

Premise

The Dakar Framework for Action represents the most important international political commitment towards promoting education for all. The Framework contains two gender-based goals. In Article 7 (ii) the participants commit themselves to eliminating ‘gender disparities in primary and secondary education by 2005’. The second commitment is to achieve gender equality in education (Article 7 (v)). These are here described as ‘gender parity’ and ‘gender equality’ respectively. While the focus of this article will be on the latter, gender parity will be examined by way of comparison, on the premise that it is a necessary but insufficient precondition for the realization of equality.

In contrast to such political agreements, human rights are legal standards that States have committed themselves to implement through the ratification of international treaties. This process of ratification constitutes the undertaking of international legal obligations, not mere promises. Although the two processes of international politics and international law-making and enforcement are conceptually distinct, the realization of the objectives of each can be enhanced by the interrelation of both, so that they exist as complementary, not parallel, processes.² Recognizing that States’ political commitments cannot be isolated from their legal obligations means that States that have committed to relevant international instruments (all but two countries in the world³ have ratified the Convention on the Rights of the Child—CRC, and over 174 the Convention on the Elimination of All Forms of Discrimination Against Women—CEDAW) have clear obligations to progressively realize the right to education and gender equality in and through education.

A merging of international monitoring of Education for All and international human rights law would allow an integrated rights framework to compliment the political promises of Jomtien and Dakar, and ensure that these processes promote rights in and through education, rather than simply counting numbers of children, or investment, in education. In this light, the continued and deepening openness towards human rights evident in the Education for All Global Monitoring reports is to be welcomed.

A human rights framework for education to promote gender equality

Gender is a social construct, not a biological one, and discrimination on this basis is consequently difficult to assess and address. Distinctions based on biological sex can be measured statistically, whereas gender differentials entail more subtle distinctions on male and female roles. Achieving gender parity (equal numbers of boys and girls) in school is just one step towards gender equality in and through education. While parity is a quantitative concept, equality is a qualitative one. The human rights protection and promotion of gender equality requires more than numerical equilibrium, it also requires conceptual equilibrium, and a conscientious effort to redress inequality, as it exists.

An exclusive focus on numbers can present apparent progress and hide real patterns of discrimination and disadvantage. This is particularly true in measuring equality. In education, while increasing parity in enrolment is important, equality requires adaptation. Addressing the right *to* education, without addressing rights *in* education and *through* education may mean compelling attendance in education that may be of limited use and relevance to increasing equality between the sexes.

Governments hold the primary responsibility ensuring the full realization of the right to education for all. The analytical framework of governmental obligations developed by the United Nations Special Rapporteur shows that this entails *availability*, *accessibility*, *acceptability* and *adaptability* of education (Tomasevski, 2001).⁴

Ensuring the *availability* of education has differing solutions: segregated, or single sex schools (permitted under the Convention Against Discrimination in Education on condition of equivalence of quality);⁵ integrated schools, where girls are enrolled in boys schools which may not adapt to them; or inclusive education in co-educational schools that are gender sensitive. It is worth noting that in implementing a system of education segregated by sex governments may be responding to parental choice, others, however, such as Ecuador, will point to ‘coeducation as a way to break down sexist barriers’.⁶ There is an important balance to be struck between parental freedom in education and the best interests of the child.

Accessibility requires removing both directly discriminatory barriers to the enrolment of those of one sex from all levels and types of education and, as we shall see, barriers such as cost, which may have indirect gender significance.

Acceptability implies education that will actually be of use to the child, not only in seeking employment, but also importantly in protecting health and well-being. Sufficient educational opportunities for girls are only the first step. Treating boys and girls in the same way can reinforce, rather than redress social disadvantage as education can serve

to underline existing stereotypes of women as unsuited to academic achievement, an image which can be portrayed (often unconsciously) in textbooks showing female role models at home, while men are history makers and intellectual pioneers. The aims of education in human rights law include ‘the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes’.⁷ Addressing the implications of this requirement—what children learn and why—requires the reorientation of education to contribute to gender equality.

The obligation under human rights law that education be *adaptable* to the individual, and not the other way around is revolutionary. It will mean schools that are more inclusive, and assurance that education does not reinforce extant societal patterns that discriminate against certain groups. As girls tend to be subject to multiple discrimination (for example, as a member of a minority group using the national language as a second or third language, and as a girl), this is of particular relevance.

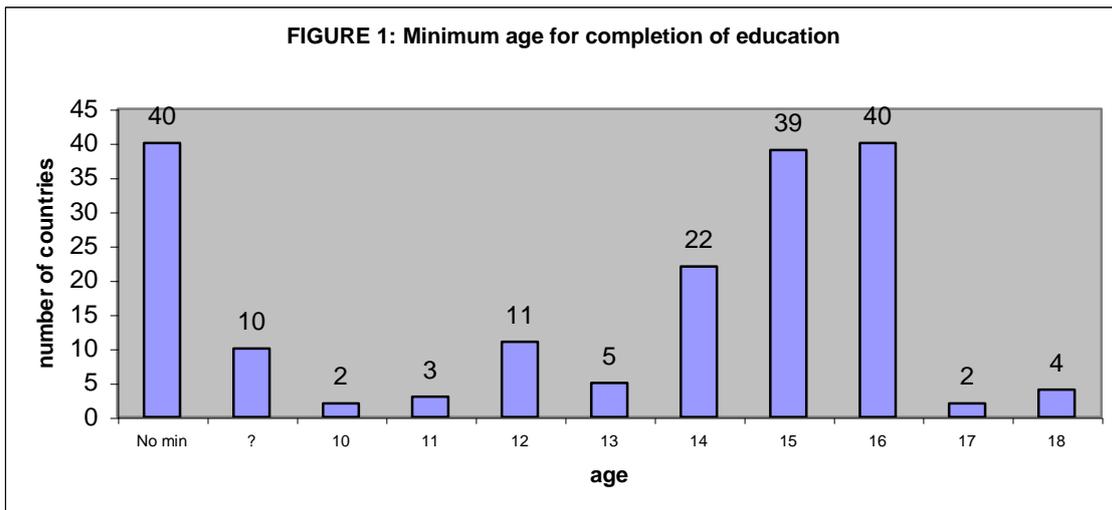
Availability

COMPULSORY EDUCATION

By law, at least primary education should be free and compulsory.⁸ This requirement can be seen to have evolved over time and place from an obligation on the parent to send the child to attend school and the State to provide education.

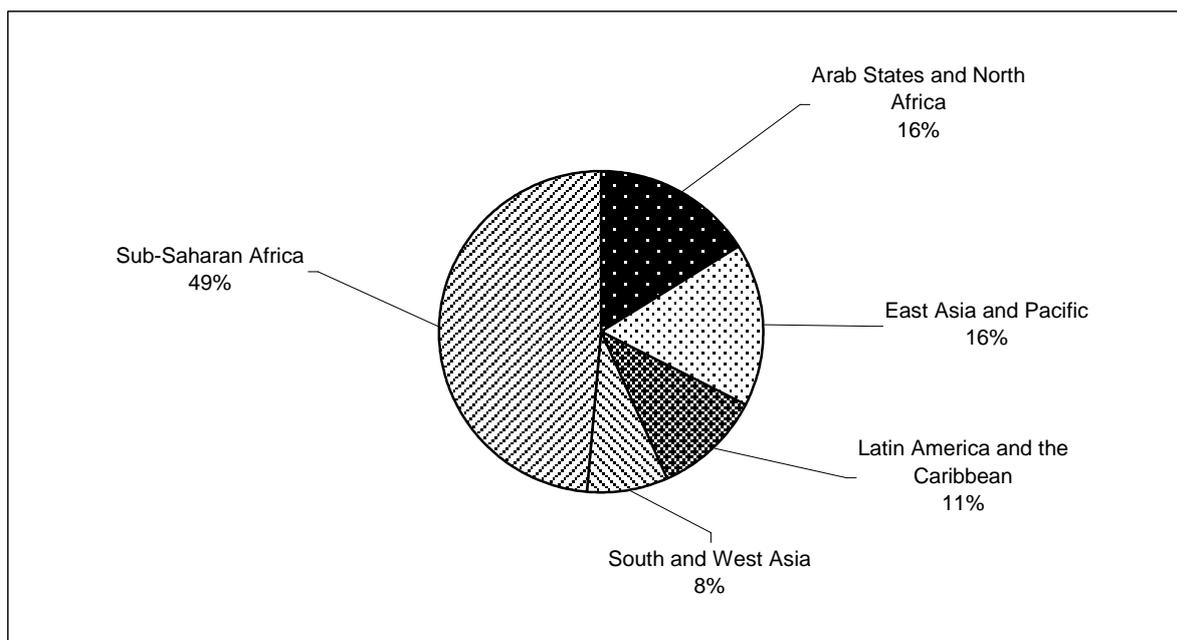
A preliminary review of 179 countries shows that only around 80% of States have translated their international commitment into domestic implementing legislation. The research also shows that the association between compulsory education and primary education is no longer valid, as the age limit for compulsory education goes beyond that of primary education. The majority of countries with compulsory education legislation now have a minimum age for completion of 14 or over (see Figure 1).

FIGURE 1. Minimum age for the completion of education



Some forty of the 179 countries analysed have no compulsory educational legislation; eighty-one have a minimum age for completing education of between ages 14 and 16, whereas for twenty-one of them the age is between age 10 and 13, and six at age 17/18. Ten countries have compulsory education without indicating the age at which this ends. Whilst this might in practice mean that compulsory education is unenforceable, this may also be a fault of reporting. Consequently these countries have not been included in the ‘no minimum’ category.

FIGURE 2. Global distribution of countries where education is not compulsory



As Figure 2 shows, the largest group of countries with no compulsory educational legislation are from Sub-Saharan Africa (45% of the total number of countries, representing 40% of countries in the region). Relatively large numbers of countries have no compulsory education in South and West Asia (33.3% of countries in the region), Arab States and North Africa (30% of countries in the region), and East Asia and the Pacific (23% of countries in the region).

Box 1 provides a country-by-country overview of minimum age for completing compulsory education for those countries for which data was collected. In large part this data comes from self-reporting by the country concerned, in the form of reports under international human rights treaties. Each party to a human rights treaty is obliged to provide initial and then periodic reports on compliance with the obligations therein. The data is authoritative as it comes from the states themselves. Where human rights reports were not available (either where the most recent report was considered unreliable, being produced over five years ago, or where the state concerned has not provided a report) then the data is supplemented with information from World Data on Education, an IBE database, figures from the Organisation for Economic Development in Development (OECD) and finally the UNESCO Institute of Statistics (although, as a rule UIS has not consistently collected this data, and where it has it tends to conflict with all other sources, including States own reports).

BOX 1: Minimum age for completing compulsory education, by country

Education is not compulsory (40 countries): Bahrain, Benin, Bhutan, Brunei Dar el Salaam, Burundi ^a , Cambodia, Cameroon, Chad, Côte d'Ivoire, Democratic Republic of Congo, Eritrea, Ethiopia, Fiji, Gambia, Haiti, Jamaica, Lesotho ^b , Malawi, Maldives, Mauritania, Mozambique, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea ^a , Qatar ^a , Rwanda ^a , Saint Vincent & the Grenadines, Sierra Leone ^b , Singapore, Solomon Islands, Sudan, Suriname, Swaziland ^a , Uganda ^b , Vanuatu, Yemen, Zambia, Zimbabwe
Education is compulsory but the minimum age for completion is unclear (10 countries): Azerbaijan, Iraq, Kazakhstan, Kyrgyzstan, Lao Peoples Democratic Republic, Saudi Arabia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan
Education is compulsory until age 10 (2 countries) : Bangladesh, Iran
Education is compulsory until age 11 (3 countries): Equatorial Guinea ^b , Panama ^b , United Arab Emirates
Education compulsory until age 12 (11 countries): Georgia ^a , Guinea-Bissau ^b , Lebanon ^a , Mauritius ^b , Nicaragua ^b , Paraguay, Philippines ^a , Senegal ^b , Syrian Arab Republic, Thailand ^a , Trinidad and Tobago
Education compulsory until age 13 (5 countries): Djibouti ^a , Honduras, Kenya ^b , Sao Tome and Principe, United Republic of Tanzania
Education compulsory until age 14 (22 countries): Albania ^a , Angola ^a , Belize, Bolivia ^a , Brazil ^c , Chile, Comoros, Cuba ^b , Dominican Republic, Ecuador ^b , Egypt, Ghana ^b , Guinea ^a , India, Kuwait, Madagascar ^b , Marshall Islands, Micronesia (Fed. States of), Nigeria ^b , Sri Lanka, Turkey, Venezuela
Education compulsory until age 15 (39 countries): Argentina, Armenia ^a , Australia, Austria, Botswana ^b , China ^a , Colombia, Cook Islands ^a , Croatia ^a , Cyprus, Czech Republic, El Salvador ^b , Greece, Guatemala ^b , Indonesia ^a , Ireland, Israel, Japan, Latvia, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Mali ^b , Mexico, Morocco ^a , Netherlands Antilles, Portugal, Rep. Korea, Russian Federation, Saint Helena ^b , Serbia and Montenegro ^a , Seychelles, Slovak Republic ^c , Slovenia, South Africa, Switzerland, The FYR of Macedonia, Togo, Uruguay ^c
Education compulsory until age 16 (40 countries): Algeria, Andorra, Antigua & Barbuda, Barbados, Bulgaria, Burkina Faso, Canada ^c , Cape Verde, Congo ^a , Costa Rica ^a , Denmark, DPR of Korea, Estonia ^a , Finland, France, Gabon, Grenada ^a , Hungary, Iceland, Italy, Jordan, Liberia, Lithuania, Malaysia ^c , Malta, Monaco, Namibia ^b , New Zealand, Niger, Norway, Rep. of Moldova, Romania, Saint Kitts and Nevis, Saint Lucia ^a , San Marino, Spain, Sweden, Tunisia, United Kingdom, United States of America ^a
Education compulsory until age 17 (2 countries): Netherlands, Palau
Education compulsory until age 18 (4 countries): Belgium, Germany ^c , Peru, Poland
(Education compulsory until age 21 (1 country): Central African Republic (only girls))

Source:

Where not otherwise indicated data comes from State Reports under human rights treaties.

^a: data from IBE: World Data on Education 2001 and 2004 (forthcoming)

^b: UNESCO Institute of Statistics (Regional Reports on Latin America and Africa, UIS, Montreal, 2001)

^c: Organisation for Economic Cooperation in Development, *World Education Indicators*, 2002, Paris.

At least 138 countries have enacted compulsory educational legislation. How this is translated into practice is difficult to judge. There is a lack of consensus on where the obligation lies in compulsory education: does this imply the criminalization of parents who cannot afford to send their children to school? or of the child through the creation of the offence of ‘truancy’?

BOX 2: Compulsory education: an obligation for whom?

The Compulsory Education Act explicitly seeks to prevent truancy and dropout. A 1994 amendment [...] makes pupils themselves directly liable for non-attendance. [...] As of the age of 12, pupils can be held legally responsible for failing to comply with the provisions on school attendance. (*Netherlands*)ⁱ

The compulsory elementary education program in Indonesia is more closely equated with universal education, that is opening up learning opportunities by encouraging parents to send their children to school once they reach school age. (*Indonesia*)ⁱⁱ

Every parent, guardian or other persons having control of any child between the ages of six and sixteen years shall cause such child to attend a recognized public or private school regularly during the entire time the school is in session [...] (*Liberia*)ⁱⁱⁱ

ⁱ CRC/C/117/Add. 1 (unnumbered pages);

ⁱⁱ CRC/C/65/Add. 23, p. 99;

ⁱⁱⁱ CRC/C/28/Add. 21, p. 54–55.

Or is the obligation on the State to ensure sufficient opportunities? Box 2 illustrates a spread of opinion on the compulsory nature of education.

The European Convention on Human Rights (ECHR) dates from 1950, and provides that children may be detained for educational supervision.⁹ This sees the child as the recipient of, rather than a participant in, education. The far-more-recent Convention on the Rights of the Child does not mention enforcement, but obliges *States* to encourage attendance.¹⁰ At the level of monitoring and enforcement of *international* human rights treaties, one can see a shift in promoting compulsory education from an obligation of the individual to an obligation of the State.

The State undertakes a heavy burden in determining that education should be compulsory, as compelling attendance implies that education will be in the child’s best interest. Education which does not fulfil requirements of (e)quality may still, of course, be beneficial. A very little education can save a life, but education in and for equality requires a fundamental review of intention, implementation and method to actively promote gender equality and gender sensitivity.

Compulsory schooling can be a key to combating the effects of private discrimination, which may impact on the education of girls. Several countries do, in fact, view compulsory education as a means to increase girls’ education.¹¹

TEACHERS

The centrality of teachers to education means that in their training, selection and composition gender equality should be highlighted. Increasing the balance between male and female teachers at all levels can serve as an indicator of gender equality. Analysis of the position of female teachers in schools routinely shows that they, as with most girl pupils, remain confined to primary school. In all regions of the world the proportion of female teachers at secondary and higher education levels is lower than that at the primary level (Gaynor, 1997, p. 11). This can provide another reason for lower enrolment of girls in education, where parents refuse to allow their female children to be taught by male teachers, as Egypt has reported.¹²

Studies of earnings have revealed that, in several major cities around the world (notably Lagos, Jakarta and Sao Paulo), bus drivers earn more than teachers (Union Bank of Switzerland, 1994 and 2000, p. 50-51). Research has also linked ‘teachers’ motivation and performance and education quality’, while noting that ‘teachers’ motivation is not uniformly prioritized as a major concern of national and international policy-makers’ (Voluntary Service Overseas, 2002, p. 2). The recent example of Kenya, where the introduction of free education was hampered by teachers’ strikes demanding payment of outstanding wages, shows the urgency of linking free education with the realization of the right of teachers.¹³ When teachers are busy fighting for their own rights they cannot be teaching.

Accessibility

PUBLIC AND PRIVATE DISCRIMINATION

Girls face obstacles to their education both in public and in private. At the public level, States have committed under the Convention on the Elimination of All Forms of Discrimination against Women¹⁴ not only to prohibit discrimination *de jure* (formal equality), but to eliminate it *de facto* (substantive equality). Prohibiting discrimination may be essentially a matter of changing policy, and enacting and enforcing laws. Efforts to eliminate discrimination require a fundamental review of the system of education to expose and address patterns of discrimination and to reorient education to avoid recreating a negative social reality.

As Zambia has reported, ‘girls are socialized to become wives, mothers and care-givers and to be submissive while boys are groomed to take up the roles of leadership and

providers of society.¹⁵ Developing ‘non-discriminatory education’ in implementing the Beijing Platform of Action¹⁶ is one step towards an education which promotes gender equality. This process also requires adopting ‘temporary special measures’ to redress the effects of discrimination. Such measures are foreseen by human rights standards,¹⁷ do not

BOX 3: Special measures to encourage girls enrolment

Reception centres [...] to accommodate girls entering Year 6 (secondary education).

In rural areas, mothers are being provided with modern labour-saving devices enabling them to disperse with the services of their school-age daughters. (*Benin*)ⁱ

programmes that transfer funds to poor families, conditional on their children being [...] in school. (*Brazil*)ⁱⁱ

The building of sanitary conveniences. (*Morocco*)ⁱⁱⁱ

free textbooks and employment of at least one female teacher in every primary school. (*Nepal*)^{iv}

girls opting for technical subjects are eligible for scholarships and are given priority with respect to boarding places. (*Tunisia*)^v

Build new girl’s schools and use existing schools for two periods, one for girls only; (*Yemen*)^{vi}

ⁱ E/1990/5/Add.48, 5 September 2001; paras 380, 382.

ⁱⁱ E/1990/5/Add.53, 20 November 2001; para 769.

ⁱⁱⁱ CEDAW/C/BFA/2-3, 25 February 1998; p 5.

^{iv} CEDAW/C/MOR/2, 29 February 2000, p 29.

^v E/1990/6/Add.14, 8 October 1996; para 383.

^{vi} E/1990/5/Add.54, 17 May 2002; para 154.

violate non-discrimination provisions where based on reasonable and objective criteria, and are rescinded on achievement of the aim.¹⁸ The Human Rights Committee, charged with monitoring the International Covenant on Civil and Political Rights, considers such measures to be ‘affirmative action designed to ensure the positive enjoyment of rights’.¹⁹ Thus, human rights law can in certain circumstances *require* that different groups be treated differently. Controversies surrounding ‘affirmative action’ often centre on exactly where the cut-off point lies—when has the goal of equality been reached? This may be something of an elusive goal, in fact, given that the United Nations Development Programme has stated that no country in the world can claim to have achieved gender equality.²⁰ Nevertheless, the law mandates that there be a point beyond which different treatment is discriminatory. Certain countries (notably in the Caribbean), having instigated special measures for girls in education, are now faced with the opposite situation of an education system that appears to be failing to include boys. Jamaica is a case in point. Having reported on a range of special measures for girls’ education in its report to the CEDAW committee in 1998, the country now faces educational

disadvantage of males.²¹ Bailey, elsewhere in this issue, notes research suggesting that, in Jamaica, female preference is exercised in private decision-making in education. Box 3 shows the range of special measures reported under relevant human rights provision²²—from accommodation in Benin, Bolsa Escola in Brazil, free textbooks in Burkina Faso and Nepal,²³ to improved sanitation in Morocco²⁴—which indicate these measures can be far reaching, or partial. A determination to have ‘at least one female teacher in every primary school’ is far from a commitment to gender parity in the teaching profession, but may have significant impact in helping families feel safer in sending their girl children to school, and in providing a female role model.

Certain econometric analyses view parents as conducting cost-benefit analyses in determining whether to send each child to school. Abstracting this to macro demand and supply rationale proved to be flawed in the case of Malawi, where World Bank supported research suggested that fees should be increased where demand is excessive (Thobani, 1983). This logic undermines Education for All and does not consider the discriminatory impact of fees on girls. Human rights offers a ‘corrective to the free market’²⁵ by removing decision-making to the public sphere, where primary education at least should be ‘free and compulsory’.²⁶

Whilst there is no agreement on the definitive reasons for lower enrolment and completion rates for girls (World Bank research highlights parental decision-making and responsibilities of the girl in the home as decisive (Bredie & Beeharry, 1998), others point to a lack of available and accessible education (Rugh, 2000)), governments are responsible for reversing both public and private discrimination, which denies the child’s right to a beneficial education.²⁷

Addressing existing inequality requires tackling discrimination where it is found, and this includes in the private sphere. As the Human Rights Committee has stated:

States parties [should] take all steps necessary, including the prohibition of discrimination on the ground of sex, *to put an end to discriminatory actions, both in the public and the private sector*, which impair the equal enjoyment of rights.²⁸

Education can play a key role by presenting children with equal opportunities. Yet this might well clash with the reality that children know and see in the home and in society at large. It is therefore essential to nurture critical tools that allow children to challenge gender-biased attitudes.

HOW FREE IS EDUCATION?

Children cannot pay for education themselves. Charging fees for education thus means that families are faced with difficult decisions when they cannot afford to educate all children. While education can never be without cost, user fees act as a regressive form of educational financing, limiting opportunity to those who are able to pay. The impact of this on girls can be disproportionate (World Bank, 2001, p. 165–69),²⁹ given that, ‘years of attending school appear wasted when women do not have access to employment and/or are precluded from becoming self-employed, do not have a choice as to whether to marry and bear children, or their opportunities for political representation are foreclosed.’³⁰ States themselves recognize this link, as Kenya has reported: ‘with the introduction of cost-sharing in the education system, many girls from poor families are increasingly dropping out of school due to lack of available funds.’³¹

Given this background, researchers have linked declines in female enrolment to the imposition of structural adjustment policies during the 1990s (Rose, 1995, p. 1931–49).

Education cannot be compulsory in practice where it is not free. Increasing numbers of States are now domesticating their international obligation to make primary education free. Translating policy and legislative change that abolishes fees into the practice of free education has proved difficult. In Cambodia, Thomas Hammarberg, the UN Secretary-General’s Special Representative, has reported that:

Although the Constitution states that education should be free for all, the costs are high. School fees, uniforms, stationary, books, transport and tutoring must all be paid for. A 1997 study showed that parents and the community bear 75% of the real costs of education, with the State only contributing 13%.³²

When, in 1997, Uganda implemented a policy of free primary education for four children from each family, on condition that two were girls, enrolment increased within the year by no less than 44% in total, with girls gross enrolment rising from 74% to 112% and boys from 86% to 137%.³³

An in-house survey of the charging of user fees in ‘client’ countries, conducted by the World Bank in 2002, revealed that 97% of countries surveyed charged some kind of fee in public education; the fees were *illegal* (according to domestic legislation) in one-third of the seventy-seven countries where they were charged (World Bank, 2002, p. 6). As yet, there is no publicly available global survey on the charging of fees for education that should be free, but work is on-going.³⁴

The private cost of financing public education may in fact be greater at the primary level: ‘direct parental contributions finance up to half or in some cases even more of the total expenditure at the primary level, this share falls rapidly at the public secondary level’ (Penrose, 1993). Human rights law, in contrast, provides that primary education should be free, and that States should take steps, by all available means (including through seeking international assistance), to introduce free secondary education progressively.

Acceptability: from fear to equality

ABUSED AT SCHOOL

Forcing girls to attend schools which may endanger their health or their life is an abomination of the right to education. Sexual abuse and physical violence against girls are particularly invidious dangers, which will undermine any effort at gender equality in and through the classroom. Recent reports from human rights groups suggest that such violence confronts girls with disturbing frequency.³⁵ The United Nations Committee on the Elimination of Discrimination Against Women has noted: ‘gender-based violence is a form of discrimination which seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.’³⁶ As an IBE comparative study has noted ‘girl students are dropping out because of excessive bullying and terrorizing—and rape’ (Ohsako, 1997, p. 36). Monitoring Education for All must take a broad approach to ensure positive numerical trends are coupled with increasing respect for human rights, to ensure that free and compulsory education encourages improved gender relations.

(E)QUALITY EDUCATION

Recognizing that the content of education is a central determinant of its role as a transmitter

BOX 4: Reviewing what boys and girls are taught

Action:

The adaptation [sic] of school textbooks to the country's socio-economic realities [...] with a view to combating biased stereotypes against women. (*Burkina Faso*)ⁱ

awareness-creation and incentives for companies producing school textbooks [to] eliminate sexist stereotypes. (*Colombia*)ⁱⁱ

The elaboration of a draft curriculum incorporating a gender perspective in teacher training. (*Nicaragua*)ⁱⁱⁱ

review of all school textbooks, from which any images portraying women as inferior were more or less completely expurgated. (*Tunisia*)^{iv}

Aim:

to create in the mind and understanding of schoolchildren the analytical capacities necessary to grasp sex-based prejudices and their implications. (*Romania*)^v

ⁱ CEDAW/C/BFA/2-3, 25 February 1998; p 12.

ⁱⁱ E/C.12/4/Add.6, 31 August 2000; para 166.

ⁱⁱⁱ CEDAW/C/NIC/4, 28 August 1998; p 19.

^{iv} CEDAW/C/TUN/3-4, 2 August 2000; para 539.

^v CEDAW/C/ROM/4-5, 15 March 1999; para 31.

of discrimination or promoter of the elimination of discrimination, many States have initiated a review process of curricula and textbooks in order to eradicate manifest and implicit stereotyped views of gender roles. A review undertaken in Thailand has found that:

overall in the textbooks male characters appeared twice as [frequently as] female characters and 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 present men as the leader[s] 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.³⁷

In the Philippines the government went further, stating that, 'schools continue to play pivotal roles in reinforcing and perpetuating sex-role stereotyping and sexist concepts still found in the curricula, textbooks and instructional materials.'³⁸

Box 4 gives further examples where States have reported a renewed gender focus in education.

Adaptability: promoting human rights through education

PUNISHING PREGNANT GIRLS

In many countries pregnant girls face expulsion from formal education. At times this may also impact on the rights of teachers, who may face suspension or dismissal if they become

pregnant, especially where unmarried. As one country has stated: ‘unmarried teachers may be fired owing to pregnancy’.³⁹

Over recent years, in response to an increased attention to the issue, a range of responses has emerged. There is now increasing questioning as to why pregnant girls should be discriminated against in education. A prominent example of mobilizing social change in the area comes from Colombia. The Constitutional Court in Bogotá stated,

surely, the stigmatization and discrimination implied in suspension from school attendance have converted this method of instruction [limited tutorials] into a disproportionate burden which the pupil has to bear solely because she is pregnant, which, in the opinion of the court, amounts to punishment. The transformation of pregnancy—through school regulations—into a ground for punishment violates fundamental rights to equality, privacy, free development of personality, and to education.⁴⁰

Elsewhere, non-governmental organizations, such as the Forum for African Women Educationists, have exposed the discriminatory treatment of pregnant girls. The African Charter on the Rights and Welfare of the Child explicitly recognizes the right of the pregnant girl to an education.⁴¹ In response to this certain countries, such as Kenya, Zambia, Botswana, Guinea and Malawi, now permit the re-entry of girls into formal education after pregnancy. Nevertheless, this can be subject to limitations, notably a prohibition on re-entering the same school.⁴² Maluwa-Banda, elsewhere in this issue, notes that this often amounts to suspension, which can still have the effect of increasing drop-out—or in this case ‘push-out’—rates of girls. In such circumstances, one may still question whether the ‘stigmatization and discrimination implied’ is any less.

Practice varies immensely. While one country has admitted to having ‘no educational policy in this area’, it admits that ‘young [girls] may be expelled because of pregnancy, or be denied the opportunity to resume their education following childbirth’, ‘the main impetus for expelling pregnant students is pressure from the parents of other students’.⁴³ Again private discrimination negatively impacts girls, despite the public responsibility of the State to advance the right to education. In other cases, where there is an apparently firm policy prohibiting the expulsion of pregnant girls, it may not extend to private schools.⁴⁴

EARLY MARRIAGE

Human rights instruments are clear on the need for marriage to be based on the full and free consent of parties. The Universal Declaration on Human Rights states in Article 16(2) that: ‘Marriage shall be entered into only with the free and full consent of the intending spouses.’

The Convention on the Elimination of All Forms of Discrimination Against Women further states in Article 16 (2) that:

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

There is, however, little consensus on when a child becomes capable of informed consent and therefore no consensus on what this minimum age should be. International human rights instruments do not categorically define the length of childhood. Whilst the Convention on the Rights of the Child states in Article 1 that: ‘a child is any human being under the age of 18’, the provision goes on to state: ‘unless under domestic law a different age of majority is specified’.

TABLE 1. Married adolescents: the percentage of 15–19 year olds who are married.

	Boys	Girls		Boys	Girls
SUB-SAHARAN AFRICA			MIDDLE EAST		
D.R.Congo	5	74	Iraq	15	28
Niger	4	70	Syria A.R.	4	25
Congo	12	56	Yemen	5	24
Uganda	11	50	LATIN AMERICA AND CARIBBEAN		
Mali	5	50	Honduras	7	30
ASIA			Cuba	7	29
Afghanistan	9	54	Guatemala	8	24
Bangladesh	5	51			
Nepal	14	42			

Source: UN Population Division, Department for Economic and Social Affairs, World Marriage Patterns, 2000.

A legal connection was drawn between the age of completion of compulsory education and the minimum age of employment. Where the two are not aligned, the age of completion of compulsory education should be raised to match the minimum age of employment.⁴⁵ No such similar provision has been adopted or contemplated regarding marriage. Yet marriage is repeatedly asserted as one of the principal reasons for female desertion, or exclusion, from education (Mensch, Bruce & Greene, 1998, figure 9, p. 71). Egypt and Morocco, for example, report that female drop-out in rural areas can be attributed in significant degree to early marriage.⁴⁶ Researchers have drawn a link between marriage and education, showing that girls who have completed seven years or more of education are far less likely to marry during adolescence; the association is made with higher levels of secondary education of girls (Singh & Samara, 1996, p. 153).

Treating early marriage as a human rights issue is hampered by a lack of available data. As the UNICEF Innocenti Research Centre has found: ‘very little country data exists about marriages under the age of 14, even less about those below age 10’ (UNICEF, 2001, p. 4). Table 1 suggests that girls appear in practice to be married earlier than boys around the world. Law is often lacking on minimum ages of marriage. Where it does exist it is often not applied (being in conflict with customary law), and where it is applied it often cements difference in treatment between men and women in the form of a lower minimum age for marriage for women (Melchiorre, 2002).

Conclusion: from education to social inclusion

Where education does not, or is not seen to, increase opportunities for girls, the rationale for sending girls to school is significantly undermined. In Egypt, a study has shown that, in at least 50% of cases reviewed, the decision not to send girls to school was heavily influenced by the view that education does not guarantee employment. This perception seems to coincide with economic studies showing that the employment market can actually *punish* the education of girls. UNIFEM has concluded that women’s average wages are less than those of men in all countries where data is available (UNIFEM, 2000, p. 92).

Education can act as a multiplier for the opportunity to realize other human rights (particularly health and employment, and well as the right to equality between the sexes). Where this is not the case in practice, the aims of education as set out in international human rights standards are not maximized—notably that education should ensure the ‘full development of the human personality’ and ‘enable all persons to participate effectively in a free society’.⁴⁸

A greater appreciation of the gender dimension in each of the ‘4A’ components of the right to education would help further these educational aims. Governments have been fast to make political promises to promote gender equality in education, and slow to translate these into equality and rights promoting and respecting education systems; in other words, effective action has lagged behind rhetoric. This paper has attempted to outline some of the policy and practical measures that would help to bring these commitments to life in the form of effective measures for gender equality in and through education.

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Notes

1. The author would like to acknowledge the research assistance of Lee Holloway.
2. This was recognized by the Special Rapporteur on the Right to Education of the United Nations Commission on Human Rights in her annual report of 2002, E/CN.4/2002/60, paras 5–10.
3. The United States of America and Somalia.
4. Adopted by the Committee on Economic, Social and Cultural Rights in General Comment no. 13 (E/C.12/1999/10). For more information see: www.right-to-education.org.
5. Article 2, ‘When permitted in a State, the following situations shall not be deemed to constitute discrimination [...]: (a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study [...].’
6. Report of Ecuador under CEDAW, 2002, CEDAW/C/ECU/4-5, para 155.
7. Convention on the Rights of the Child, 1989, Article 29(1)(d).
8. International Covenant on Economic, Social and Cultural Rights, Article 13; Convention on the Rights of the Child, Article 28, and regional and domestic guarantees.
9. Article 5(1)(d). This has been upheld in *Bouamar v. Belgium*, Judgement of 29 February 1988, A-129, *Nielsen v. Denmark*, Judgement of 28 November 1988 and *D.G. v. Ireland*, Judgement of 16 May 2002, Application number 39474/98.
10. Article 28 (1)(e): ‘take measures to encourage regular attendance at schools and the reduction of drop-out rates.’
11. Report of Algeria under the International Covenant on Economic, Social and Cultural Rights, 2000, E/1990/6/Add. 26, 2000, para. 168; Report of Tunisia under CEDAW, 2000, CEDAW/C/TUN/3-4, para. 71; Report of Uzbekistan under CEDAW, 2000, CEDAW/C/UZB/1, p. 42.
12. Report of Egypt under CEDAW, 2000, CEDAW/C/EGY/4-5, p. 60.
13. ‘Lets go on strike, says KNUT branch’, *The Nation* (Nairobi), 7 April 2003.
14. As of 18 April 2003 there were 173 States Parties to CEDAW. A reasonably updated table of ratifications and reservations is available at: www.unhcr.ch.
15. Report of Zambia under CEDAW, 2002, CEDAW/C/ZAM/3-4, p. 7.
16. Beijing Platform for Action, para. 69.
17. Notably CEDAW, New York, 18 December 1979, Article 4(1).
18. Committee on Economic, Social and Cultural Rights, General Comment 13 (1999), the right to education, and views of the Human Rights Committee in *Hopu & Bessert v France*, Communication number 549/93, CCPR/C/60/D/549/1993; General Comment number 18, Communications numbers 180/1984 (*L.G. Denning v the Netherlands*); 196/1985 (*Gueye v France*); 666/1995 (*Frédéric Foin v France*); 689/1996 (*Richard Maille v France*); 690 and 691/1996 (*Marc Venier & Paul Nicolas v France*), among others.
19. ICCPR General Comment 4 (Thirteenth session, 1981): Article 3: Equality Between the Sexes, A/36/40 (1981) 109 at para. 2.
20. http://www.undp.org/dpa/choices/2002/march/p7Mar02_E.pdf
21. Report of Jamaica under CEDAW, 1998, CEDAW/C/JAM/2-4, p. 23-25. See Barbara Bailey in this issue of *Prospects*.
22. Article 4(1), and Article 10 of CEDAW.
23. Report of Nepal under the Covenant on Economic, Social and Cultural Rights, 2000, E/1990/5/Add. 45, para. 82.
24. While lack of proper toilet and sanitation facilities can inconvenience boys, it can be a disaster to girls during menstruation.
25. Preliminary Report of the Special Rapporteur on the Right to Education, 1999, E/CN.4/1999/49, para. 60.
26. Similar formulations are found in all major human rights that secure the right to education.
27. The Inter-American Court of Human Rights has held States responsible for violations of human rights by private actors, *Velasquez-Rodriguez*, Judgement of 29 July 1988, Inter-Am Ct, H.R. (ser. C, no. 4).

28. ICCPR General Comment 28 (Sixty-eighth session, 2000): Article 3: Equality of Rights Between Men and Women, A/55/40 vol. I (2000) 133 at paras. 1-32 (emphasis added).
29. 'price elasticity is consistently higher for girls than it is for boys'.
30. Annual Report of the Special Rapporteur on the Right to Education, 2002, E/CN.4/2002/60.
31. Reports of Kenya under CEDAW, 2000, CEDAW/c/ken/3-4, p 23.
32. Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, 1999, E/CN.4/1999/101, para. 111.
33. Republic of Uganda, Ministry of Education and Sports, *Education for All (EFA) 2000 Assessment*, Kampala, 1999, table 6.2.3, p. 21.
34. The Right to Education Project has initiated a survey; preliminary results are expected towards the end of 2003.
35. Education Rights Project, *Prohibiting the ongoing sexual harassment and sexual violence against learners*, Johannesburg, 2002; Human Rights Watch, *Scared at school*, New York, 2001.
36. CEDAW, 'Violence Against Women,' General Recommendation no. 19, 1992, CEDAW/C/1992/L.1/Add.15, para. 1.
37. Report of Thailand under CEDAW, 1997, CEDAW/C/THA/2-3, para. 160.
38. Report of the Philippines under CEDAW, 1996, CEDAW/C/PHI/4, para. 44.
39. Report of Belize under CEDAW, 1996, CEDAW/C/BLZ/1-2, paras. 113–16.
40. *Cristano Arcangel Martinez y Maria Suarez Robayo v. Colegio Ciudad de Cali*, Case No. T-177814, 11 November 1998. Quoted in K. Tomasevski, Human rights in education as a prerequisite for human rights education. *Right to education primers, no. 4*, Gothenberg, Sweden, 2001, p. 42.
41. OAU Doc. CAB/LEG/24.9/49 (1990) (in force since November 1999). Article 11(6) states: 'States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.'
42. Report of Burundi under CEDAW, 2000, CEDAW/C/BDI/1, p. 13.
43. Report of Belize under CEDAW, 1996, CEDAW/C/BLZ/1-2, paras. 113–16.
44. Report of Chile under CEDAW, 1999, CEDAW/C/CHI/3, p. 11.
45. ILO treaty 138, Convention Concerning Minimum Age for Admission to Employment, 1973.
46. Report of Egypt under CEDAW, 2000, CEDAW/C/EGY/4-5; Report of Morocco under CEDAW, 1998, CEDAW/C/BFA/2-3.
47. Nader Fergany, *Towards high quality universal primary education in Egypt*, Giza, Egypt, Almishkat Centre for Research, 2000. http://www.almishkat.org/engdoc00/girls_education.htm; and UNDP, *Egypt human development report, 1998/1999*, p. 111, New York.
48. International Covenant on Economic, Social and Cultural Rights, 1966, Article 13 (1).

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