire range of programmes and policies aiming at ensuring equality of opportunity.

*Second, multiple forms of inequality and discrimination through comprehensive policies must be addressed*

Given the mutually reinforcing nature of different forms of discrimination and inequality in the context of education, States should address multiple forms of inequality and discrimination through comprehensive policies. Prevailing disparities in access to education - between boys and girls and between rich and poor regions - must receive special consideration, recognizing that good policies backed by a commitment to equality can make a difference. Policy measures must respond to the need for making learning accessible for the most marginalized and vulnerable.

*Third, States must provide adequate resource allocation for mitigating inequalities in education*

Having regard to the specific needs of those who are victims of marginalization and exclusion as well as to the elimination of geographic disparities in the provision of education, States must ensure adequate allocation of resources where they are needed most. Resources should be earmarked adequately for fellowships, bursaries and grants, along with investments in social protection, bearing in mind the need to address marginalization and exclusion, and educational dimensions of poverty reduction strategies. The Human Rights Council in its Resolution on the Right to Education on the sixth of July reaffirmed the need for adequate financial resources so that everyone can realize their right to education and the importance in this regard of national resource mobilization and international cooperation (Human Right Council, 2011).

*Fourth, governments must devise a sound regulatory framework for controlling the private providers of education*

Exploding demands for education have led to an exponential growth in a number of private schools. A comprehensive and sound regulatory framework is necessary for controlling private schools and ensuring their conformity with norms and standards. While private education can supplement public education, it should not supplant the Government's primary responsibility to provide basic education for all. While preserving public interest in education, effective sanctions in case of abusive practices by private schools are necessary.

Education benefits both the individual and the society and it should be safeguarded by avoiding its mercantalization, geared towards commercial gains only. It should be central to the notion and concepts of global public goods and intellectual commons which are increasingly being discussed in international fora.

*Fifth, Equity Based Approaches for Mitigating Disparities in Access to Education are needed*

The right to education is a universal right, which must be provided without discrimination or exclusion. In face of persistent disparities in education and the gap between rich and poor, both within and among countries, the challenges are enormous for bringing about de facto equality of opportunity in education. Equity-based approaches to education are necessary in face of growing disparities in access to education. In order to overcome the marginalization and exclusion in education, the right to quality education must be made universally accessible to all without exception.

*Finally, Raising Public Debate on the Right to Education must be pranoted*

Fostering inclusive education implies active engagement of civil society. The intellectual community and the civil society play a central role in promoting better understanding of inequalities in education. The advocacy work of these stakeholders is vital to ensure widespread attention to issues in ensuring equality of opportunity in education. In order to advance the right to education, raising public debate is necessary for more effective implementation of existing instruments and for creating greater policy awareness of the importance of constitutional/legal bases of the right to education as a fundamental human right. The Parliamentarians have an especially important role in this respect.

Development must be guided by the principles of social justice and equity which are at the core of global mission of the United Nations to promote development and human dignity, In this context, the importance of basic principles of “social justice and equity”, as reflected in the United Nations Millennium Declaration (UN, 2000) must be underlined. These principles are invaluable in imparting dynamism to the process of full realization of the right to development and to bring it at the forefront in development planning to build a better world for present and future generations. They are of abiding importance in guiding State actions and should receive renewed emphasis in post-2015 development agenda with a view to creating a better world for present and future generations.

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