

## A RIGHTS APPROACH TO EDUCATION

by Kitty Arambulo



*Dans le domaine de l'éducation, il convient de développer une posture qui place le droit à l'éducation au centre de nos préoccupations, à partir de la notion de droit de l'homme telle que présentée dans les instruments juridiques relatifs au droit international des droits de l'homme. La prise en compte de ces droits en matière d'éducation ajoute à la valeur de celle-ci. Ces droits ont pour objet de protéger les personnes et de garantir l'égalité pour tous, notamment dans les domaines de l'éducation, de la santé, de l'habitation, du travail. Il ne s'agit pas là de considérations humanitaires, mais bel et bien de droits en tant que tels.*

*En el campo de la educación, conviene desarrollar una postura que ubique el derecho a la educación en el centro de nuestras preocupaciones, a partir de la noción del derecho humano tal como lo demuestran los instrumentos jurídicos relativos al Derecho Internacional de los Derechos Humanos. Tomar en cuenta estos derechos educativos aporta valor a la educación misma. Estos derechos tienen por objeto proteger a las personas y garantizar la igualdad para todos, especialmente en el campo de la educación, la salud, la vivienda y el trabajo. No se trata de consideraciones humanitarias sino de derechos en tanto que tales.*

*In the field of education, it is advisable to take a position that places the right to education at the center of our concerns, to start from human rights principals as stated in the legal instruments related to international human rights law. The recognition of these rights concerning education adds to their value. These rights are aimed at protecting individuals and guaranteeing equality for everyone, specifically regarding education, health, housing and work. These are not humanitarian considerations, but well and truly rights as such.*

Education, including human rights education, has a crucial role in all efforts to promote and protect the human rights and fundamental freedoms of all people.

However, present reality paints a sobering picture. Approximately between 110 and 140 million children of school-going age have no access to primary education. In addition, a considerable number of adults lack the basic or fundamental education required to be functionally literate, which means that they are unable to perform basic functions necessary in present society, such as filling out a simple form or performing simple mathematics. This situation persists, despite the efforts of the international community since the 1960s to ensure universal primary education for all, and later on, to ensure basic education for all by the year 2000, a year later changed to 2015. In short, the inability of the international community to adequately address the issue of education so far has been evident.

The main point made in the present statement is the importance of adopting a rights approach to education, based on the provisions of the relevant international human rights instruments, i.e. speaking of education as a human right, the RIGHT to education. Mainstreaming human rights and a human rights perspective in all activities and efforts with

respect to education has a unique added value. Those issues, which human rights aim to protect and guarantee, such as education, but also health, adequate housing, just and favourable conditions of work, fair and equal justice, are not matters for charity – they are matters of RIGHTS.

With specific regard to education, the human right to education means that it is the entitlement and rightful claim of all individuals and peoples, which is participatory, empowering, accountable and non-discriminatory, and which is based on universal and inalienable principles of human rights and freedoms<sup>1</sup>. All these elements have been captured eloquently in the first paragraph of General Comment No. 13 on the right to education of the UN Committee on Economic, Social and Cultural Rights, the supervisory body of the International Covenant «Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty, and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical : a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence<sup>2</sup>.»

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1. The right to education is contained in numerous international instruments, including the Covenant on Economic, Social and Cultural Rights (Articles 13 and 14), the International Covenant on Civil and Political Rights (Article 18(4)), the Convention on the Rights of the Child (Articles 28 and 29) and the Convention on the Elimination of All Forms of Discrimination against Women (Article 10).

2. UN Doc. E/C.12/1999/10, para. 1.

Education, in other words, benefits all parties concerned: the individual's personal development and the creation of opportunities for a better quality of life, in all senses of the word ; the development of society, as a collective of these individuals and families : and ultimately, the progress and growth of a State, with a developed and educated population that can contribute to the improvement of its social, economic, cultural, civil and political situation and circumstances.

General Comment No. 13, which recognizes the inclusion of the right to education in other international instruments, constitutes the normative interpretation of the right to education as contained in Article 13 of the Covenant. The normative interpretation by the Committee of Article 11 of the Covenant, on primary education, is contained in General Comment No. 11<sup>3</sup>. Together, these two General Comments provide an authoritative interpretation of what the human right to education means : of which elements it consists ; which obligations are incumbent upon States parties to the Covenant in order to achieve the realization of the right to education ; which obligations are of particular importance to the existence of the right to education ; and finally what constitutes violations of this right<sup>4</sup>.

Several issues are addressed in the Committee's General Comments, as well as in the reports of the Special

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3. UN Doc. E/C.12/1999/4, CESCR General Comment No. 11, Plans of Action for Primary Education (Article 14 of the Covenant on ESCR).

4. It is pointed out that the UN Commission on Human Rights appointed a Special Rapporteur on the right to education in 1998, Ms. Katarina Tomasevski, who has done important and innovative work in the field and who has produced a number of reports, which are of considerable value for the entire discussion on education and the right to education and on enhancing the understanding of this human right.

Rapporteur, which merit particular attention in the framework of the CIFEDHOP/EIP training session :

- First, the principle of non-discrimination, which is a fundamental principle of human rights and permeates all aspects of the right to education.
- Secondly, a framework as used by the Committee in General Comment No. 13, which is useful in determining the normative contents of the right to education, and which consists of four main criteria : availability, accessibility, acceptability and adaptability<sup>5</sup>. Thirdly, the obligations of the State with regard to the realization of the right to education.

First, the principle of non-discrimination is enshrined in article 2(2) of the Covenant and various other sources of international human rights law, which according to the General Comment No. 13 of the Committee, applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds. In this regard, the Committee in its General Comment highlights one particular point. It is stated that the adoption of temporary special measures intended to attain de facto equality for men and women and for disadvantaged groups is not a violation of the principle of non-discrimination with respect to education, as long as such measures do not result in sustained unequal or separate standards for different groups, and provided that they are not continued after the objectives for which they were taken have been achieved. It cannot be assumed that all groups in society start with a level playing field, and it should be recognized that before all members of society can actually fully enjoy their right to education in a fair and just manner, obvious economic and social imbalances should be eliminated.

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5. UN Doc. E/C.12/1999/10, paras 6-14.

The second topic is the framework of the «4 As»: availability, accessibility, acceptability and adaptability. These four criteria, which are interrelated, have been formulated by the Special Rapporteur as the essential features of primary education, and have been deemed by the Committee to apply to other forms and levels of education, as well.

According to the Committee, availability refers to the requirement that functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of a State. What is required for these institutions and programmes to function differs from country to country, depending on culture, climate, and developmental context. In general, however, it can be said that having schools available means that there should be sufficient of them to allow all students to enjoy education, including in remote areas, and that the facilities should comply with at least the basic requirements of sanitation, drinking water and teaching materials.

The second criterion of accessibility implies that educational institutions and programmes should be accessible to all. This requirement entails that schools should be accessible to everyone without discrimination, in law and in fact, especially with regard to the vulnerable groups, in terms of both economic and physical accessibility. An example of an obstacle to economic accessibility is the raising of school fees for forms of primary or basic education, and a possible obstacle of physical accessibility is the absence of alternative schooling for children living in remote areas, such as mobile schools or distance learning by computers.

Thirdly, the element of acceptability of education requires that the form and substance of education, including curricula and teaching methods, have to be relevant to the needs of the specific context in which the students will have to work and live, they have to be culturally appropriate, and

they should equip students with the skills and knowledge to function and contribute as full members of society. The requirement of acceptability also takes into account the freedom of parents to choose the type of schooling they would like their children to enjoy, in conformity with their own convictions.

The fourth criterion is the adaptability of education, requiring educational institutions and programmes to be flexible to adapt to the exigencies of changing communities and societies. Fundamental changes brought about by the process of globalisation and the flows of migration, which has made our world a global village, as well as changing views on the status of women and girls have resulted in the need for schooling to equally reflect these evolutions.

With regard to the issue of States' obligations, according to the Committee's General Comment No. 13, one general parameter of a State party's obligations is to progressively realize the right to education, implying that retrogressive measures are not permitted, except when the State is able to prove that they have been introduced after the most careful consideration of all alternatives, that they are fully justified in the context of the Covenant and that they are in accordance with the requirement of full use of the State's maximum available resources.

The more specific obligations of a State have been categorized in three main types : the obligations to respect, to protect, and to fulfil<sup>6</sup>. This typology of obligations has been most useful in demonstrating the nuances in the obligations of the State to realize the right to education, and other human rights, and that they do not merely consist of positive obligations, or actions required from the State which necessarily require funding. For instance, obligations to

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6. UN Doc. E/C.12/1999/10, para. 46.

respect the right to education include the obligation of a State to respect the freedom of parents to choose the type of schooling in conformity with their own convictions, by not closing down specific private schools. An obligation to protect is, for example, the obligation of a State to ensure that third parties, including parents or employers, do not stop children, or in particular girls, from going to school. An example of an obligation to fulfil, which does often require action by the State, is to develop and maintain a system of schooling, including building classrooms, delivering teaching materials, training teachers and paying them domestically competitive salaries.

Obviously, the obligations that entail financing are those, which are most controversial, particularly in developing countries. It is for this reason that the possibility of international cooperation and international assistance has also been addressed in General Comment No. 13. The Committee refers briefly in the conclusion of this General Comment, to the fact that the role of the UN agencies is of special importance in relation to the realization of the right to education. It specifically points out the need for international financial institutions, notably the World Bank and the International Monetary Fund «to pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt crisis<sup>7</sup>».

This brings us, in full circle, back to the starting point of the present statement, namely the importance of a rights-based approach to education. A considerable number of initiatives are being undertaken at the international level that are aimed at education. One noteworthy institution is the World Bank, as it is the international organization with the

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7. UN Doc. E/C.12/1999/10, para. 60.



greatest financial capacity to support activities related to education. During the recent conference on education in Dakar earlier this year, the president of the World Bank, Mr. James Wolfensohn, made the statement that not a single country with a sound plan to achieve education for all its children should fail for lack of help or money. It is precisely in relation to this statement that the relevance of a human rights-based approach to education becomes crystal clear. The World Bank is still in the process of developing a consistent and uniform position from a human rights perspective, with regard to education. In many of its activities, the World Bank therefore still does not take into account sufficiently human rights implications of its actions, nor is there an explicit recognition of the rights that ought to be respected<sup>8</sup>.

Finally, it is stressed that the rights-based approach to education and considering education as a human right will empower people and encourage participation of all actors in civil society to aim at achieving the lofty goals once set by the international community, namely that education «will 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<sup>9</sup>.»

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8. Examples with regard to the World Bank can be found in the progress report of the Special Rapporteur on the Right to Education, UN Doc. E/CN.4/2000/6.

9. Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights*.

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