



International Human Rights Law (4th edn)

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Abstract

This chapter discusses two human rights that belong to the category of economic, social, and cultural rights: the right to education and the right to work. It explains how the modern view of the nature of economic, social, and cultural rights can be applied to these rights. The chapter discusses the sources of the rights under international human rights law, their main features, and components; the obligations resulting from each right; and the relationship of each right with other human rights. Both rights are crucial for the ability to live a life in dignity and develop one's personality.

Keywords: right to education, right to work, economic, social, and cultural rightsinternational human rights, International labour standards, International Labour Organization

Summary

This chapter focuses on the normative content of the right to education and the right to work. It discusses the sources of these rights under international human rights law and their main features and components. Both rights should be understood in terms of different entitlements and freedoms. The obligations resulting from each right are set out, demonstrating that states have both negative and positive obligations. Finally, the relationship of each right with other human rights is highlighted, thus illustrating that all human rights are interrelated and interdependent.

1 Introduction

This chapter discusses two human rights that belong to the category of economic, social, and cultural rights, namely the right to education and the right to work. It was long argued that this category of human rights is different from civil and political rights. The latter were said to be capable of immediate implementation, cost-free, and only entailing negative obligations (obligations not to interfere) for states. Economic, social, and cultural rights, on the other hand, were seen as subject to progressive realization, requiring financial resources, and entailing positive obligations (obligations to actively take measures). These differences were also said to imply that civil and political rights could be enforced by courts, whereas economic, social, and cultural rights were seen as non-justiciable, that is, not suitable for review by courts. This traditional view, which emphasized the inherent differences between the two categories of rights, dominated until the late 1980s. Gradually, however, this approach has given way to a view that stresses the unity, equality, and interdependence of all human rights.¹

Section 2 deals with the right to education and Section 3 with the right to work and work-related rights. The chapter explains how the modern view of the nature of economic, social, and cultural rights can be applied to these rights. Each section first discusses the sources of the right under international human rights law, its main features, and components. Next, the obligations resulting from each right are discussed. Finally, the relationship of each right with other human rights is highlighted. Both rights are crucial for one's ability to live a life in dignity and develop one's personality.²

p. 236 **2 The Right to Education**

The right to education has been included in many constitutions and international treaties. States have agreed that illiteracy must be eliminated and that all children must attend school. However, there is a big gap between theory and reality. Worldwide there are still 258 million children and youth out of school today.³ The right to education is crucial for a person's self-fulfilment and the development of society as a whole. This section explains what the right to education is and what states should do to make this key right a reality for those who lack access to education.

2.1 Sources

2.1.1 Universal instruments

Article 26 of the Universal Declaration of Human Rights (UDHR) has been the basis for further guarantees of the right to education in later human rights instruments. It provides for the three basic characteristics of the right to education, namely, recognition of the right to receive an education, a guarantee for the exercise of parental rights in matters of education, and a reference to the aims of education.

Article 26 UDHR was transformed into legally binding form through two provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in comparison to other Covenant rights are rather detailed: Articles 13 and 14. The right to education laid down in Article 13 ICESCR is a universal right, granted to every person, regardless of age, language, social or ethnic origin, or other status. Article 13(1) lists the aims that education should achieve in society. Article 13(2) enumerates the different steps that states must take to achieve the full realization of the right to education, in particular the specific obligation to make education available and accessible in a non-discriminatory way. In performing this duty, states have a degree of discretion within the limits of the standards of Article 13 and the key provision of Article 2(1), which states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 14 deals with the implementation of primary education in states that have not yet realized this goal. It requires states to adopt a plan of action for the introduction of free and compulsory primary education. Article 13(3) and (4) guarantees the rights of parents in matters of education and the freedom to establish schools outside the public school system.

Other relevant universal instruments include the UN Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education, adopted in 1960, which aims to eliminate discrimination in education and promote equality of opportunity and treatment. The historical background of this Convention is the discrimination and segregation in education under the *apartheid* regime in South Africa. It remains relevant today as an important interpretation of the phenomenon of discrimination and exclusion in education. Article 10 of the Convention on the Elimination of All Forms of Discrimination

Against Women (CEDAW) requires states to ensure that women → have equal rights with men in the field of education. It lists a number of particular measures and goals, such as access to the same curricula and reduction in female student drop-out rates. Article 28 of the Convention on the Rights of the Child (CRC) lists the measures that states must take progressively to realize this right. It includes one new element that is lacking in previous instruments, namely the obligation to ensure that school discipline is administered in a manner consistent with the child's dignity. This may be understood as a ban on applying corporal punishment in schools.⁴ Article 29(1) deals with the aims of education, while Article 29(2) guarantees the freedom of individuals and bodies to establish schools. Finally, Article 32(1) calls for protective measures against economic exploitation of children (child labour) which may interfere with the child's education.

2.1.2 Regional instruments

The right to education is also guaranteed by regional human rights instruments. In Europe, the relevant provision is Article 2 of the First Protocol to the European Convention on Human Rights (ECHR). This norm guarantees access to public educational institutions without discrimination and requires states to abstain from interference in the free exercise and free choice of education by pupils and parents. The European Court

of Human Rights has interpreted this provision as requiring states only to maintain the level of educational services existing at a given time, without imposing an obligation to expand educational facilities or to increase funding for education.⁵ Access to education within the context of labour and other professional activities is covered by the right to vocational training laid down in Article 10 of the European Social Charter (1961). Educational rights of national minorities are guaranteed by Articles 12 to 14 of the Council of Europe Framework Convention for the Protection of National Minorities (1995). Finally, the EU Charter of Fundamental Rights guarantees the right to education in Article 14. This provision contains the key elements of the ECHR and the European Social Charter relating to education, but it adds that the right to education includes the possibility of receiving free compulsory education (Article 14(2)). The latter element is also a key part of Article 13 ICESCR.

Article 17(1) of the African Charter on Human and Peoples' Rights (ACHPR) provides that '[e]very individual shall have the right to education'. The Charter does not elaborate on this brief and generally worded provision. However, the African Charter on the Rights and Welfare of the Child contains a detailed provision on the right to education in Article 11. It is modelled on other human rights instruments, in particular the ICESCR and the CRC. It also contains some elements that are relevant from an African perspective. These include a clause that education shall be directed to the preservation and strengthening of positive African morals, traditional values, and cultures, and to the promotion and achievements of African unity and solidarity (Article 11(2)(c) and (f)). Furthermore, Article 11(6) stipulates that states parties shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue their education on the basis of their individual ability. This means that they should not be banned from attending school.

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) deals with the right to education in Article 13. This provision is very similar to Article 13 ICESCR. It includes the rights to receive an education and to choose an education. What is special about this Protocol is that the complaints procedure of the American Convention on Human Rights (ACHR) applies to two of its provisions, namely certain trade union rights (Article 8a) and the right to education (Article 13). That means that there is a mechanism open to individuals to enforce these rights where it is alleged that they 'are violated by action directly attributable to a State Party to this Protocol'.⁶

Article 41 of the Arab Charter on Human Rights, adopted in 2004, provides for the right to education and requires states to eradicate illiteracy. It contains references to free primary and fundamental education and the aims of education. However, it lacks a provision guaranteeing parental rights and the freedom to establish schools.

Finally, the non-binding Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, adopted in November 2012, provides for the right to education in Article 31. Its structure and content are similar to other international provisions on the right to education.

From this overview, it becomes clear that Article 26 UDHR has been, and still is, a major source of inspiration for the drafting of universal and regional provisions on the right to education. However, subsequent developments, changing views, and regional particularities have been taken into account in more recent instruments.

2.2 Features

Two aspects of the right to education as laid down in international documents can be identified. On the one hand, realization of the right to education demands an effort on the part of the state to make education available and accessible. It implies a positive state obligation. This may be defined as the *right to receive an education* or the *social dimension* of the right to education. On the other hand, there is the personal freedom of individuals to choose between state-organized and non-public education, which can be translated, for example, in parents' freedom to ensure their children's moral and religious education according to their own beliefs. From this, stems the freedom of natural persons or legal entities to establish their own educational institutions. This is the *right to choose an education* or the *freedom dimension* of the right to education. It requires the state to follow a policy of non-interference in private matters. It implies a negative state obligation. Both aspects can be found in Articles 13 and 14 ICESCR. Articles 13(2) and 14 cover the social dimension, while Article 13(3) and (4) embodies the freedom dimension.

In addition, the right to education has been explained by the Committee on Economic, Social and Cultural Rights and the UN Special Rapporteur on the right to education to include four interrelated features:

- *Availability*: functioning educational institutions and programmes have to be available in sufficient numbers, through a public educational system and allowing private parties to establish non-public schools.
- *Accessibility*: educational institutions and programmes have to be accessible to everyone, without discrimination on any ground, also implying safe physical and economic accessibility.
- *Acceptability*: the form and substance of education, including curricula and teaching methods, have to be relevant, culturally appropriate, of good quality, and in accordance with the best interests of the child; this includes a safe and healthy school environment.
- *Adaptability*: education has to be flexible, so that it can adapt to the needs of changing societies and communities and respond to the needs of students within their specific social and cultural context, including the evolving capacities of the child.⁷

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This '4-A' scheme is a useful device to analyse the content of the right to receive an education and the obligations of states parties resulting from it as well as to measure the level of its realization.

It is clear that the consequences of the COVID-19 pandemic have put at serious risk the availability, equal accessibility, and adaptability of education.⁸ Schools were closed, either fully or partially, for a significant period of time. This affected all school-going children worldwide, but in particular those belonging to vulnerable and marginalized groups, such as rural children and disabled children in countries in the South.⁹ When boys and girls in poor countries can no longer go to school, there is the risk that they will be employed by their parents to work on the land or for domestic work. In addition, girls face the risk of arranged marriages and early pregnancies. When not accompanied by good quality home schooling, the closure of schools has led to educational arrears of many children worldwide. Furthermore, school closures and the consequent digital learning have led to a divide in education between rich and poor countries and between rich and poor families within countries. In addition, a social and economic divide has emerged between parents and caregivers who can, and those who cannot, provide support to their children in learning activities.

2.3 The Aims of Education

Education can be used or abused to prepare children well or badly for life.¹⁰ Education in Germany during the Nazi regime was an example of brainwashing children. Indeed, the formulation of the aims of education as contained in international human rights instruments reflects the need to avoid the horrors of the Second World War from recurring. This is clear from Article 26 UDHR, which provides that education should contribute to avoiding conflicts between nations, groups, and people by promoting understanding, tolerance, and friendship and the maintenance of peace. In addition, education must be directed to the full development of the human personality and to strengthening respect for human rights. By emphasizing the individual's sense of dignity and ability to participate in a free society, Article 13(1) ICESCR makes it clear that the interests of the individual should be central to education.

It is noteworthy that some instruments emphasize specific aims, such as the elimination of stereotyped concepts of the role of men and women at all levels and in all forms of education (Article 10(c) CEDAW) or the development of a child's personality, talents, and mental and physical abilities through education (Article 29(1)(a) CRC). The CRC also adds further goals for education, such as the development of respect for the natural environment and for people of indigenous origin. These common aims, laid down in a number of international instruments, reflect a 'broad universal consensus on the major aims and ↗ objectives of the right to education'.¹¹ They also constitute the foundation for programmes about human rights education in schools worldwide.¹²

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2.4 Components

On the basis of treaty law, General Comments of the Committee on Economic, Social and Cultural Rights, and case law, the following four key components of the right to education can be identified.

2.4.1 Access to education on a non-discriminatory basis

The essence of the right to education is the right to access available educational facilities. In more concrete terms, this means the right of access to existing public educational institutions on a non-discriminatory basis.¹³ This right is violated, for example, if people belonging to a specific ethnic, linguistic, or religious group have restricted access to existing public educational institutions, as is the case for Roma children in some European countries.¹⁴ In addition, education provided by the state should be of the same quality for all groups. Girls, for example, should not be given education of an inferior quality compared to boys.¹⁵ Another extreme example was the situation in Afghanistan where the Taliban regime banned girls and women from all types of educational institutions.¹⁶ The case of the young Pakistani girl, Malala, who advocated for the right to education for girls and was shot in the head by the Taliban in 2012, shows that this right is still far from being accepted by everyone as a human right.¹⁷ In some African countries, female students are forced to disclose a pregnancy and leave school once the pregnancy has been discovered. This practice was found to be discriminatory by the Economic Community of West African States (ECOWAS) Court of Justice.¹⁸ Discriminatory treatment of an HIV-positive person in the school system was qualified as a violation of the right to education under the Protocol of San Salvador.¹⁹ Protecting the right to education of refugees deserves special attention from governments and the international community.²⁰

2.4.2 The right to enjoy free and compulsory primary education

A second key component of the right to education is the right to enjoy primary education in one form or another, not necessarily in the form of traditional classroom teaching. Primary education is so fundamental for the development of a person's abilities that it ^{p. 241} can be rightfully defined as a minimum claim.

Accordingly, the Supreme Court of India has held the right to (primary) education to be implicit in the right to life.²¹ Primary education relates to the first layer of a formal school system and usually begins between the ages of five and seven and lasts approximately six years, but in any case no fewer than four years.²² Primary education includes the teaching of basic education or covering basic learning needs.

The term 'basic education' is frequently used, for example in outcome documents of international conferences such as the World Declaration on Education for All, but it is not part of international human rights law.²³ Basic education relates to the content of education rather than the form it takes (formal or non-formal schooling). Apart from a school and classroom system, basic education may be given in less traditional forms, such as village- or community-based, or in the open air. Usually, basic education is aimed at children within the framework of primary schooling. However, basic education is also relevant for other persons who lack basic knowledge and skills. This dimension is referred to as 'fundamental education' in Article 13(2)(d) ICESCR. The enjoyment of this right is not limited by age or gender; it extends to children, youth, and adults, including older persons; it is an integral component of adult education and life-long learning.²⁴

The right to free and compulsory primary education also implies that no one, for example parents or employers, can withhold a child from attending primary education.²⁵ It is the only provision in the UDHR and the ICESCR in which the exercise of a right is linked to meeting an obligation, namely to attend primary education. States have an obligation to protect this right from encroachments by third persons. According to Article 13(2)(a) ICESCR, primary education shall be compulsory. There is a worldwide trend to extend compulsory schooling beyond primary schooling. The rationale for a minimum length of compulsory schooling beyond 11 years of age is that it should last at least to the minimum age of employment.²⁶ Obviously, it is not sufficient that primary education is compulsory by law. What is also necessary is a state inspection service to supervise and enforce this duty with respect to parents, schools, employers, and pupils themselves.

There are a number of factors that may influence actual attendance of children at school. These include inadequacy of school services, such as the distance between a student's home and the school, lack of transportation facilities, lack of running water and sanitation facilities at school, teaching in a language other than the child's mother tongue, and teaching materials and methods that do not fit in with the cultural background of children and their parents (adaptability of education). Other factors relate to the socio-economic status of parents, including their inability to pay for school attendance of their children, traditional attitudes regarding the education of girls, and loss of family income that a child attending classes would otherwise earn.

^{p. 242} Article 13(2)(a) ICESCR also stipulates that primary education shall be free. The rationale behind this entitlement is that:

children would not have to pay for their schooling or remain deprived of it when they cannot afford the cost. Children cannot wait to grow, hence their prioritized right to education in international human rights law. The damage of denied education while they are growing up cannot be retroactively remedied.²⁷

The degree to which primary education is really free is determined by a number of direct and indirect costs, such as school fees, expenses for textbooks and electronic devices, extra lessons, meals at school canteens, school transport, school uniforms, medical expenses, and boarding fees. Another form of indirect cost for parents is taxation. Its effects upon the accessibility of education will depend upon the progressiveness of the tax system: do low-income groups pay less, in absolute and relative terms, compared to high-income groups?²⁸

Primary education must be a priority when allocating resources, because it deals with the fundamental basis for a person's development and the development of society as a whole.²⁹ It is the responsibility of states to provide for primary education and maintain educational services. They cannot waive that responsibility by giving more room to the private sector or by stimulating public–private partnerships for the financing of the educational infrastructure. With respect to the right to education in the ECHR, the European Court of Human Rights has held that a state cannot absolve itself of responsibility by delegating its obligations to private school bodies.³⁰ UNICEF has emphasized that 'only the State ... can pull together all the components into a coherent but flexible education system'.³¹ The Committee on Economic, Social and Cultural Rights has stressed that 'Article 13 [ICESCR] regards States as having principal responsibility for the direct provision of education in most circumstances'³² and that states have an immediate duty to provide primary education for all.³³ Recently a number of governments of developing countries have begun to privatize educational services by allowing the private sector to set up fee-based commercial schools for primary and secondary education. This development has been criticized as contrary to the idea of education as a public good and the obligation of the state to make basic education available and equally accessible to all.³⁴ For those states that have not yet realized compulsory and free primary education, there is an 'unequivocal obligation' to adopt and implement a detailed plan of action as provided for in Article 14 ICESCR.³⁵ After a long delay, in 2009 India finally adopted an Act to implement the right to free and compulsory education for children of the age of six to fourteen years.³⁶

p. 243 2.4.3 Free choice of education

Yet another key component of the right to education is free choice of education without interference by the state or a third person, in particular, but not exclusively, with regard to religious or philosophical convictions. This component is violated when a state fails to respect the free choice of parents with regard to the religious instruction of their children. Public education entails the danger of political goals, that is, the danger that the state will promote the most influential 'philosophy of life'.³⁷ Thus, a state must ensure an objective and pluralist curriculum and avoid indoctrination in this dominant philosophy.³⁸ However, in many states there is only limited, or no, opportunity to attend education of one's own choice: there may only be state-controlled education or, where available, private education is too expensive for parents. There is no obligation under international human rights law for states to provide financial support to private educational institutions. If they do, however, they must do so in a non-discriminatory way.³⁹

2.4.4 The right to be educated in the language of one's own choice

A more controversial question is whether the right to be educated in the language of one's own choice is a key component of the right to education. In the *Belgian Linguistic Case No 2*, the European Court of Human Rights stated that 'the right to education would be meaningless if it did not imply, in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be'.⁴⁰ This means that it is the state that determines whether a specific language is to be a national or official language as a medium of instruction in education. In addition, the Strasbourg Court stressed that individuals cannot claim a right to state-funded education in the language of their own choice, thus rejecting claims of a positive state obligation in that regard.

On the other hand, a state must respect the freedom of individuals to teach, for instance, a minority language in schools established and directed by members of that minority. This does not imply, however, that a state must allow the use of this language as the only medium of instruction; this would be dependent on the educational policy of the state. As a minimum, states must not frustrate the right of members of national, ethnic, or linguistic minorities to be taught in their mother tongue at institutions outside the official system of public education, albeit they are not obliged to fund those institutions. This right of minorities is solidly established in international law.⁴¹ It was a cornerstone of the minority protection system established under the auspices of the League of Nations after the First World War. Moreover, the right of minorities to establish educational institutions in which they are entitled to use their own language was characterized by the Permanent Court of International Justice in 1935 as 'suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics'.⁴² It is in this sense that the right to be educated in the language of one's own choice belongs to the key components of the right to education.

p. 244 **2.5 Types of Obligations**

Obligations of states resulting from Articles 13 and 14 ICESCR may be derived from these treaty provisions themselves, Article 2(1) ICESCR, and General Comments 3, 11, and 13 of the Committee on Economic, Social and Cultural Rights. They may be divided into general obligations and specific obligations. *General obligations* include immediate obligations to prohibit discrimination in law and in fact, in the area of education, and to take steps to make primary education compulsory and free. Moreover, states are obliged not to take retrogressive measures, such as the introduction of school fees where previously education was free, and to protect the most vulnerable groups in society through special programmes, such as schooling for street children. *Specific obligations* include obligations to draft, adopt, and implement a comprehensive national education strategy, to establish minimum standards for private educational institutions, to develop curricula that conform to the aims of education, and to set up a school inspection system.

The typology of obligations introduced by the Committee on Economic, Social and Cultural Rights (obligations to respect, to protect, and to fulfil)⁴³ can be used to further define and refine the nature of states' obligations.

The obligation to *respect* the right to education requires states to abstain from interference. They must not prevent children from obtaining an education, for example by closing educational institutions in times of political tension without complying with the limitations clause of Article 4 ICESCR.⁴⁴ As a response to the

July 2016 coup d'état, the Turkish government derogated from a number of human rights obligations under the ECHR,⁴⁵ including the right to education. It has closed approximately 1,000 private schools and 15 private universities and fired tens of thousands of teachers. Although this derogation may be lawful, the effects it has on the enjoyment of the right to education are disproportionate.⁴⁶ The obligation to respect can be characterized as an obligation of conduct: it requires the state to follow the specific course of action specified in the treaty provision.

The obligation to protect requires states to guarantee the exercise of the right to education in horizontal relations (between private groups or individuals). For example, they must protect against discrimination of students in obtaining access to non-public schools. Other examples of the obligation to protect are the adoption and enforcement of legislation to combat child or bonded labour in private labour relations, or arrangements for monitoring and enforcing compulsory primary education.

The nature of the right to education is such that positive state action is needed to achieve the full realization of this right. The obligation to fulfil requires states to make the various types of education available and accessible for all and to maintain that level of realization, which may involve a variety of measures. While it may be necessary to adopt legislation to provide a legal framework, the primary means of realizing the right to education are policy measures as well as financial and material support. It is clear that the embezzlement of public education funds will have a negative impact on the enjoyment of the right to education, because fewer resources will be available for the provision of education.⁴⁷ The obligation to fulfil implies that states have a substantial degree of latitude, depending also on the specific level of education and the wording of the respective treaty obligation. Therefore, ↵ the obligation to fulfil should be characterized as an obligation of result, leaving the choice of means to the state, providing the result achieved conforms to international standards.

Particular elements of the right to education give rise to *minimum core obligations* as defined by the Committee on Economic, Social and Cultural Rights in its General Comment on the nature of states parties' obligations.⁴⁸ Such obligations are not limited to cost-free (negative) obligations to respect but also include positive obligations to protect and to fulfil. Minimum core obligations emanating from the right to education apply irrespective of the availability of resources.⁴⁹ According to the Committee, the minimum core obligations with respect to the right to education include obligations:

- to ensure the right of access to public educational institutions and programs on a nondiscriminatory basis; to ensure that education conforms to the objectives set out in article 13(1) [ICESCR]; to provide primary education for all in accordance with article 13(2)(a); to adopt and implement a national educational strategy which includes provision for secondary higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with 'minimum educational standards' (article 13(3) and (4)).⁵⁰

It is obvious that for many states meeting these core obligations is a challenge from legal, policy, practical, and financial points of view.

2.6 Relationship With Other Human Rights

Education is a social good in that it creates opportunities and provides choices to people. In this sense, education is an end in itself. However, it is also a means to an end, because it helps to achieve economic growth, health, poverty reduction, personal development, and democracy. Therefore, the right to education should be characterized as an 'empowerment right'. Such a right 'provides the individual with control over the course of his or her life, and in particular, control over ... the state'.⁵¹ In other words, exercising an empowerment right enables a person to experience the benefit of other rights: 'the key to social action in defense of rights ... is an educated citizenry, able to spread its ideas and to organize in defense of rights'.⁵² Education enables people to make a contribution to society as independent and emancipated citizens. Civil and political rights, such as freedom of expression, freedom of association, or the right to political participation only obtain substance and meaning when a person is educated. Galbraith has emphasized that 'education not only makes democracy possible; it also makes it essential. Education not only brings into existence a population with an understanding of the public tasks; it also creates their demand to be heard'.⁵³ In this sense, education is a threat to autocratic rule. Governments have used the education system for building nations, for instance through the introduction of a national language. Often this happened to the detriment of the languages and cultures of ethnic minorities and indigenous groups. For such groups, the right to education is an essential means to preserve and strengthen their cultural identity. For example, in China the ↗ authorities are making it more difficult for Tibetans to be taught in their mother tongue at public schools.⁵⁴

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Education enhances social mobility: it helps people to escape from discrimination based on social status and to move up the social ladder. Moreover, education promotes the realization of other economic, social, and cultural rights, such as the right to work, the right to food, or the right to health: an educated person will have a greater chance of finding a job, will be better equipped to secure his or her own food supply, and is more aware of public health dangers. In general, education promotes the fulfilment of the right to an adequate standard of living; it provides people with access to the skills and knowledge for full membership of society. From the perspective of the rights of the child, education contributes to socializing children into understanding and accepting views different from their own. In other words, education unlocks the enjoyment of other human rights and contributes in an important way to the promotion of the essence of human rights, namely living in human dignity.

Finally, the right to education has a clear overlap with civil rights, such as freedom of religion and the right to privacy: the freedom of parents to determine the (religious) education of their children is not only part of the right to education but also of the freedom of religion⁵⁵ and is an issue belonging to people's private lives. Similarly, the right to education is linked to the freedom of association through the freedom to establish private educational institutions.

The interdependence of rights may also give rise to tensions and the need to weigh the different interests that are at stake. For example, a controversial issue is whether the state can prohibit the wearing of the headscarf in public educational institutions with a view to keeping the education system free from any religious expressions, or whether such a ban would violate the freedom of religion and expression of the student.⁵⁶

In short, the right to education, through its links with other rights, accentuates the unity, indivisibility, and interdependence of all human rights.

3 The Right to Work and Work-Related Rights

In the age of economic globalization, millions of workers in many parts of the world experience the flexibility of the world labour market on a daily basis. They may benefit from new jobs created as a result of foreign direct investment, or they may lose their job because their employer fires them and moves the company to a country where labour is cheaper. Some countries rely on cheap labour and weak trade unions as a comparative advantage to attract foreign investments. As jobs move from one part of the world to another, so do workers. Many migrant workers from developing countries try to find a living in rich countries by taking on work that is badly paid and often of an inferior status and quality. It is particularly in this type of situation that workers' rights come to the fore. These rights are meant to counter the negative consequences of economic globalization for labour, such as extreme forms of income inequality, exploitation of workers (including women, children, and migrant workers), and high levels of unemployment. The reaction of the international community to these consequences has been the call for social justice and decent work.⁵⁷

^{p. 247} Workers' rights are crucial in this respect. They aim at protecting and promoting working conditions by laying down international minimum standards. The International Labour Organization (ILO) has played, and continues to play, a key role in setting, implementing, and monitoring these standards. This section of the chapter discusses the right to work and so-called 'work-related' rights, including, among others, the right to the enjoyment of just and favourable working conditions, the right to strike, and trade union rights.

3.1 Sources

3.1.1 Universal instruments

A discussion of the right to work and work-related rights should start with the origins of the ILO, which was established in 1919 after the First World War. From the preamble to its constitution it is clear that the achievement of social justice was considered to be crucial for the establishment of lasting peace between states. In addition, it was deemed important to improve labour conditions of workers in order to prevent social unrest, which could possibly result in social and political revolutions such as the one that took place in Russia in 1917.⁵⁸ Thus, governments at that time had a self-interest in improving labour conditions, although sentiments of justice and humanity were also mentioned as guiding concerns in the preamble. In this respect, it is interesting to note that in 1944 the ILO stated explicitly that 'labour is not a commodity'.⁵⁹ Hundreds of binding conventions and non-binding recommendations have been adopted within the framework of the ILO over the years. The tripartite structure of the organization provides a framework for representatives of governments, workers, and employers to discuss and agree on new rules. These are usually called international labour standards.

The early establishment of the ILO meant that it was far ahead in laying down work-related rights when the UN started its normative human rights activities after the Second World War. The ILO contributed actively to the drafting of both the UDHR and the ICESCR. Article 23 UDHR and Articles 6 to 8 ICESCR contain a number of elements that relate to the protection of the right to work, such as the free choice of work, equal pay for equal work, and trade union rights. Trade union rights are also part of the International Covenant on Civil and

Political Rights (ICCPR), Article 22 of which recognizes the right to form and join trade unions. The ICCPR also provides for the prohibition of forced labour in Article 8(3). There are a number of further universal human rights instruments that deal with work-related rights. For example, Article 11 CEDAW lays down detailed obligations for states aimed at eliminating discrimination in the field of employment. Article 32 CRC recognizes the right of children to be protected from economic exploitation and hazardous work. There is a clear link here with the elimination of child labour. Article 10(3) ICESCR serves a similar purpose, adding that states ‘should set age limits below which the paid employment of child labour should be prohibited and punishable by law’. Note the use of the permissive ‘should’ instead of the more mandatory ‘shall’.

The work-related rights of migrant workers are of particular importance. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families lays down a number of relevant rights. Its main feature is the principle of non-discrimination with respect to rights granted to migrant workers and members of their families (Article 7). This principle has been elaborated for matters of employment and labour conditions in Article 25. However, Article 52 allows for restrictions that states of employment may impose on migrant workers’ free choice of remunerated activities. Furthermore, the Convention contains a number of provisions that are applicable to particular categories of migrant workers, such as frontier workers and seasonal workers.⁶⁰ Some aspects of the Convention do not apply to migrant workers and members of their families who are non-documented or in an irregular situation.⁶¹

The Convention on the Rights of Persons with Disabilities is based on the principles of, among others, non-discrimination, full and effective participation and inclusion of disabled people in society, and equality of opportunity (Article 3). As is made clear by Article 27, these principles also apply to matters of work and employment. This means, for example, that states have to prohibit discrimination on the basis of disability with respect to conditions of recruitment for jobs and to promote employment opportunities and career advancement for persons with disabilities in the labour market. Among numerous other positive obligations, states must also ensure that reasonable accommodation is provided to persons with disabilities in the workplace (Article 27(1)(i)).

3.1.2 Regional instruments

The European Social Charter (1961), the Additional Protocol to the European Social Charter (1988), and the Revised European Social Charter (1996) all aim at protecting the rights of workers. They extensively regulate various aspects of the right to work, employment conditions, vocational training, participation of workers in the determination of labour issues, and access to social security, social assistance, and welfare services. The Charter also identifies specific groups that need special protection, such as women, children, elderly persons, and migrant workers. The Charter does not recognize individual rights that are directly enforceable against the state. Although rights language is used, its provisions are framed as state obligations rather than individual rights. For example, Article 1 Revised European Social Charter, dealing with the right to work, reads: ‘With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake ... to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment.’ The Charter of Fundamental Rights of the European Union stipulates in Article 5 that no one shall be required to perform

forced or compulsory labour. In addition, it contains a number of workers' rights, including protection in the event of unjustified dismissal (Article 30) and the right of workers to information and consultation (Article 27).

Article 15 ACHPR provides that every individual shall have the right to work under equitable and satisfactory conditions and receive equal pay for equal work. Interestingly, the Charter also contains duties that are imposed on the individual, one of them being 'to work to the best of his abilities and competence' (Article 29(6)). Article 15 African Charter on the Rights and Welfare of the Child provides protection against child labour in similar terms to those of Article 32 CRC. Measures to protect children cover both the formal and informal sectors of employment.

In the Americas, the Protocol of San Salvador provides for the right to work in Article 6. Its wording is quite modern in that it refers to the notions of dignity and decency that have been essential features of recent debates about the right to work.⁶² Article 7 lists a range of labour conditions that should be just, equitable, and satisfactory. Like Article 24 UDHR, it recognizes that workers have a right to rest, leisure, and paid holidays, and remuneration for national holidays (Article 7(h)).

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In the Arab Charter on Human Rights, one comprehensive article deals with a number of aspects of the right to work. Article 34 provides that the right to work is a natural right of every citizen. It also requires states to provide, to the extent possible, a job for the largest number of those willing to work. The reference to 'those willing to work' is unique in the texts of human rights instruments. Article 34 also prescribes non-discriminatory treatment of men and women in matters of training, employment, job protection, and remuneration.

3.1.3 ILO conventions

Conventions adopted within the framework of the ILO are special conventions, because they deal with one or more particular labour issue(s). As the ILO has always stated, labour standards included in its conventions and recommendations are universal in nature. They are deliberately set low in order to achieve a worldwide reach, although more favourable national working conditions remain applicable.⁶³ The ILO conventions recognize that there are economic disparities between states and that these differences may have an impact on the way states implement their obligations.⁶⁴ What is decisive in the end is whether a state has complied with its treaty obligations. The conventions address a variety of issues relating to the right to work and work-related rights, and many of them have a long history. The first ILO convention, adopted in 1919, dealt with the regulation of hours of work in industrial plants,⁶⁵ while another early convention was designed to counter unemployment.⁶⁶ More recent conventions deal with the elimination of the worst forms of child labour, the safety and health of workers in mines, the rights of domestic workers, and the prohibition and prevention of violence and harassment at work.⁶⁷

3.2 Features

The right to work has a number of special features. First of all, it is an aggregate right, that is, it includes a number of components, such as claims to employment, free choice of work, improvement of working conditions, and trade union rights. Furthermore, the nature of the right to work, understood as a claim to employment, is such that it is not possible to enforce it directly against the state. It is not a subjective right enforceable by courts. Most people are employed by private employers rather than the state. This means that the state must regulate, monitor, and enforce labour rules by laying down mechanisms that workers can use to enforce their rights against employers. Many labour standards thus apply in horizontal relationships between employers and employees. To implement the ILO conventions, states have to bring their domestic law and practice into conformity with the international standards and employers have to comply with the domestic law. The advantage of ILO standards is that they are specific and detailed, thus giving clear guidance to states as to how to implement them. Consequently, compared to other economic, social, and cultural rights, the right to work and work-related rights are well developed in terms of their normative content.

p. 250 ↵ The detailed nature of ILO standards has helped to clarify the meaning of relevant provisions in human rights instruments. For example, Article 7(b) ICESCR mentions safe and healthy working conditions as a component of just and favourable conditions of work, without further explanation. ILO conventions and recommendations have been helpful in defining what this means for specific types of activity or categories of workers. For example, there is a convention on safety and health in the agricultural sector⁶⁸ and a convention on the labour conditions of seafarers.⁶⁹ These detailed rules may be used by human rights supervisory bodies to explain the nature and scope of human rights obligations.

Traditionally, there was little cooperation and coordination between international labour circles, on the one hand, and the human rights movement, on the other hand. The ILO and trade unions paid little attention to the use of human rights language to promote their cause and human rights activists largely ignored labour rights issues in their campaigns.⁷⁰ This situation has changed gradually over time. The ILO has been devoting special attention to the role of human rights in achieving social justice. For example, in 2010 it adopted a Recommendation on HIV/AIDS and the World of Work, which is meant to give impetus to anti-discrimination policies at the workplace level.⁷¹ For its part, the human rights community is focused increasingly on violations of workers' rights, which often result as a negative consequence of the globalization of production and trade. For example, Amnesty International has drawn attention to the abuse of rights of workers by multinational companies in the palm oil industry in Indonesia as a side effect of uncontrolled business practices and economic growth.⁷²

3.3 Components

The right to work is composed of several key components. One of the most fundamental rights is the *freedom from slavery*, guaranteed by Article 8(1) ICCPR. Slavery is 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.⁷³ Thus, a slave is unable to exercise the right of individual self-determination. Although slavery has been eradicated in many countries, it still exists in parts of Asia and Africa. For example, caste and ethnic status underpin the use of slavery in Niger, Mauritania, and Mali, where tens of thousands of people are ascribed slave status at birth and are then

considered to be the property of their ‘masters’ who force them to work without pay.⁷⁴ In India, many children work long hours in the cotton industry to pay off the debts of their parents. This is not freely chosen work, but bonded labour.

Forced or compulsory labour has also been banned under international human rights law. ‘Forced or compulsory labour’ is ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.⁷⁵ In 1957, ILO member states agreed on new standards concerning the abolition of forced labour, committing themselves not to use forced labour as a means of political coercion or education or as a punishment for holding or expressing certain views; as a method of mobilizing and using labour for the purposes of economic development; as a means of labour discipline; as a punishment for having participated in strikes; or as a means of racial, social, national, or religious discrimination.⁷⁶ The convention was directed against communist states that imposed forced labour in so-called labour camps for political opponents and states such as Rhodesia and South Africa that applied forced labour of black workers as part of their discriminatory laws and practice. Not all forms of ‘compulsory’ labour qualify as prohibited labour under international labour law and human rights law. Both the 1930 Forced Labour Convention and the ICCPR provide for exceptions, including compulsory military service and work required of persons in detention.⁷⁷ In 2016, an ILO Protocol to the Forced Labour Convention 1930 entered into force which is aimed at tackling forms of modern slavery. It, *inter alia*, requires employers to exercise due diligence to avoid modern forms of slavery in their business practices and supply chains.⁷⁸

The counterpart of the prohibition of slavery and forced labour is the *freedom to work*, which means the right to free choice of work or occupation. People have a right, not a duty, to work. This right is codified in several human rights instruments, such as Article 6(1) ICESCR and Article 1(2) Revised European Social Charter. A current, controversial issue is the so-called *Kafala* (sponsorship) system applied in Qatar in the construction sector for employment of migrant workers. This system requires a ‘No Objection Certificate’ for workers from their employer if they want to change job or leave the country. In combination with mistreatment of migrant workers employed in the construction of stadiums and infrastructure for the 2022 FIFA World Cup tournament, this system of bonded labour has raised a great deal of international criticism because of the violation of the right to the free choice of work.⁷⁹ In 2020, Qatar adopted a number of labour reforms. It will now allow migrant workers, including domestic workers, to change jobs before the end of the contact without the prior consent of their employer. The question remains whether these changes will be put in practice, monitored, and enforced.⁸⁰

Another key component of the right to work and work-related rights is the principle of *non-discrimination and equal treatment*, which is part of every human rights treaty. For example, Article 7(a)(i) ICESCR provides for ‘equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work’. ILO standards lay down more specific rules and other grounds of discrimination that are prohibited.⁸¹ Examples include trade union membership and action, marital status, pregnancy, and family responsibilities.

The right to work also includes the *right to seek work*, which implies that states must design, adopt, and implement active employment policies aimed at creating jobs and reducing unemployment. States are under a duty to act, not to succeed in providing everyone with a job. In some communist states, the right to work was constitutionally guaranteed and the authorities claimed that there was full employment, when in reality

p. 252 there was ↗ hidden unemployment. Today, the internationalization of economic processes has limited the role of governments to influence employment through national measures, but raising employment figures remain one of the major concerns.⁸² The ILO has said that job creation for young people must be a priority in achieving inclusive and sustainable development.⁸³

The right to work implies a right to, not just any kind of work but, *decent work*. Although there is no authoritative definition of ‘decent work’, this concept, which is at the heart of current ILO policies and programmes, implies that work has to be of an acceptable quality in terms of conditions of work, feelings of value and satisfaction, relations between employer and employee, and remuneration.⁸⁴ The right to fair remuneration is protected by several human rights instruments.⁸⁵ It includes, *inter alia*, the right to equal pay for work of equal value. Fair remuneration is meant to guarantee to workers and their families a decent standard of living. The wage level is subject to a number of factors, such as the standard of living in a country, the type of work, and the situation on the labour market. For the European region, the European Committee on Social Rights has determined that the net minimum wage should amount to at least 60 per cent of the net national average wage.⁸⁶ Decency also implies that a certain minimum level of protection has to be met. For example, there is agreement that certain forms of child labour do not meet that standard, as is evidenced by the ILO Convention on the Worst Forms of Child Labour.⁸⁷ According to this Convention, the worst forms of child labour include work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children (Article 3(d)).

Other components of the right to work include the right to have access to free employment services in order to find a job as guaranteed by Article 1(3) Revised European Social Charter, and protection of employment security, that is, protection against unjustified dismissal. ILO Convention No 158 (1982) sets out reasons that cannot be invoked to justify a dismissal, such as union membership or the exercise of a right by a worker, such as maternity leave.

Finally, there are some instrumental rights, such as the freedom of association, the right to bargain collectively, and the right to strike that serve the purpose of promoting and protecting the right to work and work-related rights.

The critical importance of some fundamental work-related rights has been proclaimed and confirmed in a key declaration adopted by all member states of the ILO in 1998. The Declaration on Fundamental Principles and Rights at Work establishes an obligation of member states, arising from the very fact of membership of the ILO, to respect, promote, and realize a number of *core principles and rights* laid down in ILO conventions. These include:

- freedom of association and effective recognition of the right to collective bargaining;
- elimination of all forms of forced or compulsory labour;
- effective abolition of child labour; and
- elimination of discrimination in respect of employment and occupation.

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- ↳ The significance of this Declaration lies in the fact that states agreed that they have these obligations even if they have not ratified the relevant conventions.⁸⁸ Furthermore, the principles have universal reach and application, applying to all member states of the ILO with respect to both their domestic and international policies and practice. As a consequence, for example, importing and exporting states may not benefit from commodities produced through the use of forced labour or the worst forms of child labour.

3.4 Obligations

Obligations resulting from the right to work and work-related rights can be derived from the treaty provisions themselves as well as the explanations given by the Committee on Economic, Social and Cultural Rights, for example in its General Comment 18. However, these obligations have been formulated in general terms, often making it difficult to monitor implementation.

As explained already, pursuant to Article 2(1) ICESCR, states must progressively realize the rights included in the ICESCR by taking appropriate measures, such as the adoption of legislation. Article 6(2) ICESCR lists a number of steps that states parties must take to achieve the full realization of the right to work, such as setting up vocational guidance and training programmes. Some obligations are not subject to progressive realization, but have an immediate effect. One example is the obligation to guarantee that the right to work can be exercised ‘without discrimination of any kind’, as provided for in Article 2(2) ICESCR.

The Committee on Economic, Social and Cultural Rights has identified further obligations resulting from the right to work by using the typology of obligations ‘to respect, to protect and to fulfil’.⁸⁹ These entail both negative obligations to abstain from interference and positive obligations to act. Under the obligation to *respect*, the state must not, for example, apply forced or compulsory labour and must allow the establishment and functioning of trade unions. The obligation to *protect* requires states to lay down in domestic law standards for labour relations between private employers and employees (for example, minimum wages, working hours, and occupational health and safety rules), to monitor compliance with the law, and to enforce it in case of infringement.⁹⁰ In a globalized economy, a key question is what role both home and host states can play through national legislation and policy in regulating and monitoring working conditions in subsidiaries of multinational companies, for example in the garment industry. Do companies give effect to their corporate social responsibility to respect and promote fair labour conditions through self-regulation and voluntary codes of conduct, or should soft law instruments persuade companies to adopt and implement a decent work approach?⁹¹ Finally, the obligation to *fulfil* requires states, for instance, to develop an active employment policy to counter unemployment.

The Committee on Economic, Social and Cultural Rights has characterized some obligations as *minimum core obligations*, which must be realized under all circumstances. These include, for example, the obligation to ensure non-discrimination and equal opportunity in matters of employment, for instance with respect to the right of access to employment for women, migrants, and disabled people.⁹² Another core obligation is the duty to abolish the worst forms of child labour pursuant to applicable ILO standards.

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- ↳ As far as the obligations arising from ILO conventions are concerned, two broad categories can be distinguished. First, some of the conventions entail immediate obligations for states. An example is the Equal Remuneration Convention (No 90) (1951), which stipulates in Article 2 that states shall ensure the application

to all workers of the principle of equal remuneration for men and women workers for work of equal value. States may use different methods to implement this principle, including national laws or regulations, legally established or recognized machinery for wage determination, or collective agreements between employers and workers. Other conventions, in contrast, contain obligations that are programmatic in nature, that is, they provide for programmes of action that set general objectives for domestic policy. These conventions allow for policy freedom and discretion for authorities regarding how best to implement the standards. An example is the Human Resources Development Convention (No 142) (1975), which requires states to adopt and develop policies and programmes of vocational guidance and vocational training.

3.5 Relationship With Other Human Rights

The right to work and work-related rights are linked to the enjoyment of other human rights. They play a key role in facilitating the right to an adequate standard of living laid down in Article 25 UDHR and Article 11 ICESCR. When people make a living through work, they are in a much better position to have access to food, medical care, housing, and education. Income generated through work is instrumental in acquiring property, such as a house or land. In addition, decent work, not any kind of work, and just and favourable working conditions contribute to living in dignity. There are also links with the right to social security, that is, the right to access and maintain benefits in order to secure protection from a lack of work-related income, caused by illness, disability, maternity, employment injury, unemployment, old age, or death of a family member.⁹³ This right is thus complementary to the right to work and work-related rights. The right of children not to be subject to child labour is closely linked to the need to make the right to education a reality.⁹⁴

There are also relationships with civil and political rights, such as the right to information concerning work-related issues, freedom of expression to speak out about abuses at the workplace, and freedom of association with regard to trade unions. Finally, the enjoyment of other rights has an impact on the enjoyment of the right to work. Workers who are well trained and in good health will probably find it easier to find a suitable job and will perform better. This relationship has been acknowledged in the Revised European Social Charter.⁹⁵

Due to its different dimensions and its links to other work-related rights, the right to work is a composite and complex right. In practice, it is particularly relevant to the horizontal relationships between employers and employees. Similar to the right to education, it becomes clear with the right to work that all human rights are interrelated and interdependent. International human rights law is less developed with regard to the right to work than the international standards established within the framework of the ILO. The implementation of the right to work at the domestic level can benefit from the detailed rights and obligations laid down in ILO conventions. Similarly, it can be argued that ILO standards should be seen and applied as human rights norms, because they are aimed at the protection of human dignity.

p. 255 **4 Conclusion**

This chapter has demonstrated that both the right to education and the right to work are important for living a life in dignity. Both rights are critical for the development of society as a whole, but also for achieving self-fulfilment and ‘moving up the social ladder’. Their content, but also their realization, reflects the idea that all human rights are indivisible, interdependent, and interrelated. The modern approach to economic, social, and cultural rights emphasizes the importance of clarifying the normative content of each right by identifying its different dimensions, framed as entitlements and freedoms. These give rise to positive and negative obligations for states. It is a challenge for states to phrase, implement, and monitor their domestic policies in accordance with international standards. This is particularly so when implementation requires allocation of scarce (financial) resources in a period of economic recession.⁹⁶ Human rights monitoring bodies, international organizations, and NGOs should be aware of these different dimensions when monitoring implementation of these rights by states.

Further Reading

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BERLINER *et al*, *Labour Standards in International Supply Chains* (Edward Elgar, 2015).

CHAPMAN and RUSSELL (eds), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Intersentia, 2002).

DE BECO, LORD, and QUINLIVAN (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press, 2019).

DUHAIME and Décoste, ‘From Geneva to San José: The ILO Standards and the Inter-American System for the Protection of Human Rights’ (2020) 159 *Intl Lab Rev* 525.

EIDE, KRAUSE, and ROSAS (eds), *Economic, Social and Cultural Rights* (Martinus Nijhoff, 2001).

HUMAN RIGHTS WATCH, ‘Years Don’t Wait For Them’—Increased Inequality in Children’s Right to Education Due to the Covid-19 Pandemic (2021).

KALANTRY, GETGEN, and KOH, ‘Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR’ (2010) 32 *HRQ* 253.

TAPIOLA, *The Teeth of the ILO* (ILO, 2018).

VERHEYDE, *Article 28: A Commentary on the UN Convention on the Rights of the Child* (Brill/Nijhoff, 2006).

p. 256 Useful Websites

ILO: <<http://www.ilo.org>>

UNESCO: <<http://www.unesco.org>>

International Network for Economic, Social & Cultural Rights: <<http://www.escr-net.org>>

Anti-Slavery International: <<http://www.antislavery.org>>

Right to Education Initiative: <<http://www.right-to-education.org>>

Center for Economic and Social Rights: <<http://www.cesr.org>>

Global Initiative for Economic, Social and Cultural Rights: <<http://www.gi-escr.org>>

Questions for Reflection

1. Which elements of the right to education and the right to work would be justiciable and enforceable before the courts?
2. Should education be/remain a public good or a private good?
3. From the perspective of economic globalization, what challenges do you see for the protection of decent work as a human right?
4. How would you assess the use of corporal punishment as a disciplinary measure at school?
5. How would you assess the policy in some European countries that eligibility for receiving a social assistance grant from the state is linked to a duty to do unpaid work for the community?

Notes

¹ See Chapter 7.

² See UDHR, Art 22.

³ Human Rights Council, Res 47/6 (12 July 2021).

⁴ See CRC, General Comment 8, CRC/C/GC/8.

⁵ The ECtHR has interpreted the meaning and scope of Art 2 in a number of leading judgments: *Case relating to certain aspects of the laws on the use of languages in education in Belgium (Belgian Linguistic Case No 2)* (1968) 1 EHRR 252; *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711; *Campbell and Cosans v UK* (1982) 4 EHRR 293; *Leyla Sahin v Turkey* (2005) 44 EHRR 5; *Ponomaryov v Bulgaria* (2011) 59 EHRR 20.

⁶ Protocol of San Salvador, Art 19(6).

⁷ CESCR, General Comment 13, HRI/GEN/1/Rev.9 (Vol I) 63; Preliminary Report of the Special Rapporteur on the Right to Education, E/CN.4/1999/49 (13 January 1999) part II.

⁸ For a discussion, see the report by the UN Special Rapporteur on the Right to Education, A/HRC/44/39 (15 June 2020).

⁹ See <<http://www.unesco.org/covid19>>. UNESCO figures show that, worldwide, on average, two-thirds of an academic year has been lost due to COVID-19-related school closures.

¹⁰ Tomasevski, *Education Denied* (Zed Books, 2003) 60.

¹¹ Nowak, ‘The Right to Education’ in Eide, Krause, and Rosas (eds), *Economic, Social and Cultural Rights* (Martinus Nijhoff, 2001) 251.

¹² See <<https://www.ohchr.org/EN/Issues/Education/Training/Pages/Programme.aspx>>.

¹³ ICESCR, Arts 2(2) and 3; ICCPR, Art 26; CRC, Art 2.

¹⁴ See *DH and Others v Czech Republic* (2007) 47 EHRR 3; Recommendation CM/Rec(2009)4 of the Committee of Ministers to member states on the education of Roma and Travellers in Europe.

¹⁵ UNESCO Convention Against Discrimination in Education, Art 1(1) and CEDAW, Art 10. See for an interpretation, CEDAW, General Recommendation 36, CEDAW/C/GC/36.

¹⁶ Human Rights Watch, *1999 World Report*. See also Report of the UN Secretary-General on the situation of women and girls in Afghanistan, E/CN.4/Sub.2/2000/18 (21 July 2000).

¹⁷ ‘Pakistani girl shot over activism in Swat valley, claims Taliban’, *The Guardian* (9 October 2012), <<http://www.guardian.co.uk/world/2012/oct/09/pakistan-girl-shot-activism-swat-taliban>>.

¹⁸ *WAVES v The Republic of Sierra Leone*, ECW/CCJ/JUD/37/19 (12 December 2019), <<https://www.escr-net.org/caselaw/2020/women-against-violence-and-exploitation-society-waves-v-republic-sierra-leone>>.

¹⁹ *Gonzales Lluy v Ecuador*, IACtHR Series C No 298 (1 September 2015).

²⁰ Art 22 Refugee Convention. See UNESCO, Protecting the right to education for refugees (2017), <<https://unesdoc.unesco.org/ark:/48223/pf0000251076>>.

²¹ *Unni Krishnan and Others v State of AP and Others*, 1 SCC 645 (4 February 1993).

²² Preliminary Report of the Special Rapporteur on the Right to Education, paras 75–9; Melchiorre, ‘At what age? ...’ (2004), <<http://www.right-to-education.org>>.

²³ Sustainable Development Goal 4 aims to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’. GA Res 70/1, Transforming our world: the 2030 Agenda for Sustainable Development (21 October 2015). See further <<http://www.un.org/sustainabledevelopment/education/>>.

²⁴ CESCR, General Comment 13; UNESCO Recommendation on Adult Learning and Education (2015), section I.1.

²⁵ See CESCR, General Comment 11, E/C.12/1999/4.

²⁶ See Progress report of the Special Rapporteur on the Right to Education, E/CN.4/2000/6 (1 February 2000) para 46 and Table 3. See also Melchiorre (2004).

²⁷ Report of the UN Special Rapporteur on the Right to Education, E/CN.4/2004/45 (15 January 2004) para 8.

²⁸ See background paper prepared by the Special Rapporteur on the Right to Education, E/C.12/1998/18 (30 November 1998) para 12.

²⁹ See CESCR, General Comment 13, para 51: ‘States parties are obliged to prioritise the introduction of compulsory, free education’.

³⁰ *Costello-Roberts v UK* (1993) 19 EHRR 112.

³¹ UNICEF, *The State of the World’s Children* 1999, 63.

³² CESCR, General Comment 13, para 48.

³³ CESCR, General Comment 13, para 51.

³⁴ Report by the UN Special Rapporteur on the right to education, A/HRC/29/30 (10 June 2015); Report by the UN Special Rapporteur on the right to education, A/HRC/41/37 (10 April 2019); the Abidjan Principles—Guiding Principles on the human rights obligations of states to provide public education and to regulate private involvement in education (2019).

³⁵ CESCR, General Comment 11, para 9.

³⁶ Act No 35 of 2009, *The Gazette of India* No 39, 27 August 2009.

³⁷ Compare ACHPR, Art 17(3): ‘The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.’

³⁸ *Kjeldsen, Busk Madsen and Pedersen case*.

³⁹ *Waldman v Canada*, CCPR/C/67/D/1996 (5 November 1999).

⁴⁰ Section I.B., para 3.

⁴¹ eg ICCPR, Art 27; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) sections 32–4; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art 4; European Charter for Regional or Minority Languages, Art 8; Framework Convention for the Protection of National Minorities, Arts 12–14.

⁴² *Minority Schools in Albania*, PCIJ, Advisory Opinion, Series A/B No 64 (1935) 17.

⁴³ See Chapter 7.

⁴⁴ CESCR, General Comment 13, para 59.

⁴⁵ See for the Turkish derogation statement: <<https://wcd.coe.int/ViewDoc.jsp?p=&id=2436803&Site=COE&BackColorInternet=F7F8FB&BackColorIntranet=F7F8FB&BackColorLogged=F7F8FB&direct=true>>.

⁴⁶ Human Rights Watch, Turkey: Rights Protections Missing from Emergency Decree (26 July 2016), <<https://www.hrw.org/news/2016/07/26/turkey-rights-protections-missing-emergency-decree>>.

⁴⁷ ECOWAS Court of Justice, *SERAP v Nigeria*, ECW/CCJ/JUD/07/10 (30 November 2010) para 19.

⁴⁸ CESCR, General Comment 3, E/1991/23, Annex III.

⁴⁹ ‘Maastricht Guidelines on Violations of Economic, Social and Cultural Rights’ (1998) 20 *HRQ* 691.

⁵⁰ CESCR, General Comment 13, para 57.

⁵¹ Donnelly and Howard, ‘Assessing National Human Rights Performance: A Theoretical Framework’ (1988) 10 *HRQ* 214, 215.

⁵² Donnelly and Howard (1988) 234–5.

⁵³ Galbraith, *The Good Society: The Humane Agenda* (Houghton Mifflin, 1996).

⁵⁴ See the *New York Times* documentary, *A Tibetan’s Journey for Justice*, <<https://www.hrw.org/video-photos/video/2019/05/30/330638>>.

⁵⁵ See ICESCR, Art 13(3) and ICCPR, Art 18(4).

⁵⁶ See Chapter 11.

⁵⁷ See ILO Declaration on Social Justice for a Fair Globalization (2008).

⁵⁸ For the text of the Constitution, see: <<http://www.ilo.org>>.

⁵⁹ Declaration Concerning the Aims and Purposes of the International Labour Organization (Declaration of Philadelphia) (1944).

⁶⁰ Migrant Workers Convention, Arts 57–63.

⁶¹ Migrant Workers Convention, Art 35.

⁶² Art 6(1) reads: ‘Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.’

⁶³ ILO Constitution, Art 19(8).

⁶⁴ See also ILO Constitution, Art 19(3).

⁶⁵ Hours of Work (Industry) Convention 1919 (No 1).

⁶⁶ Unemployment Convention 1919 (No 2).

⁶⁷ Convention No 182 (1999), Convention No 176 (1995), Convention No 189 (2011), and Convention No 190 (2019) respectively.

⁶⁸ Convention No 184 (2001).

⁶⁹ Maritime Labour Convention (2006).

⁷⁰ Leary, ‘The Paradox of Workers’ Rights as Human Rights’ in Compa and Diamond (eds), *Human Rights, Labor Rights, and International Trade* (University of Pennsylvania Press, 1996) 22.

⁷¹ ILO Recommendation 200 (2010).

⁷² Amnesty International, 'The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names', <<https://www.amnesty.org/en/documents/asa21/5184/2016/en/>>.

⁷³ Slavery Convention (1926), Art 1(1).

⁷⁴ See <<http://www.antislavery.org>> for more information on current forms of slavery.

⁷⁵ See ILO Forced Labour Convention (No 29) (1930), Art 2(1).

⁷⁶ ILO Convention Concerning the Abolition of Forced Labour (No 105) (1957), Art 1.

⁷⁷ Forced Labour Convention (No 29), Art 2(2); ICCPR, Art 8(3).

⁷⁸ Protocol No 29 of 2014 to the Forced Labour Convention, 1930. See <<http://50forfreedom.org>>.

⁷⁹ See the Complaint concerning non-observance by Qatar of Forced Labour Convention No 29 (1930) under Art 26 ILO Constitution, GB.326/INS/8 (Rev) (17 March 2016); Human Rights Watch, 'Qatar: Failing on Crucial Labor Reforms' (27 January 2016), <<https://www.hrw.org/news/2016/01/27/qatar-failing-crucial-labor-reforms>>.

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⁸¹ See ILO Discrimination (Employment and Occupation) Convention (No 111) (1958).

⁸² See ILO Employment Policy Convention (No 122) (1964) and Revised European Social Charter, Art 1(1).

⁸³ ILO Global Initiative on Decent Jobs for Youth (2021), <https://www.ilo.org/global/topics/youth-employment/publications/WCMS_488464/lang--en/index.htm>.

⁸⁴ For more information on ILO's decent work campaign, see: <<http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>>.

⁸⁵ eg ICESCR, Art 7(a)(i); Revised European Social Charter, Art 4; Protocol of San Salvador, Art 7(a); ACHPR, Art 15.

⁸⁶ Digest of the Case Law of the European Committee on Social Rights (2008) 43.

⁸⁷ ILO Convention No 182 (1999).

⁸⁸ ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up (1998).

⁸⁹ CESCR, General Comment 18, E/C.12/GC/18, paras 22–8.

⁹⁰ For an extensive interpretation of the normative contents of standards relating to conditions of work, see CESCR, General Comment 23, E/C.12/GC/23.

⁹¹ eg see the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2017), <<https://www.oecd.org/industry/inv/mne/responsible-supply-chains-textile-garment-sector.htm>>.

⁹² CESCR, General Comment 18, E/C.12/GC/18, para 31.

⁹³ CESCR, General Comment 19, E/C.12/GC/19, para 2. See also Chapter 10.

⁹⁴ See Worst Forms of Child Labour Convention (No 182) (1999), Art 7(2).

⁹⁵ Revised European Social Charter, Arts 10–13.

⁹⁶ See the 2016 statement by the CESCR, ‘Public debt, austerity measures and the ICESCR’, E/C.12/2016/1.

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