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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*

The promotion of equality of opportunity in education

Summary

This report is submitted in accordance with Human Rights Council resolution 8/4 and constitutes the first report of Kishore Singh since his appointment as Special Rapporteur on the right to education. It focuses on the promotion of equality of opportunity in education. The report also provides an overview of additional concerns that the Special Rapporteur intends to study in the course of his mandate.

Ensuring equality of opportunity in education is an overarching principle that is reflected in core human rights treaties. States have the duty to adopt measures to eradicate discrimination and ensure equal access for all to education. The promotion of equality of opportunity in education both in law and in fact is an ongoing challenge for all States, and one that requires not only the elimination of discriminatory practices, but also the adoption of temporary special measures to bring about equality in fact with regard to education. The report first details core human rights standards provisions which establish the obligation to promote equal opportunities in education. It subsequently describes different sources of inequalities and different types of initiatives to address them. It concludes by formulating recommendations based on human rights standards.

* This document is being submitted late in order to include up-to-date information.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 8/4 on the right to education. The Council, in its resolution, calls on the Special Rapporteur to gather, review and exchange information on obstacles to the enjoyment of the right to education and formulate recommendations on measures to promote and protect it. It also calls on the Special Rapporteur to make recommendations contributing to the realization of the Millennium Development Goals (particularly goals 2 and 3) as well as the Education for All goals, to integrate a gender perspective in his work, and to review the interdependence and interrelatedness of the right to education with other human rights. The Special Rapporteur has been requested to report annually to the Human Rights Council and the General Assembly.

2. This is the first thematic report presented by the Special Rapporteur, Kishore Singh, who took up his mandate in August 2010. The first section of the report addresses emerging concerns that the Special Rapporteur intends to examine during his three-year term. The other sections focus on the promotion of equality of opportunity in education: section III analyzes the importance of equality of opportunity in education; section IV details international human rights standards and norms establishing the duty to ensure equality of opportunity in education as well as important political commitments relating to this aim; section V examines national legal frameworks; section VI describes sources of inequalities and indicates measures usually adopted to address them; and section VII addresses the enforcement of laws protecting equal opportunity. Finally, section VIII of the report proposes recommendations to strengthen equality of opportunity in education.

3. During the reporting period, the Special Rapporteur engaged in informal consultations with State representatives, international organizations and non-governmental organizations in order to identify priority themes to be examined and plan his main activities. In particular, the Special Rapporteur attaches importance to maintaining close cooperation with the United Nations Children's Fund (UNICEF) as well as the United Nations Educational, Scientific and Cultural Organization (UNESCO), since both play a leading role in the field of education and are essential partners for the dissemination of the work developed by the mandate. The Special Rapporteur has also initiated the process of cooperation with various civil society organizations working on matters relevant to his mandate. Through these various informal consultations, he gathered information used in his analysis of measures promoting equality of opportunity in education.

4. From August 2010 to March 2011, the Rapporteur participated in a number of public events concerning the right to education. In September 2010, he participated in the UNESCO Seminar on "Innovative Financing for Education" and in side events at the Millennium Development Goals Review Summit in New York focusing on the central contribution of education and the Goals. On both occasions, he emphasized the importance of legal instruments to ensure financial support to education. On 25 October, he presented the report of his predecessor to the General Assembly, and also outlined key priority themes that he intends to examine. In November 2010, the Special Rapporteur participated in the Conference of Ministers of Education of French-speaking Countries (CONFEMEN) held in Dakar, which addressed the theme of quality in education. In December 2010, he was invited by the University of São Paulo (Brazil) on the occasion of the human rights prize award ceremony, where he interacted with experts on human rights and education. During the same month, he participated in activities commemorating the 50th anniversary of UNESCO's Convention against Discrimination in Education in Paris.

5. From 8 to 15 January 2011, the Special Rapporteur undertook his first country mission to Senegal (a separate report is submitted in this regard). On 1 March 2011 in New

York, the Rapporteur participated in a panel discussion entitled “Tackling Violence: securing quality education for women and girls”, organized on the occasion of the meeting of the Commission on the Status of Women. On 3 and 4 March 2011, he participated in the symposium of UNESCO Chairs on human rights, bioethics, peace democracy and tolerance (University of Bergamo, Italy). He also participated in a number of meetings on the Education for All (EFA) process in Paris and, from 22 to 24 March 2011, he participated in the 10th Meeting of the High-level Group on EFA in Jomtien, Thailand.

II. Main areas of concern

6. The centrality of education in human development is clear. The right to education as an internationally recognized right is all the more important as it is not only a human right in itself, but also essential for the exercise of other rights. While the international community is committed to achieving the right to basic education for all, the gap between commitment and reality remains significant and, if concrete and sustainable steps are not taken, this can easily widen. Understanding and removing obstacles that impede the enjoyment of all to the right to education are urgent challenges for the entire international community.

7. Since its establishment by the Commission on Human Rights in 1998, the mandate of the Special Rapporteur on the right to education has sought to identify obstacles to the right to education, and has provided conceptual and practical guidance on steps to be taken to ensure its realization. The Special Rapporteur intends to build on this work, while benefiting from the knowledge and experiences of those who are directly involved in the promotion of education at global, regional and local levels. The themes he intends to examine in the course of his mandate are highlighted below. While implementing these priorities, the Special Rapporteur also intends to give particular attention to the situation on the African continent, given the acute challenges faced by the region.

(a) Update on previous report on education in emergency situations: Despite efforts and international pledges to ensure full enjoyment of the right to education in areas affected by conflict and natural disasters, these situations are still central factors in the exclusion of children from schools, and in the deterioration of education. The General Assembly requested¹ the Special Rapporteur to include in his report to the sixty-sixth session an update to the report² on the right to education in emergencies

(b) Financing education: The share of resources allocated to ensure the provision of education is frequently unstable and insufficient, deeply affecting the realization of this right. The Special Rapporteur will pay attention to legal and institutional mechanisms that ensure the provision of adequate resources for education. He also intends to look at innovative forms of financing education and to assess how the human rights normative framework may guide State action in these areas.

(c) Justiciability of the right to education: The protection of the right to education requires judicial and quasi-judicial mechanisms that ensure rights holders’ capacity to claim their rights at national, regional and global levels. The Special Rapporteur intends to examine the jurisprudence and enforcement mechanisms for protecting the right to education.

(d) Establishing minimum quality standards for education: The impact of recent expansion of enrolment in schools in many countries is seriously compromised by the

¹ See resolution 64/290.

² A/HRC/8/10.

deterioration in the quality of education that schools currently provide. The Special Rapporteur intends to pay attention to the development and implementation of norms for quality education - both for public and private schools - with a focus on improving the conditions of the teaching profession and learning outcomes.

(e) **Regulating private education:** Private, religious or community schools comprise an important proportion of education systems around the world. With the limited capacity of public systems in some countries, private schools become the dominant source of education. The Special Rapporteur intends to examine standards and mechanisms that ensure all non-public educational entities comply with standards of human rights law and the objectives of human rights generally.

(f) **Management of schools and human rights standards:** The realization of the right to education involves the proper discharge of duties by public servants and private providers. The Special Rapporteur will study the main obstacles to the respect of human rights in the functioning and management of schools, and the standards and mechanisms that ensure that educational entities comply with human rights principles.

(g) **Freedom from violence and the right to education:** If schools play a central role in the prevention of violence and the promotion of a culture of peace, it is also true that violence can often take place in the school context with serious consequences for the enjoyment of the right to education. The Rapporteur intends to address the emerging concern of violence in schools in close collaboration with the Special Representative of the Secretary-General on violence against children.

III. Equality of opportunity in education – an overarching principle

8. Despite the almost universal recognition of State obligations to provide universal primary education and fair access to secondary and higher education through all appropriate means, education is not fully accessible for many people around the world. The Special Rapporteur decided to dedicate his first thematic report to the promotion of equality of opportunity in education, considering its universal importance for the realization of the right to education. Developing countries face particularly acute challenges with regard to great social and economic inequalities, but developed countries also encounter challenges when attempting to ensure equal educational opportunities for all. Concerns relating to equality of opportunity in education are understood as relating both to guaranteeing equal opportunities in access to different levels of education as established by human rights norms, as well as equal opportunities to evolve within education systems.

9. The right to education is set out in article 26 of the Universal Declaration of Human Rights, and is comprehensively elaborated in article 13 of the International Covenant on Economic, Social and Cultural Rights and in articles 28 and 29 of the Convention on the Rights of the Child. As highlighted below, a number of other human rights treaties also expand on the right to education.³

10. Free and compulsory primary education is an inalienable right of every child, and a core obligation of States under international human rights treaties. The Education for All

³ The right to education is also guaranteed by article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, articles 10, 11 and 13 of the Convention on the Elimination Of All Forms Of Discrimination against Women, articles 30, 43 and 45 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and article 24 of the Convention on the Rights of Persons with Disabilities.

process has furthered the global recognition of the duty to ensure every child receives free primary and basic education without discrimination or exclusion.

11. Beyond primary education, the right to education also extends to higher education; its enjoyment is subject to the criteria of merit or capacity, while respecting the fundamental principles of non-discrimination and equality. The obligations assumed by States under human rights treaties range from ensuring universal access to primary education to progressive access to secondary education and higher education on the basis of capacity. The right to education is not only recognized as an entitlement, but as a source of empowerment.

12. Efforts to universalize access to education over the last decades are underpinned by repeated political commitments. The EFA and Millennium Development Goals campaigns inspired expansions of primary education systems and created more education opportunities for girls. However, progress is fragile and uneven across regions and among population groups. Unprecedented disparities in access and quality emerge as the demand for education grows and education systems expand. Significant gaps remain even in the coverage of education as there are about 67 million children of primary school age who are out of school; while a larger number of adolescents (another 71 million), remain deprived of basic post-primary education.⁴

13. The experience of human rights monitoring mechanisms has identified many forms of discrimination and inequality that affect the enjoyment of the right to education. These range from clear legal inequalities in status and entitlements to policies that neglect the specific conditions of certain groups. The work of human rights treaty bodies over the last years has indicated areas of action at national and international levels to ensure equality of opportunity in education. Similarly, recommendations to States undergoing the universal periodic review process also address aspects such as guaranteeing the right to education to marginalized and under privileged groups, combating poverty, ensuring the right to education for all, removing gender-based imbalances in education, strengthening efforts to expand opportunities for (basic) education, etc.⁵

14. Challenges faced in achieving equality of opportunity in education were also described in reports submitted by States regarding implementation of the UNESCO Convention against Discrimination in Education⁶ – even in countries where educational opportunities are in general widely available, inequalities remain in the ability of all social groups to fully avail themselves of such opportunities. Social and cultural barriers and unequal opportunities manifested in access to quality education remain one of the most serious difficulties of national educational policies. Closing the attainment gap among children from different ethnic groups and differing socio-economic backgrounds appears as a common challenge in these reports.

15. The need to guarantee “equal access of all levels of society to learning opportunities so as to implement the principles of inclusive education” was underlined in the conclusions and recommendations of the forty-eighth session of the International Conference on Education, in 2008. Considering that inclusive education is key to building inclusive societies, the Conference recommended that States “address social inequity and poverty

⁴ UNESCO, *EFA Global Monitoring Report 2010: Reaching the Marginalized*, Paris.

⁵ See Issues-Right to Education, UPR Info site, <http://www.upr-info.org>.

⁶ UNESCO, “Results of the Seventh Consultation of Member States on the measures taken for implementation of UNESCO’s Convention and the Recommendation (1960)” (Document 177 EX/36).

levels as priorities as these are major obstacles to the implementation of inclusive education policies and strategies.”⁷

16. Recent EFA Global Monitoring Reports highlight that the enjoyment of the right to education is severely limited by the phenomena of marginalization and exclusion. In 2009, the report stated that “progress towards the EFA goals is being undermined by a failure of governments to tackle persistent inequalities” based on income, gender, location and ethnicity, language etc.⁸ In the subsequent year, the report focused on the issue of marginalization, and like its predecessor, indicated that “Governments are failing to address the root causes of marginalization in education”⁹ and showed how mutually reinforcing layers of disadvantage create extreme and persistent deprivation that undermine equal opportunities in education.¹⁰

17. A recent progress review of the Millennium Development Goals by UNICEF¹¹ focuses on the question of equity. The importance of equity in education should be recognized not only as regards the goals of universalizing basic education, but also with respect to “access to higher education for members of some special target groups, such as indigenous peoples, cultural and linguistic minorities, disadvantaged groups, peoples living under occupation and those who suffer from disabilities.”¹² While equity in education is a worthy goal in itself, equity-enhancing policies and practices, particularly education as investment in human capital, can, in the long run, boost economic growth and help reduce poverty.¹³

18. Ensuring equal opportunities in education is also a key concern at the regional level. The Conference of Ministers of Education of the African Union has continued to reiterate the need to increase access to education, improve quality and relevance, and ensure equity. This is the underlying thrust of the Second Decade of Education for Africa (2006-2015), and the Framework for Action, adopted by African Ministers of Education.

19. Reports indicate that the EFA agenda is falling behind, and the prospects of achieving Millennium Development Goals 2 and 3 on universal primary education and gender equality, respectively, are also bleak. The target of universal primary education is unlikely to be achieved by 2015. Inequalities, stigmatization and discrimination linked to economic status, gender, ethnicity, language, location and disability are also holding back progress. Social and economic status and sex appear as major factors of marginalization in education, with girls and those living in poverty being the most affected. “Poverty and gender inequalities magnify other disadvantages, and close doors to education opportunity for millions of children.”¹⁴

20. In the face of all these challenges, it is important to examine State obligations under international human rights law relating to equality of opportunity in education, underlining

⁷ International Bureau of Education, “Inclusive Education: the Way of the Future: Conclusions and Recommendations of the 48th session of the International Conference on Education,” 28 November 2008 (ED/BIE/CONFINTED 48/5).

⁸ UNESCO, *EFA Global Monitoring Report 2009: Overcoming Inequality: Why Governance matters*, Summary, pp. 4, 7 and 39).

⁹ UNESCO, *EFA Global Monitoring Report 2010*, Summary, p. 22. The Report highlights the data on exclusion in 80 countries.

¹⁰ UNESCO, *EFA Global Monitoring Report 2010*, p. 137.

¹¹ UNICEF, *Progress for Children: Achieving the MDGs with Equity*, September 2010.

¹² See UNESCO, “World Declaration on Higher Education in the Twenty-first Century: Vision and Action,” 9 October 1998, Article 3: Equity of Access.

¹³ See also World Bank, *World Development Report 2006: Equity and Development*.

¹⁴ UNESCO, *EFA Global Monitoring Report 2010*, Summary, p. 22.

the need for their fulfillment. As described below, equality and non-discrimination are fundamental human rights principles or obligations, and concerns regarding equality of opportunity in education are common to almost all international human rights treaties. Given the centrality of the principle for States, international human rights mechanisms have developed important guidance with regard to the establishment of legal and policy instruments to ensuring equal opportunities in education.

IV. Human rights standards and political commitments regarding equality of opportunity in education

21. Promoting and protecting the right to education and promoting equality and non-discrimination are clearly interrelated duties in accordance with human rights norms. The decisions of several human rights bodies recognize the central role of education in ensuring the enjoyment of an equal protection of other human rights.

A. International human rights treaties

22. Equality of opportunity in education permeates most human rights treaties. As mentioned above, article 13 of the International Convention on Economic, Social and Cultural Rights clearly establishes every person's right to free primary education, and State responsibilities to achieve the progressive realization of this right with respect to secondary education, and for higher education, on the basis of capacity. The Convention further indicates that fundamental education should be provided as far as possible for those who have not received or completed the whole period of their primary education.

23. The Committee on Economic, Social and Cultural Rights details the core content and the obligations related to the right to education in its general comment No. 13¹⁵. It indicates that States have the principal responsibility for the direct provision of education, with core obligations clearly related to the principle of equality of opportunity, to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis, and to provide primary education for all in accordance with article 13 (2) (a).

24. General comment No. 13 dedicates one section to the obligations related to the principles of non-discrimination and equality. The prohibition against discrimination "applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination". It further stipulates that "the adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved". It also indicates that "sharp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant." Further, "States parties must closely monitor education –including all relevant policies, institutions, programmes, spending patterns and other practices – so as to identify and take measures to redress any de facto discrimination."¹⁶

25. Article 28 of the Convention on the Rights of the Child enshrines the right of every child to education on the basis of equal opportunity. The Committee on the Rights of the

¹⁵ CESCR, general comment No. 13 (1999).

¹⁶ *Ibid.*, paras. 34 and 37.

Child has recognized the need for identifying and giving priority to marginalized and disadvantaged groups of children, while not neglecting or diluting in any way the obligations which States parties have accepted under the Convention.¹⁷

26. General comment No. 1 of the Committee on the Rights of the Child highlights the fact that while equality of opportunity in education “is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) [concerning the aims of education] can have a similar effect.” The general comment goes on to outline how discrimination based on gender, disability, health status and race can hamper children’s equal access to education¹⁸ Furthermore, other general comments elaborated by the Committee address the need for temporary special measures to ensure equal access to education for indigenous children and equality of opportunity in education for children with disabilities.¹⁹

27. Other treaty bodies have also stressed obligations connected to ensuring equality of opportunity in education. Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination protects the right to education and training for everyone without discrimination. In its general recommendations concerning specific groups, particularly in relation to discrimination against Roma and discrimination based on descent, the Committee on the Elimination of Racial Discrimination addressed, *inter alia*, “measures in the field of education.” These elements especially address issues of access to education, quality of education, drop-out rates, and special measures to ensure inclusion of communities which face discrimination.²⁰ The general recommendation on discrimination against non-citizens also places particular emphasis on access to and quality of education for non-citizens.²¹

28. Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women contains detailed provisions related to equality of opportunity in education and the equal rights of women and men in the field of education.” Furthermore, general recommendation No. 25, elaborated by the Committee on the Elimination of Discrimination against Women, which oversees the implementation of this treaty, explains that “the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results.”²² In this regard, the Committee further specified that temporary special measures are necessary, not as an exception to the prohibition of discrimination, but as a central part of a strategy to achieve substantive or *de facto* equality between women and men.²³ The Committee has also specifically referred to the equal rights of girls in the area of basic education in its general recommendation No. 28 on the core obligations of States parties.²⁴

29. Concerning equality between men and women, the Human Rights Committee has also interpreted articles 3 and 24 of the International Covenant on Civil and Political Rights on equality between men and women, and on protection of children, respectively, as

¹⁷ CRC, day of general discussion on “Resources for the rights of the child - Responsibility of States”, Recommendations, p. 11.

¹⁸ CRC, general comment No. 1 (2001), paras. 10 and 11.

¹⁹ CRC, general comment No. 11 (2009), para. 60; general comment No. 9 (2006), para. 62.

²⁰ CERD, general recommendation No. 27 (2000); general recommendation No. 29 (2002).

²¹ CERD, general recommendation No. 30 (2004).

²² CEDAW, general recommendation No. 25 (2004).

²³ *Ibid.*, para. 18.

²⁴ CEDAW, general recommendation No. 28 (2010).

requiring States to provide information on “measures taken to ensure that girls are treated equally to boys in education.”²⁵

30. Article 3 of the Convention on the Rights of Persons with Disabilities specifically mentions equality of opportunity as a general provision of the treaty, while article 24 contains detailed provisions concerning the right of persons with disabilities to education “without discrimination and on the basis of equal opportunity.” Of particular importance is article 24.2 (b) which stipulates that States shall ensure that “persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others”

31. The International Convention on the Rights of All Migrant Workers and Members of Their Families also protects the right to education on a basis of equality. Specifically, article 30 states that “each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned.” Articles 43 and 45 further emphasize equality of treatment for migrant workers and members of their families in relation to access to educational institutions, as well as vocational training.

32. Thus, equality of opportunity in education is clearly an overarching principle in most human rights treaties. It enjoins on the States parties to these treaties international obligations of a permanent nature for promoting and protecting the right to education, without discrimination or exclusion, in a way that it is fully respectful of equality of opportunity in education.

B. UNESCO Convention against Discrimination in Education

33. The UNESCO Convention against Discrimination in Education is a key instrument addressing the fundamental principles of non-discrimination and equality of opportunity in education. Adopted in 1960 and in force since 1962, it seeks not only to eliminate discrimination in education but also to adopt positive measures to promote equality of opportunity and treatment. Article 4 of the Convention specifically lays down the obligations of the States parties to the Convention to “undertake [...] to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education”.

34. The Committee on Economic, Social and Cultural Rights has interpreted articles 2.2 and 3 of the International Convention on Economic, Social and Cultural Rights “in the light of the UNESCO Convention against Discrimination in Education (...).”²⁶ A statement of the joint expert group of UNESCO and the Committee highlights that in overcoming inequalities and eliminating disparities in education, emphasis should be placed on the inclusive dimensions of the right to education, which does not admit of any discrimination or exclusion.²⁷

²⁵ Human Rights Committee, general comment No. 28 (2000), para. 28.

²⁶ CESCR, general comment No. 13 (1999).

²⁷ See UNESCO/Economic and Social Council, “Inclusive dimensions of the right to education: Normative bases,” Concept paper, Eighth and ninth meetings of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education, 2008.

C. Global political commitments

35. The global political commitments made by the international community at the 2000 World Education Forum towards achieving the goals of EFA are well known. EFA is the most relevant international initiative for promoting equality of opportunity in education; its goals correspond to various provisions regarding the right to education as enshrined in international human rights treaties.

36. Reflecting the commitments adopted by world leaders in 2000 and set to be achieved by 2015, the Millennium Development Goals are amongst the most significant political commitments in recent history to tackle the most pressing challenges of our world, including serious concerns relating to education. Goal 2 calls on States to ensure that all children complete primary education, while Goal 3 calls on States to eliminate disparities between girls and boys in primary as well as secondary education. Progress towards these goals requires fully embracing equality of opportunity in education in the formulation, implementation and evaluation of education policies.

37. The challenge of ensuring equality in education is also a matter of specific concern in the Durban Declaration and the Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), in which a key role was assigned to the right to education, in particular basic education. States are urged “to ensure equal access to education for all in law and in practice, and to refrain from any legal or any other measures leading to imposed racial segregation in any form in access to schooling.”²⁸ The Programme of Action amply demonstrates the need for revitalizing action for non-discrimination and equality of opportunity in the field of education. It urges States to ensure access to education for all without discrimination, to eliminate barriers to accessing education, to ensure education of good quality, to monitor the educational performance of children from disadvantaged groups, and to devote resources to addressing inequalities in educational outcomes for children.²⁹

38. As regards equal opportunities for men and women, the Beijing Platform for Action, adopted at the Fourth World Conference for Women in 1995, includes women and education as one of the Platform’s 12 critical areas of concern, *inter alia*, recognizing that “equality of access to and attainment of educational qualifications is necessary if more women are to become agents of change.”³⁰ The Platform for Action calls on Governments to, *inter alia*, “advance the goal of equal access to education by taking measures to eliminate discrimination in education at all levels,” and to “create a gender-sensitive educational system in order to ensure equal educational and training opportunities.”³¹

V. National legal framework

39. Pursuant to the legal obligations assumed by States under international human rights treaties, and following up on the political commitments they have undertaken, it is incumbent upon them to apply the principle of equality of opportunity in education through their national legal system. The place accorded to this principle in constitutions and other national legislation bears evidence to the way States incorporate their obligations into domestic law.

²⁸ Durban Programme of Action (A/CONF.189/12), paras. 122 and 123.

²⁹ *Ibid.*, paras. 121-123.

³⁰ Beijing Declaration and Platform for Action, September 1995 (A/CONF.177/20 and Add.1).

³¹ *Ibid.*, para. 80.

40. Equality of opportunity and equal access to education are guaranteed in the constitutions of many countries in all regions. Constitutional provisions are noteworthy in several countries in Africa,³² Asia,³³ Europe³⁴ and Latin America.³⁵

41. Constitutional law in various countries reflects concepts such as equal and adequate opportunities, or equal and reasonable opportunities, equitable public education, equal access to education, or equal conditions and opportunities, equal right to receive education, among others. This provides fertile grounds for action at the national level in the form of legislation, but also policies and programmes that ensure better opportunities for all.

42. The need to “identify steps to strengthen and harmonize, where necessary, the legislative framework within which the right to education is guaranteed” was recognized at various stages of the EFA process.³⁶ As a consequence, a large number of countries have also developed or modernized their national legislation. Such laws establish the right to basic education, and include provisions on non-discrimination and equality of opportunity in education. This further demonstrates the importance accorded to the equality of opportunity in education in national legal systems.³⁷ Moreover, in some countries, the regulatory frameworks for private educational institutions have also been developed as part of national legal frameworks protecting equal opportunities in education.³⁸

43. Additionally, other countries have enacted laws specifically addressing the principles of non-discrimination and equality of opportunity in education. Examples include the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) in South Africa; the Law on Equality of Rights and Opportunities, Participation and Citizenship of Persons with Disabilities (2005) in France; the Prohibition of Discrimination Act (2005) in Norway, which establishes the function of Ombudsman on Equality and Anti-

³² Provisions for: “equal and adequate opportunities” are present in the constitutions of Nigeria and Tanzania; “equal access to educational opportunities and facilities” in Liberia; “equal access to education” in Algeria and in Ivory Coast; and “equal opportunity to attain the highest educational standards” in Uganda.

³³ Provisions for: “promoting with special care the educational and economic interests of the weaker sections of the people” are contained in the constitution of India; “making quality education accessible to all” in the Philippines; “equal right to receive the fundamental education” in Thailand.

³⁴ Provisions for: “equal opportunity to receive educational services in accordance with their ability and special needs as well as the opportunity to develop themselves without being prevented by economic hardship” are in the constitution of Finland; “equality of opportunity in access to and success in schools” in Portugal; “equal access to education (instruction)” in France; and “the right to education for all” in Spain.

³⁵ Provisions for: “equal educational opportunities and access to education to all citizens to attain the highest level of education in accordance with their capacities” can be found in the constitution of Brazil; “equal opportunity to access higher education” in Ecuador; “equal opportunity to all citizens for schooling” in Suriname; “equal and free access to education for all Nicaraguans” in Nicaragua; “the right to learn and equal access and opportunities” in Paraguay; and “education with equal conditions and opportunities” in Venezuela.

³⁶ UNESCO, Seventh Meeting of the High-Level Group on Education for All, Dakar, Senegal, December 2007, Communiqué (ED/EFA/2007/ME/32).

³⁷ For example, Law on Education, Lithuania (2003, revised in 2006); Education Law, Liberia (2002); Education Law, Senegal (2004); Law on National Education System, Indonesia (2003); Compulsory Free Universal Basic Education Act, Nigeria (2004); Education Law, Brazil (1996, as amended in 2006); Education Law, China (1995); Right of Children to Free and Compulsory Education Act, India (2009); General Law on Education, Mexico (2003); National Education Law, Argentina (2006); Education Law, Cambodia (2007); Basic Education Law (1999), Thailand; Education Law, Afghanistan (2008); Technical and Vocational Education and Entrepreneurship Training (TVET) Act, Zambia (2005); Education Law, Benin (2003); Education (amendment) Act, Mauritius (2000).

³⁸ See UNESCO, *Implementing the Right to Education: A compendium of practical examples*, 2010.

Discrimination; the General Equality of Treatment Act (2006) in Germany, which aims “to prevent or remove disadvantages due to race or ethnic background, gender, religion or philosophy, disability, age or sexual orientation” in employment and vocational training; the Equality Act (2006) in the United Kingdom which establishes a Commission for Equality and Human Rights and requires public authorities “to take proactive steps in promoting equality of opportunity between men and women”.

44. In order for legal instruments to be effective, they must offer the possibility of addressing the multiple dimensions of inequality in education, as well as the specific situation of different groups commonly excluded from the education system. Their enforcement requires a reliable and constantly updated data collection system that captures the various situations of unequal opportunities in education. In some cases, legal instruments expressly address the education of particularly vulnerable groups, such as indigenous groups.³⁹

VI. Promoting equality of opportunity in education

45. Addressing inequalities in education requires a clear understanding of its multiple and intersecting sources. Given the broad nature of sources of inequalities in education, it would be impossible to provide an exhaustive description, or analysis, of measures adopted with the declared aim of promoting equal opportunities in education. Moreover, measuring marginalization in education is inherently difficult. This section provides only an overview of key factors affecting equality of opportunity in education as well as some initiatives designed to counter barriers to achieving de facto equality of opportunity in education.

46. Poverty is one of the main obstacles to realizing the right to education. Similarly, education is recognized as a powerful lever to pull children out of poverty and empower them. Nationally and internationally agreed targets for poverty reduction will be missed, and inequalities among countries and within societies will widen, if progress towards Education for All is not accelerated. The magnitude of the challenge in promoting equal opportunities in education can be gauged by the fact that the number of people living in extreme poverty and hunger surpasses one billion.

47. Girls and women constitute the majority of those who remain deprived of education. The Committee on the Elimination of Discrimination against Women has repeatedly expressed concern in its concluding observations at the low level of education of women and girls, and the prevailing obstacles to their access to education at all levels, especially the secondary and tertiary levels. The Special Rapporteur is of the view that the human rights framework is pivotal in the struggle against multiple forms of discrimination which women and girls in vulnerable and marginalized situations suffer. Educating women and girls should, a priori, be viewed as a human rights imperative, rather than undertaken solely because of the potential benefits to one’s children or to society.

48. Belonging to a minority group is also a factor for marginalization in education. Indeed, education opportunities of Afro-descendants in the Americas or Roma groups in Europe are the subject of important debates. Ensuring access to basic education on an equitable basis for children of ethnic and linguistic minorities is an obligation⁴⁰ and also

³⁹ For example, the Indigenous Education Act (2000), Australia, provides for equitable and appropriate educational outcomes for indigenous people, and their equal access to education.

⁴⁰ The rights of national minorities to carry on their own educational activities, while remaining respectful of “understanding the culture and language of the community as a whole” are provided in article 5.1(c) of the Convention against Discrimination in Education.

one of the EFA goals. In this respect, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides a basis for action. The 2008 United Nations Forum on Minority Issues was devoted to the right to education, and produced recommendations which apply to the situations of minorities globally with respect to the right to education.⁴¹ These are highly relevant to equality of opportunity in education for other disadvantaged groups. Indigenous groups also face important challenges when accessing education. In this regard, apart from core international human rights treaties, the United Nations Declaration on the Rights of Indigenous Peoples⁴² provides a normative base for action.

49. Other groups vulnerable to limited opportunities in education and requiring targeted support include persons with disabilities, children living in the street or without parental care, migrant workers and their families, refugees, internally displaced persons and those affected by natural disasters or conflict. Moreover, nomad populations, including pastoral populations who remain deprived of equal opportunities in education, deserve special attention, especially in Africa.

50. In all such circumstances, different types of barriers emerge as the central factors in the limited enjoyment of the right to education of these various population groups. Understanding these different obstacles and their inter-relationship is a permanent challenge for developing effective education policies to ensure non-discrimination and equal opportunities in education.

51. Even if international human rights standards do not provide specific policy prescriptions with regard to the vast possibilities of initiatives required to ensure equal opportunities in education, they establish a firm foundation for implementing and evaluating policy initiatives at the national level. Given the broad nature of sources of inequalities in education, it would be impossible to provide an exhaustive description or analysis of measures adopted with the declared aim of promoting equal opportunities in education.

52. An illustrative overview of key factors affecting equality of opportunity in education, as well as some initiatives designed to counter barriers to achieving de facto equality of opportunity in education are provided below.

A. Physical barriers

53. Inadequate public transportation and inadequate school facilities can be determinant factors in excluding students from the education system. Persons living in poverty are particularly affected; the concentration of communities living in poverty in remote areas or in areas that are poorly served by transportation is a key factor limiting their access to education institutions. This is particularly acute in rural areas where schools are not present.⁴³ These obstacles are commonly addressed through support for transportation of students, and by bringing schools closer to communities, often through improvements in transport infrastructure and the construction and expansion of education establishments in poorly served locations. Strategies also include the establishment of boarding schools.

54. Threat of violence against girls on the way to and from schools limits their education opportunities: household surveys in many countries identify distance as a major factor in

⁴¹ See Recommendations of the Forum on Minority Issues (A/HRC/10/11/Add.1).

⁴² Adopted by General Assembly resolution 61/295.

⁴³ UNESCO, *EFA Global Monitoring Report 2010*, p. 192.

parents' decisions to keep daughters out of school, and concerns over security figure prominently.⁴⁴

55. The lack of support for transportation and inadequate facilities can also be a determinant factor in the exclusion of students with disabilities from education systems. Inadequate public transportation and poor infrastructure in rural and urban areas still impede access to schools for persons with mobility restrictions and those who have impaired vision. Within schools, inadequately built classrooms and toilets can also restrict their use by students with disabilities⁴⁵.

B. Financial barriers

56. Surveys in various countries point to financial constraints – direct and indirect costs of schooling – as a central reason for children being out of school or dropping out.⁴⁶ Tuition fees appear as the most obvious financial obstacle, and the accumulation of indirect costs, such as those related to transportation, school materials, uniform and other indirect contributions, undermine access to education opportunities. Besides, disparities in the provisions for public education contribute to unequal opportunities for many students receiving education in poorly resourced schools, as compared to well-resourced ones.

57. Even if primary or basic education were to be accessible free of cost, such access cannot be universalized effectively unless financial support in the form of grants and bursaries is provided to the children who are excluded, in particular those who are victims of extreme poverty.⁴⁷ Furthermore, targeting elimination of child labour in order to safeguard mandatory education is particularly relevant.

58. While significant efforts have been undertaken to improve access to free primary schooling, less efforts have been made in relation to higher levels of education. Students with limited resources therefore have very limited prospects to progress to secondary education and beyond. States have the responsibility to alleviate this financial burden and ensure that secondary education is generally available and accessible to all, as well as ensure equal access to higher education on the basis of merit or capacity⁴⁸.

59. A number of in-kind incentives, such as school meal programmes, especially in poverty-stricken areas, are implemented in order to ensure that income deprivation or poverty in general does not result in exclusion from schools. In broad terms, State investment in social-protection policies and its contribution to alleviating the burden on families and child poverty plays an important role in the promotion of education.

60. As poverty and social exclusion remain the major barriers to achieving the EFA, the use of direct financial support (through fellowship schemes, conditional cash transfers, or

⁴⁴ Ibid., p. 177. Furthermore, the lack of separate toilets for girls and boys in schools increases the risk of abuse and ultimately may contribute to the exclusion of girls from schools.

⁴⁵ See report of the Special Rapporteur on “The right to education of persons with disabilities”. (A/HRC/4/29), para. 14.

⁴⁶ UNESCO, *EFA Global Monitoring Report 2010*, p. 166.

⁴⁷ UNESCO, Report on the Seventh Meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education, (179 EX/24).

⁴⁸ Subject to progressive realization as provided for in ICESCR, Art.13 (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”; and (c) “Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education”.

social assistance support for children of school age, for example) can be effective in enlarging access to education.

61. Affirmative action and promotional measures are highly important for addressing the educational needs of those living in poverty.⁴⁹ Such measures may be suitable in cases of long-standing or historical and persisting forms of discrimination. The systemic exclusion of specific groups from higher levels of education can also be addressed through the adoption of temporary special measures. These might range from the establishment of enrolment quotas to the offer of financial incentives targeted to particularly vulnerable groups.

62. The right to education establishes the obligation of States to undertake promotional measures including through the introduction of financial support schemes. Article 13 of the International Covenant on Economic, Social and Cultural Rights proposes the establishment of “an adequate fellowship system” among its provisions on the right to education,⁵⁰ while the Committee’s general comment No. 13 on the right to education states that “the requirement that ‘an adequate fellowship system shall be established’ should be read with the Covenant’s non-discrimination and equality provisions; the fellowship system should enhance equality of educational access for individuals from disadvantaged groups.”⁵¹

C. Linguistic and cultural barriers

63. The lack of education in mother-tongue or native languages is often a source of exclusion. This is particularly relevant for minorities and migrants. Estimates indicate that around 221 million children speak a different language at home from the language of instruction in school, limiting their ability to develop foundations for later learning.⁵² The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, establishes in article 4(3) that States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. Moreover, available experience shows that a child learns better in his or her mother tongue in the formative stages and initial period of education.

64. Countries with numerous local languages where the official language is not the same as that used at home face particular challenges in establishing educational policies and language rights. The Forum on Minority Issues recommended that States take appropriate measures, wherever possible, to ensure that persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. These measures are deemed to be most critical at the preschool and primary school levels, but may extend to subsequent stages of education.⁵³ Respecting the richness of linguistic and cultural diversity, education policies in today’s globalized world should give high consideration to mother-tongue-based, multilingual education.

⁴⁹ As provided for in the Education Law (2003), Peru, in order to guarantee equity in education, the State should promote positive action and compensate for inequalities resulting from economic, geographical and social factors which have an adverse impact on the exercise of the right to education. The Education Act (2005) of Czech Republic also contains provisions on affirmative measures.

⁵⁰ UNESCO 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” (article 3(c)).

⁵¹ CESCR, general comment No. 13 (1999), para. 26.

⁵² UNESCO, *EFA Global Monitoring Report 2010*, p. 10-11.

⁵³ Recommendations of the Forum on Minority Issues (A/HRC/10/11/Add.1), para. 58.

VII. Legal enforcement of equality of opportunity

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

66. In the historic ruling of *Brown v. Board of Education*, the Supreme Court of the United States of America emphatically declared that separate educational facilities for white and black children are “inherently unequal”. Even where physical facilities and other objective factors are equal, a segregated school system denies equal educational opportunities to the minority group.⁵⁴ Other cases have noted that “providing public schools ranks at the very apex of the function of a State,” and “education is perhaps the most important function of State and local governments.”⁵⁵ The right to equal educational opportunity in mixed-race and mixed-gender schools has since been codified through the establishment of the Equal Educational Opportunities Act.⁵⁶

67. In India, jurisprudence also underlines State obligations relating to the right to education and the equality of educational opportunities. The Supreme Court of India has interpreted the provisions on equality before the law in article 14 of India’s Constitution to promote equality *in law* and *in fact*. Equality in law must ultimately find its *raison d’être* in equality in fact.⁵⁷ A Constitution Bench of the Indian Supreme Court held that “What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. [...] The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed.”⁵⁸

68. In 1997, the Constitutional Court of Colombia ruled that by excluding pupils on an economic basis, schools violate their right to education.⁵⁹ 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 allowed by section 9(2) of the Constitution.”⁶⁰ Other rulings from the same court in South Africa also protect the right to education and language rights.⁶¹

69. Regional human rights systems have also adopted decisions relevant for the protection of equal opportunities in education. The European Court of Human Rights recently held that the right to education was violated by the placement of a Croatian

⁵⁴ *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct.686, 98 L.Ed.873 (1954), as cited in Education Law, Education Series, Chapter 4, ‘Students Rights’, Law Journal Press, New York, 2002.

⁵⁵ *Wisconsin v. Yoder*, 406 U.S.205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972), as cited in Education Law, Education Series, op. cit.

⁵⁶ 20 U.S.C. paragraph 1701-1758, cited in Education Law, Education Series, Chapter 4, op. cit.

⁵⁷ See *Pradeep Jain v. Union of India*, (1984), 3 SCC 654.

⁵⁸ *Km. Chitra Ghosh and Another vs. Union of India and Others*, (1969) 2 SCC 228.

⁵⁹ Sentencia C-560/97, Demanda de inconstitucionalidad contra el artículo 203 (parcial) de la Ley 115 de 1994.

⁶⁰ *Motala and Another v. University of Natal*, (1995) (3) BCLR 374 (D).

⁶¹ Constitutional Court, Gauteng provincial legislature, South Africa, (1996) CCT 39/95.

national of Roma origin in Roma-only classes, rather than ethnically ‘mixed’ classes.⁶² Even the applicant had attended ‘Roma-only’ schools at other times. The Court noted that there was a lack of a systemic and structured approach to the integration of Roma children into mainstream classes.

70. Administrative tribunals and national human rights institutions also reinforce judicial and quasi-judicial mechanisms to safeguard the equality of opportunities in education and right to education. In another case relating to schools dedicated to Roma children, the Equal Treatment Authority of Hungary concluded⁶³ that not only were authorities responsible for the local system that segregated students, in violation of the principle of equal treatment, but those who tolerated or assisted the maintenance of existing segregation schemes also violated the law. National human rights institutions also have an important role to play. In Mauritius, for example, the ombudsperson has the authority to investigate any type of educational discrimination. The Equality and Anti-Discrimination Ombudsman, in Norway, and the Equal Opportunities Ombudsman, in Sweden, also have such competence.

VIII. Conclusions and recommendations

71. **It is clear that normative action aimed at achieving equality of opportunities in education, both in law and in fact, needs to be intensified. The application of the principle of equality of opportunity in education, which is common to various international human rights treaties, calls for greater emphasis on the fulfilment of State obligations.**

72. **The Special Rapporteur puts forward the following recommendations for the promotion of equal opportunities in education on the basis of a human rights framework:**

(a) **Ensure adequate legal protection to the right to education and its equal enjoyment in all its inclusive dimensions:**

States should incorporate their obligations under international human rights conventions into their domestic legal order. Governments should recognize the key importance of adequate legal frameworks on equality of opportunity in education in line with international standards for ensuring such equality. A strong regulatory framework for public and private education systems grounded in the principle of equality of opportunity provides the essential basis for the establishment of an entire range of programmes and policies aiming at ensuring equality of opportunity;

(b) **Address multiple forms of inequality and discrimination through comprehensive policies:**

Given the mutually reinforcing nature of different forms of discrimination and inequality in the context of education, States should address multiple forms of inequality and discrimination through comprehensive policies. Prevailing disparities in access to education – between boys and girls, and between rich and poor regions – must be given special consideration, recognizing that good policies backed by a commitment to equality can make a difference. Policy

⁶² European Court of Human Rights, *Orsus and Others v. Croatia*, 16 March 2010

⁶³ Decision 23/2007.

measures must respond to the need for making learning accessible for the most marginalized and vulnerable;

(c) **Ensure adequate resource allocation:**

Having regard to the specific needs of those who are victims of marginalization and exclusion as well as to the elimination of geographic disparities in the provision of education, States must ensure adequate allocation of resources where they are needed most. Resources should be earmarked adequately for fellowships, bursaries and grants, along with investments in social protection, bearing in mind the need to address marginalization and exclusion, and educational dimensions of poverty reduction strategies;

(d) **Support mechanisms promoting the enforcement of the right to education:**

States should ensure adequate support to independent national human rights institutions, as these can greatly contribute to identifying inequalities and addressing relevant situations of violation of the right to education’;

(e) **Take a human-rights perspective for moving forward the Education For All (EFA) agenda:**

In order to strengthen effectiveness in combating marginalization and exclusion as part of the EFA process, high emphasis should be placed on human rights obligations, and the responsibility of States to ensure the right to basic education for all. Such approach would provide leverage in moving the EFA agenda further and would foster the central role of education in accelerating progress toward achieving the Millennium Development Goals;

(f) **Promote integrated follow-up to concluding observations adopted by the United Nations human rights treaty bodies, and to recommendations to States resulting from the Universal Periodic Review of the Human Rights Council:**

Integrated follow-up to concluding observations adopted by the United Nations human rights treaty bodies and to recommendations emerging from the Universal Periodic Review of the Human Rights Council would contribute to better ensuring equality of opportunity in education;

(g) **Enhance international assistance and cooperation:**

Major inequalities in the enjoyment of the right to education occur in countries facing severe resource constraints. Thus, adequate and sustainable international assistance and cooperation also play a central role in the elimination of inequalities. Assistance should be provided, bearing in mind human rights obligations and political commitments, including the Paris Declaration on Aid Effectiveness, as well as Goal 8 on developing a global partnership for development;

International organizations, notably UNESCO and UNICEF, play a key role in the field of education. They can show the way forward by encouraging public debate on issues deemed to be of critical importance, and play an important role in promoting equality-enhancing policies and exchange of experiences on successful practices in the promotion of equality of opportunities. In that spirit, technical assistance to countries in the most difficult situation must be prioritized;

(h) Strengthen collaboration with academic institutions and civil society organizations:

Fostering inclusive education implies active engagement of civil society. The intellectual community and the civil society play a central role in promoting better understanding of inequalities in education. The advocacy work of these stakeholders is vital to ensuring widespread attention to issues for ensuring equality of opportunity in education.
