The international human right to education and education concerning human rights

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[T]he child's right to education ... is ... a requirement of human dignity. It is unacceptable that in this world of ours, possessing a store of scientific and technological knowledge unprecedented in history, there should be, side by side with privileged people commanding access to the resources of knowledge, hundreds of millions, not only of boys and girls, but also of men and women, who are denied the possibility of simply learning to read and to write.1

1. Introduction

In 1954 the United States Supreme Court stressed the fundamental importance of education for all in the famous case of Brown v. Board of Education2 and asserted that "[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education".3 The concept of education can, of course, be variously defined. Education can be defined in the broad sense to encompass "all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable that group to subsist".4 The General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as "UNESCO") has itself defined the term "education" to imply "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their

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3 Id. 493.

4 M'Bow, op. cit., p. 11.
personal capacities, attitudes, aptitudes, and knowledge". On the other hand, education can be more narrowly confined to refer to formal or professional "instruction imparted within a national, provincial or local education system, whether public or private". Indeed, the General Conference of UNESCO has defined the term "education" for the purpose of its *Convention against Discrimination in Education* to mean "all types and levels of [formal] education, and includes access to education, the standard and quality of education, and the conditions under which it is given". For the purposes of this article, education will refer merely to formal education comprising the pre-primary, primary (elementary), intermediate (secondary), higher and adult levels of instruction.

It is generally accepted that formal education is a primary function of the State. The human right to education is essentially a welfare or "second generation" right which is to be provided to individuals primarily by governmental agencies. Although children are the main beneficiaries, the right to education belongs to all individuals. In proclaiming that "[e]veryone has the right to education", Article 26(1) of the *Universal Declaration of Human Rights* (hereinafter referred to as the "*Universal Declaration*") implicitly recognizes that education is a life-long and continuous process.

This article will endeavour to provide a general overview of the content and development of the right to education at the international and regional levels as well as a brief examination of associated topical issues such as minority education and the extent of the parental prerogative in making decisions which affect the child's education.

2. Historical development of the right to education

Despite its importance in the hierarchy of human rights, the right to education, as we shall see in Section 4, was not fully proclaimed at the international

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6 M'Bow, op. cit., p. 11.

7 Article 1(2).

8 See, for example, Article 1 of the *Central American Convention on the Unification of the Fundamental Norms of Education* of 1962 ("Education is a primary function of the State, which shall offer maximum opportunities for education"). Principle 4 of the Official Statement of Principles adopted by the Conference on the Legal Protection of the Rights of the Child held in Warsaw in 1979 states: "The duty to provide the means of education ... falls in the first place on the State".