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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the right to education, Kishore Singh

Justiciability of the right to education*

Summary

This report is presented pursuant to Human Rights Council resolutions 8/4 and 17/3 and in accordance with the Special Rapporteur's initial report (A/HRC/17/29 and Corr.1) in which he identified the justiciability of the right to education as one of the themes to be addressed during his mandate. The report examines questions related to enforcement of the right to education and judicial and quasi-judicial mechanisms. It also highlights the available jurisprudence at the national, regional and international levels, with a focus on some key dimensions of the right to education.

In conclusion, the Special Rapporteur offers recommendations for making the justiciability of the right to education and its enforcement more effective.

* Late submission.

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I. Introduction

1. This report is presented pursuant to Human Rights Council resolutions 8/4 and 17/3 and to the Special Rapporteur's initial report (A/HRC/17/29 and Corr.1), in which he identified justiciability of the right to education as one of the issues to be examined during his mandate. The Special Rapporteur examines questions related to enforcement of the right to education and highlights the available jurisprudence at the national, regional and international levels. The report focuses on some key dimensions of the right to education. In conclusion, the Special Rapporteur offers recommendations for making the justiciability of the right to education and its enforcement more effective.

2. The enjoyment of the right to education is often least accessible to those who need it most – disadvantaged and marginalized groups and, above all, children from poor families. It therefore requires enforcement in case of its breaches or violations. These can occur on numerous grounds, and involve all providers of education. Even primary education is not provided worldwide, despite being a core obligation of States. The right to education also encompasses secondary and tertiary education, which must be progressively implemented where immediate realization is not possible. Fundamental principles of non-discrimination and equality of opportunity in education must be respected under all circumstances, and education provided must be of good quality. All providers of education – public or private – remain accountable for respecting the right to education in its various dimensions.

3. As such, the Special Rapporteur would like to underline the important role that adjudication plays in the effective realization of the right to education, and in ensuring that it is given effect to. He considers it vital to improve access to justice for all those whose right to education is not fully protected and respected.

II. Activities of the Special Rapporteur

4. During the reporting period, the Special Rapporteur undertook missions to Tunisia and Ecuador. He also reported to the sixty-seventh session of the General Assembly (A/67/310). His report addressed the issue of technical and vocational education and training from a right to education perspective. It detailed human rights obligations underlying the right to education and the provision of technical and vocational education and training, primarily at the secondary level.

5. The Special Rapporteur participated in a number of public events on education and continued collaborating with States, international organizations and non-governmental organizations (NGOs).

6. In March 2012, he delivered the Foundation Day Lecture in the Foundation Day function of the National Commission for Protection of the Child Rights, in New Delhi, India. In the same week, he participated as a speaker in a consultation on right to quality in education, organized by the Right to Education Forum in New Delhi.

7. In May, the Special Rapporteur participated in the Third International Congress on Technical and Vocational Education and Training in Shanghai, China, and was moderator of the session on new developments regarding international instruments and normative action on technical and vocational education. He gave a speech at a side-meeting on "Beyond 2015: Perspectives from the role of TVET and skills development in the international development agenda". At the end of May, he delivered a keynote speech at the opening session of the "Fourth International Policy

Dialogue Forum: Teacher challenges for the EFA” in New Delhi, India, organized by the Government of India in cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO). In June, he participated as keynote speaker at a side event, organized by the International Organization for the Right to Education and Freedom of Education (OIDEF), aimed at promoting quality education. In July, the Special Rapporteur met with a high-level delegation of the Ministry of Education of Thailand at UNESCO, Paris, for a dialogue on teachers’ education, quality imperatives and normative action in the field of education. This was followed by a discussion on the education agenda beyond 2015 in Thailand (considering Millennium Development Goals (MDGs) plus commitments) and the country’s 15-year free education for all programme.

8. In September, he gave a keynote address at a seminar organized by the European Network of Ideas, in cooperation with the European Peoples Party of the European Parliament in Brussels to address the importance of quality education. He also was one the main speakers at the launch of the publication “Protecting Education in Insecurity and Conflict: An International Law Handbook” by Education Above All in New York. He gave a lecture at Cornell Law School in Ithaca, New York on the “Right to a Quality Education – Norms and Standards”, and later attended the High-level Launch of the United Nations Secretary-General’s Initiative on Global Education – Education First, and made a statement.

9. In November, he spoke at the round table “Human Rights and Development Cooperation” on the Human Rights Approach in International Cooperation and Public Policies, organized jointly by the National University of Piura, Peru, and the University of Rioja, Spain. He also participated in the Fifth Budapest Human Rights Forum, and served as a panellist on human rights education and training. He was a special invitee in the World Innovation Summit for Education in Doha, Qatar, where H.H. Sheikha Moza bint Nasser’s “Educate a Child Initiative” was launched. In the same month, he made a statement at UNESCO’s First Global Education for All meeting in Paris, which brought governments together to provide quality basic education to all children, youths and adults by 2015. In December, the Special Rapporteur participated in the 55th session of the Conference of Ministers of Education of the Francophone countries – CONFEMEN – held in Ndjamena (Chad), and gave a speech on the diversification of offers in education and the right to education. He also participated in the high-level advocacy event “Stand up for Malala – Girls’ Education is a Right”, organized in Paris by UNESCO in cooperation with Pakistan to mark Human Rights Day. During the same month, he participated in the Steering Committee Seminar of the Association for the Development of Education in Africa (ADEA) in Sevres (France), and had a dialogue with the Bureau of ADEA on key issues and international initiatives in the field of the right to education.

10. In January, 2013 the Special Rapporteur participated as keynote speaker at a seminar on “Justiciability as an Instrument for Enforcing the Right to Education”, organized by the Right to Education Forum in New Delhi. He participated as a panellist in the first Seminar on Human Rights Education and Morality, organized as part of a series of Seminars on Implementation of the United Nations Declaration on Human Rights Education and Training (2011) by the Research Centre on Human Rights and Humanitarian Law, University of Paris II, with the support of the French National Commission for UNESCO. He also participated in the Working Group on “Education and Development” organized by the Education and Development wing of the French Ministry of Foreign Affairs, in cooperation the *Agence Française de développement* (French Agency of Development) for reflections on the post-2015 MDG agenda.

11. In March, the Special Rapporteur attended the High-Level Panel on Mainstreaming Human Rights, with a focus on the areas of the right to education, organized by the Human Rights Council. He made the opening remarks at the side event on Education for Global Citizenship – follow-up to the United Nations Secretary-General’s Initiative – Education First, organized on 11 March by OIDEI in Geneva. He was the keynote speaker at the side event on vocational education, organized in Geneva on 12 March by the *Apprentissage sans Frontières*.

12. In April, the Special Rapporteur participated in the International Academic Seminar “Justice for Quality Education – Quality Education for Democracy”, and gave the opening address. Organized by the São Paulo School of Judges and the Faculty of Law, University of São Paulo and other partners, the Seminar brought together experts and scholars, judges, lawyers, Government officials and civil society partners. On this occasion, the publication “Justice for the Quality of Education” was released. The Special Rapporteur gave the closing address to the International Seminar, which provided insights into the ways in which the justiciability of the right to education and enforcement could be strengthened.

III. Justiciability of the right to education and the role of adjudication

13. The legal protection of the right to education has its foundation in national, regional and international legislation and standards, and the State obligations that these laws lay down. Government policies and provisions of education – both public and private – are subject to review and determination by judicial and quasi-judicial bodies. The role of adjudication is to ensure that the right to education as an internationally recognized right as established by numerous treaties and legislation is respected, protected and fulfilled. Its most basic tenets, free and compulsory primary education for all, the progressive realization of secondary and tertiary education, and the immediate non-discrimination in their application, are universally recognized.

IV. The legal framework of the right to education

14. The right to education is provided for in international, regional and national legal frameworks.

A. International legal instruments

15. A number of international human rights conventions establish the right to education. This right is covered comprehensively in UNESCO’s Convention against Discrimination in Education (1960) and in articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (1966).¹ Several other human rights conventions recognize the right to education for specific groups of individuals. These include (a) the Convention on the Rights of the Child, articles 28–30; (b) the

¹ For an account of *travaux préparatoires* of the International Covenant on Economic, Social and Cultural Rights and State obligations including the right to education, see Philip Alston and Gerard Quinn, “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights”. *Human Rights Quarterly*. Vol. 9, No. 2 (May 1987), pp. 156–229.

Convention on the Elimination of All Forms of Discrimination against Women, article 10; (c) the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, articles 12 and 30; (d) the Convention on the Elimination of Racial Discrimination, article 5(e); and (e) the Convention on the Rights of Persons with Disabilities, article 24.

16. Regional human rights treaties also include provisions on the right to education. In Europe, the First Protocol (1952) to the European Convention for the Protection of Human Rights and Fundamental Freedoms states that “no person shall be denied the right to education”. The Revised European Social Charter (1996)² has provisions for free primary and secondary education.³ The Charter of the Organization of American States (1948) provides numerous rights related to education.⁴ The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (San Salvador Protocol, 1999) defines the right to education in detail in articles 13 and 16.⁵ Finally, the African Charter on Human and Peoples' Rights (1981) provides that every individual shall have the right to education,⁶ and the African Charter on Rights and Welfare of the Child provides in article 11 that every child should have the right to education.

B. State obligations for the right to education under international human rights law

17. “As the Supreme Court of the United States of America stated in the historic judgement in *Brown v. Board of Education* (1954), “Providing public schools ranks at the very apex of the function of a State,” and “education is perhaps the most important function of State and local governments”.⁷ The right to education creates complex, intertwined obligations and responsibilities for multiple stakeholders. States have the primary responsibility to realize the right to education for all individuals in their territories and subject to their jurisdiction. They must establish an educational system respectful of the right to education,⁸ and refrain from any action which may prevent or limit access to education. The State’s obligations remain in case of privatization of education. States must ensure that the right to education is provided and promoted; they must also ensure that it is respected and fulfilled,⁹ both as entitlement in terms of universal access to basic education as well as empowerment in terms of acquisition of knowledge, skills and competencies and their quality and standard.

² Revised European Social Charter (1996), CETS No. 163.

³ *Ibid.*, art. 17.2.

⁴ Notably in arts. 31, 47, 48 & 49, establishing three levels of education, and the requirement to develop plans for, and to cooperate internationally to achieve, educational needs.

⁵ *See, e.g.*, American Declaration on the Rights and Duties of Man, article XII (every person has the right to education); Protocol of San Salvador, article 13 (stating that primary education should be compulsory and free to all and that higher education should be available).

⁶ OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), article 17.

⁷ *Wisconsin v. Yoder*, 406 U.S.205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972), as cited in Education Law, Education Series, Chapter 4, “Students Rights”, *Law Journal Press*, New York, 2002.

⁸ General Comment 13 on the Right to Education (article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. E/C.12/1999/10, 2 December 1999.

⁹ The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. General Comment 13 on the Right to Education (article 13 of the Covenant), E/C.12/1999/10, 2, December 1999 (paras. 46 &47).

18. The State obligations for the right to education must be understood in terms of the right to quality education, as the Special Rapporteur emphasized in his thematic report (2012) to the Human Rights Council.¹⁰ These obligations also make State responsibility to provide necessary resources for its realization, including financing of education, as the Special Rapporteur has underlined in his report to the General Assembly.¹¹

19. Ensuring enjoyment of the right to education without discrimination or exclusion is of paramount importance. States 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”.¹²

20. State obligations regarding the right to education¹³ have been interpreted under international human rights law, establishing the right as justiciable. Available literature sheds light on the importance of identifying “justiciable components” of economic, social and cultural rights, including the right to education, and their enforcement at the international level, along with the obligations of States to protect, respect and fulfil them.¹⁴ Indeed, the courts have dealt with educational issues brought before them, and a number of key dimensions of the right to education have been subject to judicial or quasi-judicial review. The right to education has been considered to be fully justiciable in many jurisdictions.¹⁵

C. Domestic legal obligations for the right to education

21. States parties to international human rights treaties have legal obligations to give effect to individual treaties in their domestic legal order.¹⁶ Constitutions and laws should provide for the right to education in line with State obligations under these.¹⁷ When the established right forms part of a convention that is properly ratified or incorporated into a State’s internal order, people can use every available legal means to secure compliance by recourse to law courts. Convention rights should be made directly invocable in the courts and applied by national authorities, and the convention should prevail where there is a conflict with domestic legislation or common practice.¹⁸ “In case of any conflict between national legislation and treaties,

¹⁰ A/HRC/20/21, 2 May 2012.

¹¹ The right to education: Note by the Secretary-General, A/66/269, 5 August 2011.

¹² General Comment 13 on the right to education (article 13 of the Covenant), E/C.12/1999/10, 2, December 1999, para. 43.

¹³ Klaus Dieter Beiter, “The Protection of the Right to Education by the International Law”, Martinus Nijhoff Publishers, 2005.

¹⁴ Antônio Augusto Cançado Trindade, “A justiciabilidade dos direitos economicos, sociais e culturais no plano internacional” in *Ensayos en Honor a Fernando Volio Jiménez*, 1997, Brasilia pp. 214-215.

¹⁵ Fons Coomans, “Justiciability of the Right to Education”, *Erasmus Law Review*, Vol. 2, No. 4, pp. 427-443, 2009.

¹⁶ Recommendations or declarations constitute soft law, and do not have binding force. They have moral force and express political commitment. Member States adopting them are expected to take action for giving them follow up in policies or develop national legislation.

¹⁷ The guidelines for preparation of reports by States to the human rights treaty bodies require that these reports should show how the right to education as provided for under the international human rights conventions is reflected in the constitution and legislation in a country.

¹⁸ General Comment No. 5 (2003) “General measures of implementation of the Convention on the Rights of the Child” CRC/GC/2003/5, 27 November 2003. Where a State delegates powers to legislate to federated regional or territorial governments, it must also require these subsidiary

predominance should always be given to international obligations, in the light of article 27 of the Vienna Convention on the Law of Treaties.”¹⁹

22. Domestic law should set out “entitlements” in sufficient detail to enable remedies for non-compliance to be effective.²⁰ National laws on the right to education should create a “right of action” for individuals or groups who consider that their right to education is not being fully realized,²¹ and provide for “judicial remedies”.²²

23. The right to education as provided for in article 13(2)(a), 13(3) and 13(4) of the International Covenant on Economic, Social and Cultural Rights, along with a number of other provisions, would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.²³

24. “For rights to have meaning, effective remedies must be available to redress violations.”²⁴ These should include “access to independent complaints procedures and to the courts with necessary legal and other assistance.”²⁵ Where rights are found to have been breached, there should be appropriate reparation, including compensation.

V. Justiciability of the right to education in national legal systems

25. The right to education is enshrined in the constitutions of a large number of countries – it is one of the most universally recognized rights in national constitutions in the world today. A study of national constitutions found that 90 per cent of constitutions in the world contain a provision on the right to education. Of those constitutions that contain education provisions, 56 per cent require that education be compulsory up to a certain level. Additionally, 65 per cent of these constitutions stipulate that education should be free up to a certain level.²⁶ Moreover, national legislation on education exists in most States.

26. Thus, justiciability of right to education also has its bases in national legal systems which provide “grounds” for the “right of action”, mentioned above. An example is the Constitution of South Africa, which provides in section 38 (Enforcement of rights) that “Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of

governments to legislate within the framework of the Convention and to ensure effective implementation.

¹⁹ *Ibid.*

²⁰ *Ibid.*, para. 25

²¹ General comment 3 “The nature of States parties obligations” (art. 2, par.1): CESCR fifth session (1990) para. 6.

²² *Ibid.*, para. 5.

²³ *Ibid.*, para. 5.

²⁴ General Comment No. 5, *op. cit.*, para. 24.

²⁵ *Ibid.*

²⁶ Comparative Constitutions Project, directed by Professors Zachary Elkins, University of Texas, Tom Ginsburg, University of Chicago, and James Melton, IMT Institute for Advanced Studies, available at <http://www.comparativeconstitutionsproject.org>.

rights.”²⁷ Fundamental rights in India constitute “basic and essential feature” of the Constitution, and any citizen can directly approach the Supreme Court of India in cases of breach or violation. The Brazilian Association of Judges, Prosecutors and Public Defenders for Children and Youth also has a strong commitment to human rights, in particular the right to quality education and its enforcement.²⁸

VI. Justiciability and enforcement of the right to education

27. “The essential element [of a right] is the legal power bestowed upon the [individual] by the legal order to bring about, by a law suit, the execution of a sanction as a reaction against the non-fulfilment of the obligation.”²⁹ Since the right to education is an internationally recognized right, any or all of its dimensions are justiciable. “A matter is considered to be justiciable if it can be properly brought before a court and is capable of being disposed judicially.”³⁰ In case of its denial or violation, a citizen must be able to have legal recourse before the law courts on the basis of international legal obligations as well as existing constitutional or legislative provisions on the right to education. Decisions by courts across regions demonstrate how they have upheld the right to education in its various dimensions.

28. Even when not explicitly identified in the constitution, the right to education can be considered as an essential component for the enjoyment of other rights. In an historic decision, the Supreme Court of India ruled that the right to education (even when not provided for in India’s Constitution as such) was an integral part of the right to life,³¹ and therefore, enforceable. Pursuant to this and other Supreme Court decisions, the Constitution of India was amended, establishing the right of children aged 6–14 to free and compulsory education.

VII. Judicial and quasi-judicial mechanisms for the enforcement of the right to education

29. The right to education can be enforced through a wide variety of judicial and quasi-judicial mechanisms.

30. Judicial mechanisms such as national, regional and international courts are of key importance to adjudicate claims based on national or international law. Their judgements have proven crucial in defining the specific entitlements available to citizens under national and international law. Quasi-judicial mechanisms such as local administrative bodies, national human rights institutions, such as ombudspersons or human rights commissions, and international human rights

²⁷ In one of the few instances to deal directly with whether education policies are justiciable, the Community Court of Justice of the Economic Community of West African States held that, under the African Charter on Human and People’s Rights, the right to education is fully justiciable. *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*, (oral ruling of 27th October 2009), ECW/CCJ/APP/08/08.

²⁸ This is demonstrated in the publication “Justice for the Quality of Education” (Editora Saraiva S.A. 2013), which is a collective reflection of educators and law professionals committed to protecting and promoting the right to quality education for all.

²⁹ Cited by Philip Alston and Gerard Quinn “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights”, *op. cit.*, p. 169.

³⁰ Black’s Law Dictionary (9th ed. 2009).

³¹ *Unni Krishnan, J.P. v. State of A.P.* (1993 I. SCC 645).

mechanisms such as human rights treaty bodies can also examine cases of the violations of the right to education, carry out inquiries and investigations, and recommend the adoption of appropriate measures to local, regional or national authorities.

31. Remedies available under domestic jurisdiction must normally be first exhausted before international mechanisms apply.

32. As a precondition, it must be noted that an independent judicial system is an “essential prerequisite” for justiciability. It is of paramount importance that the judiciary upholds “the rule of law” and ensuring that there is no discrimination in the administration of justice.”³²

A. Judicial mechanisms

33. Alleged violations of the enjoyment of the right to education are normally litigated in national courts. Once all levels of appeal have been exhausted, or at times when it can be shown that no action is possible in national courts, recourse can be made to regional or international courts.

34. The European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples’ Rights are examples of regional human rights courts, established for the enforcement of regional treaties, as mentioned above.

35. Finally, in case of inter-State conflict, recourse can be made to the International Court of Justice by one State against another State for protecting the right to education of its citizens, as provided for under UNESCO’s Convention against Discrimination in Education.³³ In this respect, the advisory opinion rendered by the International Court of Justice in response to the United Nations General Assembly resolution on what legal consequences arose from Israel’s construction of a wall in the Occupied Palestinian Territory, considering the rules and principles of international law, is a historic example in showing how the right to education can be safeguarded by the world court. The International Court of Justice held that the construction of the wall in Occupied Palestinian Territory is a violation of international law and impedes the enjoyment of various human rights, including that to education.³⁴

³² Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, adopted by the United Nations General Assembly on 24 September 2012 (A/RES/67/1).

³³ Yves Daudet and Kishore Singh, “The Right to Education: an Analysis of UNESCO’s Standard-setting Instruments”, UNESCO, Paris 2001, p. 41.

³⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of the International Court of Justice, available: <http://www.icj-cij.org/docket/index.php?pr=71&p1=3&p2=1&case=131&p3=6>.

B. Quasi-judicial mechanisms

36. Quasi-judicial mechanisms, such as ombudspersons,³⁵ and national human rights institutions play an important role in protecting the right to education by monitoring its implementation at the national level. Such mechanisms exist in many countries. Even though their findings are not legally binding,³⁶ decisions and recommendations by such quasi-judicial bodies at national level are important as they wield political and legal pressure upon the authorities and institutions. Such mechanisms can also approach judiciary for providing relief in cases where the right to education is not respected. For example, *Defensoria Pública* in São Paulo (Brazil) provides legal support to poor citizens whose right to education has been violated, even as the Public Prosecutors in São Paulo (Brazil) take up such violations with public authorities, as well as in courts for the enforcement. The National Commission for Protection of Child Rights in India has the mandate to protect the enjoyment of the right to education, and has moved away from a welfare-based approach to a rights-based perspective. After examining a large number of complaints regarding imposition of fee for primary education when the education should be free of cost, the findings of the Commission led to parents having fee payments reimbursed through subsequent court actions.

37. Regional human rights bodies in Europe, Africa and the Americas have developed quasi-judicial mechanisms to enforce regional instruments. For example, the right to education is guaranteed within the Inter-American system by the Inter-American Commission on Human Rights. The Protocol of San Salvador specifically allows individuals to bring petitions to the Commission for violations of the right to education.³⁷ Similarly, the African Commission on Human and Peoples' Rights plays an important role in looking into complaints of violation of the right to education as provided for under African Charter on Human and Peoples' Rights (article 17). After examining the reports, the European Committee of Social Rights takes decisions, known as "conclusions," as to whether or not the situations in the countries concerned are in conformity with the European Social Charter.

38. Regional and national level quasi-judicial authorities may be empowered to undertake, on their own initiative, investigations to promote and protect the right to education, and initiate inquiries into alleged violations, for example through public hearings.

39. As the decisions of quasi-judicial bodies are not directly enforceable, their findings may be used as the basis for initiating procedures in national courts. The findings of national human rights institutions³⁸ and regional human rights quasi-

³⁵ In Mauritius, for example the ombudsperson is entrusted with powers to investigate any type of educational discrimination. The Equality and Anti-Discrimination Ombudsman in Norway and the Equal Opportunities Ombudsman in Sweden are other noteworthy examples.

³⁶ The South African Human Rights Commission, for example, has a monitoring role in respect of all human rights, especially for the socio-economics rights, including the right to education. The decisions of the Commission are not legally binding, and could consequently be called "soft" enforcement mechanisms.

³⁷ See Protocol of San Salvador, art. 19(6), referring to the rights contained in art. 13.

³⁸ For instance, the National Commission for Protection of Child Rights in India may address complaints that come up before it, and also takes up cases *suo moto*, and makes recommendations to the national Government. The Commission may then approach the national courts for such directions, orders or writs as that the court may deem necessary.

judicial mechanisms³⁹ have been referred to the corresponding judicial instances for enforcement.

40. Human rights treaty bodies play a very important role regarding enforcement of the right to education and its justiciability. The dialogue they maintain with the States parties with respect to the progress realized in its implementation includes the constitutional and national laws and situations where the right is not protected in national legal system. For instance, the Committee on Economic, Social and Cultural Rights (CESCR) requires States to provide information as to the extent to which these rights are considered to be justiciable.⁴⁰

41. Communications on cases of violations of an individual's right to education are another important avenue of quasi-judicial procedures for the enforcement of the right to education.

42. UNESCO's Committee on Conventions and Recommendations (CR), which is a subsidiary organ of the Executive Board, considers the communications received by the Organization concerning cases and questions of alleged violations of human rights within UNESCO's fields of competence.⁴¹ As such, CR examines all such communications received by the Organization. As a result, the right to education has been enforced in a number of cases in which it was violated. From 1978 to 2009, CR resolved 10 cases enabling victims to benefit from changes in certain education laws which were discriminatory towards ethnic or religious minorities, and 14 cases where victims were able to resume their education.⁴²

43. Finally, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which entered into force on 5 May 2013, entitles individuals and groups of individuals to lodge complaints against States which have ratified the Optional Protocol concerning the alleged violations of the rights recognized in the Covenant, including the right to education. The Committee on Economic, Social and Cultural Rights, which would examine such complaints, may also initiate an inquiry where it receives reliable information of grave or systematic violations of rights. However, States must expressly declare to be bound by this procedure when ratifying. There is also an inter-State communication procedure for States to allege other States which are not meeting their covenant obligations. The Joint Expert Group UNESCO (CR)/Economic and Social Council (CESCR) on the

³⁹ For example, when a claim involving educational infrastructure and filed in 1997 by the representatives of the Yakye Axa Indigenous Community – a nomad tribe – was rejected by the Supreme Court of Paraguay in 1999, the American Commission of Human Rights examined the case, based on a complaint filed with the Commission in January 2000 by two NGOs, alleging a breach of art. 25 of the American Convention on Human Rights, and the Commission referred it to the Inter-American Court of Human Rights. In its decision, the Court held that the state had not complied with its obligation to ensure that the circumstances of special vulnerability of the Yakye Axa Community did not affect the development and the future of the children of the indigenous community. It ordered creation of a fund for projects concerning, *inter alia*, education, and the state was required to supply educational material to the members of the community. Inter-American Court of Human Rights, *Yakye Axa vs. Paraguay*, 2005, Available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.doc.

⁴⁰ General comment 3 "The nature of States parties obligations" (art. 2, par.1): CESCR Fifth session (1990) para. 6.

⁴¹ See 104 EX/Decision 3.3, adopted by UNESCO's Executive Board in 1978, UNESCO, Paris.

⁴² "Conventions and Recommendations," UNESCO Paris, 2010, para. 26.

monitoring of the right to education could have an important potential role in developments in this respect.⁴³

VIII. Examples of jurisprudence on the right to education

44. A selection of cases illustrates how courts have interpreted the right to education worldwide.

A. Equality of opportunity in education

45. Rich jurisprudence exists regarding State obligations to respect the fundamental principle of equality of opportunity in education. In his 2011 report to the Human Rights Council on the promotion of equality of opportunity in education, the Special Rapporteur highlighted a number of leading cases.⁴⁴ The fair and equal right of access to education has been widely adjudicated. The United States Supreme Court ruled in *Brown v. Board of Education*, that separate educational facilities for white and black children are “inherently unequal”. Even where physical facilities and other objective factors are equal, a segregated school system denies equal educational opportunities to the minority group.

46. The Supreme Court of India has interpreted the provisions on equality before the law in article 14 of India’s Constitution to promote equality in both law and fact. A Constitutional Bench of the Indian Supreme Court held that “What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality”.⁴⁵ Several other cases show how equality of opportunity in education can be safeguarded by courts.⁴⁶

B. Protecting marginalized and vulnerable groups

47. A number of decisions by judicial and quasi-judicial mechanisms show how the right to education of marginalized and vulnerable groups can be protected.

48. In a “collective complaint” by Autism-Europe to defend the rights of people with disabilities in Europe,⁴⁷ the European Committee on Social Rights ruled that the French Government’s overall lack of progress in this area constituted a violation of the European Social Charter. The French National Consultative Commission for Human Rights has also defended the right to education for children with disabilities by a number of its advisory opinions.⁴⁸

⁴³ Report on the fourth meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the monitoring of the right to education (2006), 175 EX/28, UNESCO, Paris.

⁴⁴ A/HRC/17/29, para. 66-68.

⁴⁵ *Km. Chitra Ghosh and Another vs. Union of India and Others* (1969) 2 SCC 228.

⁴⁶ See *S. Tengur v. the Minister of Education and Anor.* See also judgment of the Constitutional Court of Moldova of 4 November 2004 - Case 72/1995 published in Romanian Official Gazette, 167/31.07.1995; Judgment of the Constitutional Court of Romania of 18 July 1997 (Case 72/1995) Published in Romanian Official Gazette, 167/31.07.1995.

⁴⁷ *International Association Autism Europe vs. France*, Complaint No. 13/2002. European Committee on Social Rights, 4 November 2003. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC13Merits_en.pdf.

⁴⁸ See <http://www.cncdh.fr/fr/publications/avis-sur-la-scolarisation-des-enfants-handicapes>.

49. Discriminatory practices against Roma with mental disabilities were found to violate the right to education under the European Convention on Human Rights.⁴⁹ The European Court of Human Rights held that Roma children must be integrated into mainstream classes; their right to education was violated by the placement of a Croatian national of Roma origin in Roma-only classes rather than ethnically “mixed classes”.⁵⁰ In another case referring to schools for Roma children only, the Equal Treatment Authority of Hungary concluded that authorities responsible for the local system that segregated students violated the principle of equal treatment.⁵¹ Moreover, adjudication shows how the right to basic education of children living in rural areas can be defended.

50. Jurisprudence based on national legislation can also lead to affirmative action to support the right to education. In South Africa, based on the allegation by the Eastern Cape District School Association that failure by the provincial Government to pay necessary hostel, transport, and boarding subsidies, impaired rural children of the district from attending school, the South African Human Rights Commission found this to be a violation of the rights of affected learners to basic education, and recommended that payments of these subsidies be made.

C. Enforcement of the right to quality education

51. Providing education of quality is a responsibility devolving on all providers of education and its justiciability is crucial for upholding quality and standards of education in face of general deterioration of quality and widespread concern with it. Claims for quality education are reinforced by the 2010 Millennium Review Summit, which expressed renewed commitment of the international community “to provide equitable educational and learning opportunities for all children” and “ensuring quality education and profession through the school system”.⁵²

52. As regards quality imperatives, the State of New York has interpreted the education clause in the constitution to include high quality education, adjudicating that the Government must provide a “sound basic education”⁵³, and a “meaningful high school education”.⁵⁴ The court found that the teaching quality was inadequate, and that the large class sizes in New York City negatively affected student performance.⁵⁵ Though the court considered other factors in holding that the State funding system failed to provide a sound basic education, the issue of teacher quality was clearly seen as justiciable.

53. The right to a quality education carries the obligation for States to ensure that curriculum meets essential objectives of education. In litigation by private colleges and universities in the Philippines, involving a statutorily assigned power to the

⁴⁹ *Horvath and Kiss v. Hungary*, Application no. 11146/11, January 29, 2013, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124>, accessed February 24, 2013.

⁵⁰ *Orsus and Others v. Croatia*, 16 March 2010.

⁵¹ Law No. 23/2007 amending Law No. 26 of 1998 on assuring equal opportunity for disabled people.

⁵² United Nations General Assembly Resolution 65/1 – “Keeping the promise: united to achieve the Millennium Development Goals” (September 2010).

⁵³ Board of Education, *Levittown Union Free Speech District v. Nyquist*, 57 N.Y.S.2d 27, 48 (N.Y. 1982).

⁵⁴ *Campaign for Fiscal Equity, Inc. v. State of New York*, 801 N.E.2d 326, 332 (N.Y. 2003).

⁵⁵ See *Campaign for Fiscal Equity*, 100 N.Y.2d at 912.

Secretary of Education,⁵⁶ the Supreme Court of the Philippines ruled that the Government has good reason (public welfare) to regulate private education, and there was no undue exercise of power by the Secretary of Education in setting of school curricula, calendars, and examination procedures.⁵⁷

D. The rights of minorities, including language rights

54. A large number of cases address the rights of minorities and their language rights. The European Court of Human Rights, for instance, has held that the right to education⁵⁸ did not guarantee the right to education in a particular language, or for the State to subsidize education of a particular type.⁵⁹ However, article 14 read in conjunction with article 2 of Protocol No. 1 was violated because the legislation prevented children from having access to French-language schools in certain areas solely on the basis of their parents' residence.⁶⁰

55. The Supreme Court of Canada has ruled that minority language educational rights under section 23 of the Canadian Charter of Rights and Freedoms, which provides guarantees for French-speaking communities, were considered justiciable.⁶¹ Other rulings by courts in South Africa protect the right to education and language rights.⁶²

E. Girls and the right to education

56. Women have historically been victims of social injustice and educational deprivation. The majority of those who are deprived of education today are girls and women, whereas they are entitled to education as much as boys. In some cases, they are prevented from attending schools by parents who see no value in educating daughters, or by religious extremists threatening them. Violence against women and girls impairs their right to education.

57. The Committee on the Elimination of Discrimination against Women (CEDAW) has called on the States parties "to denounce and punish such acts of violence and to continue to take all necessary action, including the dismantling of patriarchal barriers and entrenched gender stereotypes, to guarantee and to ensure that girls are able to enjoy their basic human right to education in every region of the world."⁶³

⁵⁶ *Philippine Association of Colleges and Universities v. Secretary of Education*, G.R. No. L-5279 (October 31, 1955), available at http://www.lawphil.net/judjuris/juri1955/oct1955/gr_1-5279_1955.html, accessed 3 May 2013.

⁵⁷ *See ibid.*

⁵⁸ Under art. 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Paris, 20.III.1952. European Court of Human Rights.

⁵⁹ *Belgian Linguistic Case (No. 2)*, (1968) 1 EHRR 252.

⁶⁰ *See ibid.*

⁶¹ *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2096/index.do>, accessed February 23, 2013.

⁶² Gauteng Provincial Legislature In re: Gauteng School Education Bill of 1995 (CCT39/95) [1996] ZACC 4; 1996 (4) BCLR 537; 1996 (3) SA 165 (4 April 1996).

⁶³ CEDAW Statement "Protection of Girls' Right to Education" Adopted on 19 October 2012 during the 53rd session, p. 1.

58. This as well as available case law is helpful in safeguarding girls' right to education. For instance, the Supreme Court of Colombia has upheld the pregnant girl's right to education, nullifying any contrary regulation by school,⁶⁴ as has the Botswana Court of Appeals.⁶⁵

F. Financing of education

59. Human rights in general oblige States to provide resources to give effect to them. In his report to the General Assembly, the Special Rapporteur has examined State obligations regarding public financing of basic education and the importance of legal frameworks ensuring domestic financing of such education.⁶⁶

60. Jurisprudence has shown that courts can order governments to conduct cost studies on resources needed to be invested in educational institutes and review government proposals in light of the constitutional requirements.⁶⁷

61. For instance, providing equal funding to all schools was litigated in the Supreme Court of Kentucky.⁶⁸ Addressing a constitutional challenge to the school finance system, the State financing of education was held to be unconstitutional because it did not provide substantially equal funding among all schools in the State.⁶⁹

62. As a result of a series of decisions by the Supreme Court of Indonesia, the Government had to progressively increase the national budget for education in line with the constitutional provisions and the Law on National Education System (2003), which stipulates that the State shall provide 20 per cent of national and regional budgets for education.⁷⁰

G. Regulating private providers of education

63. The Special Rapporteur would like to emphasize the importance of recognizing education as a public good, and of preserving the public interest in education. The recognition of a general public interest in education implies that any entity or individual should be able to claim the right on behalf of those who are

⁶⁴ Case No. T-177814, *Crisanto Arcangel Martinez Martinez y Maria Eglina Suarez Robayo v. Colegio Ciudad de Cali*, 11 November 1998; *See also* Fons Coomans, "Justiciability of the Right to Education", p. 437; "Rhetoric or Rights? When Culture and Religion Bar Girls' Right to Education", *Virginia Journal of International Law*.

⁶⁵ *R. v. Tatu Shabani*, Criminal Sessions Case No. 322 of 2003 (PC) (Unreported); *See* Fons Coomans, "Justiciability of the Right to Education" p. 437; *See also*, "Is the Right to Get Pregnant a Fundamental Right Human Right in Botswana?" (1995) 39 *Journal of African Law* 97, p. 99.

⁶⁶ A/66/269, 5 August 2011.

⁶⁷ Elizabeth Brundige, Sital Kalantry "Sandra Liebenberg, Socio-Economic Rights: Adjudication Under a Transformative Constitution" (book review), *Human Rights Quarterly*, Volume 34, Number 2, May 2012.

⁶⁸ *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989).

⁶⁹ *Ibid.*, p. 216.

⁷⁰ Decision Number 13/PUU-VI/2008 Available at http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_eng_13-PUU-VI-2008%20_Eng_.pdf.

victims of non-fulfilment of State obligations for the right to education.⁷¹ For that purpose, “access to justice for all, including legal aid” should be promoted.⁷²

64. Excluding pupils from schools on only an economic basis violates their enjoyment of the right to education, as the Constitutional Court of Colombia ruled in 1997.⁷³ The Court also ruled that, because of the fundamental character of the right to education, private schools are bound by specific obligations. These concern their disciplinary powers and their capacity to terminate contractual relations with students or their parents.⁷⁴

65. Emerging case law is significant in upholding social interest in education. For instance, a ruling given by the Supreme Court of India in April 2012 upheld the constitutional validity of the provisions in the Right of Children to Free and Compulsory Education Act, 2009, which mandates that 25 per cent of seats in private schools in the country should be reserved for the socially and economically weaker sections of the society.⁷⁵

66. Similarly, a recent decision by the Supreme Court of Nepal issued a verdict demanding that educational authorities devise reform programmes to regulate private schools – regulating fees, prohibiting the sale of unregistered and over-priced textbooks, and limiting the number of private schools gaining accreditation. Exorbitant fees charged by private providers of education are causing greater social and economic disparity between working and middle classes.⁷⁶

IX. Enforcement of the right to education in protective and promotional spirit

67. Protection and promotion are two pillars of the human rights system on which national legal systems should be grounded. The judicial and the quasi-judicial mechanisms are protective as well as promotional in safeguarding and enforcing the right to education. The obligation to promote the right to education means progressive introduction of free education and States must prioritize the provision of free primary education. Steps to be taken by States must be “deliberate, concrete and targeted” towards the full realization of the right to education.⁷⁷

68. In order to promote the equal and effective enjoyment of the right to education, States can adopt affirmative action measures for addressing educational

⁷¹ Legal aid and public interest litigation are crucial when individuals cannot defend their rights: groups enjoying legal status and with a stake in the matter (unions, public service users’ or parents’ associations, etc.) may take such action on behalf of their members.

⁷² Declaration of the High-level Meeting on the Rule of Law at the National and International Levels, adopted by the General Assembly on 24 September 2012, A/RES/67/1 *op. cit.*

⁷³ Sentencia C-560/97, Demanda de inconstitucionalidad contra el artículo 203 (parcial) de la Ley 115 de 1994.

⁷⁴ Colombian Constitutional Court, *Case T-211/95*, May 12, 1995. See also *T-377/95*, *T-145/96*, *T-180/96*, *T-290/96*, *T-667/97* and *T-580/98*. And Colombian Constitutional Court, *Case T-065/93*, February 26, 1993. Cited in “Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative experiences of justiciability”, International Commission of Jurists, Geneva, 2008.

⁷⁵ *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1.

⁷⁶ Open Equal Free <http://www.openequalfree.org/nepali-private-schools-banned-from-raising-fees/19112>.

⁷⁷ General Comment 13 on the right to education (art. 13 of the Covenant), (paras. 43-44).

needs of individuals belonging to disadvantaged or marginalized groups, including those living in poverty. This may be suitable in cases of longstanding or historical and persisting forms of discrimination.⁷⁸ Thus, a recent decision by the Supreme Court of Brazil on 26 April 2012 ruled in favour of racial quotas in universities for black, mixed race (*metis*) and indigenous students.⁷⁹ Article 208 § VII of the Federal Constitution of Brazil relates to the duty of the State for assistance to elementary school students through supplemental programmes of school books, educational supplies, transportation, food and health assistance.

69. States have an obligation to undertake promotional measures, including through the introduction of schemes of financial support for the right to education. Article 13 of the International Covenant on Economic, Social and Cultural Rights provides for “an adequate fellowship system” among its provisions on the right to education. Similarly, UNESCO’s Convention against Discrimination in Education lays down the criteria of “merit or need” with respect to “grant of scholarships or other forms of assistance to pupils”.

70. Promotional measures have special importance for ensuring the right to education of those who remain deprived of it on account of poverty, in particular extreme poverty. The adoption of the Declaration on the Rule of Law by the United Nations General Assembly, already mentioned, is a landmark in upholding the rights – including the right to education – of the poor to seek justice and get their right to education enforced.

71. A protective and promotional approach also underlies the United States state courts, which have dealt extensively with challenges to government funding of public education in the light of local constitutional provisions recognizing the right to education. Issues involved related to State budgetary allocations as being discriminatory by failing either to provide equal funding to different educational districts (equity claims), or to provide sufficient funding to ensure minimum quality standards in education (adequacy claims). The bulk of funding of basic public education coming from municipal or district taxes resulted in a disparity of resources between poor and rich counties or districts.⁸⁰ Unequal distribution of resources made the poorest population of the poorest district bear either a higher cost for the same quality of education, or suffer a worse quality of education. The courts, therefore, ordered the State legislatures to redesign budgetary allocations and to fund public education by redistributing State resources, rather than relying on municipal or district funding, in order to meet equality standards in education.⁸¹

X. Justiciability of the right to education and indicators

72. Courts can better adjudicate claims based on violations of the right to education if litigants formulate clear demands. Human rights indicators and qualitative and quantitative information about education systems can support claims

⁷⁸ The Constitutional Court of South Africa held that “affirmative action in education, which would give preference to previously disadvantaged persons to gain admission (to university), is sanctioned by section 9(2) of the Constitution.” *Motala and Another v. University of Natal*, 1995 (3) BCLR 374 (D)

⁷⁹ Nina Ranieri, “Affaires problématiques dans le domaine du droit à l’éducation au Brésil : les quotas raciaux”, *Analele Universitatii din Bucuresti, Seria Drept*, 2010, III, p. 3/13.

⁸⁰ Cited in “Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative experiences of justiciability”, International Commission of Jurists, Geneva, 2008. p. 58

⁸¹ *Ibid.*

regarding violations of the right to education. These can be a very powerful tool because they broaden understanding of the level and depth of human rights violations.⁸² For claims based on systemic or collective discrimination, indicators can show the inequality among groups, for example, dropout rates between girls and boys, indicating gender discrimination in education.

73. A recent publication by the Office of the High Commissioner for Human Rights has pointed out that courts do use statistical information in adjudicating cases of rights violations.⁸³ Structural, process as well as outcome indicators are useful to determine what type of violation has occurred, and can enhance the justiciability of the right to education by providing evidence to judicial and quasi-judicial bodies of instances where States have violated their obligations in respect of education rights.

XI. Challenges facing justiciability

74. The role of courts and adjudicatory mechanisms in further defining and adjudicating the right to education is clear. However, significant challenges remain, particularly for disadvantaged groups, to bring allegations of violations to court.

A. Awareness of the right

75. It is often difficult or impossible for disadvantaged groups to address claims of non-discrimination, in part because they lack the knowledge and financial resources to pursue legal remedies. Few people in any country are fully aware of the protections they are entitled to under the right to education. Worse still, they are unaware of what mechanisms exist for them to attempt to realize their rights. Without reforms of the education system, and a public awareness campaign, violations are most likely to occur against disadvantaged groups, which may result in their continued marginalization without challenge.

B. Legal barriers

76. Where States have failed to include the right to education in their national legislation, even those who can afford legal advice may not be able to find a lawyer conversant in regional and international legal options and State obligations.

C. Cultural barriers

77. People from disadvantaged groups in particular may be reluctant to take violations of their rights to quasi-judicial or judicial mechanisms, due to poor language skills, fear of reprisals from offenders or State authorities, or due to cultural constraints restricting the right of women to represent themselves in such proceedings.

⁸² For a detailed analysis, see Sital Kalantry, *et al.*, “Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR”, 32 *Human Rights Quarterly*, pp. 253-310 (2010).

⁸³ Human Rights Indicators, A Guide to Measurement and Implementation, 2012, p. 3, available at <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>.

D. Procedural barriers

78. Courts and even adjudicative bodies may at times insist on the formality of their procedures, severely disadvantaging anyone without legal representation. Procedures to bring claims must be simplified for unrepresented claimants, and kept as informal as possible for quasi-judicial institutions. Rules with respect to legal standing to bring a claim should allow not just a child and their parents, but also third parties to bring a claim based on the alleged violation, in order to ensure that cultural constraints, or threats against the victims, do not prevent cases from emerging.

E. Litigation costs and legal assistance

79. Fees to file complaints, however minor, have the effect of deterring claimants. This effect is more pronounced on the poor, who in turn are often those most affected by violations. Quasi-judicial mechanisms should never require payment to bring a claim, and subsidies for court proceedings should be available on a needs-based assessment.

80. The complexity of legal procedures in any court requires legal advice. States seeking to ensure citizens are able to defend their right to education should provide competent legal aid in civil courts, on a needs-tested basis, to ensure this basic human right is defended.

XII. Conclusions and recommendations

81. **International, regional and national jurisprudence has demonstrated that the right to education is a legally enforceable right. In case of its violation, it can be protected and enforced through adjudicative mechanisms. These are invaluable for allowing citizens to address violations of their rights in a fair and impartial manner. Its justiciability should be publicly acknowledged, and reaffirmed by governments in the constitution and domestic legislation.**

82. **Bearing in mind the key importance of the justiciability of the right to education and its enforcement, and with a view to fostering protective as well as promotional role of adjudication mechanisms, the Special Rapporteur would like to offer the following recommendations:**

Legislating the right to education

(a) States must fully assume their obligation to respect, protect and fulfil the right to education. Their first obligation in this regard is to give effect to the right in their domestic legal order, and ensure its effective enforcement in case of violation through national, regional and international judicial and quasi-judicial mechanisms. Individuals as beneficiaries of the right to education, as defined in national legislation and as contained in international law, must be able to have legal recourse against its violations.

(b) The right to education should be provided the broadest and strongest legal protection possible. States with a dualist legal tradition should ensure their constitutions and national legislation are amended to directly provide for the right to education. This is important, as constitutional protections cannot be ignored by courts, quasi-judicial mechanisms or even governments unwilling to address violations of the right.

(c) Domestic legislation should define the rights and responsibilities of all stakeholders for the right to education. At a minimum, such legislation should create the legal framework for primary, secondary, tertiary and vocational education systems. It should also create monitoring and reporting mechanisms, providing indicators and statistics necessary for the right to education to be evaluated and enforced. Reference should also be made to the legal recourse mechanisms and procedures, highlighting the administrative and legal mechanisms that will address alleged violations.

Institutional strengthening

(d) National human rights institutions, tribunals, commissions and ombudspersons provide a crucial point of first instance for many complaints related to the right to education. As such, governments must make every effort to ensure such institutions fully comply with the Paris Principles,⁸⁴ and in particular be made, and be seen to be made, independent from any government authority. They should also be empowered to initiate investigations into violations on their own initiative to allow them to pursue serious allegations raised in the media or elsewhere which are not being brought by the victims themselves. Appointments to courts and quasi-judicial mechanisms should be protected by legislation to protect against arbitrary government interference, or politically motivated dismissals.

Independence of the judiciary and quasi-judicial institutions

(e) A precondition for effective monitoring and review is a legal system that respects the rule of law and the independence of the judiciary as well as national human rights institutions and other quasi-judicial mechanisms. The purpose of adjudicating alleged violations of the right to education is to have a credible, independent body monitoring the legal compliance of State actors in the field of education. When such mechanisms are perceived to be under undue government or private influence, their value is negated, as their judgments may not be respected by the public. By ensuring independence, there will be greater public confidence in their findings, and citizens will have more respect for the laws and actions of governments which pass scrutiny. As such, the independence of adjudicative mechanisms should be guaranteed.

Training legal professionals

(f) The right to education-based litigation can be complex, drawing upon constitutional, domestic and international law. Adjudicating disputes based on the right to education requires specialized training for lawyers and judges, which must be supported by law schools, bar associations and continuing legal education requirements. Particularly where legislation on the right to education is vague or underdeveloped, guidance and training is necessary to assist courts and quasi-judicial mechanisms in enforcing the right.

(g) States must ensure that adequate training is provided on the application and interpretation of the right to education-based laws, including international human rights law, for lawyers, courts and particularly quasi-

⁸⁴ Adopted by the United Nations Human Rights Commission by Resolution 1992/54 of 1992, and by the United Nations General Assembly in its Resolution 48/134 of 1993.

judicial mechanisms. Law societies, civil society organizations and academic institutions can be invaluable partners in this regard.

The importance of civil society

(h) Children and adults who are primary beneficiaries of the right to education are often unaware of their rights. In many cases, parents, while motivated, may lack information or the financial resources to protect their right to education in courts. Civil society and media can play an important role in disseminating information regarding the right to education to parents, teachers and school administrators, and also in identifying and publicizing violations of the right to education.

Preserving social interest in education vis-à-vis private providers of education

(i) Legal recourse to enforce the enjoyment of the right to education involves individual or group claims for remedial measure against government and education authorities. But it also involves claims for remedies against private providers of education, and schools managed by the private sector, as case law in several countries shows. Private providers of education are more resourceful in seeking defence of their position. In litigation against them, governments should intervene as appropriate to defend the right to education and social interest in education, so that education is preserved as a public good and not allowed to become a mere commercial venture.

Public interest litigation and accessing the right to education

(j) Litigation promoting the right to education is in the public interest. Violations of the right to education may be voiced in the media, but they must also be subject to effective adjudication. For this reason, legal standing should be given the broadest possible interpretation, to allow not just affected children, but also their parents and other education stakeholders to bring complaints before judicial and quasi-judicial bodies. Poor and disadvantaged persons may be unwilling to pursue their rights, out of fear of reprisals, lack of financial resources, or unwillingness to challenge State authorities. Quasi-judicial institutions should be empowered to initiate investigations *suo moto*, and third parties, including non-governmental actors, should be able to initiate cases before courts and human rights institutions where the available evidence supports them.

Legal aid

(k) The United Nations Declaration on the Rule of Law, adopted by the General Assembly on 24 September 2012, emphasized that States should “promote access to justice for all, including legal aid”. To facilitate this, individuals or groups who have been denied the right to education and cannot afford to bring litigation should have access to free legal aid to support their claims. While reducing fees for all rights-based claims in courts to a minimum, States should ensure that applications before quasi-judicial mechanisms are free for complainants. Protection of the right to education of the poor should be central to poverty reduction strategies.

Role of parliamentarians

(l) Parliamentarians have an important role to play in fostering democratic perception of the justiciability of the right to education. Their primary role is to promote legislation which implements the right to education

into the domestic legal framework. However, they may also encourage governments to refer alleged legislative deficiencies to courts for advice, they can support and promote national human rights institutions and civil society actors, and they can promote public legal aid for rights-based claims. Perhaps most importantly, they can lend their democratic legitimacy to legal and quasi-legal decisions on the right by promoting government action on recommendations and legal findings. In many cases, a legal decision places a requirement on governments to enact policy and legal changes to protect the rights of citizens. Support of the legislative branch provides democratic strength for these decisions, and publicizes the importance of the right to education among the population.

Educating the public

(m) Knowledge regarding the means by which violations of the right to education can be adjudicated is often possessed least by those who need it most. Disadvantaged and marginalized groups in society lack resources to engage legal assistance, and are often unaware of quasi-legal mechanisms, such as the individual complaint procedure of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

(n) Governments have the primary responsibility to disseminate such information. However, the media and civil society can play an important role in sharing information with disadvantaged groups, and should be engaged and supported where possible. The national education system should also inform students, teachers and parents of their respective rights and obligations, and how violations, when they arise, should be addressed, ranging from parent-teacher interviews and school administrative complaint procedures, to national human rights mechanisms and even international mechanisms where applicable. In particular, low-cost or free mechanisms, including those available through national or regional human rights bodies, UNESCO's complaints and communication procedure, and the Optional Protocol should be made widely known.

Promoting research and studies on the justiciability and collaboration with academic institutions

(o) The research community, particularly universities, may usefully promote the right to education by publishing research on the application of national and international law on national educational practices.

(p) Legal educators, especially law faculties, should promote teaching, research and studies on the right to education, particularly regarding its enforcement and justiciability. These can focus on how the international legal obligations for the right to education as a fundamental right are integrated into constitutions and laws, and how national jurisdictions are endowed with effective enforcement mechanisms for protecting the right to education. The intellectual community can play an important role in promoting better understanding of substantive as well as procedural matters and avenues available for safeguarding the right to education. Collaboration between academic institutions and civil society organizations can be very useful in this respect.

83. The application of the above recommendations is aimed at strengthening the laws, institutions and procedures surrounding the justiciability of the right to education. However, it must be recognized that all such measures are for naught if the State refuses to implement the findings and recommendations of courts or quasi-

judicial mechanisms. A nation's development flows from the initial investment not just in a comprehensive education system, but also in the mechanisms and procedures necessary to monitor and safeguard the right to education which is not only a human right in itself but also essential for the exercise of all other human rights.
