



## The Right to Education

### Section 27A Right to Education

- (1) Every child has the right to have access to free, school education appropriate to his or her needs.
- (2) Everyone has the right to have access to further education and vocational and continuing training.
- (3) These rights are limited to the following immediately realisable aspects:
  - (a) everyone is entitled to enjoy these rights without discrimination;
  - (b) to ensure the religious and moral education of a child in conformity with the convictions of the child's parent or guardian, the parent or guardian may choose schooling for the child (other than schooling provided by the government) that conforms to the minimum educational standards required under law.

The primary source for the right in section 27A is the Article 13 of the International Covenant on Economic, Social and Cultural Rights ('ICESCR' or 'the Covenant').

### Article 13 ICESCR

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **Interpreting the right to education**

Under s31(1) of the *Human Rights Act*

international law, and the judgments of foreign and international courts and tribunals, relevant to a human right may be considered in interpreting the human right.

According to the dictionary of the *Human Rights Act*, 'international law' is defined inclusively to include 'human rights treaties to which Australia is a party, general comments and views of the United Nations human rights treaty monitoring bodies; and declarations and standards adopted by the United Nations General Assembly that are relevant to human rights.' Some important treaty provisions that are binding on Australia, and other instruments which protect the right to education are outlined in Appendix 1.

In addition, there have been a number of conferences held under UN auspices that have resulted in declarations which help to define the right to education, such as the World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs,<sup>1</sup> and the Dakar Framework for Action.<sup>2</sup> There are also numerous regional treaties which protect the right to education, and the constitutions and national laws in many countries also protect the right to education. Decisions from courts and tribunals in these jurisdictions may be used to interpret the right to education in s27A of the *Human Rights Act*.<sup>3</sup>

### **Enforceability – what s27A does and does not do**

Unlike all the other rights included in the *Human Rights Act* which require ‘public authorities’ such as public servants to act consistently with them,<sup>4</sup> public authorities are *not* required to act consistently with s27A of the *Human Rights Act*.<sup>5</sup> This means that any court or tribunal case concerning s27A must be brought on the basis of an existing avenue for litigation.

Examples of existing avenues include s145A of the *Education Act 2004* (ACT) and ss18 and 20 of the *Discrimination Act 1991* (ACT). Under s18 of the *Discrimination Act 2004* (ACT), for example, an educational authority must not discriminate against a person with respect to admission to educational institutions and, once admitted, it must not deny them benefits, subject them to detriments or expel them on a discriminatory basis, while s20 of the *Discrimination Act 1991* (ACT) prevents discriminatory denial of services (which may include education) by government. Section 27A of the *Human Rights Act* may be referred to in litigation based on the *Education Act 2004* (ACT) or the *Discrimination Act 1991* (ACT). Courts and tribunals must interpret the relevant sections of these two Acts so as to be consistent with s27A of the *Human Rights Act* so far as it is possible to do so consistently with their purpose.

The Attorney-General is required to write a statement concerning the compatibility of all government bills (draft legislation) with the right (where the right is relevant), and all bills (including Private Member’s bills) are subject to scrutiny for compatibility with the right (where the right is relevant) by the Legislative Assembly Scrutiny Committee.

### *Interpretation of s27A of the Human Rights Act – what is ‘immediately realisable’?*

The *Human Rights Act* expressly limits the right to education to two immediately implementable aspects of the right to education, namely (a) access to certain levels of

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<sup>1</sup> Adopted by the World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 5 – 9 March 1990.

<sup>2</sup> Adopted by the World Conference on Education for All: Meeting our Collective Commitments, Dakar, Senegal, 26 – 28 April 2000.

<sup>3</sup> *Human Rights Act 2004* (ACT) s 31(1).

<sup>4</sup> *Human Rights Act 2004* (ACT) s 40B.

<sup>5</sup> *Human Rights Act 2004* (ACT) s 40B(3)

education (identified as free pre-school, primary and secondary education and further education and continuing training) without discrimination and (b) the ability of parents or guardians to choose schooling that provides religious and moral education in conformity with the convictions of those parents and guardians, subject to the minimum educational standards required under the law.

Section 27A(3)(a) raises a question of interpretation. Is the section limited to prohibiting non-discrimination in access to the forms of education stated above, or does it provide a positive right to 'enjoy' the right to access these forms of education, which must, in addition, be enjoyed without discrimination? The latter meaning suggests that education itself has a *content* that must be provided to *all persons*, whereas the former meaning suggests that the content of education is not all that relevant, and what matters is whether everyone gets non-discriminatory access to what is on offer as 'education'.

To give an illustration, does s27A protect the right to "further education and vocational and continuing training" or only the right to non-discriminatory access to such education? For example, if funding for the CIT in the ACT was removed and the institution closed, it is unclear whether s27A would be infringed. If the first interpretation was adopted by the courts, s27A would not be infringed as the right to further education and vocational training is not being impinged in a manner that is discriminatory. Rather, all persons are equally being denied access to CIT education. However, if the second interpretation is adopted by the courts, s27A may be breached as the positive right to enjoy further education and vocational training has been infringed. Yet, even if a court was sympathetic to this more expansive reading of s 27A, in this specific example this argument may still not be successful as s27A does not apply to public authorities, which includes public service.

In some cases, it would not matter whether the first or the second interpretation was adopted. For example, 'education' provided to *all* students that promoted *discriminatory attitudes* would violate the principles of equality and non-discrimination found in s27A and s8 of the *Human Rights Act*, the *Discrimination Act 1991* (ACT), and federal anti-discrimination legislation. Laws introducing fees may also indirectly discriminate against people with low incomes. Issues like this are explored later in this fact sheet.

### **Normative content of the right to education**

This fact sheet examines some of the content of the right to education under international law, drawing attention, where possible, to matters most relevant to the elements of the right to education set out in s27A.

#### *The goals of education*

The goals of education are stated in Article 13(1) of the ICESCR, namely:

the full development of the human personality and the sense of its dignity, and [to] strengthen the respect for human rights and fundamental freedoms. ... Education shall

enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The goals of education are expanded in Article 29 of the Convention on the Rights of the Child, which adds equality between the sexes and respect for the environment to the goals set out in the Covenant. Access to something called 'education' that does not further these goals, might not satisfy the right of access to education at all. As the Committee on the Rights of the Child has said, 'the child's right to education is not only a matter of access (art. 28) but also of content.'<sup>6</sup>

### *What are the Different Levels of Education?*

The Committee on Economic Social and Cultural Rights has also described the aims of the different levels of education. In its description of primary education, the Committee draws on the World Declaration on Education for All which says in Article 5 that:

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.

Basic learning needs are defined in Article 1 of the World Declaration on Education for All 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.

Similarly, the Committee on the Rights of the Child has said that:

basic skills include not only literacy and numeracy, but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.<sup>7</sup>

The Committee has also referred to the importance of pre-school education (which is covered by the reference to 'school education' s27A) to a child's right to maximum development in Article 6(2) of the Convention on the Rights of the Child.<sup>8</sup>

Secondary education 'includes the completion of basic education and consolidation of the foundations for life-long learning and human development. It prepares students for vocational and higher educational opportunities.'<sup>9</sup>

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<sup>6</sup> Committee on the Rights of the Child, General Comment 1, [3].

<sup>7</sup> Committee on the Rights of the Child, General Comment 1, [9].

<sup>8</sup> Committee on the Rights of the Child, General Comment 7, [28].

## *Higher and Tertiary education*

Tertiary education has been described by a commentator, drawing on UNESCO's *International Standard Classification of Education (ISCED)* as follows:

higher or tertiary education involves two stages: a first stage not leading directly to an advanced research qualification, and a second stage leading to an advanced research qualification. The former consists of programmes with an educational content more advanced than those of upper secondary education. Entry to these programmes normally requires the successful completion of upper secondary education. Education at this stage may *either* be theoretically based and intended to provide the qualifications for entry into advanced research programmes and professions with high skills requirements *or* practically oriented/occupationally specific and mainly designed for participants to acquire the practical skills and know-how needed for employment in a particular occupation or trade. The latter has a research oriented content, and entails a submission of a thesis or dissertation.<sup>10</sup>

The Committee on Economic, Social and Cultural Rights has said higher education includes technical and vocational education,<sup>11</sup> and that '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.'<sup>12</sup>

Although higher education is limited to those with 'capacity', countries are required to ensure that it is accessible. As the international expert Klaus Beiter notes, measures to achieve this may include the following:

- granting study bursaries to students in deserving cases;
- facilitating access to university via different paths, *i.e.* not only by virtue of passing the school-leaving exam;
- providing accurate information to students on all forms of higher education available; and
- increasing the opportunities for distance education.<sup>13</sup>

## *Obligations of progressive achievement and immediate obligations*

The right to education is an economic, social and cultural right, although it clearly has civil and political aspects to it.<sup>14</sup> An educated person is better equipped to exercise his or her

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<sup>9</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [12].

<sup>10</sup> Klaus Dieter Beiter, *The Protection of the Right to Education in International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (Martinus Nijhoff, 2006), 521, citing UNESCO *International Standard Classification of Education (ISED)* (1997) [80]—[106].

<sup>11</sup> The Committee refers to Article 6(2) of the Covenant which requires vocational training as one of the steps to achieve the right to work.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [18].

<sup>13</sup> Beiter, note 11 above, 523. The Report on base funding of universities has made recommendations concerning students of lower socio-economic status: Australian Government, Higher Education Base Funding Review, Final Report, October 2011.

<sup>14</sup> The Committee has said that the right to education is 'in many ways, a civil right and a political right, since it is central to the full realization of those rights as well.' Committee on Economic, Social and Cultural Rights, General Comment 11, [2].

right to vote, for example. However, economic, social and cultural rights are not always entirely immediately achievable. As a party to the International Covenant on Economic, Social and Cultural Rights, the Australian Government is committed under Article 2 of the Covenant to the following obligation with respect to economic, social and cultural rights:

#### **Article 2 ICESCR**

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2 of the Covenant recognizes that economic, social and cultural rights require resources in order to implement them, and imposes a general obligation of *progressive achievement*. However, the Committee on Economic, Social and Cultural Rights, which supervises the Covenant, has recognized that economic, social and cultural rights also impose some *immediate* obligations. These include the obligations of non-discrimination with respect to all rights (as recognized in Article 2(2)) and the obligation to take steps towards the achievement of economic, social and cultural rights (governments cannot choose to do nothing).<sup>15</sup>

The Committee has also identified a minimum core content of each right which must be respected *immediately*. The minimum core obligation with respect to Article 13 of the Covenant,

includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with “minimum educational standards” (art. 13 (3) and (4)).<sup>16</sup>

#### *The four As – Availability, accessibility, acceptability and adaptability*

Principles of equality and non-discrimination are also interrelated with four general qualities which apply to the right to education. In its General Comment on Article 13 of the Covenant, the Committee on Economic, Social and Cultural Rights has said that all levels of education

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<sup>15</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [43].

<sup>16</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [57].

set out in Article 13 must be *available, accessible, acceptable* and *adaptable*.<sup>17</sup> Section 27A of the *Human Rights Act* explicitly uses the word ‘access’ (which is also used several times in Article 13 of the Covenant). However, the Committee notes that availability, accessibility, acceptability and adaptability are ‘interrelated and essential’.<sup>18</sup> The use of the word ‘access’ in s27A does not mean that the other three requirements of availability, acceptability and adaptability are irrelevant.

### *Accessibility*

Section 27A of the *Human Rights Act* expressly protects ‘access’ to certain forms of education, without discrimination. The Committee on Economic, Social and Cultural Rights has said that accessibility has three elements:

- (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 ... ;
- (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 (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 ...<sup>19</sup>

An obvious example of discrimination that must be avoided is discrimination against vulnerable groups such as children or young people with disabilities. Children or young people with disabilities are entitled to ‘reasonable accommodations’ in order to enable them to attend mainstream schools and educational facilities. Article 2 of the Convention on the Rights of Persons with Disabilities says that ‘reasonable accommodation’ means:

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Article 5(3) of the Convention on the Rights of Persons with Disabilities says that ‘in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.’

What is reasonable depends on the facts of the case. For example, in one situation, the German Federal Constitutional Court found that it was not a violation to require a particular

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<sup>17</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [6].

<sup>18</sup> Ibid.

<sup>19</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [6(b)].

student with disabilities to attend a special school.<sup>20</sup> As one commentator writes, ‘the extensive special pedagogical support needed by the [student] and the state’s inability to provide such support within the framework of the resources at its disposal at the school concerned were crucial to the resolution of the case.’<sup>21</sup> The example of students with disabilities is discussed further below under the heading non-discrimination.

The requirement of economic accessibility or affordability means that some actions eg introduction of fees for education that appear to apply to everyone will in fact discriminate against people on low incomes. School fees for primary and secondary students appear to be expressly ruled out by the requirement in s27A that every child has the right to have access to free, school education. However, s27A does not say that tertiary education must be free.

‘Hidden fees’ may be inconsistent with the right to education as a matter of international law. In its General Comment 11 on the Covenant, the Committee has stated that ‘free’ education means that certain indirect costs are impermissible. This may include ‘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 ...’<sup>22</sup> Other indirect costs need to be considered on a case by case basis.<sup>23</sup> The requirement in Article 13(2)(e) that there be a system of ‘fellowships’ (bursaries) is important as they must be made available to cover permissible indirect costs in order to ensure that students from low socio-economic backgrounds are able to participate fully on a non-discriminatory basis in secondary education.

### *Availability*

The Committee says that:

functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends on 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.<sup>24</sup>

Clearly, the concept of availability requires fair distribution of resources. In its General Comment on the Covenant, the Committee on Economic, Social and Cultural Rights has

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<sup>20</sup> *Integrated Schooling Case*, German Federal Constitutional Court, Judgment of 8 October 1997, *Entscheidungen des Bundesverfassungsgerichts*, Vol. 96, 288 – 315 cited in Beiter, above n 11, 507.

<sup>21</sup> Beiter, above n 11, 509.

<sup>22</sup> Committee on Economic, Social and Cultural Rights, General Comment No 11, [7].

<sup>23</sup> For further discussion of indirect costs that might violate the principle that certain forms of education be ‘free’ and which could have the effect of discriminating against the poor, see Beiter, above n 11, 513 – 4.

<sup>24</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [6(a)].

stated that ‘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.’<sup>25</sup>

Similarly, school closures would have to be carefully justified and adequate solutions offered to students affected because of the impact on the availability and accessibility of education to residents of certain areas. Currently, school closures in the ACT are governed by s20 of the *Education Act 2004* (ACT), which requires consideration to be given to ‘access to public education’ among other factors.<sup>26</sup>

### *Acceptability*

The Committee on Economic, Social and Cultural Rights says that

the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4)).<sup>27</sup>

Education that does not meet this criterion of acceptability may not qualify as ‘education’ at all. In some cases, education that is not acceptable – eg education that is not culturally acceptable, will be discriminatory because it may make it more difficult for students of certain cultural backgrounds to learn. The requirement of acceptability is particularly important to Aboriginal and Torres Strait Islander people and culturally and linguistically diverse (CALD) students.<sup>28</sup> An evidence-based approach is required however, because the education offered to these students must not be inferior to that offered to other students.

The Committee has also said that it is compulsory to ‘remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.’<sup>29</sup> This is also required by Article 10(c) of the Convention on the Elimination of All Forms of Discrimination against Women.

### *Adaptability*

The Committee on Economic, Social and Cultural Rights has said that education has to be adaptable:

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.<sup>30</sup>

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<sup>25</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [35].

<sup>26</sup> *Education Act 2004* (ACT) s 20B.

<sup>27</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [6(c)].

<sup>28</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [50].

<sup>29</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [55].

<sup>30</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [6(d)].

Adaptability means that education and its mode of delivery is tailored for students such as migrants, refugees, working students, students with children, students in detention, homeless students and students with disabilities. Regarding persons with disabilities, Article 24(1) of the Convention on the Rights of Persons with Disabilities requires the establishment of:

an inclusive education system at all levels and life long learning directed to:

- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c. Enabling persons with disabilities to participate effectively in a free society.

As with the concept of acceptability, adaptability does not permit the introduction of inferior education.

### *Respect, Protect, Fulfil*

The Committee on Economic, Social and Cultural Rights has confirmed that, like all other rights, the right to education requires countries to ‘respect, protect and fulfil’ rights:

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.<sup>31</sup>

Section 27A of the *Human Rights Act* requires the ACT Government to *respect* ACT residents’ right to education by ensuring that ACT laws do not prevent access to education on a discriminatory basis.

The obligation to *protect* individuals from interference by others means that parents should not interfere with children (females, for example) receiving an education,<sup>32</sup> and governments should ensure that this does not occur. It also requires that school bullying must be addressed because of the impact it has on the victim’s learning. As the Committee on the Rights of the Child has said, ‘a school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29(1) [of the Convention on the Rights of the Child].’<sup>33</sup>

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<sup>31</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [47].

<sup>32</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [50].

<sup>33</sup> Committee on the Rights of the Child, General Comment 1, [19].

The obligation to *fulfil* or provide education means that governments have ‘principal responsibility for the direct provision of education in most circumstances.’<sup>34</sup>

### *Non-discrimination*

The Committee on the Rights of the Child in its General Comment No. 1 has said that ‘discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.’<sup>35</sup> As outlined in the table earlier in this fact sheet, many treaties outlaw discrimination against particular groups.

The Committee has clearly indicated that it is concerned not only by intentional discrimination, but ‘de facto’ discrimination – features of the education system which effectively exclude people from learning even though there is no intent to discriminate. The Committee has urged countries that are party to the Covenant to:

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 by the prohibited grounds of discrimination.<sup>36</sup>

In several cases involving the education of Roma children in European countries, the European Court of Human Rights has taken into account the alarming statistics on the numbers of Roma children enrolled in special schools or classes, and decided that the countries’ education systems were effectively discriminating against Roma children, with devastating impact on these children’s’ life prospects.<sup>37</sup>

It is therefore important in preparing cabinet submissions concerning new policies and legislation, and also compatibility statements or scrutinising bills under the *Human Rights Act* to consider the impact of laws and policies, including by considering relevant statistical information.

### *A case study of discrimination – persons with disabilities*

Discrimination in education against persons with disabilities has been extensively covered in Article 24 of the Convention on the Rights of Persons with Disabilities. In line with this provision, the ACT Government should be taking positive measures concerning *content* and *delivery* of education to include students with disabilities. For example, Article 24(2)(a) says that:

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<sup>34</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [48].

<sup>35</sup> Committee on the Rights of the Child, General Comment No 1, [10].

<sup>36</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [37].

<sup>37</sup> *Case of D.H. and Others v The Czech Republic* (2011) IV Eur Court HR 1; *Case of Orsus and Others v Croatia* (App no. 15766/03) ECtHR Grand Chamber (16 March 2010).

persons with disabilities are not excluded from the general education system on the basis of disability, and ... children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability.

Article 24(3) and (4) require governments to facilitate learning of Braille and sign language (for example) and to employ teachers qualified in those languages. There is case law holding that failure to do so is a form of discrimination against persons with disabilities.<sup>38</sup>

The Committee on Economic, Social and Cultural Rights has also said that persons with disabilities should be educated within the general education system and that,

states should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.<sup>39</sup>

In a collective complaint against France involving children with autism and a collective complaint against Bulgaria involving children with moderate, severe or profound intellectual disabilities living in Homes for Mentally Disabled Children ('HMDCs'), the European Committee on Social Rights decided that the right to education in the Revised European Social Charter had been violated. The Committee confirmed that the integration of children with disabilities into mainstream schools where their special needs are catered for should be the norm, and special schools the exception.<sup>40</sup> In the complaint against Bulgaria, the Committee said that:

only 2.8% of the children with intellectual disabilities residing in HDMCs are integrated in mainstream primary schools, which is extremely low whereas integration should be the norm. Mainstream educational institutions and curricula are not accessible in practice to these children. There also appears to be insufficient evidence to show real attempts to integrate these children into mainstream education. The Committee considers therefore that the criterion of accessibility is not fulfilled.

For the very few children integrated into mainstream primary schools, the way in which they are dealt with should be suited to their special needs. The Committee finds on this point in particular that teachers have not been trained sufficiently to teach intellectually disabled children and teaching materials are inadequate in mainstream schools. These schools are therefore not suited to meet the needs of children with intellectual disabilities and hence to provide their education. The Committee concludes that neither therefore is the criterion of adaptability met.<sup>41</sup>

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<sup>38</sup> The Colombian Constitutional Court decided that a law requiring a minimum enrolment of hearing-impaired students prior to the appointment of sign language interpreters was unconstitutional: *Julio David Perez v Mayor's Office of Monteria*, Colombian Constitutional Court, T-051/11, 4 February 2011.

<sup>39</sup> Committee on Economic, Social and Cultural Rights, General Comment 5, [35].

<sup>40</sup> *Autism-Europe v France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, [49].

<sup>41</sup> *Mental Disability Advocacy Center (MDAC) v Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008, [43]-[44].

The Committee also found that activities within the HDMCs were not a form of education.<sup>42</sup> It found that progress towards achieving the right to education for these children in Bulgaria was too slow, and that lack of resources were not an excuse.<sup>43</sup> The Committee decided that the right to education had been violated and that this was also a form of discrimination against the children 'as a result of the low number of such children receiving any type of education when compared to other children.'<sup>44</sup>

*Positive measures to overcome disadvantage are not discriminatory*

The Committee on Economic, Social and Cultural Rights has said that:

temporary special measures intended to bring about de facto equality of 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.<sup>45</sup>

This is particularly relevant to groups such as Aboriginal and Torres Strait Islander people who have been educationally disadvantaged in the past. Scholarships for Indigenous people which aim to overcome the continuing legacy of discrimination against Indigenous Australians are *not* a form of discrimination against non Indigenous Australians. Special measures are explicitly recognised in s.27 of the *Discrimination Act 1991* as an exception from the prohibition on discrimination in the Act.

The Committee has also said that 'in some circumstances', separate educational systems or institutions for groups defined by the factors set out in Article 2(3) of the Covenant (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) do not breach the Covenant.<sup>46</sup> The Committee also acknowledges that the situations described in Article 2 of the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education ('CADE'), set out below, are not discriminatory.<sup>47</sup>

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<sup>42</sup> Ibid, [46].

<sup>43</sup> Ibid, [47].

<sup>44</sup> Ibid, [54].

<sup>45</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [32].

<sup>46</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [33].

<sup>47</sup> Ibid.

## Article 2 CADE

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

Separate education that is in fact exclusionary has been examined by the European Court of Human Rights. This court has considered a number of cases involving Eastern European countries where Roma children were effectively channelled into inferior education in special schools or special classes. The Court decided these countries violated the right to education in Protocol One to the European Convention on Human Rights, in conjunction with the right to equal treatment in Article 14 of the European Convention on Human Rights.<sup>48</sup>

### *Non-nationals are protected*

The Committee has said 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.'<sup>49</sup> This is important for students who are currently in immigration proceedings but allowed to live in the Australian community, as well as for those in immigration detention facilities (although there are no such facilities in the ACT).

### *Parental Choice*

Section 27A protects the rights of parents or guardians to choose schooling for their children that conforms with the convictions of the parents or guardians. Article 13(3) and (4) of the

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<sup>48</sup> *Case of D.H. and Others v The Czech Republic* (App no. 57325/00) ECtHR Grand Chamber (13 November 2007); *Case of Orsus and Others v Croatia* (App no. 15766/03) ECtHR Grand Chamber (16 March 2010).

<sup>49</sup> Committee on Economic, Social and Cultural Rights General Comment 13, [34].

Covenant are significantly broader than s27A. A court may read s27A broadly, so as to be as consistent as possible with these provisions of the Covenant.

Under the Covenant, parents and guardians not only have the right to choose schools (Article 13(3)), but to *establish* them (Article 13(4)). It should be noted that the Human Rights Committee, which supervises the International Covenant on Civil and Political Rights, has also said that the freedom to *manifest* religious beliefs includes the freedom to establish religious schools.<sup>50</sup> In addition, Article 13(3) of the ICESCR has two distinct elements, as it states that parents or guardians are both able to choose schools for their children, *and* to ensure the religious and moral education of their children in conformity with their own convictions. Even within the ACT Government school system, parents and guardians have rights to ensure the religious and moral education of their children, subject always to the minimum educational standards set by the national Government and the overarching goals of education in Article 13(1) of the Covenant.

The Committee has said that,

article 13(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(3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.<sup>51</sup>

The right to choose ‘schooling’ set out in s27A will be meaningless unless these guidelines are applied.

The Committee’s guidelines mean that students cannot be required to attend a church service in Government schools, for example. However, they can be required to attend sex education courses, provided it is taught in a neutral way. The European Court of Human Rights also considers that sex education can be compulsory.<sup>52</sup> One commentator has summarised the decision of the Court as follows:

[Sex education]... was aimed not so much at instilling knowledge children did not have or could not acquire by other means, but rather at giving them such knowledge more correctly, precisely, objectively and scientifically...The Court held further that the Danish law did not amount to an attempt at indoctrination aimed at advocating a specific kind of sexual behaviour, as “[i]t does not make a point of exalting sex or inciting pupils to indulge precociously in practices that are dangerous for their stability, health or future or that many parents consider reprehensible.” It also did not affect the right of parents to enlighten and advise their children. The Court concluded, therefore, that compulsory sex education in public schools in Denmark did not violate the applicant parents’ right to respect for their religious and philosophical convictions.<sup>53</sup>

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<sup>50</sup> Human Rights Committee, General Comment 22, [4].

<sup>51</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [28].

<sup>52</sup> *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1979) 23 Eur Court HR (ser A).

<sup>53</sup> Beiter, above n 11, 554.

Compulsory sex education is consistent with the obligation under the Convention for the Elimination of All Forms of Discrimination against Women in Article 10 (h) that countries ensure 'access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning'. It is also consistent with Article 24(2)(f) of the Convention on the Rights of the Child, which requires countries 'to develop preventive health care, guidance for parents and family planning education and services.'

Other forms of social and health promotion education, for example, concerning dangers of drugs and alcohol should also be provided to children.<sup>54</sup>

### *Limitations on Rights – expulsion, suspension and uniforms*

Section 27A is subject to s28 of the *Human Rights Act* which permits limitations on rights.

#### **Section 28 Human Rights Act**

Human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

(2) In deciding whether a limit is reasonable, all relevant factors must be considered, including the following:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose;
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Expulsion and suspension from school may constitute justifiable limitations on the right to education. Expulsion or suspension that is based on serious misconduct by a student does not necessarily amount to discrimination as it may be a reasonable and proportionate reaction to the behaviour. However, exclusion of students from school for reasons such as a student's pregnancy is prohibited as discrimination.<sup>55</sup> In situations where there has been violence, harassment, intimidation or stalking between two current students and a Personal Protection Order is granted, there is a need to protect the rights of victims of violence, and to ensure that the person subjected to the Order realises their right to education.

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<sup>54</sup> See the United Nations Guidelines for the Prevention of Juvenile Delinquency ('The Riyadh Guidelines'), [25].

<sup>55</sup> See s18 *Discrimination Act* (ACT) 1991. See also, the 1998 decision of the Supreme Court of Colombia in *Martinez Martinez y Suarez Robayo v Colegio Ciudad de Cali*, cited in Beiter, above n 10, 497.

School uniforms or guidelines about appropriate dress in schools are often sensible and good policy. However, it is important for educators to bear in mind that in some circumstances, rules about what students wear may also constitute a discriminatory denial of students' right to education, as well as a denial of civil rights protected by the *Human Rights Act* such as freedom of conscience and religion (s. 14) and freedom of expression (s. 16). In the 2007 case of *R (SB) v Governors of Denbigh High School*,<sup>56</sup> a school uniform policy which permitted Muslim students to wear the shalwar kameez (a sleeveless smock-like dress worn over a school shirt, and loose trousers) and hijab (head scarf), in order to respect Muslim requirements concerning modest dress, but did not permit them to wear the jilbab (a long coat like garment), was unanimously accepted by the UK House of Lords as consistent with students' rights. The reasoning in the separate opinion by Baroness Hale is particularly cogent. Although based on the European Convention of Human Rights, which protects the right to education in a different way to the Covenant, Baroness Hale's opinion draws attention to the need for schools and parents to respect the best interests of the child, and the need for minimum standards related to the goals of education set out in Article 13 of the Covenant:

If a woman freely chooses to adopt a way of life for herself, it is not for others, including other women who have chosen differently, to criticise or prevent her. ... [T]he sight of a woman in full purdah may offend some people, and especially those western feminists who believe that it is a symbol of her oppression, but that could not be a good reason for prohibiting her from wearing it.

But schools are different. Their task is to educate the young from all the many and diverse families and communities in this country in accordance with the national curriculum. Their task is to help all of their pupils achieve their full potential. This includes growing up to play whatever part they choose in the society in which they are living. The school's task is also to promote the ability of diverse races, religions and cultures to live together in harmony. Fostering a sense of community and cohesion within the school is an important part of that. A uniform dress code can play its role in smoothing over ethnic, religious and social divisions. But it does more than that. Like it or not, this is a society committed, in principle and in law, to equal freedom for men and women to choose how they will lead their lives within the law. Young girls from ethnic, cultural or religious minorities growing up here face particularly difficult choices: how far to adopt or to distance themselves from the dominant culture. A good school will enable and support them. ...

... Social cohesion is promoted by the uniform elements of shirt, tie and jumper, and the requirement that all outer garments be in the school colour. But cultural and religious diversity is respected by allowing girls to wear either a skirt, trousers, or the shalwar kameez, and by allowing those who wished to do so to wear the hijab. This was indeed a thoughtful and proportionate response to reconciling the complexities of the situation. This is demonstrated by the fact that girls have subsequently expressed their concern that if the jilbab were to be allowed they would face pressure to adopt it even though they do not wish to do so.<sup>57</sup>

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<sup>56</sup> *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100 [97].

<sup>57</sup> *Ibid* (Baroness Hale) [96]—[98].

### *School discipline*

The Committee has stated that corporal punishment is inconsistent with ‘the fundamental guiding principle of international human rights law’—human dignity.<sup>58</sup> This is consistent with the jurisprudence of the Human Rights Committee concerning Article 7 of the International Covenant on Civil and Political Rights.<sup>59</sup> It is also consistent with Article 28(2) of the Convention on the Rights of the Child. The Committee has also said that:

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, such as the right to food. A State party is required to take measures to ensure that discipline which is 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.<sup>60</sup>

The Committee on the Rights of the Child has said that:

The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.<sup>61</sup>

The related issue of school attendance has been discussed by the UN Special Rapporteur on Education, who has advised that ‘rather than *enforcing*, states should *encourage* school attendance.’<sup>62</sup>

### *Education in Detention*

It is discriminatory not to provide education to persons held in detention. The Standard Minimum Rules for the Treatment of Prisoners (the Standard Minimum Rules) state that:

provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible.<sup>63</sup>

Furthermore, the Standard Minimum Rules indicate that:

the education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

so far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.<sup>64</sup>

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<sup>58</sup> Committee on Economic, Social and Cultural Rights, General Comment 13 [41].

<sup>59</sup> See the ACT Human Rights Commission’s fact sheet on torture.

<sup>60</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, [41].

<sup>61</sup> Committee on the Rights of the Child, General Comment 1, [8].

<sup>62</sup> See Beiter, above n 11, 512.

<sup>63</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 77.

In relation to young people in detention, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty requires that:

every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.<sup>65</sup>

The ACT Human Rights Commission Report *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly* raised a number of concerns about the education of children and young persons detained in Bimberi Youth Justice Centre, including the practice of denying students in segregation the ability to attend school.<sup>66</sup> Although it was reported that young people in segregation were generally provided with written work to complete on their own,<sup>67</sup> without access to a teacher, it is arguable that this may not be consistent with the right to education, particularly where young people have low levels of literacy and need support to complete written work.

The Commission also identified concerns that year 11 and 12 students at Bimberi can only complete their studies through distance education at the Karabar High School in Queanbeyan, which is not part of the ACT education system.<sup>68</sup> Given that international law requires that education in detention is integrated with that of the outside world, it would be preferable for students to have access to the ACT education system. The ACT Government's response to the Commission's Report indicated that options are being explored to make ACT years 11 and 12 education accessible to students at Bimberi.

Students with special needs who would be entitled to extra assistance in mainstream education, for example through the provision of a teacher's aid, should receive the same support whilst in detention.<sup>69</sup>

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<sup>64</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 77.

<sup>65</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 38- 39.

<sup>66</sup> ACT Human Rights Commission Report *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly* by the ACT Human Rights Commission (2011) 265.

<sup>67</sup> Ibid.

<sup>68</sup> ACT Human Rights Commission Report, above n 66, 262.

<sup>69</sup> Ibid, 267—268.

## Appendix 1: International Sources

<p>Universal Declaration of Human Rights</p>	<p><b>Article 26</b></p> <p>(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.</p> <p>(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.</p> <p>(3) Parents have a prior right to choose the kind of education that shall be given to their children.</p>
<p>Convention on the Rights of the Child</p>	<p><b>Article 28</b></p> <p>1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:</p> <p>(a) Make primary education compulsory and available free to all;</p> <p>(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;</p> <p>(c) Make higher education accessible to all on the basis of capacity by every appropriate means;</p> <p>(d) Make educational and vocational information and guidance available and accessible to all children;</p> <p>(e) Take measures to encourage regular attendance at schools</p>

and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 29**

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

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

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

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements

	<p>that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.</p>
<p>International Convention on the Elimination of All Forms of Racial Discrimination</p>	<p><b>Article 5</b></p> <p>In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:</p> <p>...</p> <p>(e) Economic, social and cultural rights, in particular: ...</p> <p>(v) The right to education and training.</p>
<p>Convention on the Elimination of All Forms of Discrimination against Women</p>	<p><b>Article 10</b></p> <p>States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:</p> <p>(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;</p> <p>(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;</p> <p>(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;</p>

	<p>(d ) The same opportunities to benefit from scholarships and other study grants;</p> <p>(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;</p> <p>(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;</p> <p>(g) The same opportunities to participate actively in sports and physical education;</p> <p>(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.</p>
<p>Convention on the Rights of Persons with Disabilities</p>	<p><b>Article 24</b></p> <p>1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:</p> <ul style="list-style-type: none"> <li>a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;</li> <li>b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;</li> <li>c. Enabling persons with disabilities to participate effectively in a free society.</li> </ul> <p>2. In realizing this right, States Parties shall ensure that:</p> <ul style="list-style-type: none"> <li>a. Persons with disabilities are not excluded from the general education system on the basis of disability,</li> </ul>

	<p>and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;</p> <ul style="list-style-type: none"> <li>b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;</li> <li>c. Reasonable accommodation of the individual's requirements is provided;</li> <li>d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;</li> <li>e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.</li> </ul> <p>3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:</p> <ul style="list-style-type: none"> <li>a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;</li> <li>b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;</li> <li>c. Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.</li> </ul> <p>4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers,</p>
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	<p>including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.</p> <p>5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.</p>
<p>Convention against Discrimination in Education (UNESCO)<sup>70</sup></p>	<p><b>Article 3</b></p> <p>In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:</p> <p>(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;</p> <p>(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;</p> <p>(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries ;</p> <p>(d) Not to allow, in any form of assistance granted by the</p>

<sup>70</sup> It should be noted that the grounds of discrimination in this Convention appear more limited than the grounds of discrimination in the Covenant, which includes the open-ended category ‘other status.’

	<p>public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;</p> <p>(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.</p> <p><b>Article 4</b></p> <p>The States Parties to this Convention undertake furthermore 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 and in particular:</p> <p>(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;</p> <p>(b) To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;</p> <p>(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;</p> <p>(d) To provide training for the teaching profession without discrimination.</p>
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