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The Evolving Right to Education Under the UN Human Rights Framework**

ABSTRACT

Since its first articulation under Article 26 UDHR, education has evolved into a fundamental right and is one of the most complex human rights under international law. It is guaranteed by all major international and regional human rights treaties, as well as national constitutions and laws, and governments have made a number of political commitments towards providing education for all, most recently under the global Sustainable Development Agenda. Despite receiving such wide support, many States continue to experience barriers in its implementation and fail to realise this right fully. To overcome these barriers as well as to keep up with the current challenges bearing on the full realisation of this right – e.g., the effects of technological advancements, as well as multiple crises, including the climate and economic crises – the right to education will necessarily have to continue to evolve. To explore the extent of and the potential avenues through which this evolution or expansion might take place, one cannot forgo the analysis of the right to education as provided for under the contemporary corpus of the UN human rights framework. Therefore, the present paper seeks to provide a concise analysis of the UN system's cornerstone article on the right to education, namely Article 13 ICESCR. In doing so, it will briefly shed light on the origins of this article under the UDHR and its evolution under some of the group-specific treaties of the UN, including the CEDAW, CRC and CDPR.

KEYWORDS: right to education, evolving right to education, Article 26 UDHR, Article 13 ICESCR, Article 28 CRC, Article 29 CRC, 4A scheme, progressive realisation, maximum available resources, equality and non-discrimination

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** The views expressed in this article are those of the author.

I. INTRODUCTION

The right to education is one of the most complex human rights under present international law,¹ and is guaranteed, in whole or in part, in at least 48 legally binding instruments, 28 of which are regional, and 23 soft law instruments.² International human rights law requires States to realise this right for all by providing inclusive, quality, public education, that must be provided free at the primary level and made progressively free at secondary and higher levels. This obligation is grounded in the 1948 Universal Declaration of Human Rights (UDHR) and is elaborated upon in a number of international and regional treaties,³ as well as in many national constitutions and legislation. In addition to these legal obligations, governments have made political commitments towards providing education for all, most notably Sustainable Development Goal (SDG) 4, which reinforces States' commitments to "ensure inclusive and equitable quality education and lifelong learning approaches to all",⁴ including by requiring that "by 2030, all boys and girls complete 12 years of free, publicly funded, equitable and quality primary and secondary education", and "at least one year of free and compulsory quality pre-primary education".⁵

In recent years, education stakeholders, including inter-governmental institutions, NGOs and academics have increasingly turned their attention to the new and old challenges faced by States – and accelerated by the global COVID-19 pandemic – to make the right to education and SDG4 a reality for all by 2030. In 2019, UNESCO launched an initiative on The Futures of Education⁶ to rethink education and catalyse a global debate on how it needs to be reimagined in a world of increasing complexity, uncertainty, and precarity. It has expressed the need to "take stock, reflect and open a

¹ See M. Novak, The right to education, in A. Eide et al., *Economic, Social and Cultural Rights*, (M. Nijhoff, 2001) 268.

² As until 2018; *UNESCO Handbook on the Right to Education*, (2019) 51.

³ The most important among these instruments are *inter alia*: Article 26 of the Universal Declaration of Human Rights (UDHR); Article 5(1)(a) of the 1960 UNESCO Convention on Discrimination in Education (CADE); Articles 13–14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Articles 28–29 of the United Nations Convention on the Rights of the Child (UNCRC); Article 17 of African Charter of Human and Peoples' Rights (ACHPR); Article 11 of the African Charter on the Rights and Welfare of the Child (ACRWC); Articles 13 of the Additional Protocol to the American Convention of Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"); Article 17 of the Revised European Social Charter; Article 2 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

⁴ Sustainable Development Goal No. 4.

⁵ Sustainable Development Goal 4.1 and 4.2.; Incheon Declaration and Education 2030 Framework for Action for the implementation of Sustainable Development Goal (SDG) 4, at para 6.

⁶ <https://en.unesco.org/futuresofeducation/> (Last accessed: 30 December 2021); One of the outcomes of the initiative is the report: *Reimagining our Futures Together, a New Social Contract for Education*, (UNESCO, 2021).

collaborative discussion as to the potential expansion of the right to education in light of emerging challenges, as well as existing barriers to the right to education that remain pervasive” and therefore initiated a global dialogue around the evolving dimensions of the right to education.⁷ One of these emerging dimensions is the urgency “to develop an international normative framework to further clarify the scope and extent of early childhood care and education (ECCE/ECD) under international human rights law and related States’ obligations” and to achieve that all countries provide at least one year of free and compulsory pre-primary education by 2030.⁸

In order to determine whether the international right to education should be expanded to impose new obligations on states to better reflect our changing realities regarding its full realisation – and for which the need has already been expressed through initiatives within the global education space referred to above – one must first understand the nature and scope of this right which has its roots in a long history of UN human rights treaty provisions beginning with the Universal Declaration of Human Rights (UDHR). While Article 26 UDHR provides the initial structure and content of the right, the cornerstone provision, upon which most other international and regional provisions are based, is Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Therefore, the present contribution purports to explore the right to education beginning with an overview of Article 26 UDHR and followed by an extensive analysis of Article 13 ICESCR. As the group-specific treaties of the UN system, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Right of Persons with Disabilities (CRPD), and the Convention on the Rights of the Child (CRC), also incorporate specific articles on the right to education, they will also be referred to briefly.

II. THE RIGHT TO EDUCATION IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR or Declaration) adopted on 10 December 1948 by the United Nations General Assembly is the foundation of international human rights law. It is a universal commitment of the post-World War international community setting out the core principles of human rights for the first time in history. As a resolution of the UN General Assembly, the UDHR is of a non-binding nature. However, the achievements of the Declaration are still continuously

⁷ *The Right to Education in the 21st Century. Background paper for the international seminar on the evolving right to education*, (UNESCO, 2021).

⁸ *Ibid.*

being translated into legally binding obligations in forms of the numerous international instruments both within and outside the United Nations system. This makes it necessary to begin the inspection of any UN treaty-provision from the interpretation of the underlying UDHR provision. Consequently, the analysis of the right to education as enshrined under the International Covenant on Economic, Social and Cultural Rights will depart from the exploration of Article 26 of the UDHR which reads as follows:

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

The first paragraph of the article contains five components of the right to education: the right of all to education; right to free elementary (in the UN treaties called primary) education; the right to compulsory elementary education; right to a generally available technical and professional education; and a right to an equally accessible higher education to all on the basis of merit. It is worth noting that although the term *non-discrimination* does not explicitly appear in the text of this paragraph, the use of expressions such as “everyone”, “to all”, “generally available” and “equally accessible” imply that the prohibition of discrimination – which is articulated under a separate provision, Article 2 of the UDHR⁹ – has already grown together with the right to education as early as in 1948 and continuously translated into a legal obligation under the various treaties stemming from the Declaration.¹⁰

⁹ Article 2 UDHR states that “[e]veryone is entitled to all the rights and freedoms set forth in [the UDHR], without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” – which means that the rights within the UDHR should be granted to everyone on equal terms.

¹⁰ See J. Morsink, Social Security, Education and Culture (Chapter 6), in *The Universal Declaration of Human Rights. Origins, Drafting and Intent*, (University of Pennsylvania Press, Philadelphia, 1999) 213. <https://doi.org/10.9783/9780812200416.191>

The second paragraph of Article 26 stresses that education aims at the realization of the right to the full development of one's person and towards respect for human rights and the mission of the United Nations. As Morsink points out, the drafters' intention was to avoid the prescription of a "particular brand of civic education" and "prescribe a set of guidelines that are valid in different cultural settings and not dependent on any specific level of development".¹¹ Consequently, paragraph (2) defines a set of guidelines or goals that should govern the spirit of education. Read together, the first two paragraphs of Article 26 are the recognition of the interest of society in having a citizenry educated in accordance with the values articulated in Article 26(2), and therefore reflect the social aspect of the right to education.¹² To facilitate the realization of the objectives enshrined under paragraph (2), States agree to make basic education both compulsory and free under paragraph (1). As demonstrated by the historical account of the UDHR's drafting process, the connection between the right to education and the more basic right to full development of the human personality was obvious from the start.¹³ The drafting committee saw the right to education in the greater context of the right to full development of the person.¹⁴ It was clear that the right to free and full development of one's personality apart from involving the protection of one's own means to subsistence (rights to food, housing, medical care) and the rights to work needed to involve the right to education as well. The drafters' interpretation of the right to education as an occurrence of the right to the full development of human personality is relevant because it proposes an understanding of the right to education as being embedded into the full spectrum of the future category of economic, social and cultural rights.

Finally, Article 26(3) guarantees "[the] prior right [of parents] to choose the kind of education that shall be given to their children" and therefore reflects the freedom aspect of the right to education. According to the UDHR's *travaux préparatoires*, this paragraph protects the right of parents to choose the school which their children should attend, in line with their own convictions. As Beiter points out, the *raison d'être* of Article 26(3) is to provide protection against state indoctrination.¹⁵

¹¹ See *ibid.* 215.

¹² See K. D. Beiter, *The protection of the right to education by international law: Including a systematic analysis of article 13 of the International Covenant on Economic, Social and Cultural Rights*, (Brill, 2005) 91. <https://doi.org/10.1163/ej.9789004147041.i-738>

¹³ See Morsink, *Social Security, Education and Culture*, 210–212.

¹⁴ See *ibid.*

¹⁵ Beiter, *The protection of the right to education by international law...*, 93.

III. THE RIGHT TO EDUCATION UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

One of the first international instruments elaborating upon the principles set out in the UDHR is the International Covenant on Economic, Social and Cultural Rights¹⁶ (ICESCR or Covenant). The Covenant and its “twin Covenant” on Civil and Political Rights (ICCPR), together with the UDHR form the International Bill of Human Rights which is the primary basis of the United Nations’ activities to promote, protect and monitor human rights and fundamental freedoms.¹⁷ The ICESCR contains some of the most significant international legal provisions establishing economic, social and cultural rights. These rights are designed to ensure the protection of people as full persons, based on a perspective in which people can enjoy rights, freedoms and social justice simultaneously.¹⁸ States ratifying the Covenant accept a series of legal obligations to uphold the rights and provisions enumerated under its text. In relation to the right to education, Articles 13-14 set out the obligations of States. Article 13 reads as follows:

- (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;

¹⁶ International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR), adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force 3 Jan. 1976).

¹⁷ See Fact Sheet No. 2 (Rev.1), The International Bill of Human Rights.

¹⁸ See Fact Sheet No. 16 (Rev.1), The Committee on Economic, Social and Cultural Rights.

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

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

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

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

1. The right to education as an enabler, multiplier, empowerment, and cross-cutting right

Article 13 is the longest provision in the Covenant and is the most wide-ranging and comprehensive article on the right to education in international human rights law.¹⁹ In this author's view, the most eloquent and revealing articulation of what lies at the heart of the right to education has been given by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 13.²⁰ Accordingly, the right to education is based on the premise that a "well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence",²¹ while recognising that education is also an enabler and empowerment right serving as "the primary vehicle by which socially and economically marginalised adults and children can lift themselves out of poverty".²² The right to education also

¹⁹ CESCR General Comment No. 13 (1990), para 2.

²⁰ CESCR General Comment No. 13 (1999) on the Right to education (Art. 13), which provides a substantive analysis of the right to education by the CESCR; In the context of education the Committee has also issued General Comment No. 11 (1999) on Plans of action for primary education (Art. 14), which is a strategic plan on how States should implement Article 14.

²¹ CESCR General Comment 13, para 1.

²² *Ibid.*

functions “as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated”²³ and as such is “both a human right in itself and an indispensable means of realizing other human rights”.²⁴ Moreover, the Committee highlights that the right to education accentuates the indivisibility and interdependence of all human rights because it greatly facilitates the enjoyment of many civil and political as well as economic, social and cultural rights: “[The right to education] has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realisation of those rights as well. In this respect, the right to education epitomises the indivisibility and interdependence of all human rights.”²⁵ This concept is inherent in the UDHR and has been reaffirmed by the Vienna Declaration and has since crystallized as one of the cornerstones of human rights law.²⁶ Therefore, although the right to education is enshrined under a treaty that groups together economic, social and cultural rights and has historically been classified as a fundamental right falling under the so called “second generation of human rights”, in essence, it has a cross-cutting nature and falls under all generations of human rights.²⁷

2. The ‘4A’ scheme

Before delving into the analysis of States’ obligations regarding the right to education, it is necessary to briefly introduce the ‘4A’ scheme, which has been elaborated by Katarina Tomaševski, the first Special Rapporteur on the right to education in the attempt to clarify the scope and nature of Article 13, and has subsequently been endorsed by the CESCR in General Comment No. 13.²⁸ The ‘4A’ scheme provides a conceptual framework to identify the qualitative dimensions of right to education. It states that “education in all its forms and at all levels shall exhibit four interrelated and essential

²³ K. Tomasevski, *Human Rights Obligations in Education: The 4A Scheme*, (Woolf Legal Publishers, 2012) 7., cited in L. Lundy and J. Tobin, Art. 29 The Aims of Education, in J. Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, (Oxford, 2019); and UN Committee on Economic, Social and Cultural Rights, General Comment 13.

²⁴ CESCR General Comment 13, para 1.

²⁵ *Ibid.*, para 2.

²⁶ See para 5 of Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, in Vienna on 25 June 1993: “All human rights are universal, indivisible and interdependent and interrelated [...]”.

²⁷ S. Fredman, *Human Rights Transformed. Positive Rights and Positive Duties*, (OUP, Oxford, 2008) 216. <https://doi.org/10.1093/acprof:oso/9780199272761.001.0001>

²⁸ UNCHR, ‘Preliminary Report of the Special Rapporteur on the Right to Education, Ms Katarina Tomaševski, submitted in accordance with Commission on Human Rights Resolution 1998/33’ (13 January 1999) UN Doc E/CN.4/1999/49, paras 13–14.

features, namely, *availability*, *accessibility*, *acceptability* and *adaptability*.²⁹ This means that in the execution of their obligations corresponding to the right to education States must ensure that these elements are guaranteed – i.e. respected, protected and fulfilled³⁰ – at every level of education provided for.

Accessibility has three dimensions: non-discrimination, physical accessibility and economic accessibility.³¹ Correspondingly, education must be accessible to everyone, especially the most vulnerable and disadvantaged groups, both in law and in fact, without discrimination of any kind; educational institutions or facilities have to be within safe physical reach; and finally, education has to be affordable to all.³² *Availability* means that “functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party”.³³ The element of *acceptability* relates to the form and substance of education: the curricula and teaching methods have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and must respond to the educational objectives identified under Article 13(1).³⁴ Finally, in terms of *adaptability*, “education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings”.³⁵ In summary, the ‘4As’ are certain key aspects of the right to education which are equally applicable to all levels of education in addition to the different obligations that our set out under Article 13(2) relating to each level of education.³⁶

3. The aims of education [ICESCR art 13(1)]

The second and third sentences of Article 13(1) define the aims and objectives of education and almost entirely echo the second paragraph of Article 26 UDHR. The only additions that appear, quite fundamentally, are that “education shall be directed to the full development of the human personality *and its sense of dignity*”,³⁷ it shall “enable

²⁹ See CESCR General Comment No. 13 (1999), para 6, and the ‘Preliminary Report of the United Nations Special Rapporteur on the right to education’, E/C.12/1999/10, para 50. Emphasis added.

³⁰ This typology of state obligations finds its origins in Asbjorn Eide’s 1987 Report on the Right to Adequate Food as a Human Right. For more on the evolution of, and variations on, this typology, see E. Koch, *Dichotomies, Trichotomies or Waves of Duties?*, (2005) 5 (1) *Human Rights Law Review*, 81–103., 84; and M. C. R. Craven, *The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development*, (Oxford University Press, Oxford, 1995) 14.

³¹ See CESCR General Comment No. 13 (1999), para 6(b).

³² See CESCR General Comment No. 13 (1999), para 6(b).

³³ See CESCR General Comment No. 13 (1999), para 6(a).

³⁴ See CESCR General Comment No. 13 (1999), para 6(c).

³⁵ CESCR General Comment No. 13 (1999), para 6(d).

³⁶ B. Saul, D. Kinley and J. Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, (OUP, Oxford, 2014) 1098.

³⁷ Emphasis added.

all persons to participate effectively in a free society".³⁸ The insertion of "human dignity", which constitutes the source and essence of human rights, is important because it highlights that education should enable individuals to recognise their own inherent value, based on which human rights accrue to them.³⁹ The term "human dignity" also appears in the preambles of the UDHR and the ICCPR, as well as the ICESCR, and therefore its inclusion under the aims of education must be seen as a direct reference to them. Furthermore, Article 13(1) emphasises that education is indispensable to "enable effective participation in society", that is, to teach individuals how to satisfy their practical needs in life⁴⁰ thus also serving as a source of empowerment under the Covenant. As it will be pointed out later, these aims are broadened by Article 29(1) of the United Nations Convention on the Rights of the Child (CRC) and therefore Article 13(1) ICESCR must be interpreted in the light of the Article 29(1) CRC.⁴¹

4. The societal aspects of education [ICESCR art 13(2) and art 14]

Article 13(2) elaborates on "the right of everyone to education" [Article 13(1)] by identifying what States' obligations are and describing the measures to be taken at the different levels of education in the course of the full realization of this right. This dimension of the right to education is often referred to as the social dimension of education.⁴²

As formulated under Article 13(2)(a), primary education "shall be compulsory and available free to all". This formulation follows that of Article 26(1) UDHR. According to the CESCR, "the element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education".⁴³ Also, it implies that primary education must be *generally available*, as without enough schools, children cannot be compelled to attend them. Furthermore, by requiring states to ensure primary education is available without charge to the child, parents or guardians,

³⁸ Emphasis added.

³⁹ Beiter, *The protection of the right to education by international law...*, 95.

⁴⁰ Ibid.

⁴¹ The CESCR, in its General Comment No. 13, rightfully takes note of this evolution and records that State parties are required to ensure education conforms to the aims and objectives of education as interpreted in the light of all subsequent international instruments, including the CRC, which together reflect the contemporary interpretation of Article 13(1) at para 5.

⁴² Fons Coomans distinguishes between the social and freedom aspects of the right to education: "Both aspects can be found in Articles 13 and 14 ICESCR. Article 13(2) and Article 14 cover the social dimension, while Article 13(3 and 4) embody the freedom dimension." – see F. Coomans, *Exploring the normative content of the right to education as a human right: recent approaches*, (2004) 50 *Persona & Derecho*, 65.

⁴³ See CESCR General Comment No. 11 (1999) on plans of action for primary education, para 6.

the provision guarantees a *general/universal access* to primary education. This general or universal accessibility also reflects the requirement of non-discrimination under Article 2(2)⁴⁴ (see in more detail below). Under Article 13(2)(b), secondary education “shall be made *generally available* and *accessible* for all”,⁴⁵ which signifies that secondary education is not dependent on a child’s apparent capacity or ability, and that it shall be distributed throughout the State in such a way that it is available to all, that is *generally available*,⁴⁶ and also *generally accessible*, “in particular by the progressive introduction of free education”. Although technical and vocational education appears as a part of secondary education under Article 13(2)(b), in the Committee’s view “it forms an integral element of all levels of education”.⁴⁷ As phrased under Article 13(2)(c), higher education “shall be made *equally* accessible to all, *on the basis of capacity*”.⁴⁸ Accordingly, higher education is limited in its availability on the basis of the capacity of individuals that should be assessed by reference to all their relevant expertise and experience.⁴⁹ The common phrase “the progressive introduction of free education” included under both Article 13(2)(b) and (c) obliges States to take concrete steps towards achieving free secondary and higher education.

Article 13(2)(d) sets out that those individuals “who have not received or completed the whole period of their primary education” have the right to fundamental education.⁵⁰ Unlike under Article 26(1) UDHR, the Covenant does not demand that fundamental education be free and does not refer to the progressive introduction of free education at this level, it merely requires states to “encourage or intensify as far as possible” its availability and accessibility.⁵¹ As noted by the Committee, the right to fundamental education is not limited by age or gender and it extends to all those who have not yet satisfied their “basic learning needs” as understood by the World Declaration on Education for All.⁵² In other words, Article 13(2)(d) emphasises the importance of life-long learning and extends the enjoyment of the right to education to all age groups.

Article 13(2)(e) does not have a foundation in the UDHR and is a new provision. It prescribes three measures a State party must take to ultimately realise an education system which provides education that is available and accessible at all levels, as envisaged by Article 13(2)(a) to (d).⁵³ First, it stipulates that the “development of a

⁴⁴ See CESCR General Comment No. 11 (1999) on plans of action for primary education, para 7.

⁴⁵ Emphasis added.

⁴⁶ CESCR General Comment No. 13 (1999), para 13.

⁴⁷ CESCR General Comment No. 13 (1999), para 15.

⁴⁸ Emphasis added.

⁴⁹ CESCR General Comment No. 13 (1999), para 19.

⁵⁰ CESCR General Comment No. 13 (1999), para 22.

⁵¹ Beiter, *The protection of the right to education by international law...*, 97.

⁵² CESCR General Comment No. 13 (1999), paras 23–24.

⁵³ Beiter, *The protection of the right to education by international law...*, 98.

system of schools at all levels shall be actively pursued”. This signifies that states are obliged to have an overall developmental strategy for their school system, in which primary education shall be prioritized.⁵⁴ As the Committee highlights, this obligation “reinforces the principal responsibility of States parties to ensure the direct provision of the right to education in most circumstances”,⁵⁵ which translates into an obligation to provide education primarily through *public* educational institutions of the State, which might be supplemented by private provision in accordance with Article 13(4). Second, it obliges States Parties to “establish an adequate fellowship system” which should enhance equality of educational access for individuals from disadvantaged groups⁵⁶ and, thirdly, to “continuously improve the material conditions of teaching staff”.

5. The freedom aspects of education [ICESCR art 13(3) and (4)]

Articles 13(3) and (4) elaborate on Article 26(3) UDHR and deal with the so called freedom dimension of the right to education.⁵⁷ On the one hand, Article 13(3) requires States to undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.⁵⁸ This means that the State has to refrain from the indoctrination of children and must instruct such subjects as general history of religions or ethics in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression.⁵⁹ On the other hand, Article 13(3) recognizes the liberty of parents to choose other, than public schools for their children. The prerequisite of this guarantee is to be found separately, under the subsequent paragraph [Article 13(4)], which recognizes the liberty of individuals and bodies to establish and direct educational institutions, provided they conform to the educational objectives set out in Article 13(1), and to the minimum standards laid down by the State. Accordingly, Article 13(3) read in conjunction with Article 13(4) ensures that parents are protected against totalitarian tendencies of state education by their right to establish private schools and to choose the type of education for their children that conforms to their own convictions. As Novak points out, compulsory primary education, the liberty of parents to choose education and their liberty to establish schools are interrelated principles and “form an expression of the

⁵⁴ CESCR General Comment No. 13 (1999), para 25.

⁵⁵ CESCR General Comment No. 13 (1999), para 53.

⁵⁶ CESCR General Comment 13, para 26.

⁵⁷ Fons Coomans distinguishes between the social and freedom aspects of the right to education: “Both aspects can be found in Articles 13 and 14 ICESCR. Article 13(2) and Article 14 cover the social dimension, while Article 13(3 and 4) embody the freedom dimension.” – see Coomans, Exploring the normative content of the right to education as a human right: recent approaches, 65.

⁵⁸ CESCR General Comment No. 13 (1999), para 28.

⁵⁹ CESCR General Comment No. 13 (1999), para 28.

complex and sensitive relationship between children, their parents and the state”.⁶⁰ By establishing a duty on states to provide for a compulsory primary education system, “the state protects children against their parents and all forms of economic exploitation” and compels children to attend school.⁶¹ Ensuring the parents’ liberty to choose freely, other, than State ran public schools for their children and ensuring that their children are taught according to their own religious or philosophical convictions, parents are at the same time protected against totalitarian tendencies of public education. It is important to note, that although parents are primarily responsible for choosing the kind of education their children should attend, read together with Articles 5 and 12 of the CRC, this parental prerogative diminishes as children grow older and get in a better position to make informed and independent decisions on their education.⁶²

6. The implementation of the right to education

Article 2(1) describes the obligations of State Parties in the implementation of the rights under the Covenant, as follows: “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.”

a) Taking steps to the maximum availability of resources

In the implementation of the right to education, States are obliged to take steps to “the maximum of their available resources”. In Robertson’s view “resources” may be defined as “that upon which the satisfaction of the [Covenant’s] rights is dependent”.⁶³ The resources that must be utilized by States are understood to encompass not only

⁶⁰ See Novak, The right to education, 261–262.

⁶¹ See Novak, The right to education, 262. The international standards that contribute to this complementary protection by education are, *inter alia*, ILO Conventions Nos. 5, 10, 33, 59, 60, 123, 124, 138 and 182, and Article 32 of the UNCRC which stresses that child work cannot be exploitive and cannot jeopardize the child’s enjoyment of other rights, such as the right to education, the right to leisure and play, the right to health, etc.

⁶² D. Hodgson, The international human right to education and education concerning human rights, (1996) 4 (3) *The International Journal of Children’s Rights*, 237–262., 260. <https://doi.org/10.1163/157181896X00158>

⁶³ R. E. Robertson, Measuring State Compliance with the Obligation to Devote the ‘Maximum of Available Resources’ to Realizing Economic, Social and Cultural Rights, (1994) 16 (4) *Human Rights Quarterly*, 693–714., 695. <https://doi.org/10.2307/762565>

financial, but natural and human resources, as well as technology and information.⁶⁴ In guiding States regarding the *availability* of resources, the CESCR and the Limburg Principles state that it “refers to both the resources within a State and those available from the international community through international co-operation and assistance”.⁶⁵ In terms of the right to education, the Abidjan Principles⁶⁶ describe available resources to include all resources that are at the disposal of the State, as well as those that may be mobilised by the State, through primarily domestic resources, such as the enforcement of fair and progressive taxation⁶⁷ and other domestic income-generating schemes; expansion of the revenue base; reallocation of public expenditures; elimination of illicit financial flows, corruption, and tax evasion and avoidance; the use of fiscal and foreign exchange reserves; the management of debt by borrowing or restructuring existing debt; the development and adoption of a more accommodative macroeconomic framework; or through international cooperation and assistance.

To assist States in implementing their obligation to take steps to the maximum of their available resources to fulfil the rights under the Covenant, the CESCR has embraced the concept of “minimum core obligations”. Accordingly, States have “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” under the ICESCR, including “the most basic forms of education”.⁶⁸ The CESCR clarifies that

in the context of article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure 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)].⁶⁹

The CESCR goes on to state that “any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying

⁶⁴ Ibid. 693., see also J. Heintz, D. Elson and R. Balakrishnan, Public Finance, Maximum Available Resources and Human Rights, in O. Nolan, R. O’Connell and C. Harvey (eds), *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights*, (Hart Publishing, Oxford, 2013), 14.

⁶⁵ See CESCR General Comment No. 3, para 13; and para 26 Limburg Principles.

⁶⁶ Guiding Principles on the human rights obligations of States to provide public education and regulate private involvement in education (Abidjan Principles – adopted in 2019), at Guiding Principle 16.

⁶⁷ CESCR General Comment 24, para 23.

⁶⁸ CESCR General Comment No. 3, para 10; and CESCR General Comment No. 13, para 57.

⁶⁹ CESCR General Comment No. 13, para 57.

within the country concerned”.⁷⁰ It further stresses, a state party will only escape liability for “its failure to meet at least its minimum core obligations due to a lack of available resources”⁷¹ if it can show that it has utilised all resources available to fulfil the minimum core of the right in question, and that it has given priority to the fulfilment of the minimum core of that right.

The obligation imposed on States parties by Article 2(1) to realize Covenant rights “to the maximum available resources” also means that they should not take deliberate retrogressive measures in relation to these rights.⁷² That is, States should not allow the existing level of enjoyment of the right to education to deteriorate, which is also implied within the notion of “progressive realisation”. As stated by the CESCR, “if any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives [...] and in the context of the full use of the State party’s maximum available resources”.⁷³ However, even in times of economic crisis, the minimum core obligations imposed by the rights in question cannot be compromised by any retrogressive measures.⁷⁴

b) Progressive or immediate nature of State obligations to realise the right to education?

Regarding the nature of state obligations under the Covenant, Article 2(1) obliges States parties to realise the rights of the Covenant “progressively”. The CESCR has described the concept of progressive realisation as “a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realisation of economic, social and cultural rights”.⁷⁵ However, to ensure that this progressiveness does not deprive state obligations of their meaningful content, the Covenant imposes the obligation “to move as expeditiously and effectively as possible” towards the goal of full realisation of Covenant rights, including the right to education.⁷⁶

The ICESCR also imposes various obligations on States parties which are of immediate effect. Accordingly, and as clarified by the Committee “States parties have immediate obligations in relation to the right to education, such as the »guarantee« that it »will be exercised without discrimination of any kind« [art. 2(2)] and the obligation »to take steps« [art. 2(1)] towards the full realization of article 13”.⁷⁷ It also adds

⁷⁰ CESCR General Comment No. 3, para 10.

⁷¹ CESCR General Comment No. 3, at para 10; Beiter, *The protection of the right to education by international law...*, 384.

⁷² CCRC General Comment No. 19, para 31.

⁷³ CESCR General Comment No. 13, para 45.

⁷⁴ CCRC General Comment No. 19, para 31.

⁷⁵ CESCR General Comment No. 3, para 9.

⁷⁶ *Ibid.*; see also CESCR General Comment No. 13, para 44.

⁷⁷ CESCR General Comment No. 13, para 43., and CESCR General Comment No. 3, paras 1–2.

that “such steps should be taken in a reasonably short time” and must be “deliberate, concrete and targeted”.⁷⁸

However, as Coomans and Beiter point out, the nature of state obligations under Article 13 and 14 must not only be determined in the light of Article 2(1) of the ICESCR. Consideration must additionally be given to the way in which obligations are formulated by the individual provisions of the Covenant as they bear on the exact meaning of the notion of “progressiveness” regarding the various provisions of the Covenant.⁷⁹ These formulations express differing degrees of urgency in the realisation of Covenant rights which is well detectable throughout Article 13. Accordingly, Article 13(1), concerning the general right to education, and Article 13(2), concerning the establishment of an education system at the various levels, describe the state obligation as “recognise”. As Alston and Quinn explain, recognition “triggers the application of general state obligations under Article 2(1)”,⁸⁰ thus these obligations must be realised progressively. Concerning Article 13(2), the degree of urgency of realisation decreases, however, from a high level for primary education [Article 13(2)(a) uses the formulation “shall be free and compulsory” which implies this obligation has an immediate rather than a progressive nature) to successively lower levels for each of secondary [Article 13(2)(b) uses the formulation “shall be made progressively free”], higher [Article 13(2) (c) deploys the same formulation “shall be made progressively free”] and fundamental education [Article 13(2)(d) deploys the expression “shall be encouraged or intensified as far as possible”].⁸¹

Regarding the aims of education under Article 13(1), States parties “agree” that education must further these aims, which expresses a low degree of urgency in their realisation.⁸²

Under Article 13(3) and (4) concerning the educational freedom to choose and the freedom to establish schools, States parties’ obligations are referred to as “undertake to have respect” towards parents’ freedom to choose and “not to construe article 13 in such a manner as to interfere with” the right of individuals and bodies to establish and direct private schools. These formulations also suggest a rather low degree of urgency.⁸³

Article 14 is devoted to the implementation of compulsory and free primary education for all for States Parties who have not yet reached that goal. It limits the

⁷⁸ CESCR General Comment No. 13, para 43., and CESCR General Comment No. 3, paras 2 and 9.

⁷⁹ Beiter, *The protection of the right to education by international law...*, 389.

⁸⁰ P. Alston and G. Quinn, The Nature and Scope of States Parties’ Obligations under the International Covenant in Economic, Social and Cultural Rights, (1987) 9 *Human Rights Quarterly*, 156–229., 185. <https://doi.org/10.2307/762295>, quoted in F. Coomans, Clarifying the core elements of the right to education, in F. Coomans and F. van Hoof (eds), *The Right to Complain about Economic, Social and Cultural Rights*, SIM Special No. 18. (SIM, Utrecht, 1995) 9–26.

⁸¹ Beiter, *The protection of the right to education by international law...*, 389.

⁸² *Ibid.* 390.

⁸³ *Ibid.* 390–391.

progressive realisation of primary education to two years (and additionally to a reasonable number of years which must be clearly specified in a detailed plan for action). This way it reinforces that States should give priority to the implementation of primary education over other types of education under Article 13(2) when realizing the general right to education, and it confirms that the legal obligation contained in Article 13(2)(a) is stronger (also supported by the provision's use of the imperative "shall be") than the other legal obligations under Article 13(2). It is important to point out, that although the implementation of primary education is a progressive obligation, working out a detailed plan of action, including targeted policies in this regard is an obligation of an immediate character.⁸⁴

7. Equality and non-discrimination

The principle of equality and the prohibition of discrimination is of crucial importance for the proper understanding of the right to education and is therefore necessary to examine here briefly. The prominence of these overriding human rights principles is obvious from both the Covenant's general non-discrimination clause articulated under Article 2(2), and from Article 13(2) establishing the right to receive an education. Article 2(2) reads as follows: "(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".

This provision prohibits discrimination on specified grounds and obliges States to "undertake to guarantee" they will not discriminate against anyone in the exercise of their Covenant rights, including the right to education under Article 13. Notably, the grounds of discrimination enlisted under Article 2(2) are not exhaustive and "encompass all internationally prohibited grounds of discrimination".⁸⁵ This is suggested by the inclusion of "other status" as one of the grounds, "indicating that... other grounds [than enlisted] may be incorporated in this category".⁸⁶ Furthermore, the CESCR has stressed that non-discrimination in the context of education must be interpreted in light of "the UNESCO Convention Against Discrimination in Education, the relevant provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination

⁸⁴ Coomans, Clarifying the core elements of the right to education.

⁸⁵ CESCR General Comment No. 13, para 31.

⁸⁶ See *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, para 36., and Fact Sheet No. 16 (Rev. 1), The Committee on Economic, Social and Cultural Rights.

of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the ILO Indigenous and Tribal Peoples Convention”.⁸⁷ This means that the definition, notions, and forms of discrimination that are formulated under those treaties apply to the context of the ICESCR as well.

On the face of it, Article 2(2) obliges States to guarantee formal equality only, but not to make an effort to achieve substantive equality.⁸⁸ Nonetheless, the idea of substantive equality should be read into Article 2(2) even in lack of an express instruction on States to guarantee it.⁸⁹ This is supported by the content of Article 13(2), which requires States to make education at the various levels generally available and accessible to all, simultaneously contributing to achieving equal opportunities and equal treatment for all (substantive equality) in the enjoyment of the right to education.⁹⁰ Moreover, the use of expressions such as “everyone”, “to all”, “generally available and accessible” under the text of Article 13(2) also highlight the obligation to ensure the principle of equal access in the enjoyment of the right to education.

States Parties are obliged to eliminate both formal (*de jure*) and substantive (*de facto*) discrimination under Article 2(2) in conjunction with Article 13.⁹¹ Regarding the former, States are required to “abolish without delay any discriminatory laws, regulations and practices” affecting the enjoyment of the right to education,⁹² and must also adopt legislation that prohibits discriminatory conduct.⁹³ Regarding *de facto* or substantive discrimination, States must “closely monitor education so as to identify and take measures to redress [it]”⁹⁴ and “bring it to an end as speedily as possible”.⁹⁵ This

⁸⁷ CESCR General Comment No. 13, para 31.

⁸⁸ Equality is the corollary of non-discrimination. *Substantive equality* is concerned with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience, CESCR General Comment No. 16 on *Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights*, para 7.

⁸⁹ A number of articles of the ICESCR cover the idea of substantive equality, including Article 3, which provides for the “equal rights of men and women” in the enjoyment of ESC rights, and Article 7(c), which provides for “the equal opportunity for everyone to be promoted in his employment”, as well as Article 13(2) regarding higher education which needs to be made “equally accessible to all”. Furthermore, the UNESCO Convention against Discrimination in Education, which precedes the ICESCR, compels states to take specific steps to eliminate and prevent formal discrimination (Article 3) as well as to “formulate, develop an apply a national education policy aimed at promoting equality of opportunity and treatment in education” (i.e. substantive equality) (Article 4).

⁹⁰ Beiter, *The protection of the right to education by international law...*, 404.

⁹¹ CESCR General Comment No. 20 on non-discrimination, para 8.

⁹² See *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, para 37.

⁹³ See CESCR General Comment 20, para 8., see also UNESCO Convention against Discrimination in Education, Article 3.

⁹⁴ See CESCR General Comment No. 13 (1999), para 37.

⁹⁵ See *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, para 38.

includes the duty to “immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination”.⁹⁶ Although the Committee is of the view that the prohibition against discrimination enshrined in Article 2(2) “is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education [...]”,⁹⁷ Beiter argues otherwise. He suggests that, realistically, measures directed against *de facto* discrimination can only be taken progressively, and the notion of immediacy only applies regarding measures directed against *de jure* discrimination.⁹⁸ This argument is supported by the wording of the Limburg Principles on the implementation of the ICESCR, which states that *de jure* discrimination shall be abolished “without delay”,⁹⁹ and *de facto* discrimination should be brought to an end “as speedily as possible”.¹⁰⁰

The CESCR has highlighted on numerous occasions that “the principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality and therefore temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others”.¹⁰¹ Consequently, in some circumstances, states are required to adopt such measures to attenuate or suppress conditions that perpetuate discrimination for disadvantaged groups’ access to the enjoyment of the right to education.¹⁰² As emphasised by the CESCR, these measure will not constitute a violation of the right to nondiscrimination with regard to education, so long as they represent reasonable, objective and proportional means to redress *de facto* discrimination, they do not lead to the maintenance of unequal or separate standards for different groups, and provided they are terminated when *de facto* equality has been sustainably achieved.¹⁰³

⁹⁶ CESCR General Comment No. 20, para 8.

⁹⁷ See CESCR General Comment No. 13, para 31; para 41 the Committee further states “States parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind” [art. 2(2)]”; see also CESCR General Comment No. 3, para 1: “One of [the various obligations which are of immediate effect] ... is the ‘undertaking to guarantee’ that relevant rights ‘will be exercised without discrimination...’”.

⁹⁸ Beiter, *The protection of the right to education by international law...*, 406.

⁹⁹ *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, para 37.

¹⁰⁰ See *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, para 38.; Beiter, *The protection of the right to education by international law...*, 406.

¹⁰¹ CESCR General Comment No. 16, para 15.

¹⁰² See *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, para 39.

¹⁰³ CESCR General Comment No. 13, para 32 and CESCR General Comment No. 16, para 15, and CESCR General Comment No. 20, para 9.

IV. GROUP-SPECIFIC TREATIES

1. The United Nations Convention on the Rights of the Child (CRC)

The UN Convention on the Rights of the Child (CRC or Convention) provides the most comprehensive articulation of the right to education among the group-specific treaties, which is not surprising, given that the right to education is enjoyed mainly by children. It extends its coverage into two lengthy articles, namely Articles 28 and 29. While Article 28 provides for the right to receive an education (or the right to access education), Article 29 describes States duties in relation to the aims and nature of education. Article 28 is modelled on Article 13 of the ICESCR, however, there are several differences between the formulations adopted in each instrument. First, Article 28 does not consider the aims of education, which appear under Article 29 instead. Second, it imposes a new obligation on States under Article 28(1)(e) “to encourage regular school attendance and reduce dropout rates”, an obligation that reflects the child-centred nature of this provision relative to Article 13 ICESCR. Third, under Article 28(2) it adds a requirement that states “ensure school discipline is administered in a manner consistent with a child’s human dignity”. Fourth, it omits the requirement under Article 13(3) of the ICESCR that states respect the liberty of parents to choose schools for their children and to ensure the religious and moral education of their children in conformity with their own convictions. Instead a modified version of this requirement is shifted to Article 29(2) of the Convention. Fifth, it includes a specific sub-paragraph requiring that States “promote and encourage international cooperation in matters relating to education [...]”, a requirement that is included under Article 2(1) of the ICESCR on the scope and nature of States’ obligations, but not expressly under Article 13.

As Tobin points out in his commentary on the CRC, “although article 28 enhances the scope of a child’s right to education in several ways, it also contains discrepancies with the text of article 13 of ICESCR which could be interpreted as diminishing or weakening aspects of the right to education under the Convention relative to the ICESCR”.¹⁰⁴ He demonstrates this point by the following examples: Article 13(2)(b) of ICESCR requires states to “develop” different forms of secondary education and “progressively introduce free secondary education”, whereas Article 28(1)(b) only requires measures to “encourage the development” of such education and refers to the progressive introduction of free secondary education as a potential means to “make secondary education available and accessible (instead of *equally* accessible) to every child”; Article 13(2)(c) requires states to “progressively introduce

¹⁰⁴ Tobin, *The UN Convention on the Rights of the Child: A Commentary*, 1059.

free higher education, whereas Article 28(1)(c) only requires states to make higher education accessible to all by every appropriate means; Article 13(2)(d) includes a general right to fundamental education whereas Article 28 does not. Critically, as he highlights, the significance of these variations should not be overstated because even if a diminution of existing standards were found to exist, the savings clause under Article 41 of the Convention demands that a child would be entitled to the benefit of the higher standard, assuming that the State concerned is a party to both treaties.¹⁰⁵

Article 29(1) repeats and broadens the aims of education included under Article 13(1) ICESCR by adding two new objectives to it. In this respect, the CRC upgrades the content of this provision under the ICESCR. Accordingly, the education of the child must be directed to the development of respect for parents, cultural identity, national values, language and values, and diverse civilisations [Article 29(1)(c)]. In the interpretation of the CCRC, this paragraph can best be described as “an enhanced sense of identity and affiliation”.¹⁰⁶ Furthermore, the education of the child must be directed to the development of respect for the natural environment [Article 29(1)(e)]. While this objective does not in itself constitute recognition of a separate right to a clean and healthy environment, it is an important step to acknowledging the close interrelationship between respect for human rights and protection of the environment.¹⁰⁷

2. The Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disability (CRPD)

The right to education is also an established feature of the CEDAW and CRPD. Article 10 of the CEDAW emphasizes the requirement for women and girls to receive equal educational opportunities. Beiter summarizes the substance of this article as follows. Women must have the same access to education as men. Quality norms concerning education must be the same for women as for men. This applies especially to curricula, examinations, teaching staff and school premises and equipment. Co-education must be promoted. Education should be directed to changing stereotyped views of the role of men and women in society.¹⁰⁸ Articles 3 and 4(1) of the CEDAW read together with Article 10 require States to promote equal opportunities and equal treatment for women in their exercise of the right to education through positive measures, including affirmative action measures.¹⁰⁹

¹⁰⁵ Ibid.

¹⁰⁶ See CRC General Comment No. 1, para 1.

¹⁰⁷ Tobin, *The UN Convention on the Rights of the Child: A Commentary*, 1145.

¹⁰⁸ Beiter, *The protection of the right to education by international law...*, 112.

¹⁰⁹ Ibid. 112–113.

Under Article 24, the CRPD provides for a series of additional obligations on states in relation to the right to education, mainly focusing on inclusion. These include the obligation to ensure that “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” [Article 24(2)(b)] and that “effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion” [Article 24(2)(e)]. It further requires states to ensure that “[p]ersons with disabilities receive the support required, within the general education system, to facilitate their effective education” [Article 24(2)(d)]. To reinforce this obligation and ensure that children are educated in inclusive environments, the Committee on the Rights of Persons with Disabilities has issued General Comment to No. 4 dedicated exclusively to this issue.¹¹⁰

V. CONCLUSION

Since its first articulation under Article 26 UDHR, education has evolved into a fundamental right that is integral to the full development of the human personality and a sense of dignity and self-worth, as well as being indispensable to the promotion of peace, democracy, environmental sustainability, citizenship, and for realising other human rights. It is guaranteed by all major international and regional human rights treaties, as well as national constitutions and laws, and governments have made a number of political commitments towards providing education for all, most recently under the global Sustainable Development Agenda. Despite receiving such wide support, many States continue to experience barriers in its implementation and fail to realise this right fully. To overcome these barriers as well as to keep up with the new challenges of our times – such as the effects of the technological advancements and the multiple crises, including the climate crisis and economic crises unfolding in the aftermath of the global COVID-19 pandemic and in relation to the pending Ukrainian war – the right to education will necessarily have to continue to evolve. To explore the extent of and the potential avenues through which this evolution or expansion might take place, one cannot forgo the analysis of the right to education as provided for under the contemporary corpus of the UN human rights framework. Therefore, the present paper sought to provide a concise analysis of the UN system’s cornerstone article on the right to education, namely Article 13 ICESCR. In doing so, it has furthermore briefly shed light on the origins of this article under the UDHR and its further evolution under some of the group-specific treaties of the UN, including the CEDAW, CRC and CDPR.

¹¹⁰ CRPD General Comment No. 4 (2016) on Inclusive Education.