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Mitigating Social Inequality in Education: Human Rights Implementation in Brazilian
and American Education Policies

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Abstract

To explore this issue of (in)equitable access to education and gain further insight into how human rights constructs appear in education policies, this thesis will address the question: how have human rights standards regarding the right to education, particularly those dealing with the element of accessibility, been implemented in education policies aimed at reducing social inequality in Brazil and the United States? Through document analysis, this thesis will construct an understanding of the international human rights standards regarding the right to education and analyze how these standards appear in Brazilian and American education policies, drawing comparisons between each state's implementation of and respect for the right to education. This thesis will also identify persistent barriers to accessing education through analyzing narrative data from Brazilian and American students regarding their educational experiences. Findings suggest that the construction of the right to education in national policies in Brazil and the United States has been fragmented by the failure to consult the guidance and recommendations of human rights bodies and organizations holistically. This has resulted in the perpetuation of inequitable access to education for marginalized students.

Keywords: right to education, accessibility, affirmative action, special measures

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Education is widely regarded as fundamental to developing human identity, abilities, and power.¹ Not only can education facilitate consciousness raising and enhance human potential;² education is crucial for building social capital.³ In fact, education is regarded as one of the most important determinants of social capital.⁴ Thus, the international community recognized a right to education for all individuals. This right was first introduced in the Universal Declaration of Human Rights (UDHR) and subsequently codified in various human rights treaties, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD), among others. The United Nations has also supported the right to education through various instruments including the United Nations Educational, Scientific, and Cultural Organization's (UNESCO) Convention Against Discrimination in Education.

Since its inception, the right to education has undergone significant development. A consistent priority of the international community has been ensuring equitable access to education for all students, regardless of background or identity. Over the past few decades, various human rights treaty bodies, particularly that which oversees the ICESCR, have established international standards regarding the realization of the right to education. These bodies have also enumerated and elaborated several elements of the right to education, including the accessibility element, which this thesis will pay particular attention to.

¹ Jootaek Lee, "The Human Right to Education: Definition, Research and Annotated Bibliography," *Emory International Law Review* 34, no. 3 (2020): 757, Social Science Research Network.

² Ibid.

³ Jian Huang, Henriette Maassen van den Brink, and Wim Groot, "A Meta-Analysis of the Effect of Education on Social Capital," *Economics of Education Review* 28, no. 4 (2009): para. 4.

<https://doi.org/10.1016/j.econedurev.2008.03.004>.

⁴ Ibid.

While the establishment of these standards and elements has resulted in increased recognition of the right to education worldwide, many issues persisted in achieving the right's full realization. Students of color and socioeconomically disadvantaged students continued to face systemic barriers to accessing education despite increased recognition, including in states that have ratified the ICESCR and the ICERD. Additionally, the human rights regime has been critiqued for inadequate enforcement, reliance on the principle of progressive realization, and use of weak or unclear language, especially regarding the obligations of state parties.

In response to this, many states have enacted measures to increase marginalized or vulnerable populations' access to schooling, including instituting affirmative action policies in higher education admission. Brazil and the United States are two states which have, at one time, enacted such policies. These states present a compelling comparative analysis. Despite sharing similar colonial histories, legacies of slavery, and rampant systemic racial discrimination,⁵ these states have ruled contrarily on the validity of the use of affirmative action policies in higher education admission: while Brazil has upheld affirmative action policies as constitutional, the United States has declared them unconstitutional.

This contradiction becomes intriguing when comparing each state's level of social inequality. Academic literature tends to heavily criticize the United States for its lackluster reduction in social inequality. Meanwhile, Brazil is often hailed as being majorly successful in reducing social inequality. Some scholars have referred to Brazil's affirmative action policies—commonly referred to as “quotas”—as the “backbone” of reducing inequality,⁶ equalizing

⁵ David J. De Villers and Alethea C. De Villers, “A Comparative Review of Education Policy in Brazil and South Africa: Divergent Trends in Inequality,” *Athens Journal of Education* 10, no. 2 (2023), <https://doi.org/10.30958/aje.10-2-8>.

⁶ Ibid.

student experiences and improving marginalized students' educational outcomes. Other literature argues that Brazil's affirmative action policies may not be so successful, failing to improve the career prospects of marginalized students and neglecting to support said students as they complete their education. This prompts further inquiry into how comprehensively human rights standards and principles regarding the right to education have been incorporated into education policies on the national level.

To explore this issue of (in)equitable access to education and gain further insight into how human rights constructs appear in education policies, this thesis will address the question: how have human rights standards regarding the right to education, particularly those dealing with the element of accessibility, been implemented in education policies aimed at reducing social inequality in Brazil and the United States? Through document analysis, this thesis will construct an understanding of the international human rights standards regarding the right to education and analyze how these standards appear in Brazilian and American education policies, drawing comparisons between each state's implementation of and respect for the right for the right to education. This thesis will also identify persistent barriers to accessing education through analyzing narrative data from Brazilian and American students regarding their educational experiences. Findings suggest that the construction of the right to education in national policies in Brazil and the United States has been fragmented by the failure to consult the guidance and recommendations of human rights bodies and organizations holistically. This has resulted in the perpetuation of inequitable access to education for marginalized students.

Understanding Access to Education through a Human Rights Perspective

Challenges Posed to the Human Right to Education

The right to education has been affirmed by many human rights instruments and is included in numerous human rights treaties, including the ICESCR, the ICERD, the CRC, and the CRPD. For the purposes of this paper, particular attention will be paid to the ICESCR and the ICERD. As core human rights instruments, these treaties are especially influential in shaping human rights standards. Moreover, these treaties and the applicable treaty bodies have dedicated substantial effort to articulating various elements of the right to education, including accessibility and non-discrimination. While these treaties have contributed to the establishment of international standards regarding the exercise and realization, challenges persist in meeting such standards.

Though the Committee on Economic, Social, and Cultural Rights (CESCR) has embraced policies mitigating social inequality, including affirmative action, through General Comments (GCs) and Special Rapporteur reports, scholars remain concerned that affirmative action is not explicitly referenced in the ICESCR.⁷ GCs and Special Rapporteur reports are not binding on states.⁸ Rather, they provide “significant normative guidance.”⁹ This could create an environment where states feel emboldened to dismiss the treaty bodies’ comments,¹⁰ delegitimizing affirmative action. Other scholars argue that states generally accept the treaty bodies’ authority to

⁷ Ruth B. Ginsburg, “Affirmative Action as an International Human Rights Dialogue: Considered Opinion,” *The Brookings Review* 18, no. 1 (2000), 2, <https://doi.org/10.2307/20080884>.

⁸ Helen Keller and Leena Grover, “General Comments of the Human Rights Committee and Their Legitimacy,” in *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012), 124.

⁹ *Ibid.*; Paula Gerber, Joanna Kyriakakis, and Katie O’Byrne, “General Comment 16 on State Obligations Regarding the Impact of the Business Sector on Children’s Rights: What is its Standing, Meaning, and Effect?” *Melbourne Journal of International Law* 14, no. 1 (2013), 7, Social Science Research Network; Max Lesch and Nina Reiners, “Informal Human Rights Law-Making: How Treaty Bodies use ‘General Comments’ to Develop International Law,” *Global Constitutionalism* 12, no. 2 (2023), 387, <https://doi.org/10.1017/S2045381723000023>; Lutz Oette, “The UN Human Rights Treaty Bodies: Impact and Future,” in *International Human Rights Institutions, Tribunals, and Courts*, ed. Gerd Oberleitner (Springer, 2018).

¹⁰ Oette, “The UN,” 10.

interpret treaties and issue GCs,¹¹ as evidenced by no state ever having formally objected to a treaty body's authority to do so.¹² Moreover, the CESCR's GCs have shaped the committee's individual complaints communications and influenced national jurisprudence.¹³

The ICESCR's progressive realization obligation has also been a point of contention among scholars and human rights activists. While non-discrimination is an immediately enforceable obligation under the ICESCR, the right to education falls under the obligation of progressive realization. Historically, progressive realization has been used to justify the notion that economic, social, and cultural rights (ESCR) are merely "aspirational goals" rather than immediately applicable and judiciable rights, depriving rights holders of their ESCRs.¹⁴ Allowing states to define and implement ESCRs according to their priorities perpetuates patterns of exclusion, further disadvantaging the most marginalized.¹⁵

Moreover, the language of "progressive realization" is critiqued for being weak,¹⁶ failing to provide concrete guidance regarding how quickly progress should be made¹⁷ and disconnecting rights from the means to realize them.¹⁸ While progressive realization does obligate states to realize more than the minimum core content (MCC) of a right, it allows this to

¹¹ Keller and Grover, "General Comments," 127; Dianne Otto, "'Gender Comment: Why Does the UN Committee on Economic, Social, and Cultural Rights Need a General Comment on Women?'" *Social Science Research Network Electronic Journal* (2002), 13, <https://doi.org/10.2139/ssrn.319202>.

¹² Gerber, Kyriakakis, and O'Byrne, "General Comment 16," 7; Keller and Grover, "General Comments," 127.

¹³ Oette, "The UN," 10.

¹⁴ Bruce Porter, "Rethinking Progressive Realization: How Should it be Implemented in Canada?" *Social Rights Advocacy Center* (2015), 1.

¹⁵ *Ibid.*

¹⁶ Katerina Linos and Tom Pegram, "The Language of Compromise in International Agreements," *International Organization* 70, no. 3 (2016), 590, <https://doi.org/10.1017/S0020818316000138>.

¹⁷ Lilian Chenwi, "Unpacking 'Progressive Realisation,' its Relation to Resources, Minimum Core and Reasonableness, and some Methodological Considerations for Assessing Compliance," *De Jure* 46, no. 3 (2013), para. 5, Southern African Legal Information Institute.

¹⁸ Seamus Byrne, "Reclaiming Progressive Realisation: A Children's Rights Analysis," *The International Journal of Children's Rights* 28 (2020), 763. <https://doi.org/10.1163/15718182-28040011>.

take place over a lengthy period.¹⁹ This is concerning as waiting uncertainly perpetuates rights deprivations and disempowers those already disadvantaged.²⁰

Conversely, the ICERD does not rely on progressive realization to achieve the rights enumerated within it nor does it rely on GCs to support implementing affirmative action or other policies aimed at increasing the accessibility of education. In fact, Article 1(4) creates an immediate legally binding obligation on state parties to institute affirmative action policies in situations that deem it necessary. However, Linos & Pegram (2016) have critiqued the ICERD's use of weak language ("*may* be necessary"), enabling states to overlook their obligations or reduce their efforts to comply with the ICERD's obligations.²¹

Higher Education in the Human Rights Schema

While the right to education is guaranteed by various international human rights instruments as discussed above, the right to *higher* education remains a contentious topic. While the UDHR and the ICESCR acknowledge a right to higher education, there are many challenges associated with realizing this right.²² The MCC of the right to education does ensure non-discriminatory access to public institutions of higher education,²³ meaning higher education must be equally accessible to all on the basis of race and other demographics. However, the MCC does not immediately obligate states to eliminate financial or geographic barriers to accessing higher

¹⁹ Ibid.

²⁰ Katherine Young, "Waiting for Rights: Progressive Realization and Lost Time," in *The Future of Economic and Social Rights* (Cambridge University Press, 2019), 679.

²¹ Linos and Pegram, "The Language of Compromise," 590.

²² Byrne, "Reclaiming Progressive Realisation," 763.

²³ Jane Kotzmann, "Lifting the Cloak of Conceptual Confusion: Exploring the Meaning of the Human Right to Higher Education," *Australian Journal of Human Rights* 21, no. 1 (2015): 81, Social Science Research Network.

education.²⁴ Rather, states are obligated to implement national education strategies that include provisions designed to enhance access to higher education,²⁵ leading to potentially lengthy periods of time of lackluster access to higher education.²⁶

While the progressive realization principle may embolden states to neglect their treaty obligations,²⁷ the United Nations has reiterated numerous times that failing to take “deliberate, concrete, and targeted” steps to gradually accomplish the full realization of ESCRs is a violation of the state’s obligations.²⁸ Thus, states are not absolved from their duty to progressively realize the right to higher education. Additionally, some elements of the so-called right to higher education are immediately enforceable, compelling states to take immediate steps to enhance the accessibility of higher education.

Regarding financial barriers, it has been argued that the failure to remove financial barriers constitutes a violation of the non-discrimination principle—which is immediately enforceable—as students of color are less likely than their white counterparts to possess the financial resources necessary to matriculate.²⁹ The human rights framework dictates that higher education should be equally accessible to all on the basis of ability or capacity.³⁰ In states with public universities charging inaccessible tuition rates, higher education remains inaccessible for

²⁴ Angelina Fischer, “‘Minimum Core’ and the ‘Right to Education,’” *The World Bank* (2017), <https://hdl.handle.net/10986/29142>.

²⁵ *Ibid.*

²⁶ Byrne, “Reclaiming Progressive Realisation,” 763.

²⁷ *Ibid.*

²⁸ Fischer, “‘Minimum Core;’” United Nations Committee on Economic, Social, and Cultural Rights, *General Comment No. 3*. (1990); United Nations Committee on Economic, Social, and Cultural Rights, *General Comment No. 13*. (1999); United Nations Educational, Scientific, and Cultural Organization, “The Right to Education: Law and Policy Review Guidelines” (2014)

²⁹ Heidi R. Gilchrist, “Higher Education is a Human Right,” *Washington University Global Studies Law Review* 17, no. 3 (2018), 647, Washington University Open Scholarship.

³⁰ *Ibid.*

those without the means to finance it, constituting what some argue is a violation of the right to equally accessible higher education.³¹

Not only has there been debate concerning states' obligations to remove financial barriers to higher education; controversy has emerged regarding whether states' obligations to ensure non-discriminatory access to education entail positive obligations in addition to negative obligations.³² States are inarguably obligated to refrain from introducing mechanisms that would cause preclusion from higher education on the basis of a prospective student's individual characteristics.³³ Some argue that the states' obligations cease there while others argue that states must also create opportunities for prospective students who possess capacity but have not demonstrated merit due to unequal access to quality education or other resources at lower levels of education.³⁴ The latter perspective imposes positive obligations on the state to take proactive steps to increase the accessibility of education in addition to a negative obligation not to discriminate. This perspective also implies that a student's capacity is of greater concern than a student's demonstrated merit or ability when determining who has a right to accessible higher education, broadening the pool of individuals who possess this right.

Human Rights Education

These debates and the standards set by various international organizations have shaped theoretical models of education, including Human Rights Education (HRE). HRE, being based in a human-rights approach, promotes making action-oriented efforts to enhance the accessibility of

³¹ Ibid.

³² Felisa Tibbitts, "Revitalizing the Mission of Higher Education Through a Human Rights-Based Approach," *Prospects* 54 (2024), 403, <https://doi.org/10.1007/s11125-023-09654-9>.

³³ Ibid.

³⁴ Ibid.

education for marginalized individuals and for those who have not been able to realize their capacity due to previous unequitable access to resources.³⁵

HRE's defining principles include non-discrimination, equality, participation, dignity, and cultural sensitivity.³⁶ Scholars have found that when educational environments are welcoming to diverse students and when students have their value and ability to perform reinforced, negatively stereotyped students' academic performance increases.³⁷ Thus, marginalized students who are exposed to HRE are more likely to excel, underscoring the usefulness of holistic, human rights-based education in mitigating social inequality.³⁸

The content of HRE, however, can vary greatly across contexts.³⁹ States that engage weakly with human rights standards tend to avoid HRE and undervalue ESCRs, including the right to education.⁴⁰ HRE in these contexts, if it is present, is often concerned with improving availability, disparaging the right's other elements and perpetuating inequality.⁴¹ This undermines the goals of HRE, reinforcing social inequality rather than mitigating it. The usefulness of educational models such as HRE, then, seems to depend on the state's engagement with human rights standards, especially the right to education.

Engagement with the Right to Education in Brazil

³⁵ Ibid.

³⁶ Jane Kotzmann, "Theoretical Approaches to Higher Education," in *The Human Rights-Based Approach to Higher Education: Why Human Rights Norms Should Guide Higher Education Law and Policy* (Oxford University Press, 2018), para. 76, <https://doi.org/10.1093/oso/9780190863494.001.0001>.

³⁷ Gregory Walton, Steven J. Spencer, and Sam Erman, "Affirmative Meritocracy," *Social Issues and Policy Review* 7, no. 1 (2013), <https://doi.org/10.1111/j.1751-2409.2012.01041.x>.

³⁸ Ibid.

³⁹ Kotzmann, "Theoretical Approaches," para. 86.

⁴⁰ Ibid.

⁴¹ Ibid.

Because the effectiveness of the right to education is dependent on institutional policies and educational conditions,⁴² it is worthwhile to examine how states engage with human rights standards in their national laws and educational policies. As party to the ICESCR and the ICERD, Brazil is bound by the human rights standards set forth in each treaty and encouraged to adhere to the guidance and recommendations of the applicable treaty bodies.

Additionally, Brazil has thoroughly embraced the right to education in its constitution, national laws, and education policies.⁴³ In fact, the current Brazilian Constitution is referred to as the “Citizen Constitution” because of its zealous incorporation of a wide array of human rights.⁴⁴ Not only did the Constitution acknowledge a diverse set of rights; it established them as fundamental rights, raising their esteem and creating a sense of urgency to achieve their realization.⁴⁵

Despite the human rights language used in Brazil’s constitution, the Brazilian judiciary does not often directly cite human rights treaties or other documents in its rulings.⁴⁶ Thus, the state’s legislative power is responsible for the creation of federal policies that promote the implementation of human rights standards and the realization of human rights.⁴⁷ For example, the ruling of the Brazilian Supreme Federal Court on case IDPF 186 (colloquially known as the “Quota Law Case”) has played a particularly prominent role in shaping the state’s stance on

⁴² Celio da Cunha, Denise G. de Britto Damasco, and Nelson A. Ferreira de Vasconcelos, “The Education System of Brazil: Historical Context and Challenges to Federative Equity,” in *The Education Systems of Americas*, ed. Sieglinde Jornitz and Marcelo P. do Amaral (Springer, 2021), 242.

⁴³ *Ibid.*, 251.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Thiago Amparo, Odara Andrade, Julia Piazza, and Deborah Bittar, “The Impact of the United Nations Human Rights Treaties on the Domestic Level in Brazil,” in *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years On*, ed. Christof Heyns, Frans Jacobus Viljoen, and Rachel Murray (Brill Nijhoff, 2024).

⁴⁷ *Ibid.*

affirmative action and its engagement with human rights principles related to the right to education in the state's national education policies.⁴⁸ The Court's ruling on this case heavily favored the right to education and enshrined various human rights principles into Brazil's national laws and educational policies; though, it did so without direct reference to international human rights frameworks.⁴⁹

Engagement with the Right to Education in the United States

Unlike Brazil, the United States is notorious for its poor engagement with the international human rights framework, especially ESCRs such as the right to education. Despite being a signatory to—though not a party to—the ICESCR, the United States does not recognize a national or constitutional right to education nor does it set many nation-level education policies.⁵⁰ Moreover, when the United States ratified the ICERD, it attached a reservation to the treaty, rejecting ICERD's obligation to institute special measures (understood to be similar in meaning to affirmative action) to correct the systemic or historical exclusion of particular demographics of individuals.⁵¹ This lack of regard for various human rights constructs has resulted in an inconsistent and fragmented presence of human rights principles in American education policies.⁵²

⁴⁸ Christopher DiSchino, "Affirmative Action in Brazil: Reverse Discrimination and the Creation of a Constitutionally Protected Color-Line," *University of Miami International and Comparative Law Review* 17, no. 2 (2010). University of Miami School of Law Institutional Repository.

⁴⁹ *Ibid.*

⁵⁰ Robert H. Beach and Ronald A. Lindahl, "Can There Be a Right to Education in the United States?" *Equity & Excellence in Education* 33, no. 2 (2000), 5, <https://doi.org/10.1080/1066568000330202>; Sandra Sirota, "The Inconsistent Past and Uncertain Future of Human Rights Education in the United States," *Prospects* 47, no. 2 (2018), 6, <https://doi.org/10.1007/s11125-018-9417-1>.

⁵¹ Maya K. Watson, "The United States' Hollow Commitment to Eradicating Global Racial Discrimination," *Human Rights Magazine* 44, no. 4 (2020). American Bar Association.

⁵² Sirota, "The Inconsistent Past," 6.

Two major barriers to engaging with international human rights standards in American education policy have been identified by scholars: (1) the public's lack of understanding of human rights and (2) United States exceptionalism.⁵³ Despite the American misconception that the United States is the freest country in existence and that the United States affords its citizen special rights that other developed countries do not afford their citizens, the majority of Americans are unaware of the existence of human rights treaties and that the United States government is bound to uphold the rights enumerated in the treaties it has ratified.⁵⁴ This ignorance also contributes to the idea of United States exceptionalism, fueling the belief that the United States Constitution already contains provisions for any relevant rights and does not need to be held accountable by outside forces, such as the United Nations.⁵⁵ These factors have resulted in an unwillingness to holistically embrace the right to education.

Failing to acknowledge the right to education makes it difficult to judicially address educational inequities in the United States.⁵⁶ This perpetuates existing social inequalities, channeling particular groups into existing pockets of wealth and poverty. It also leaves the disadvantaged with little to no options for redress. Thus, one of the biggest strengths of education—its ability to enhance social equity—is rendered largely ineffective.

Moreover, the United States's failure to acknowledge the right to education has contributed to affirmative action policies being declared unconstitutional by the Supreme Court of the United States (SCOTUS). In 2003, SCOTUS ruled that racial quotas are impermissible in

⁵³ *Ibid.*, 11.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Beach and Lindahl, "Can There Be," 11.

higher education admissions.⁵⁷ However, the Court did leave a loophole, stating that race is an acceptable part of holistic application review, improving equity in admissions.⁵⁸ In 2023, SCOTUS overturned this ruling, stating that race may no longer be considered in higher education admissions, even in the limited manner and purpose of the 2003 ruling.⁵⁹ The Court reasoned that considering race in admissions was a violation of equal protection.⁶⁰ Scholars have argued the opposite: rather than decreasing racial inequalities in education, this decision is likely to increase them.⁶¹ The demographic composition data being reported by American universities supports this prediction: Black/African American enrollment at MIT, Washington University in St. Louis, and Tufts University have fallen 8%, 4%, and 3%, respectively.⁶²

Effectiveness of Affirmative Action and Gaps in Existing Literature

As evidenced by these state's varying levels of engagement, affirmative action policies are highly controversial. Thus, many scholars have undertaken analyses of their effectiveness in addressing students' needs and improving social equality. Studies involving Brazil and the United States's affirmative action policies have produced contradictory results. Some researchers have found that affirmative action policies have been successful, creating equitable educational experiences and improving marginalized students' educational outcomes. For example, a 2017

⁵⁷ Daniel G. Aaron, Simar S. Bajaj, and Fatima C. Stanford, "Supreme Court Cases on Affirmative Action Threaten Diversity in Medicine," *Proceedings of the National Academy of Sciences of the United States of America* 120, no. 17 (2023), para. 4, <https://doi.org/10.1073/pnas.2220919120>.

⁵⁸ *Ibid.*

⁵⁹ Robert Kim, "Under the Law: Affirmative Retraction," *Phi Delta Kappan International* 105, no. 1 (2023), para. 3, <https://doi.org/10.1177/00317217231197484>.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² "Composite Profile for 2024-2027," MIT Admissions, accessed September 20, 2024, <https://mitadmissions.org/apply/process/composite-profile/>; "First Year Class Profile," Washington University in St. Louis Office of the University Registrar, accessed September 20, 2024, <https://admissions.washu.edu/life-at-washu/our-students/>; "Student Body Diversity," Tufts University Office of Institutional Research, accessed September 20, 2024, <https://provost.tufts.edu/institutionalresearch/student-diversity/>.

study in Brazil found that public university students admitted through racial quotas performed slightly better than traditionally admitted students.⁶³ A more recent study, however, found that quota students exhibited poorer academic performance.⁶⁴ Similar confusion is observed in the United States.⁶⁵ Some studies indicate that GPA decreases while dropout rates increase for students admitted via affirmative action policies,⁶⁶ while other studies find no such relationship.⁶⁷

Interestingly, despite producing differing results, these studies relied on the same measure of academic performance: standardized test scores. The use of standardized exams as a measurement of academic performance is vastly problematic.⁶⁸ Academic performance is difficult to measure in an unbiased manner, and measures such as test scores can be unreliable in many ways.⁶⁹ They may predict intellectual performance less strongly for a particular group or they may underestimate a group's level of performance relative to another.⁷⁰ The latter bias is especially pervasive when using standardized test scores as an indicator of academic ability. Test scores tend to systemically underestimate the ability of negatively stereotyped students compared

⁶³ Rubia R. Valente and Brian J. L. Berry, "Performance of Students Admitted Through Affirmative Action in Brazil," *Latin American Research Review* 52, no. 1 (2017), 23, <https://doi.org/10.25222/larr.50>.

⁶⁴ Priscilla S. Santos, Kalinca L. Becker, and Sibebe V. de Oliveira, "Race-Based Affirmative Action for Higher Education in Brazil: Impact Assessment on Performance, Time, and Delay in Completion," *Review of Development Economics* 27, no. 5 (2022), 262, <https://doi.org/10.1111/rode.12923>.

⁶⁵ Harry Holzer and David Neumark, "Assessing Affirmative Action," *Journal of Economic Literature* 38, no. 3 (2000), 483, <https://doi.org/10.1257/jel.38.3.483>.

⁶⁶ Linda D. Loury and David Garman, "College Selectivity and Earnings," *Journal of Labor Economics* 13, no. 2 (1995), JSTOR.

⁶⁷ Thomas Kane, "Racial Preferences and Higher Education," in *The Black-Test Gap*, ed. Christopher Jencks and Meredith Phillips (Brookings Institution Press, 1998).

⁶⁸ Sandra E. Black, Kalena E. Cortes, and Jane A. Lincove, "Efficacy versus Equity: What Happens When States Tinker with College Admissions in a Race-Blind Era?" *Educational Evaluation and Policy Analysis* 38, no. 2 (2016), 356, <https://doi.org/10.3102/0162373716629006>; Alice Dias Lopes, "Affirmative Action in Brazil: How Students' Field of Study Choice Reproduces Social Inequalities," *Studies in Higher Education* 42, no. 12 (2017), 2344, <https://doi.org/10.1080/03075079.2016.1144180>; Walton, Spencer, and Erman, "Affirmative Meritocracy," 2.

⁶⁹ Walton, Spencer, and Erman, "Affirmative Meritocracy," 2.

⁷⁰ Ibid.

to non-negatively stereotyped, including racial minorities and financially disadvantaged students.⁷¹ This casts doubt on the reliability of these studies' findings.

Another indicator that is troublesome in evaluating the effectiveness of affirmative action policies is the demographic characteristics of university student bodies.⁷² Many studies compare the racial and socioeconomic demographics of university student bodies before and after the implementation of affirmative action to judge success.⁷³ While this does indicate whether or not universities are implementing affirmative action policies in ways that increase the number of disadvantaged students being admitted, it does not provide information regarding the experiences students have in school nor does it address student career or graduation prospects. If the goal of affirmative action is to lead to greater social equality, measuring student body demographics cannot provide an accurate assessment of whether this goal is being achieved.

Not only does utilizing measurements of student body demographics to judge affirmative action policies provide an inaccurate picture of effectiveness; it has obscured the existence and perpetuation of socioeconomic inequalities. More proportionate student demographics do not necessarily translate into equitable experiences or outcomes. This is evidenced by the reproduction of social inequality based on students' major/program selection. Students admitted through affirmative action are less likely to graduate from programs with high social and economic prestige (medical school, law school, or economic programs).⁷⁴ This funneling of

⁷¹ Ibid., 5.

⁷² Dias Lopes, "Affirmative Action," 2344; Rebecca L. Igreja and Gianmarco L. Ferreira, "The Brazilian Law of Racial Quotas Put to the Test of Labor Justice: A Legal Case Against Banco do Brasil," *Latin American and Caribbean Ethnic Studies* 14, no. 3 (2019), 309, <https://doi.org/10.1080/17442222.2019.1667635>.

⁷³ Dias Lopes, "Affirmative Action," 2344; Jesse R. Ford, Jason K. Wallace, and Dawn Y. Matthews, "Race-Based Admission and Affirmative Action: Revisiting Historical Implications on Black Students in Higher Education," *Journal of Higher Education Policy and Leadership Studies* 4, no. 1 (2023), 52, <https://dx.doi.org/10.52547/johepal.4.1.46>; Santos, Becker, and de Oliveira, "Race-Based," 248.

⁷⁴ Dias Lopes, "Affirmative Action," 2357.

disadvantaged students into jobs with fewer social and economic returns makes upward social mobility difficult to achieve, propagating existing racial and socioeconomic hierarchies. Other scholars have produced findings that corroborate this: racial minorities are underrepresented in high-prestige jobs in both the public and private sectors in Brazil.⁷⁵ Moreover, Afro-Brazilians receive lower salaries than their white counterparts and account for 76% of the poorest people despite representing approximately 54% of the Brazilian population.⁷⁶

Despite these methodological shortcomings, few studies have utilized alternative methods. Only a handful of researchers have interviewed Brazilian undergraduate students admitted through affirmative action to explore students' lived experiences as a measure of the effectiveness of affirmative action.⁷⁷ These studies uncovered several faults in current affirmative action policies: students interviewed expressed that racial discrimination persisted in their educational experiences and the job market.⁷⁸ Additionally, universities with racial quotas tended to target students from private high schools at the expense of students from public high schools with lower socioeconomic status.⁷⁹ Thus, the most marginalized continued to be

⁷⁵ Igreja and Ferreira, "The Brazilian Law," 310.

⁷⁶ Narciso L. X. Baez, "Effectiveness of Affirmative Action," in *Affirmative Action and the Law* (Routledge, 2020), 79.

⁷⁷ Porsha Childs, "Factors Affecting the Academic Achievement and Persistence of Quota Students in STEM: A Case Study of A Public University in Brazil;" (PhD diss., University of Maryland, 2015), Digital Repository at the University of Maryland; Paulo S, da Silva, "Persistence and Academic Success of Quota Students in a Public University in Brazil: The Case of the Universidade Federal da Bahia" (PhD diss., Teacher's College of Columbia University, 2012), ProQuest (3545632); Willian F. Luna, Karla C. Teixeira, and and Giovana K. de Lima, "Access and Retention Policies for Indigenous People in Brazilian Federal Medical Schools: Mapping and Experiences;" *Interface: Communication, Health, and Education* 25 (2021), SciELO; Jewel McLaughlin, "Afro-Brazilian University Graduates' Perception of the Effectiveness of the Affirmative Action Program," (PhD diss., The Chicago School of Professional Psychology, 2016), ProQuest (10251209).

⁷⁸ Ibid.

⁷⁹ Ibid.

excluded. This indicates that more comprehensive education policies, accounting for socioeconomic inequalities, are needed to produce greater social equality.

Research Question

In light of the limitations of and gaps left by previous literature, this thesis attempts to answer the question: how have human rights standards regarding the right to education, particularly those dealing with the element of accessibility, been implemented in education policies aimed at reducing social inequality in Brazil and the United States? This thesis also attempts to identify persistent barriers to accessing education faced by marginalized students, analyzing whether human rights standards are being realized in practice.

Methodology

To accomplish these goals, this thesis utilized a mixed-methods qualitative methodology. Document analysis was combined with a pool of existing interview/narrative data to (1) explore how human rights constructs appear in national education policies in Brazil and the United States and (2) understand students' educational experiences, identifying trends in said experiences. This methodology allowed for the exploration of how engagement with human rights constructs in education policy influences the effectiveness of affirmative action policies in addressing students' needs and reducing disparities in educational experiences, outcomes, and opportunities.

Document analysis was conducted to establish a contextual understanding of the international human rights-based conceptualization of the right to education and its relevant elements, particularly accessibility and non-discrimination. National education frameworks in Brazil and the United States were analyzed through a human rights lens, analyzing how policy is constructed and what underlying assumptions or influences are present. Particular attention was

paid to policies' engagement with human rights standards and principles. This included explicit and implicit references to specific human rights, human rights values, and overarching human rights themes.

The documents analyzed to construct an understanding of how the right to education is framed by the international community included a few core international human rights treaties, GCs from treaty committees, Special Rapporteur reports, and reports and policy overviews published by specialized agencies of the United Nations. To understand how national-level policies engaged with the right to education, pieces of legislation, policy briefs, and court decisions and rulings were analyzed. This analysis uncovered how human rights standards and principles are incorporated into education policy, particularly in relation to affirmative action. Additionally, this analysis allowed for comparisons to be drawn between Brazil and the United States regarding potential explanations of differing or similar student experiences.

To analyze the efficacy of these international standards and national-level policies, interview and narrative data regarding students' educational experiences was compiled. This data was collected from published research papers on topics relevant to the study at hand, including the efficacy of affirmative action policies, indicators of student performance and achievement, and factors that influence retention and graduation rates. The incorporation of this data allowed for an analysis of how well international standards are being met in practice and of whether the incorporation of human rights standards regarding the right to education seems to have a tangible effect on the realization of human rights in practice.

The qualitative analysis employed was informed by Grounded Theory: an inductive research methodology designed to facilitate data-driven theory generation through systematic

coding.⁸⁰ Grounded Theory is a commonly-utilized methodology in the social sciences, especially when analyzing social processes and interactions between individuals, groups, and social institutions.⁸¹ This methodological approach boasts several strengths, including theoretical sensitivity, which allows the researcher to “separate out what is relevant and what is not,” creating more grounded and cohesive conclusions or theories.⁸²

Grounded Theory employs three stages of data analysis: open, axial, and selective coding.⁸³ Coding of the data was divided into three sections: (1) international human rights standards, (2) national education policies, and (3) student narratives or experiences regarding their educational experiences, and each of these sections were subjected to all levels of analysis. All coding was completed manually.

10 codes were applied to the first set of documents during the open coding phase. These codes targeted relevant specific human rights principles or ideals and dimensions of the right to education to build an understanding of the international community’s construction of the right to education. These codes allowed for comparisons to be drawn between how various human rights documents framed the right to education and its relevant elements. During the axial coding phase, these 10 initial codes were examined for connections and similarities and then combined into 3 broader categories. Finally, selective coding was used to identify a “core category:” the phenomena which all other categories are related to in some way.⁸⁴ The core category identified

⁸⁰ Helen Noble and Gary Mitchell, “What is Grounded Theory?” *Evidence Based Nursing* 19, no. 2 (2016), 34, <https://doi.org/10.1136/eb-2016-102306>.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Lillemor R-M. Hallberg, “The ‘Core Category’ of Grounded Theory: Making Constant Comparisons,” *International Journal of Qualitative Studies on Health and Well-Being* 1, no. 3 (2009), 143, <https://doi.org/10.1080/17482620600858399>.

was educational accessibility. This core category shaped the analysis, serving as a point of comparison for all pieces of data to center around.

To the second set of documents, 11 codes were applied during the open coding phase. These codes were created to identify and interpret how human rights constructs—including standards, principles, and general themes, among others—were engaged with and incorporated into national-level education policies in Brazil and the United States. During the axial coding phase, these codes were condensed into 4 broader categories, and the same core category was identified during selective coding.

The narrative data collected regarding students' educational experiences was similarly subjected to each level of analysis. This allowed for the identification of trends and similarities among students' experiences, which led to the identification of policy gaps perpetuating inequitable access to education. During the open coding phase, 9 codes were applied to the data. These codes were designed to evaluate whether the human rights standards implemented in current national policies were being met in practice, effectively creating more equitable access to education. During axial coding, these were re-categorized into 3 broader categories, and the same core category was identified during selective coding.

The conceptualization of three of the open codes—Discrimination, College Involvement, and Overcoming Challenges—was informed by the codes McLaughlin (2016) used to code interview data regarding students' perceptions of affirmative action policies in Brazil.⁸⁵ These codes were designed to illicit information on how experiences of racial discrimination impacted students' access to education and opportunities, how students' educational experiences and

⁸⁵ McLaughlin, "Afro-Brazilian University Graduates," 46-47.

campus involvement were impacted by demographic factors, and what tools or strategies students leveraged to overcome barriers to accessing education, respectively. These codes were particularly useful in identifying persistent barriers to accessing education and identifying opportunities to improve access.

In addition to conducting document analysis, direct and paraphrased interview quotes were selected from existing published research to understand students' lived experiences. First, a thorough review of existing literature on affirmative action, educational accessibility, and students' lived experiences was conducted. Next, a database was compiled of any direct or paraphrased quotes included in the literature from current students. Quotes that addressed a code or category created to conduct the document analysis were selected for potential inclusion. Selected quotes must have then met at least one of the following criteria to be selected for inclusion: (a) provide insight into students' educational experiences, achievements, outcomes, or opportunities or (b) elucidate strengths, weaknesses, or gaps within existing educational policies, particularly those which serve to (dis)enfranchise marginalized communities or individuals.

Utilizing these qualitative methods boasts several strengths. As discussed, existing literature has been predominately concerned with quantitative analyses, overlooking students' experiences and offering mixed results. Incorporating narrative data will reveal whether marginalized students are still subjected to diminished opportunities and discriminatory experiences. It will also allow for a more nuanced exploration of the impact policy decisions have on marginalized students' lives, revealing whether international standards and national policies are being met in practice. Moreover, the inclusion of this data allows for the identification of barriers to accessing education that have persisted even after the introduction of

policies designed to improve access. The comparative nation of this analysis will offer insights into what of these issues persist across different contexts.

Utilizing narrative data from existing research rather than conducting interviews allowed for the inclusion of a broader demographic of students, including Indigenous students and Afro-Brazilian students from rural areas. This allowed the analysis to incorporate more diverse perspectives and include the voices of some of the most marginalized, enriching the analysis.

Findings

Foundational Elements of the Right to Education

The adoption of the Universal Declaration of Human Rights (UDHR) established an internationally recognized right to education in 1948, bringing attention to the need for accessible education. Accessibility is highlighted as a key component of the right, becoming one of the CESCR's main focuses in its subsequent GCs. Under Article 26, the UDHR asserts that education is a right for all and that education must be equally accessible to all.⁸⁶

The UDHR, as a declaration, is not a legally binding document, creating no state obligation to protect the rights enumerated within it. It was not until 1966 that the right to education gained international legal backing with the United Nations General Assembly's (UNGA) adoption of the ICESCR. The right to education was set forth in Article 13.⁸⁷ Similar to the UDHR, the ICESCR recognizes the need for accessibility in education-related policies,

⁸⁶ United Nations, *Universal Declaration of Human Rights*.

⁸⁷ United Nations Office of the High Commissioner for Human Rights, *International Covenant on Economic, Social, and Cultural Rights*.

obligating all state parties to recognize the right to education for all individuals under Article 13(1).⁸⁸

The United Nations continued to make efforts to clarify state parties' obligations regarding the right to education by appointing a Special Rapporteur on the right to education in 1998. Through the Special Rapporteur's reports several elements of the right to education were substantiated. The "4-A schema"—introduced by Katarina Tomasevski in her 1999 Preliminary Report of the Special Rapporteur and further elaborated in her 2000 Progress Report of the Special Rapporteur on Education—established four such elements: accessibility, acceptability, availability, and adaptability.⁸⁹

Tomasevski argued that the accessibility element was particularly important and must encompass a broad range of potential barriers to schooling.⁹⁰ Without an expansive application of the right to accessible schooling, this element would be impossible to respect in law and education policy. Among the accessibility issues identified by Tomasevski are protection from discrimination, removal of financial barriers to schooling, and providing resources necessary for school attendance.⁹¹

ICESCR's Articulation of the Right to Education

Following these reports, the Committee on Economic, Social, and Cultural Rights (CESCR) clarified state parties' obligations regarding the accessibility element in its GC No. 13. The CESCR stated that accessibility is a necessary feature of education "in all its form at all its

⁸⁸ Ibid.

⁸⁹ Katerina Tomasevski, "Preliminary Report of the Special Rapporteur on the Right to Education," (1999), 15.

⁹⁰ Ibid.

⁹¹ Ibid.

levels,” including higher education.⁹² Additionally, this GC outlined three dimensions of accessibility: (1) non-discrimination, (2) physical accessibility, and (3) economic accessibility.⁹³ In regards to non-discrimination: all individuals must have access to education regardless of any individual or group characteristic.⁹⁴ Notably, GC No. 13 endorses the use of affirmative action, stating that individuals from disadvantaged or vulnerable groups must be prioritized in actions related to enhancing accessibility.⁹⁵ A specific form of intervention mentioned in the GC was the introduction of fellowship systems that “enhanced the equality of educational access.”⁹⁶ Thus, this GC advocated not only for policy adjustments to enhance equitable access to education; it advocated for the introduction of means of financial assistance for historically disadvantaged or marginalized groups.

Physical and economic accessibility ensure that no students are denied education because of material or financial barriers. GC No. 13 clarified that physical accessibility is not limited to differently-abled individuals’ concerns; this dimension also encompasses the distance between students and schools and whether students can travel to school safely.⁹⁷ Regarding the economic dimension of accessibility, the CESCR clarified the MCC of the right, obligating state parties to progressively realize free secondary and higher education to the maximum of available resources where previously it was only established that primary education must be free.⁹⁸

GC No. 20 built on the standards established by the CESCR in GC No. 13. Regarding non-discrimination, the committee acknowledged in Paragraph 8b that differentiation (or positive

⁹² United Nations Committee on Economic, Social, and Cultural Rights, *General Comment No. 13* (1999).

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ United Nations Committee on Economic, Social, and Cultural Rights, *General Comment No. 13* (1999).

discrimination) is often required to repair harms suffered by groups who have been historically, systemically, or persistently the subject of prejudice.⁹⁹ Additionally, the CESCR uses the term “special measures” in Paragraph 39, which is synonymous with affirmative action, arguing that such measures are necessary to overcome systemic discrimination.¹⁰⁰ This legitimizes the use of affirmative action as rights-affirming.

ICERD: Non-Discrimination and Support for Special Measures

While the ICESCR has established the right to education and the CESCR has produced significant literature furthering developing the elements of this right and discussing states’ obligations to realize this right, the ICERD offers additional insight into two key elements of this right: non-discrimination and special measures.

Regarding non-discrimination, the ICERD defines “racial discrimination” in Article 1(1) as any:

“distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or imparting the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹⁰¹

This definition of racial discrimination builds on the ICESCR’s and the CESCR’s establishment of the obligation of non-discrimination by defining racial discrimination as both intentional and unintentional racially-based distinction, exclusion, restriction, or preference that

⁹⁹ United Nations Committee on Economic, Social, and Cultural Rights, *General Comment No. 20* (2009).

¹⁰⁰ *Ibid.*

¹⁰¹ United Nations Office of the High Commissioner for Human Rights, *International Convention on the Elimination of All Forms of Racial Discrimination*.

inhibits the equal enjoyment of human rights and other fundamental freedoms. This is a crucial addition to the framing of the non-discrimination principle as it holds states to a greater degree of accountability.

The ICERD also addresses states' negative and positive obligations to realize the non-discrimination principle, offering clarity on scholarly debates regarding such topics, especially those related to higher education. Article 4 explicitly states that states parties must "adopt immediate and positive measures designed to eradicate" national, racial, and ethnic discrimination.¹⁰² This clarifies that states are, in fact, beholden to positive obligations to realize non-discrimination. Under Article 5(1), the ICERD lists a number of negative obligations the state must adhere to in the effort to eradicate racial discrimination.

Article 2(2) establishes that states are also positively obligated to address discrimination "when the circumstances so warrant."¹⁰³ This is furthered in Article 7, which obligates state parties to undertake "immediate and effective measures" to combat prejudices leading to racial discrimination.¹⁰⁴ Thus, states must not only refrain from introducing policies that (un)intentionally discriminate based on race; they must also introduce measures designed to promote understanding and tolerance among various national, racial, and ethnic groups.

In GC No. 7, the CERD reaffirms the obligation to take positive measures to eradicate national, ethnic, and racial discrimination, stating that Article 4's obligation to take positive measures is a "mandatory requirement" and requesting that states parties in violation of this Article take action to correct their unsatisfactory conformity to the obligations set forth in the

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

ICERD.¹⁰⁵ Moreover, GC No. 29 lists additional positive obligations the committee “recommends” states parties take in an effort to eradicate racial discrimination.¹⁰⁶ Notably, GC No. 29 recommends that states take efforts to reduce school drop-out rates.¹⁰⁷

The clearest support for affirmative action measures within the human rights framework comes from the ICERD and the Committee on the Elimination of Racial Discrimination (CERD). Under the ICERD Article 1(4), it is stated that special measures “may be necessary [...] to ensure [...] equal enjoyment or exercise of human rights,” “for the sole purpose of securing adequate advancement of certain racial or ethnic groups.”¹⁰⁸ Moreover, Article 2(2) asserts that special measures may be used to achieve the equal enjoyment of social, economic, and cultural rights,¹⁰⁹ including the right to education. Article 1(4) states that special measures may not be considered racial discrimination so long as such measures do not maintain separate rights for different racial groups and cease to be upheld once “the objectives for which they were taken have been achieved.”¹¹⁰ Additionally, Article 5(v) obligates that state parties guarantee the right to education for all, without discrimination.¹¹¹

The CERD briefly discussed what constitutes legitimate use of special measures in GC No. 30: differential treatment that is applied pursuant to a legitimate aim (judged against the

¹⁰⁵ United Nations Committee on the Elimination of All Forms of Racial Discrimination, *General Comment No. 7* (1985).

¹⁰⁶ United Nations Committee on the Elimination of All Forms of Racial Discrimination, *General Comment No. 29* (2001).

¹⁰⁷ *Ibid.*

¹⁰⁸ United Nations Office of the High Commissioner for Human Rights, *International Convention on the Elimination of All Forms of Racial Discrimination*.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

objectives of the ICERD) and is proportional to the achievement of this aim.¹¹² The meaning and scope of special measures were further clarified in GC No. 32. In Part III(A), the CERD stated that the purpose of special measures is to temporarily supplement, when circumstances warrant, policies and practices implemented to fulfill the Convention's obligations.¹¹³ In Part III(B), paragraph 12, it is stated that special measures include measures that have been "described as 'affirmative measures,' 'affirmative action,' or 'positive action.'"¹¹⁴ The CERD also expands those groups able to legitimately be the subject of special measures in Part IV(A), paragraphs 24 and 25, stating that special measures shall be available to any group or person covered by the ICERD's Article 1.¹¹⁵

Not only are state parties encouraged to include special measure provisions in their legal systems through general and specific legislation, plans, programs, and policy initiatives at national, regional, and local levels under Part III(B), paragraph 13; Part IV(B), paragraph 30 asserts that taking special measures is a mandatory obligation when circumstances so warrant.¹¹⁶ Moreover, the CERD stated that circumstances that warrant special measures carry an objective meaning: "the disparate enjoyment of human rights by persons and groups in the State party."¹¹⁷

Additionally, GC No. 32 further clarified what constitutes discrimination. Notably, the interpretation of discrimination was expanded to include treating individuals "whose situations are objectively different" in an equal manner.¹¹⁸ The CERD also acknowledged that

¹¹² United Nations Committee on the Elimination of All Forms of Racial Discrimination, *General Comment No. 30* (2004).

¹¹³ United Nations Committee on the Elimination of All Forms of Racial Discrimination, *General Comment No. 32* (2009).

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

consideration of the characteristics of groups is necessary to adequately apply the principle of non-discrimination.¹¹⁹ In Part IV(A), paragraph 20, the CERD states that special measures are not an exception to the non-discrimination principle; rather, they are “integral to [the principle’s] meaning and essential to” eliminating racial discrimination, advancing human dignity.¹²⁰

The Right to Higher Education: “Capacity”

The UDHR acknowledges that “higher education shall be equally accessible to all on the basis of merit” in Article 26.¹²¹ In Article 13(2)(c), the ICESCR states that higher education must be equally accessible to all on the basis of *capacity*.¹²² This difference is notable as it eliminates the exclusion imposed by the UDHR’s phrasing. Students hailing from disadvantaged backgrounds may not be able to demonstrate merit or past achievement due to education inequalities or inequitable access to resources.¹²³ Where the UDHR failed to acknowledge the inequalities produced by discrimination or a lack of previous accessibility, the ICESCR made a greater effort to include more marginalized individuals. The exclusion of individuals with capacity from higher education, thus, constitutes a violation of the right to education.

National Education Policies and the Right to Education

Brazilian Law and Policy

As previously discussed, the Constitution of the Federative Republic of Brazil enumerates many human rights, including the right to education. Interestingly, though the

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ United Nations, *Universal Declaration of Human Rights*.

¹²² United Nations Office of the High Commissioner for Human Rights, *International Covenant on Economic, Social, and Cultural Rights*.

¹²³ Gilchrist, “Higher Education,” 649.

Constitution uses a great deal of human rights-based language and includes provisions for many of the rights enumerated in the ICESCR and the ICERD, the Constitution tends to refer only implicitly to international human rights constructs and does not cite any human rights constructs directly. The right to education is explicitly recognized as a right of all individuals in Article 205 (“Education, which is the right of all”) and Article 208, Paragraph 1 (“The access to compulsory and free education is a subjective public right”).¹²⁴ While education is not explicitly referred to as a human right, the phrasing “right of all” implicitly establishes it as a human right.

Chapter III, Section I of the Constitution outlines the state’s obligations surrounding the realization of the right to education.¹²⁵ Article 205 declares that education “shall be promoted and fostered.”¹²⁶ The Constitution refers to progressive realization as “progressive universalization” in Article 208(II), which states that free secondary education must be progressively realized. Notably, the Constitution does not include a provision stating that economically accessible higher education must be immediately or progressively realized. The exclusion of this provision does not necessarily contradict the standards set by the ICESCR regarding the progressive realization of economically accessible higher education, which were further clarified in the CESCR’s GC No. 13. However, the lack of acknowledgment of the state’s duty and the lack of a national law or policy stating such a duty could indicate a lack of intention to remain compliant with this obligation, leading to a potential violation of the right to education.

While the Constitution does not acknowledge the economic accessibility of higher education tuition, it does ensure the right to equal access to higher education based on individual

¹²⁴ Biblioteca Digitalal, *Constitution of the Federative Republic of Brazil*.

¹²⁵ Ibid.

¹²⁶ Ibid.

capacity in Article 208(V).¹²⁷ These obligations echo the values of the ICESCR and the ICRED in ensuring education for all, allowing for an expansive pool of individuals to have the right to attend higher education.

Several amendments within the constitution address accessibility and its three dimensions: non-discrimination, physical accessibility, and financial accessibility. Article 206(I) addresses non-discrimination and physical accessibility, obligating education to be provided based on “equal conditions of access and permanence in school.”¹²⁸ Economic accessibility is implicitly referenced in Article 206(IV): “Education shall be provided on the basis of... free public education in official schools.”¹²⁹ All three elements of accessibility are addressed in Article 208(VII), which states that it is the duty of the state to ensure “assistance to students in all grades of basic education, by means of supplementary programmes providing school materials, transportation, food, and health care.”¹³⁰

Brazil has also embraced affirmative action in its laws and national education policies. Article 3 of the Constitution shares the ICESCR and the ICERD’s non-discrimination principles, stating that “a free, fair society” must be established, “social marginalization and inequality” must be “eradicated,” and the “well-being of all” without prejudice as to individual background or identity must be promoted.¹³¹ While there is no explicit reference to the non-discrimination

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ “Brazil’s Supreme Court Upholds the Use of Affirmative Action in Higher Education,” Equal Rights Trust, accessed September 20, 2024, <https://www.equalrightstrust.org/news/brazils-supreme-court-upholds-use-affirmative-action-higher-education#:~:text=Brazil's%20Supreme%20Court%20Upholds%20the,Higher%20Education%20%7C%20Equal%20Rights%20Trust>.

principle nor any direct citation of it, this echoes the purposes and goals of the non-discrimination principle as established by various human rights bodies, particularly the CERD.

Article 3 of the Constitution, along with an implicit reference to ICERD's non-discrimination principle, was cited by the Brazilian Supreme Federal Court in its 2012 ruling on IDPF 186, which upheld the constitutionality of the use of racial quotas in public university admissions. The Court ruled that racial quotas contributed to creating a free, fair, and united society per Article 3.¹³² It also ruled that affirmative action policies were compatible with the state's obligations under Article 208(V).¹³³ This case set a precedent that led to new legislation (Law 12.711/2012) mandating federal higher education and technical institutes to adhere to admissions quotas for racial minorities, public school graduates, and low-income students, vastly improving access to education for these students.

American Law and Policy

Across all seven articles and 27 amendments to the United States Constitution, there is no explicit or implicit reference to the right to education. In fact, the word "education" does not appear anywhere in the document, and the Constitution does not empower Congress to legislate on education. Thus, federal education legislation is scarce, and the majority of the little of it that exists is enacted under the Spending Clause under "general wealth."¹³⁴ Instead, the Constitution allocates the power and responsibility to provide and regulate education onto the states per the Tenth Amendment.¹³⁵

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Nicole Lawler, "The Right to Education in the United States and Abroad: A Comparative Analysis of Constitutional Language and Academic Achievement," *The Federal Lawyer* (2018), 35. Federal Bar Association.

¹³⁵ Ibid.

In an effort to uphold this delegation of power and responsibility, the Supreme Court of the United States (SCOTUS) has continually denied the establishment of a national, fundamental right to education within the United States.¹³⁶ *San Antonio Independent School District v. Rodriguez*, a 1973 SCOTUS case, was one of the earliest cases to set this precedent.¹³⁷ In its ruling, SCOTUS refused to recognize education as a right, stating that “the limited category of rights recognized by this Court as guaranteed by the Constitution” did not include education.¹³⁸

Interestingly, while this ruling firmly denies that education is a right under the Constitution, it does make an implicit reference to the interdependence and minimum core content principles of the international human rights framework: “Even if some identifiable quantum of education is arguably entitled to constitutional protection to make meaningful the exercise of other constitutional rights, here there is no showing that the Texas system fails to provide the basic minimal skills necessary for that purpose.”¹³⁹ This does imply that a future, more egregious denial of the “basic minimal skills necessary” to exercise one’s constitutional rights could compel the Court to acknowledge a right to a minimum level education.

While the Court chose not to solidify the right to education within the United States in the above case, it did acknowledge the validity of specific elements of the right to education in a 1954 SCOTUS case. In *Brown v. Board of Education*, the Court unanimously held that “separate educational facilities are inherently unequal” and that education “must be made available to all on equal terms.”¹⁴⁰ This implicitly addresses both non-discrimination and accessibility. This

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ “*San Antonio Independent School District v. Rodriguez*, 411 S. 1 (1973),” Justia, accessed November 10, 2024. <https://supreme.justia.com/cases/federal/us/411/1/>.

¹³⁹ Ibid.

¹⁴⁰ Lawler, “The Right to,” 35.

ruling was made based on the Fourteenth Amendment, which prohibits the state from denying any person the equal protection of the law. This Amendment upholds the values of the non-discrimination principle, demanding that all people be recognized and treated as equal.

While non-discrimination and accessibility were protected by the above case—albeit weakly—the lack of a national right to education left education litigation vulnerable to varied constitutional interpretations and shifting political goals.¹⁴¹ This was made apparent in 2023 when SCOTUS struck down the use of race-based admissions systems, claiming they violated the Constitution’s Equal Protection Clause. In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, the court reiterated the argument of the plaintiffs in *Brown v. Board of Education* that “no State has any authority under the equal-protection clause of the Fourteenth Amendment to use race as a factor in affording educational opportunities among its citizens” and stated that schools are required to admit students “on a racially nondiscriminatory basis.”¹⁴² The ruling also made several references to the Constitution requiring a “colorblind standard.”¹⁴³ This conceptualization of non-discrimination is contradictory to the human rights framework’s conceptualization, opposing the expectation to divert resources to the most marginalized and to take action to correct the historic or systemic discrimination of particular groups.

Persistent Barriers: Student Narratives

Experiences and Perspectives Among Brazilian Students

¹⁴¹ Ibid.

¹⁴²

¹⁴³

While Brazil’s affirmative action policies have resulted in a “dramatic increase” in the number of disadvantaged students enrolled in postsecondary education at federal universities,¹⁴⁴ the analysis of student narratives regarding their experiences in postsecondary education reveal policy gaps perpetuating barriers to accessing education for marginalized students. Regarding accessibility, a few key themes emerge: a lack of knowledge dissemination, secondary education inequalities, a lack of resources to address financial barriers, and a lack of attention to retention.

First-generation Indigenous Brazilian students indicated that a lack of knowledge regarding secondary education negatively impacted their ability to access education and made it challenging to make education-related choices.

“The importance that I see is this: it is to have people with knowledge that can help those who may not have it, because their knowledge is for something else. Not that they don’t have knowledge; they have it to work in the field, to pray, for the rituals, for other things.”¹⁴⁵

“As I always stayed in the village, I didn’t know how this question of getting into college worked. [...] I don’t know if this information is still enough... it doesn’t get there.”¹⁴⁶

This finding is further highlighted by the comments of non-first-generation students and students who otherwise had familial, personal, or educational knowledge regarding postsecondary education. These students indicated that their personal experiences and knowledge of postsecondary education eased the application process and facilitated their matriculation.

¹⁴⁴ Andrew Francis-Tan and Maria Tannuri-Pianto, “Affirmative Action in Brazil: Global Lessons on Racial Justice and the Fight to Reduce Social Inequality,” *Oxford Review of Economic Policy* 40, no. 3 (2024): para. 75. <https://doi.org/10.1093/oxrep/gra027>.

¹⁴⁵ Luna, Teixeira, and de Lima, “Access and Retention,” 9.

¹⁴⁶ *Ibid.*, 10.

These students identified the following factors as being beneficial to their application experience and educational decision-making: family members who attended postsecondary education, friendships or relationships with university students, having studied in private school, and having attended postsecondary education preparatory course(s).¹⁴⁷

“What helped me was that I already had a notion of what a university was. I already had this previous access; I was raised in a family that already has this culture of university.”¹⁴⁸

“Just having a place is not enough, because as I said, in the case of my history, what was very important for me was that I had taken prep courses.”¹⁴⁹

“[Participant] I1’s parents both ended up in the education field, thus, creating a pathway for him to follow. That led him to keep pursuing and surpassing his parent’s education.”¹⁵⁰

“The interviewees were inspired by their parents and their experiences in college.”¹⁵¹

“At the same time that I took the private prep class, I studied things on my own that I did not have in public school, because there are things they didn’t give. For example, I didn’t have trigonometry. How can I do engineering without trigonometry?”¹⁵²

Not only did a lack of knowledge about higher education negatively impact students’ ability to matriculate, many students who graduated from public secondary schools expressed

¹⁴⁷ Ibid., 11.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ McLaughlin, “Afro-Brazilian University Graduates,” 52.

¹⁵¹ Ibid.

¹⁵² Childs, “Factors Affecting,” 113.

that they felt their secondary education left them with academic knowledge deficits that negatively impacted their success and experiences in higher education.

“Many teachers are not trained in the area that they teach. I have friends who have said that they had their high school art teacher teaching physics and the physical education teacher teaching chemistry. How can you do that? How can you prepare students like that?”¹⁵³

“In math, I didn’t get any trigonometry and did not see many other things in math. I couldn’t complete the [higher education entrance examination] without knowing these things.”¹⁵⁴

“In order for you to enter a Brazilian university today, you need to have a strong basic foundation in order to pass the [higher education entrance examination], and the public schools do not prepare students for this. You have to go up against people who are being aggressively trained to enter the university... it’s inhumane.”¹⁵⁵

Moreover, many students indicated that the level of prestige of the secondary school they hailed from impacted their chances of admittance into a university, suggesting that educational inequalities in one’s secondary education impacts one’s access to higher education.¹⁵⁶

“Beatriz, along with other students, agreed [that a large number of quota students admitted into STEM fields graduated from military or technical schools], noting that the bulk of students admitted through the public school quota matriculated from one of these

¹⁵³ Ibid., 111.

¹⁵⁴ Ibid., 112.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid., 109.

prestigious schools. ‘Now it’s like this with the quotas: you realize that here at the university most students either come from the school I came from [a federal technical school] or from the military school.’”¹⁵⁷

“All of the students described being at a disadvantage for having attended a public high school. Even Beatriz and Leandro, who attended some of the best public schools in the state, suggested that there was a large disparity between the education they received and that of their private school peers.”¹⁵⁸

“There’s no way a public school student can compete with a private school student.”¹⁵⁹

“There is no way to compare the education a person from public school gets to a person from private school. I think it’s inhumane to do such a thing. [Private school students] saw every possible subject, and we didn’t see virtually anything.”¹⁶⁰

In addition to identifying educational inequality and the lack of knowledge regarding postsecondary education as challenges in navigating the application process, first-generation students indicated that attending postsecondary education was burdensome to their families:

“It has a very big burden because, in my indigenous family, I am the first one to enter higher education. In fact, I am the only one, until then.”¹⁶¹

Another commonly-discussed barrier to education among Indigenous students was a lack of financial resources. Not only did students struggle to afford the costs associated with the

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Luna, Teixeira, and de Lima, “Access and Retention,” 9.

application process, including exam fees; students also struggled to secure financial aid and other sources of funding during their time in postsecondary education. Many students were unable to produce financial assistance sufficient to provide for essential living costs, including room and board.

“In my case, I even sold some things from my house to be able to take the exams, because otherwise I wouldn’t have made it.”

“Without receiving a scholarship, we were fully dependent on family and friends. And then I think we spent a whole semester running after assistance [...]. There was this big burden of thinking: ‘how am I going to pay the rent?’, ‘where will I get the money from?’”¹⁶²

“[...] One [participant] [...] had to work her way through college though she attended a free college.”¹⁶³

“I took a prep course which was not very good because I did not have good financial conditions.”¹⁶⁴

Even students who were successful in securing financial assistance from the university or outside sources, such as the National Indigenous People Foundation, faced significant financial hardships. Interview participants reported that the amount of financial aid awarded was typically insufficient to cover the cost of living.¹⁶⁵ Additionally, many interviewees reported inconsistent payment amounts at irregular time intervals.¹⁶⁶ Other sources of federal funding, such as the

¹⁶² Ibid., 13.

¹⁶³ McLaughlin, “Afro-Brazilian University Graduates,” 47.

¹⁶⁴ Childs, “Factors Affecting,” 113.

¹⁶⁵ Luna, Teixeira, and de Lima, “Access and Retention,” 13.

¹⁶⁶ Ibid.

Ministry of Education Retaining Bursary Program, were plagued by similar issues according to interview participants.¹⁶⁷ These programs, while interviewees reported receiving regular amounts, could take lengthy amounts of time to disperse to students, leaving students without financial aid for months at a time.¹⁶⁸ Not only did these sources of financial aid fail to support students' living costs during their postsecondary education; they introduced further economic hardship and uncertainty by providing irregular and inconsistent payments, inhibiting students from relying on such assistance to support their educational pursuits.

“At the time, I had [National Indigenous People Foundation] assistance, even scarce existed... but it was irregular.”¹⁶⁹

“I think that the MEC bursary has helped a lot for Indigenous people to stay in the universities. And this is a very serious problem at the moment. I am currently receiving it, but the new students of this year haven't received it yet, and we are already in October.”

Another common theme that emerged among student narratives was a lack of attention to the retention of quota students. Although affirmative action policies had begun to improve the number of disadvantaged students matriculating, many universities failed to institute policies designed to adequately support such students throughout their education, leading to challenges remaining enrolled in higher education and graduating.¹⁷⁰ In particular, students expressed significant discomfort integrating themselves into the university norms and becoming involved on campus due to the university's lack of retention policies, degrading the quality and return-on-investment of their educational experiences.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid., 12.

“Suddenly, you come out of a village where there is only the sound of wind, children running from one place to another, [...]. How would I insert myself in this environment?”¹⁷¹

“I think what really marked me was being there in the university corridor with nowhere to go, you know? I was like, ‘And now I’m in college, but what am I going to do?’ With my little suitcase and everything. [...] They didn’t know what to do with me.”¹⁷²

“When I got here, it was a very hostile environment for affirmative action students [...] and it was a very complicated period. [...] The university didn’t know what to do with us.”¹⁷³

Experiences and Perspectives Among American Students

Despite inhabiting states with vastly differing views on affirmative action and the right to education, American students identified similar obstacles to matriculating as their Brazilian counterparts. Policy gaps in the United States likewise led to a lack of knowledge dissemination, and inequalities in secondary education.

Regarding a lack of familial or personal experience with and knowledge of the higher education system, students shared that they felt one’s family education history mattered more than their capacity to succeed in higher education when attempting to matriculate.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

“It’s not based on merit, but it’s based on family history, but no one [calls attention to that].”¹⁷⁴

Many students indicated that having taken college preparatory courses was crucial for them to gain the tools necessary to successfully apply to and enroll in higher education.¹⁷⁵ In fact, some students expressed that having taken college preparatory courses inspired them to continue to pursue higher education, furthering advantaging these students over their peers lacking access to such resources.

“Academic outreach program staff showed me exactly what I needed to do to get into [the University of California, Berkeley], and this is why I am [here].”¹⁷⁶

“If it was not for [a magnet program that prepared students to be future teachers], I would have been in a lower track and ended up a lost soul. [...]. This magnet program was crucial in me going to college.”¹⁷⁷

“I am confident that if it had been for Upward Bound, I would have never gotten to [college] [...]. Upward Bound was the motivating source that filled the desire to go to college.”¹⁷⁸

¹⁷⁴ Rican Vue, Siduri J. Haslerig, and Walter R. Allen, “Affirming Race, Diversity, and Equity Through Black and Latinx Students’ Lived Experiences,” *American Educational Research Journal* 54, no. 5 (2017), 886, <https://doi.org/10.3102/0002831217708550>.

¹⁷⁵ Grace Carroll, Karolyn Tyson, and Bernadette Lumas, “Those Who Got in the Door: The University of California-Berkeley’s Affirmative Action Success Story,” *The Journal of Negro Education* 69, no. 1 (2000), 136, JSTOR.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

“I like the focus on, did you have a shitty school? Did you never have an A.P. class? Did you never have a prep course for your SAT? I like the focus on that.”¹⁷⁹

Similar to Brazilian students, some students indicated that taking college preparatory courses aided them in overcoming educational inequalities that resulted in a lackluster secondary education. Thus, college preparatory courses were not essential for gaining knowledge of the college system; they were necessary for leveling the academic playing field and exposing students to the knowledge necessary to succeed in higher education, maximizing the quality of their educational experiences and their return-on-investment.

“Upward Bound gave me exposure to the English, science, math, and history requirements that I didn’t have access to through my high school counselor.”

In addition to identifying college preparatory courses as an indicator of future academic achievement and performance, students also recognized educational inequalities as a key indicator of such success.

“You meet a lot of people who have gone to boarding school or day schools, who have gone to public schools in good neighborhoods and things like that. The proportion of Black students who have come from that inner-city public school... you don’t hear those stories as much... or there aren’t many of them, basically.”¹⁸⁰

The Value of Affirmative Action

¹⁷⁹ Rachel Moran, “Diversity and its Discontents: The End of Affirmative Action on Boalt Hall,” *California Law Review* 88, no. 6 (2000), 2325, <https://doi.org/10.2307/3481216>.

¹⁸⁰ Vue, Haslerig, and Allen, “Affirming Race,” 890.

Despite the barriers to education Brazilian students have shared, such as those discussed above, many have emphatically voiced their support of affirmative action policies.

“[Participant] I5 was a public school student who learned about the [affirmative action program] from the school. Once information was received, the interviewee stated she was ‘thankful’ for the program because it helped her receive a college degree.”¹⁸¹

“[Participant] I4 explained that the affirmative action program is needed because it affords the opportunity for those students from low resource schools to get an education.”¹⁸²

“So, I think that, for the time being, we need to reserve spaces to be able to enter medical school. We can’t be in wide competition with other people. It is unequal. It is unfair. But after we are here, what I realize is that we can handle it.”¹⁸³

Even the parents of Brazilian students showed a great deal of support for affirmative action policies, strongly encouraging their children to pursue college through the racial admittance quotas.

“Many of the interviewees’ parents occupied labor jobs because they were not able to get higher paying jobs, which is why they strongly encourage their children to enter through the affirmative action program.”¹⁸⁴

¹⁸¹ McLaughlin, “Afro-Brazilian University Graduates,” 51.

¹⁸² Ibid.

¹⁸³ Luna, Teixeira, and de Lima, “Access and Retention,” 10.

¹⁸⁴ McLaughlin, “Afro-Brazilian University Graduates,” 51.

“Most [interviewees] stated their parents’ backgrounds as well as their parents’ motivation for them to continue their education through college.”¹⁸⁵

Similarly, American students who benefited from affirmative action policies lamented over the loss of such programs as legislation regarding affirmative action evolved over the years and universities abandoned the practice of considering race in admissions processes.

“I was very upset that the affirmative action program was thrown out because I feel an opportunity for others has been lost. I think we are worse off because we are creating situations where people can’t excel.”¹⁸⁶

“It’s not right when you take away an opportunity for a set of people who have just grown up in a certain set of chances and environment. If you give them a chance, that genius is put in a lot of directions.”¹⁸⁷

“We need affirmative action because, honestly, racism is still an issue in this country. [...] At the end of the day, [...] I think we need it.”¹⁸⁸

Discussion

Adherence to International Human Rights Standards

While Brazil has largely upheld its obligations under the ICERD—even following the CERD’s guidance to include provisions on special measures in its legal systems through legislation—it has failed to holistically uphold the three dimensions of the accessibility element of the right to education under the ICESCR. Brazil has particularly neglected the dimension of

¹⁸⁵ Ibid., 52.

¹⁸⁶ Carroll, Tyson, and Lumas, “Those Who Got,” 141.

¹⁸⁷ Ibid., 141.

¹⁸⁸ Vue, Haslerig, and Allen, “Affirming Race,” 887.

economic accessibility, allowing financial barriers to continue to impede access to higher education. Additionally, because students of color are more likely to belong to lower socioeconomic classes, this also constitutes a violation of the non-discrimination principle.

The United States has similarly fallen short of its duties to uphold the values of and rights outlined by the human rights framework. As a party to the ICERD, the United States is obligated to realize the rights enumerated within the treaty. However, the United States's conceptualization of non-discrimination—a necessarily colorblind approach—contradicts the standards and goals of the ICERD. Because non-discrimination is a guiding principle throughout the treaty, the United States's fundamental misinterpretation of the concept undermines the state's ability to effectively guarantee any right set forth in the ICERD.

Reference to Human Rights Standards

A contributing factor to Brazil and the United States's lack of adherence to international human rights standards is each states' resistance to explicitly referencing the human rights framework in their jurisprudence and education policies. Each state opts to cite their own Constitutions in educational-related legislation and policy rather than any human rights treaties or the guidance of any treaty bodies. This produces gaps between international standards and national policies.

For example, the non-discrimination dimension of the accessibility element of the right to education is well articulated throughout the ICERD and the CERD's GCs. The United States's resistance to engaging with the human rights framework has resulted in the state forming a misguided, counterproductive definition of non-discrimination, as discussed above. Regarding Brazil, the ICESCR requires financial accessibility of higher education to be progressively

realized while Brazil's Constitution acknowledges no such obligation. Greater engagement with human rights treaties, treaty bodies, or other instruments could correct these inconsistencies.

As a state party to both the ICESCR and the ICERD, it is puzzling why the Brazilian Court chose to make such limited references to the treaties and the guidance set forth by the treaty bodies. Having ingrained the right to education into the Constitution, the case heavily favored the right to education. However, referencing the treaties or the treaty bodies' GCs more explicitly and in greater detail would have bolstered many of the Court's findings and would have established a stronger tie between the human rights framework and Brazil's laws, leading to greater adherence with international human rights standards and bolstering the realization of the right to education.

Additionally, while the Brazilian courts have made implicit references to human rights standards related to non-discrimination, they have made fewer of such references to standards related to the right to education and accessibility. Because the majority of international standards regarding the right to education have been set by the CESCR, the Brazilian Court's tendency to implicitly acknowledge the ICERD rather than the ICESCR in education-related cases is troubling. This could result in affirmative action policies that are not holistic enough to address the myriad of issues related to educational accessibility. Focusing on particular elements of the right to education while neglecting others may inadvertently perpetuate existing inequalities rather than address them.

“Just Having a Place is Not Enough:” Policy Gaps

In fact, the student narratives elucidated many of these persisting inequalities. Both Brazilian and American students expressed that a lack of knowledge about higher education, a

lack of knowledge regarding the academic skills needed to succeed in higher education, and inequalities in secondary education imposed significant difficulties in their ability to access education. Additionally, Brazilian students struggled to access the financial resources necessary to attend college and struggled to integrate themselves into their university due to the lack of retention policies for marginalized students, diminishing the quality of their educational experience and limiting their access to opportunity.

While critics of affirmative action would blame affirmative action policies for the existence of these persistent barriers to accessing education, students' staunch support for affirmative action in the face of these barriers reveal that affirmative action policies are not the cause of problematic or discriminatory educational experiences. Rather, this indicates that the affirmative action policies do not operate as effectively as they could if they were implemented in conjunction with policies designed to facilitate student matriculation, retention, and graduation. Ensuring students are not abandoned once they are "through the door" is critical for the success of affirmative action, and more attention must be paid to designing policies to continue to support students throughout their educational journeys.

Re-Framing Interdependence

Since the fracturing of the UDHR into two separate treaties—the ICESCR and the International Covenant on Civil and Political Rights (ICCPR)—many human rights activists have taken to arguing for and defending the interdependence and indivisibility of human rights. Separating human rights into ESCRs and civil and political rights (CPR) resulted in ESCRs

being relegated to a subordinate position to CPRs, devaluing these rights and implying that they are not necessary for the full realization of human dignity and potential.¹⁸⁹

Moreover, the separation of ESCRs and CPRs has caused some of “the most egregious systemic violations of human rights” and has allowed these violations to go uncorrected, leaving the human rights framework lacking the tools necessary to address these violations.¹⁹⁰ For example, the right to health is considered a ESCR while the right to life is considered an CPR. Within the human rights framework, these rights are characterized as being distinct. However, to be denied the right to health, in some cases, is to be denied the right to life. Failing to protect the right to health as faithfully as the right to life could, then, result in the loss of a life. The mutually reinforcing nature of these rights and the damage resulting from separating them is clear. Similarly, being denied the right to education could negatively impact one’s right to vote or one’s right to freedom of thought.

Arguing that human rights are interdependent on one another has emerged as a key strategy for affirming the value of ESCRs.¹⁹¹ As such, conversations regarding the interdependence of human rights have largely been staunchly focused on arguing for the interdependence between ESCRs and CPRs, specifically arguing that the full realization of CPRs is not possible without the full realization of ESCRs, such as the example discussed above.¹⁹² Little attention has been paid; however, to arguing for the interdependence of various human rights principles or for the interdependence of the guidance issued from treaty bodies on related elements of human rights.

¹⁸⁹ Bruce Porter, “Interdependence of Human Rights,” in *Research Handbook on Economic, Social and Cultural Rights*, ed. Jackie Dugard, Bruce Porter, Daniela Ikawa, and Lilian Chenwi, (Edward Elgar Publishing, 2020), 303.

¹⁹⁰ *Ibid.*, 301.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*, 305.

The right to education, for example, consists of four elements: accessibility, acceptability, availability, and adaptability. Each of these elements is comprised of sub-elements, as well. Non-discrimination is an essential aspect of the accessibility element. While, the CESCR has devoted substantial effort to framing the right to education and its four elements, it has paid lesser attention to articulating a nuanced understanding of the non-discrimination principle. The CERD, however, has dedicated substantial effort to clarifying the non-discrimination principle and what constitutes a violation of it. While the ICESCR does not explicitly define discrimination, the ICERD does. To attempt to design educational policy that adheres to each of the elements of the right to education without considering the normative guidance of treaty bodies other than the CESCR would create policy that is less nuanced, less specific, and less capable of eradicating discrimination, failing to meet the standards set forth by the international community in practice.

This re-conceptualization of interdependence is especially relevant to achieving the full realization of the right to education. Though the ICESCR and the CESCR have produced the majority of the normative guidance regarding the right to education, the application of the CERD's guidance is particularly useful in shaping educational policies as accessibility and non-discrimination are inextricably linked. Educational policies designed to increase equitable access and reduce social inequality cannot be holistic without engaging with the guidance of both the CESCR and the CERD. Thus, human rights activists should begin to reconceptualize the field's understanding of "interdependence." Not only are other human rights essential to achieving the full realization of a right; the fulfilment of each element of a right is essential. Because some treaty bodies or organizations are more equipped to deal with specialized topics than others, achieving the full realization of a right requires joining the guidance of numerous sources.

Conclusion

Education is one of the most utilized tools for advancing human identity, ability, and power. Recognizing the value of education, the international community established a right to education for all individuals. After being introduced in the UDHR, the right was enumerated in various human rights treaties, including the ICESCR, the ICERD, the CRC, and the CRPD, among others. Being featured in so many human right documents, the right to education has undergone significant development. Ensuring equitable access to education for all students, regardless of background or identity, emerged as a consistent priority of the international community, and many human rights organizations took up the task of devising various elements of the right to education and means of achieving the right's full realization.

Despite this, many issues persisted in achieving its full realization. Disadvantaged students continue to face barriers to accessing education, and the human rights framework has been saddled with a plethora of critiques, including inadequate enforcement, reliance on the principle of progressive realization, and the use of weak or unclear language. Many states have attempted to enact measures to increase marginalized students' access to education, including the United States and Brazil, which presented a compelling comparative analysis as these states, despite sharing similar colonial histories and legacies of racism, have come to vastly different findings regarding the validity of affirmative action policies.

Despite some literature hailing Brazil as a champion of reducing social inequality while critiquing the United States for its lackluster improvements in social equality, other literature had indicated that Brazil's attempts to reduce social inequality through affirmative action may not be so successful. This prompts inquiry into how comprehensively human rights standards have been incorporated into education policies on the national level in Brazil and the United States.

Through a combination of document analysis and narrative data, this thesis revealed gaps in Brazil and the United States's adherence to human rights standards. This thesis revealed that the unwillingness to directly reference human rights standards in national policies contributed to the fragmented realization of human rights and fundamental misunderstandings of various human rights principles. Several persistent barriers to accessing education were identified, including a lack of knowledge about higher education, a lack of preparation for higher education, inequalities in secondary education, a lack of financial resources, and a lack of policies designed to facilitate matriculation, retention, and graduation. Re-conceptualizing how interdependence is understood was discussed as a potential mitigator of this issue, encouraging states to holistically engage with human rights standards and integrate the guidance of various treaty bodies to create nuanced conceptualizations of human rights standards within national policies.

Bibliography

- Aaron, Daniel G., Simar S. Bajaj, and Fatima C. Stanford. "Supreme Court Cases on Affirmative Action Threaten Diversity in Medicine." *Proceedings of the National Academy of Sciences of the United States of America* 120, no. 17 (2023).
<https://doi.org/10.1073/pnas.2220919120>.
- Amparo, Thiago, Odara Andrade, Julia Piazza, and Deborah Bittar. "The Impact of the United Nations Human Rights Treaties on the Domestic Level in Brazil." In *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years On*, edited by Christof Heyns, Frans Jacobus Viljoen, and Rachel Murray. Brill Nijhoff, 2024.
- Baez, Narciso L. X. "Effectiveness of Affirmative Action." In *Affirmative Action and the Law*. Routledge, 2020.
- Beach, Robert, H., and Ronald A. Lindahl, "Can There Be a Right to Education in the United States?" *Equity & Excellence in Education* 33, no. 2 (2000): 5-12.
<https://doi.org/10.1080/1066568000330202>.
- Biblioteca Digitalal. *Constitution of the Federative Republic of Brazil*.
- Black, Sandra, E., Kalena E. Cortes, and Jane A. Lincove. "Efficacy versus Equity: What Happens When States Tinker with College Admissions in a Race-Blind Era?" *Educational Evaluation and Policy Analysis* 38, no. 2 (2016): 336-363.
<https://doi.org/10.3102/0162373716629006>.
- Byrne, Seamus. "Reclaiming Progressive Realisation: A Children's Rights Analysis." *The International Journal of Children's Rights* 28 (2020): 748-777.
<https://doi.org/10.1163/15718182-28040011>.
- Carroll, Grace, Karolyn Tyson, and Bernadette Lumas. "Those Who Got in the Door: The

- University of California-Berkeley's Affirmative Action Success Story." *The Journal of Negro Education* 69, no. 1 (2000): 128-144. JSTOR.
- Chenwi, Lilian. "Unpacking 'Progressive Realisation,' its Relation to Resources, Minimum Core and Reasonableness, and some Methodological Considerations for Assessing Compliance." *De Jure* 46, no. 3 (2013). SciELO.
- Childs, Porsha. "Factors Affecting the Academic Achievement and Persistence of Quota Students in STEM: A Case Study of A Public University in Brazil." PhD diss., University of Maryland, 2015. Digital Repository at the University of Maryland.
- Cunha, Celio, Denise G. de Britto, and Nelson A. Ferreira de Vasconcelos. "The Education System of Brazil: Historical Context and Challenges to Federative Equity." In *The Education Systems of Americas*, edited by Sieglinde Jornitz and Marcelo P. do Amaral. Springer, 2021.
- Da Silva, Paulo S. "Persistence and Academic Success of Quota Students in a Public University in Brazil: The Case of the Universidade Federal da Bahia." PhD diss., Teacher's College of Columbia University, 2012. ProQuest (3545632).
- De Villers, David J., and Alethea C. De Villers. "A Comparative Review of Education Policy in Brazil and South Africa: Divergent Trends in Inequality." *Athens Journal of Education* 10, no. 2 (2023). <https://doi.org/10.30958/aje.10-2-8>.
- Dias Lopes, Alice. "Affirmative Action in Brazil: How Students' Field of Study Choice Reproduces Social Inequalities." *Studies in Higher Education* 42, no. 12 (2017): 2343-2359. <https://doi.org/10.1080/03075079.2016.1144180>.
- DiSchino, Christopher. "Affirmative Action in Brazil: Reverse Discrimination and the Creation

of a Constitutionally Protected Color-Line.” *University of Miami International and Comparative Law Review* 17, no. 2 (2010). University of Miami School of Law Institutional Repository.

Equal Rights Trust. “Brazil’s Supreme Court Upholds the Use of Affirmative Action in Higher Education.” Accessed September 20, 2024.

<https://www.equalrightstrust.org/news/brazils-supreme-court-upholds-use-affirmative-action-higher-education#:~:text=Brazil's%20Supreme%20Court%20Upholds%20the,Higher%20Education%20%7C%20Equal%20Rights%20Trust>.

Fischer, Angelina. “‘Minimum Core’ and the ‘Right to Education.’” The World Bank (2017).

<https://hdl.handle.net/10986/29142>.

Ford, Jesse R., Jason K. Wallace, and Dawn Y. Matthews. “Race-Based Admission and Affirmative Action: Revisiting Historical Implications on Black Students in Higher Education.” *Journal of Higher Education Policy and Leadership Studies* 4, no. 1 (2023): 46-62. <https://dx.doi.org/10.52547/johepal.4.1.46>.

Francis-Tan, Andrew, and Maria Tannuri-Pianto. “Affirmative Action in Brazil: Global Lessons on Racial Justice and the Fight to Reduce Social Inequality.” *Oxford Review of Economic Policy* 40, no. 3 (2024). <https://doi.org/10.1093/oxrep/graee027>.

Gerber, Paula, Joanna Kyriakakis, and Katie O’Byrne. “General Comment 16 on State Obligations Regarding the Impact of the Business Sector on Children’s Rights: What is its Standing, Meaning, and Effect?” *Melbourne Journal of International Law* 14, no. 1 (2013): 1-36. Social Science Research Network.

Gilchrist, Heidi R. “Higher Education is a Human Right.” *Washington University Global Studies*

- Law Review* 17, no. 3 (2018): 645-676. Washington University Open Scholarship.
- Ginsburg, Ruth. "Affirmative Action as an International Human Rights Dialogue: Considered Opinion." *The Brookings Review* 18, no. 1 (2000): 2-3. <https://doi.org/10.2307/20080884>.
- Hallberg, Lillemor R-M. "The 'Core Category' of Grounded Theory: Making Constant Comparisons." *International Journal of Qualitative Studies on Health and Well-Being* 1, no. 3 (2009): 141-148. <https://doi.org/10.1080/17482620600858399>.
- Holzer, Harry, and David Neumark. "Assessing Affirmative Action." *Journal of Economic Literature* 38, no. 3 (2000): 483-568. <https://doi.org/10.1257/jel.38.3.483>.
- Huang, Jian, Henriette Maassen van den Brink, and Wim Groot. "A Meta-Analysis of the Effect of Education on Social Capital." *Economics of Education Review* 28, no. 4 (2009): 454-64. <https://doi.org/10.1016/j.econedurev.2008.03.004>.
- Igreja, Rebecca L., and Gianmarco L. Ferreira. "The Brazilian Law of Racial Quotas Put to the Test of Labor Justice: A Legal Case Against Banco do Brasil." *Latin American and Caribbean Ethnic Studies* 14, no. 3 (2019): 294-317. <https://doi.org/10.1080/17442222.2019.1667635>.
- Justia. "San Antonio Independent School District v. Rodriguez, 411 S. 1 (1973)." Accessed November 10, 2024. <https://supreme.justia.com/cases/federal/us/411/1/>.
- Kane, Thomas. "Racial Preferences and Higher Education." In *The Black-Test Gap*, edited by Christopher Jencks and Meredith Phillips. Brookings Institution Press, 1998.
- Keller, Helen, and Leena Grover. "General Comments of the Human Rights Committee and Their Legitimacy." In *UN Human Rights Treaty Bodies: Law and Legitimacy*. Cambridge University Press, 2012.
- Kim, Robert. "Under the Law: Affirmative Retraction." *Phi Delta Kappan International* 105, no.

1 (2023). <https://doi.org/10.1177/00317217231197484>.

Kotzmann, Jane. "Lifting the Cloak of Conceptual Confusion: Exploring the Meaning of the Human Right to Higher Education." *Australian Journal of Human Rights* 21, no. 1 (2015): 71-96. Social Science Research Network.

Kotzmann, Jane. "Theoretical Approaches to Higher Education." In *The Human Rights-Based Approach to Higher Education: Why Human Rights Norms Should Guide Higher Education Law and Policy*. Oxford University Press, 2018.
<https://doi.org/10.1093/oso/9780190863494.001.0001>.

Lawler, Nicole. "The Right to Education in the United States and Abroad: A Comparative Analysis of Constitutional Language and Academic Achievement." *The Federal Lawyer* (2018). Federal Bar Association.

Lee, Jootaek. "The Human Right to Education: Definition, Research and Annotated Bibliography." *Emory International Law Review* 34, no. 3 (2020): 757-823. Social Science Research Network.

Lesch, Max, and Nina Reiners. "Informal Human Rights Law-Making: How Treaty Bodies use 'General Comments' to Develop International Law." *Global Constitutionalism* 12, no. 2 (2023): 378-401. <https://doi.org/10.1017/S2045381723000023>.

Linos, Katerina, and Tom Pegram. "The Language of Compromise in International Agreements." *International Organization* 70, no. 3 (2016): 587-621.
<https://doi.org/10.1017/S0020818316000138>.

Loury, Linda D., and David Garman. "College Selectivity and Earnings." *Journal of Labor Economics* 13, no. 2 (1995): 289-308. JSTOR.

Luna, Willian, F., and Karla C. Teixeira. "Access and Retention Policies for Indigenous People

- in Brazilian Federal Medical Schools: Mapping and Experiences.” *Interface: Communication, Health, and Education* 25 (2021): 1-19. SciELO.
- McLaughlin, Jewel. “Afro-Brazilian University Graduates’ Perception of the Effectiveness of the Affirmative Action Program.” PhD diss., The Chicago School of Professional Psychology, 2016. ProQuest (10251209).
- MIT Admissions. “Composite Profile for 2024-2027.” Accessed September 20, 2024. <https://mitadmissions.org/apply/process/composite-profile/>.
- Moran, Rahcel. “Diversity and its Discontents: The End of Affirmative Action on Boalt Hall.” *California Law Review* 88, no. 6 (2000): 2241-2352. <https://doi.org/10.2307/3481216>.
- Noble, Helen, and Gary Mitchell. “What is Grounded Theory?” *Evidence Based Nursing* 19, no. 2 (2016): 34-35. <https://doi.org/10.1136/eb-2016-102306>.
- Oette, Lutz. “The UN Human Rights Treaty Bodies: Impact and Future.” In *International Human Rights Institutions, Tribunals, and Courts*, edited by Gerd Oberleitner. Springer, 2018.
- Otto, Dianne. ““Gender Comment:’ Why Does the UN Committee on Economic, Social, and Cultural Rights Need a General Comment on Women?”” *Social Science Research Network Electronic Journal* (2002): 1-65. <https://doi.org/10.2139/ssrn.319202>.
- Porter, Bruce. “Rethinking Progressive Realization: How Should it be Implemented in Canada?” *Social Rights Advocacy Centre* (2015): 1-15. Social Rights Advocacy Centre.
- Porter, Bruce. “Interdependence of Human Rights.” In *Research Handbook on Economic, Social and Cultural Rights*, edited by Jackie Dugard, Bruce Porter, Daniela Ikawa, and Lilian Chenwi. Edward Elgar Publishing, 2020.
- Santos, Priscilla, S., Kalinca L. Becker, and Sibebe V. de Oliveira. “Race-Based Affirmative

- Action for Higher Education in Brazil: Impact Assessment on Performance, Time, and Delay in Completion.” *Review of Development Economics* 27, no. 5 (2022): 247-267. <https://doi.org/10.1111/rode.12923>.
- Sirota, Sandra. “The Inconsistent Past and Uncertain Future of Human Rights Education in the United States.” *Prospects* 47, no. 2 (2018): 1-17. <https://doi.org/10.1007/s11125-018-9417-1>.
- Tibbitts, Felisa. “Revitalizing the Mission of Higher Education Through a Human Rights-Based Approach.” *Prospects* 54 (2024): 401-409. <https://doi.org/10.1007/s11125-023-09654-9>.
- Tomasevski, Katerina. “Preliminary Report of the Special Rapporteur on the Right to Education.” (1999).
- Tufts University Office of Institutional Research. “Student Body Diversity.” Accessed September 20, 2024. <https://provost.tufts.edu/institutionalresearch/student-diversity/>.
- United Nations Committee on Economic, Social, and Cultural Rights. *General Comment No. 3*. (1990).
- United Nations Committee on Economic, Social, and Cultural Rights. *General Comment No. 13*. (1999).
- United Nations Committee on Economic, Social, and Cultural Rights. *General Comment No. 20*. (2009).
- United Nations Committee on the Elimination of All Forms of Racial Discrimination. *General Comment No. 7*. (1985).
- United Nations Committee on the Elimination of All Forms of Racial Discrimination. *General Comment No. 29*. (2001).
- United Nations Committee on the Elimination of All Forms of Racial Discrimination. *General*

Comment No. 30. (2004).

United Nations Committee on the Elimination of All Forms of Racial Discrimination. *General Comment No. 32.* (2009).

United Nations Educational, Scientific, and Cultural Organization. “The Right to Education: Law and Policy Review Guidelines.” (2014).

United Nations Office of the High Commissioner for Human Rights. *International Covenant on Economic, Social, and Cultural Rights.*

United Nations Office of the High Commissioner for Human Rights. *International Convention on the Elimination of All Forms of Racial Discrimination.*

Valente, Rubia R., and Brian J. L. Berry. “Performance of Students Admitted Through Affirmative Action in Brazil.” *Latin American Research Review* 52, no. 1 (2017): 18-34. <https://doi.org/10.25222/larr.50>.

Vue, Rican, Siduri J. Haslerig, and Walter R. Allen. “Affirming Race, Diversity, and Equity Through Black and Latinx Students’ Lived Experiences.” *American Educational Research Journal* 54, no. 5 (2017): 868-903. <https://doi.org/10.3102/0002831217708550>.

Walton, Gregory, Steven J. Spencer, and Sam Eрман. “Affirmative Meritocracy.” *Social Issues and Policy Review* 7, no. 1 (2013):1-35. <https://doi.org/10.1111/j.1751-2409.2012.01041.x>.

Washington University in St. Louis Office of the University Registrar. “First Year Class Profile.” Accessed September 20, 2024. <https://admissions.washu.edu/life-at-washu/our-students/>.

Watson, Maya K. “The United States’ Hollow Commitment to Eradicating Global Racial Discrimination.” *Human Rights Magazine* 44, no. 4 (2020). American Bar Association.

Young, Katherine. “Waiting for Rights: Progressive Realization and Lost Time.” In *The Future*

of Economic and Social Rights. Cambridge University Press, 2019.

Appendix I

Open Coding Code Book

International Human Rights Standards	
Code	Definition
Non-Discrimination	Reference to the non-discrimination principle.
Economic Accessibility	Financial factors that enable or inhibit individuals from accessing education.
Social Accessibility	Social/cultural factors that enable or inhibit individuals from accessing education.
Physical Accessibility	Physical factors that enable or inhibit individuals from accessing education.
Affirmative Action	Policies specifically designed to promote equality/equity in education or to increase access for historically marginalized groups.
Right to Higher Education	Access to higher education is referred to as a right.
Progressively Realized	A right or element of a right subject to progressive realization.
Immediately Enforceable	A right or element of a right being established as immediately enforceable.
Aspirational Standards	Recommendations for best practices that are not immediately enforceable nor required to be progressively realized.
Interdependence	Reference to the interdependence principle or reference to the idea that the right to education must be realized to enjoy other rights.
National Policies	
Code	Definition
Referenced Human Rights Schema	Direct reference to human rights constructs (including but not limited to: human rights documents, conventions, standards, principles, or tools).
Alluded to Human Rights Schema	Indirect reference to human rights constructs (including but not limited to: human rights documents, conventions, standards, principles, or tools).
Implied Right to Education	Education is implied to be a right.
Explicit Right to Education	Education is explicitly framed as or recognized as a right.
Human Rights to Education	Education is explicitly framed as or recognized as a human right.
Resource Allocation	Information on the allocation of financial resources or recommendations on how financial resources should be allocated within the education system.
Affirmative Action	Policies specifically designed to promote equality/equity in education or to increase access for historically marginalized groups.
Economic Accessibility	Financial factors that enable or inhibit individuals from accessing education.
Social Accessibility	Social/cultural factors that enable or inhibit individuals from accessing education.

Physical Accessibility	Physical factors that enable or inhibit individuals from accessing education.
Interdependence	Access to education is identified as necessary for the full realization of other rights.
Students Narratives	
Code	Definition
Knowledge Gaps	Lack of understanding or knowledge of how the higher education system functions.
Financial Obstacles	Financial barriers to matriculation and/or graduation.
Supportive Policies	Policies or proposed policies aimed at mitigating the barriers marginalized or vulnerable students face.
Access to Opportunity	Availability and distribution of educational, social, and economic opportunities for students.
Educational Outcomes	Results of the educational process, including graduation, drop-out, or enrollment in subsequent schooling.
Academic Achievement	Students' performance in school.
Discrimination	Experiences of discrimination in higher education.
College Involvement	Students' experiences utilizing campus resources and navigating being a college student.
Overcoming Challenges	References to how students handled experiences of discrimination and overcame barriers to matriculating.

Axial Coding Code Book

International Human Rights Standards	
Code	Definition
Accessibility	Financial, social/cultural, and physical factors that enable or inhibit individuals from accessing education.
Enforcement	Indications of if and how the right to education and its various elements are enforceable.
Tools for Overcoming Barriers	Policies, principles, or guidance designed to facilitate access to education.
National Policies	
Code	Definition
Engagement with Human Rights Schema	Direct or indirect reference to human rights constructs (including but not limited to human rights documents, conventions, standards, principles, or tools).
Engagement with the Right to education	Education is implied to be or explicitly framed as a right.
Accessibility	Financial, social/cultural, and physical factors that enable or inhibit individuals from accessing education.
Tools for Overcoming Barriers	Policies or guidance designed to facilitate access to education.

Students Narratives	
Code	Definition
Tools for Overcoming Barriers	Policies or guidance designed to facilitate access to education.
Educational Experiences	Students' education related experiences.
Persistent Barriers	Barriers students face attempting to access to education.