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The right to education

**Report of the Special Rapporteur, Katarina Tomaševski, submitted pursuant
to Commission on Human Rights resolution 2002/23**

Executive summary

The limited length of this, the fifth, annual report has permitted only a cursory mention of major developments and a brief summary of the Special Rapporteur's work. Space constraints have also required integration of conclusions and recommendations in the text; they are printed in bold. Notes have been reduced to a minimum. The Special Rapporteur's work has been made exceedingly difficult due to inadequate servicing by the OHCHR. Therefore, she had a meeting with OHCHR on 11 December 2002 and will inform the Commission of the follow-up.

As the Commission has requested, the Special Rapporteur has continued prioritizing the elimination of obstacles to the progressive realization of the right to education. Section I of this report focuses on global rule of law as the foundation for human rights mainstreaming. The priority is a clear articulation of a framework of global accountability so as to ensure the conformity of global strategies with the core requirements of international human rights law. The rights-based approach to education facilitates overcoming regulatory and institutional fragmentation and promotes cross-sectoral strategies in international cooperation. The report on the Special Rapporteur's mission to Indonesia (E/CN.4/2003/9/Add.1) has highlighted the role of education in eradicating poverty, mitigating and preventing conflict, and promoting gender equality. In cooperation with the United Nations Educational, Scientific and Cultural Organization she has made further steps in operationalizing rights-based education, examining the potential and limitations of quantitative data, and developing rights-based benchmarks for the quality of education. Cooperation across vertical and horizontal divisions of competence and sectoral and professional boundaries can be further strengthened through streamlining treaty-based human rights reporting.

The practice of States reflects translation of international human rights law into correctives for education. Increasing involvement by diverse actors from all over the world in vindicating the right to education demonstrates its enhanced visibility. Trends in the realization of education as a civil, cultural, economic, political and social right are summarized in section II. Following the Commission's request to highlight the problems of responsiveness where it impedes effective carrying out of thematic mandates (resolution 2002/84, para. 6), the Special Rapporteur has noted the obstacles she has encountered regarding Ethiopia and Turkey.

The growing emphasis on the quality of education, especially its contents, has reinforced the importance of strengthening human rights safeguards in education. These are addressed in section III. Shifting the emphasis from the means to the ends of education requires supplementing quantitative data on budgetary allocations or enrolments by asking and answering key questions: What is education for? Who decides and how? How are human rights safeguards best applied in the processes of teaching and learning? Such questions have acquired an increasing urgency, especially in post-conflict societies. The Special Rapporteur's mission to Northern Ireland (E/CN.4/2003/9/Add.2) has highlighted the importance of education in rupturing intergenerational transmission of key factors that create a conflict-prone society. This reinforces the need for rights-based processes of teaching and learning, and the Special Rapporteur has amplified her work on the human rights contents of educational curricula and textbooks in cooperation with the International Bureau of Education (IBE/UNESCO).

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Introduction

1. This, the fifth, annual report of the Special Rapporteur on the right to education has had to accommodate the constraints of space, permitting only a brief outline of pertinent developments and a cursory overview of key facets of her work. She has had to invest an immense amount of time and also her own funds amounting to over US\$ 15,000 to carry out her mandate. Therefore, on 11 December 2002, she had a meeting with the new Chief of the Research and the Right to Development Branch of OHCHR and the Deputy High Commissioner for Human Rights. Its purpose was to discuss whether the promised support for the mandate on the right to education (E/CN.4/2002/60, para. 2) could be provided by the Office and thereby alleviate some of the recent hardship, which the Special Rapporteur had experienced before (E/CN.4/2001/52, para. 2). In practice, the Special Rapporteur has continued doing all her research and writing. Carrying out her mandate has been exacerbated by administrative and logistical problems. The Special Rapporteur brought these problems to the attention of OHCHR during the aforementioned meeting on 11 December 2002 and will inform the Commission of the follow-up.

2. The conceptual basis for human rights mainstreaming in international cooperation has been strengthened by the shared focus on poverty eradication, gender equality and conflict prevention. This has facilitated the Special Rapporteur's cooperation with UNESCO and the International Labour Organization and her continuing dialogue with the World Bank. Poverty has been universally affirmed as a key obstacle to the enjoyment of the right to education. Human rights mainstreaming has amplified the analysis of poverty to apply situations where poverty results from denials and violations of human rights, including the right to education. Gender, racial, ethnic, or religious profiles of poverty and impoverishment have heightened the urgency of rights-based poverty analysis. The process of translating all internationally prohibited grounds of discrimination into education indicators has begun. Its ultimate objective is the affirmation and full implementation of all human rights for girls and women, or minorities and migrants, to make improvements sustainable. The symmetry between rights and responsibilities ensures sustainability. It associates individual entitlements with the corresponding government obligations, linking empowerment with accountability. The association between relative poverty and conflict generation has further reinforced the importance of rights-based approaches, extending their application to conflict prevention.

3. The Secretary-General's initiative towards integrating reporting under human rights treaties (A/57/387, paras. 52-54) has created an excellent opportunity for reviving the Special Rapporteur's previous initiative aimed at a shared conceptual framework for reporting on the right to education since it is dealt with by all treaty bodies (E/CN.4/2000/6, paras. 5-6). Once achieved, unification of reporting under human rights treaties will overcome fragmentation within the very international human rights law. The coexistence of treaties that address different components of the right to education have facilitated separate and differentiated analyses of parts of the right to education. The Special Rapporteur has further refined her digest of core human rights standards pertaining to education from all pertinent treaties as these have been affirmed in States' practice. Her 4-A scheme, whereby Governments' human rights obligations are defined as making education available, accessible, acceptable and adaptable (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) has proved to constitute a simple and easy-to-use tool for translating the international legal framework of the

right to education for professionals working in education or international cooperation. **The Special Rapporteur recommends that efforts to streamline human rights treaty-based reporting be used as an opportunity to clarify and simplify the legal framework of the right to education, highlight key principles and core standards, and identify the most important quantitative and qualitative data concerning the right to education as a civil, cultural, economic, political and social right. This can be useful to Governments, United Nations organizations dealing with education, multilateral and bilateral actors involved in international cooperation, or international financial institutions.**

I. MAINSTREAMING HUMAN RIGHTS THROUGH GLOBAL RULE OF LAW

4. In her work, the Special Rapporteur has emphasized broadening the rule of law as the foundation for human rights mainstreaming (E/CN.4/2002/60, paras. 5-8). The Commission has amplified the remit of rights-based mainstreaming to development agencies and financial institutions (resolution 2002/74, para. 17 (b)). The grounding of human rights in the rule of law provides the outline of the accountability framework within which individual and collective government responsibilities can be defined and translated into practice as the corollary of the universal right to education.

5. The Special Rapporteur has continued her dialogue with the World Bank.¹ Her priority remains subsuming the World Bank's work under the rule of law. This is facilitated by World Bank's promotion of the rule of law at the domestic level through its lending. Its own accountability for past and future lending, including for education, is therefore a necessary counterpart. As Nicholas Stern, the World Bank's chief economist, has pointed out, "global programmes are often less firmly anchored in accountability mechanisms that attend country work".² The reason for the rule of law spanning all areas of rule-making has been aptly summed up by Mario Monti, the European Union's competition commissioner: "Effective judicial review is the ultimate guarantor of accountability".³ Accountability requires safeguards against selectiveness, whereby parts of law are followed while others are flouted. Thus, school fees in primary education may be charged or teachers' trade union freedoms denied in breach of international and domestic law, undermining the very notion of the rule of law. **The Special Rapporteur recommends a clear articulation of the requirements of the rule of law as the basis for human rights mainstreaming, and analysis of the impact of these requirements for the principal actors involved in designing and implementing global education strategies.**

A. Surmounting financial obstacles

6. Recent global developments have been characterized by increased commitments to free primary education, including the elimination of school fees and a search for models of sustainable public funding. However, the borderline between public and private has become blurred due to the rapid expansion of the sale and purchase of education services. **The Special Rapporteur recommends the identification of actual and potential conflicts within the rapidly changing international legal environment. These require upholding education as a free public service and defining the permitted scope of free trade in education services.**

1. Renewed commitments to free primary education

7. In the past year, much progress has been achieved in global commitments to free primary education. These have, more often than not, followed developments at the domestic level (E/CN.4/2002/60, paras. 11-13) and increasing international mobilization around education as a human right. This rollback has been based on the opposition to the implicit denial of the right to education to poor countries, communities, families and children resulting from the absence of remedies for poverty-based exclusion from education. The process of rollback has been inspired by traditional human rights activism whereby exposing human rights denials and violations is the most effective way of opposing them. Much as elsewhere, the pace of change has been driven by the quality of argument and the ability to mobilize political support. Because most global commitments concerning public funding for public education are not based on law, political support has proved indispensable for fostering change. After the turn of the millennium, global strategies have increasingly embodied a commitment to free primary education, facilitating the affirmation and realization of one key component of the right to education at the domestic level.

8. The importance of poverty-based exclusion from education has focused the Special Rapporteur on the elimination of fees in primary school. These fees epitomize the impossibility of alleviating poverty through education for all those who are too poor to afford its cost. They also reflect discriminatory denials of the right to education on the grounds of poverty and age. Prohibitions of discrimination regarding economic status, property or fortune form part of international human rights treaties, both global and regional. Their enforcement has been hampered by the unfortunate rule of inverse proportion, whereby the right to education is litigated where already guaranteed, while not at all where it is denied and poverty is used to justify that denial. Age-based discrimination has often denied education to children who need it most.

9. The Special Rapporteur's continuing dialogue with the World Bank has encompassed her written comments on its draft study on school fees of 17 June 2002 (E/CN.4/2002/60, para. 16) and her subsequent visit to the World Bank on 4 November 2002. Her comments concerning the draft study on school fees highlighted, inter alia, the inevitably detrimental impact of school fees on the rule of law. They often constitute a breach of international legal obligations and/or are unconstitutional. The World Bank's promotion of the rule of law through its lending requires its observance in its own work (E/CN.4/2001/52, paras. 37-41). **The Special Rapporteur recommends to the World Bank an assessment of the conformity of its policy and practice in education lending with the international human rights obligations of borrowers.** The Special Rapporteur is awaiting the final version of the World Bank's study of school fees, as well as any policy changes that may ensue as follow-up, and shall provide updated information to the Commission in her oral report.

2. Integration of human rights in global funding strategies

10. There is, as yet, no comprehensive global definition of universal human rights obligations corresponding to the right to education. The process aimed at generating this definition entails clarifying and streamlining collective, universal human rights obligations to guide global education strategies and decisions concerning public funding. Promises of increased aid for education have been made but have not yet materialized. They represent a signpost for the

reversal of decreasing aid flows. This process could be facilitated by clearly and powerfully argued purposes and objectives of education. Human rights mainstreaming usefully complements the current focus on the means of education, on the need for all children to start and finish primary school, by linking the right to education to poverty eradication (E/CN.4/2001/52, paras. 9-10; E/CN.4/2002/60, paras. 59-63) as well as prevention of conflicts and violence (E/CN.4/2002/60, paras. 64-69; E/CN.4/2001/52, paras. 46-50). **The Special Rapporteur recommends that purposes and objectives of education be prioritized in global education strategies.**

11. The process of debt relief (E/CN.4/2002/60, paras. 17-18) has generated concrete commitments to increased funding for primary education, as has the closely related World Bank Fast-Tracking Initiative (FTI). The FTI was launched by the World Bank in April 2002. It encompasses 18 countries,⁴ all of them heavily indebted and eligible for debt relief under heavily indebted poor country initiative HIPC-II on the basis of Poverty Reduction Strategy Papers (PRSPs). These countries are planned to be “fast-tracked” towards achievement of school enrolment and completion for six-year primary schooling. Compliance with specified education reforms is also required. At a joint meeting of the World Bank, UNESCO and the European Union on 27 November 2002, seven countries were selected (Burkina Faso, Guinea, Guyana, Honduras, Mauritania, Nicaragua and Niger) for the first phase of “fast-tracking”.⁵ The FTI has been hailed as the first focused financing framework for the achievement of the Millennium Development Goals in education, but also critiqued for its exclusive focus on quantitative dimensions of education and the one-size-fits-all policy framework. Also, there are fears that aid dependence may be further increased. The Special Rapporteur will continue closely following ongoing developments and inform the Commission in her oral report.

12. One of the Special Rapporteur’s concerns is the length of schooling - six years - especially in connection with the elimination of child labour (E/CN.4/2001/52, para. 28; E/CN.4/2000/6, paras. 61-65). A recent global overview of the legally determined minimum ages for, inter alia, education and employment⁶ has revealed the scope of change that is necessary. Six years of primary school entail children aged only 12 leaving school, when they are legally prohibited from working in most countries. The Commission’s emphasis on closing the gap between the school-leaving age and the minimum age for employment (resolution 2003/23, para. 4 (i)) reinforces the need for human rights mainstreaming in this area in cooperation with the ILO.

13. The Special Rapporteur is also worried about the expectations that primary education alone would result in poverty reduction. Empirical evidence that secondary, rather than primary education constitutes the key to poverty reduction (E/CN.4/2002/60, para. 62) supports her fears. The rationale behind making free and compulsory education the responsibility of the State has always been the delayed economic return, and that only in combination with other assets (E/CN.4/2001/52, para. 10). The World Bank’s overarching goal of combating poverty (E/CN.4/2001/52, para. 34) emphasizes poverty reduction expected from primary education. As it gives loans which ought to be repaid, the economic case for primary education attains heightened importance. Whether the World Bank’s approach will prove viable, and the expectations it has raised justified, is not only an empirical but also a legal question because children as young as 12 are not allowed to work. **The Special Rapporteur recommends that**

the World Bank raise the school-leaving age to the minimum age for employment. She will be, of course, happy to contribute to the necessary process of change in every way she can, including through her cooperation with the ILO

B. Rights-based law reform

14. The Special Rapporteur's report on her mission to Indonesia (E/CN.4/2003/9/Add.1) has highlighted the role of education in eradicating poverty, mitigating and preventing conflict, and promoting gender equality. The Special Rapporteur is grateful to the Government for its supportive comments on her findings and recommendations and for the endorsement of her 4-A scheme as an analytical framework. She is looking forward to contributing to the follow-up of her mission in every way she can. Her recommendations represent a considerable challenge for cross-sectoral and interinstitutional cooperation. Much as in other countries, education constitutes a separate sector, supported by a separate institutional structure; gender equality or child labour pertain to the remit of different institutions.

15. Human rights obligations pertain to all parts of the Government, regardless of vertical and horizontal divisions of powers and responsibilities. Human rights mainstreaming requires regulatory and institutional coherence because human rights are interrelated and interdependent. The Special Rapporteur recommends operationalizing human rights mainstreaming through rights-based law reform, encompassing the right to education, human rights safeguards in education, and enhancing human rights through education.

1. The import of the rights of the child

16. A definition of human rights as safeguards against abuse of power by the State is, especially for the rights of the child, necessarily complemented by adult duties and parental responsibilities. Parental obligations regarding the education of their children are complemented by numerous prohibitions against abuse or exploitation of children. The Government is responsible for securing the conditions for full realization of the rights of the child, including the enforcement of parental responsibilities towards their children, as well as adult duties, such as taxation.

17. The right to education involves three key actors: the Government as the provider and/or funder of public schooling, the child as the principal 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 guaranteed freedom and the corollary responsibility of parents to choose education for their children constitutes one pillar of the right to education; another is embodied in the human rights obligations of the State. The rationale behind parental choice is not to legitimize their denial of their children's right to education; in the case of a conflict between parental choice and the best interests of the child, the latter prevail. Rather, parental choice prevents State monopoly over education and protects pluralism.

18. Children have not yet been accorded the standing necessary to vindicate their right to education in most countries. They 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 extralegal mechanisms for human rights protection. The potential for abuse of power inherent in the vulnerability of children necessitates special public institutions to be created for children, alongside their own right to articulate and defend their rights. The rights of the child reach far beyond law since macroeconomic and fiscal policies can jeopardize, or even abrogate, children's entitlements. Anticipating the impact of particular policies on children is necessary, as is the avoidance (or at least mitigation) of harmful impacts. A variety of institutions have been established in different countries, including national human rights commissions or children's ombudsmen. These sometimes tend, however, to replicate the existing allocation of competence amongst government institutions. One may find an education-specific commission, another one dealing with children, yet another with women and/or gender, another one with human rights, yet another with minority issues. 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 inputs highlighting specific dimensions that ought to be integrated in a comprehensive strategy. On the other hand, a single, comprehensive strategy may be difficult to elaborate due to coexistence of different government and public institutions with different remits and limited mandates. **The Special Rapporteur recommends comparative studies into best practices for elaborating and implementing rights-based education strategies.**

2. Delineating public and private law

19. Renewed commitments to free primary education have facilitated the articulation of a global accountability framework so as to ensure the conformity of diverse global approaches and strategies with the core requirements of international human rights law. The rapidly changing international legal environment (E/CN.4/2002/60, paras. 19-21) necessitates delineating public and private law as well as addressing newly created conflicts of law.

20. Education as an individual entitlement under public law entails corresponding government obligations; education as a traded service is regulated by private law as a commercial transaction. Freedom of scientific research relies on unimpeded access to the existing knowledge so as to generate new knowledge and transmit it through education. Protection of intellectual property rights threatens to transform knowledge from a public good into a commodity accessible only to those with purchasing power. Moreover, the need for conceptual and normative clarity is reflected in a widespread terminological confusion with regard to the term "rights". Human rights as inherent properties of all members of humanity are often terminologically equated with "rights" under private law acquired through commercial transactions. The sale and purchase of education, an inherently commercial transaction, becomes equated with the provision of education as a free public service. Public interest or charitable activities frequently becomes indistinguishable from commercial and/or profit-making work. For example, the IFC (International Financial Corporation) describes religious orders as "private sector initiatives" that have been providing education for centuries and hails "entrepreneurial activity by NGOs".⁷ **The Special Rapporteur recommends giving priority to public over private law, to the protection of public over private interests, to guide the elaboration of rights-based solutions for recent and future conflicts of law.**

II. OPERATIONALIZING RIGHTS-BASED EDUCATION

21. A broad range of actors have become involved in promoting rights-based global education strategies. This has increased demand for operationalizing its nature and scope. “Rights-based” would have been redundant if only more education of better quality was required. Hence the need for operationalization. The Special Rapporteur has contributed to the *2002 EFA Global Monitoring Report*,⁸ and participated in the Nordic Solidarity Conference. The latter constituted a unique forum that combined education and development professionals and policy-makers. Human rights have introduced difficult questions relating to bridging “the gap between education and overall human rights concerns”.⁹ Problem-defining triggers new and different questions and seeking different types of data to document underlying problems. Human rights are applied research, aimed at broadening and strengthening human rights protections. Problem-solving benefits from five decades of human rights work all over the world, offering a toolbox for the identification of problems and the search for solutions.

A. The potential and limitations of quantitative data

22. The Special Rapporteur has continued working on rights-based indicators (E/CN.4/2002/60, paras. 27-29). The Commission’s focus on the elimination of discrimination “on the basis of race, colour, descent, national, ethnic or social origin, sex, language, religion, political or other opinion, property, disability, birth or other status” (resolution 2002/23, para. 4 (b)) has prioritized mapping out the existing pattern of discrimination so that it can be properly addressed and effectively eliminated. This has revealed the complete absence of quantitative data at the global level and their paucity in most countries. The process of generating education statistics based on the internationally prohibited grounds of discrimination has started. It constitutes a considerable challenge, which can best be met through close cooperation between education and human rights professionals at all levels, from local to global.

23. Education as a universal human right requires universality of governmental human rights obligations because discrimination cumulates, as do the resulting inequalities since discrimination is often compounded by poverty. Education statistics inevitably show that not all children enjoy the right to education. Internationally prohibited discrimination highlights the pattern of exclusion that has historically proved widespread, worldwide, and requires particular attention. The first step towards eliminating discrimination is to make it visible. Keeping a problem invisible facilitates inaction, thereby perpetuating exclusion. Those with the least access to education tend to leave this heritage to the next generation. Making individual families and local communities responsible for funding education broadens the gap between haves and have-nots. Breaking this vicious circle requires Governments, individually and collectively, to prioritize and equalize funding for education, from the local to the global level.

24. Government reports processed under the Convention on the Rights of the Child have revealed no less than 32 categories of children that are particularly likely to be excluded from education. These are, in alphabetical order: abandoned children; asylum-seeking children; beggars; child labourers; child mothers; child prostitutes; children born out of wedlock; delinquent children; disabled children; displaced children; domestic servants; drug-using children; girls; HIV-infected children; homeless children; imprisoned children; indigenous

children; married children; mentally ill children; migrant children; minority children; nomadic children; orphans; pregnant girls; refugee children; *sans-papiers* (children without identity papers); sexually exploited children; stateless children; street children; trafficked children; war-affected children; and working children. **Because most of these combine several grounds of discrimination with poverty-related exclusion from education, the Special Rapporteur recommends merging the conventional focus on legislative measures for the elimination of discrimination with measures aimed at overcoming poverty-based exclusion.**

25. The global priority for eliminating gender disparity in education by the year 2005 has revealed one key obstacle: the necessary statistics become available with a delay of some three years. Global assessments generated in the year 2002 rely on education statistics that relate to the year 1999. From 10 to 12 October 2002, the Special Rapporteur attended the Expert Seminar on article 4 (1) of the Convention on the Elimination of All Forms of Discrimination against Women in Valkenburg/Maastricht, which discussed models for attaining gender equality, including *in* education and *through* education. An important message from that meeting is the need to define equality *of* both women and men as the yardstick rather than merely *between* women and men. Indeed, gender mainstreaming points to the need to review different facets of gender disparity in education. The existing data may reflect the prevalence of male teachers and boys, or female teachers and girls, as the Special Rapporteur found in her own work (E/CN.4/1999/49, paras. 55 and 73). The identification of reasons for gender disparity requires qualitative data, especially concerning the affirmation of and obstacles to the exercise of all human rights that influence gender-related profiles of teaching and learning. **The Special Rapporteur recommends prioritizing quantitative and qualitative data related to gender disparities in education so as to create the background for assessing progress in the year 2005.**

B. Benchmarks for the quality of education

26. The growing emphasis on the quality of education has prioritized strengthening human rights safeguards in education and emphasizing not only the means, but also - even more importantly - the ends of education. As a consequence, quantitative data on budgetary allocations or enrolments are complemented by qualitative data that reflect the purposes and underlying objectives of education, its orientation and contents, methods of teaching and learning.

27. In cooperation with the UNESCO, Asia and Pacific Regional Bureau for Education in Bangkok, the Special Rapporteur has further operationalized rights-based education. A joint Regional Workshop on Universalizing the Right to Education of Good Quality: A Rights-Based Approach to Achieving Education for All, held in Manila, from 29 to 31 October 2002, marked the end of the first phase of cooperation. The Special Rapporteur was prevented from physically attending that meeting by bad weather conditions that kept her stranded at Schiphol Airport those three days. The continuation of cooperation includes a summarized guide on core international human rights standards in education aimed at education professionals and rights-based benchmarks for the quality of education. Education statistics present children as numbers, with school places matching the intake, or the ratio between teachers and pupils conforming to the established standards. The diversity of the intake moves the spotlight in a different direction, to recognizing each child's different identity, ranging from age, sex, race, religion or ethnicity, to

ability and disability, to the importance of the child's family environment (or the lack of thereof), the distance which the child has to walk to school, other requirements upon the child that may interfere with the learning process. Fierce intellectual debates about the meaning of "quality" or "relevance" among educationists and educators demonstrate the immense progress towards clarifying the purposes and objectives that education should have. The advantage of defined ends and means of education in human rights constitute an opportunity for making a useful contribution.

28. The realization of the right to education is a continuing process. Progress can be depicted through two broadening concentric circles, the first showing a gradual extension of the right to education, and the second an incremental inclusion of those previously excluded. The extension of the right to education to the previously excluded categories can be described by highlighting four main stages:

(a) The first stage involves recognizing education as a right. Where the right to education is recognized, non-citizens are often explicitly excluded. Domestic servants or children without identity documents may be implicitly excluded, especially where such documents are required for enrolment;

(b) Once education is recognized 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;

(c) The third stage involves shifting from segregation through assimilation towards integration. Categories 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 placed in schools that provide instruction in an alien language and, often, teach them history that denies their very existence. This process may be underpinned by inclusionary goals, but these tend to be interpreted differently. Assimilation entails imposition of uniformity; integration acknowledges diversity but only as a departure from the "norm". Hence, newcomers have to adjust to the "norm", which routinely extrapolates key features of the earliest, self-granted, bearers of rights - favouring male over female, or speakers of the dominant national language over those speaking a vernacular;

(d) The fourth stage necessitates adaptation to diversity. The previous requirement upon children to adapt themselves to whatever education was available is being replaced by adapting education to the best interests of each child.

C. Multifaceted right to education

29. The practice of States reflects the translation of requirements of international human rights law into correctives for education. Because education is a civil, cultural, economic, political and social right, it requires integrated rather than fragmented analytical approaches. This is further reinforced by the indivisibility of human rights, which necessitates studying linkages between education and all other human rights. This is best studied in situ, hence the importance of country visits. The Special Rapporteur received on 14 November 2002 an

invitation to visit China and is planning to carry out a mission sometime between May and September 2003. Due to budgetary constraints, this will be a two-week visit confined to Beijing. The Special Rapporteur requested an invitation to visit Colombia on 21 October 2002, hoping to be able to schedule a mission at the beginning of February 2003. At the invitation of the first national Special Rapporteur on the right to education, Sergio Haddad, the Special Rapporteur will be on a two-week private visit to Brazil in January 2003. She is very much looking forward to supporting this precedent-setting development.

30. The Commission has requested the thematic mechanisms to highlight the lack of responsiveness (resolution 2002/84, para. 6) where it prevents them from effectively carrying out their mandates. Following the Commission's emphasis on promoting the right to education through international cooperation, the Special Rapporteur has initiated correspondence with key donors for education in Ethiopia so as to overcome the obstacle of the Government's refusal to permit her to visit the country (E/CN.4/2002/60, para. 23). In her statement before the Commission on 4 April 2002, she highlighted that case of non-cooperation as it has gratifyingly been the only one in her experience. However, the Special Rapporteur's efforts to follow up her mission to Turkey (E/CN.4/2002/60/Add.2) have thus far been impeded by the Government's silence. The Special Rapporteur wrote on 27 March 2002, 14 May 2002, 17 June 2002 and 29 October 2002 seeking clarification regarding, inter alia, the fate of the students who had launched an initiative aimed at introducing Kurdish as an elective course at the university, some of whom she met during her mission and about whose fate she has been deeply concerned. The constitutional and legislative changes subsequent to her mission have apparently promised increased human rights safeguards. Thus, the Special Rapporteur has been trying to determine whether this promise has been translated into practice and hopes that the new Government will break the silence.

31. The work of national human rights commissions merits emphasis as the Special Rapporteur has found them key actors in promoting the integrated human rights approach as well as merging legal and extralegal methods of human rights protection. The Special Rapporteur has found her cooperation with national human rights institutions particularly useful, whether in Indonesia (E/CN.4/2002/6/Add.1) or Northern Ireland (E/CN.4/2002/6/Add.2). At the invitation of the South African Human Rights Commission, the Special Rapporteur visited South Africa from 15 to 21 September 2002. This visit included, inter alia, her participation in the Forum on Racism in Education, the launching of the Education Rights Project, and a seminar at the National Department of Education. The Special Rapporteur's concerns regarding the continuing charging of school fees in compulsory education were a topic of her private meeting with the Minister of Education, Kader Asmal. In following up her visit, she is prioritizing a search for ways and means to abolish formally and fully school fees in compulsory education. She is also looking forward to continuing cooperation with the South African Human Rights Commission on the right to education, human rights in education, and human rights education.

32. An increasing involvement of diverse actors from all over the world vindicating the right to education has amplified the Special Rapporteur's outreach. These range from parents of schoolchildren to teachers' trade unions, and, increasingly specialized institutions developing expertise in human rights education. On 23 July 2002, the Special Rapporteur participated in the twentieth Inter-Disciplinary Human Rights Course at the Inter-American Institute of Human Rights (San José), with a lecture on the right to education. The immense interest for this topic

was reflected in an unplanned evening session which highlighted progress from learning *about* human rights to learning human rights. On 26 and 27 July 2002, the Special Rapporteur participated in a seminar on the justiciability of economic, social and cultural rights in Mexico City.¹⁰ That meeting highlighted the existing jurisprudence of the Inter-American Commission and Court on Human Rights, especially its increasing focus on integrating and enforcing *all* human rights. Increasing commitments to economic and social rights by governmental and non-governmental actors represent a particularly welcome development.

33. Amongst many facets of education, its operative definition as a cultural right has thus far attained the least attention. The placement of cultural rights on the Commission's agenda constitutes a welcome change. The Commission's resolution on cultural rights has underlined "that market forces alone cannot guarantee the preservation and promotion of cultural diversity", supporting the priority for public policy (resolution 2002/26, para. 13) in molding education so as to best contribute to the enhancement of cultural rights.

34. Education vocabulary often reflects the free-market approach through terms such as "the global market for advanced human capital" or even "humanistic capital".¹¹ Economists within the World Bank favour investment in education for its social rates of return, or its externalities, defining them as "individual's human capital enhancing the productivity of other factors of production through channels that are not internalized by the individual".¹² The ordinary meaning of the term *capital* is "wealth (money or property) owned or used in business".¹³ It is therefore, in the Special Rapporteur's view, an inappropriate designator for people because owning people, or using them in business, was one of the first universal prohibitions, by far predating the development of international human rights law. Perhaps the very institution of the Special Rapporteur, working without any remuneration, is a useful reminder that values other than "wealth creation" underpin human rights.

35. The World Bank has explicitly mentioned human rights criteria regarding the contents of school textbooks: "it is expected that book provision programs financed by the Bank subscribe to the principles expressed in the UN's Universal Declaration of Human Rights. The Bank reserves the right to withdraw funding for books which can be shown to breach some provisions of that declaration."¹⁴ The Special Rapporteur has highlighted controversies that school textbooks raise (E/CN.4/2002/60, para. 67) and pointed out domestic and international jurisprudence (E/CN.4/2001/52, paras. 73-77). The legal framework which has developed in the past 50 years on the basis of the Universal Declaration of Human Rights should be, in the Special Rapporteur's view, used as a corrective to the process of developing educational curricula and textbooks. **She recommends that the process of preparing, using and assessing school textbooks be subsumed under the rule of law.** Alongside the contents of textbooks, their chosen language often raises human rights concerns. The World Bank's guidance has emphasized "profitable trade in textbooks" and the need to carefully assess "the cost of providing materials in minority languages". The yardstick for such assessments could - and should be - in the Special Rapporteur's view a commitment to preserve the linguistic richness (not to say wealth) of humanity, or to promote minority or indigenous rights, not merely profitability.

36. The Special Rapporteur's mission to Northern Ireland (E/CN.4/2003/9/Add. 2) has highlighted the importance of education in rupturing the intergenerational transmission of key

factors that create a conflict-prone society. The language of instruction and the contents of education typify similar controversies worldwide. These routinely trigger political solutions or partial rights-based approaches, whereby “education may actually contribute to the entrenchment of separation of communities as each group (that can afford to) establishes its own schools, teaching its own curriculum in its own language”.¹⁵

III. HUMAN RIGHTS SAFEGUARDS IN EDUCATION

37. One of the most visible manifestations of the increasing knowledge about and commitment to human rights is correspondence addressed to the United Nations. It raises diverse issues that people from all corners of the world feel may constitute human rights violations in education, ranging from censorship of school textbooks to corporal punishment of schoolchildren, from a right of parents to educate their children themselves to the exclusion of children from education because they are deemed to be too old or too young. The Secretary-General’s emphasis of the fact that people all over the world look to the United Nations Commission on Human Rights for protection of their rights (A/57/387, para. 46) provides excellent guidance to all Commission’s mechanisms, and the Special Rapporteur has continued this part of her work (E/CN.4/2002/60, paras. 52-57) addressing the variety of issues brought to her attention.

A. Eliminating obstacles to teaching

38. The global commitment to the quality of education entails the elimination of obstacles to teaching and learning and this, in turn, requires full recognition of the rights of both learners and their teachers. The Commission’s mention of teachers, for the first time, in its resolution 2002/23 has inspired the Special Rapporteur to amplify her previous work on the affirmation of the rights of teachers, especially by studying the obstacles thereto (E/CN.4/2002/60, paras. 50-51; E/CN.4/2001/52, para. 16; E/CN.4/2000/6, paras. 42-44). Alongside her previous work, in cooperation with the ILO, on clarifying constraints upon the rights of teachers in Ethiopia (E/CN.4/2001/52, para. 19), the Special Rapporteur sent a joint letter to the Government of Zimbabwe on 18 October 2002 together with the Special Rapporteurs on torture and on freedom of opinion and expression and the Working Group on arbitrary detention. That urgent appeal sought to clarify the fate of numerous teachers whose protests against their collective dismissal were reportedly suppressed. The dismissal itself seems to have been prompted by a teachers’ strike. Since no reply was received by the time this report had to be finalized, the Special Rapporteur will continue her efforts to clarify the fate of the teachers, the background and circumstances of the events that seem to have jeopardized not only their livelihoods but also their lives, and the evolving government policy regarding the status of teachers.

39. The Special Rapporteur’s visit to the World Bank on 4 November 2002 was an opportunity to examine different approaches regarding the core international labour standards developed by the ILO. The World Bank’s Fast-Track Initiative, mentioned above, is based on a calculated average teacher’s salary of 3.5 times GDP per capita. Thus, policy reforms will necessitate increasing teachers’ salaries in some countries, decreasing them in others, all outside the requirements of international labour law on trade union freedoms and collective bargaining. The ILO Declaration on Fundamental Principles and Rights at Work includes “freedom of

association and the effective recognition of the right to collective bargaining” among those fundamental rights that should be universally applied, including in global strategies for economic development.¹⁶ A part of follow-up have been commitments by international organizations to the integration of fundamental principles and rights at work in their policy and practice. Different from the World Bank, the Asian Development Bank (ADB) has made a formal and explicit commitment whereby “in the design and formulation of its loans, ADB will comply with the internationally recognized labour standards”.¹⁷

40. It is a truism that teachers whose rights are denied cannot be expected to effectively teach human rights. Thus the difference between *teaching human rights* and teaching *about* human rights. The contents of educational curricula and textbooks are increasingly subjected to human rights assessments, which constitutes a particularly welcome development.

41. In September 1999, the Special Rapporteur initiated correspondence with the Government of India (E/CN.4/2001/52, para. 24) regarding many different facets of public policy regarding religion and education, including the revision of curricula and textbooks. On 14 January 2002, together with the Special Rapporteur on torture, she sent an urgent appeal to the Government of India related to the fate of participants in a conference on education policy, who were allegedly detained and ill-treated, to which there has been no reply as yet. The recent attention to the crucial importance of public policy for the relations between religious communities has highlighted the need to continue her efforts to clarify the human rights dimensions of recent and ongoing changes. Amongst them, controversies relating to the contents of school textbooks have required her immediate attention and on 12 December 2002 she sent a letter to the Government of India. Thereby, she sought information about the impact of a recent Supreme Court judgement relating to the contents of history textbooks on the evolving government policy and practice.

42. From 6 to 9 November 2002, the Special Rapporteur attended the Education International conference Living and Learning Together held in St. Paul’s Bay, Malta. Obstacles to teaching and learning were found in the form of conflicting historical narratives that create insecurity amongst learners, especially where they had been socialized into accepting that there was one and only one truth. Teachers who challenge that truth as summarized in textbooks may be detained, arrested, or even killed. Specialized courses in human rights or peace education tend to present to children a world in which conflicts can be avoided, and easily so, while the environment around the school may be full of conflicts.

43. An increased focus on the human rights contents of in-school and out-of-school education, and on discrepancies between the two, appears particularly urgent. The Special Rapporteur has heeded the emphasis placed by the Commission on the contents of education curricula and textbooks (resolution 2002/74, para. 5) and strengthened her cooperation with IBE/UNESCO on the basis of the Protocol of Cooperation of 1 October 1999 (E/CN.4/2000/6, para. 8). Interdisciplinary work will facilitate analysis of the human rights contents of educational curricula and textbooks as well as the carrying out of case studies focused on the human rights impact of its changes, especially in post-conflict countries.

B. Promoting rights-based learning

44. The specific obstacles to children's learning are many. They include hunger, ill-health, or tiredness because the child worked too hard or walked to school much too long. They do not predispose children to understanding the meaning of human rights, except by noting their conspicuous absence in their own lives. Once these obstacles are eliminated, the language of instruction may impede communication between teachers and their pupils, impeding both teaching and learning. Increased attention to the relevance of education for children's lives has highlighted the indivisibility of human rights. The affirmation of the child's right to health has obtained particular importance due to the HIV/AIDS pandemic, and the Special Rapporteur plans to devote considerable attention to the linkage between health and education.

45. The rapidly increasing emphasis on preventing HIV/AIDS through education has reinforced the need to revisit the Secretary-General's call to address "the deadly price of not going to school" (E/CN.4/2001/52, para. 30). It has been supported by the Commission's call for "preventive education against HIV/AIDS" (resolution 2002/23, para. 4 (c)). While there is a broad agreement on the importance of education for HIV/AIDS prevention, there is a great deal of disagreement about what should be taught at school and how. Education is typically deemed to be an elixir that can cure all diseases of society. How this should be done triggers different responses. One extreme is represented by knowledge about "the potential of curriculum changes to empower school learners to avoid HIV infection",¹⁸ another by silence about human sexuality. Calls for children's right of access to information necessary for their self-protection are as numerous as are the objections and children pay a high price for disagreements amongst adults. This requires, in the Special Rapporteur's view, a careful examination of the existing practices with a view to distilling best options for promoting rights-based processes of teaching and learning in the best interests of each child.

Notes

¹ The Special Rapporteur's preliminary report highlighted the World Bank's steps towards "adjusting adjustment", outlining her plans for subsequent study (E/CN.4/1999/49, para. 20). Her progress report analysed the World Bank's education strategy as well as its role in the introduction of school fees in Africa in the 1980s (E/CN.4/2000/6, paras. 23-29 and 48-55). Her subsequent annual report highlighted the need for the rule-of-law approach to strengthen the World Bank's operational guidance (E/CN.4/2001/52, paras. 31-42), adding as her most urgent recommendation an in-house review of the charging of school fees in primary education (E/CN.4/2001/52, para. 81). In 2002, the Special Rapporteur noted that she was waiting for the results of that review (E/CN.4/2002/60, paras. 14-16).

² N. Stern, Development: Learning the lessons, *Global Agenda 2002/2003: Meeting the Challenges. The Annual Meetings of the IMF and the World Bank, Washington DC, 28-29 September 2002*, Agenda Publishing, London, p. 8.

³ F. Guerrero, "Why handshakes may get harder", *Financial Times*, 21 November 2002.

⁴ The formal announcement of 12 June 2002 listed 18 countries invited to join the FTI (Albania, Bolivia, Burkina Faso, Ethiopia, Gambia, Ghana, Guinea, Guyana, Honduras, Mauritania, Mozambique, Nicaragua, Niger, Uganda, United Republic of Tanzania, Viet Nam, Zambia and Yemen) and five to which the World Bank pledged intensified support so as to make them eligible for financing under the FTI (Bangladesh, Democratic Republic of the Congo, India, Nigeria and Pakistan).

⁵ UNESCO Education Web Digest of 2 December 2002, www.unesco.org/education/efa/news.

⁶ A. Melchiorre, *At What Age? ... Are School Children Employed, Married and Taken to Court?*, Right to Education Project, November 2002, available at www.right-to-education.org.

⁷ International Finance Corporation, *Investing in Private Education: IFC's Strategic Directions*, Washington DC, July 2001, p. 15.

⁸ *Education for All: Is the World on Track? EFA Global Monitoring Report 2002*, UNESCO Publishing, Paris 2002.

⁹ Nordic Council of Ministers, *Nordic Solidarity: Conference on Education and Development Cooperation under Norway's Presidency in the Nordic Council of Ministers*, Oslo, 3-4 June 2002, p. 19.

¹⁰ Seminario sobre justiciabilidad de los derechos económicos, sociales y culturales, Centro por la Justicia y el Derecho Internacional, Mexico, Center for Human and Civil Rights, Notre Dame University, United States of America and Instituto de Investigaciones Jurídicas de la Universidad Autónoma de Mexico.

¹¹ The World Bank, *Constructing Knowledge Societies: New Challenges for Tertiary Education*, Washington DC, 2002, p. 4.

¹² G. Psacharopoulos, and H.A. Patrinos, *Returns to Investment in Education. A Further Update*, Policy Research Working Paper, No. 2881, The World Bank, September 2002, p. 3.

¹³ *Webster's New World Dictionary of the American Language*, The World Publishing Company, New York, 1974, p. 210.

¹⁴ *World Bank Operational Guidelines for Textbooks and Reading Materials*, Washington DC, undated.

¹⁵ D. Wilson, *Minority Rights in Education. Lessons for the European Union from Estonia, Latvia, Romania and The former Yugoslav Republic of Macedonia*, Right to Education Project, December 2002, available at www.right-to-education.org.

¹⁶ The text of this Declaration and documents relating to its follow-up are available at www.ilo.org.

¹⁷ Asian Development Bank *Social Protection Strategy*, para. 54 (b), (full text at www.adb.org).

¹⁸ *Education for All: Is the World on Track? 2002 EFA Global Monitoring Report*, Paris, 2002, p. 154.
