

# A HOLISTIC VISION OF THE RIGHT TO EDUCATION

*by Paulo David*



*The UN Convention on the Rights of the Child (1989) suggests a holistic vision of the right to education. As this international human rights treaty powerfully combines civil and political rights with economic, social and cultural rights, it provides for a dynamic interpretation of the right to education, covering significant issues such as non-discrimination, violence, right to privacy, freedom of thought, right to rest and leisure, and student participation and empowerment.*

*La Convention relative aux droits de l'enfant (1989) invite à une saisie d'ensemble du droit à l'éducation. En raison même du fait que cette Convention traite à la fois des droits civils et politiques, économiques, sociaux et culturels, elle permet une interprétation dynamique d'enjeux fondamentaux tels la non-discrimination, la violence, le droit à la vie privée, la liberté de pensée, le droit aux loisirs ainsi que la participation de l'élève et sa reconnaissance en tant que sujet de droit.*

Education as a human right has been enshrined in several significant international human rights instruments, including the *Universal Declaration of Human Rights* (1948), the *International Covenant on Economic, Social and Cultural Rights* (1966) and the *Convention on the Rights of the Child* (1989). The aim of this paper is to look at some specific dimensions of the right to education as understood under the *Convention on the Rights of the Child* (the Convention, hereafter). These are complementary – and in no way in opposition – to the interpretation of the same human right under both the *Universal Declaration* and the *Covenant*.

### **The Right to Education : a Global approach**

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The *Convention* is the most comprehensive treaty among the seven main international human rights instruments. It is the only one that combines so significantly all civil and political rights with economic, social and cultural ones, thereby loyally reflecting the principles of interdependence and indivisibility of all human rights affirmed by the *Vienna Declaration and Programme of Action* (1993).

The UN Committee on the Rights of the Child – the expert body established by the *Convention* to monitor its implementation by States Parties – interprets the right to education in such a “holistic perspective” (see CRC/C/58, para. 9). The *Convention’s* ultimate aim is to guarantee the development of the child to his or her fullest potential, and education plays an important role in this regard (article 29.1.a). The Committee states that:

“Education” in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society (Committee on the Rights of the Child 2001, para.2).

When the Committee monitors the right to education within each country, it starts by looking at how the *Convention's* four general principles are applied in the education system:

- non-discrimination (article 2) ;
- the best interests of the child (article 3) ;
- the right to life, survival and development (article 6) ;
- the right of the child to freely express his or her views and have them given due weight in all matters affecting the child (article 12).

For example, with regard to the right of the child to be protected from all forms of discrimination, the Committee monitors, among other things, gender discrimination, or access to school for children with no residence permit, from minority, indigenous or other vulnerable groups, or the provision of education in institutions for the disabled and in detention centres. In this regard, in 2002, the Committee expressed concern, *inter alia*, over the right to access education of children who are deprived of liberty in the United Kingdom<sup>1</sup>.

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<sup>1</sup> CRC/C/15/Add. 188, paras. 47-48.

Unsurprisingly, the Committee is extremely concerned by the persistent discrimination suffered by girls, including within the education system. The Committee has expressed concern in this regard in approximately half the countries it has reviewed. But it also expressed concern about discrimination against boys in the education systems of many Caribbean countries, such as Barbados and St. Kitts and Nevis, resulting in academic underachievement in the male community<sup>2</sup>.

The interdependence and indivisibility between civil and political rights and economic, social and cultural rights is vigorously illustrated by the direct link between respect for the child's right to an identity (articles 7 and 8 of the *Convention*) and the right to education. UNICEF notes that, "A birth certificate is a ticket to citizenship ... Every year, about 40 million babies – one third of all births – go unregistered around the world"<sup>3</sup>. Some countries, such as Eritrea, Ethiopia, Namibia, Somalia, Oman, Afghanistan and Cambodia, have no birth registration system. Many others have fewer than 30 per cent of children registered (for example Zambia, Sierra Leone, Rwanda, Papua New Guinea and Bangladesh), and the majority of countries have not registered all their children<sup>4</sup>.

The *Convention* obliges state parties to ensure that, "The child shall be registered immediately after birth and shall have the right from birth to a name..." (article 7.1). In many

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<sup>2</sup> CRC/C/15/Add. 103 and Add. 104.

<sup>3</sup> Dow, U. (1998) "Birth registration: the 'first' right", in *The Progress of Nations*, 1998, New York : UNICEF, 5-8.

<sup>4</sup> Ibid.

countries, children who are not officially registered cannot enroll in school (for example in Algeria, Argentina, Brazil, China, the Democratic Republic of Congo, India, Kenya, the Russian Federation and Vietnam). As such, the right to education of millions of children is denied worldwide every day, as a consequence of an administrative failure to respect their right to an identity. Reasons for not delivering birth registration can vary. They include excessive fees; the absence of an official birth registration system, especially in remote areas; fear of registering, which is relatively common among indigenous populations, illegal migrants and refugees ; and corruption.

In addition to the provisions on education, the Committee also looks at the guarantee of other human rights in schools, and ensures that children are respected as full subjects of rights, rather than as only vulnerable objects in the hands of teachers and school managers. The Committee stated that, “Children do not lose their human rights by virtue of passing through the school gates” (2001, para. 8). In this context, the civil rights and freedoms of children (articles 13 to 17) are key to the educational process.

When discussing the situation of child rights in Norway, the Committee expressed concern regarding the potential discrimination faced by children who do not wish to attend religious classes (CRC/C/15/Add. 126, para. 26). In the case of the United Kingdom, the Committee criticised the government’s position regarding adolescent gays’ freedom of expression and right to access information in schools<sup>5</sup>.

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<sup>5</sup> CRC/C/15/Add.188, paras. 43-44.

The Committee is also convinced that any form of violence within the school will gravely impede the child's right to education and his or her inherent dignity. The Committee is especially concerned by the use of corporal punishment by teachers as a means of discipline and the phenomenon of bullying. Article 19 states:

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

Article 28.2 guarantees that:

“States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.”

The Committee energetically advocates for the legal prohibition of all forms of physical punishment, including its so-called light forms, such as chastisement. It also calls for the effective protection of children from bullying<sup>6</sup>. To facilitate respect for the dignity of the child and prohibition of physical punishment, States Parties need to invest

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<sup>6</sup> Newell, P. And Hodhkin, R. (2002). “Implementation Handbook for the Convention on the Rights of the Child”. UNICEF, 424-426.

seriously to sensitise and train all teachers and other school officials to alternative forms of discipline that are consistent with articles 19 and 28.2.

## **Implementation of the Right to Education**

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Contrary to the 1990 Jomtien *World Declaration on Education for All* and the 2000 *Dakar Framework for Action*, the *Convention* includes legal obligations for all states that have ratified the treaty. The right to education, as spelled out in articles 28 and 29, are not an *option* for States Parties, but rather an *obligation* under international law, which needs to be reflected in domestic law, policies, institutions and programmes.

The *Convention* states that the right to education is to be achieved “progressively and on the basis of equal opportunity” (article 28.1). States Parties are nonetheless obligated to “make primary education *compulsory* and available *free to all*” (article 28.1.a, emphasis added). The Committee on Economic, Social and Cultural Rights considers this right as “unequivocal”<sup>7</sup>. The monitoring work of the Committee shows that this obligation remains a challenge in a great number of States Parties. Some States Parties have even made a reservation – not only on the basis of financial constraints – to the right to free compulsory primary education. They read as follows<sup>8</sup>:

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<sup>7</sup> General Comment No. 11, E/C.12/1999/4.

<sup>8</sup> CRC/C/2/Rev. 8.

Samoa :

“The Government of Western Samoa, whilst recognising the importance of providing free primary education, as specified under article 28 (1)(a) of the *Convention on the Rights of the Child*, and being mindful of the fact that the greater portion of schools within Western Samoa that provide primary education are controlled by bodies outside the control of the government, *pursuant* then to article 51, the Government of Western Samoa thus reserves the right to allocate resources to the primary level sector of education in Western Samoa, in contrast to the requirement of article 28 (1)(a) to provide free primary education.”

Singapore :

“(3) The *Constitution* and the laws of the Republic of Singapore provide adequate protection and fundamental rights and liberties in the best interests of the child. The accession to the *Convention* by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the *Constitution* of the Republic of Singapore nor the acceptance of any obligation to introduce any right beyond those prescribed under the *Constitution*.”

Swaziland :

“The *Convention on the Rights of the Child* being a point of departure to guarantee child rights; taking into consideration the progressive character of the implementation of certain social, economic and cultural rights; as recognized in article 4 of the *Convention*, the



Government of the Kingdom of Swaziland would undertake the implementation of the right to free primary education to the maximum extent of available resources and expects to obtain the co-operation of the international Community for its full satisfaction as soon as possible.”

The Committee has expressed “deep concern” that Nepal did not make primary education compulsory<sup>9</sup>. Other countries, such as Côte d’Ivoire, the Democratic Republic of Congo, Guatemala, Jordan, Paraguay, Senegal, Yugoslavia and Zimbabwe, have also been criticised by the Committee for failing to guarantee this right<sup>10</sup>.

It is important to note that the *Convention* itself does not define the number of years “primary education” is supposed to cover, therefore leaving states with much flexibility to set the related age limit. This age may vary between 10 and 13 years old, and consequently the age limit for free and compulsory education is not equal for all children. The 1990 *Jomtien Declaration* also adds to the imprecision, as it does not refer to “primary education” but rather to “basic education”, and states, “The scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably changes with the passage of time” (article 1.1). It also says, “Basic education *should* be provided to all children, youth and adults” (article 3.1, emphasis added). The *Jomtien*

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<sup>9</sup> CRC/C/15/Add.57, para. 18.

<sup>10</sup> Newell, P. And Hodhkin, R. (2002). “Implementation Handbook for the Convention on the Rights of the Child”. UNICEF, 417.

*Declaration* does not refer to the *right* to education. It is a universal political statement, which is not of a binding nature for states. This lack of consistency between the political and legal commitments and processes of governments, which is not unique to the international level, runs the risk of weakening the concept of the right to education.

The Committee, which has so far monitored the right to education in 166 states, has noted that in several countries, despite legal guarantees, free education is not necessarily without costs. Some public primary schools do request some types of fees, others bear excessive indirect costs for parents. These can be generated by the high costs of learning materials, including books, transportation, food and uniforms.

Some of the most neglected human rights recognised in the *Convention* are the ones enshrined in article 31, especially the rights to leisure, culture and rest. These rights are essential to ensure the full development of the child, but both developed and developing countries still struggle to respect them. The Committee criticised the Japanese education system, not merely for its quality or accessibility, but also for generating high levels of stress, creating a “school phobia” and neglecting children’s right to rest and leisure<sup>11</sup>.

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<sup>11</sup> CRC/C/15/Add. 90, para. 22.

In other countries, such as Morocco, Paraguay, Myanmar, China and Macedonia, the Committee expressed concern over the fact that children belonging to minorities had no (or limited) access to education in their own language.

Finally, the Committee observed that in some States Parties (for example Nicaragua, Guatemala and Suriname), the official age for ending compulsory education is not synchronised with the minimum age for access to employment, leaving children who drop out of school in a grey zone that could lead some of them to work illegally under dangerous conditions. The Committee usually recommends that these countries extend the age of compulsory education to the minimum one of access to employment (when it complies with *ILO Convention 138*).

### **Monitoring the Right to Education**

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One particularity of human rights is that, in addition to identifying emerging issues, they often examine well-known situations, but from their own specific perspective, subsequently revealing new dimensions. For example, the human rights community is not the only one taking a close look at education, but it does so from a rights-based perspective. Though the education community might satisfy itself with a statistic indicating that 93 per cent of children aged 14 attend classes in a specific country, the human rights community will look at the seven per cent of children who do not have access to school in order to understand whether patterns of discrimination prevail. It will raise serious concerns and try to provide remedies in case, among these seven per cent of children, 91 per cent

are girls belonging to indigenous families. Similarly, though in many countries we have relatively easy access to statistics on attendance and drop-out rates, we have only modest knowledge of the quality and adequacy of schools.

Education is an area for which much knowledge and research, including data and indicators, exist. They have been developed in a wide-range of fields, ranging from psychology to sociology, and of course pedagogy. While these tools are important in assessing the *enjoyment of rights* of young children, they are insufficient. Monitoring children's rights and childhood might require different tools and serve different purposes<sup>12</sup>.

Traditional education indicators and statistics feed analysis about *education status*, not necessarily to properly assess the exercise of the *right to education*. Tools to understand issues such as the "Four As" defined by the UN Special Rapporteur on the Right to Education and endorsed by the Committee – availability, accessibility, acceptability and adaptability<sup>13</sup> – and the general levels of enjoyment of the right to education (especially by vulnerable and unrecognised groups of people) remain scarce, and sometimes non-existent. For this reason, today we are equipped to obtain information on school attendance and drop-out rates, but it is still scientifically

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<sup>12</sup> Casas, F. (1996). "Monitoring children's rights and monitoring childhood : different tasks?" in Verhellen, E. (ed.) *Monitoring children's rights*, The Hague : Martinus Nijhoff, 49-56.

<sup>13</sup> E/CN.4/1999/49, paras. 42-74.

challenging to monitor the feeling of (in)security of students in schools, the protection of their right to privacy, the level of impunity with regard to violence, or the respect for the aims of education – as spelled out in article 29. Hence, too often, the right to education is monitored with traditional instruments that are not rights-specific, and therefore the understanding of the implications of this right are still not well understood by States Parties and other stakeholders.

In its reporting guidelines for periodic reports, the Committee identifies the minimum information it needs to monitor respect of the right to education by States Parties<sup>14</sup>. However, due to the holistic approach, States Parties also need to provide information about other rights, such as civil rights and freedoms, that are also fundamental to understand levels of respect for the right to education.

Furthermore, in 2001, the Committee adopted a General Comment on the “aims of education” as enshrined in article 29 of the *Convention*<sup>15</sup>. This General Comment provides further explanation to States Parties and others involved in the field of education about the contents of the aims of education and on the way they should be human rights compatible. It identifies six strategic dimensions<sup>16</sup>:

- i. The link between the aims of education and other human rights of children, such as the right to express

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<sup>14</sup> CRC/C/58, paras. 105-118.

<sup>15</sup> CRC/GC/2001/1.

<sup>16</sup> *ibid*, paras. 5-14.

views and have them taken into account (article 12), the rights and responsibilities of parents (articles 5 and 18), freedom of expression (article 13), freedom of thought (article 14), the right to information (article 17), and the rights of children with disabilities (article 23);

- ii. Implementing the right to education requires States Parties and all other stakeholders to establish a human rights sensitive process that promotes a child-friendly school system. For example, school discipline needs to be administered in a non-violent manner, “consistent with the child’s human dignity” (article 28.2). Hence, all forms of violence, including physical punishment, must be prohibited by all means;
- iii. Any form of discrimination must be prevented and fought;
- iv. The link between the aims of education and combating racism, racial discrimination, xenophobia and related intolerance needs to be prioritised;
- v. The content of education needs to be closely looked at in order to ensure that education does not become an instrument of excessive competition, rather than one that prompts the harmonious development of the child;
- vi. Insist on the indivisibility of human rights and recognise the child as a rights-holder capable of participating “fully and responsibly in a free society”<sup>17</sup>.

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<sup>17</sup> Ibid, para. 14.

It is significant to note that during 2001, a number of concerned parties in Sweden, including the Ministry of Education, Save the Children and school personnel, took the initiative to organise a specific meeting to discuss the Committee's General Comment. The aim of the meeting was to identify issues of concern to the Swedish education system specifically, and make recommendations for improving the implementation of article 29 of the *Convention*. These types of national implementation processes are fundamental to improving respect for human rights.

## A New Vision of Education

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The *Convention on the Rights of the Child* proposes a dynamic vision of the role of children in society, as actors of their own human rights, in accordance with their evolving capacities. For 191 States Parties, respect for the human rights of children are not *optional*; they are an *obligation*. This means that all the provisions and principles recognised by the *Convention* need to shape today's schools worldwide. All must work towards this objective, even if one needs to accept that this requires time, as it also involves changes in mentalities and the attitudes of adults. In a remarkable booklet entitled, "A school for children with rights: the significance of the United Nations *Convention on the Rights of the Child* for modern education policy"<sup>18</sup>, Thomas Hammarberg, a leading human rights

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<sup>18</sup> Hammarberg, T. (1998) "A school for children with rights: the significance of the United Nations Convention on the Rights of the Child for modern education policy". Florence : UNICEF-Innocenti Research Centre.

expert who has been a member of the Committee for six years, affirms :

“Teachers could find their job description in the Convention on the Rights of the Child. Its principles about non-discrimination, the best interests of the child, child development and respecting the views of the child are all crucial ingredients in the conduct of educators.”

He also believes that the role of teachers should drastically move from that of being *lecturers* to becoming *facilitators* :

“Obviously, the Convention encourages the changing role of educators from ‘lecturers’ to ‘facilitators’. Their skill is to encourage and assist pupils in the learning process, rather than to know all the facts. It is to help introduce democratic attitudes and prevent violence. It is also to make the school relate to the community and the outside world in a constructive way.”

The importance of article 12 of the *Convention* should not be overlooked. All concerned parties are still in an experimental phase in implementing this right. This provision is at the heart of child rights. Children are recognised the right to express their views “freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. In other words, children should be considered equal partners in decision making, including in the school system. This does not mean, of course, that they should have the last word. It means that they should take a *full part* in decision-making processes, in accordance with their



evolving capacities. Article 12 and articles 13 to 17 also offer dynamic tools to empower children to exercise their rights progressively. The school system, along with family and community, are unique environments for young people to develop these essential skills.

Hammarberg's vision loyally integrates the spirit and message of the *Convention*. Are States Parties, but also individual adults – whether teachers or parents – ready to relay this vision?

Note: reference to “children” in this article follows the definition provided by article 1 of the *Convention on the Rights of the Child* : “... a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”

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