

MANUAL ON RIGHTS-BASED EDUCATION

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GLOBAL HUMAN RIGHTS REQUIREMENTS MADE SIMPLE

Collaborative project between
the UN Special Rapporteur on the Right to Education and
UNESCO Asia and Pacific Regional Bureau for Education

Katarina Tomasevski

Asia and Pacific Regional Bureau for Education,
UNESCO Bangkok



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ACRONYMS

CE: Compulsory Education

CEART: Committee of Experts on the Application of the Recommendation concerning the Status of Teachers

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CERD: International Convention on the Elimination of All Forms of Racial Discrimination

CoE: Council of Europe

CRC: Convention on the Rights of the Child

EFA: Education for All

GATS: General Agreement on Trade in Services

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ILO: International Labour Organization

NGO: Non-governmental organization

OAS: Organization of American States

OAU: Organization of African Unity

OHCHR: Office of the High Commissioner for Human Rights

SWAp: Sector-wide approaches

UNESCO: United Nations Educational, Scientific and Cultural Organization

FOREWORD

The Dakar Framework for Action adopted at the World Education Forum in Dakar, 2000, contains a clear statement reaffirming education as a fundamental human right and underlines the importance of rights-based government action in achieving Education for All (EFA) goals. UNESCO actively supports the view that a rights-based approach to the development of education is a prerequisite for realizing EFA.

The UNESCO Asia and Pacific Regional Bureau for Education in Bangkok is pleased to make available this Manual, which forms an essential part of UNESCO's ongoing efforts to promote the development of policies to advance a rights-based approach to education. The Manual was originally prepared as a background paper by Katarina Tomasevski for the Regional Workshop on *Universalizing the Right to Education of Good Quality: A Rights-based Approach to Achieving Education for All* in Manila, Philippines, from 29 to 31 October 2002.

There is currently growing awareness and consensus around the world that government officials, development agencies and NGOs all need greater assistance in ensuring that the provisions contained in the major international human rights treaties inform educational policies and are integrated into national education systems. Both the Dakar Framework for Action and core human rights obligations identify the need for free and compulsory education, of good quality, for *all* children. However, to achieve this in practical terms has so far proved difficult.

The Manual, therefore, is intended not only to clarify some of the technical concepts presented in international human rights law but also, more importantly, to stand on its own as a useful reference tool for those who would like to gain a deeper understanding of how these concepts relate to education. In summarizing and analysing the major human rights treaties and conventions from the perspective of education, this Manual presents the key rights as they relate to children, parents and governments, and the corresponding obligations, especially of governments, that must be met to fulfil those rights.

The aim is to provide an easily-referenced, one-stop guide to rights-based education, which makes sense of the bewildering array of global human rights documents and draws on numerous country-specific examples.

We hope this manual becomes a useful, even crucial resource in global efforts to apply a rights-based approach to education and to promote the right to education, both of which are essential for achieving Education for All.



Sheldon Shaeffer
Director UNESCO Bangkok

EXECUTIVE SUMMARY

This manual aims to translate globally-accepted human rights standards into guidelines for national education strategies, and has been written as a reference tool for policy-makers and practitioners in education, as well as for those working in international development co-operation.

The fulfilment of the right to education is an ongoing process, and the same can be said of meeting global commitments to achieving Education for All. Recognition that universal human rights standards and global education strategies complement one another therefore provides the orientation of this manual. Indeed, the Dakar Framework for Action has reaffirmed education as a fundamental human right and underlined the importance of rights-based government action in implementing Education for All (EFA) at the national level.

This manual attempts to facilitate human rights mainstreaming in education to contribute to both these goals; it lists and describes relevant human rights standards, highlights how they could best be translated into education practice at the micro level, and points to the key human rights questions that ought to be addressed at the macro level.

The basis for the manual is international human rights law, and a series of tables presents the core parts of global human rights treaties which address human rights in education. These treaties have been accepted by the majority of countries in the world, and thus reflect global commitment in this area. However, since international human rights law is not directly applied in many countries, the ways that these treaties are put into practice at national levels are also presented, in order to illustrate the different approaches used and stages reached in applying rights-based education around the world.

The manual follows a simple 4-A scheme describing governmental human rights obligations to make education *available*, *accessible*, *acceptable* and *adaptable*:

- *available* education means ensuring free and compulsory education for all children, and the manual draws attention to one of the key requirements of international human rights law, namely for governments to respect parental freedom of choice;
- in describing factors under *accessibility*, the manual prioritizes the elimination of discrimination as international human rights law mandates;
- *acceptability* refers to the current focus on the quality of education, which is addressed by summarizing those human rights standards which should apply to the processes of teaching and learning;
- under *adaptability*, the manual emphasizes the key principle of child rights, namely that education should respond and adapt to the best interests of each child.

An important strand running throughout the manual is that rights and education are engaged in a mutually defining process, each essential to the enhancement of the other. While national and local education systems must be informed by the various international human rights treaties that aim to safeguard the best interests of all children, schools and curricula must be oriented in such a way that they contribute to the enjoyment of all human rights by every member of society.

There exists a vast and bewildering assortment of international human rights conventions, covenants and treaties, and cross-referencing and understanding these presents a formidable challenge to all but the most committed academic or professional human rights expert.

The text emphasizes the links between human rights and education using a variety of country-specific examples from Asia and the Pacific, and adds global profiles for particularly important issues, such as the elimination of child labour and child marriage through education. Tabulated overviews have been used wherever possible to make the manual more user-friendly. These summarize the main components of rights-based education, and also list key questions for applying it within varying national contexts.

In addition to the complexities created by different countries being signatories of some but not others of these treaties, and the fact that even ratification of a given convention does not mean that it will be integrated into national education policy, there is the problem that each treaty emphasizes a different area of human rights in education. However, core components of all the major treaties can be identified, and have been done so in this manual in order to bring them together as a common framework for understanding rights-based education.

An important advantage of this kind of framework is that it lends itself very well to a cross-sectoral analysis of national and international education environments, not limiting its focus to education specifically but necessarily taking in all arms of government and sectors of society. In this way, we see that education has a bearing on, and is moulded by, many other areas of society; similarly, human rights cannot be considered in isolation, but must be understood as the guiding principle for all political and social activity.

The principal documents that this manual refers to comprise:

The ILO Convention Concerning Indigenous and Tribal Peoples;
 The Convention on the Elimination of All Forms of Discrimination against Women;
 The Convention on the Elimination of Racial Discrimination;
 The Convention on Intolerable Forms of Child Labour.
 The Convention on the Minimum Age for Employment;
 The Convention on the Rights of the Child;
 The International Covenant on Civil and Political Rights;
 The International Covenant on Economic, Social and Cultural Rights;
 The International Convention on the Elimination of All Forms of Racial Discrimination;
 The UNESCO Convention against Discrimination in Education;
 The Universal Declaration of Human Rights;

Education is addressed in all of these documents in one way or another, but it is important to note that not all have been ratified by all countries. Furthermore, ratification is only the first step towards a government making meaningful changes to their education system. Very often, a treaty is only used as a kind of guiding principle for enacting national legislation, and the provisions it contains may differ considerably from the education policies that are finally drawn up based on them.

Nonetheless, ratification is an important first step, and it is encouraging that the great majority of the world's nations have become signatories to many of these treaties; indeed, the Convention on the Rights of the Child has been ratified by all but two countries.

That so many countries recognize the need to assert the universal right of children to education is significant for a number of reasons. Universal rights of the child must go hand in hand with universal governmental obligations to enable equal access to education, quality standards, elimination of discrimination, and a host of related issues. This kind of collective responsibility helps mobilize international support, and provides a wealth of shared experiences that can be used as examples of best practice.

Furthermore, with decentralization a growing trend in so many countries, resulting in poorer local governments being left behind, the emphasis on *universal* rights and obligations reinforces the need for co-operation among all stakeholders in education.

It was noted above that governmental legal obligations under various of the international treaties can be summarized according to the following four-fold schema: to make education *available*, *accessible*, *acceptable* and *adaptable*. Key issues relating to each of these in turn have been identified in the manual, and best practices for addressing them have been described. These show how rights-based education can be put into operation, which new questions it raises, and what guidance it provides for the qualitative and quantitative data that need to be collated from the existing statistics or, sometimes, created anew.

The following elaborates briefly on each of the four components.

A vailability

That primary education is to be free and compulsory is affirmed by all of the key international treaties, including the Universal Declaration of Human Rights and the Convention on the Rights of the Child. The core principle underpinning this assertion is that there is a close correlation between low levels of education and poverty, both individual and societal. However, in recognition that for some countries constrained by a lack of funds it is just not viable to insist on immediate and widespread free primary schools, these treaties allow for a progressive realization of governments' commitments.

In ensuring that free and compulsory education of good quality is available to all children, governments must also strike a balance with parental freedom of choice as to how they wish their child to be educated. This right of the parents allows for the provision of both public- and privately-funded schools, and also involves governments addressing other issues, including whether to provide for home-based education, the role of religious schools, and upholding indigenous rights, which especially concerns language of instruction.

The public-private debate is a particularly important one, especially in the current climate of increasing liberalization of education. One of the chief obstacles to establishing greater access to free primary schools in recent years was the introduction of fees, both as a means of offsetting cuts in the budgets allocated for education and, ironically perhaps, as conditions for receiving development loans. Many loans throughout the 1980s, in particular, contained clauses insisting on the introduction of some kind of “cost-sharing”, and by early in the new millennium it was found that in many countries in Asia and the Pacific, some kind of charges attached to primary education were the norm, rather than the exception.

Charters with provisions directly addressing issues such as those outlined above include the following: *the Universal Declaration of Human Rights; European Convention on Human Rights, Protocol 1; UNESCO Convention against Discrimination in Education; International Covenant on Economic, Social and Cultural Rights; Protocol of San Salvador to the American Convention on Human Rights; Convention on the Rights of the Child; Charter on the Rights and Welfare of the African Child; and the (Revised) European Social Charter.*

Accessibility

In terms of access to education, the Dakar Framework for Action emphasizes the elimination of all forms of discrimination, and prioritizes excluded, vulnerable, marginalized and/or disadvantaged children. Recent years have seen an increase in the kinds of discrimination outlawed by international treaties, with groups such as children with disabilities and ethnic minorities gaining closer attention.

However, discrimination is a moving target: in addition to old forms of prejudice needing greater scrutiny, such as non-citizens being denied or offered low-grade education, new issues continue to arise. For example, HIV/AIDS has emerged as a new area where special efforts must be introduced to protect sufferers from being excluded from the same level of education as the rest of their community.

Specific measures for combating discrimination are articulated in a number of conventions, and range from financial matters, such as defining budgetary allocations for education departments, to regulating educational content, for example curricula and text books, which have often in the past perpetuated gender and cultural stereotypes.

Prohibitions on various forms of discrimination are outlined in the following treaties: *United Nations Bill of Rights; the Convention on the Rights of the Child; The European Convention on Human Rights; the American Convention on Human Rights; the African Charter on Human and Peoples' Rights; UNESCO Convention against Discrimination in Education; International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; ILO Convention Concerning Indigenous and Tribal Peoples; and the Convention on the Rights of the Child.*

Aceptability

Building on efforts to achieve greater and more equitable access to education, the Dakar Framework for Action also highlights the need for ensuring the quality and relevance of children's learning experiences as soon as possible.

International human rights treaties and legislation stop short of defining the specific content of national educational curricula. Instead, they outline the functions and goals that should orient education systems, and include guidelines for developing indicators to assess progress towards quality education for all.

The obligation for developing indicators of quality and enforcing standards falls on the governments, with assistance available from regional and international bodies and NGOs. Acceptable standards of education are essential for achieving equality of access and elimination of discrimination in schools, as well as for establishing an environment within which every child can be offered the chance to develop to his or her own full potential.

This manual describes an extended matrix for understanding the key stages in education, analyzed in terms of the following paradigm: *intake-input-process-outcome-impact*; the intake and impact phases especially are highlighted by the human rights perspective.

If a school syllabus and the infrastructure in place are really to allow for every child's greatest development, any potential barrier to this must be identified at the earliest opportunity. This calls for close attention to the *intake* stage of the matrix outlined above, for revising the kinds of data gathered for recording statistics on child enrolment, and for aligning the *intake* with the *input* stage, in other words, ensuring that the syllabus, curriculum and language of instruction, among other issues, are in harmony with the needs and abilities of the students.

Achieving an acceptable level of quality education also demands that attention be paid to the opportunities school-leavers can expect to enjoy when finishing education and entering the job market. One important aspect of this involves close participation between education and the labour sectors, and this is another example of how education must develop a balanced, mutual relationship with all other areas of society to maximize its effectiveness.

In addition, working for acceptability in education relates to a series of important provisions contained in international treaties that take in the following areas, dealt with in more depth in the manual: teachers' rights, who in many countries are among the lowest-paid members of society, and whose labour rights are routinely ignored or denied; medium of instruction, which often involves striking a delicate balance between enabling a child to learn his or her mother tongue and upholding a state's right, affirmed by international law, to determine its own national language(s) and language(s) of instruction; educational contents; and school discipline.

Key provisions for developing the contents of education can be found in the following treaties: *UNESCO Convention against Discrimination in Education*; *the International Convention on the Elimination of All Forms of Racial Discrimination*; *the International Covenant on Economic, Social and Cultural Rights*; *the Convention on the Elimination of All Forms of Discrimination against Women*; *the ILO Indigenous and Tribal Peoples Convention*; and *the Convention on the Rights of the Child*.

A daptability

Another result of infusing education with a human rights perspective is that school systems must necessarily adapt to the various needs of individual students, rather than expect children to fit in with a prescribed syllabus or manage with whatever facilities are in place. For governments and parents alike, this often involves, for example, choosing between private or public education systems, deciding whether to allow children to be educated at home, and the sensitive issue of whether to encourage the establishment of religious schools, or else to promote all-inclusive educational policies.

Then there is the question of standardized testing, which, some have argued, tends to limit a child's potential for expressing his or her learning achievements by developing easily quantifiable curriculum content, and the results of these tests often define an individual's, as well as a school and even a country's, position in performance tables.

The human rights perspective urges governments to consider education as vital in the transmission of core values from one generation to the next, and to help in the elimination not only of poverty, but also of racism, religious intolerance and other reasons for social disharmony. International human rights treaties very carefully lay out the means by which states can develop strategies to work towards these ends, while leaving individual governments free to adapt these guidelines to the specific contexts of their own countries.

The final stage in the matrix, *impact*, involves two more key issues: the elimination of child labour and of child marriage. Ensuring free and compulsory education is extended to, and enforced for, all children is a vital first step towards keeping children in school and making sure they are not exploited for cheap labour. Furthermore, tying the minimum age for leaving school to the minimum age for

starting work is essential for combating the situation which occurs in many countries, where children have left school perhaps as early as 10 and cannot legally begin work until 15, and are thereby forced into illegal employment with no rights. The minimum age for leaving school set by the ILO is 14, while some countries have adopted ILO recommendations that it be lifted to 16.

It has been shown that effectively increasing girls' enrolment in primary education plays a vital part in reducing child marriage and extending the age at which young women have children; however, official figures may not paint the whole picture as illegal marriages are often statistically invisible. In addition, there are still significant cultural and religious obstacles to ensuring girls are afforded the same level of access to education as boys, and the situation is exacerbated in some countries where the legal minimum age at which girls can be married may either be lower than boys or else there may be no minimum at all.

Relevant conventions touching on issues in developing the various kinds of schools described above, and those focusing on child labour and child marriage, include: *the Convention on the Rights of the Child; the ILO Convention on Intolerable Forms of Child Labour; and the Convention on the Elimination of All Forms of Discrimination against Women; and the ILO Minimum Age Convention.*

The affirmation of human rights treaties that education shall be compulsory and free for all children, regardless of race, religion, disability, language or any other possible ground for discrimination, requires the creation of institutional mechanisms, both of a legal and extra-legal nature, to ensure those rights are implemented and upheld. These institutions are vital if governments are to meet the obligations that they accept when ratifying any of the international human rights treaties or conventions.

In addition, the indivisibility of human rights means that education must be assessed according to its contribution to the enhancement of *all* human rights. Unfortunately, this remains an under-explored area. One important reason for this is the often sectoral orientation of education, while rights-based education emphasizes a cross-sectoral outlook. Specific provisions for curricular content highlight the kinds of adjustment needed in all areas of education to underpin the promotion of human rights.

Finally, the variety of attitudes to education around the world, coupled with the increasing decentralization of authority to local governments, means that there is all the more need for a comprehensive, unified and consistent framework within which to develop education systems and establish the necessary regulatory institutions, and to ensure that a respect for human rights informs the curriculum and extends the benefits of a quality education to all children.

Rights-based education provides that cross-cutting framework. The attendant legal provisions and detailed policy strategies apply to all sectors of society and at every level of government, and remain general enough to be adapted to the context of each individual country while providing coherent, internationally-endorsed guidelines for fulfilling the promise of Education for All by 2015.

1. INTRODUCTION

This manual forms part of an ongoing project initiated in April 2002. Its first phase consisted of preparations for the Regional Workshop on Universalizing the Right to Education of Good Quality, held in Manila from 29 to 31 October 2002. The preparatory work encompassed collating, summarizing and analyzing government reports under global human rights treaties pertaining to education. Similarities and differences in the application of universal human rights standards within national education strategies and practices triggered additional work in the follow-up to that meeting. The coverage of countries was initially limited to those represented at the Workshop, namely Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam. This text broadens the coverage to other Asian countries, occasionally draws on experiences from other regions, and presents global overviews of key issues.

Since the beginning of the new millennium, global strategies for establishing a rights-based approach to education have been increasingly converging, and it is these strategies that form the basis of this manual. Numerous calls for human rights mainstreaming within the United Nations have inspired various collaborative projects of this type. The EFA Global Monitoring Report 2003/4,¹ for example, has integrated the subject of human rights as well as furnishing recent statistics in this area, so none of these are repeated here.

Human rights mainstreaming necessitates integrating human rights throughout education policy-making and practice at all levels, from global to local, emphasizing “the centrality of human rights in all activities”.² This necessitates establishing links between the sectors of human rights, education and development, in working towards the shared goals of education for all, poverty eradication and gender equality, and as a result there is a need for cross-sectoral analysis. Education for all is not only an end in itself but also a means for attaining all globally agreed commitments.

Human rights are founded on the rule of law, and therefore human rights mainstreaming entails the need to understand and apply universal human rights norms. Some of these treaties are fairly well known, such as the Convention on the Rights of the Child, while others are familiar only to the legal profession. This manual aims to present those universal human rights norms that are crucial for education strategies and practices in such a way that educationists, educators or people working in international development can easily consult, comprehend and apply them.

International human rights law consists of a network of treaties that lay

¹ *Gender and Education for All: The Leap to Equality. EFA Global Monitoring Report 2003/4*, available at www.unesco.org/education/efa_report

² *General Assembly - Road map towards the implementation of the United Nations Millennium Declaration: Report of the Secretary-General, U.N. Doc. A/56/326, para. 201*

down minimum standards that should guide and regulate education world wide. These are supplemented with recommended, optimal approaches for tackling key human rights problems, developed through the application of global human rights treaties in all parts of the world. Some universal human rights norms have been integrated into global education strategies, such as the elimination of gender discrimination; others are not widely known. There is, for example, only a brief mention of the rights of teachers in global education strategies, while religious education is not mentioned at all. All universal human rights standards have been included in this manual so as to provide its users with a complete overview.

Furthermore, acknowledging that human rights do not exist in a vacuum requires that an assessment be made of the relationship between all human rights and education. One consequence of treating education as an end in itself as well as a means for poverty reduction is the need to assess what impact the design and implementation of national education curricula have on the ability of graduates to find or create employment. Moreover, the socialization of children occurs chiefly through the education system, and the values it transmits to future generations are of utmost importance.

The minimum human rights standards and optimal approaches have been tested in the field to ascertain how they are best translated into practice in different regions and countries. Just as human rights are universal, so too are the problems associated with their adoption. The existence of a whole network of human rights treaties, their acceptance by the vast majority of countries in the world, and their being enacted in all corners of the globe have created a rich pool of knowledge. This manual draws on that knowledge in order to facilitate both the identification of important human rights questions and the search for their solutions.

For most people, the bewildering complexity of international law creates a formidable obstacle. This text aims to diminish, and possibly eliminate, that obstacle through distilling the substantive guidance for education in the relevant global treaties, and by supplementing this with brief descriptions of practices in Asia and the Pacific and, where necessary, elsewhere in the world. The recent commitment of the United Nations to streamlining human rights reporting and UNESCO's shift towards rights-based monitoring make this approach timely.

This text extracts and explains the core universal norms that apply to education where these are found in the large number of human rights treaties. Each of these treaties has a different number of signatories, and entails a separate reporting procedure, which do not make access to relevant information fast or easy, hence the need for a manual of this sort. This situation does, however, appear to be changing; the Secretary-General of the United Nations has initiated reforms which aim at integrated reporting of all human rights treaties,³ which, if and when they are accepted and implemented, promise to make the content more widely accessible and more easily understood.

³ *General Assembly - Strengthening of the United Nations: an agenda for further change. Report of the Secretary-General, U.N. Doc. A/57/387, paras. 52-54*

Education is dealt with in all global human rights treaties, and is addressed by all regulatory bodies, and therefore a uniform conceptual framework can help identify common themes and strands. This manual has drawn together the substantive norms from a variety of treaties in order to highlight the common core of the universal legal framework. Different human rights treaties address different components of the right to education and, taken together, provide these core human rights standards. As noted above, they define governments' obligations to human rights as making education available, accessible, acceptable and adaptable.⁴ Relevant provisions of key treaties are grouped together as the common point of reference for specific substantive issues throughout this text.

Recognition that universal human rights standards and global education strategies complement one another provides the orientation of this manual. Indeed, the Dakar Framework for Action has reaffirmed education as a fundamental human right and underlined the importance of rights-based government action in implementing Education for All (EFA) at the national level. Its reaffirmation of the right to education draws upon the international legal framework developed over the past five decades. Efforts towards EFA have highlighted the rights of the child and the need to eliminate gender discrimination in education, which complements the success of the Convention on the Rights of the Child in becoming the most broadly accepted human rights treaty in history.

The emphasis on education for *all* sharpens the focus on universal, good-quality and free education for all children, targeted by both EFA declarations and international human rights treaties.

Turning the right to education into a reality and achieving Education for All are continuous, mutually reinforcing processes. However, the kind of qualitative and quantitative data available on the progress of individual countries varies, as do the approaches these countries adopt: while education is under the responsibility of ministries within central government in many cases, in others responsibility has been decentralized to the local level; education has been compulsory in some countries for a long time, others have taken steps in this direction only recently; whether to educate all children together or to allow religious or ethnic communities to educate their children separately is yet another issue where countries may be seen to differ.

It is therefore necessary to assess countries' diverse experiences within a common framework in order to progress towards fulfilling both the core obligations expressed in international human rights law and EFA goals. Such an overview makes it possible to identify the key challenges in designing and implementing policies for rights-based education so as to complement and strengthen education strategies and practices, a process that does not limit itself only to the education sector.

⁴ *Commission on Human Rights - Annual reports of the Special Rapporteur on the right to education, E/CN.4/1999/49, paras. 51-74; E/CN.4/2000/6, paras. 32-65, and E/CN.4/2001/52, paras. 64-65*

While national EFA plans have a strong institutional and policy emphasis, the human rights agenda prioritizes normative action, although the two are complementary. Normative action consists of constitutional and legal measures that aim to enforce the right to education as defined in international human rights law.

In some countries, these include specific provisions for the allocation of funding for education, making as much as 25 per cent of the total budget mandatory. In others, constitutional and legislative changes have asserted the individual right to free public education for all school-aged children, and further specified measures for overcoming exclusion and discrimination. Still others have moved even further, establishing public institutions bestowed with powers to monitor human rights performance and recommend, or even enforce, correctives that may be needed. In this way, representatives of children deprived of their right to education can seek and obtain redress before a national human rights commission or a children's ombudsman.

2. INTEGRATING HUMAN RIGHTS IN EDUCATION: WHAT AND HOW

The International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, together with the Universal Declaration of Human Rights, have been proclaimed by the United Nations to form the core treaties that comprise the International Bill of Human Rights. Three additional key international treaties provide the yardstick by which global efforts towards EFA goals, and specifically to eliminate discrimination in education, are measured: the UNESCO Convention against Discrimination in Education; the Convention on the Elimination of Racial Discrimination; and the Convention on the Elimination of All Forms of Discrimination against Women.

The last of these is prioritized as being essential to the elimination of gender disparities in the earliest agreed time in the Dakar Framework of Action. The six EFA goals extend to the education of children, young people and adults, but the global focus is, inevitably, on children, and thus on the Convention on the Rights of the Child. This Convention, ratified by 192 countries as of December 2003, guides and informs global efforts for improving access to education among children, and lists and defines all the rights of the child as these should be applied in education.

Finally, the connection between education and poverty eradication, and especially the elimination of child labour, is highlighted by two principal international treaties generated by the International Labour Organization (ILO), namely the Conventions on the Minimum Age for Employment and on Intolerable Forms of Child Labour.

The right to education is affirmed in the five key global human rights treaties, presented in Table 1, with the number of ratifying states as of December 2003. The table shows that all states in the world are party to at least one of these. The treaties define different facets of the right to education, as a civil and political, economic, social and cultural right, as well as outlining the right of each child.

The large number of states that are party to these treaties demonstrates their global acceptance. The Convention on the Rights of the Child (CRC), for example, has attracted near universal approval with 192 parties, the sole exceptions being the United States of America and Somalia. A smaller number, although still two thirds of the world, is bound by the International Covenant on Economic, Social and Cultural Rights. Information on the extent to which different states uphold their legal commitments under these treaties is available in the form of government reports, with all five treaties obliging their parties to submit periodic accounts of the practical measures taken to protect human rights, including the right to education.

Table 1: Principal human rights treaties and the number of States Parties

TREATY	ACRONYM	ADOPTION	ENTRY INTO FORCE	NUMBER OF STATES PARTIES
International Covenant on Civil and Political Rights	ICCPR	1966	1976	151
International Covenant on Economic, Social and Cultural Rights	ICESCR	1966	1976	148
International Convention on the Elimination of Forms of Racial Discrimination	AICERD	1965	1969	169
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	1979	1981	174
Convention on the Rights of the Child	CRC	1989	1990	192

As the table shows, not all states have ratified all these treaties; and even when a treaty has been ratified, it is sometimes accompanied by reservations which limit its application in individual countries. Moreover, international treaties are not directly applied in many countries but rather are transformed into domestic legislation, from which national education strategies, routinely developed separately, often differ substantively.

To ground an education system on internationally accepted principles of human rights, a unified strategy is needed which spans the entire education sector, as well as exploiting cross-sectoral linkages. The advantages of a rights-based education are far-reaching: through integrated, all-encompassing strategies education becomes associated with all other human rights and fundamental freedoms, such as the right to work, which plays an important role in poverty eradication, the right to marry and raise a family, which has an impact on demographic changes, and the right to political participation, which highlights the importance of education for building all-inclusive societies.

Principal human rights treaties

Each state party to any of the five key human rights treaties outlined in Table 1 is required to submit periodic reports detailing implementation status. These progress reports by individual governments are self-assessments on how well they are meeting their obligations to international human rights in education. The five parallel reporting processes have generated an immense amount of documentation, one of the advantages of which is that there is now a wealth of readily available information on global efforts to turn rights-based education into a reality.

A disadvantage, however, is that there is often an overlap, or even repetition, in the information, as the right to education is addressed in all five key treaties. Even more importantly, preparing the periodic reports stipulated by each treaty is an immensely resource-consuming procedure, both for individual governments as well as for the United Nations. For this reason, the Secretary-General has launched

an initiative that aims to simplify, streamline and hopefully unify the different elements of this reporting process. This manual follows the rationale for this reform, and presents the human rights obligations relating to education through a cross-cutting scheme that merges the core provisions of all five human rights treaties.

2.1. Legal framework

The legal obligations of governments stemming from the right to education are easily structured according to the following 4-A scheme:

- **Availability** refers to three different kinds of governmental obligation: education as a civil and political right requires governments to permit the establishment of schools respecting freedom *of* and *in* education; education as a social and economic right requires governments to ensure that free and compulsory education is available to all school-age children; education as a cultural right, meanwhile, requires respect of diversity, expressed in particular through minority and indigenous rights.

- **Accessibility** means governments must strive for the practical elimination of gender and racial discrimination and ensure the equal enjoyment of all human rights, and must not be satisfied with merely formally prohibiting discrimination. In addition, accessibility relates to the primary, secondary and tertiary levels of education in different ways; governments are only obliged to provide access to free and compulsory education for all children in the compulsory age range. The right to education should be realized progressively, ensuring all-encompassing, free and compulsory education is available as soon as possible, and facilitating access to post-compulsory education as circumstances permit.

- **Acceptability** requires minimum guarantees regarding the quality of education, for example in terms of health and safety or professional requirements for teachers, but it is much wider in scope than this. These guarantees have to be set, monitored and enforced by the government throughout the education system, whether the institutions are public or private. Acceptability has been considerably broadened through the development of international human rights law: indigenous and minority rights have prioritized the language of instruction, while the prohibition of corporal punishment has transformed methods of instruction and school discipline. The emerging perception of children as subjects with the right *to* education and with rights *in* education has further extended the boundaries of acceptability to include the contents of educational curricula and textbooks, which are increasingly considered from the perspective of human rights.

- **Adaptability** requires that schools respond to the needs of each individual child, in keeping with the Convention on the Rights of the Child. This reverses the traditional approach in which schools expected the children to adapt to whatever form of education the school provided. As human rights do not exist in isolation, adaptability involves safeguarding all human rights *within* education as well as enhancing human rights *through* education. This necessitates cross-sectoral analysis of the impact of education on the whole range of human rights, to monitor, for example, graduate employment by ensuring integrated planning between the relevant sectors.

Table 2 below, describes the human rights requirements that each of these four components entails.

Governmental obligations

For education truly to be appreciated as a *universal* human right, governments' obligations to this end must also be universal. Therefore, international co-operation is considered essential for facilitating the move towards rights-based education in countries whose governments have not yet been able to ensure the globally required minimum for all children. Education statistics inevitably show that not all children enjoy the same quality of, or level of access to, education. The first step towards eliminating discrimination and exclusion is to bring these issues out into the open. Keeping a problem invisible only leads to inaction which perpetuates the process of exclusion, and such inequalities accumulate over time as they become the legacy one generation leaves to the next.

Table 2: Core human rights obligations in education

AVAILABILITY	<p>Obligation to ensure compulsory and free education for all children in the country within a determined age range, up to at least the minimum age of employment.</p> <p>Obligation to respect parental freedom to choose education for their children, observing the principle of the best interests of the child.</p>
ACCESSIBILITY	<p>Obligation to eliminate exclusion from education based on the internationally prohibited grounds of discrimination (race, colour, sex, language, religion, opinion, origin, economic status, birth, social status, minority or indigenous status, disability).</p> <p>Obligation to eliminate gender and racial discrimination by ensuring equal enjoyment of all human rights in practice, rather than only formally prohibiting discrimination.</p>
ACCEPTABILITY	<p>Obligation to set minimum standards for education, including the medium of instruction, contents and methods of teaching, and to ensure their observance in all educational institutions.</p> <p>Obligation to improve the quality of education by ensuring that the entire education system conforms to all human rights.</p>
ADAPTABILITY	<p>Obligation to design and implement education for children precluded from formal schooling (e.g. refugee-seeking or internally displaced children, children deprived of their liberty, or working children).</p> <p>Obligation to adapt education to the best interests of each child, especially regarding children with disabilities, or minority and indigenous children.</p> <p>Obligation to apply indivisibility of human rights as guidance so as to enhance all human rights through education, such as the right to marry and raise a family, or the right to freedom from forced and child labour.</p>

It is crucial to identify in what ways poverty might be seen to result from a denial and/or violation of human rights. Girls and women are particularly prone to being denied higher income due to human rights abuses: in many countries they are denied the right to own or inherit land, to become self-employed, or to have a bank account in their own name. Legal reforms and their effective enforcement are necessary to affirm and safeguard equal rights for all, which must be buttressed by accompanying funds.

Importantly, the process of decentralization may in fact contribute to inequalities in access to education, by making the financing of education the sole responsibility of poor local communities or families. When education becomes locally funded the gap between the haves and have-nots inevitably broadens, as poorer communities are left behind those that are better funded. Breaking this vicious circle requires governments, individually and collectively, locally and nationally, to prioritize support for education and ensure the equal distribution of funds. Ensuring that the right to education is put into practice on a universal scale requires, therefore universal governmental obligations.

The right to education principally involves three key actors: the government, as the provider and/or funding body of public schooling; the child, as the bearer of the right to education and of the duty to comply with compulsory-education

requirements; and the child’s parents, who are “the first educators”. The latter of these pillars, the guaranteed freedom of parents to choose their child’s education and the corresponding responsibilities that freedom entails, must not be misunderstood. The rationale behind parental choice is not to legitimize a denial of their child’s rights; in the case of a conflict between parental choice and the best interests of the child, the child is given priority. Rather, it is to prevent any state’s monopoly of education and to protect educational pluralism.

2.2. Children as privileged subjects of the right to education

While all international human rights treaties assert the right to education without reference to age, clear priority is accorded to young learners, and governments are obliged to provide free and compulsory education for all children.

Child rights

The conventional articulation of human rights in relation to children that aims to safeguard against abuse of power by the state also contains clear references to the duties of all adults, and in particular defines parental responsibilities. Parental obligations regarding the education of their children are complemented by numerous prohibitions against abuse or exploitation. Governments are responsible for creating conditions that support the full realization of the rights of the child, which includes enforcing parental responsibilities towards their children. Governments must also make sure that adults meet their general civic duties, such as paying taxes, through which public education is most often funded.

An illustration of just why rights-based education is needed is provided in Table 3, which highlights the differences in age-based rights of children in selected Asian countries. The data is derived from government reports under the Convention on the Rights of the Child, and only those Asian countries whose reports have recently been considered by the Committee on the Rights of the Child are included. The figures show that in some countries, for example Viet Nam, children can finish their education as young as 10 years old, while they are prohibited from being allowed to work until the age of 15.

Minimum-age restrictions

In many countries, children have not yet been recognized as having the equal standing needed to justify their rights, nor are they always in a position to effectively pursue complaints against denials and violations of those rights. For this reason, a number of actors are involved in working to ensure the rights of the child are observed, ranging from parents and teachers to specialized institutions such as children’s ombudsmen. This broadening of interested parties promoting justice for children is based on three specific features of the rights of the child:

Table 3: The need for a child-rights policy illustrated by minimum-age laws⁵

COUNTRY	SCHOOL LEAVING AGE	-MINIMUM AGE OF EMPLOYMENT	MINIMUM AGE FOR MARRIAGE (F/M)	AGE OF CRIMINAL RESPONSIBILITY
Bangladesh	10	14	18/18	7
Brunei	(not compulsory)	14	no minimum	7
Cambodia	no minimum	16	18/20	no minimum
Fiji	no minimum	12	16/18	10
India	14	14	(varying norms)	12
Indonesia	15	15	(varying norms)	8
Japan	15	15	16/18	14
Laos	10	15	15	15
Myanmar	no minimum	no minimum	no information	7
Pakistan	(not compulsory)	14	no minimum	7
Papua New Guinea	(not compulsory)	14	no minimum	7
Philippines	12	15	n/a	7
Republic of Korea	15	15	16/18	14
Singapore	16	(varying norms)	n/a	7
Solomon Islands	(not compulsory)	12	15	8
Sri Lanka	14	10	no minimum	8
Thailand	16	13	17	7
Viet Nam	10	15	18/20	14

Source: Government reports under the Convention on the Rights of the Child.

education: for example, there might be an education-specific commission; another body dedicated to child rights; yet another with a gender focus; and still another with a broad human rights agenda.

⁵ Note: A specific age is included for education if the respective government has reported that education was compulsory until a legally determined age. Where education is not compulsory or the school-leaving age has not been reported, this is noted. Minimum age for employment tends to be precisely defined by all parties to international conventions on the elimination of child labour, which is addressed below. Minimum age for marriage is in some countries not defined as the laws of particular religious or ethnic communities apply. The minimum age of criminal responsibility tends to be very low, and children may be held to account while having only recently started primary school.

1. the recognition of the rights of the child necessitates that all public authorities, parents and families, as well adults in general, accept specific obligations and responsibilities; the potential for abuse of power inherent in the vulnerability of children requires that special public institutions be created *for* children, alongside children's own right to articulate and defend their rights;

2. the rights of the child reach far beyond the legal system, and refer to all public policies and authorities, since macro-economic and fiscal procedures can jeopardize programmes and projects at the micro level; anticipating the impact of particular policies on children is necessary, as is the avoidance (or at the very least alleviation) of any likely or predictable harmful impact on children;

3. children lack the knowledge, experience and political voice necessary to articulate and defend their rights; moreover, their passive legal status and financial dependence on adults prevent them from effectively using the existing legal or extra-legal mechanisms for human rights protection. Thus, specialized, publicly-funded children's advocates, counsels or ombudsmen are necessary.

A variety of institutions of this sort have been established in different countries, although these tend to replicate the existing distribution of responsibility within government agencies. One may find a range of public bodies that are involved in particular areas of rights-based

Such institutional frameworks make forging a rights-based education strategy both easier and more difficult. On the one hand, a variety of public bodies can provide input highlighting specific dimensions that ought to be integrated in a comprehensive strategy; on the other, a single, comprehensive strategy may be difficult to elaborate due to the co-existence of different government and public institutions, each with a specific agenda and limited responsibility.

3. MAKING EDUCATION AVAILABLE

International human rights law asserts the public responsibility for ensuring free and compulsory primary education. Key provisions included in the treaties are summarized in Table 4, reflecting changes in international human rights law over the last few decades.⁶ These changes have reaffirmed that compulsory education should remain free.

3.1. Universalizing education

Table 4: Key treaty provisions on free and compulsory education

Universal Declaration of Human Rights (1948): Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

European Convention on Human Rights, Protocol 1 (1952): No person shall be denied the right to education.

UNESCO Convention against Discrimination in Education (1960): The States Parties to this Convention undertake to formulate, develop and apply a national policy which ... will tend to promote equality of opportunity and of treatment ... and in particular: a) to make primary education free and compulsory.

International Covenant on Economic, Social and Cultural Rights (1966): Primary education shall be compulsory and available free for all.

Protocol of San Salvador to the American Convention on Human Rights (1988): The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education: a. Primary education should be compulsory and accessible to all without cost.

Convention on the Rights of the Child (1989): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: a) make primary education compulsory and available free for all.

Charter on the Rights and Welfare of the African Child (1990): States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of [the right to education] and shall in particular: a) provide free and compulsory basic education.

(Revised) European Social Charter (1996): With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organizations, to take all appropriate and necessary measures designed: ... 2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

There is a close correlation between poverty, among families, communities and entire countries, and low levels of education among children, and identifying financial obstacles to universal primary education is the crucial first step towards their elimination. This is mandated by universal human rights standards that assert primary education should be free and compulsory. However, the law cannot force either parents or governments to ensure education for all if it is beyond their means; thus, international human rights law mandates a progressive, step-by-step approach to fulfilling the right to education. This necessitates provision of free primary education for all children as soon as this can be accomplished.

⁶ *The UNESCO Convention against Discrimination in Education stipulates that primary education should be free and compulsory; the International Covenant on Economic, Social and Cultural Rights says that "primary education shall be compulsory and available free for all"; while the Convention on the Rights of the Child defines making "primary education compulsory and available free for all," as a governmental obligation, urging nations to progressively achieve every child's right to education on the basis of equal opportunity.*

*Free and
compulsory
education*

International cooperation is often necessary, and reflects the universal application of the right to education. There are two sides to the human rights coin: on the one hand rights refer to what entitlements one can reasonably expect to enjoy, in this case the right to access and pursue quality education; the flip side, however, are the duties and obligations that are expected both of individuals as well as governments, which include providing and supporting education services.

Historically, the education of all children has been the responsibility of the state because it is seen as a vital investment in a country's economic future and, moreover, in combination with other factors will determine the direction that country will take. Rights-based education prioritizes the primary schooling of all children, necessarily directing political choices that might otherwise under-emphasize education. This approach also recognizes that, as children lack a political voice, they need co-ordinated efforts on their behalf to secure quality education through the political process.

Individual countries and regions in general are inevitably at very different stages along the path towards adopting and enforcing human rights guarantees. Asia is the only region yet to develop an inter-governmental human rights system, lagging behind Africa, the Americas and Europe. Initiatives have, however, begun at the sub-regional level,⁷ which aim to close this gap.

Through regional human rights mechanisms, global human rights standards – which define the universal minimum – are adapted to the specific circumstances of each region. Policies have been adopted by all three regional human rights organizations which reinforce the universality of the right to education, and also supplement the minimum global standards through regional law-making and enforcement. This process is carried much further in individual countries.

International human rights law holds that the protection of human rights is, and should be, primarily a national priority. International human rights bodies act as checks-and-balances mechanisms only when national systems fail to ensure global human rights standards. This situation might occur because of a lack of political will on the part of the leadership in a particular country, but such cases are becoming fewer with time.

Also, while political will may be strong, the resources necessary for protecting human rights may be lacking. Poverty especially may impede a country's capacity to fulfil its obligations towards free and compulsory primary education, even more so in countries with a high population of young children. School-aged children may account for well over a third of the national population in some developing countries, while comprising as little as one-tenth in industrialized nations.

That primary education ought to be free for children because they cannot pay for themselves is reinforced by the prohibition of child labour and

⁷ *Towards an ASEAN Human Rights Mechanism: Proposals, Declarations and Related Documents, Working Group for an ASEAN Human Rights Mechanism, 1999*

complementary laws tying school-leaving age to the minimum age for employment. Freedom from adult responsibilities is one of the key features of childhood. This does not imply that education is free for their parents, community, society or the state; no human right is cost-free. Safeguards against police brutality necessitate well-paid police forces; freedom of information cannot be realized without funds to access and disseminate information; while the judiciary cannot be independent unless it is properly funded.

It is taken for granted that individuals should not have to pay for the fire brigade services that prevented their house from burning down; this service should be funded out of public taxes. Direct payments to judges in a legal dispute constitute bribery rather than legitimate fees. Global consensus about services that a government should provide for its citizenry is expressed in legislation that defines government and civil obligations and their corresponding human rights.

3.1.1. Progressive realization

Different models are used by different states to harmonize international treaties with national policies for education. In many countries, international human rights treaties do not apply domestically. For example, in Cambodia, “[international] covenants and conventions may not be directly invoked before the courts or administrative authorities.” Similarly in Singapore, “international conventions such as the CRC do not automatically become part of the domestic legal system upon Singapore’s accession to them. To become part of the legal system Parliament has to enact legislation to implement the said conventions.” A similar model is described by Thailand as “an obligation to revise laws regarding child rights to ensure that they comply” with international human rights treaties.⁸

The extent to which national constitutions and laws, policies and practices have been harmonized with international mandates varies a great deal, and there are many cases around the world where national charters fall short of the requirements of international human rights law. The global blueprint embodies minimum standards, leaving to each country the choice of methods for attaining them, and international co-operation is seen as key to progressive realization of the right to education. Overcoming obstacles to the harmonization of national laws and practices with international standards therefore includes assistance to those governments that are, as yet, unable to translate them into practice. Both international human rights law and EFA targets require national plans.⁹

⁸ U.N. Docs. CERD/C/292/Add. 2, 1997, para. 18; CRC/C/11/Add.13, para. 67.

⁹ International Covenant on Economic, Social and Cultural Rights obligates each party which has not yet been able to secure compulsory education free of charge for all to develop and adopt a detailed plan of action for its progressive implementation. The Dakar Framework for Action contains a similar provision and, in addition, acknowledges that “many countries currently lack resources to achieve education for all” adding that “that no countries seriously committed to education for all will be thwarted in their achievement of this goal by a lack of resources”.

Constitutional guarantees of the right to education

The different national approaches are reflected in varied constitutional provisions. As Table 5 illustrates, there are 43 countries where there is no explicit constitutional guarantee of the right to education, while such a guarantee does exist in 144 countries; that the vast majority of states constitutionally guarantee the right to education reflects the thrust of international human rights law.

Table 5 also shows that in a number of countries the right to education is being progressively realized, and international co-operation is facilitating progress in quite a few of these. The postulate of the Convention on the Rights of the Child whereby all children should have guaranteed access to education regardless of their legal status, or that of their parents, is also gradually being translated into practice. In 37 countries, however, the right to education is formally restricted to legal citizens. The exclusion of children without citizenship from education may amount to a denial of their right to education, or it may be that they are subjected to different conditions.

Singapore provides an illustrative example: *“In the primary school, Singaporean pupils and those who are children of Singaporeans do not pay school fees. Non-citizen pupils in the primary school pay school fees at different rates. Those whose parents are permanent residents, employment pass holders and diplomats of foreign embassies pay a fee of S\$36 (about US\$20) per annum. Other non-citizens pay S\$960 per annum. Still, these rates are much lower than the actual cost (S\$2865) per annum of educating a child in the primary school.”*¹⁰

Table 5: Constitutional guarantees of the right to education

Free and compulsory education for all constitutionally guaranteed:	Guarantees restricted to citizens or residents:
Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia, Congo/Brazzaville, Costa Rica, Croatia, Cuba, Denmark, Democratic People’s Republic of Korea, Ecuador, Egypt, Estonia, Finland, France, Gambia, Georgia, Germany, Ghana, Haiti, Honduras, Iceland, India, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Macedonia, Madagascar, Malta, Mauritius, Mexico, Moldova, Netherlands, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Romania, Russia, Rwanda, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Venezuela, Yugoslavia	Armenia, Bahrain, Cambodia, Chad, Cyprus, Czech Republic, Dominican Republic, El Salvador, Equatorial Guinea, Greece, Grenada, Guatemala, Guyana, Hungary, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Luxembourg, Malawi, Mali, Morocco, New Zealand, Nicaragua, Philippines, Qatar, Republic of Korea, Sao Tome, Seychelles, Slovakia, Slovenia, Syria, Turkey, Turkmenistan, Viet Nam, Yemen
Progressive realization or partial guarantees:	No constitutional guarantee:
Bangladesh, Belarus, Benin, Bhutan, Burma, Cameroon, Comoros, Guinea, Guinea-Bissau, Iran, Iraq, Israel, Maldives, Micronesia, Monaco, Mongolia, Namibia, Nepal, Nigeria, Pakistan, St Kitts and Nevis, Sierra Leone, Sudan, Tanzania, Togo, Uganda, Uzbekistan, Zimbabwe	Angola, Antigua and Barbuda, Bahamas, Botswana, Brunei, Burkina Faso, Burundi, Central African Rep., Cote d’Ivoire, Djibouti, Dominica, Eritrea, Ethiopia, Fiji, Gabon, Indonesia, Jamaica, Kenya, Kiribati, Laos, Lebanon, Lesotho, Liberia, Malaysia, Marshall Islands, Mauritania, Mozambique, Nauru, Niger, Oman, Papua New Guinea, St Lucia, St Vincent, Samoa, San Marino, Singapore, Solomon Islands, Swaziland, Tonga, Tuvalu, USA, Vanuatu, Zambia

¹⁰ *Initial report of Singapore, under the Convention on the Rights of the Child, April 2002.*

Constitutions only lay down a general framework of human rights and corresponding obligations as far as education is concerned. The responsibility for regulating education is divided between the central and regional and/or local administration, who are guided by national and sub-national legislation.

Moreover, secular and religious law may apply in parallel, which can create additional disparities between national education systems and international conventions on human rights, and this can particularly affect girls and women. However, the state is subject to specific obligations to protect human rights, and it is the central government that must ensure the enforcement of these rights throughout the country.

3.1.2. Eliminating financial obstacles

International law is based on the knowledge that education cannot be made compulsory unless it is free. Direct and indirect costs preclude access to education or the completion of compulsory schooling for many children. Although the two pillars of primary education – free and compulsory – are mentioned together in all international human rights treaties, they are not necessarily associated in the policies of international financial agencies or practices of individual countries.

All international human rights instruments require compulsory education to be free. The underlying logic is that by eliminating financial obstacles it becomes possible to ensure all children benefit from compulsory education. As long as families cannot afford the cost of education, participation of their children cannot be enforced. In consequence, children will remain deprived of education and countries of educated and skilled citizens.

Global efforts to this end were jeopardized by consecutive economic crises over the past three decades. Diminished budgetary allocations for education due to pressures of debt repayment, especially in developing countries, led to formal introduction of school fees in quite a few instances. Disunity of global approaches led to bifurcated strategies, with international financial institutions including fees (usually called “cost-sharing”) in compulsory schooling among their conditions for development loans, contradicting the requirements of international and domestic law. Reports accompanying human rights treaties have routinely included references to structural adjustment programmes as the reason for school fees. This discrepancy between legal and fiscal requirements was highlighted by the World Bank as an explanation of paucity of data:

“Very few countries compile data on the contributions of fees more generally to the public sector, even when the fees are commonplace, often because these fees may be formally unconstitutional, or because they may

Budgetary constraints

be technically illegal.”¹¹

One of the major challenges facing human rights campaigners has been the gulf between the allocation of resources for debt repayment and for education. In 1991, the Philippines allocated PHP86 billion for debt servicing compared to PHP27 billion for education. The national Constitution obligates the government to assign the highest budgetary priority to education, and a group of senators questioned whether funding debt repayment to the tune of three times the budget for education was unconstitutional. The Court found that education had indeed received the largest budget of all government departments, as the Constitution required, while debt servicing was necessary for the creditworthiness of the country and, thus, the survival of its economy.¹²

Since around the turn of the millennium, there has been increased momentum towards reviving global consensus that at least compulsory education should be free. In the 1980s, educational loans provided by the World Bank entailed “cost-recovery”¹³ whereby a variety of school fees were introduced, precluding access to school for children whose parents could not afford them. This has been challenged from both human rights and poverty reduction perspectives.¹⁴

The World Bank’s review of the charging of fees revealed in 2002 that this practice was much more widespread than assumed. Indeed, in South Asia fees proved to be the norm rather than an exception, while in East Asia and the Pacific fees of some sort were charged in the majority of countries.¹⁵ Ongoing efforts to forge a comprehensive global approach to the elimination of financial obstacles for compulsory education continue.

The abolition of school fees has resulted in immediate and considerable increases in primary school enrolments in some countries (Uganda, Tanzania and Kenya, for example), and debt relief has often provided the mechanism for this change. Initiatives for the alleviation of unsustainable debt servicing increased funding for education within HIPC-II (the Enhanced Heavily Indebted Poor Countries Debt Relief Initiative). The poverty reduction strategy papers, blueprints for the allocation of funds transferred from debt servicing to development, gave prominent place to education and usually 40 per cent of debt relief was invested in education and health.

¹¹ *World Bank - User Fees in Primary Education, Draft for Review, February 2002.*

¹² *Supreme Court of the Philippines - Guingona, Jr. v. Carague, G.R. No. 94571, 22 April 1991.*

¹³ *Commission on Human Rights – Progress report of the Special Rapporteur on the right to education, U.N. Doc. E/CN.4/2000/6, paras. 45-55.*

¹⁴ *Commission on Human Rights – Annual report of the Special Rapporteur on the right to education, U.N. Doc. E/CN.4/2001/52, paras. 31-41.*

¹⁵ *For East Asia and the Pacific, the review showed that tuition fees were charged in China, Indonesia, Papua New Guinea, Solomon Islands and Viet Nam. Parental and community contributions were common in Cambodia, China, Laos, Malaysia, Papua New Guinea, Philippines, Solomon Islands and Viet Nam. The World Bank - User Fees in Primary Education, Draft of February 2002.*

3.2. Balancing compulsory education and parental choice

Governments are obliged to ensure that education is available while also respecting parental freedom of choice regarding the education of their children. International human rights law requires the state to respect the freedom of parents and communities to establish and operate schools. The rationale is to preclude state monopoly of education and to protect educational pluralism. Because of these two different human rights requirements, states' efforts towards ensuring access to education follow a variety of models, at various points between two extremes: at one end the state can fund a diverse number of schools without actually operating any of them directly; or conversely, it may operate a network of schools in a particular mould without funding any others.

The emergence of the state as the funding body and/or provider of education is a fairly recent development in the history of education. The inherited patchwork of pre-state provision of education is reflected in the variety of the existing models; the trend of privatization in the 1990s has reintroduced this patchwork. The parallel existence of free (state and/or public) and fee-paying (private) schools has been widely recognized and a great deal of legislation has focused on public funding to facilitate establishing and operating schools, a right which is guaranteed under international human rights law.

As far as subsidies for non-state schools are concerned, countries vary widely in their policies. Indeed, there is great variety in the very classification of schools, and the line between public- and/or state-run schools on the one hand, and privately-funded institutions on the other, is not always clear. The classification developed by UNESCO, which is globally used in education statistics, divides schools according to whether they are managed by the state or privately, and thus “*government-aided schools are considered private if they are privately managed.*”¹⁶ Conversely, English courts have classified schools into state (i.e. public) and private using as the main criterion the source of funding. If a school's funding comes out of public revenue, it is defined as a state school regardless of how it is managed.¹⁷

Education was historically defined as a duty much earlier than it was affirmed as a right. The 1959 Declaration of the Rights of the Child laid down the entitlement of the child to receive education,¹⁸ articulating a vision at the time of the child as a passive recipient of education rather than the subject of the right to education. The very notion of education being compulsory entails the obligation of the state to secure access to schooling for all children. Some countries allow alternatives to formal schooling; for example, parents may be allowed to educate their children at home themselves. The complexity entailed in introducing compulsory

¹⁶ UNESCO - 1998 World Education Report, *Paris, 1999*, p. 118.

¹⁷ National Union of Teachers v. Governing Body of St.Mary's Church of England Aided School, [1995] ICR 317, EAT [1997] IRLR 242 (CA); R. v.Haberdashers' Aske's Hatcham Trust, ex parte T [1995] ELR 350; EA 1996, ss 482 (1) (b), (3); 483.

¹⁸ United Nations General Assembly resolution 1386 (XIV) of 20 November 1959, Principle 7.

education while respecting different, often conflicting, interests of all key actors has been illustrated recently in Singapore:

“The Government has, after extensive discussions with community leaders, interest groups and members of the public, decided to make the six-year primary education in national schools compulsory with effect from January 2003, starting with the cohort entering primary 1 that year. The Compulsory Education (CE) Bill was passed by the Singapore Parliament in October 2000 to effect this change. However, in view of the reality of the situation in Singapore, exemptions from CE are given to four categories of pupils. These categories are:

(a) Pupils of madrasahs. The madrasah plays an important role in producing religious scholars and religious teachers for the Muslim community. The madrasahs feel that the training for these scholars and teachers needs to begin from a young age, and that they will not be able to attract enough students at the secondary level if all children had to attend national schools at the primary level under CE ...

(b) Pupils of San Yu Adventist School. The San Yu Adventist School is owned and operated by the Seventh-Day Adventist Mission of Singapore ... The school’s mission is to provide Christian education parallel with the Singapore education system. As the school has historically been offering education to Singaporeans, its contribution is recognized. Hence, Singaporean pupils of the school at the primary level have also been given individual exemption from CE. The school, like the madrasahs, must meet a certain minimum standard at the PSLE [Primary School Leaving Examination].

(c) Children receiving home schooling. A small number of parents have strong views on how their children should be brought up and educated. They choose to educate their children at home, using curriculum packages designed for home-schoolers from abroad. As these parents are very keen on how they want to educate their children, it has been decided that such children are allowed exemption from CE. However, their parents must be able to satisfy the MOE that the two key objectives of CE can be achieved for their children. These two objectives are:

(i) To give our children a common core of knowledge which will provide a strong foundation for further education and training to prepare them for a knowledge-based economy;

(ii) To give children a common educational experience which will help to build national identity and cohesion.

The parents are also required to furnish information on the curriculum and educational outcomes of the home-schooling programme. The progress of the home-schoolers would be closely monitored. They will be required to sit for tests at certain points of their primary education and as well as the PSLE. They would have to meet the same PSLE standard as the children attending the San Yu Adventist School. The MOE reserves the right to withdraw its approval for exemption from CE at any stage. These stringent requirements for home-schoolers to be exempted from CE will help the MOE to ensure that home schooling is not used by irresponsible parents as a loophole to circumvent the introduction of CE and hence negate the purpose for which CE is introduced;

(d) Children with special needs. Several options are currently open for the education of children with special needs. Children with mild and sensory disabilities but who are able to cope with mainstream schools attend such schools which incorporate the appropriate facilities and resources. Children with moderate and profound disabilities are educated in special education (SPED) schools established by voluntary welfare organizations with the help of the MOE and the National Council of Social Service. There are also home-based programmes for such children. While children with learning disabilities are much more able to develop their full potential if they attend SPED schools, the enforcement of CE may be unduly harsh on the parents of such children. Therefore, it has been decided that special needs children who are not able to attend national schools because of physical/intellectual disabilities be automatically exempted from CE.¹⁹

¹⁹ CRC/C/51/Add.8 of 17 March 2003, paras. 421-424.

*Parental
freedom of
choice*

Freedom of choice for parents to decide the kind of education they would like for their child (public or private education or else home instruction) has been a counterpoint to the imposition of uniform public education from the very emergence of international human rights standards. In addition, children tended to be treated as the object of state and/or parental choices, without having a recognized right to choose or even to participate in decision-making themselves; this right is now recognized by the Convention on the Rights of the Child, even if it is not yet put into practice in many countries in the world. Those cases in which the child's right to choose their school has been affirmed or where domestic law gives the child the right to initiate court proceedings concerning education have been referred to in this text.

Compulsory education is in practice a duty as well as a right of the child. The duty-component of this right is accepted as being in the best interest of the child. However, the need to secure the protection of human rights within education and the emergence of the rights of the child is slowly altering compulsory education.

In practice, domestic law often reflects the view that compulsory education is no more than an opportunity for the state to exercise its power to impose, regulate, compel and control the first stage of education, and the *right* to education is often overlooked. To safeguard against the state's abuse of this power, human rights measures are necessary. These are orientated towards balancing the right of the state to compel children to be educated and the right of their parents to opt out of compulsory education.

National constitutions and laws follow different approaches in this regard. Some define education as both a right and a duty, others only as a right, yet others regulate only the freedom of communities or families to educate their children without affirming children's entitlements vis-à-vis the state. Making education compulsory for all children within a determined age range – in practice not merely in law – depends on the availability of schools, the elimination of all obstacles to their access, and the perception of the quality and purpose of education. National approaches and experiences thus vary a great deal.

Table 6: Legally-mandated length of compulsory education

Years	Country
13	Netherlands
12	Belgium, Brunei Darussalam, Germany, St Kitts and Nevis
11	Antigua and Barbuda, Armenia, Azerbaijan, Barbados, British Virgin Islands, Dominica, Grenada, Israel, Kazakhstan, Malta, Moldova, United Kingdom
10	Argentina, Australia, Belize, Canada, Congo, Costa Rica, Dominican Republic, Democratic People's Republic of Korea, Ecuador, France, Gabon, Hungary, Iceland, Kyrgyzstan, Liberia, Monaco, Namibia, New Zealand, Norway, Seychelles, Spain, St Lucia, St Vincent and the Grenadines, Venezuela, USA
9	Algeria, Austria, Bahamas, Bahrain, Belarus, Cambodia, China, Comoros, Cook Islands, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, Georgia, Greece, Hong Kong, Indonesia, Ireland, Japan, Jordan, Kiribati, Lebanon, Libya, Lithuania, Luxembourg, Mali, Netherlands Antilles, Portugal, Republic of Korea, Russia, Sierra Leone, Slovakia, South Africa, Sri Lanka, Sweden, Switzerland, Tajikistan, Tunisia, Ukraine, Yemen
8	Albania, Angola, Bolivia, Brazil, Bulgaria, Chile, Croatia, Egypt, Fiji, FYROM, Ghana, Guyana, India, Italy, Kenya, Kuwait, Latvia, Malawi, Mongolia, Niger, Poland, Romania, Samoa, San Marino, Slovenia, Somalia, Sudan, Tonga, Turkey, Yugoslavia, Zimbabwe
7	Burkina Faso, Eritrea, Lesotho, Mauritius, Mozambique, Swaziland, Tanzania, Trinidad and Tobago, Tuvalu, Zambia
6	Afghanistan, Benin, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Cote d'Ivoire, Djibouti, Ethiopia, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Iraq, Jamaica, Madagascar, Mauritania, Mexico, Morocco, Nicaragua, Nigeria, Panama, Paraguay, Peru, Philippines, Rwanda, Senegal, Suriname, Syria, Thailand, Togo, United Arab Emirates, Uruguay, Vanuatu
5	Bangladesh, Colombia, Equatorial Guinea, Iran, Laos, Macao, Myanmar, Nepal, Viet Nam
4	Sao Tome and Principe

Sources: UNESCO and government reports under human rights treaties.

UNESCO has been collating data on the length of compulsory education and these provide a useful global overview, illustrated in Table 6. While education is compulsory in most countries in the world, the difference in length from four years at one extreme to 13 at the other reflects the varying willingness and ability of governments to ensure that all children and young people complete a determined length of schooling.

It is important to remember that the rights of the child entered international law late, with the Convention on the Rights of the Child introduced in 1989. The child is today deemed to be the principal subject of the right to education, and also subjected to the duty of compulsory education. With rare exceptions, children are not party to decision-making on their education; these decisions involve the government, the child's parents, and professional educators, principally teachers. When decision-making is divided between the parents and the state, each actor tends to claim to represent the best interests of the child, but adults often disagree among themselves as to what exactly those interests may be.

Compulsory education vs. parental freedom of choice

As Table 7 shows, respect for parental freedom to have their children educated in conformity with their religious, moral or philosophical convictions has been affirmed in all human rights treaties. Despite this global consensus, the obligation to make primary education all-encompassing is frequently, albeit erroneously, associated with state-provided schooling. Governments can ensure freedom of education by funding, but not managing, a diverse range of schools, as well as operating a country-wide network of public schools.

Table 7: Universal guarantees for parental freedom of choice

Universal Declaration (1948):

Parents have a prior right to choose the kind of education that shall be given to their children.

UNESCO Convention against Discrimination in Education (1960):

The States Parties to this Convention agree that:

(b) It is essential to respect the liberty of parents, ... firstly to choose for their children institutions other than those maintained by the public authorities but conforming to ... minimum educational standards, and secondly, to ensure ... the religious and moral education of the children in conformity with their own convictions.

International Covenant on Economic, Social and Cultural Rights (1966):

The States Parties to the present Covenant undertake to have respect for the liberty of parents ... to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions ...

International Covenant on Civil and Political Rights (1966) :

The States Parties to the present Covenant undertake to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions.

Convention on the Rights of the Child (1989):

No part of [articles 28 and 29] shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions ...

The right to education by its very nature requires regulation by the state because the state is responsible for ensuring that all educational institutions comply with prescribed standards. The exercise of parental freedom of choice in educating their children generates a variety of schools, and these standards ought to be observed in them all so as to safeguard education as a public good as well as to protect children against abuse.

4. MAKING EDUCATION ACCESSIBLE

Prohibitions on discrimination

References to the Convention on the Rights of the Child in the Dakar Framework for Action reaffirm the obligation of *all* governments to ensure, individually and collectively, education for *all* children, especially to eliminate exclusion and discrimination. Legalized and institutionalized denial of access to education has been globally outlawed. The Dakar Framework for Action has prioritized excluded, vulnerable, marginalized and/or disadvantaged children.

Definitions of these terms vary. For example, the Philippine Commission on Human Rights has defined disadvantaged sectors as “*women, children, youth, prisoners/detainees, urban poor, indigenous people, elderly, Muslims, persons with disabilities, internally displaced persons, informal labour, private labour, migrant workers, rural workers and public sector.*”²⁰ The Commentary to the Dakar Framework prioritizes an all-inclusive approach to education:

“The key challenge is to ensure that the broad vision of Education for All as an inclusive concept is reflected in national government and funding agency policies. Education for All ... must take account of the need of the poor and the most disadvantaged, including working children, remote rural dwellers and nomads, and ethnic and linguistic minorities, children, young people and adults affected by conflict, HIV/AIDS, hunger and poor health; and those with special learning needs...”²¹

Categories of children that are often excluded from education vary between and within countries, but unfortunately little comparative data is available in EFA assessments and education statistics. However, the reporting process under human rights treaties, especially the Convention on the Rights of the Child, attempts to highlight those children that are particularly likely to be excluded.

Cambodia has emphasized that “*in remote and unsafe areas births are hardly ever registered owing either to the parents’ ignorance or to their lack of means ... In the towns, the school attendance rate reaches 95%, whereas in the remote and mountainous areas it is only 40%. As for the children of ethnic minorities, their school attendance is only 5%.*” In addition, Cambodia has listed categories excluded from education as: “*orphans, abandoned children, children of poor parents, vagrants, domestic servants, juvenile delinquents between the ages of 7 and 17, disabled children, children who engage in prostitution, beggars and scavengers.*”²²

²⁰ Commission on Human Rights - 12 Years of Human Rights Advocacy: 1998 Annual Report, Quezon City, p. 7.

²¹ The Dakar Framework for Action - Education for All: Meeting Our Collective Commitments, Expanded Commentary, para. 19.

²² Initial report of Cambodia under the Convention on the Rights of the Child, CRC/C/11/Add.16, 1998.

Similarly, in Viet Nam, “[I]n rural, remote and mountainous areas, there are still many children aged from 6 to 14 who are not enrolled, dropped out or repeat (especially girl children) [for] many reasons, among them the shortage of schools and classrooms or ... distance from their villages to schools. Legal provisions on birth registration have yet to be implemented seriously and fully in a number of localities, especially in the mountainous and remote areas. A big number of children are found with no birth certificate or residence registration which cause[s] difficulties to their enrolment.”²³

Thailand has described exclusion from education thus: “There is a large group of children trafficked into Thailand from neighbouring countries who are classified by Thai law as illegal immigrants. Regrettably, they do not enjoy rights other children take for granted. This includes access to education ... These children are all too often exploited as prostitutes and child labourers. Those who have been violated, physically or mentally exploited, tortured, sold into the sex industry or turned into cheap labourers, neglected or homeless, do not receive the social services and benefits to which they are entitled. This is all the more so for children from very poor families, children of construction workers and of migrant workers as well as children in remote areas and children of minority groups ... Disabled children rarely get the rehabilitation they need. The number of children with AIDS or who tested HIV positive is rapidly increasing and is bound to become a major problem for society in the future ... Most of the children who had no access to schooling were living in remote rural areas, children of poor families, children living in slums, children living in areas that have a different language and culture, children of ethnic minorities such as hill-tribe children and island children.”²⁴

Similarities and differences in these descriptions indicate that the obstacles to be overcome in combating exclusion from education vary, but all are exacerbated by poverty. For minority children, reasons for exclusion may also include the language of instruction in school, while for migrant children there may be legal or administrative obstacles where the right to education is confined to legal citizens.

4.1. Global prohibitions on discrimination

Table 8 contains a list of internationally prohibited grounds of discrimination. During the past fifty years, the number of proscribed forms of discrimination has expanded from a handful at first (race, colour, sex, religion, or political opinion) to encompass those that are particularly important for children, such as birth (including discrimination against children born to unmarried parents) and disability. The process of outlawing discrimination is ongoing and there are forms that have not yet been globally outlawed. For example, although discrimination against non-citizens should be eliminated according to the Convention on the Rights of the Child, which demands the right to education for all children in the country, national laws are often restrictive in defining the subjects of the right to education.

²³ *Second periodic report of Viet Nam under the Convention on the Rights of the Child, 2000.*

²⁴ *Initial report of Thailand under the Convention on the Rights of the Child, U.N. Doc. CRC/C/11/Add.13, paras. 50, 69-70, and 342.*

New grounds of discrimination, such as HIV infection that has emerged in the past two decades with the onset of the AIDS pandemic, are also gradually being outlawed.

While international prohibitions against discrimination tend to be replicated in most national legal systems, the practical elimination of discrimination is an immense challenge the world over. Outlawing the denial of education to a child because she is female or belongs to a minority group or is disabled is the first step towards affirming the universality of the right to education and towards meeting the obligation of extending education to all children. This first step, therefore, the formal prohibition against inequality of access, has to be followed by additional efforts to redress the knock-on effects of years of discrimination.

Table 8: Universally prohibited grounds of discrimination

	UN Bill of Rights ^a	CRC ^b	CoE ^c	OAS ^d	OAU ^e
Race	yes	yes	yes	yes	yes
Colour	yes	yes	yes	yes	yes
Sex	yes	yes	yes	yes	yes
Language	yes	yes	yes	yes	yes
Religion	yes	yes	yes	yes	yes
Opinion	yes	yes	yes	yes	yes
Origin	yes	yes	yes	yes	yes
Property/fortune / economic status	yes	yes	yes	yes	yes
Birth	yes	yes	yes	yes	yes
Social condition/other status	yes	yes	yes	yes	yes
Minority/ethnic group	no	no	yes	no	yes
Disability	no	yes	no	no	no

a. United Nations (UN): The International Bill of Human Rights consists of the Universal Declaration of Human Rights (1948), and International Covenants on Economic, Social and Cultural Rights, and Civil and Political Rights (1966).

b. The Convention on the Rights of the Child (CRC) has prohibited additional grounds of discrimination, notably disability.

c. Council of Europe (CoE): The European Convention on Human Rights (1950) lists and defines civil and political rights, and its prohibition of discrimination was reinforced in 2000 through Protocol No. 12. The European Social Charter (adopted in 1961 and last revised in 1996) deals with economic and social rights.

d. Organization of American States (OAS): The American Convention on Human Rights deals with civil and political rights; the Protocol of San Salvador deals with economic and social rights.

e. Organization of African Unity (OAU): The African Charter on Human and Peoples' Rights deals with individual and collective, civil and political, as well as economic and social rights.

The Convention on the Rights of the Child provides among the broadest prohibitions of discrimination, as Table 8 shows. Thus, it constitutes the most comprehensive analytical framework within which similarities and differences between and within countries can be analyzed. However, there are additional ways that children can be discriminated against, for example, when they are outside the legally-determined ages; those too young may be refused admission to school, just as those considered too old may be excluded.

4.2. The process of eliminating discrimination and exclusion

The pattern of discrimination changes over time and geography. Purposeful government strategies for the elimination of discrimination therefore encompass a variety of legal, educational or fiscal measures according to the kind of investment needed. Safeguarding against prejudice against children with disabilities requires a considerable increase in financial resources, while ensuring equality for girls usually requires sustained public education as well as legal reforms to enable girls and women to effectively take advantage of their right to education.

Progress towards equality of access to education can be illustrated by imagining two parallel, ever-increasing circles starting at the same point: the first depicts a gradual extension of the right to education, and the second an incremental inclusion of those previously excluded. The priority attached to primary education in international human rights law, complemented by plans to achieve education for all by 2015, demonstrates global consensus on this minimum. The progressive realization of the right to education is also evident in the gradual lengthening of compulsory schooling, and evolving guarantees for post-compulsory education.

Statistics that assess progress in combating exclusion from education using international prohibitions as a yardstick are, as yet, rare. What is more, they are commonly generated around single categories, especially gender, race, or disability, while multi-layered discrimination remains statistically invisible. Historically, members of groups that have been excluded from education have inevitably been seen as a low educational priority. International human rights law consequently emphasizes not only the prohibition but also the active elimination of discrimination, especially with respect to girls and women.

This is especially difficult because discrimination is a cumulative phenomenon. For example, Thailand has noted that “*education remains one of the chief areas in which women and girls with disabilities may suffer more discrimination than their male counterparts.*”²⁵ Moreover, lack of education is often attributed to remoteness where the population in question may be indigenous or a minority, and education may require adaptation to a particular language, religion or lifestyle.

²⁵ *Second and third periodic reports under the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/THA/2-3, 1997, para. 28.*

Provisions on non-discrimination in education are included in key international human rights treaties, as Table 9 shows. These range from specifying the obligations of governments to prohibit discrimination in access *to* education, to far-reaching obligations with respect to countering discrimination *through* education, especially by revising curricula and textbooks as these may contain biased portrayals of women, minorities, people with disabilities or indigenous groups.

Table 9: Key provisions on non-discrimination in education

UNESCO Convention against Discrimination in Education (1960):

The States Parties to this Convention undertake to formulate, develop and apply a national policy which ... will tend to promote equality of opportunity and of treatment ...

... the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) Of depriving any person or group of persons of access to education of any type or at any level;
- (b) Of limiting any person or group of persons to education of an inferior standard;
- (c) ... of establishing or maintaining separate educational systems or institutions ... [such systems are permitted for pupils of both genders, for religious or linguistic reasons, and private education is also permitted if its object is not to secure the exclusion of any group].

International Convention on the Elimination of All Forms of Racial Discrimination (1965):

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ...

(v) The right to education and training.

States Parties undertake to adopt immediate and effective measures, particularly in the field of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination ...

Convention on the Elimination of All Forms of Discrimination against Women (1979):

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education ...
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

ILO Convention Concerning Indigenous and Tribal Peoples (1989):

Measures shall be taken to ensure that members of the [indigenous] peoples have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Education programmes and services for the [indigenous] peoples shall be developed and implemented in co-operation with them to address their special needs and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

The imparting of general knowledge and skills that will help children belonging to the [indigenous] peoples to participate fully and on an equal footing in their own community and in the national community shall be the aim of education for these peoples.

Educational measures shall be taken among all sections of the national community, and particularly amongst those that are in most direct contact with the [indigenous] peoples, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history text books and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Convention on the Rights of the Child (1989):

Recognizing the special needs of a disabled child, assistance ... shall be designated to ensure that the disabled child has effective access to and receives education ...

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

5. MAKING EDUCATION ACCEPTABLE

That exclusion from education tends to be transmitted from one generation to another and contributes to the perpetuation of poverty is a well-documented phenomenon. It is also well known that early childhood is a crucial time for developing the ability to learn. The Dakar Framework for Action has therefore prioritized developing the learning potential of all children by targeting education for all as soon as it can be attained. Moreover, the Framework has moved beyond universalizing access to education to highlighting the importance of its quality and relevance.

5.1. Analyzing the entire process of teaching and learning

The anticipated outcomes of the learning process tend to be reflected in commonly-used quality definitions. From the perspective of human rights-based education, therefore, to the standard *input-process-outcome* framework must be added the critical categories of *intake* and *impact*, so that the framework then becomes *intake-input-process-outcome-impact*. It is important to note, however, that international human rights treaties do not go so far as to define quality education; this is an issue left to education specialists and the specifics are expressed in education laws in each country. Rather, international human rights law defines which functions education should fulfil (such as elimination of discrimination, as illustrated in Table 9) and the goals it should try to accomplish (see Table 12).

Indicators have been developed that monitor education from a human rights perspective, and inevitably countries vary widely in their progress. Differences between and within countries reveal, on the one hand, an insufficient number of schools with essential safety and environmental health safeguards, as well as large numbers of untrained and often unpaid teachers, and, on the other hand, schools that perform very well in internationally-administered tests of learning outcomes.

Governments' obligations to define and enforce standards for quality education require that the existing situation be assessed in the context of international targets; standards be developed that should be uniformly applied; and institutions and procedures be identified whereby these standards will be implemented, monitored and enforced. Clearly, no education system can help each child develop his or her potential to the full if schools are poorly equipped or unsafe, and teachers are untrained. Similarly, the elimination of discrimination cannot be achieved through education if minority or indigenous children attend schools of inferior quality.

The focus of human rights in education is on the learners, especially children, and the key to this approach is sustainability. This is achieved, as outlined above, by defining children's entitlements and corresponding governmental obligations. The individual projects of foreign donors or NGOs can certainly be of use to particular groups of children, but any wider benefit is routinely lost with the termination of the programme.

Furthermore, the fact that some children are able to benefit from these initiatives while others are neglected conflicts with the very notion of the equal rights of each child. Projects which have developed and tested child-friendly educational materials or child-centred methods of teaching can prove beneficial when they have an impact on children's entitlements and corresponding government obligations, and need to be sustained and, where appropriate, scaled up.

Therefore, there has been a visible shift in international co-operation to sector-wide approaches (SWAp). This change involves the development of a government-led single education strategy, which is then supported by all externally-funded initiatives. Fully integrating human rights into SWAps thus provides an excellent model for sustaining and extending the benefits that might ensue from individual projects or special programmes.

*The best
interests of
each child*

The key principle of the Convention on the Rights of the Child, which asserts that education must be designed and implemented with the best interests of each child in mind, necessitates identifying and eliminating factors that impede the child's learning. These include language of instruction where it is not the child's first language, or a curriculum that is ill-suited to the age of the child. There is therefore a great need to identify and record at the intake stage the data of all children relevant to the teaching and learning process.

The transition at the exit stage from education into society also demands scrutiny based on human rights criteria. Where learning outcomes are satisfactory but graduates are doomed to unemployment, the needs for cross-sectoral linkages become apparent; the principle of indivisibility of human rights requires co-ordination between education and employment policies. This is addressed in the section on adaptability of education.

The human rights perspective broadens the usual focus on quantitative data to encompass *all* rights of *all* key actors in education. As UNESCO has put it, "*the inclusion of human rights in education is a key element of a quality education.*"²⁶ This entails re-orienting the design of education strategies, which should accommodate the minimum universal human rights standards pertaining to all the actors: learners, parents and teachers. This often necessitates creating quantitative and qualitative data which do not yet exist because the process of integrating human rights throughout the education system is at a fairly early stage. Table 9 outlines the five-point framework, mentioned above, that should inform rights-based questions concerning the quality of education.

²⁶ UNESCO Executive Board - Elements for an overall UNESCO strategy on human rights, Doc. 165 EX/10 (2002), para. 31.

Table 10: Rights-based matrix for the quality of education

KEY COMPONENTS	QUESTIONS RAISED BY THE RELEVANT HUMAN RIGHTS STANDARDS
INTAKE	<p>Is the right of each child to be registered at birth fully guaranteed? If not, what measures have been undertaken to remedy this? Is the census of school-aged children all-encompassing and effective? If information is available on excluded children or those beyond reach, what measures have been taken to close the gaps in the coverage of compulsory education?</p> <p>Do the available statistics include all internationally prohibited grounds of discrimination relating to the children and their parents (race, colour, sex, language, religion, political or other opinion, origin, economic status, birth, social condition, minority or indigenous status, and disability)? If not, are there plans to develop education statistics to cover all internationally prohibited grounds of discrimination?</p> <p>Which data are recorded for each child enrolled in school? Does the procedure require official certificates (such as birth registration, or proof of citizenship or residence)?</p> <p>What is known about each child's family environment? How is parental freedom of choice regarding the education of their children assured? What measures are in place to secure education for children deprived of the family environment?</p>
INPUT	<p>Is there a constitutional or legal guarantee whereby budgetary allocations for compulsory education must be aligned with the estimated cost of quality education for all children? If so, is there an institutional mechanism (such as a constitutional court or a human rights commission) to provide remedies when budgetary allocations are insufficient?</p> <p>If not, has a national plan to ensure compulsory education for all children been developed?</p> <p>If the fiscal responsibility for compulsory education has been decentralized, are the responsibilities of local authorities accompanied by adequately guaranteed resources?</p> <p>Alongside budgetary allocations, have all other necessary inputs in education been defined as well as government or public institutions assigned whose responsibility it is to ensure that they are provided?</p>
PROCESS	<p>TEACHING: Is teachers' participation in the creation of education policies and laws ensured? Are teachers' human and professional rights and trade union freedoms guaranteed in accordance with universal standards? Have measures been introduced to align the profile of teachers (regarding sex, race, ethnicity, language, etc.) with the profile of learners? Have both the contents and methods of teaching been assessed by the human rights yardstick? Does teachers' training include human rights education?</p> <p>LEARNING: Does the education strategy affirm the need for adjustment to each individual child? If not, which measures have been put in place to initiate such adjustment?</p> <p>How are children's diverse abilities and disabilities assessed and recorded? Are obstacles to children's learning continuously assessed so that they can be effectively overcome?</p> <p>What approach has been adopted towards education in the child's mother tongue?</p>
OUTCOMES	<p>When was the last review of the curriculum undertaken and what was changed? Which learning outcomes have been prioritized and why? How is the process of assessing learning outcomes adjusted to children's diverse abilities and opportunities? Which models for assessing learning outcomes are applied to the assessment of human rights education?</p>
IMPACT	<p>Have education curricula been analysed based on human rights requirements? How are external objectives (such as poverty eradication, gender equality or social cohesion) monitored? If graduate unemployment exists, what measures have been taken towards aligning education with employment-creating measures? What strategy has been adopted to achieve gender parity in education? Is the impact of education on progress towards gender and racial equality monitored?</p>

5.2. Correspondence between intake and input

Education statistics tend only to represent school-age children by age and gender. The child-rights approach, however, is much wider in scope, and requires identifying all obstacles that may hinder a child's access to school and his or her learning once at school. At the macro-level, identification and quantification of particular obstacles to a child's education should inform all related statistics. Therefore, the very design of statistics-gathering projects involves important human rights questions.

Quantitative data may need to include a child's religious and ethnic background. Personal identification of individuals by race or religion is prohibited in many countries, and so population-based data is often compiled instead. Recording the religion or political affinity of parents, and thus their children, may well be a sensitive process, as families can often suffer victimization as a result. For example, formal gathering of data relating to religion recently triggered huge controversy in Indonesia.²⁷

Education strategies and quantitative data underpinning them ought therefore to include human rights safeguards that formally recognize diversity but which protect all those who may be perceived as different from discrimination and victimization.

The process of identifying children's learning abilities and disabilities also creates controversy, although of a different kind. Ongoing efforts to create internationally comparable statistics relating to disability (or special needs) have revealed differences in underlying definitions. The proportion of children categorized as having special needs ranges from between 1 per cent in some countries and 41 per cent in others, demonstrating huge divergence in underlying notions of disability, difficulty and disadvantage.²⁸

Ensuring that diversity in the intake of students is matched by appropriate inputs in the teaching and learning process remains an unrealized ideal for most of the world's children. Education routinely receives less money than necessary to ensure quality education for all. The main reason for this is that funding is in most countries discretionary. To genuinely translate assertions of the right to education into a reality, there must be constitutionally guaranteed budgetary allocations, as is the case in some countries which specify as much as 25 per cent of total expenditure, or 6 per cent of their GNP. The following passage describes recent changes to spending on education in Indonesia:

“One of the major developments registered in the reform of Indonesia's system of education is the adoption of the Fourth Amendment to the Constitution

²⁷ *Commission on Human Rights - Report of the Special Rapporteur on the right to education on her mission to Indonesia, E/CN.4/2003/9/Add. 1, para. 27.*

²⁸ *Commission on Human Rights - Annual report of the Special Rapporteur on the right to education, E/CN.4/2002/60, paras. 43-45.*

on 10 August 2002. The newly amended Constitution not only guarantees every Indonesian's right to education, but also the corresponding obligation of the state in this regard. Article 31 stipulates the government's obligation to ensure the fulfilment of the right of every citizen to basic education, as well as the financial responsibility which this fulfilment entails. In addition, the state must develop and implement a national education system, and earmark at least 20% of its own and local governments' budgets to meet the system's requirements."²⁹

This type of legislation guarantees financial commitment to all areas of education. Budgetary allocations often force education authorities to distribute insufficient funds amongst a variety of national or local programmes, while the funds are insufficient for meeting any of them. Therefore, the correspondence between children's entitlement to quality education and the government's obligations in the form of guaranteeing educational funds is an important step. Another important move is to compare the input at the macro-level, that is, the needs and characteristics of the children entering primary schools, and the processes of teaching and learning at the micro-level. A mismatch between input and intake may become apparent where educational resources are in place but they have not been adapted to the learners' needs.

5.3. De-marginalizing the rights of teachers

Education strategies tend to prioritize learning, emphasizing the relevance of the contents of education for students and child-centred learning processes. The practice of teaching attracts less attention, as do internationally-guaranteed rights of teachers. In Cambodia, for example: “[t]eachers have a very low standard of living. For this reason, it is impossible to fight corruption. Moreover, some teachers are obliged to exercise a secondary activity (e.g. as motorcycle taxi drivers or as farmers) in order to feed their families.”³⁰

Inquiries into the fate of many teachers reveal that neither their labour rights nor their trade union freedoms are recognized, both of which form part of core international labour standards. These are legally enforceable in many countries, as well as internationally, and are also supported by the Asian Development Bank. Alongside general reporting and complaints procedures within the International Labour Organization (ILO), the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART) meets every three years to review the application of this Recommendation, and to conduct inquiries into any allegations of non-compliance. These reviews may span a wide range of issues, including teachers' salaries, security of employment, terms of service, teachers' social security entitlements, discrimination against teachers, and the employment of untrained “contract” teachers.

²⁹ Statement by the Indonesian delegation before the 59th session of the Commission on Human Rights, Geneva, 3 April 2003, on the report of the Special Rapporteur on the right to education on her mission to Indonesia in July 2002.

³⁰ Initial report of Cambodia under the Convention on the Rights of the Child, CRC/C/11/Add.16, 1998.

Status of teachers

Primary school teachers are very often employed as civil and/or public servants and this may result in their trade union rights being denied, while a definition of teaching as an essential service leads to the denial of teachers' right to strike. The ILO Freedom of Association Committee has consistently rejected assertions that teaching is an essential service and has affirmed the right of teachers to take industrial action, stating that *“the right to strike can only be restricted and even prohibited in the public service (public employees being those who act as agents of the public authority) or in the essential services in the strict sense of the term (i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population).”*³¹

Moreover, the ILO has affirmed that, besides their occupational interests, trade unions *“should be able to have recourse to protest strikes, in particular aimed at criticising a government’s economic and social policies.”*³²

The ILO has also objected to the denial of collective bargaining to teachers who have the status of civil servants. The Committee has consistently held that restrictions upon civil servants should not apply to teachers: *“Teachers do not carry out tasks specific to officials in the state administration; indeed, this type of activity is also carried out in the private sector.”*³³ The incompatibility of domestic with international law has come to light in, for example, the Philippines.³⁴ The Committee has reiterated its view that *“teachers should enjoy the same protection as other workers against acts of anti-union discrimination. If this protection is not available under the [domestic legislation] due to an interpretation by a national court, then the Government should have recourse to other appropriate measures to ensure that this protection is afforded, in law and in practice, to this group of employees.”*³⁵

In addition, limitations on trade unions, which stem from demands upon them to mould their work according to government policy, have been dealt with by the ILO to ensure that international law protects *“the establishment of trade union organizations that are independent of the public authorities and of the ruling party, and whose mission should be to defend and promote the interests of their constituents and not to reinforce the country’s political and economic system”*.³⁶

³¹ Freedom of Association Committee - 272nd Report, Case No. 1503 (Peru), para. 117.

³² Freedom of Association Committee - 304th Report, Case No. 1863 (Guinea), para. 358.

³³ Freedom of Association Committee - 302nd Report, Case No. 1820 (Germany), para. 109.

³⁴ Freedom of Association Committee - 278th Report, Case No. 1570 (Philippines), para. 162; 281st Report, Case No. 1528 (Germany), para 19; 300th Report, Case No. 1514 (India); para. 21.

³⁵ Freedom of Association Committee - 300th Report, Case No. 1514 (India); para. 21.

³⁶ Freedom of Association Committee - 286th Report, Case No. 1652 (China), paras. 713-714.

5.4. The process of learning

5.4.1. The medium of instruction

The focus of the Dakar Framework for Action on mother-tongue education has highlighted a key obstacle to children’s learning: if the child does not understand the language of instruction, no learning can take place. The Convention

Table 11: Global human rights standards on language, minority and indigenous rights

UNESCO Convention against Discrimination in Education (1960)

It is essential to recognize the right of members of national minorities to carry out their own educational activities, including the maintenance of schools and, depending on the educational policy of each state, the use or the teaching of their own language, provided however:

- (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and the language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;
- (ii) That attendance at such schools is optional.

International Covenant on Civil and Political Rights (1966)

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

ILO Indigenous and Tribal Peoples Convention (1989)

Measures shall be taken to ensure that members of the [indigenous and tribal] peoples have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community. Education programmes and services for the [indigenous and tribal] peoples shall be developed and implemented in co-operation with them...

In addition, governments should recognize the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Children belonging to the [indigenous and tribal] peoples shall, whenever practicable, be taught to read and write in their own language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

Convention on the Rights of the Child (1989)

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

on the Rights of the Child further emphasizes the importance of mother-tongue instruction during the first stages of education, reinforcing the thrust of international human rights law whereby “*the individual, guaranteed substantive equality of treatment, has the right to learn his or her own language in addition to the official language.*”³⁷

This does not mean that the government has an obligation to ensure the teaching and learning of all languages in the country as this would be simply impossible. Rather, it means that governments should facilitate the use of a child’s first language, especially in the earliest years of education.³⁸

International human rights law affirms the right of each state to determine official languages, as well as languages of instruction. As Table 11 shows, general human rights treaties use negative formulations when defining language rights, opting for phrases such as “*nobody shall be denied ...*” etc. The International Covenant on Civil and Political Rights specifies that members of minorities should not be denied the right to use their own language, while the Convention on the Rights of the Child includes a similar provision for indigenous children and children belonging to minorities. Thus, learning other-than-official languages does not burden governments to provide and/or finance such education.

However, international prohibitions of discrimination include language, and thus protect educational institutions – both public and

³⁷ Wilson, D. - *Minority Rights in Education*, available at www.right-to-education.org

³⁸ More information is available at the UNESCO International Mother Language Day, www.unesco.org/education/imld

Language rights

private – which preserve and enrich linguistic diversity. The exercise of parental choice is often the key to this, hence the priority for educational pluralism in international human rights law. The ILO Indigenous and Tribal Peoples Convention provides far reaching safeguards for indigenous peoples and languages, but it has so far been ratified by only a few countries.³⁹

National constitutions tend towards unilingualism since one language of instruction facilitates nation-building. For example, the 1974 Constitution of Burma (now Myanmar) states: “*Burmese is the common language. Languages of the other national races may also be taught.*” The 1986 Constitution of the Philippines affirms that “*the Government shall take steps to initiate and sustain the use of Filipino as a medium of official communication and as a language of instruction in the educational system.*”

Other countries, such as Thailand, have acknowledged the existence of linguistic diversity and the problems that this can create: “*Language is a substantial barrier to full achievement of human rights in Thailand. The isolation brought about by language barriers combines with problems created by undocumented status to create particular dangers in the area of employment, where non-Thai women and girls are particularly vulnerable to exploitation and abuse.*”⁴⁰

Meanwhile, some countries have actually adopted an official multilingual approach: “*Singapore has 4 official languages i.e. Malay, Chinese, Tamil and English. Malay is the national language while English is the language of administration. A fundamental feature of Singapore’s education system is the bilingual policy which ensures that each child learns both English and his mother tongue so as to maintain an awareness of his cultural heritage whilst acquiring the skills to manage in a modern, industrialised economy.*”⁴¹

³⁹ *The Indigenous and Tribal Peoples Convention (No. 169) was adopted in 1989 but as of April 2003 had attained only 17 ratifications, by mostly South American and Western European countries. The only party to this Convention in Asia is Fiji.*

⁴⁰ *2nd and 3rd periodic reports of Thailand under the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/THA/2-3, 1997, para. 41.*

⁴¹ *Initial report of Singapore under the Convention on the Rights of the Child, April 2002.*

5.4.2. The contents of education

International human rights law treats education as an end in itself as well as a means for attaining all other human rights. All international human rights treaties, therefore, include specific guidance for developing the contents of education. The key provisions are reproduced in Table 12. Their similar, often identical, provisions highlight the underlying global consensus.

Table 12: Human rights requirements for the contents of education

UNESCO Convention against Discrimination in Education (1960)

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

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

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

The States Parties to the present Covenant ... agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace ...

Convention on the Elimination of All Forms of Discrimination against Women (1979)

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on the basis of equality of men and women ... (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods ...

ILO Indigenous and Tribal Peoples Convention (1989)

The imparting of general knowledge and skills that will help children belonging to the [indigenous and tribal] peoples to participate fully and on an equal footing in their own community and in the national community shall be the aim of education for these peoples.

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the [indigenous and tribal] peoples, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Convention on the Rights of the Child (1989)

States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment.

These general provisions of international human rights treaties have been amplified and clarified through general comments by the respective treaty bodies. For example, the Committee on the Rights of the Child has elucidated a general comment on the aims of education, which recommends the translation of human rights requirements into educational syllabi, curricula, textbooks and methods of teaching and learning.⁴² The Office of the High Commissioner for Human Rights

⁴² *Committee on the Rights of the Child - The aims of education, General comment 1, U.N. Doc. CRC/GC/2001/1 (2001).*

(OHCHR) has produced a number of compilations of relevant documents within the United Nations Decade for Human Rights Education (1995-2004).⁴³

This process has, at the national level, included formal introduction of human rights in the curriculum. In Cambodia, *“the new curriculum includes human rights, the environment, food, the highway code, ethics and civics with the object of enabling students to achieve a better understanding of their place and role and to make themselves useful in society.”*⁴⁴ In the Philippines, *“Executive Order No. 27 issued on 4 July 1986 ... instructed the Department of Education, Culture and Sports (DESC) to include the study and understanding of human rights in the curricula of all levels of education and training in all schools.”*⁴⁵

There is often a marked difference between the values underpinning human rights education and those that were previously promoted in schools. An example of the broader outlook that rights-based education seeks to adopt can be found in Singapore: *“The importance of the family and filial responsibility are also inculcated in pupils ... The pupils are taught moral concepts such as family unity, love, respect and care for elders, communicating and co-operating with family members, sharing household responsibilities and upholding the sanctity of marriage and the importance of parenthood.”*⁴⁶

Another illustration is provided in the law of Myanmar, which stipulates that *“every child shall abide by the following: (i) upholding and abiding by the law; (ii) obeying the advice and instructions of parents or guardians; (iii) pursuing education peacefully in conformity with the guidance of teachers; (iv) abiding by school discipline, work discipline and community discipline; (v) cherishing and preserving the race, language, religion, culture, customs and traditions.”*⁴⁷

5.4.3. Methods of teaching and school discipline

There is often a huge gulf between formal commitments to education that aim to teach children how to learn and educational practices that go no further than helping children to memorize and accurately regurgitate facts under exam-conditions. A similar gap can be seen between the growing number of child-centred and child-friendly experimental teaching and learning projects on the one hand, and the many critical assessments of most school children’s learning experiences on the other, experiences which are often confined to rote learning.

⁴³ The website of the United Nations High Commissioner on Human Rights (www.unhcr.ch) includes a section on human rights education where these documents, and many others, can be found.

⁴⁴ Initial report of Cambodia under the Convention on the Rights of the Child, CRC/C/11/Add.16, 1998.

⁴⁵ Fourteenth periodic report of the Philippines under the Convention against Racial Discrimination, 1997, U.N. Doc. CERD/C7299/Add.12, para. 28.

⁴⁶ Initial report under the Convention on the Rights of the Child, April 2002.

⁴⁷ Initial report under the Convention on the Rights of the Child, 1995, CRC/C/8/Add. 9, paras. 27 and 118.

One part of the explanation for these widely divergent education experiences is the sheer size of the education sector, which may encompass close to half of a country's population. Another explanation is the emphasis on achieving the global minimum standards for all children, which focuses attention on children with no access to school or whose schooling does not conform to the narrowest possible definition of "quality education".

The current trend of ranking learners, schools and countries according to their performance in tests that measure easily quantifiable learning outcomes has, paradoxically, jeopardized the general commitment to learning. Thus, rights-based education provides a useful pointer to the core objective of education, namely development of the ability to learn and to continue learning throughout life.

Education as a whole faces a considerable challenge in overcoming the denial of children's rights that has been going on for generations, in terms of defining children as the property of their parents or as the object of care and protection, rather than the subject of rights. The following is an illustration from Cambodia:

"In Cambodian society, parents or guardians are habitually heavy-handed and do not allow children to talk a great deal. Because of such oppression, children lack courage, initiative and determination in exercising their rights ... Many parents uphold the ancestral precept that 'children must respect their elders' and shape their children's thoughts to resemble their own ... Cambodia does not yet have a law expressly forbidding parents to strike their children."⁴⁸

Methods of teaching that use the threat of physical punishment as motivation to conform have been found incompatible with the core objectives and purposes of education. For this reason, the process of outlawing corporal punishment started in earnest in the 1990s, leading to changes throughout the world. Table 13 lists countries which have legally prohibited corporal punishment in school, demonstrating how rapid this process of change has been in all regions of the world.

Table 13: National legal prohibitions of corporal punishment in school

Albania, Andorra, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cameroon, China, Colombia, Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Greece, Guinea-Bissau, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malawi, Maldives, Malta, Mauritius, Moldova, Monaco, Mongolia, Namibia, Netherlands, New Zealand, Norway, Oman, Philippines, Poland, Portugal, Qatar, Republic of Korea, Russia, Samoa, San Marino, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Taiwan, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Kingdom, Uzbekistan, Zambia, Zimbabwe

Source: www.endcorporalpunishment.org January 2003

⁴⁸ *Initial report under the Convention on the Rights of the Child, CRC/C/11/Add.16, 1998.*

6. MAKING EDUCATION ADAPTABLE

There have been important changes in the terms used to refer to children with disabilities in recent years, which is one illustration of a broad and growing tendency to acknowledge that it is the education system that needs to adapt to children in a variety of ways, rather than forcing children to fit in with whatever nature of schooling may be on offer.

In the past decades, references to children as “defective” or “disabled” have been replaced by terms such as “special needs”, to emphasize the fact that children include both slow and fast learners, and that there is no “norm” against which a child’s abilities can be measured. The underlying rationale has been to recognize children as individuals, as international human rights requires, rather than designing and implementing education for an average “statistical child” who simply does not exist.

The lack of access to quality education leads to exclusion from the labour market, which perpetuates and increases poverty; however, education alone cannot lead people out of poverty. Rights-based education therefore strives towards aligning different sectors (such as education and employment) within a common conceptual framework. This framework emanates from universally-recognized human rights. Because human rights are interrelated and interdependent, the enjoyment of the right to education leads to the exercise of other human rights, while its denial precludes the enjoyment of most, if not all, other rights. Thus, rights-based education goes much further than simply examining the outcomes of education by assessing its impact on all areas of human rights.

6.1. Adapting schooling to children

There are a number of options available in terms of how to approach both all-inclusive and special education, and different countries adopt various strategies. For example, they may choose a uniform public school system or encourage a diversity of specialized schools; some decide all children should be educated in school while others allow parents to educate their children themselves.

The literature on the beneficial and harmful effects of each of these approaches is voluminous, and there is extensive research scrutinizing how minimum human rights standards should be incorporated into each of these strategies. This reflects the flexibility of international human rights law; it does not suggest, least of all impose, a one-size-fits-all recipe. Rather, it requires a careful analysis of all relevant human rights standards and elaboration of different models through which these can be translated into practice.

The human rights approach necessitates an explicit affirmation that each individual is the subject of equal rights: “All different, all equal” is a slogan often used to express this commitment. In education, however, the performance of learners in standardized tests is the most frequently-used indicator of the quality of an education system. These tests relate to the students’ achievements in specific parts of the curriculum, usually those that are the easiest to quantify, such as mathematics and science. Their results are often converted into national and

international schools and country tables, and attract considerable attention as well as influencing graduates' employment prospects. A definition of education as an investment often leads to success being measured by the salary levels enjoyed subsequent to graduation. The phenomenon of graduate unemployment, however, might point to a discord between education and the labour market.

In addition to the transmission of knowledge, education is the key vehicle for passing on values from one generation to the next. From a human rights perspective, therefore, the entire education system must conform to globally-accepted standards, which includes curricular contents, and the quality of that system is assessed according to the contribution it makes to the enjoyment of all other human rights within society in general.

In this way, otherwise well-rounded education systems may be faulted for their failure to eradicate the inter-generational transmission of racism or xenophobia, and segregated education may be faulted for fostering disintegration of society or even inter-community conflicts. The indivisibility of human rights necessitates assessing the contribution of education to the enhancement of *all* human rights. This is, as yet, an unexplored area. One important reason for this is the sectoral orientation of education, while the rights-based approach emphasizes a cross-sectoral outlook. The particular focus of human rights treaties on the elimination of gender and racial discrimination indicates the issues that are to be prioritized. Moreover, specific provisions for curricular content highlight the kinds of adjustment needed in all areas of education to underpin the promotion of human rights.

Turning the statements contained within the many treaties and conventions into a reality is gradually being made easier by the diverse experiences acquired around the world over the past few decades. These have revealed the need to broaden the focus from *hardware* (funding, schools, teachers or tests) to *software* so as to capture the qualitative dimensions of education, as well as to foster greater dialogue between education and society.

There is no ready-made recipe that would be suitable everywhere. Rather, human rights standards provide guidance on the substantive and procedural standards that ought to be translated into models best suited for particular countries and communities. The Committee on the Rights of the Child has described the process in the following way:

“Efforts to promote understanding, tolerance and friendship ... might not always be automatically compatible with policies designed to develop respect for the child's own cultural identity, language and values, for national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But in fact, part of the importance of [Article 29] lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference.”⁴⁹

⁴⁹ *Committee on the Rights of the Child - The aims of education, General comment 1, U.N. Doc. CRC/GC/2001/1 (2001).*

6.2. Enhancing the desired impact of education

6.2.1. Eliminating child labour

The widespread ratification of the ILO Convention on Intolerable Forms of Child Labour⁵⁰ and the rapid expansion of IPEC/ILO programmes into many countries⁵¹ have provided the impetus for sweeping changes in child labour practices.

Child labour

The linkage between education and work also requires a close examination of the length, quality, orientation and contents of a country's schools system, in terms of its ability adequately to prepare students for earning an income. The phenomenon of graduate unemployment indicates the need to closely link education and the labour market (including self-employment and the formal and informal sectors).

Minimum age for employment

The international human rights framework provides useful guidance by linking the school-leaving age with the minimum age for employment, set by the ILO in 1921 at 14. In 1946, the ILO recommended it be raised to 16. Specific legal commitments were attained in 1973 through the ILO Minimum Age Convention, and each ratifying country has thereby determined the general minimum age for employment. These are included in Table 14 for all countries that have become party to this Convention.

The varying definitions of primary and/or basic education, as well as differing lengths and levels of enforcement of compulsory schooling, make age-related categorizations all the more important. This kind of information is useful in the elimination of intolerable forms of child labour and provision of education to working children, as well as combating child marriage. Problems stemming from inconsistent minimum-age laws were described in 1996 by Thailand (before compulsory education was prolonged from six to nine years, then to 14 years in early 2004):

“The minimum compulsory school age creates a problem for child employment when compared with the minimum employment age. Children are only about 11 or 12 years old when they complete compulsory primary school, too young for the labour market which allows legal entry only to 13-year-olds. Since

⁵⁰ *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour defines the child as anybody under the age of 18. The entitlement to free basic education is thus broadened to encompass all children who have been removed from the worst forms of child labour, even if they are above the school-leaving age. In April 2003, this Convention had been ratified by 136 countries.*

⁵¹ *The first global report under the ILO Declaration on Fundamental Principles and Rights at Work, wherein the effective abolition of child labour was singled out as one of the four categories for follow-up, listed 75 IPEC participating countries. In Asia, 11 had signed a Memorandum of Understanding with IPEC (Bangladesh, Cambodia, India, Indonesia, Laos, Nepal, Mongolia, Pakistan, Philippines, Sri Lanka, and Thailand); China and Viet Nam were categorized as associated with IPEC. International Labour Office - A Future without Child Labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 90th session (2002), Report I (B), p. 137.*

Table 14: Legally-determined minimum age for employment⁵²

14	Angola, Argentina, Bahamas, Belize, Benin, Bolivia, Botswana, Cambodia, Cameroon, Central African Republic, Colombia, Congo/Brazzaville, Congo/Kinshasa, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guatemala, Honduras, Malawi, Mauritania, Namibia, Nepal, Nicaragua, Niger, Panama, Peru, Rwanda, Sri Lanka, Sudan, Tanzania, Togo, Uganda, Venezuela, Yemen, Zimbabwe
15	Austria, Barbados, Belgium, Bosnia and Herzegovina, Burkina Faso, Chile, Costa Rica, Croatia, Cuba, Cyprus, Denmark, Dominica, Fiji, Finland, Georgia, Germany, Greece, Guyana, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Kuwait, Lesotho, Libya, Luxembourg, Macedonia, Madagascar, Malaysia, Mali, Mauritius, Mongolia, Morocco, Netherlands, Nigeria, Norway, Philippines, Poland, Republic of Korea, Senegal, Seychelles, Slovakia, Slovenia, South Africa, Swaziland, Sweden, Switzerland, Syria, Turkey, United Arab Emirates, Uruguay, Yugoslavia, Zambia
16	Albania, Algeria, Antigua and Barbuda, Azerbaijan, Belarus, Brazil, Bulgaria, Burundi, China, France, Hungary, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Lithuania, Malta, Moldova, Papua New Guinea, Portugal, Romania, Russia, San Marino, Spain, Tajikistan, Tunisia, Ukraine, United Kingdom

just over half of the primary school graduates chose to continue to secondary level in the last decade, many have been entering the labour market illegally. Besides, child labour has traditionally been an important source of free labour in rural farming areas and parents will be hard put to find alternative sources of labour.”⁵³

6.2.2. Eliminating child marriage

The emphasis on eliminating all forms of discrimination against girls and women is shared by both international human rights instruments and EFA policies. Moreover, there is a host of global strategies reinforcing this approach, which range from development co-operation to poverty eradication, and are endorsed not only by individual governments but also by inter-governmental development finance institutions.

The global commitment to eliminate gender disparities in primary and secondary education by the year 2005 is the first time-bound goal agreed upon at Dakar. It is, therefore, timely to review progress towards its attainment at the national level. The purpose is to identify remaining obstacles and to forge effective strategies

to facilitate the achievement of the goal within the agreed time-frame.

Gender disparities

Efforts to remedy the unequal enrolment of girls in primary schools have included extending incentives to parents and increasing the availability of, and thereby access to, schools for girls. These moves have included introducing requirements for primary schools to enrol a specific percentage of girls, the establishment of special schools for girls, and the recruitment and training of female teachers. Experiences have shown that initiatives to increase the enrolment of girls and the recruitment of female teachers can be seen to yield short-term results, but these may not be sustained. One reason is often the feminization of teaching for the youngest children in contrast to the paucity of women in education policy-making.

Excerpts from government reports under human rights treaties often highlight this phenomenon. In Myanmar, “*female teachers outnumber male teachers at the*

⁵² States that have become party to the ILO Minimum Age Convention, 1973 (No. 138) have had to formally declare the minimum age for employment when ratifying that treaty. There had been 124 ratifications by April 2003 and the minimum ages for employment are derived from them.

⁵³ Initial report under the Child Rights Convention, 1996, U.N. Doc. CRC/C/11/Add.13, para. 115.

Table 15: Out-of-school obstacles for girls' education

Country	Unpaid household work	Early marriage	Pregnancy
Bangladesh		X	
Brunei		X	
Chile			X
Central African Republic		X	
Dominican Republic			X
Ethiopia		X	
Gambia		X	X
India		X	X
Indonesia		X	X
Jordan		X	X
Kyrgyzstan		X	
Lebanon		X	X
Lesotho			X
Nepal		X	X
Niger		X	
Pakistan		X	X
Papua New Guinea	X	X	
Paraguay			X
Saudi Arabia		X	
Solomon Islands		X	
Sri Lanka	X	X	
Syria		X	
Tajikistan		X	
Tanzania	X		X
Togo		X	
Uzbekistan		X	

Source: Government reports under the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

primary and secondary levels; in 1996/97, female teachers were 79 per cent and 75 per cent, respectively, of the total.”⁵⁴ In the Philippines, “women’s disproportionate under-representation in top-level positions in all areas affecting people’s lives continues to be evident. This is particularly observed in the education sector where women constitute the majority of the schoolteachers but are not equitably represented as the positions go up.”⁵⁵

The reasons why the elimination of gender disparities is often hard to sustain—routinely point to factors outside schools and the education sector in general. Therefore, the principle of the indivisibility of human rights provides helpful guidance as it requires the examination of the entire legal status of girls and women in society, as well as the sources which determine that status.

In many countries, interpersonal relations between individuals, and within families and communities, are governed by religious law or societal custom. In duty-based societies, communitarian values take precedence over individual rights. Hence, a broad range of interdependent factors shape the impact of global strategies aiming at gender equality. Those most often identified by the governments themselves in their reports under human rights treaties are listed in Table 15.

The ways in which girls are able to put their education to practical use, especially in terms of their economic rights, influences the effectiveness of education and underscores the

rationale of the rights-based, cross-sectoral approach. Inconsistencies among education laws, laws regulating family status, and those regulating economic and labour status impede effective and self-sustaining change.⁵⁶

⁵⁴ Initial report of Myanmar under the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/MMR/1, 1999.

⁵⁵ Fourth periodic report of the Philippines under the Convention on the Elimination of All Forms of Discrimination against Women, 1996, U.N. Doc. CEDAW/C/PHI/4, para. 162.

⁵⁶ Economic and Social Commission for Asia and the Pacific - Human Rights and Legal Status of Women in the Asian and Pacific Region, United Nations, New York, 1997, p. 42.

Table 16: Minimum age for marriage

STATUTORY MINIMUM AGE LOWER FOR GIRLS THAN FOR BOYS	COUNTRIES FOLLOWING RELIGIOUS OR CUSTOMARY LAWS	NO MINIMUM AGE FOR MARRIAGE
Austria 15/18	Bangladesh	Benin
Bolivia 14/16	Burkina Faso	Chad
Chile 12/14	Ethiopia	Comoros
Dominican Rep. 15/16	Guinea-Bissau	Cote d'Ivoire
Guatemala 14/16	India	Ghana
Jordan 15/16	Indonesia	Grenada
Kuwait 15/17	Mali	Guinea
Mexico 14/16	Namibia	Guinea-Bissau
Nicaragua 14/15	Sri Lanka	Kenya
Moldova 14/16	Tanzania	Lesotho
St Vincent 15/16	Zambia	Malawi
South Africa 12/14	Zimbabwe	Maldives
Suriname 13/15		Mauritania
Trinidad and Tobago 12/14		Niger
		Saudi Arabia
		Sierra Leone
		Sudan

Source: Government reports under the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Domestic and extra-curricular expectations upon girls are among the most common factors depriving them of the right to attend school. Girls who are required to perform household chores must adapt their school schedule to the daily and seasonal rhythm of subsistence food production or family life, and since poor families depend on the work of each member of the family for their survival, it is often necessary for work to take priority. The ILO's experiences in moving children out of labour and into school has demonstrated the advantage of supplementing prohibitions and condemnations with investment in the promotion of human rights.⁵⁷

Lengthening of girls' education has proved successful in delaying both marriage and childbearing; thus, it complements and strengthens efforts to eliminate child marriage. However, the abyss between official statistics and reality is striking with regard to child marriage. Where it is illegal, it is not statistically recorded, so officially recorded marriages reflect only those marriages that are in compliance with the law.

Child marriage

Child marriage is a tremendous obstacle to girls' education because the minimum age at which girls can marry is often very low, as Table 16 illustrates, and sometimes there may be no minimum age at all. Moreover, parents may consider investment in their daughter's education to be a waste of money, in part influenced by local custom. In Bangladesh, for example, *"marriage of a female child often entails a considerable financial burden on the parents, and it is often perceived that investments made in the education of the girl child may not benefit her own family but the family of her husband and in-laws."*⁵⁸

The left column in Table 16 lists countries where the minimum age is particularly low, which inevitably inhibits the education of girls. It also highlights the still prevalent discriminatory practice of setting a lower minimum age for marriage for girls than for boys. The middle column contains countries where there is divergence between the national law, and religious or customary laws, even when they openly defy the country's own legal commitments to equal rights for girls and women. The right column lists countries where there is no minimum age for marriage, where girls can be legally married during or even before primary school.

⁵⁷ *The Memorandum of Understanding between the Bangladesh Garment Manufacturers and Export Association with UNICEF and the ILO of 4 July 1995, and the Partners' Agreement to Eliminate Child Labour in Soccer Ball Industry in Pakistan between the Sialkot Chamber of Commerce and Industry, the ILO and UNICEF of 14 February 1997.*

⁵⁸ *CRC/C/3/Add.38, 1995, para. 52.*

Table 16 also highlights the difficulties attached to monitoring child marriage world wide. In contrast to the global commitment towards eliminating child labour, the issue of child marriage has not united the public and governments to the same extent. Although the wording contained in two relevant human rights treaties urges parties to prohibit child marriage, reservations to these provisions undermine their translation into practice. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is not fully supported in its efforts to i) diminish the authority of religious and customary laws, and ii) promote girls' and women's rights with respect to marriage and family.⁵⁹

The Convention on the Rights of the Child has attracted a similar lack of commitment, with some parties reluctant to implement changes to laws and practices that legitimize school-age children – especially girls – being married.⁶⁰ The Committee on the Rights of the Child is constantly reminding governments of the necessity to bestow equal rights upon girls. In India, it noted, “*religionbased personal status laws perpetuate gender inequality in areas such as marriage.*”⁶¹ In Bangladesh, the statutory minimum age of marriage set at 18 does not apply to the majority of the population, nor is 14 as the age of sexual consent enforced. Official statistics reveal girls are married as young as 10 years old, and maybe even younger, and the majority of girls have children while they are still legally children themselves:

“Among married adolescents, 26 per cent of 10-14-year olds and 38 per cent of 15-19-year olds use some form of contraception ... 5 per cent of 10-14-year olds and 48 per cent of 15-19-year olds are currently married.”⁶²

In some countries that apply shariah law, no minimum age for marriage may be set. In Brunei Darussalam, “*sexual intercourse by a man with his own wife, the wife not being under 13 years of age, is not rape.*”⁶³ Poverty compounds adolescent childbearing: “*In Indonesia, the Philippines and Viet Nam, the poorest adolescents are nearly seven times as likely to have children as their better-off counterparts.*”⁶⁴

All-encompassing and prolonged education has been shown to decrease population growth and, thus, the numbers of children to be educated in the future. The association between women's education and their fertility is a particular

⁵⁹ Tomasevski, K. - A Handbook on CEDAW, the Convention on the Elimination of All Forms of Discrimination against Women, Swedish Ministry for Foreign Affairs/Sida, Stockholm, 1999, pp. 16 and 37.

⁶⁰ Tomasevski, K. - Women, in: Eide, A. Et al. (eds.) - Economic, Social and Cultural Rights, Martinus Nijhoff Publishers, Dordrecht, 1995, pp. 275-281.

⁶¹ CRC/C/94, 2000, para. 64.

⁶² CRC/C/65/Add.22, 2001, paras. 208 and 222.

⁶³ CRC/C/61/Add.5, 2001, paras. 35 and 38.

⁶⁴ UNFPA State of the World Population 2002, New York, 2003, p. 37.

Table 17: Effects of the length of education on the age of marriage⁶⁷

Country	Less than 7 years of school	More than 7 years of school
AFRICA		
Botswana	26%	15%
Burundi	45%	25%
Cameroon	90%	49%
Ghana	73%	55%
Kenya	70%	36%
Liberia	74%	42%
Mali	93%	79%
Namibia	32%	12%
Niger	92%	28%
Nigeria	83%	33%
Senegal	75%	28%
Tanzania	80%	54%
Togo	71%	28%
Uganda	79%	55%
Zambia	85%	48%
Zimbabwe	75%	28%
ASIA		
Indonesia	70%	23%
Pakistan	57%	19%
Philippines	50%	23%
Thailand	47%	14%
LATIN AMERICA		
Bolivia	53%	30%
Brazil	53%	24%
Colombia	52%	26%
Dominican Republic	77%	36%
Ecuador	63%	30%
El Salvador	73%	33%
Guatemala	67%	28%
Mexico	66%	26%
Paraguay	53%	24%
Peru	64%	21%
MIDDLE EAST		
Egypt	69%	21%
Jordan	47%	27%
Morocco	38%	11%
Sudan	52%	17%
Tunisia	25%	9%
Yemen	68%	26%
OECD		
France	52%	28%
Japan	27%	2%
USA	45%	16%

Source: Singh, S. and Samara, R. - Early marriage among women in developing countries, *International Family Planning Perspectives*, vol. 22, No. 4, December 1996, p. 153.

focus, because education is generally expected to result in fewer and healthier children. Sex education has been introduced in a few countries in the world, and the example of Singapore is illustrative of the changing trend:

“A Sexuality Education Programme was implemented in early 2001 by the Ministry of Education for students aged 11 to 18 years. The programme involving at least 6 hours of sexuality education goes beyond the basics of sex and contraception. Younger children learn about puberty and the changes that happen to their bodies. Teenagers in secondary school learn about boy-girl relationships, pregnancy, pornography, dangers of sexually transmitted diseases, sexual harassment, etc... The programme aims to reinforce core values such as responsibility, commitment, respect for self and others. Topics such as abortion have been included to address the problem of teenage abortions.”⁶⁵

Statistics show that when education lasts for longer than seven years there is a tangible effect on fertility levels.⁶⁶ Table 17 illustrates the effects that the length of education has on the age at which girls are married, used as a proxy for child-bearing figures. Figures represent the percentage of married women between the ages of 20 and 24 who had received respectively less or more than seven years of education.

The length of schooling is, of course, only one aspect of how education can help achieve gender equality. The content of education is also crucially important. One country report presents a typical depiction of gender roles that could be

⁶⁵ *Second periodic report of Singapore under the Convention on the Elimination of All Forms of Discrimination against Women, 2001, U.N. Doc. CEDAW/C/SGP/2, para. 2.5.*

⁶⁶ *Women's Education and Fertility Behaviour. Recent Evidence from the Demographic and Health Surveys, U.N. Doc. ST/ESA/SER.R/137, United Nations, New York, 1995, p. 30.*

⁶⁷ *Women aged 20-24 who were married before 20, by years of schooling*

Eliminating gender stereotypes

describing one of many countries around the world: “*Women’s duties include bringing up children, as well as other household duties.*”⁶⁸ Quite a few countries have consequently begun revising their schools’ curricula to identify and eliminate this kind of discriminatory and/or stereotyped portrayal of girls and women.

In Thailand, for example, “[a]t the primary level, a major NCWA [National Council for Women’s Affairs] study found very significant stereotyping in the standard textbooks used in virtually all schools. The study found that overall in the textbooks male characters appeared twice as often as female characters and that the message presented by these texts was that men and women have different and unequal roles, and that men’s status is superior to women’s. The books presented men as the leaders or administrators in the community, and as family breadwinners. Women are generally presented as housewives, cooks and child carers, and as supplementary income earners in poorer families ... The NCWA has recommended the establishment of an ongoing supervisory system to oversee the production of all future new texts.”⁶⁹

The Committee on the Rights of the Child has urged that the image of women be changed “*in school textbooks by adopting suitable messages to combat inequalities, stereotypes and social apathy.*”⁷⁰ At the national level, an example from Singapore depicts the scope of the challenge:

“Schools continue to play pivotal roles in reinforcing and perpetuating sex-role stereotyping and sexist concepts are still found in the curricula, textbooks and instructional materials ... There is a need therefore to continuously review the curricula and educational and instructional materials across levels vis-?-vis their relevance to the changing roles of women and men ... As in the educational institutions, women continue to be portrayed in very limited, sexist and stereotyped roles in the news, radio, television programmes, advertisements and movies. There is an overabundance of movies that portray women as victims, sex objects, weaklings and hopeless romantics.”⁷¹

⁶⁸ *Initial report of Laos under the Convention on the Rights of the Child, CRC/C/8/Add.32, 1996.*

⁶⁹ *2nd and 3rd periodic reports of Thailand under the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/THA/2-3, 1997, paras. 160 and 168.*

⁷⁰ *Committee on the Rights of the Child - Report on the eighth session (Geneva, 9-27 January 1995), U.N. Doc. CRC/C/38, 20 February 1995, General debate on the girl child, 21 January 1995, Annex V, para. 3 (a), p. 72.*

⁷¹ *Fourth periodic report of Singapore under the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/PHI/4, 1996, paras. 44-45, 157, and 320.*

7. KEY ISSUES ON THE MICRO LEVEL

Just as human rights are declared universal, so too are the problems associated with ensuring they are upheld. Similar, often identical problems are encountered in different countries, and each country can benefit from the experiences of others. Therefore, while country-specific forces will inevitably come into play and there may be the need for gathering different types of data to document underlying obstacles, the rights-based approach to education provides a toolbox of collective experiences for identifying and solving problems within a global framework.

Infrastructure

Human rights law has introduced two procedural innovations: the first of these is to affirm that every individual – including the child – is the subject of equal rights; the second and related development has been to establish broad mechanisms necessary to articulate those rights and ensure they are implemented and upheld at every level of society. Rights-based education depends upon regulatory and institutional coherence; human rights obligations refer to all parts of the government, regardless of the division of power and responsibilities, and require the development of a uniform and comprehensive legal framework for education that takes into account the goals of Education for All and the various roles of government departments in achieving them. These obligations very often span a large number of government and public bodies; for example, in Singapore, 13 ministries and agencies are encompassed by the Inter-Ministerial Committee on the CEDAW.⁷²

Clearly, it would be meaningless to assert human rights without establishing effective procedures for redress in the case of their denial. Explicit in individual rights, therefore, is the right to due process and the means for grievances to be given a fair hearing. For this reason, side by side with the evolution of human rights law has been the establishment of institutional infrastructures, both legal and extra-legal, for dealing with human rights violations, with judiciaries and human rights commissions around the world playing a vital role.

Contrary to the frequent perception of enforceable human rights as being limited to the civil or political spheres, human rights commissions tend to have much of their caseload dominated by complaints against violations of economic and social rights. For example, some 44.5 per cent of the cases dealt with by Indonesia's National Commission on Human Rights in the year 2000 were classified as violations of the right to welfare.⁷³

Table 18 shows how rights-based education can be put into operation, which new questions it raises, and what guidance it provides for the qualitative and quantitative data that need to be collated from the existing statistics or, sometimes, created anew.

⁷² *Second periodic report of Singapore, U.N. Doc. CEDAW/C/SGP/2, 2001, para 2.1.*

⁷³ *The National Commission on Human Rights Indonesia - Annual Report 2000, Jakarta, 2001, p. 69.*

Table 18: Best practices in monitoring rights-based education

	KEY ISSUES	BEST PRACTICES
AVAILABILITY	(1) Correspondence between budgetary allocations and human rights obligations	(1) Budgetary allocations based on the estimated cost of quality education for all obligatory, complemented by human rights correctives and remedies for non-compliance
	(2) Congruence between available educational provision (formal schooling, private and out-of-school education) and school-aged children	(2) Identification of gaps in coverage and measures to close them
	(3) The teaching profession	(3) Observance of human rights and labour law standards for teachers
ACCESSIBILITY	(4) Continuous monitoring of out-of-school children and the identification of reasons for non participation	(4) Measures ensuring access to school for excluded children, or provision of education where the children are
	(5) Identification of all obstacles to completion of compulsory education by all children	(5) Comprehensive strategy for the elimination of all obstacles (legal, administrative, financial, etc.)
ADAPTABILITY	(6) Specification of quality standards	(6) Supervision of all educational institutions to ensure conformity with quality standards
	(7) Rights-based teaching	(7) Human rights safeguards for the contents of curricula and textbooks, methods of instruction, discipline, etc.
	(8) Elimination of all barriers to learning	(8) Adjustment to language, religion, provenance, disability, family environment, health status, etc.
ACCEPTABILITY	(9) Concordance of age-determined rights	(9) Child-rights approach to all age-determined rights (education, work, marriage, etc.)
	(10) Moulding education to enhance all human rights	(10) Human rights impact assessment (e.g. graduate unemployment, economic and social exclusion, gender equality, conflict-prevention, etc.

8. HUMAN RIGHTS QUESTIONS ON THE MACRO LEVEL

There are considerable differences in the kinds of language used to articulate education strategies around the world, which reflect great diversity in the underlying definitions of, and approaches to, education. Education can be defined in a great many ways from a great many perspectives: as a means for increasing an individual's earning capacity, for example, or for reducing birth rates. An economist, meanwhile, may define education as the efficient production of human capital and consider human rights dimensions as external to it. Such a definition will obviously have different implications for education than one wherein people are seen as the subjects of rights.

Mainstreaming human rights in education

Human rights law calls for the mainstreaming of human rights throughout the teaching and learning process; from this perspective, education is both an end in itself as well as a means for achieving other goals. This contrasts markedly with the human-capital approach, as illustrated by the obstacles faced by children with physical and learning disabilities in some countries. The costs involved in meeting the needs of children with physical disabilities, for example in terms of wheelchair access, and those with special learning needs, are deemed by some authorities to be too great considering the minimal returns they expect to receive.

This type of reasoning challenges the very premise on which the notion of human rights is based, namely the equal worth of all human beings, and the importance of education *for all*.

This difference in emphasis demonstrates the need for a consistent and comprehensive human rights approach to education so as to integrate human rights in domestic as well as international strategies and monitoring mechanisms.

Globalization vs. localization

The relationship between the dual trends of globalization and localization also has a bearing on rights-based education. On the global level, education strategies range from efforts to provide primary schooling for all children to ensuring the quality of internationally-traded education services. At the national level, meanwhile, education comes under the responsibility of regional or local authorities, and the growing trend towards decentralization in many countries further establishes local control over education policy. Globalization particularly affects the upper levels of education, with universities becoming a traded service in most countries, as well as internationally, while primary education remains localized. Local languages, customs and cultures are transmitted from one generation to another at this stage as the basic safeguard against their loss.

A large number of governmental and inter-governmental institutions co-operate on education, with concerns ranging from finance to gender to graduate unemployment. However, though there may be co-operation, many aspects of education are nonetheless dealt with by separate government agencies or public bodies. The unique advantage of the human rights approach, therefore, is its

comprehensive legal framework, applicable regardless of horizontal or vertical divisions of responsibility, and it is this symmetry that ensures sustainability. It associates individual entitlements with the corresponding government obligations, linking empowerment with accountability.

Human rights interact with every branch of government and extend to every part of society, and therefore mainstreaming requires a coherent approach among and between regulatory and institutional bodies. In particular, the rule of law must be broadened to include macroeconomic and education strategies, especially in terms of working to eliminate financial barriers to schooling.

Domestically, payment of taxes that fund education and policy implementation ensures the collective participation of the whole community. Internationally, the universality of the right to education is premised on global co-operation in order to achieve equal access by offering assistance to less economically developed countries.

Importantly, the scope of human rights commissions must extend far beyond the legal system, since the political and macroeconomic policies themselves can jeopardize or undermine individual entitlements. Anticipating the human rights impact of particular policies is therefore a necessary part of the monitoring process.

The orientation of global development strategies towards eradicating poverty offers a powerful opportunity to mainstream human rights and gender equality in education. There is a close relationship between poverty, the denial of the right to education and gender discrimination, and these combine and interact, trapping new generations – especially girls – into a downward spiral of denied rights and poverty.

A lack of access to education and the denial of their right to work, and of their rights at work, lead to women’s financial dependence on male members of their family, and this increases poverty among girls and women, which perpetuates ignorance, and so it goes on. This relationship between poverty and ignorance provides the justification for rights-based education. Human rights mainstreaming usefully complements the current focus on the means of education, namely the priority for *all* children to start and finish primary school, by asking: education for *what*?

One important purpose of education is the provision of knowledge about human rights, especially those of girls and women. While there has been considerable progress on this front in some countries around the world, in many others the process has barely begun, as illustrated by the self-assessments of Papua New Guinea and the Solomon Islands:

“[In Papua New Guinea, t]he Constitution, domestic law and the Convention are not yet meaningful in the lives of many rural children. Prevailing ‘traditional acceptance’ regarding the age of marriage and other issues relating to the protection of the child make both domestic law and the Convention insignificant in the lives

of children in many remote and traditional villages. This fact poses serious problems, even though it is considered to be a temporary situation.”⁷⁴

“In certain areas of the [Solomon Islands], customary marriage practices may, for example, allow a female child of comparatively young age to be married to a person chosen by her parents, but against her own will. In such cases any potential advocate for the girl’s interests might be deterred for several reasons. Persons who might help would not be welcome interfering in family affairs. Such persons may also be uninformed of the child’s legal rights under the Constitution. Or an advocate may not be willing to disrupt the highly valued cohesion of the community in such a circumstance. Though such hypothetical situations may or may not be uncommon, a legal case must be presented before the strength of the constitutional protection can be effectively measured.”⁷⁵

8.1. All-inclusive education or separate schools?

National constitutions and laws vary considerably in their approach to the question of whether all children should be educated together. Some envisage a country-wide, uniform network of public schools, others guarantee plurality by affirming the freedom of parents and communities to establish and operate educational institutions of many kinds. In Indonesia, for example, the 1999 Law on Human Rights has stipulated that “*every child has the right to access to education and schooling as befits [every child’s] interests, talents and intellectual capacity.*” The dual system of public and private, free and fee-based, religious and secular schools has thereby been enshrined in national law, which also guarantees freedom for fund-raising for “*private schooling and education*”.⁷⁶

*Religious/
secular schools*

As far as religious versus secular education is concerned, some constitutions affirm that education can be provided by religious communities, while others regulate religious education in public schools. For example, the 1957 Constitution of Malaysia and the 1963 Constitution of Singapore specify that “*every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of such law.*”

This kind of approach safeguards the collective religious and/or linguistic identity of particular communities, but raises important questions from the viewpoint of individual rights, as well as challenging the role of education as a public good. The parallel existence of public and private schools raises two particularly important issues:

⁷⁴ Report by Papua New Guinea, CRC/C/28/Add.20 of 21 July 2003, para. 80.

⁷⁵ Report by Solomon Islands, CRC/C/51/add.6 of 12 July 2002, para. 476.

⁷⁶ The House of Representatives of the Republic of Indonesia - Legislation Number 39 of 1999 Concerning Human Rights, Jakarta, 23 September 1999, State Gazette of the Republic of Indonesia No. 165 of 1999.

- first, the public-/private-school divide may replicate, and indeed contribute to, existing material inequalities within and between communities; the poverty gap often coincides with racial, ethnic, religious or linguistic divisions in society, and there needs to be a thoughtful examination of the existing models of education, and how these can help eliminate discrimination and enhance societal inclusion through participatory approaches;

- second, governments are now seen to have even greater responsibility to education: in addition to ensuring that all educational institutions conform to prescribed quality standards, they must also guarantee that those standards are informed by a clear commitment to human rights. The contents of educational curricula and textbooks, methods of instruction, or administration of school discipline may conflict with universally guaranteed human rights, especially the rights of the child.

To meet their human rights obligations, therefore, governments must carefully and thoughtfully weigh up the impact of the different schools systems on achieving education for all. We have noted that various grounds of exclusion and discrimination combine, trapping new generations – especially girls – in a vicious circle where a lack of access to education leads to their exclusion from the labour market, which then reinforces and increases individual and familial poverty. The lack of recognition of basic rights, starting with the right to registration at birth and the right to citizenship, inevitably leads to children being denied the right to education. Domestic servants may start working at the age of four, at least 80 per cent are girls, and 70 per cent come from categories victimized by discrimination, such as ethnic minorities or migrants.⁷⁷

*Stages in
achieving
all-inclusive
education*

*Education as a
right*

There are four typical stages that can be identified as education systems move towards establishing an all-inclusive policy. The first stage involves recognizing education as a right. Where the right to education is recognized, non-citizens are often explicitly excluded. Children without identity documents may be implicitly denied entry where such documents are required for enrolment. In many countries, non-citizens are denied the right to any kind of schooling. The Convention on the Rights of the Child unequivocally asserts that every child has the right to education, but reports under human rights treaties have revealed that a lack of citizenship may constitute the most widespread legal obstacle to the enjoyment of this right. Again, girls and women are particularly victimized, because gender discrimination is often embedded in laws which may state that a child can only acquire the citizenship of its father.

Where there is a recognition of education as a human right, the second stage involves segregation, whereby girls, indigenous people, children with disabilities, or members of minorities are given access to education but confined to separate, routinely inferior schools.

⁷⁷ *Sub-commission on the Promotion and Protection of Human Rights - Child domestic workers in Benin, Costa Rica and India. Submission by Anti-Slavery International to the 25th session of the Working Group on Contemporary Forms of Slavery, Geneva, 14-23 June 2000.*

Towards integration

The third stage involves moving from segregation towards integration. Groups newly admitted to mainstream schools have to adapt, abandoning their mother tongue or religion, or their usual residence if they are enrolled in boarding schools. Girls are admitted to schools whose curricula were designed for boys. Indigenous and minority children are placed in schools that provide instruction in an alien language and that often teach them an interpretation of history that denies their very existence. Assimilation entails the imposition of uniformity: integration acknowledges diversity but only as a departure from the “norm”, and newcomers have to adjust to the standard which favours male over female or speakers of the dominant national language over those speaking a vernacular.

Schools respond to diversity

The fourth stage requires that schools respond to the diversity of their students. The previous onus on children to adapt to whatever education was available is replaced by adapting education to the best interests of each child.

These different stages can be recognized in various parts of education systems in all countries around the world, but no country can be said, as yet, to have achieved full compliance with all international human rights obligations in education. Thus, international human rights bodies are always critical when assessing a country’s compliance, pointing out shortcomings and suggesting improvements.

It is vitally important that human rights be recognized and protected on a permanent basis, especially taking into account legislative changes around the world. Greater autonomy in developing education systems and curricula as a freely-traded service must be balanced against individual rights, particularly each child’s entitlement to free and compulsory education.

8.2. Public or private education?

The obligation to make primary education free of charge is frequently, albeit erroneously, associated with the government provision of primary education through state and/or public schools, although it may be implemented through subsidizing a diverse range of primary schools. Some countries have only public schools, others only private, while most have a mixture.

The meaning of “private” varies a great deal. In its broadest sense, it encompasses all non-state schools, some of which may actually be partially or even fully funded by the state. The assumption behind the term “private” is that all such schools are profit-making, while in fact many are not. The term is applied to formal and non-formal education, religious and secular schools, minority and indigenous schools, as well as schools for children with special needs. Some private schools supplement state institutions and provide education in a particular minority language or religion, or accommodate children with physical or learning disabilities. Others are established as an alternative to state-provided education.

The right to education by its very nature requires regulation by the state because the state is responsible for ensuring that all educational institutions comply with prescribed standards. The exercise of parental freedom of choice in educating

*Liberalization of
education*

their children generates a wide variety of schools, and these standards ought to be observed in them all in order to safeguard education as a public good as well as to protect children against abuse.

The urgency to reaffirm the right to education has been heightened by resumed negotiations on liberalizing trade in education services. Exporters of education services have set the tone, slanting education towards an internationally traded service, and it is therefore important to define the nature and scope of that part of education that should remain exempt and continue as free to the public. The question is: are we heading towards a view of education as a commodity or towards realizing education as a right?

New Zealand notes that it is an issue centring on “*the divide between public policy and commercial activity*”,⁷⁸ and the implications for education are profound. International human rights law defines free and compulsory education as a government obligation, thus implying that it should be a free public service, while permitting private education for those parents who desire and can afford it, bearing in mind most private schools charge for their services.

The process of privatization is increasingly creating two parallel education systems, with two corresponding tiers of quality, and public education has been dubbed “poor public education for the poor”. The option of free education for many parents is not “free” in any meaningful sense of the word because their responsibility to their children leaves them little choice but to join the exodus from public education to private schools. This makes children’s education dependent on the purchasing power of their family, which is in direct conflict with international human rights law which requires governments to ensure equal access to education for each child.

The General Agreement on Trade in Services (GATS) contains an important and relevant provision: it does not extend to services provided “*in the exercise of governmental authority*”. Articles 1(3)(b) and (c) of GATS set out this legal proviso:

“(b) ‘services’ includes any service in any sector except services supplied in the exercise of governmental authority;

(c) ‘a service supplied in the exercise of governmental authority’ means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.”

This exemption potentially covers all public compulsory education. Thus, individual governments can exempt all education from liberalization and/or privatization, or at least primary and/or compulsory education. The list of countries in Table 19 demonstrates that some countries have included all parts of their education in their liberalization commitments, which may jeopardize the

⁷⁸ World Trade Organization - Negotiating proposal for education services: Communication from New Zealand, S/CSS/W/93 of 26 June 2001.

preservation of education as a free public service if it is not adequately funded. Moreover, a shift towards characterizing education in terms of property rights may be a precursor to the subjecting of all education – including primary and/or compulsory education – to liberalization.

Table 19: Liberalization commitments in education under GATS

WTO member	Commitments by education sub-sectors				
	Primary Education	Secondary Education	Higher Education	Adult Education	Other Education
Albania	X	X	X	X	X
Armenia			X	X	
Australia		X	X		X
Austria	X	X		X	
Bulgaria	X	X		X	
China	X	X	X	X	X
Congo, D. R.			X		
Costa Rica	X	X	X		
Croatia		X	X	X	X
Czech Republic	X	X	X	X	X
Estonia	X	X	X	X	X
European Community	X	X	X	X	
Gambia	X			X	X
Georgia	X	X	X	X	
Ghana		X			X
Haiti				X	
Hungary	X	X	X	X	
Jamaica	X	X	X		
Japan	X	X	X	X	
Jordan	X	X	X	X	X
Kyrgyzstan	X	X	X	X	
Latvia	X	X	X	X	
Lesotho	X	X	X	X	X
Liechtenstein	X	X	X	X	
Lithuania	X	X	X	X	
Rep. of Macedonia		X	X	X	
Mali				X	
Mexico	X	X	X		X
Moldova	X	X	X	X	X
New Zealand	X	X	X		
Norway	X	X	X	X	X
Oman		X	X	X	X
Panama	X	X	X		
Poland	X	X	X	X	
Rwanda				X	
Sierra Leone	X	X	X	X	X
Slovak Republic	X	X	X	X	X
Slovenia		X	X	X	
Switzerland	X	X	X	X	
Taiwan	X	X	X	X	X
Thailand	X	X		X	
Trinidad and Tobago			X		X
Turkey	X	X	X		X
USA				X	X
Total	31/44	36/44	35/44	34/44	20/44

Relatively few WTO members have made specific commitments to liberalize their education sectors, and many of those that have been made are only partial. This is largely because negotiations are still at an early stage. Nevertheless, it is surprising that almost as many commitments to liberalization have been entered for primary education as for higher education, as Table 19 shows. These commitments are, it is important to note, irrevocable as well as legally enforceable.

9. LOOKING AHEAD

The development of national education strategies is influenced by many factors, not least the financial implications of opting either for public or private, free or fee-based education, a decision which all governments face today. Human rights criteria should – but often do not – form part of such decisions, especially where international human rights law clearly specifies government obligations, such as ensuring free and compulsory education for all children or eliminating gender discrimination *in and through* education.

Governments in all countries have to choose between a multitude of policy priorities, notably the level of public investment in education while under tight budget constraints. For developing countries, such decisions are even more difficult and perhaps of even greater significance, because needs tend to vastly exceed available resources. To implement rights-based education requires i) a knowledge of the global human rights standards that should inform education strategies, and ii) the development of necessary skills to adapt these standards to national conditions. The aim of this manual has been to provide a resource for achieving both these.

The manual does not claim that answering key questions is easy or that there are ready-made global recipes to resolve complex problems. Rather, it has outlined the core global human rights standards contained in international law, which defines government obligations and which mandates the incorporation of human rights in national education strategies.

Human rights are defined as government obligations because they do not materialize spontaneously through the interplay of market forces or charity. Prioritizing the rights of children derives from the fact that children cannot wait to grow; deprivation of education is difficult, often impossible, to redress subsequently. The rationale behind global human rights standards is to assist with their incorporation in national education strategies, because education has a multiplying effect: where the right to education is effectively guaranteed it enhances the enjoyment of all other rights and freedoms, while when the right to education is denied it precludes the enjoyment of many, if not all, other human rights. Government human rights obligations are based on the premise that education is a public good and institutionalized schooling a public service.

*Affirming need
for free and
compulsory
education*

Historically, free and compulsory education has proved to be essential for the elimination of child labour. Similarly, all-encompassing and free primary and secondary education for girls has often helped raise the age at which they marry and bear children. As a result, children in subsequent generations are easier to educate, partly because they are fewer in number and also as they are born to better-educated parents.

Education is key to affirming the whole range of human rights, hence the increasing consensus on the need for human rights mainstreaming in the schools system. With the benefit of hindsight, it is easy to see why past models which defined education as the springboard to guaranteed, life-long employment in the civil service collapsed when governments ceased to be their country's principal employer. Having learned that lesson, education policies need to be developed that will ensure the future workforce are equipped to adapt themselves to ever-changing labour markets. In addition, statistics have traditionally measured only the prescribed learning outcomes of a school's curriculum from an internal perspective; however, the extent to which the schools system contributes to the skills and abilities of a country's graduates is crucial for making education self-sustaining.

Education reform has been a standard feature of many countries since the turn of the millennium, with adaptation to the process of globalization often the driving force behind these reforms. However, rarely is there a blueprint which articulates the key aims of education, defines the sources and deployment of resources whereby these aims are to be achieved, specifies the government and public institutions responsible, defines the rights and duties of all stakeholders, and outlines the procedures for their enforcement.

Finally, the need to integrate education in overall development strategies offers the opportunity for other central issues to be discussed, which can then help take education in the direction desired by all key stakeholders. This is precisely the reason that EFA goals, as well as international human rights law, insist on national plans. This manual has been written to facilitate this process by summarizing, as briefly and simply as possible, the most relevant human rights issues that should inform such a plan.

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