

THE HUMAN RIGHT TO EDUCATION: DEFINITION, RESEARCH AND ANNOTATED BIBLIOGRAPHY

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The role and function of education cannot be emphasized enough. Education enhances and develops human abilities, consciousness, identity, integrity, potential, and even power. However, no literature or other instrument comprehensively and consistently defines education. This inconsistent approach to the human right to education is more harmful than beneficial. Considering a wide variety of international instruments and literature, this Article will seek to provide a comprehensive and consistent definition of the human right to education. This Article will also provide an annotated bibliography of various sources which can facilitate the research of scholars and practitioners in this field. A list of primary source instruments, including domestic laws of selective countries, is also introduced.

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INTRODUCTION

Until the early twentieth century, education was a privilege only allowed to certain classes of a society.¹ While some countries such as Germany tried to enlighten the general public as well by starting mandatory public education in the eighteenth century,² this existed formally by law and was not fully implemented.³ To make it worse, states indoctrinate authoritarian ideas through education,⁴ a problem which international law could not effectively regulate because it could not pierce sovereigns in human rights issues before the United Nations Charter and 1948 Universal Declaration of Human Rights (UDHR) which specifically provides a human right to education under Article 26.⁵ The United States also does not recognize the right to education in its Constitution and federal statutes; rather, U.S. law reserves the power to confer a right to education to the individual states, which makes its protection inconsistent among U.S. states and meaningless.⁶ To have a better understanding of the right to education, there is no choice but to get its definition from international law, especially human rights instruments, which provides a more consistent approach to the right to education among states and better protection to humans around the world. Laws from other foreign countries and their implementation of human rights principles should also be considered in order to understand the right to education.

While the role and function of education to enhance and develop human abilities, consciousness, identity, integrity, potential, and even power cannot be

¹ Jost Delbrück, *The Right to Education as an International Human Right*, 35 GER. Y.B. INT'L L. 92, 95 (1992).

² *Id.*

³ *Id.*

⁴ *Id.* at 101. This is still true even after the launch of various human rights instruments. *See id.*

⁵ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 26, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

⁶ *See* Joshua E. Weishart, *Reconstituting the Right to Education*, 67 ALA. L. REV. 915, 917–20 (2016).

emphasized enough; no literature nor instrument comprehensively and consistently provides a definition of education.⁷ Human rights instruments only provide functional and narrow definitions of education and leave room for various interpretations. This inconsistent approach to the human right to education is more harmful than beneficial in terms of application and implementation. Just as the International Bill of Human Rights organizes human rights into two pillars of rights—civil and political rights; and, second, economic, social, and cultural rights—education should also be defined by using two different lenses of positive and negative rights.⁸ Further, uniform indoctrination of authoritarian ideas—whether racial, religious, or communistic—should be regulated within the definition of education. The new definition of education should reflect the purpose, function, quantity, quality, access, subjects, and contents which the human right to education attempts to protect, prohibit, and provide.

Numerous international instruments, articles, treatises, and national laws relating to the human right to education have been drafted and published since World War II. International law has been used to pierce state sovereignty to protect a state's citizens against the abusive use of state powers. Accordingly, research in this field to protect the human right to education has become diversified, complicated, and interdisciplinary. Research has focused on outcomes or contexts of education, applying a wide variety of theories including human capital theories, theories of consciousness-raising, and Neo-Weberian and non-Marxist theories.⁹ Further, international instruments should be considered holistically, including treaties, international custom, general principles of law, cases, and soft law from various intergovernmental and nongovernmental organization reports and documents. Domestic laws, including state law and local ordinances, should also be considered because the legal right to education is applied and implemented differently among different states.¹⁰

⁷ Kate Halvorsen, *Notes on the Realization of the Human Right to Education*, 12 HUM. RTS. Q. 341, 343 (1990). "Without education, the individual could not develop his personality, which was the aim of human life and the most solid foundation of society." *Id.* at 341 (quoting U.N. GAOR, 3d Sess., Third Committee, 147th mtg., A/C.3/SR.147, at 597 (Nov. 19, 1948)).

⁸ The term "International Bill of Human Rights" refers collectively to the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social, and Cultural Rights. *See* U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, INTERNATIONAL BILL OF HUMAN RIGHTS, at xi–34, U.N. Doc. ST/HR/1/Rev.6, U.N. Sales No. E.02.XIV.4 (2002).

⁹ *See* Halvorsen, *supra* note 7, at 343–45.

¹⁰ *See generally* Klaus D. Beiter, *Is the Age of Human Rights Really Over?: The Right to Education in Africa*, 49 GEO. J. INT'L L. 9 (2017); Munafrizal Manan, *The Implementation of the Right to Education in Indonesia*, 5 INDON. L. REV. 51 (2015); Jai Singh, *Expanding Horizons of Human Right to Education:*

Considering a wide variety of international instruments and literature, this Article attempts to provide a comprehensive and consistent definition of the human right to education. It provides an annotated bibliography of journal articles, treatises, reports, and documents available online to facilitate the research of scholars and practitioners in this field. It also includes a list of primary source instruments with domestic laws of selective countries.

I. DEFINITIONS OF EDUCATION IN THE CONTEXT OF THE HUMAN RIGHT TO EDUCATION

A. *Basic Definitions of Education*

Because the right to education has been recognized as a human right and defined in various human rights instruments in various contexts, this right can be asserted against states and their agencies. UDHR Article 26(1) states that “everyone has the right to education.”¹¹ This implies that every human, not just the young, has the right. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) protect parents’ right to control the religious and moral education of their children.¹² Under Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), state parties recognize the right of everyone to education.¹³ Article 28(1) of the Convention on the Rights of the Child (CRC) also recognizes the right of the child to education as a progressive right.¹⁴ The United Nations Educational, Scientific, and Cultural Organization (UNESCO)’s Convention Against Discrimination in Education also prohibits discrimination in terms of access to education, the standard and quality of education, and condition under which education is given.¹⁵ Article 5(v) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) urges states not to racially discriminate when their

Perspective on Indian and International Vision, 52 J. INDIAN L. INST. 34 (2010); Ni Zhen, *Rethinking Inclusion: Is There a Right to Inclusive Education?*, 11 FRONTIERS L. CHINA 486 (2016).

¹¹ UDHR, *supra* note 5, art. 26(1).

¹² International Covenant on Civil and Political Rights art. 18, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 12, Dec. 18, 1990, 2220 U.N.T.S. 3 [hereinafter MWC].

¹³ International Covenant on Economic, Social and Cultural Rights art. 13(1), *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

¹⁴ Convention on the Rights of the Child art. 28(1), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

¹⁵ Convention Against Discrimination in Education arts. 1–3, Dec. 14, 1960, 429 U.N.T.S. 93 (entered into force May 22, 1962).

citizens enjoy the right to education and training.¹⁶ Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognizes women's equal rights to education.¹⁷ Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD) recognizes the right of persons with disabilities to education.¹⁸ The MWC recognizes migrant workers' and their children's right of access to education.¹⁹ The Convention Relating to the Status of Refugees (1951 Refugee Convention) also recognizes refugees' equal rights to elementary education and most favored treatment to other educations.²⁰

However, all the definitions provided by human rights instruments do not clearly provide what *education* is. The quantity, quality, and access are not clearly considered.²¹ The meaning of education is enigmatically complicated depending on the context. Education can be the abstract freedom to educate someone or to be educated, which is related to the first-generational right to be free from state interference—a negative right.²² Equal access to education and prohibition of discrimination negatively prevents states from performing discriminatory activities,²³ which is recognized as international custom.²⁴ Alternatively, the definition of education can be more concrete and specific, including concepts such as the contents, facilities, and funds required for education, which is related to the second-generational social right to ask states to actively provide certain things—a positive right.²⁵ Education also can mean a process through which certain outcomes and goals, such as personality,

¹⁶ International Convention on the Elimination of All Forms of Racial Discrimination art. 5(v), *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter ICERD].

¹⁷ Convention on the Elimination of All Forms of Discrimination Against Women art. 10, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW].

¹⁸ Convention on the Rights of Persons with Disabilities art. 24, *opened for signature* Mar. 30, 2007, 2515 U.N.T.S. 3 [hereinafter CRPD].

¹⁹ MWC, *supra* note 12, arts. 30, 43(1)(a).

²⁰ Convention Relating to the Status of Refugees art. 22, July 28, 1951, 189 U.N.T.S. 137 [hereinafter 1951 Refugee Convention].

²¹ Quantity can include literacy percentages, number of schools and teachers, facilities, and budgets. Quality can also include the contents, pedagogies, class integration and interaction, class interaction, diversity, etc. Access can include equality of opportunities, distance, roads, and transportation to facilities.

²² For an overview of the generational development of human rights in international law, see Karel Vasak, *A 30-Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights*, 1977 UNESCO COURIER.

²³ ICESCR, *supra* note 13, art. 13(2)(c); CRC, *supra* note 14, art. 28(1).

²⁴ See Douglas Hodgson, *Education, Right to, International Protection*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2006); see generally Connie de la Vega, *The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?*, 11 HARV. BLACKLETTER L.J. 37 (1994).

²⁵ E.g., UDHR, *supra* note 5, art. 26(1); see Vasak, *supra* note 22, at 29.

capabilities, and dignity, can be reached through certain institutional instruction, which may be related to both negative and positive rights.²⁶

Not only does international human rights law define education in different ways, but also each national and regional law confusingly uses education in inconsistent ways. The U.S. Supreme Court in *Brown v. Board of Education* considers education as a means, stating that education is “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, . . . in helping him to adjust normally to his environment,” and in enabling a child to succeed in life.²⁷ On the contrary, the European Court of Human Rights in its decision *Campbell v. United Kingdom* broadly defines education as “the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development.”²⁸ In addition to the inconsistent definitions—with one focusing on means and the other focusing on process—both approaches are limited, focusing only on the young and failing to consider specifically what kinds of beliefs and cultural values they are trying to deliver.

Human rights instruments also partly define education as “formal institutional instruction imparted within a national, provincial, or local education system (whether public or private) at the primary, secondary, and tertiary levels.”²⁹ This interpretation of human rights documents focuses only on the formal instructional part of education and does not consider its contents and ideological purposes, such as the protection of human dignity and fundamental freedoms. The CRC emphasizes the elimination of ignorance, illiteracy, and facilitation of access to scientific and technical knowledge and modern teaching methods.³⁰ This also focuses only on a functional, literal meaning of education and its social utilities and outcomes.

Human rights instruments break education into primary, secondary, and higher education, and impose different obligations onto state parties.³¹ Economic accessibility to education was also diverged among primary,

²⁶ E.g., UDHR, *supra* note 5, art. 26(2); see Vasak, *supra* note 22, at 29.

²⁷ *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). The United States does not recognize the human and fundamental right to education in its Constitution; however, many state constitutions recognize it. See Heidi R. Gilchrist, *Higher Education as a Human Right*, 17 WASH. U. GLOBAL STUD. L. REV. 646, 652 (2018).

²⁸ *Campbell v. United Kingdom*, 4 Eur. H.R. Rep. 293, 303 (1982).

²⁹ Hodgson, *supra* note 24.

³⁰ CRC, *supra* note 14, art. 28(3).

³¹ See e.g., ICESCR, *supra* note 13, art. 13.

secondary, and higher education.³² UDHR Article 26(1) imposes compulsory elementary education.³³ ICESCR Article 13(2)(a) and CRC Article 28(1)(a) also affirm compulsory primary education, which must be available and free to all.³⁴ The CRC prohibits child labor in part to provide the child with a fully-realized opportunity to learn.³⁵ Free compulsory primary education is recognized as international custom, so states are bound by it regardless of their ratification status.³⁶ While the human rights instruments consider secondary and higher education as a human right,³⁷ secondary and higher education are neither free nor compulsory due to a caveat that higher education should be accessible on the basis of capacity.³⁸ Secondary education must be generally available and accessible to all,³⁹ and “higher education shall be made equally accessible to all” on the basis of capacity.⁴⁰ The European Court of Human Rights imposed further restrictions on the human right to higher education and considered a caveat of “the capacity and resource potential of universities,” including “the availability of technical means and human resources.”⁴¹ Both secondary and higher education are not free to all, but the progressive introduction of free education as a goal was encouraged.⁴²

Education can also focus on subjects who enjoy the right. Subjects can include adults,⁴³ parents, and vulnerable populations such as the young,⁴⁴ women, persons with disabilities, and minorities such as indigenous people.⁴⁵

³² See e.g., *id.*

³³ *Id.*

³⁴ ICESCR, *supra* note 13, art. 13(1); CRC, *supra* note 14, art. 28(1)(a).

³⁵ CRC, *supra* note 14, art. 10(3).

³⁶ Hodgson, *supra* note 24.

³⁷ ICESCR, *supra* note 13, art. 13(2)(b); see Gilchrist, *supra* note 27, at 649–50.

³⁸ ICESCR, *supra* note 13, art. 13(2)(b).

³⁹ *Id.*; CRC, *supra* note 14, art. 28(1)(b).

⁴⁰ ICESCR *supra* note 13, art. 13(2)(c); UDHR, *supra* note 5, art. 26(1); CRC, *supra* note 14, art. 28(1)(c);

⁴¹ Tarantino v. Italy, 2013-II Eur. Ct. H.R. 397, 407.

⁴² ICESCR, *supra* note 13, art. 13(2)(b)–(c); CRC, *supra* note 14, art. 28(1)(b).

⁴³ “Adult learning and education is a core component of lifelong learning” ensuring “all adults participate in their societies and the world of work” and enriching “their capabilities for living and working.” U.N. Educational, Scientific and Cultural Organization [UNESCO], *Recommendation on Adult Learning and Education 2015*, ¶ 1, U.N. Doc. ED-2016/WS/29 (2015) [hereinafter UNESCO RALE 2015].

⁴⁴ The young include:

girls, children living in rural areas, children belonging to minority groups, indigenous children, migrant children, refugee children, internally displaced children, children affected by armed conflicts, children with disabilities, children affected by infectious diseases, sexually exploited children, children deprived of their liberty, children living in the street, working children and orphaned children.

U.N. Comm’n on Human Rights Res. 2005/21, U.N. Doc. E/CN.4/RES/2005/21, ¶ 7 (Apr. 15, 2005).

⁴⁵ See CEDAW, *supra* note 17; CRPD, *supra* note 18; Convention Concerning Indigenous and Tribal Peoples in Independent arts. 26–31, June 27, 1989, 1650 U.N.T.S. 383 [hereinafter ILO Convention No. 169];

Human rights instruments assume that every human has a right to education although that right is narrowly applied when a specific group of people is indicated.⁴⁶ Because of this ambiguous, broad designation, a child's freedom of education was not specifically protected. The young, including children, have been merely the objects receiving the ideological and cultural values imposed by the states and parents.⁴⁷

B. *Human Rights Education*

What the young can learn varies. Since the eighteenth century, law has regulated education.⁴⁸ After World War II, the new generational social right to education required states to formulate laws to provide education to their populace.⁴⁹ However, law can be manipulated by politics, and people can be indoctrinated with bad policies and ideas. Politicians or an authoritarian dictator can lead their population in certain directions. Many critics allege that strong government involvement in the education process “might threaten individual freedom and might undermine the very foundations of a free society altogether.”⁵⁰ To prevent this side effect, the UDHR and the ICESCR inserted provisions to protect “the full development of the human personality and the sense of its dignity” and to “strengthen the respect for human rights and fundamental freedoms.”⁵¹ ICCPR Article 18 also protects parents' right to religious and moral education of their children.⁵²

see also UNESCO RALE 2015, *supra* note 43, ¶ 23(c).

⁴⁶ See UDHR, *supra* note 5, art. 26(1) (stating “everyone has the right to education”); *id.* art. 26(3) (“Parents have a prior right to choose the kind of education that shall be given to their children.”).

⁴⁷ UDHR, *supra* note 5, art. 26(2)–(3).

⁴⁸ See, e.g., Jurgen Herbst, *Nineteenth-Century Schools Between Community and State: The Cases of Prussia and the United States*, 42 HIST. EDUC. Q. 317 (2002) (“The capstone of these writings and this legislation was placed in 1794 in Prussia’s General Land Law which declared schools and universities to be ‘institutions [Veranstaltungen] of the state’ which should be established only ‘with prior knowledge and permission of the state’ and were to be ‘subject to the supervision of the state and to its examinations and visitations at all times.’”).

⁴⁹ ICESCR, *supra* note 13, art. 14.

⁵⁰ Delbrück, *supra* note 1, at 93.

⁵¹ ICESCR, *supra* note 13, art. 13(1). This is similar to the language in Article 5 of the Convention Against Discrimination in Education, stating:

[t]he States [sic] Parties to this Convention agree that: (a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Convention Against Discrimination in Education, *supra* note 15, art. 5.

⁵² ICCPR, *supra* note 12, art. 18.

Considering the aims and purposes of education, another definition of education is provided by the UDHR and the ICESCR. UDHR Article 26(2) states that:

[e]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.⁵³

ICESCR Article 13(1) also provides similar purposes and contents of education in detail in the human rights context, providing that education is for “the full development of the human personality and the sense of its dignity” and to “strengthen the respect for human rights and fundamental freedom.”⁵⁴ This education will allow all humans to “participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”⁵⁵ The UDHR and ICESCR not only include the social right to education requiring state involvement, but also emphasize core values of the human personality, dignity, and the fundamental freedom of humans.⁵⁶ *General Comment 13* is aligned with this idea, defining education as “the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities” and enable humans to “wander freely and widely.”⁵⁷ As a result, this emphasis on the fundamental freedom and engagement with communities in education contributes to the fights against terrorism, totalitarian societies, violence, and extremism.⁵⁸

Furthermore, many other international and regional instruments specify and supplement the aims of education, including the Protocol of San Salvador;⁵⁹ the Recommendation Concerning Education for International Understanding, Co-Operation, and Peace and Education Relating to Human Rights and Fundamental

⁵³ UDHR, *supra* note 5, art. 26(2).

⁵⁴ ICESCR, *supra* note 13, art. 13(1). This is similar to the language in Article 5 of the Convention Against Discrimination. *See supra* note 51.

⁵⁵ ICESCR, *supra* note 13, art. 13(1).

⁵⁶ UDHR, *supra* note 5, pmbl.; ICESCR, *supra* note 13, pmbl.

⁵⁷ Comm. on Econ. Soc. & Cultural Rights, Rep. on the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 13: The Right to Education, ¶ 1, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999) [hereinafter General Comment 13].

⁵⁸ *See Gilchrist, supra* note 27, at 673–76.

⁵⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 13(2), Nov. 17, 1988, 69 O.A.S.T.S [hereinafter Protocol of San Salvador].

Freedoms (UNESCO Education Recommendation of 1974);⁶⁰ the UNESCO Recommendation Concerning the Status of Teachers 1966;⁶¹ the Convention Against Discrimination in Education;⁶² the U.N. Declaration on the Promotion Among Youth of the Ideas of Peace, Mutual Respect, and Understanding Between Peoples of 1965;⁶³ American Declaration of the Rights and Duties of Man of 1948 (Bogotá Declaration);⁶⁴ the Declaration of the Rights of the Child of 1959;⁶⁵ the CRC;⁶⁶ and the ICERD.⁶⁷ These aims reflected in various international and regional instruments are recapitulated as “human rights education” in the *Plan of Action for the U.N. Decade for Human Rights Education, 1995–2004*⁶⁸ as follows:

- (a) The strengthening of respect for human rights and fundamental freedoms;⁶⁹
- (b) The full development of the human personality and the sense of its dignity;⁷⁰
- (c) The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;⁷¹

⁶⁰ See generally UNESCO, General Conference 18 C/Res. 38, 18th Sess., 36th plen. mtg. at 147, *Recommendation Concerning Education for International Understanding, Co-Operation and Peace and Education Relating to Human Rights and Fundamental Freedoms*, UNESCO Doc. GC(XVIII)/RES/38 (Nov. 19, 1974) [hereinafter UNESCO Education Recommendation of 1974].

⁶¹ See generally UNESCO Special Intergovernmental Conference on the Status of Teachers 14 C/Resolution, *Recommendation Concerning the Status of Teachers*, UNESCO Doc. CFS.67/VII.4/A/F/S/R, Annex (Oct. 5, 1966) [hereinafter ILO/UNESCO Teacher Status Recommendation of 1966].

⁶² Convention Against Discrimination in Education, *supra* note 15, art. 5.

⁶³ G.A. Res. 2037 (XX), U.N. Doc. A/RES/20/2037, at 40, princ. 3–4 (Dec. 7, 1965) [hereinafter Declaration on the Promotion of Ideals Among Youth].

⁶⁴ Organization of American States [OAS], O.A.S. Res. XXX, *American Declaration of the Rights and Duties of Man*, at 17, OEA/Ser.L.V/II.82 Doc.6 Rev.1 (reprinted 1992), <https://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm> [hereinafter Bogotá Declaration].

⁶⁵ G.A. Res. 1386 (XIV), Declaration of the Rights of the Child princ. 10 (Nov. 20, 1959).

⁶⁶ CRC, *supra* note 14, art. 28(1)(b).

⁶⁷ ICERD, *supra* note 16, art. 7.

⁶⁸ U.N. Secretary-General, *Plan of Action for the United Nations Decade for Human Rights Education, 1995–2004*, ¶ 2, U.N. Doc. A/51/506/Add.1 (Dec. 12, 1996) [hereinafter *U.N. Plan of Action*].

⁶⁹ *Id.* ¶ 2(a); U.N. Charter art. 55(c); UDHR, *supra* note 5, art. 26(2); Convention Against Discrimination in Education, *supra* note 15, art. 5(1)(a); ICERD, *supra* note 16, art. 7; Declaration on the Promotion of Ideals Among Youth, *supra* note 63, at 40; ILO/UNESCO Teacher Status Recommendation of 1966, *supra* note 61, pt. III, ¶ 3; ICESCR, *supra* note 13, art. 13(1); UNESCO Education Recommendation of 1974, *supra* note 60, princ. 7, 18(c); Protocol of San Salvador, *supra* note 59, art. 13(2); CRC, *supra* note 14, art. 29(1)(b).

⁷⁰ *U.N. Plan of Action*, *supra* note 68, ¶ 2(b); UDHR, *supra* note 5, art. 26(2); Convention Against Discrimination in Education, *supra* note 15, art. 5(1)(a); ICESCR, *supra* note 13, art. 13(1); ILO/UNESCO Teacher Status Recommendation of 1966, *supra* note 60, pt. III, ¶ 3; Protocol of San Salvador, *supra* note 58, art. 13(2); CRC, *supra* note 14, art. 29(1)(a).

⁷¹ *U.N. Plan of Action*, *supra* note 68, ¶ 2(c); UDHR, *supra* note 5, art. 26(2); Declaration of the Rights of the Child, *supra* note 64, princ. 10; Convention Against Discrimination in Education, *supra* note 15, art. 5(1)(a); Declaration on the Promotion of Ideals Among Youth, *supra* note 63, pmb1.; ICERD, *supra* note 16,

- (d) The enabling of all persons to participate effectively in a free society;⁷²
- (e) The furtherance of the activities of the United Nations for the maintenance of peace.⁷³

In addition to the human right to education, the *World Declaration on Education for All* specifically suggests the purposes of education should be to meet basic learning needs, share the vision, universalize access and promote equity, focus on learning, broaden the means and scope of basic education, enhance the environment for learning, and strengthen partnerships.⁷⁴

C. *Social Right to Receive Education*

The second generational social welfare right to receive education positively imposes obligations on states to provide education instead of negatively prohibiting or preventing states from interfering with individuals' freedom to education.⁷⁵ The provision of free education, including vocational and technological training and higher education, asks states to positively provide those benefits.⁷⁶ According to *General Comment 13*, the social right to receive an education under ICESCR Article 13(2) includes the "interrelated and essential features" of availability, accessibility, acceptability, and adaptability.⁷⁷ Availability indicates the sufficient quantity of functioning educational institutions and programs, including buildings, sanitation facilities, safe drinking water, trained teachers, teaching materials, a library, computer facilities, and information technology.⁷⁸ Accessibility includes nondiscrimination, physical accessibility, and economic accessibility.⁷⁹ Acceptability means that "the form and substance of education, including curricula and teaching method, have to be

art. 7; ICESCR, *supra* note 13, art. 13(1); UNESCO Education Recommendation of 1974, *supra* note 60, princs. 4(b), 6, 7, 17, 18(b); G.A. Res. 36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, art. 5(3) (Nov. 25, 1981); Protocol of San Salvador, *supra* note 59, art. 13(2); CRC, *supra* note 14, art. 29(1)(a).

⁷² *U.N. Plan of Action*, *supra* note 68, ¶ 2(d); Bogotá Declaration, *supra* note 64, art. XII; Declaration of the Rights of the Child, *supra* note 65, princ. 7; ICESCR, *supra* note 13, art. 13(1); CRC, *supra* note 14, art. 29(1)(d).

⁷³ *U.N. Plan of Action*, *supra* note 68, ¶ 2(e).

⁷⁴ World Conference on Education for All Meeting Basic Learning Needs, *World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs*, arts. 1–7, ED-90/CONF.205 (Mar. 9, 1990) [hereinafter *World Declaration on Education for All*].

⁷⁵ Delbrück, *supra* note 1, at 101.

⁷⁶ ICESCR, *supra* note 13, art. 13(2); CRC, *supra* note 14, art. 28(1)(b).

⁷⁷ General Comment 13, *supra* note 57, ¶ 6.

⁷⁸ *Id.*

⁷⁹ *Id.*

acceptable”⁸⁰ Adaptability means flexibility, reflecting the “needs of changing societies and communities,” and the “needs of students within their diverse social and cultural settings.”⁸¹

These four pillars of the social right to receive education are expressed in a different way as principles of education:

- (1) it is conducted in a democratic and fair and non-discriminatory manner by upholding human rights, religious and cultural values, and national pluralism;
- (2) it is organized as a systemic entity with an open and multi-sense system;
- (3) it is organized as a process of culture and empowerment of learners that lasts for life;
- (4) it is organized by giving exemplary, build[ing] willingness, and develop[ing] the creativity of learners in the learning process;
- (5) it is organized by developing a culture of reading, writing, and arithmetic for all citizens;
- (6) it is organized by empowering all components of society through participation in the implementation and quality control of education services.⁸²

The first principle relates to accessibility, the second principle relates to acceptability, the third and fourth principles relate to acceptability, and the fifth and sixth principles relate to adaptability.

D. Criticism and Threats to the Human Right to Education

A definition of education should also reflect its criticism and new threats. The four pillars of the social right to education suggested by *General Comment 13*—availability, accessibility, acceptability, and adaptability—have been threatened by commercial approaches to the meaning of education, including deregulation, privatization, and reduction of public spending.⁸³ The commercial approaches to education deprive education of its status as a human right and leaves education to the self-regulatory market of capitalism and the consumers’ purchasing power.⁸⁴ Poor families and fundamental human rights

⁸⁰ *Id.* “[T]his is subject to the educational objectives required by [A]rticle 13(1) and such minimum educational standards as may be approved by the State (see art. 13(3) and (4)).” *Id.*

⁸¹ *Id.*

⁸² Ihsan Yasin Limpo, *Human Rights Perspective in the Development of National Education System*, 69 J.L. POL’Y & GLOBALIZATION 9, 11 (2018).

⁸³ Caetano Pimentel, *The Human Right to Education: Freedom & Empowerment*, MULTICULTURAL EDUC., Summer 2006, at 2, 6, reprinted in MULTICULTURAL EDUC., Spring 2013, at 29, 32; General Comment 13, *supra* note 56, ¶ 6.

⁸⁴ Pimentel, *supra* note 83, at 32.

cannot be properly protected when students are moving away from the public education system.⁸⁵ Education should be inclusive and allow people to “participate actively and consciously in the society of which they are part” and “be respectful of every individual’s cultural background”⁸⁶ Commercial and private institutions cannot guarantee these. Lack of funds and following low quality of public education must shake off entire education pillars of availability, accessibility, acceptability, and adaptability.

There is also a threat to the proposition that education should enhance the equality and fundamental freedom of humans. Craig Lauchner argues that human rights efforts, specifically the implementation of the right to education, are ineffective tools against economic inequality in Latin America, especially MERCOSUR.⁸⁷ In reality, implementation of the right to education has resulted in negative consequences and perpetuation of educational and economic inequality.⁸⁸ This, however, is a matter of implementation, including corrupt governments, and is not the fundamental issue of the right to education and its desirable definition.

It is true that the efforts to protect human rights and the freedom of education through human rights instruments could not be successfully implemented in many countries and have failed to march further to protect vulnerable populations, including the young, women, persons with disabilities, minorities, indigenous groups, and refugees.⁸⁹ The young and women have not been free from religious and cultural restraints imposed by societies and states.⁹⁰ The states that do not allow freedom of religion or democratic ideas will not provide the young with opportunities to learn different values from other religions and societies; ultimately, the young will fail to understand people from other cultures and religions.⁹¹ Education is not provided in the local language in some countries.⁹² In some Islamic countries, music, dance, and the arts are not allowed to be taught because they are contrary to the Quran.⁹³ Human rights education is

⁸⁵ *Id.*

⁸⁶ *Id.* at 35.

⁸⁷ Craig Lauchner, *The Human Right to Education: Mercosur Commitment and Economic Inequality*, 52 TEX. INT’L L.J. 145, 146 (2017).

⁸⁸ *Id.*

⁸⁹ See Cornelia Roux, *A Social Justice and Human Rights Education Project*, in 5 SAFE SPACES: HUMAN RIGHTS EDUCATION IN DIVERSE CONTEXTS 29, 30 (Cornelia Roux et al. eds., 2012) [hereinafter 5 SAFE SPACES].

⁹⁰ *Id.* at 29–30.

⁹¹ *Id.* at 34.

⁹² See ZEHLIA BABACI-WILHITE, *LOCAL LANGUAGES AS A HUMAN RIGHT IN EDUCATION: COMPARATIVE CASES FROM AFRICA* 1 (2015).

⁹³ See Kristin Izsak, *Music Education and Islam: Perspectives on Muslim Participation in Music Education in Ontario*, CANADIAN MUSIC EDUCATOR, Spring 2013, at 38, 38–39 (2013).

not possible in authoritarian states such as North Korea. Refugees' right to education is also not properly protected.⁹⁴ Professor Davis argues that the federal threats to deny legal status to DREAMers and the ongoing campaign to instill fear in immigrant communities create obstacles to immigrant children's ability to attend school.⁹⁵ In one typical instance, the U.S. Immigration and Customs Enforcement (ICE) arrested a father taking his child to school in Los Angeles.⁹⁶ In another instance, 2000 students in Las Cruces, New Mexico stayed home from school because of recent ICE raids.⁹⁷ These attacks on vulnerable communities are violations of the Equal Protection Clause and basic human rights standards.⁹⁸ "Refugees are one of the most prominent groups that risk being excluded from full legal protection . . ." ⁹⁹ While refugee children have a right of access to education, there are practical difficulties in finding effective enforcement.¹⁰⁰

It is also interesting to see a philosophical counterargument to the social right to education. Daniel Lechner uses Michel Foucault's philosophy in *Discipline and Punish: The Birth of the Prison* as a touchstone for his argument that a potential danger of a state-enforced education system is the secret subversion and abolishment of fundamental rights.¹⁰¹ Lechner briefly asserts that instead of protecting and empowering students to reach their personal potential, the education system disciplines and suppresses students, so they become "enslaved subjects" of society.¹⁰² Students will be turned into "docile bodies" controlled and disciplined by hierarchical observation, "the rather shameful art of surveillance."¹⁰³ John-Stewart Gordon also suggests that the current legal human right to education is not theoretically and morally supported, even if the human right to education is of great practical value and empowers other human rights.¹⁰⁴

⁹⁴ See ELIN MARTÍNEZ, HUMAN RIGHTS WATCH, *THE EDUCATION DEFICIT: FAILURES TO PROTECT AND FULFILL THE RIGHT TO EDUCATION IN GLOBAL DEVELOPMENT AGENDAS 4–5* (2016).

⁹⁵ Martha F. Davis, *Immigration Enforcement and Children's Human Right to Education*, 56 FAM. CT. REV. 344, 344 (2018).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 345.

⁹⁹ Kurt Willems & Jonas Vernimmen, *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*, 17 EUR. EDUC. RES. J. 219, 221 (2018).

¹⁰⁰ *Id.* at 224.

¹⁰¹ Daniel Lechner, *The Dangerous Human Right to Education*, 20 STUD. PHIL. & EDUC. 279, 279 (2001) (citing MICHAEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (1977)).

¹⁰² *Id.* at 280.

¹⁰³ JULIE ALLAN, *RETHINKING INCLUSIVE EDUCATION: THE PHILOSOPHERS OF DIFFERENCE IN PRACTICE* 86 (2008).

¹⁰⁴ See John-Stewart Gordon, *Is Inclusive Education a Human Right?*, 41 J.L. MED. & ETHICS 754, 757–59, 765 (2013). Gordon represents a person with learning difficulties who enjoys their freedom of education. *Id.* at 759.

E. Universal Definition

Consistent with human rights law and admitting criticism and threats to the human right to education, this Article proposes a universal definition of education. Education is:

- (1) an instrument and process of teaching and learning at an institution—whether elementary, secondary, or tertiary—
- (2) possessing the interrelated and essential features of availability, accessibility, acceptability, and adaptability,
- (3) in which a human person or a group of persons develop the knowledge, abilities, and skills with the aims
 - (a) of respect for human rights and fundamental freedoms;
 - (b) to fully develop the human personality;
 - (c) to promote tolerance, gender equality, and friendship among all nations and groups of people; and
 - (d) to enable people to participate effectively in a free society, and to enable the maintenance of peace in a globalized society.

II. INTERNATIONAL PRINCIPLES RELATING TO THE HUMAN RIGHT TO EDUCATION

In Part II, the Article introduces a wide variety of human rights instruments and documents which address the human right to education; it is divided into pre-1990s and post-1990s. Since the collapse of former Soviet Union in 1989, many countries abandoned communism. Thus, scholars in Western countries began to actively research sensitive legal areas that had been ignored previously because of national security concerns due to the Cold War.¹⁰⁵ One of these areas is human rights, specifically economic, social, and cultural rights. These rights had been emphasized in the Eastern bloc states, including the Soviet Union, and in the Global South. Many areas such as health, education, labor and employment, food, water, housing and development, which were traditionally considered benefits provided by states, are now approached from the perspective of human rights.

¹⁰⁵ Christopher N.J. Roberts, *Grasping at Origins: Shifting the Conversation in the History of Human Rights*, 17 CHI. J. INT'L L. 573, 595 (2017).

A. *Traditional International and Regional Human Rights Principles that Apply to the Human Right to Education*

1. *U.N. Charter (1945)*

The United Nations will promote educational cooperation among nations to create stability and well-being.¹⁰⁶ In its preamble, the U.N. Charter states a universal principle of fundamental human rights, the dignity and worth of the human person, and the equal rights of men and women. In order to create the conditions of stability and well-being based on respect for the principle of equal rights and self-determination of peoples, the members of the United Nations will universally respect and observe human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,¹⁰⁷ for which members of the United Nations committed to take joint and separate action.¹⁰⁸

2. *American Declaration of the Rights and Duties of Man (1948)*

The American Declaration of the Rights and Duties of Man, commonly known as the Bogotá Declaration, adopted by the Ninth International Conference of American States in Bogotá, Columbia, recognized the right to education under Article XII.¹⁰⁹ The right to education should be based on the principles of liberty, morality, and human solidarity.¹¹⁰

3. *Universal Declaration of Human Rights (1948)*¹¹¹

The International Bill of Human Rights is composed of the UDHR, ICESCR, and the ICCPR.¹¹² The UDHR is “a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United

¹⁰⁶ U.N. Charter art. 55.

¹⁰⁷ *Id.* art. 55(c).

¹⁰⁸ *Id.* art. 56.

¹⁰⁹ Bogotá Declaration, *supra* note 64, art. XII.

¹¹⁰ *Id.* art. 7.

¹¹¹ UDHR, *supra* note 5. Most provisions of the UDHR are considered customary international law. See HENRY J. STEINER ET AL., INTERNATIONAL HUMAN RIGHTS IN CONTEXT 161 (2008); Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 353–54 (1995).

¹¹² See *supra* text accompanying note 8; United Nations, *Universal Declaration of Human Rights*, UNITED NATIONS: DAG HAMMARSKJÖLD LIBR., <https://research.un.org/en/docs/humanrights/undhr> (last updated May 9, 2019).

Nations General Assembly in Paris on 10 December 1948”¹¹³ Article 26(1) states that everyone enjoys the right to education.¹¹⁴

4. *European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (1950)*¹¹⁵

The newly formed Council of Europe drafted the European Convention on Human Rights in 1950 as an international treaty to protect human rights and political freedoms in Europe.¹¹⁶ Article 2 of Protocol 1 of 1952 recognizes the right to education as follows: “[T]he State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”¹¹⁷

5. *1951 Refugee Convention*

Article 22 of the Convention recognizes refugees’ equal rights to elementary education and most favored treatment to other educations.¹¹⁸ Article 4 provides refugees with the most favored treatment to freedom to practice their religion and the religious education of their children.¹¹⁹

6. *Declaration of the Rights of the Child (1959)*

The Declaration of the Rights of the Child is a U.N. General Assembly resolution and “the first major international consensus on the fundamental principles of children’s rights,” expanding the right to education as recognized by the UDHR and the 1924 Geneva Declaration of the Rights of the Child.¹²⁰ In its preamble, the Declaration acknowledges that the child needs special

¹¹³ UDHR, *supra* note 5.

¹¹⁴ UDHR, *supra* note 5, art. 26(1).

¹¹⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953), *amended by* Protocols Nos. 11, 14, *supplemented by* Protocols Nos. 1, 4, 6, 7, 12, 13, 16.

¹¹⁶ *Id.* at 222.

¹¹⁷ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, Mar. 20, 1952.

¹¹⁸ 1951 Refugee Convention, *supra* note 20, art. 22.

¹¹⁹ *Id.* art. 4.

¹²⁰ *Geneva Declaration of the Rights of the Child, 1959*, HUMANIUM, <https://www.humanium.org/en/declaration-rights-child-2/> (last visited Feb. 27, 2020); *see also* UDHR, *supra* note 5; *Geneva Declaration of the Rights of the Child, 1924*, HUMANIUM, <https://www.humanium.org/en/geneva-declaration> (last visited Apr. 8, 2020).

safeguards and care because of his or her physical and mental immaturity.¹²¹ Principle 5 urges states to provide the physically, mentally, or socially handicapped child with special treatment, education, and care.¹²² Principle 7 declares children's right to receive free and compulsory elementary education of which primary responsibility lies in the first place with their parents; education should promote their general culture and enable them to develop their abilities, individual judgment, and sense of moral and social responsibility to become a useful member of society.¹²³ Under Principle 10, children should be protected from discrimination and raised in the spirit of understanding, tolerance, friendship, peace, and universal brotherhood, and their talents and energy should be devoted to the service of their fellow men.¹²⁴

7. *UNESCO's Convention Against Discrimination in Education (1960)*

This Convention prohibits discrimination in terms of access to education, the standard and quality of education, and condition under which education is given.¹²⁵ Regarding the purpose of education, Article 5(1)(a) provides that:

[e]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.¹²⁶

The Convention also respects the liberty of parents to choose for their children the institutions and religious and moral education in conformity with their own convictions.¹²⁷ It also allows for the minorities' rights to carry on their own educational activities, including the use or the teaching of their own language.¹²⁸

8. *U.N. Declaration on the Promotion Among Youth of the Ideas of Peace, Mutual Respect and Understanding Between Peoples (1965)*¹²⁹

This Declaration acknowledges that the education of young people and mutual respect and understanding between peoples can help to improve

¹²¹ Declaration of the Rights of the Child, *supra* note 65, pmb1.

¹²² *Id.* princ. 5.

¹²³ *Id.* princ. 7.

¹²⁴ *Id.* princ. 10.

¹²⁵ Convention Against Discrimination in Education, *supra* note 15, arts. 1–3.

¹²⁶ *Id.* art. 5(1)(a).

¹²⁷ *Id.* art. 5(1)(b).

¹²⁸ *Id.* art. 5(1)(c).

¹²⁹ Declaration on the Promotion of Ideals Among Youth, *supra* note 63.

international relations and to strengthen peace and security.¹³⁰ Principle II provides that the purpose of education is to foster the ideals of peace, humanity, liberty, and international solidarity, and to preserve and maintain peace and promote international understanding and cooperation.¹³¹ Principle III further provides as a purpose of education for young people to learn the dignity and equality of all men without distinction as to race, color, ethnic origins, or beliefs, and to respect fundamental human rights and people's self-determination.¹³² Principle VI states "[a] major aim in educati[on] . . . [is] to train [the young] to acquire higher moral qualities, to be deeply attached to noble ideals of peace, liberty, the dignity and equality of all men, and imbued with respect and love for humanity," and Principle VI also emphasizes the role of the family.¹³³

9. *International Convention on the Elimination of All Forms of Racial Discrimination (1966)*

Based on the U.N. Charter, UDHR, U.N. Declaration on the Elimination of All Forms of Racial Discrimination of 1963, and UNESCO's Convention Against Discrimination in Education; the ICERD as a first human rights treaty affirms the necessity of speedy elimination of racial discrimination throughout the world.¹³⁴ Under Article 5(v), states should undertake steps to prohibit and eliminate discrimination based on race, color, or national or ethnic origin in the enjoyment of the right to education and training.¹³⁵ Article 7 urges states to adopt immediate and effective measures in the fields of teaching, education, culture, and information to fight against prejudices that lead to racial discrimination.¹³⁶

10. *ILO/UNESCO Teacher Status Recommendation of 1966*¹³⁷

Originally adopted to provide the status of teachers to promote the higher quality education, the UNESCO Teacher Recommendation of 1966 states in its First Guiding Principle that:

[e]ducation from the earliest school years should [aim to] . . . develop[] . . . the human personality; . . . to [further] the spiritual,

¹³⁰ *Id.* pmb1.

¹³¹ *Id.* princ. II.

¹³² *Id.* princ. III.

¹³³ *Id.* princ. VI.

¹³⁴ ICERD, *supra* note 16, pmb1.

¹³⁵ *Id.* art. 5(v).

¹³⁶ *Id.* art. 7.

¹³⁷ ILO/UNESCO Teacher Status Recommendation of 1966, *supra* note 61.

moral, social, cultural and economic progress of the community . . . and [to teach] deep respect for human rights and fundamental freedoms, . . . peace, . . . understanding, tolerance, and friendship among all nations and among racial or religious groups.¹³⁸

This Recommendation recognized the importance of implementing previous instruments in providing proper education, including Article 26 of the UDHR; Principles 5, 7, and 10 of the Declaration of the Rights of the Child; and the U.N. Declaration on the Promotion Among Youth of the Ideas of Peace, Mutual Respect and Understanding Between Peoples.¹³⁹

11. *International Covenant on Civil and Political Rights (1966)*¹⁴⁰

The ICCPR is one of the International Bill of Human Rights.¹⁴¹ The ICCPR imposes detailed duties on states relating to civil and political rights based on the UDHR, negatively prohibiting states from violating individual's civil and political rights. Specifically, Article 18 of the ICCPR protects the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.¹⁴² The ICCPR established a Human Rights Committee which can enforce this treaty.¹⁴³

12. *International Covenant on Economic, Social and Cultural Rights (1966)*

The ICESCR, one of the International Bills of Human Rights, established a comprehensive social right to education.¹⁴⁴ Article 13(1) recognizes the right to education for everyone.¹⁴⁵ It states that education is for “the full development of the human personality and the sense of its dignity” and to “strengthen the respect for human rights and fundamental freedoms.”¹⁴⁶ It also states that education will allow all humans to “participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”¹⁴⁷ Article 13(2) demands that states provide free and compulsory primary education, generally available and accessible secondary

¹³⁸ *Id.* pt. III, ¶ 3.

¹³⁹ *Id.* pmb1.

¹⁴⁰ ICCPR, *supra* note 12.

¹⁴¹ See *supra* text accompanying note 8; UNITED NATIONS: DAG HAMMARSKJÖLD LIBR., *supra* note 112.

¹⁴² ICCPR, *supra* note 12, art. 18.

¹⁴³ *Id.* arts. 40, 41, 42.

¹⁴⁴ ICESCR, *supra* note 13, art. 13(1).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

education, and equally accessible higher education based on merits.¹⁴⁸ States also undertake to respect the liberty of parents to choose property education for their children under minimum educational standards and to provide the religious and moral education for their children in conformity with their own convictions.¹⁴⁹ The Convention was initially monitored by the U.N. Economic and Social Council until 1985 when the Committee on Economic, Social and Cultural Rights was established under ECOSOC Resolution 1985/17.¹⁵⁰

*13. American Convention on Human Rights (1969)*¹⁵¹

This regional convention, sponsored by the OAS, approves broader standards regarding economic, social, and educational rights for incorporation into the OAS Charter.¹⁵² Article 12 includes the parents' right to provide for the religious and moral education of their children or wards that is consistent with the parents' own convictions.¹⁵³ The more specific right to education embodied in the ICESCR was later incorporated by the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights in 1988, the so-called Protocol of San Salvador.¹⁵⁴ Under Article 13(1) of the Protocol of San Salvador, everyone has the right to education.¹⁵⁵ Article 13(2) of the Protocol states the aims of education are towards the full development of the human personality and human dignity and respect for human rights, ideological pluralism, fundamental freedoms, justice, and peace.¹⁵⁶ Duties for each different type of education are provided under Article 13(3):

- (a) Primary education should be compulsory and accessible to all without cost;
- (b) Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every

¹⁴⁸ *Id.* art. 13(2).

¹⁴⁹ *Id.* art. 13(3).

¹⁵⁰ *See Committee on Economic, Social and Cultural Rights*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx> (last visited Feb. 27, 2020).

¹⁵¹ Organization of American States [OAS], *American Convention on Human Rights*, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

¹⁵² *Id.* pmbl.

¹⁵³ *Id.* art. 12(4).

¹⁵⁴ *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, Nov. 17, 1988, O.A.S.T.S. No. 69.

¹⁵⁵ *Id.* art. 13(1).

¹⁵⁶ *Id.* art. 13(2).

- appropriate means, and in particular, by the progressive introduction of free education;
- (c) Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;
 - (d) Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;
 - (e) Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.¹⁵⁷

Parents also have the right to choose the type of education to be given to their children.¹⁵⁸

14. UNESCO Education Recommendation of 1974

This Recommendation emphasizes that education should achieve and advance justice, freedom, human rights and peace, noting that there is lack of implementation of educational ideals in actual situations and constitutional practices of each state.¹⁵⁹ Principles 4(b), 6, 7, 17, and 18 of the UNESCO Education Recommendation of 1974 provide aims of education.¹⁶⁰ Principle 4(b) states that the aims of education are the “[u]nderstanding and respect for all peoples, their cultures, civilizations, values and ways of life, including domestic ethnic cultures and cultures of other nations.”¹⁶¹ Principle 6 prohibits the use of force and all forms of racialism, fascism, and apartheid.¹⁶² Principle 7 recommends that states:

[F]ormulate and apply national policies aimed at increasing the efficacy of education in all its forms and strengthening its contribution to international understanding and co-operation, to the maintenance and development of a just peace, to the establishment of social justice, to respect for and application of human rights and fundamental freedoms, and to the eradication of the prejudices, misconceptions, inequalities and all forms of injustice which hinder the achievement of these aims.¹⁶³

¹⁵⁷ *Id.* art. 13(3).

¹⁵⁸ *Id.* art. 13(4).

¹⁵⁹ UNESCO Education Recommendation of 1974, *supra* note 60, pmb1.

¹⁶⁰ *Id.* princs. 4(b), 6, 7, 17, 18.

¹⁶¹ *Id.* princ. 4(b).

¹⁶² *Id.* princ. 6.

¹⁶³ *Id.* princ. 7.

Principle 17 encourages states to mutually appreciate their different cultures and to allow the teaching of foreign languages, civilizations, and cultural heritage.¹⁶⁴ Principle 18 provides specific education goals, including eradication of inequality, injustice, and use of force in international relations, equality of peoples, the right to self-determination, maintenance of peace, protection and implementation of human rights, development, environmental protection, protection of cultural heritage, and the primary role of United Nations to implement these goals.¹⁶⁵

*15. Convention on the Elimination of All Forms of Discrimination Against Women (1979)*¹⁶⁶

The CEDAW, adopted in 1979 by the U.N. General Assembly, is often described as an international bill of rights for women.¹⁶⁷ Consisting of a preamble and thirty articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.¹⁶⁸ Article 10 of the CEDAW recognizes women's equal rights to education.¹⁶⁹

16. Indigenous and Tribal Peoples Convention (ILO Convention 169) (1989)

The ILO Convention 169 deals with education in Part VI.¹⁷⁰ It urges states to take measures to ensure indigenous people have the opportunity to acquire education at all levels equally with the rest of the national community.¹⁷¹ It also requires states to take measures appropriate to the traditions and cultures of the peoples concerned, and to make known to them their rights relating to education.¹⁷²

¹⁶⁴ *Id.* princ. 17.

¹⁶⁵ *Id.* princ. 18.

¹⁶⁶ CEDAW, *supra* note 17.

¹⁶⁷ Kelly Fasbinder, *International Women's Human Rights: United States Stalling Progress from CEDAW into CIL*, 61 WAYNE L. REV. 691, 696–97 (2016) (“It is considered the ‘international bill of rights’ for women . . .”).

¹⁶⁸ *See generally* CEDAW, *supra* note 17.

¹⁶⁹ *Id.* art. 10.

¹⁷⁰ ILO Convention No. 169, *supra* note 45, pt. 6. As of 2019, there are twenty-three parties to this Convention. *Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, INT'L LAB. ORG., <https://www.ilo.org/dyn/normlex/en/f?p=1000:12001::NO::> (follow “C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169)” hyperlink) (last visited Mar. 5, 2020).

¹⁷¹ *Id.* art. 26.

¹⁷² *Id.* art. 30.

17. *Convention on the Rights of the Child (1989)*¹⁷³

Article 28(1) recognizes the right of the child to education as a progressive right, more specifically as follows:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.¹⁷⁴

Article 29(1) provides the aims of education, including the development of respect for human rights and fundamental freedoms; the development of respect for the child's parents, his or her own cultural identity, language, and values; the preparation of the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national, and religious groups and indigenous people; and the development of respect for the natural environment.¹⁷⁵ Children are also protected from economic exploitation or any interference with their education.¹⁷⁶ Under the CRC, disabled children are also entitled to effective access to education.¹⁷⁷

18. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)*¹⁷⁸

Under Article 12(4), state parties should undertake steps to respect the liberty of parents to teach “the religious and moral education of their children in conformity with their own convictions.”¹⁷⁹ The MWC recognizes migrant workers' and their children's right to access to education.¹⁸⁰

¹⁷³ CRC, *supra* note 14.

¹⁷⁴ *Id.* art. 28(1).

¹⁷⁵ *Id.* art. 29(1).

¹⁷⁶ *Id.* art. 32(1).

¹⁷⁷ *Id.* art. 23(3).

¹⁷⁸ MWC, *supra* note 12.

¹⁷⁹ *Id.* art. 12(4).

¹⁸⁰ *Id.* arts. 30, 43(1)(a).

B. The Contemporary Development of International and Regional Principles that Applies to the Human Right to Education

The contemporary development of international principles relating to the human right to education from the 1990s has continued to be led under the umbrella of the United Nations and its affiliated and subsidiary organizations, such as Commission on Human Rights; subsequent Human Rights Councils; Committee on Economic, Social and Cultural Rights; UNESCO; the International Labor Organization (ILO). The Office of High Commissioner for Human Rights under the U.N. Secretary General has been coordinating all these efforts.¹⁸¹ The implementation of the human right to education with appropriate allocation of resources and cooperation among international organizations has been emphasized, with the Special Rapporteur on the Right to Education operating since 1998.¹⁸² At the same time, research into the human right to education is met with obstacles because there are many international organizations involved and many nations incorporated and implemented the human right to education in their constitutions and statutes in different ways.¹⁸³

*1. World Declaration on Education for All (1990)*¹⁸⁴

The World Declaration on Education for All was adopted by 155 governmental delegations in Jomtien, Thailand.¹⁸⁵ This Declaration suggests the purposes of education should be to meet basic learning needs, to share a vision, to universalize access and promote equity, to focus on learning, to broaden the means and scope of basic education, to enhance the environment for learning, and to strengthen partnerships.¹⁸⁶

¹⁸¹ See *Human Rights Education and Training*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <https://www.ohchr.org/EN/Issues/Education/Training/Pages/HREducationTrainingIndex.aspx> (last visited Mar. 5, 2020); *Special Rapporteur on the Right to Education*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx> (last visited Mar. 5, 2020); *Human Rights Bodies*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> (last visited Mar. 5, 2020).

¹⁸² General Comment 13, *supra* note 57, ¶ 60.

¹⁸³ Jody Heymann et al., *Constitutional Rights to Education and Their Relationship to National Policy and School Enrollment*, 39 INT'L J. EDUC. DEV. 121, 123 (2014).

¹⁸⁴ World Declaration on Education for All, *supra* note 74.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* arts. 1–7.

2. *Vienna Declaration and Programme of Action (1990)*¹⁸⁷

Vienna Declaration and Programme of Action inherited the human rights tradition established by the U.N. Charter and UDHR and was adopted by the World Conference on Human Rights. The Vienna Declaration and Programme of Action assessed the contemporary human rights issues including the human right to development, rights of indigenous people and migrant workers, the equal status of women, the rights of child, the rights of the disabled person, and encouraged strengthening coordination on human rights within the U.N. system. The Declaration also specifically emphasized education on human rights and implementing programs, admitting that “resource constraints and institutional inadequacies.”¹⁸⁸ Human rights education part is separately allocated in the Declaration.¹⁸⁹

3. *Plan of Action for the U.N. Decade for Human Rights Education, 1995–2004 (1996)*

Pursuant to a suggestion of the World Conference on Human Rights in the Vienna Declaration and Programme of Action,¹⁹⁰ the U.N. General Assembly proclaimed the ten-year period beginning on January 1, 1995 as the U.N. Decade for Human Rights Education.¹⁹¹ The Plan of Action included training, dissemination of information, knowledge and skills in order to strengthen the goals emphasized in the Vienna Declaration and Programme of Action including the respect for human rights and fundamental freedoms.¹⁹²

4. *U.N. Human Rights Resolution 1998/33 (1998)*

The mandate of the Special Rapporteur on the Right to Education was originally established by this resolution.¹⁹³ The duties of the Special Rapporteur, serving for a period of three years, include: (i) reporting on the status of the progressive realization of the right to education and the difficulties encountered in the implementation of this right; (ii) promoting assistance to governments in working out and adopting urgent plans of action to secure the progressive implementation of the principle of compulsory primary education; and

¹⁸⁷ World Conference on Human Rights, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (June 25, 1993).

¹⁸⁸ *Id.* pt. I, ¶ 33.

¹⁸⁹ *Id.* pt. II.D, ¶¶ 78–82.

¹⁹⁰ *Id.* pt. I, ¶ 33.

¹⁹¹ *See generally* U.N. *Plan of Action*, *supra* note 68.

¹⁹² *Id.* ¶ 2.

¹⁹³ Comm’n on Human Rights Res. 1998/33, ¶ 6(a), U.N. Doc. E/CN/4/RES/1998/33 (Apr. 17, 1998).

(iii) gender considerations and the elimination of all forms of discrimination in education.¹⁹⁴ The Special Rapporteur on the Right to Education produced the first report in 2000.¹⁹⁵

5. *Implementation of the ICESCR: General Comment No. 13: The Right to Education (General Comment 13) (1999)*

General Comment 13, drafted by the Committee on Economic, Social and Cultural Rights, provides interpretations of the specific international standards for states to comply with their duties under the right to education stated under ICESCR Article 13.¹⁹⁶ *General Comment 13* emphasizes that education is “an indispensable means of realizing other human rights” as well as a human right itself.¹⁹⁷ This interpretive comment should be considered together with *General Comment 11*, which deals with plans of action for primary education under ICESCR Article 14.¹⁹⁸ *General Comment 13* discusses the normative content of ICESCR Article 13, including the aims and objectives of education; the right to receive an education—the right to primary education, the right to secondary education, technical and vocational education, the right to higher education, the right to fundamental education, and school systems—the right to educational freedom; nondiscrimination and equal treatment; academic freedom and institutional autonomy; discipline in schools; and limitations on Article 13.¹⁹⁹ State obligations and violations under ICESCR Article 13 are also specifically interpreted. Applying *General Comment 3*, *General Comment 13* emphasizes that states have some immediate obligations regarding the right to education, such as nondiscrimination, equal treatment, and the obligation to take deliberate, concrete, and targeted steps towards the full realization of Article 13.²⁰⁰ Finally, *General Comment 13* emphasizes the roles of international organizations,

¹⁹⁴ *Id.* ¶ 6(a)(i)–(iii). For other duties of the Special Rapporteur, see *id.* ¶ 6(a)(iv)–(viii).

¹⁹⁵ Katarina Tomasevski (Special Rapporteur on the Right to Education), *Progress Report*, Submitted in Accordance with Commission on Human Rights Resolution 1999/25, U.N. Doc. E/CN.4/2000/6 (Feb. 1, 2000).

¹⁹⁶ *General Comment 13*, *supra* note 57.

The Committee notes that since the General Assembly adopted the Covenant in 1966, other international instruments have further elaborated the objectives to which education should be directed. Accordingly, the Committee takes the view that States [sic] parties are required to ensure that education conforms to the aims and objectives identified in [A]rticle 13 (1), as interpreted in the light of the World Declaration on Education for All (Jomtien, Thailand, 1990) (art. 1), the Convention on the Rights of the Child (art. 29 (1)), the Vienna Declaration and Programme of Action (Part I, para. 33 and Part II, para. 80), and the Plan of Action for the United Nations Decade for Human Rights Education (para. 2).

Id. ¶ 5.

¹⁹⁷ *Id.* ¶ 1.

¹⁹⁸ *Id.* ¶ 2.

¹⁹⁹ See *id.* ¶¶ 3–42.

²⁰⁰ *Id.* ¶ 43; see also *id.* at 15 nn.19–20.

including the U.N. Development Assistance Framework, UNESCO, the U.N. Development Programme (UNDP), U.N. Children's Fund, ILO, the World Bank, the International Monetary Fund, and the regional development banks.²⁰¹

6. *U.N. Human Rights Resolution 2005/21 (2005)*²⁰²

The Commission on Human Rights has continued to consider the right to education in its regular sessions since 2000, until it was replaced by the Human Rights Council in 2006.²⁰³ The Commission passed resolutions on the right to education, declaring that everyone shall enjoy the human right to education: Resolution 2001/29, Resolution 2002/23, Resolution 2003/19, Resolution 2004/25, Resolution 2005/21.²⁰⁴ In Resolution 2005/21, the Commission on Human Rights:

[u]rges all States (a) [t]o give full effect to the right to education and to guarantee that this right is recognized and exercised without discrimination of any kind; [and] (b) . . . to eliminate obstacles limiting effective access to education, notably by girls, including pregnant girls, children living in rural areas, children belonging to minority groups, indigenous children, migrant children, refugee children, internally displaced children, children affected by armed conflicts, children with disabilities, children affected by infectious diseases, including HIV/AIDS, sexually exploited children, children deprived of their liberty, children living in the street, working children and orphaned children.²⁰⁵

It further urges states to improve the quality of education,²⁰⁶ to mainstream human rights education,²⁰⁷ to recognize and promote lifelong learning,²⁰⁸ to submit information on best practices for the elimination of discrimination in access to education,²⁰⁹ and to contribute to efforts to mobilize resources by the international community to assist all states to achieve the goal of education for all children by 2015 per the U.N. Millennium Declaration.²¹⁰

²⁰¹ *Id.* ¶ 60.

²⁰² Comm'n on Human Rights Res. 2005/21, U.N. Doc. E/CN.4/RES/2005/21 (Apr. 15, 2005).

²⁰³ *Welcome to the Human Rights Council*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hrbodies/hrc/pages/aboutcouncil.aspx> (last visited Sept. 27, 2019) ("The Council was created by the United Nations General Assembly on [March 15, 2006] by [R]esolution 60/251.").

²⁰⁴ Comm'n on Human Rights Res. 2005/21, *supra* note 196.

²⁰⁵ *Id.* ¶ 7(a)–(b).

²⁰⁶ *Id.* ¶ 7(c).

²⁰⁷ *Id.* ¶ 7(e).

²⁰⁸ *Id.* ¶ 7(g).

²⁰⁹ *Id.* ¶ 7(q).

²¹⁰ *Id.* ¶ 7(s).

7. *World Programme for Human Rights Education (2005–Present)*

The General Assembly adopted this program as a resolution (Resolution 59/2004) on December 10, 2004 in order to advance the implementation of human rights education programmes in all sectors and to “provide a concrete framework for action and to strengthen partnerships and cooperation from the international level down to the grass roots.”²¹¹ This new program is continuation of the U.N. Decade for Human Rights Education (1995–2004) and now in its third phase (2015–2019). On top of the achievements of the first phase and second phase, which had focused on human rights education in primary, secondary, and higher education, the third phase promotes human rights training for media professionals and journals in addition to the previous trainings for teachers, civil servants, law enforcement officials, and military personnel.²¹²

8. *Convention on the Rights of Persons with Disabilities (CRPD) (2007)*²¹³

Article 24 of the CRPD recognizes the right of persons with disabilities to education, ensuring an inclusive education system at all levels and lifelong learning.²¹⁴ The CRPD also provides that the aims of education are “[t]he full development of human potential and sense of dignity and self-worth; . . . the strengthening of respect for human rights, fundamental freedoms, and human diversity; [and] . . . [e]nabling persons with disabilities to participate effectively in a free society.”²¹⁵ Persons with disabilities are ensured access to an inclusive, quality, and free primary and secondary education on an equal basis with others; reasonable accommodation of the individual’s requirements; and the support required to facilitate their effective education.²¹⁶

9. *U.N. Declaration on the Rights of Indigenous Peoples (2007)*

This Declaration recognizes the right of indigenous families and communities to retain shared responsibility for the education of their children, consistent with the rights of the child.²¹⁷ Under Article 14 of the Declaration,

²¹¹ *World Programme for Human Rights Education (2005–Ongoing)*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <https://www.ohchr.org/EN/Issues/Education/Training/Pages/Programme.aspx> (last visited Mar. 5, 2020).

²¹² *Id.*

²¹³ CRPD, *supra* note 15.

²¹⁴ *Id.* art. 24(1).

²¹⁵ *Id.* art. 24(1)(a)–(c).

²¹⁶ *Id.* art. 24(2)(b)–(d).

²¹⁷ G.A. Res. 61/295, annex, Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295,

“[i]ndigenous peoples have the right to establish and control their educational systems and institutions, providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”²¹⁸ They will not be discriminated against in education,²¹⁹ and states must take effective measures to allow indigenous people access to an education in their own culture and provided in their own language.²²⁰ Furthermore, education must promote the right to the dignity and diversity of their cultures, traditions, histories, and aspirations.²²¹ Article 17 protects indigenous children from economic exploitation and performing any work that interferes with their education.²²²

10. HRC Resolution 8/4: The Right to Education (2008)

The Human Right Council continued the previous consideration of the human right to education by the U.N. Commission on Human Rights, recalling that everyone shall enjoy the human right to education.²²³

11. Transforming Our World: The 2030 Agenda for Sustainable Development (2015)

Continuing the tradition of the Earth Summit and the Millennium Declaration to reduce extreme poverty by 2015, this new agenda adopted the 17 Sustainable Development Goals (SDGs).²²⁴ While Goal 2 of Millennium Declaration “ensure[s] . . . [the] complet[ion of] a full course of primary schooling and . . . equal access to all levels of education” by 2015, SDG 4 “[e]nsure[s] inclusive and equitable quality education and promote[s] lifelong learning opportunities for all” by 2030.²²⁵ This new goal emphasizes quality access to all levels of education as well as primary education, “education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture’s contribution to sustainable development.”²²⁶

46 I.L.M. 1013 (Sept. 13, 2007).

²¹⁸ *Id.* art. 14(1).

²¹⁹ *Id.* art. 14(2).

²²⁰ *Id.* art. 14(3).

²²¹ *Id.* art. 15(1).

²²² *Id.* art. 17(2).

²²³ Human Rights Council Res. 8/4, U.N. Doc. A/41/16, ¶ 7(e) (June 18, 2008).

²²⁴ *See generally* G.A. Res. 70/1, U.N. Doc. A/70/1, ¶¶ 1–3, 10, 16–18, 24 (Oct. 21, 2015).

²²⁵ *Id.* ¶ 14; G.A. Res. 55/2, Millennium Declaration, U.N. Doc. A/55/2, ¶ 19 (Sept. 18, 2000); *accord* U.N. Dev. Programme [UNDP], *The Millennium Development Goals Rep. 2015*, at 24–27 (Apr. 17, 2017), https://www.undp.org/content/dam/undp/library/MDG/english/UNDP_MDG_Report_2015.pdf.

²²⁶ G.A. Res. 70/1, *supra* note 224, at 17, Goal 4.7; *see generally id.* Goal 4.

12. UNESCO Recommendation on Adult Learning and Education (2015)

This Recommendation reaffirms that “[l]iteracy and adult learning and education contribute to the realization of the right to education that enables adults to exercise other economic, political, social, and cultural rights.”²²⁷ The Recommendation emphasizes the importance of lifelong learning in order to enable adults to participate fully in their societies.²²⁸

III. ANNOTATED BIBLIOGRAPHY

A. Journal Articles

1. Kate Halvorsen’s *Notes on the Realization of the Human Right to Education*

This source discusses how education as a basic human right was adopted into the UDHR and ICESCR.²²⁹ The article first establishes that education is essential to fostering national development using two distinct theories: human capital and consciousness-raising.²³⁰ After an examination of the history of the human rights system, the article arrives at its thesis: Education is a right that should be free to all children, without discrimination.²³¹ It is the duty of the state to provide and implement this education, but much difficulty comes from balancing the state’s duty to provide an educational system and parental choice over their children’s education.²³² The article further argues that one standard procedure is not suitable for all nations.²³³ The best method for implementing a sustainable education system is to first examine the subject nation’s historical and cultural context.²³⁴ Second, quantitative measurements—such as literacy rates, school enrollment, and budgets—must be evaluated to determine the best foundation upon which to build an inclusive education system.²³⁵

²²⁷ UNESCO RALE 2015, *supra* note 43, pmb1.

²²⁸ *Id.* pt. I, ¶ 1.

²²⁹ Halvorsen, *supra* note 7, at 341–42.

²³⁰ *Id.* at 343.

²³¹ *Id.* at 349–50.

²³² *Id.* at 353–54, 356.

²³³ *Id.* at 356.

²³⁴ *Id.* at 357–58.

²³⁵ *Id.* at 358–62.

2. Caetano Pimentel's *The Human Right to Education: Freedom & Empowerment*

The article begins by providing a brief philosophical and historical examination of the education system as a reflection of society's changing and growing cultural, political, and religious values.²³⁶ Pimentel then describes the historical progress of the right to education, tracking various treaties and declarations from the 1600s through the 1900s.²³⁷ While many nations have acknowledged the importance of the right to education, the commercial approach to education is an obstacle to accessible education for all people.²³⁸ The article notes that the expansion of private education leaves public education in very poor condition with few resources and thereby perpetuates religious, racial, and gender-based inequities.²³⁹ After briefly discussing gender inequality and the need for inclusive education, the article discusses the drop-out phenomenon.²⁴⁰ School drop-outs occur for a variety of reasons, including familial pressure, financial pressure, addiction to drugs/alcohol, and discrimination.²⁴¹ The article suggests that "educational content, method, and scheduling" should be fine-tuned to suit the needs of nontraditional students and to combat drop-out rates.²⁴² The article endorses UNESCO's Medium-Term Strategy for 2002–2007 as a new vision for improving the quality of education and promoting experimentation.²⁴³ In addition, the education of human rights is essential to empowering individuals and promoting effective participation in a free society.²⁴⁴ The principal point of the article is that the contemporary education system and various human rights issues can be improved with appropriate education.²⁴⁵

3. Craig Lauchner's *The Human Right to Education: Mercosur Commitment and Economic Inequality*

Lauchner argues that human rights efforts, specifically the implementation of a right to education, are an ineffective tool against economic inequality in

²³⁶ Pimentel, *supra* note 83 at 3–4.

²³⁷ *Id.* at 4–5.

²³⁸ *Id.* at 6.

²³⁹ *Id.*

²⁴⁰ *Id.* at 6–7.

²⁴¹ *Id.* at 7.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.* at 7–8.

²⁴⁵ *Id.* at 9.

Latin America.²⁴⁶ In reality, implementation of the right to education has resulted in negative consequences and perpetuation of educational and economic inequality.²⁴⁷ Lauchner further argues that data and research that show improvements in economic inequality—particularly research conducted by International Monetary Fund—are misguided because income inequality does not measure “the full picture of inequality in any region of the world, and much less so in the most unequal of regions.”²⁴⁸ Additionally, access to education is not the best tool to combat inequality in Latin America largely because the governments misallocate education funds and do not provide proper access for poor students throughout primary, secondary, and tertiary levels of education.²⁴⁹ The article then examines Mercosur as a real archetype of the above issue.²⁵⁰ Mercosur is an economic arrangement between Argentina, Brazil, Paraguay, and Uruguay with the primary intent to foster trade and beneficial commerce.²⁵¹ In addition, Mercosur has long held a human rights agenda through education policies and wealth redistribution.²⁵² In 1991, the Ministers of Education from the Mercosur nations signed a Protocol of Intention to develop education programs.²⁵³ This led to Sector Educativo de Mercosur (SEM), which included a three-phase implementation process.²⁵⁴ The article argues that SEM failed to reach its stated goal because “(1) The financial burden of Mercosur coordination falls unfairly on the smallest member states, and (2) Mercosur’s educational initiatives incentivize . . . increase[d] spending on tertiary-level education in which the students who reap the benefits overwhelmingly belong to the highest wealth percentiles in their respective nations.”²⁵⁵ The article concludes that human rights efforts and economic inequality exist because a ceiling on wealth has not been implemented in any of these frameworks.²⁵⁶

4. Martha F. Davis’s *Immigration Enforcement and Children’s Human Right to Education*

This article reviews the outcome in the case of *Plyer v. Doe*, a landmark U.S.

²⁴⁶ Lauchner, *supra* note 87, at 146.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 149.

²⁴⁹ *Id.* at 150.

²⁵⁰ *Id.* at 151.

²⁵¹ *Id.* at 151 n.48.

²⁵² *Id.* at 151–52.

²⁵³ *Id.* at 152.

²⁵⁴ *Id.* at 152–53.

²⁵⁵ *Id.* at 153.

²⁵⁶ *Id.* at 159–60.

Supreme Court case.²⁵⁷ The article discusses how recent immigration policies and ICE tactics undermine immigrant children's access to education as first addressed in 1982 by the Supreme Court in *Plyler v. Doe*.²⁵⁸ In the surprising decision, the Court declared that while it was not a constitutional right, the denial of education to undocumented children was "an affront to one of the goals of the Equal Protection Clause."²⁵⁹ The thesis includes the obstacles to immigrant children's education caused by the denial of legal status to DREAMers and the ongoing campaign to instill fear in immigrant communities.²⁶⁰

5. Kurt Willems & Jonas Vernimmen's *The Fundamental Human Right to Education for Refugees: Some Legal Remarks*

This article aims to describe the human rights obligations a state bears in educational matters, including concerns about the current influx of refugees.²⁶¹ The right to education is a fundamental human right, guaranteed by many international treaties.²⁶² The article is divided into two parts. The first discusses various international legal texts and how they apply to refugees.²⁶³ Human rights can generally be divided into two categories: first generational and second generational rights.²⁶⁴ First generational rights include the freedom of speech and freedom of religion.²⁶⁵ Second generational human rights include social, economic, and cultural rights.²⁶⁶ Education, then, from the authors' point of view, falls under the latter category.²⁶⁷ Because second generational rights are alienable and thus require implementation by the state with public resources, the right to education is neither quickly actualized nor strictly enforced.²⁶⁸

This, in turn, poses further complications with regards to refugees. As the article states, refugees are "one of the most prominent groups that risk being excluded from full legal protection."²⁶⁹ It asks whether "refugees have a legally guaranteed right to education, and to which extent is [that] right enforceable

²⁵⁷ Davis, *supra* note 95, at 344.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ Willems & Vernimmen, *supra* note 99, at 219.

²⁶² *Id.*

²⁶³ *Id.* at 220.

²⁶⁴ *Id.* at 221.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

against the [s]tate[.]”²⁷⁰ The article briefly discusses several European treaties and charters, before positing that these treaties provide ample support to the claim that refugee children have a right of access to education, while acknowledging the practical difficulties of finding effective enforcement.²⁷¹ The second part of the article contemplates three legal questions concerning the right to education:

- (i) can higher school fees be asked from pupils without legal documents?
- (ii) do refugees have a right to be taught in their own native language until they learn to speak the national language? and
- (iii) can they be placed in special (separate) schools or classes until they can follow the regular curriculum?²⁷²

The article concludes that a distinction in school fees may only be defensible for higher education, refugees currently do not have a fundamental right to be taught in their native language, and it is not automatically unlawful to place refugees in separate classes or schools; however, safeguards must be in place to ensure that this separation is not discrimination.²⁷³

6. Jai Singh’s *Expanding Horizons of Human Right to Education: Perspective on Indian and International Vision*

This article states that international conventions and declarations have made legal provisions not only to recognize the human right to education, but also to develop educational innovations and initiatives.²⁷⁴ UDHR Article 26, ICESCR Article 13, and CRC Articles 28 and 29 have made provisions to recognize the human right to education and to improve quality culture in education.²⁷⁵ The article then directs its attention to the provisions for free and compulsory education in the Constitution of India—specifically, Articles 41, 45, and 46.²⁷⁶ The article then goes into brief descriptions of several legal cases in India which expanded the definition of “*the right to life*”—Article 21 of the Constitution of India—to include a right to education.²⁷⁷ For example, in the 1992 case *Mohini Jain v. State of Karnataka*, the Supreme Court of India ruled that the fundamental right of education “cannot be denied to a citizen by charging higher

²⁷⁰ *Id.* at 222.

²⁷¹ *Id.* at 222–24 (discussing treaties including the European Convention on Human Rights and ICESCR).

²⁷² *Id.* at 220.

²⁷³ *Id.* at 230.

²⁷⁴ Singh, *supra* note 10, at 57.

²⁷⁵ *Id.* at 35–39.

²⁷⁶ *Id.* at 39–40.

²⁷⁷ *Id.* at 41–42.

fee known as the capitation fee.”²⁷⁸ The justice declared further that the right to education comes from the right to life, and the State is obligated to provide education facilities of all levels to its citizens.²⁷⁹ The case of *Unni Krishnan* limited the right to free education to all children fourteen years old and younger.²⁸⁰ The article covers other issues including grant-in-aid to law colleges and infliction of corporal punishment on children.²⁸¹ The preceding legal cases and issues have accumulated to result in the Right of Children to Free and Compulsory Education Act of 2009.²⁸² This act makes it “obligatory for state governments and local bodies to provide free and compulsory education to every child from six to fourteen years.”²⁸³ The article continues to elaborate on the specific aims and duties of the Government in successfully implementing the Act.²⁸⁴

7. Douglas Hodgson’s *The International Human Right to Education and Education Concerning Human Rights*

The author explains that the fuller realization of the right to education can be achieved by improvements in the reporting and monitoring processes and a greater resolve on the part of state parties to fulfill their reporting requirements and obligations under the international instruments conscientiously and in good faith.²⁸⁵ Considering the interdependence of the right to education with other human rights, such as the rights to health, to an adequate standard of living, and to not be arbitrarily discriminated against, it may be expected that improvements to the latter will produce salutary results for the former.²⁸⁶ The article begins with a general overview of the historical development of the right to education, focusing on the global move towards adoption of education rights after World War II.²⁸⁷ The article notes the significance of the United Nations’ and UNESCO’s mission to eliminate illiteracy and discrimination, and promote the education of youth throughout the world.²⁸⁸ The importance of the right to education is solidified in the recognition of said right in the UDHR, the

²⁷⁸ *Id.* at 42–43.

²⁷⁹ *Id.* at 43–44.

²⁸⁰ *Id.* at 44–45.

²⁸¹ *Id.* at 46, 48.

²⁸² *Id.* at 53.

²⁸³ *Id.*

²⁸⁴ *Id.* at 53–57.

²⁸⁵ Douglas Hodgson, *The International Human Right to Education and Education Concerning Human Rights*, 4 INT’L J. CHILD. RTS. 237, 262 (1996).

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 238–39.

²⁸⁸ *Id.* at 239–40.

Convention Against Discrimination in Education (1960), and most recently in the CRC.²⁸⁹ More specific issues within the right to education—such as the rights of refugees, discrimination against women, and the discrimination against mentally disabled—are also discussed.²⁹⁰ International and regional instruments state four basic aims:

(a) the full development of the individual's personality, talents, and abilities; (b) the strengthening of respect for human rights and fundamental freedoms; (c) the enabling of all persons to participate effectively in a free society; (d) the promotion of understanding, tolerance and friendship among all nations, racial, ethnic or religious groups and the furtherance of the activities of the United Nations for the maintenance of peace.²⁹¹

The article further lists the international and regional documents that address education about human rights, the necessity for international cooperation, adult education, minority education, and parental prerogatives.²⁹²

8. Jost Delbrück's *The Right to Education as an International Human Right*

A basic or human right to education during the inter-war period between 1919 and 1939 is discussed in this article.²⁹³ A new generation of human rights (new rights) were created, which aimed at “obliging the state to or government to provide services to the people.”²⁹⁴ However, many critics allege that strong government involvement in the education process “might threaten individual freedom and might undermine the very foundations of a free society altogether.”²⁹⁵ This article attempts to address these fears against new rights.²⁹⁶ The article defines the focal point of the right to education as “the unequivocal commitment to the dignity inherent in every human being and hence to the development of the human personality.”²⁹⁷ Education is a development of personality of the young, not just a basic skill.²⁹⁸ The article proceeds to enumerate the various legal instruments that contain these theories.²⁹⁹ The

²⁸⁹ *Id.* at 240.

²⁹⁰ *Id.* at 245, 247–48.

²⁹¹ *Id.* at 251–52 (internal citations omitted).

²⁹² *Id.* at 254–60.

²⁹³ Delbrück, *supra* note 1, at 96.

²⁹⁴ *Id.* at 92.

²⁹⁵ *Id.* at 93.

²⁹⁶ *Id.* at 93, 98.

²⁹⁷ *Id.* at 98.

²⁹⁸ *Id.* at 99.

²⁹⁹ *Id.* at 98–99.

article ultimately argues that the right to education is a social right, but it is anchored in the inherent dignity of every human being.³⁰⁰ Therefore, there are protections of students against the State's and educator's indoctrination.³⁰¹

9. John-Stewart Gordon's *Is Inclusive Education a Human Right?*

The article presents a philosophical and conceptual argument that states that the right to inclusive education should not be seen as a human right from a moral point of view even if it is a human right from the current legal standpoint.³⁰² However, the author still admits the practical importance of human rights, and the idea of human rights is valuable independent of an attainable consensus on a theoretical level.³⁰³ The author uses the CRPD as the cornerstone for this article which, among other discussions, set out the legal human right to inclusive education for students with disabilities or impairments.³⁰⁴ The article begins its preliminary remarks by describing the three most important models of disability-individual, social, and human rights.³⁰⁵ "There are at least three main approaches in education for students with disabilities at present: inclusive education, integrative education, and segregated education."³⁰⁶ The article also posits that human rights can be both positive and negative rights.³⁰⁷

10. Munafrizal Manan's *The Implementation of the Right to Education in Indonesia*

The article examines the developments and challenges of implementing the right to education in Indonesia over the last sixty years.³⁰⁸ The author begins by discussing the significance and requirements set out by the International Bills of Human Rights.³⁰⁹ The Indonesian Constitution guarantees the right to education and requires the government to allocate at least 20% of its national budget to implement a national system of education.³¹⁰ While the Constitution obliges the government to uphold an education system, it placed a heavy burden on the country's finances.³¹¹ Due to 300 years of Dutch rule, 80% of the Indonesian

³⁰⁰ *Id.* at 104.

³⁰¹ *Id.*

³⁰² Gordon, *supra* note 104, at 755.

³⁰³ *Id.* at 757.

³⁰⁴ *Id.* at 754.

³⁰⁵ *Id.* at 755.

³⁰⁶ *Id.* at 756.

³⁰⁷ *Id.* at 758.

³⁰⁸ Manan, *supra* note 10, at 52.

³⁰⁹ *Id.*

³¹⁰ *Id.* at 56.

³¹¹ *Id.* at 56–57.

population was illiterate.³¹² Prior to the nation's independence, education was only given to the aristocratic and noble minority of the country.³¹³ The lack of qualified instructors, proper infrastructure, cultural barriers, and a variety of dialects within the language all obstructed the efficient implementation of education.³¹⁴

In 1966, the New Order Government was able to achieve notable progress in decreasing illiteracy.³¹⁵ The article claims that a large part of this success is due to pragmatic strategies which strengthened the country's economy and, in turn, allowed for infrastructural and social development.³¹⁶ The New Order Government opened more primary schools and reduced the illiteracy rate to 47%.³¹⁷ However, the government also limited higher education autonomy in order to preserve the security of centralized government.³¹⁸ The government following the New Order regime amended the Constitution of 1945 to strengthen the obligation of the government to fulfill the right to education.³¹⁹ The government granted autonomy to public universities to diminish the power of the centralized government and to decrease the obligation of the State to finance education institutions.³²⁰

The government launched the Nine-Year Compulsory Basic Education Program for every citizen from seven to fifteen years of age.³²¹ In 2008, the government claimed it achieved its target seven years ahead of schedule.³²² This motivated the government to launch the Twelve-Year Compulsory Basic Education system, extending the period of obligated public education.³²³ However, other problems with education still exist in Indonesia.³²⁴ Approximately 3.1 million students per year drop out before they reach high school, predominantly because their families can no longer afford the cost of

³¹² *Id.* at 57.

³¹³ *Id.*

³¹⁴ *Id.* at 58.

³¹⁵ *Id.* at 59.

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.* at 60.

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.* at 61.

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

education.³²⁵ In response to this problem, the government increased the national budget for education and provided scholarships to poor students.³²⁶

The article asserts that further efforts to advance progress are frustrated by the lack of will from political elites to fulfill their constitutional obligation, as well as corruption and misappropriation of funds.³²⁷ The article then moves to the development and challenges of providing education to marginalized and indigenous Indonesians.³²⁸ One of the issues with infrastructure is the location of universities throughout the country.³²⁹ The article notes that over 300 higher education universities are located in Jakarta alone and not accessible to citizens throughout the country.³³⁰ Another issue is that most disabled students are excluded from regular public school and have to attend special schools for disabled students.³³¹ However, there are fewer of these schools than regular schools, and they are more expensive.³³² In addition, many schools lack resources, properly trained teachers, textbooks, and school supplies.³³³ *Indonesia Mengajar* is an educational movement aimed at providing qualified elementary school teachers to rural areas of the country.³³⁴ It has sent new graduates into the hinterlands, fostered corporate support, and continued to recruit new and qualified applicants into the program.³³⁵

11. Klaus D. Beiter's *Is the Age of Human Rights Really Over?: The Right to Education in Africa*

This article takes a critical look at human rights efforts within Africa and ultimately argues that while human rights goals were underperformed, human rights are still significant.³³⁶ The article begins with an admission of many of the faults with human rights efforts, particularly the political hypocrisy of Western countries and the use of human rights as a new form of colonization.³³⁷ It introduces Article 11 of the African Charter on the Rights of Welfare of the Child (ACRWC) as the most prominent formulation of the right to education at

³²⁵ *Id.* at 61–62.

³²⁶ *Id.* at 62.

³²⁷ *Id.* at 63.

³²⁸ *Id.*

³²⁹ *Id.* at 63–64.

³³⁰ *Id.* at 64.

³³¹ *Id.*

³³² *Id.* at 64–65.

³³³ *Id.* at 58, 65.

³³⁴ *Id.* at 65.

³³⁵ *Id.* at 65–66.

³³⁶ Beiter, *supra* note 10, at 9.

³³⁷ *Id.* at 11.

the regional level.³³⁸ The article discusses the viability of three solutions: (1) human rights need to be domesticized; (2) development goal approaches should be debunked; and (3) extraterritorial state obligations under international human rights law must be recognized.³³⁹ The first solution addresses the problem that human rights in non-Western societies are imposed without any effort to conform to each countries' specific cultural context.³⁴⁰ The article argues in favor of soft universalism/relativism because it accommodates both the global and particularist perspectives.³⁴¹ This approach allows human rights to be domesticized. Domestication of human rights entails the complementary nature of regional norms which should not be conflicting with relevant international norms.³⁴²

The article begins the subsection "The Right to Education Under the African Human Rights System" with a discussion of the African Charter on Human and Peoples' Rights of 1981 (Banjul Charter).³⁴³ The discussion focuses on Article 17 of the Banjul Charter, which contains statements on the freedom for an individual to participate in education and the obligations that need to be fulfilled by the states.³⁴⁴ The article then discusses the African Commission on Human and Peoples' Rights's *Concluding Observations and Recommendations*, which contain the considerations of a state party and that state party's comments on progress and failures in implementing the Banjul Charter.³⁴⁵ The Commission emphasizes a variety of requirements that statements must fulfill when implementing education systems.³⁴⁶ The Commission includes further comments on providing education for disabled and indigenous children, and promotes education for young women as well.³⁴⁷ The ACRWC has been ratified by most African states and contains the essential elements found in the CRC.³⁴⁸ However, the ACRWC contains key deviations from the CRC to address specific issues in Africa.³⁴⁹ The ACRWC states that education should be aimed at "preservation and strengthening of positive African morals, traditional values,

³³⁸ *Id.* at 13.

³³⁹ *Id.* at 14.

³⁴⁰ *Id.* at 15.

³⁴¹ *Id.* at 17.

³⁴² *Id.* (internal citations omitted).

³⁴³ *Id.* at 18.

³⁴⁴ *Id.*

³⁴⁵ *Id.* at 20.

³⁴⁶ *Id.* at 20–21.

³⁴⁷ *Id.* at 21–22.

³⁴⁸ *Id.* at 22 & n.55.

³⁴⁹ *Id.* at 22.

and cultures.”³⁵⁰ It also provides provisions specifically implementing equal access to education for girls and creating more accommodating education systems for pregnant persons.³⁵¹ The ACRWC explicitly prohibits child marriages.³⁵² The African Committee of Experts on the Rights and Welfare of the Child is a committee of independent experts which supervises the implementation of the ACRWC.³⁵³

The article suggests “[d]ebunking [p]ure ‘[d]evelopment [g]oal’ [a]pproaches” as a second solution, discussing the lack of commitment and societal attention towards specific and genuine efforts to carry out the human right to education.³⁵⁴ This section focuses on the neglect of legal commitments; problems with allowing the private sector to implement education systems; the question of who bears the duty of funding education programs and the obligations of the World Bank; and the lack of “*human rights language*” to sufficiently describe the needs and methods regarding the human right to education.³⁵⁵ The article examines international treaties such as the ICESCR, the U.N. Millennium Declaration of 2000, the 2030 Agenda for Sustainable Development of 2015, and the Incheon Framework for Action.³⁵⁶ The article enumerates that if human rights law is to be properly implemented and appreciated by people globally, the concept of extraterritorial state obligations under human rights law must be accepted by all governments.³⁵⁷ These obligations must also be set out with sufficient clarity in order to uniformly determine whether a state’s conduct conforms with human rights law.³⁵⁸

12. Ni Zhen’s *Rethinking Inclusion: Is There a Right to Inclusive Education?*

The article examines the limitations to human rights law and education right as applied to persons with disabilities.³⁵⁹ The author asks two research questions: (1) What description should be given to a better education system inclusive of disabled children?; and (2) How to arrive at a consensus over that

³⁵⁰ *Id.* at 22–23.

³⁵¹ *Id.*

³⁵² *Id.* at 23.

³⁵³ *Id.*

³⁵⁴ *Id.* at 34.

³⁵⁵ *Id.* at 34–47.

³⁵⁶ *Id.* at 35.

³⁵⁷ *Id.* at 84–85, 87.

³⁵⁸ *Id.* at 86.

³⁵⁹ Ni Zhen, *supra* note 10, at 487–88.

better system among stakeholders and within the whole society?³⁶⁰ This article begins with a historical overview of educational theories.³⁶¹ In the eighteenth and nineteenth centuries, the general belief was that segregation and institutionalization were the best methods for disabled students.³⁶² In the 1960s, educational integration became a more popular ideology.³⁶³ The author uses Michel Foucault's analysis of power as the lens to view models of educational arrangements—children are “measured with respect to their distance from the fixed norm.”³⁶⁴ Special education needs to create distance from the norm; thus, children with disabilities are not given the means to assimilate and are excluded.³⁶⁵ Zhen uses China as a case study to demonstrate the challenges to implementing an inclusive education system without a clear description and consensus about what inclusive education is.³⁶⁶

Since the 1950s, the Chinese government has promoted institutionalized segregation of disabled persons.³⁶⁷ Special schools were made to provide social education and, under socialist discourse, aimed to transform disabled individuals into people who provided useful labor contributions to society.³⁶⁸ In 1990, China enacted the Law on the Protection of Disabled Persons and, in 1994, issued the Regulation on the Education of Persons with Disabilities.³⁶⁹ Under the predominant individual model of disability, there are three themes: (1) how to interpret impairments; (2) what to do with the impairments; and (3) how people value or devalue the consequences of these impairments.³⁷⁰ In 1988, the China Disabled Persons' Federation was established as a civil society organization but began to operate as a vice-ministry institution.³⁷¹ The organization sought to answer three questions: “who and where disabled persons were, and how many.”³⁷² The census revealed that China had a population of 51,860,000 disabled persons.³⁷³ Further research revealed that the vast majority of children with disabilities were excluded from any form of education.³⁷⁴ An experimental

³⁶⁰ *Id.* at 488.

³⁶¹ *Id.* at 488–89.

³⁶² *Id.* at 489.

³⁶³ *Id.* at 489–90.

³⁶⁴ *Id.* at 491.

³⁶⁵ *Id.*

³⁶⁶ *Id.* at 492.

³⁶⁷ *Id.* at 493–95.

³⁶⁸ *Id.* at 494.

³⁶⁹ *Id.* at 495.

³⁷⁰ *Id.*

³⁷¹ *Id.* at 496.

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.* at 497.

solution was “*learning in regular class*” (LRC), which placed disabled children into local, regular classrooms.³⁷⁵ While this method is still in use today, the education system still lacks proper resources and support.³⁷⁶ The Chinese government, while making efforts to improve the LRC system, largely maintains a “separate but equal” policy for disabled students.³⁷⁷

The author offers a three-layered solution to achieve consensus on the question of how inclusive education should be defined, using John Rawls’s philosophy as a cornerstone.³⁷⁸ The top layer of the author’s solution adopts Rawls’s famous thought experiment: The Original Position, in which a group of rational, equal, and free people—behind the “*veil of ignorance*”—get together to make decisions about fundamental principles for an education system and reach an “overlapping consensus.”³⁷⁹ The middle layer to the author’s solution concerns basic liberties such as freedom of thought, political liberties, freedom of association, and equality.³⁸⁰ The bottom layer can be summarized as a strong, foundational “informational basis” combined with rational choice theory, self-reflection, and public reason.³⁸¹ The article provides the author’s own definition of inclusive education.³⁸² It consists of three dimensions: the remedying dimension, the reflecting dimension, and the human rights dimension.³⁸³ The author argues that this model helps to set up the institutional mechanization for actual realization and addresses the problem of consistent inequalities.³⁸⁴

13. Ichsan Yasin Limpo’s *A Human Rights Perspective in the Development of National Education System*

This article begins with an overview of contemporary Indonesia’s education system.³⁸⁵ National education aims toward developing citizens who actualize optimal levels of potential and humanity dimension.³⁸⁶ There are three aspects to this humanity dimension: (1) faith, piety, noble character; (2) cognitive capacity of mind and intellect; and (3) psychomotor competence.³⁸⁷ The article

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 497–98, 498 n.76.

³⁷⁷ *Id.* at 500.

³⁷⁸ *Id.* at 501–02.

³⁷⁹ *Id.* at 502–06.

³⁸⁰ *Id.* at 505–07.

³⁸¹ *Id.* at 507.

³⁸² *Id.* at 512–13.

³⁸³ *Id.* at 513.

³⁸⁴ *Id.* at 513–14.

³⁸⁵ Limpo, *supra* note 82, at 9.

³⁸⁶ *Id.*

³⁸⁷ *Id.*

lists four main causes for the deterioration of education in Indonesia: (1) political intervention in education; (2) no serious effort from the government to improve education; (3) education orientation which focused on service function; and (4) the weakness of human resources of education administration.³⁸⁸ The article submits that the constructivist theory, developed by Piaget and Vygotsky, is best suited as the basis for learning development because it provides instructive notions of how to “develop creativity, independence, responsibility, and exploration.”³⁸⁹ The article continues to list the principles of education:

- (1) it is conducted in a democratic and fair and non-discriminatory manner by upholding human rights, religious and cultural values, and national pluralism;
- (2) it is organized as a systemic entity with an open and multi-sense system;
- (3) it is organized as a process of culture and empowerment of learners that lasts for life;
- (4) it is organized by giving exampl[es], build[ing] willingness, and develop[ing] the creativity of learners in the learning process;
- (5) it is organized by developing a culture of reading, writing, and arithmetic for all citizens; and
- (6) it is organized by empowering all components of society through participation in the implementation and quality control of education services.³⁹⁰

The article then suggests that the education system be modeled after the standards listed in the CRC.³⁹¹

14. Brice Dickson’s *The Right to Education for Humanity*

This article asserts as its thesis that international human rights law is stunted in its evolution due to “an undue deference to the diktat of parents in relation to how their children should be educated.”³⁹² It further argues that if international human rights law is to come to full fruition, the goal of education should be to develop “citizens of the world,” allowing people to fully participate in any society regardless of the family or community setting into which they are

³⁸⁸ *Id.*

³⁸⁹ *Id.* at 10.

³⁹⁰ *Id.* at 11.

³⁹¹ *Id.* at 12–13.

³⁹² Brice Dickson & Conor McCormick, *The Right to Education for Humanity*, 67 N. IR. LEGAL Q. 409, 409 (2016).

born.³⁹³ The article uses Northern Ireland as its case study.³⁹⁴ The original goals proclaimed in the UDHR for the right to education were sidelined by two developments: (1) tendency to concentrate on a narrow definition of education, restricting it to schools and colleges; and (2) enhanced focus on parents' prior rights over the kind of education their children would have.³⁹⁵ As a result, international human rights law effectively suppressed the right of children to be educated in a free, tolerant world and instead allowed religious prejudices to dominate education.³⁹⁶ The article proceeds to examine international human rights instruments that have given legally binding force to the right to education.³⁹⁷ While UNESCO's Convention Against Discrimination in Education, ICCPR and ICESR recognized the importance of parents' liberty to ensure that education of their children was "in conformity of their own convictions," the author asserts that that clause refers to the child's *own* convictions not the parents' convictions.³⁹⁸ The author further notes that the CRC makes no direct mention of a parent's right to control his/her child's education.³⁹⁹ The author argues that global peace can be achieved by broadening the subjects of education to include all nations, races and religions, and encouraging tolerance and friendship among all people.⁴⁰⁰

In examining the role of religion and education in Northern Ireland, the article notes the three dominant categories of education: controlled schools, voluntary schools, and integrated schools.⁴⁰¹ Controlled schools are supposed to provide a nondenominational state education, but there is an obvious lean towards Protestantism.⁴⁰² Controlled schools are owned, funded, and managed by the Education Authority.⁴⁰³ Voluntary schools are publicly funded but privately owned.⁴⁰⁴ Voluntary maintained schools are under the ownership and management of the Catholic Church.⁴⁰⁵ Integrated schools try to facilitate the education of both Protestant and Catholic students.⁴⁰⁶ For all three types of

³⁹³ *Id.*

³⁹⁴ *Id.* at 410.

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.* at 411.

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* at 414.

⁴⁰¹ *Id.* at 418.

⁴⁰² *Id.*

⁴⁰³ *Id.* at 418–19.

⁴⁰⁴ *Id.* at 419.

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.* at 420.

schools, the overseeing boards include religious representatives.⁴⁰⁷ The article continues to elaborate on the role religion plays in the education curriculum, on the hierarchy of the education system, and the admission selection process, all of which tend to perpetuate religious segregation.⁴⁰⁸ The article concludes that the right to education should include an understanding of how religious differences perpetuate conflicts throughout the world.⁴⁰⁹ Mutual appreciation of alternative points of view is essential for success in a globalized society.⁴¹⁰

B. Treatises

1. The Protection of the Right to Education by International Law Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights by Klaus Dieter Beiter

This book recognizes threats by the commercialization of education and seeks to affirm education as a human right.⁴¹¹ The book contains principles proclaimed in the U.N. Charter, including recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family as the foundation of freedom, justice, and peace in world.

2. The Human Right to Education by Douglas Hodgson

This monograph tries to provide a general overview of the content and development of the right to education at the international, regional, and national levels, as well as an examination of various associated topical issues.⁴¹² The book traces the historical development of the right to education at the national level, considers the recognition of the right to education at the international and regional levels, and describes the emerging and controversial topics of minority and indigenous education. The obligation of states to provide human rights education is examined and the various forms of specialized education and topical issues, such as the education of the disabled and parental involvement in decisions concerning the education of their children, are also explored.

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.* at 421–31.

⁴⁰⁹ *Id.* at 431.

⁴¹⁰ *Id.* at 432.

⁴¹¹ KLAUS DIETER BEITER, *THE PROTECTION OF THE RIGHT TO EDUCATION BY INTERNATIONAL LAW INCLUDING A SYSTEMATIC ANALYSIS OF ARTICLE 13 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS* (Martinus Nijhoff Publishers, 2006).

⁴¹² DOUGLAS HODGSON, *THE HUMAN RIGHT TO EDUCATION* (Ashgate, 1998).

In five sections, this book covers the development of education, particularly in the United States, but also examines the issue on an international level. Chapter 4: “International Recognition of the Right to Education Under Conventional and Customary Law” provides an exploration of “each level or source” of international and regional instruments which acknowledge the right to education.⁴¹³ Chapter 5 proceeds to methodically classify the aims of the right to education using international instruments, such as charters, declarations, and national constitutions.⁴¹⁴ In Part IV, titled “Specialised Education and Specific Groups and Issues,” the book reviews the rights of marginalized groups like disabled students, women, migrants, and refugees.⁴¹⁵

3. *Article 28: The Right to Education* by Mieke Verheyde

As part of the series *A Commentary on the United Nations Convention on the Rights of the Child*, this sixty-nine page think-book provides a commentary on CRC Article 28.⁴¹⁶ “For every article, a comparison with related human rights provisions is made, followed by an in-depth exploration of the nature and scope of State obligations deriving from that article.”⁴¹⁷

Although the author conducts a detailed examination of the right to education through Article 28, it is not the CRC’s only section that addresses education.⁴¹⁸ The author first compares Article 28 with similar international human rights doctrines.⁴¹⁹ In Chapter 3: “Scope of Article 28,” the authors delve into each subsection of the Article addressing the right to receive education, including free education and the curriculum, the right to equal access and equal opportunities to education, the freedom to choose education, the nature of states parties’ obligations, and the rights of children who participate in the education system.⁴²⁰ The book concludes with the final two sections of the Article: “Article 28(2): The Right to a Human Disciplinary System” and “Article 28(3): The International Cooperation in Education.”

⁴¹³ *Id.* at 39.

⁴¹⁴ *Id.* at 71–82.

⁴¹⁵ *Id.* at 153–207.

⁴¹⁶ Mieke Verheyde, *Article 28: The Right to Education*, in 28 *A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD* (Alen Durakovic et al. eds., Martinus Nijhoff Publishers, 2005).

⁴¹⁷ *Blurb* to Verheyde, *supra* note 416.

⁴¹⁸ *Id.* at 1. The CRC also addresses education in Article 29. CRC, *supra* note 13, art. 29.

⁴¹⁹ Verheyde, *supra* note 416, at 7–10 (chapter two).

⁴²⁰ *Id.* at 11–59.

4. *The Education Deficit: Failures to Protect and Fulfill the Right to Education in Global Development Agendas* by Elin Martínez of Human Rights Watch

Human Rights Watch makes efforts to protect people's human rights worldwide⁴²¹ and scrupulously investigates abuses, exposes the facts widely, and pressures those with power to respect rights and secure justice.⁴²² This report published by Human Rights Watch examines the causes and effects of a global "educational deficit" that persists in spite of the general progress towards creating accessible education policies in developing countries.⁴²³ The displacement of millions of children from the education system further undermines the fundamental goals of human rights education.⁴²⁴ This report bases its research on over forty different countries and examines the key barriers and governmental failures which threaten the right to education.⁴²⁵ The report is organized into four parts: (1) "International Standards Followed," which focuses on elements of cooperation, access, and quality; (2) "Global Education Efforts"; (3) "Violations and Barriers Affecting the Right to Education," which encompasses such issues as education costs, discrimination, abuse, and economic exploitation; and (4) "Impact of the Global Crises on Children's Education," which includes such issues as displacement and hazards.⁴²⁶

5. *The Universal Right to Education: Justification, Definition, and Guidelines* by Joel Spring

In this book, the author suggests that "education can provide citizens with the tools for resisting totalitarian and repressive governments and economic exploitation."⁴²⁷ This book provides universal justifications for human and educational rights, considering indigenous and minority cultures, languages, a global culture and economy, and children's rights.⁴²⁸ It also attempts to provide universal concepts of education, considering human rights education and moral duties, and guidelines for literacy and numeracy instruction.⁴²⁹

⁴²¹ MARTÍNEZ, *supra* note 94, at ii.

⁴²² *Id.*

⁴²³ *Id.* at 1.

⁴²⁴ *Id.* at 2.

⁴²⁵ *Id.*

⁴²⁶ *Id.* at 8, 13, 16, 75.

⁴²⁷ JOEL SPRING, *THE UNIVERSAL RIGHT TO EDUCATION: JUSTIFICATION, DEFINITION, AND GUIDELINES* 1 (Lawrence Erlbaum Associates, Inc., 2000).

⁴²⁸ *Id.* at 2–3.

⁴²⁹ *Id.* at 3.

Chapter 1: “Justifying Human and Education Rights” addresses conflicting ideologies by scholars and philosophers from France, the Soviet Union, China, as well as Hindu philosophy.⁴³⁰ At the end of the chapter, the author agrees with I.L. Kandel’s arguments for what makes an ideal education and which qualities do not embody the right to education.⁴³¹ The author makes a deeper examination of the conflict between culture and human rights doctrine in Chapter 2: “Justifying a Universal Right to Education for Indigenous and Minority Cultures.”⁴³² This chapter examines how colonialism established a global system and undermined thousands of minority and indigenous cultures.⁴³³ The author also addresses how to preserve these cultures and linguistics through human rights.⁴³⁴ The remaining chapters of the book then address how a global culture and economy impacts the right to education, children’s rights, literacy rates, as well as the moral duties of governments and organizations to promote education.⁴³⁵

6. *Human Rights in the Field of Comparative Education*

This book is a collection of nine critical essays relating to educational rights, which were presented at the Fourteenth World Congress of Comparative Education.⁴³⁶ Each essay covers a country-specific issue regarding the right to education, covering a wide range of topics from the educational needs of refugee children and the intersection of citizenship issues. Topics include asylum-seeking and refugee children within the neo-liberal state and inclusive schools in the United Kingdom; the protection of children’s rights in Latin America; the right to education in Latin America (2005–2010); tension between national citizenship and human rights; interpreting children’s rights; culturally responsive pedagogy and human rights; Moroccan children’s rights in an educational space; the role of inter-school collaboration in promoting inter-group relations; and refugee education as a gauge of liberal multiculturalism.⁴³⁷

⁴³⁰ *Id.* at 1–18.

⁴³¹ *Id.* at 18.

⁴³² *Id.* at 19–37.

⁴³³ *Id.* at 20.

⁴³⁴ *Id.* at 33.

⁴³⁵ *Id.* at 3.

⁴³⁶ HUMAN RIGHTS IN THE FIELD OF COMPARATIVE EDUCATION 1 (Heidi Biseth & Halla B. Holmarsdottir eds., Sense Publishers, 2013).

⁴³⁷ *Id.* at 4–9.

7. *Local Languages as a Human Right in Education: Comparative Cases from Africa* by Zehlia Babaci-Wilhite

The author suggests that any local curriculum that ignores local languages and cultures risks a loss of learning quality and represents a violation of children's rights in education.⁴³⁸ The book provides a paradigm shift from focusing on the issue of schooling access to the very meaning education has for personal and collective identity and affirmation. This book is one in a series that aims to provide the range of methodologies associated with comparative education and international education, which are both exemplified and open for debate. This book is a collection of essays regarding the choice of a "local or foreign language as a language of instruction . . . in schools from elementary to university."⁴³⁹ The ultimate thesis champions education in the local language as critical to quality learning, reinforcing the cultural identity of the students, and "indispensable for inclusive development."⁴⁴⁰ African countries are the majority of the focus of this book, particularly Zanzibar.⁴⁴¹ But the book expands to other countries such as Nigeria, Tanzania, and Malaysia.⁴⁴² It asks the question, why do some systems choose colonial languages for their education system?⁴⁴³ The book is divided into seven chapters and explores the theoretical framework for the study as well as the consequences of using colonial language of study.

8. *Safe Spaces: Human Rights Education in Diverse Contexts*

This book compiles scholarly articles dealing with issues relating to human rights education in terms of culture, religious, and societal diversity.⁴⁴⁴ "The book provides an admirable range of theoretical and empirical perspectives from the impressive range of authors. Each chapter in one way or another resonates with a problem perennial to human rights and human rights education: the transformation of articles of intention to the actualities of implementation and practice."⁴⁴⁵

⁴³⁸ BABACI-WILHITE, *supra* note 92, at 2.

⁴³⁹ *Id.* at 1.

⁴⁴⁰ *Id.* at 3.

⁴⁴¹ *Id.* at 1.

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ Cornelia Roux, *Preface* to 5 SAFE SPACES, *supra* note 88, at vii. The topics include discourse, critique, social justice, the ethical responsibility of curriculum, the irony in safe spaces, identity, identification and sociolinguistic practices, identity premised on equality of difference as fundamental human right, children's rights, religious diversity in public education, power and privilege, gender discourse, girls' experiences of religious and cultural practices, interdisciplinary feminist theory, discourses on narratives, plurality in society mirrored in the teacher's multi-voiced self, and internalized inequality.

⁴⁴⁵ Liam Gearon, *Introduction* to 5 SAFE SPACES, *supra* note 89, at 1, 2.

Collectively focusing on the intersection between religion and gender equality within the context of human rights education, the book is divided into three parts: (1) “Human Rights Education: Philosophical and Policy Perspectives”; (2) “Gender Discourse: Diverse Perspectives”; and (3) “Discourses on Narratives as ‘Safe Spaces.’” In part one, Petro Du Preez’s article discusses the ethical responsibilities of creating a curriculum and addressing the needs of students beyond meeting traditional institutional goals.⁴⁴⁶ Johan Botha’s article addresses white male teachers’ power and privilege in the classroom,⁴⁴⁷ especially their aggressive behavior toward students that can create an unsafe, destructive, and unproductive environment.⁴⁴⁸

9. *Human Rights and Education*

This volume, one in a comparative and international education series, compiles articles by various authors from many countries.⁴⁴⁹ The book discusses education as a human right and education about human rights.⁴⁵⁰ The regions and countries covered include: Sub-Saharan Africa, India, Saudi Arabia, Britain, China, Indonesia, Canada, Israel, Norway, Yugoslavia, Kenya, the United States, Canada, and the Philippines.⁴⁵¹ Appendices include human rights documents from the United Nations, UNESCO, and regions.⁴⁵²

This book provides a variety of cultural and national perspectives. As a basis for analysis, the authors examine international human rights doctrines and case-studies. The book is organized into two parts: (1) “Education as a Human Right” and (2) “Education About Human Rights.”⁴⁵³ The first part addresses issues of access and equality of opportunity, rights to universal literacy, and preservation of culture and language.⁴⁵⁴ It also considers the rights of children, parents, and teachers within the context of education rights.⁴⁵⁵ The second part addresses how a curriculum should be designed and which aspects of human rights

⁴⁴⁶ Petro Du Preez, *The Human Right to Education, the Ethical Responsibility of Curriculum, and the Irony in ‘Safe Spaces’*, in 5 SAFE SPACES, *supra* note 89, at 51, 51–52.

⁴⁴⁷ Johan Botha, *Power and Privilege: White Male Teachers’ Experiences of Aggression*, in 5 SAFE SPACES, *supra* note 89, at 151, 151–52.

⁴⁴⁸ *Id.*

⁴⁴⁹ HUMAN RIGHTS AND EDUCATION 3 (Norma Bernstein Tarrow ed., Pergamon Press, 1987).

⁴⁵⁰ *Id.*

⁴⁵¹ *See generally id.* at 15.

⁴⁵² *See generally id.* at 217–18.

⁴⁵³ *See id.* at 14–15.

⁴⁵⁴ *Id.* at 4.

⁴⁵⁵ *Id.*

education should be emphasized so that human rights is incorporated throughout an individual's career and sense of citizenship.⁴⁵⁶

10. *Ethics of Human Rights* by A. Reis Monteiro

This volume is an extensive study into the ethical significance of human rights, aiming at “contributing to a universal culture of human rights with deep roots and wide horizons.”⁴⁵⁷ The book provides an overview of ethical thought on human rights, historical and theoretical backgrounds of human rights, common ethics of human kind, ethics of recognition, human dignity principles, human rights revolution, and the changed and changing legal landscape.⁴⁵⁸ This volume mainly focuses on the theories and philosophical concepts of humanism and what it means now in the face of globalization. The purpose, scope, and rationale of human rights are reflected in the three-part structure of the manuscript: (1) “The Ethics of Human Rights,” which examines the origins of human rights ideals;⁴⁵⁹ (2) “Human Rights: Common Ethics of Humankind,” which focuses on the human dignity principle and the idea that the ethics of human rights are a recognition of “human worth, dignity, and rights”;⁴⁶⁰ and (3) “Human Rights Revolution,” which examines how law and politics influence international human rights law, as well as criticisms against human rights law.⁴⁶¹

11. *Human Rights Education for the Twenty-First Century*

This book compiles articles from various authors dealing with the following topics: “Theories and Contexts” of human rights education; “Approaches to Teacher-Training, College, and Adult Education”; “Specialized Human Rights Training for Professionals”; “Community-Based and Nonformal Human Rights Education”; and “Resources and Funding.”⁴⁶² The main theories of human rights education focus on education for peace; U.N. peace building; development strategies; empowerment; conflict resolution; education of women as a vehicle for change; “Charter Making and Participatory Research”; and “The Promise of the Third Millennium.”⁴⁶³ This book was created and designed as a practical guidebook for a “global audience of educators, scholars, research specialists,

⁴⁵⁶ *Id.*

⁴⁵⁷ A. REIS MONTEIRO, *ETHICS OF HUMAN RIGHTS* 1 (2014).

⁴⁵⁸ *See generally id.* at xi–xiii.

⁴⁵⁹ *Id.* at 11.

⁴⁶⁰ *Id.* at 12.

⁴⁶¹ *Id.*

⁴⁶² *See generally* HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY, at ix–xii (George J. Andreopoulos & Richard Pierre Claude eds., 1997).

⁴⁶³ *See generally id.* at ix–x.

nongovernmental GMOs” and other organizations and individuals working to implement human rights education programs.⁴⁶⁴

Part I explores, as the title suggests, the long history of human rights development and the political events and wars which gave rise to new Human Rights Education (HRE) initiatives and theories.⁴⁶⁵ The section also focuses on social, political, and economic development; equality; and peace as crucial theories that define human rights development.⁴⁶⁶ Part II is concerned with the best ways to implement HRE within academic institutions.⁴⁶⁷ In other words, this part addresses the best ways to inform students and citizens about their rights and the obligations which governments have towards their citizens. The articles in this section address such topics as professional training for teachers, evaluation methods, and university-level programs on international justice and conflict resolution.⁴⁶⁸ Matthew Cowie’s article, *Toward a Critical Pedagogy for Adult Education*, specifically focuses on the facilitation of the adult learning experience as one which fosters self-development and social learning.⁴⁶⁹

Part III highlights the importance of integration of human rights training into professions like law, military and police, health professionals and health practitioners, scientists, and journalists.⁴⁷⁰ The articles find *participatory experiential learning* as an effective method.⁴⁷¹ They also address the various difficulties in incorporating HRE in the professional and ethical responsibilities of military and police training, and in culturally sensitive situations.⁴⁷² Part IV examines the critical efforts by nongovernmental organizations (NGOs) to promote human rights education, especially in societies in transition.⁴⁷³ The main focus of these NGOs is “human security” and the following three assumptions: (1) the importance of nongovernmental organizations in promoting and sustaining concerns for human rights education; (2) the importance of a participatory approach to human rights education; and (3) the importance of a strong civil society lending credibility to NGO-sponsored nonformal education.⁴⁷⁴ Part V is concerned with the institutional,

⁴⁶⁴ *Id.* at xx.

⁴⁶⁵ *See id.* at 4–5.

⁴⁶⁶ *See id.*

⁴⁶⁷ *See id.* at 157–58.

⁴⁶⁸ *See id.* at 157–59.

⁴⁶⁹ *Id.* at 236–51.

⁴⁷⁰ *See id.* at 256.

⁴⁷¹ *See id.*

⁴⁷² *Id.* at 256, 258.

⁴⁷³ *See id.* at 289.

⁴⁷⁴ *Id.* at 389–91.

technological, and financial resources essential to the development of HRE.⁴⁷⁵ This section also discusses the best ways to utilize these resources.⁴⁷⁶

12. Human Rights Education: Theory, Research, Praxis

This book compiles articles from various authors, providing a primer on international human rights education. The book has three broad categories: (1) “Theoretical and Conceptual Foundations of Human Rights Education”; (2) “Global Research in Human Rights Education”; and (3) “Transformative Human Rights Education Praxis,” which “involves an active and reflexive engagement with the tensions inherent in applying and localizing concepts that exist in idealized forms.”⁴⁷⁷ The book deals with human rights education as emotions, an emergent global institution, a critical pedagogy, an evolution of human rights education models, global research in human rights education, challenges and complexity in human rights education including teachers’ understandings of democratic participation and gender equity in post-conflict Kurdistan, human rights education in postcolonial India, politics, power, protest, a contentious human rights education, justice-oriented teaching, and leveraging diversity to become a global citizen, as well as with human rights education’s role in peacebuilding.⁴⁷⁸

13. Globalization, International Law, and Human Rights

This book is a collection of essays that address a variety of human rights issues, particularly within the context of globalization. The book undertakes an examination of complex connections between globalization, international law, and human rights. The essays analyze the patterns of state responses to both traditional and emerging notices of certain categories of the human rights paradigm.⁴⁷⁹ It covers important contemporary issues such as the relationship between human rights and globalization, climate change, freedom of religion, unbridled corporate capitalism, global terrorism, and globalization and its impact on trade, investments, and people’s movement.⁴⁸⁰

Particularly, in Chapter 5 “Globalization and Its Effects on the Emerging Jurisprudence on the Right to Education in South Africa and Nigeria,” the

⁴⁷⁵ See *id.* at 544.

⁴⁷⁶ See *id.* at 543–46.

⁴⁷⁷ See generally HUMAN RIGHTS EDUCATION: THEORY, RESEARCH, PRAXIS (Monisha Bajaj ed., 2017).

⁴⁷⁸ See generally *id.*

⁴⁷⁹ See GLOBALIZATION, INTERNATIONAL LAW, AND HUMAN RIGHTS, at xv (Jeffrey F. Addicott et al. eds., 2012).

⁴⁸⁰ See *id.* at xv–xx.

essay's authors examine how globalization has impacted human rights and the right to education within those two countries.⁴⁸¹ The chapter concludes with the observation that globalization and the "free flow of human capital" has resulted in a drain for developing countries, and diminishes the idea of education as an obligation for the government to fulfill for its citizens.⁴⁸²

IV. SELECTIVE NATIONAL LAW IMPLEMENTING THE HUMAN RIGHT TO EDUCATION

In Part IV, this Article introduces education laws of six selective countries in Asia, Latin America, and Europe and how they are implementing international human rights principles as appeared in the Universal Periodic Review reports.

A. *Brazil*

Education is a social right under Article 6 and one of the fundamental rights covered under Title II.⁴⁸³ Under Title VIII, Chapter III: Education, Culture and Sports, Section 1 of the Brazilian Constitution deals with education from Article 205 to Article 214.⁴⁸⁴ Article 205 of the Brazilian Constitution states that "education, which is a right of all and the duty of the State and of the family, [must] be promoted and fostered with the cooperation of society, [seeking the] full development of the person, his preparation for the exercise of citizenship, and qualification for work."⁴⁸⁵ Article 206 guarantees:

equal conditions for access to school; freedom to learn, teach, research and express thought, art and knowledge; pluralism of pedagogic ideas and conceptions and coexistence of public and private teaching institutions; free public education in official schools, appreciation of teaching professions; democratic administration of public education; and a guarantee of standards of quality.⁴⁸⁶

Article 208 ensures compulsory and free elementary education; progressive extension of compulsory and free education to secondary school; "specialized schooling for the handicapped"; assistance to children of zero to five years of age in daycare centers and preschools; "access to higher levels of education . . .

⁴⁸¹ See Avinash Govindjee & Elijah Adewale Taiwo, *Globalization and Its Effects on the Emerging Jurisprudence on the Right to Education in South Africa and Nigeria*, in GLOBALIZATION, INTERNATIONAL LAW, AND HUMAN RIGHTS, *supra* note 477, at 111, 113.

⁴⁸² *Id.* at 142.

⁴⁸³ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 6 (Braz.).

⁴⁸⁴ *See id.* arts. 205–14.

⁴⁸⁵ *Id.* art. 205.

⁴⁸⁶ *Id.* art. 206.

according to individual capacity”; “provision of regular night courses adequate to the conditions of the student”; assistance to elementary school students by means of supplementary programs providing school material; and transportation, food, and health assistance.⁴⁸⁷

Under the national report submitted in 2014 per the Universal Periodic Review, Brazil launched the *National Education Plan 2014–2024* (PNE)⁴⁸⁸ with twenty goals, including guaranteeing quality basic education and reducing inequalities.⁴⁸⁹ Modernizing secondary education is one of the Brazilian Government’s priorities.⁴⁹⁰ In September 2016, new legislation was proposed to restructure and expand secondary education.⁴⁹¹ The illiteracy in young people and adults declined from 14.5 million in 2006 to 13.2 million in 2014.⁴⁹² Illiteracy is a more serious problem in rural areas of the country.⁴⁹³ Brazil is committed to human rights education and has been promoting various public policies and programs for that purpose.⁴⁹⁴

B. China

The 1982 Constitution of the People’s Republic of China declares that education is one of the fundamental rights,⁴⁹⁵ and a citizen has not only the right, but also the obligation to receive an education.⁴⁹⁶ Specifically, Article 46 states that citizens have the duty as well as the right to receive education.⁴⁹⁷ The State promotes the all-round development of children and young people, morally, intellectually, and physically.⁴⁹⁸ While Article 46 does not explicitly provide for a fair and equal right to education, Article 33 provides for equal protection and human rights, stating that “all citizens are equal before the law” and that “[t]he State respects and preserves human rights.”⁴⁹⁹ China has promulgated several

⁴⁸⁷ *Id.* art. 208.

⁴⁸⁸ *See generally* Lei No. 13.005, de 25 de Junho de 2014, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 26.6.2014 (Braz.).

⁴⁸⁹ Human Right Council Working Grp. on the Universal Periodic Review, *National Rep. Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Brazil*, ¶ 135, U.N. Doc. A/HRC/WG.6/27/BRA/1 (Feb. 27, 2017).

⁴⁹⁰ *Id.* ¶ 137.

⁴⁹¹ *Id.*

⁴⁹² *See id.* ¶ 139.

⁴⁹³ *Id.*

⁴⁹⁴ *Id.* ¶ 142.

⁴⁹⁵ XIANFA [CONSTITUTION] art. 34 (1982) (amended 2018) (China).

⁴⁹⁶ *See id.* art. 19.

⁴⁹⁷ *Id.* art. 46.

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.* art. 33.

education laws including a national education law and a compulsory education law.⁵⁰⁰ Article 9 of the national education law reaffirms that Chinese citizens have the right and duty to be educated.⁵⁰¹ Further, the Chinese government must help ethnic minority regions develop educational undertakings according to their characteristics.⁵⁰² China has adopted a nine-year compulsory education system.⁵⁰³ China also allows private citizens to establish schools and other educational institutions according to law, but they cannot establish institutions for the purpose of making profit.⁵⁰⁴ Learners must enjoy equal rights in going to school, entering higher education, and employment.⁵⁰⁵ Because China is a socialist country, Article 3 provides that China must uphold Marxism-Leninism, Mao Zedong Thought, and theories constructing socialism with Chinese characteristics.⁵⁰⁶

According to the national report submitted per the Universal Periodic Review, national fiscal appropriations for education have continued to exceed 4% of GDP since 2012.⁵⁰⁷ The nine-year compulsory education graduation rate reached 93.8% nationwide.⁵⁰⁸ The Chinese government continues to make efforts to strengthen the provision of educational resources in remote, rural, and ethnic-minority areas, as well as for the children of rural migrant workers and people with disabilities.⁵⁰⁹

C. Germany

Article 7 of the German Basic Law, from the country's constitution, provides that the country's entire school system is under the supervision of the national

⁵⁰⁰ Zhonghua Renmin Gongheguo Jiaoyu Fa (中华人民共和国教育法) [Education Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., Mar. 18, 1995, rev. Aug. 27, 2009, effective Aug. 27, 2009) 2009 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 553, 553; Zhonghua Renmin Gongheguo Yiwu Jiaoyu Fa (中华人民共和国义务教育法) [Compulsory Education Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., Apr. 12, 1986, rev. June 29, 2006, amended Apr. 24, 2015, rev. Dec. 29, 2018, effective Dec. 29, 2018) 2019 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 66, 66.

⁵⁰¹ Education Law of the People's Republic of China, art. 9.

⁵⁰² *Id.* art. 10. In fact, the Constitution and all educational laws guarantee all minority nationalities the right to use and develop their own languages. *See id.* art. 12 (requiring the State to make an effort to implement bilingual education in predominately ethnic minority schools).

⁵⁰³ *Id.* art. 19.

⁵⁰⁴ *Id.* art. 26.

⁵⁰⁵ *Id.* art. 37.

⁵⁰⁶ *Id.* art. 3.

⁵⁰⁷ Human Rights Council Working Grp. on the Universal Periodic Review, *National Rep. Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: China*, ¶ 29, U.N. Doc. A/HRC/WG.6/31/CHN/1* (Aug. 20, 2018).

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.* ¶¶ 30–31.

government, but parents' right to decide whether children shall receive religious instruction is guaranteed.⁵¹⁰ The right to establish private schools is guaranteed except for primary elementary schools, which must be approved only if there are special needs.⁵¹¹ Article 1 of the German Basic Law, which provides that human dignity must be inviolable and all state authorities have to respect and protect it, applies to the educational field.⁵¹² Therefore, Germany acknowledges inviolable and inalienable human rights.⁵¹³ Article 3—providing equal protection and prohibiting discrimination based on sex, parentage, race, language, homeland and origin, faith, or religious or political opinion—also applies to education.⁵¹⁴

According to the national report submitted per the Universal Periodic Review, individual states (*Länder*) implements human rights education in their school legislation.⁵¹⁵ States in Germany are working to establish complaint and prevention mechanisms in the mission statements of their universities.⁵¹⁶ All higher education institutions have guidelines regarding their approach to diversity.⁵¹⁷

D. India

The Constitution (Eighty-Sixth Amendment) Act, 2002, inserted Article 21A into the Constitution of India to provide free and compulsory education to all children ages six to fourteen as a fundamental right included under Part III of the Constitution, in such a manner as the State may, by law, determine.⁵¹⁸ The Right of Children to Free and Compulsory Education Act, which represents the consequential legislation envisaged under Article 21A, states that every child has a right to full-time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.⁵¹⁹ General prohibition of discrimination on

⁵¹⁰ GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GG] [BASIC LAW], art. 7(1)–(2), (as amended Mar. 28, 2019) *translation at* https://www.gesetze-im-internet.de/englisch_gg.html#p0047.

⁵¹¹ *Id.* art. 7(2), (4)–(5).

⁵¹² *Id.* art. 1(1); Human Rights Council Working Grp. on the Universal Periodic Review, *National Rep. Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Germany*, ¶ 22, U.N. Doc. A/HRC/WG.6/30/DEU/1 (Feb. 26, 2018) [hereinafter *National Report: Germany*].

⁵¹³ GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GG] [BASIC LAW], art. 1(2), (as amended Mar. 28, 2019) *translation at* https://www.gesetze-im-internet.de/englisch_gg.html#p0047.

⁵¹⁴ *Id.* art. 3(3); *National Report: Germany, supra* note 512, ¶ 22.

⁵¹⁵ *National Report: Germany, supra* note 512, ¶ 22.

⁵¹⁶ *Id.* ¶ 24.

⁵¹⁷ *Id.*

⁵¹⁸ INDIA CONST. art. 21A, *amended by* The Constitution (One Hundred and First Amendment) Act, 2016.

⁵¹⁹ The Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India).

grounds of religion, race, caste, sex, or place of birth also applies to education.⁵²⁰ The Constitution of India prohibits religious instruction at state-funded institutions, in which no person shall be required to take part in any religious instruction.⁵²¹ In India, all minorities have the right to establish and administer educational institutions of their choice.⁵²² Under Article 41, the Government of India must provide education to adults in cases of unemployment, old age, sickness, and disablement within the limits of its economic capacity.⁵²³ Other relevant education acts include the Central University Act of 2009 and the English and Foreign Languages University Act of 2006.⁵²⁴

According to the national report submitted per the Universal Periodic Review, realizing that poverty eradication is a key element of India's development goals and that education is a fundamental pillar of development, India is making great efforts to promote education.⁵²⁵ India also promotes health education through community based intervention programs, such as the Rashtriya Kishor Swasthya Karyakaram.⁵²⁶ Generally, India promotes children's right to education, guaranteeing quality education to all children without discrimination.⁵²⁷ India also emphasizes access to quality education by marginalized groups such as women, Scheduled Castes, and Scheduled Tribes, providing various scholarships.⁵²⁸

E. Japan

Article 26 of the Japanese Constitution of 1946 guarantees that all people have the right to receive an equal education correspondent to their ability.⁵²⁹ Freedom of religious education is protected.⁵³⁰ There must not be any discrimination in political, economic, or social relations due to race, creed, sex,

⁵²⁰ INDIA CONST. arts. 15(5), 29(2).

⁵²¹ *Id.* art. 28.

⁵²² *Id.* art. 30.

⁵²³ *Id.* art. 41.

⁵²⁴ Central University Act, 2009, No. 25, Acts of Parliament, 2009 (India); English and Foreign Languages University Act, 2006, No. 7, Acts of Parliament, 2007 (India).

⁵²⁵ Human Rights Council Working Grp. on the Universal Periodic Review, *National Rep. Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: India*, ¶¶ 88, 115, U.N. Doc. A/HRC/WG.6/27/IND/1 (Feb. 23, 2017).

⁵²⁶ *Id.* ¶ 110.

⁵²⁷ *Id.* ¶ 114.

⁵²⁸ *Id.* ¶¶ 118–19.

⁵²⁹ NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 26(1) (Japan), *translated in* Ministry of Education, Culture, Sports, Science and Technology online database, <http://www.mext.go.jp/en/policy/education/lawandplan/title01/detail01/1373798.htm>.

⁵³⁰ *Id.* art. 20.

social status, or family origin.⁵³¹ Parents have a duty to make all boys and girls under their protection receive ordinary education as provided for by law, and such compulsory education shall be free.⁵³² To guarantee the opportunity for such compulsory education and ensure adequate standards, the Basic Act on Education states that the national and local governments are responsible for implementing compulsory education through appropriate role sharing and mutual cooperation.⁵³³ Overall administration of the various levels of education, including universities, private schools, education within the family, social education, and religious education, must be carried out in a fair and proper manner through appropriate role sharing and cooperation between the national and local governments.⁵³⁴ In its preamble, the Basic Act on Education ensures that the Japanese people will implement education that values the dignity of the individual and cultivate a people rich in humanity.⁵³⁵ The basic aim of education is to cultivate a people who make up a peaceful and democratic nation and society.⁵³⁶ The public schools must refrain from political education in favor of or against any specific political party, and from other political activities.⁵³⁷

According to the national report submitted per the Universal Periodic Review, the Government of Japan provides human rights training for public servants, applying the principles of international human rights treaties.⁵³⁸ Japan's public compulsory education schools are open to foreign children, including immigrants, at no cost.⁵³⁹ Under the Fourth Basic Plan for Gender Equality, the Japanese government makes efforts to address cases in which women face additional difficulties in order to promote education on human rights and access to quality education by women.⁵⁴⁰

F. South Korea

Article 31 of the Korean Constitution urges governments to provide compulsory education to all citizens of South Korea free of charge.⁵⁴¹ All

⁵³¹ *Id.* art. 14(1).

⁵³² *Id.* art. 26(2).

⁵³³ *Kyōiku kihonhō* [Basic Act on Education], Law No. 120 of 2006, art. 5(3) (Japan).

⁵³⁴ *Id.* art. 16(1).

⁵³⁵ *Id.* pmbl.

⁵³⁶ *Id.* art. 1.

⁵³⁷ *Id.* art. 14(2).

⁵³⁸ Human Rights Council Working Grp. on the Universal Periodic Review, *National Rep. Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Japan*, ¶ 12, U.N. Doc. A/HRC/WG.6/28/JPN/1 (Aug. 31, 2017).

⁵³⁹ *Id.* ¶ 59.

⁵⁴⁰ *Id.* ¶¶ 77, 97.

⁵⁴¹ DAEHANMINKUK HUNBEOB [HUNBEOB][CONSTITUTION] art. 31 (S. Kor.).

citizens must have an equal right to receive an education corresponding to their abilities.⁵⁴² Parents have a duty to support at least their children's elementary education.⁵⁴³ Governments will guarantee the "[i]ndependence, professionalism, and political impartiality of education."⁵⁴⁴ The Government of Korea must "promote lifelong education."⁵⁴⁵ Under Article 11, "[a]ll citizens shall be equal before the law, and there shall be no discrimination in political, economic, social, or cultural life on account of sex, religion, or social status."⁵⁴⁶ The Framework Act on Education provides a principle of education, stating that education must aim at enabling every citizen to lead a life worthy of humankind and to contribute to the development of a democratic state and the realization of an idea of human co-prosperity.⁵⁴⁷ Compulsory education must last nine years, including elementary and secondary education.⁵⁴⁸ Like other civil law countries, statutes regulate a wide variety of aspects of education.⁵⁴⁹

According to the national report submitted per the Universal Periodic Review, the new administration (launched on May 9, 2017) made human rights protection a centerpiece of the state affairs, with specific policy tasks which include cementing the right to education and contributing to the human rights protection in the world.⁵⁵⁰ To combat racial discrimination, the Government of Korea is actively pursuing policies to prohibit discriminatory practices against foreigners by means of education.⁵⁵¹ As of 2016, enrollment for preschool reached 50.7%, elementary school 98.1%, middle school 94.9%, high school 94.1%, and tertiary institutions 68.5%.⁵⁵² The Government amended the *Higher Education Act*, placed an upper limit on the increase of college tuition, and

⁵⁴² *Id.* art. 31(1).

⁵⁴³ *Id.* art. 31(2).

⁵⁴⁴ *Id.* art. 31(4).

⁵⁴⁵ *Id.* art. 31(5).

⁵⁴⁶ *Id.* art. 11(1) (mentioning neither nationality nor race).

⁵⁴⁷ GyoyukGibonBup [Framework Act on Education], Act No. 14061, June 22, 2008, amended by Act No. 15950, Dec. 18, 2018, art. 2 (S. Kor.), translated in Korea Legislation Research Institute online database, http://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=42697.

⁵⁴⁸ *Id.* art. 8.

⁵⁴⁹ Topics include learning ethics, cultivation of healthy gender consciousness, prevention of safety-related accidents, peaceful pursuit of reunification, special education, education for gifted children, early childhood education, vocational education, science and technology education, physical education at schools, information-oriented education, computerization of administration of schools and educational organizations, principles of student information protection, promotion of science and culture, fostering private schools, globalized education, and scholarships.

⁵⁵⁰ Human Right Council Working Grp. on the Universal Periodic Review, *National Rep. Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Republic of Korea*, ¶ 2, U.N. Doc. A/HRC/WG.6/28KOR/1 (Sept. 4, 2017) [hereinafter *National Report: South Korea*].

⁵⁵¹ *Id.* ¶ 17 (stating that the Government enacted the Act on the Treatment of Foreigners in Korea and the Protec⁵⁵¹tion and the Promotion of the Diversity of Cultural Expressions Act in 2014 were for this purpose).

Id. ¶ 40.

established the Enrollment Fee Deliberation Committee to make college tuition affordable.⁵⁵³ In 2012, the Government launched the state scholarship scheme.⁵⁵⁴

CONCLUSION

Once again, education is:

- (1) an instrument and process of teaching and learning at an institution—whether elementary, secondary, or tertiary—
- (2) possessing the interrelated and essential features of availability, accessibility, acceptability, and adaptability,
- (3) in which a human person or a group of persons develop its knowledge, abilities, and skills with the aims
 - (a) of respect for human rights and fundamental freedoms;
 - (b) to fully develop the human personality;
 - (c) to promote tolerance, gender equality, and friendship among all nations and groups of people; and
 - (d) to enable people to participate effectively in a free society, and to enable the maintenance of peace in a globalized society.

As such, researching the human right to education is a daunting task because the definition of education is complicatedly clustered, and because research in this field to protect the human right to education became diversified, complicated, and interdisciplinary. There are many different small segments of education researchers should consider depending on the context of research. For example, whether education is considered as a first or second generational right will create a different meaning of education. The purpose, function, quantity, quality, access, subjects, and contents of education should be considered.

Research difficulty also originates from the fact that numerous international instruments, articles, treatises, and national laws relating to the human right to education have been drafted and published; they are not organized in one place in a consistent way. International law has been used to pierce state sovereignty to protect a state's citizens against the abusive use of state powers. International instruments should be considered all together, including treaties, international

⁵⁵³ Higher Education Act, Act No. 9356, Jan. 30, 2009, *amended by* Act No. 11043, Sept. 15, 2011, art. 11 (S. Kor.), *translated in* Korea Law Translation Center online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=42696&lang=ENG.

⁵⁵⁴ *National Report: South Korea*, *supra* note 550, ¶ 41.

custom, general principles of law, cases, and soft law from various intergovernmental and nongovernmental organization reports and documents. Domestic laws and local state laws should also be considered.