

## Human rights in education as prerequisite for human rights education



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Right to education primers no. 4

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## Preface

This is the fourth publication in the series of Right to Education Primers, which is devoted to elucidating key dimensions of the right to education, human rights in education, and human rights through education. Primer No. 1, entitled *Removing Obstacles on the Road to the Right to Education*, has had as the point of departure the need to dismantle prevalent misconceptions which impede effective recognition of the right to education. Primer No. 2 has addressed its cardinal requirement, ensuring free and compulsory education for all, and highlighted the gap between this minimal global human rights norm and reality. Primer No. 3 has summarized governmental human rights obligations in education, structured into a simple 4-A scheme – making education available, accessible, acceptable and adaptable. This text is devoted to the orientation, contents and methods of education from the human rights perspective. It is inspired by the paucity of information on what happens in schools and universities, which reflects a widespread tendency to discuss education only in quantitative terms. Making human rights education meaningful necessitates ensuring that the rights of learners and teachers are recognized and protected, and yet, this is often not so. This publication illustrates the scope of existing problems through a selection of real-life problems from all corners of the world. It aims at raising questions rather than offering answers simply because such questions ought to be raised but have thus far evaded scrutiny.

The importance of linking governmental human rights obligations with global development finance strategies –

encompassing aid and debt relief – is addressed in Primer No. 5. It is entitled *Is the World Bank Moving towards the Right to Education?* It argues that human rights obligations are both individual and collective hence the right to education should be – but is not – recognized in global economic, fiscal, or education strategies. The multitude of issues which have to be described and analyzed is being addressed step-by-step hence five more Primers are planned for the year 2001. *Primer No. 6* is devoted to identification and elimination of discrimination in education, as a contribution to the World Conference against Racism in September 2001. Thus far only gender has been systematically addressed in international education strategies and associated statistics, while race, ethnicity, religion, language, or disability have yet to be placed on the international agenda. *Primer No. 7* addresses university education which has, similarly, escaped international attention despite multi-layered problems at the beginning of the new millennium: from the effects of the proliferation of the introduction of tuition fees on the very notion of the right to education, to the risk that education, especially university education, will be transferred from international human rights law to international trade law, to the perpetual difficulties in ensuring respect for academic freedom, or the effects of commercial sponsorship on the autonomy of universities. Looking at the myriad of these and other issues from the human rights perspective is the objective of this series of Primers.

These publications complements my work within the United Nations as the Special Rapporteur on the right to education of the Commission on Human Rights. The Commission has recently started dealing with economic, social and

cultural rights in earnest and this area is not, as yet, widely known. These publications aim to facilitate outreach for the right to education by presenting the essential facets of the process whereby human rights can and should be mainstreamed in education. This entails the full recognition of the right to education, safeguards for human rights and fundamental freedoms in education, and the adaptation of schooling to enhancing human rights through education.

The publications are part of the emerging public access resource centre on the right to education at the Raoul Wallenberg Institute of Lund University. It is being developed to broaden interest for the right to education and to increase knowledge about it by making the essential material available in a systematic manner, free of charge. Alongside publications, this resource centre includes background information needed to map out the international and domestic legal frameworks of the right to education. This encompasses excerpts from the relevant international treaties which guarantee the right to education, information on their ratifications and reservations which delineate international legal commitments for each country, constitutional guarantees of the right to education, information on international and domestic institutions which provide remedy for human rights violations within education, important court cases and decisions of national human rights commissions concerning the right to education and human rights in education. This information will be accessible at [www.right-to-education.org](http://www.right-to-education.org), as of 15 March 2001. This website will also include full texts of the publications and they will also be sent to those who cannot access them on-line.

This resource centre is being developed to augment my work as the Special Rapporteur on the right to education of the United Nations Commission on Human Rights. Special Rapporteurs are appointed by the Chairman of the Commission on Human Rights, subsequent to the Commission's decision to create a specific mandate. The particular person's expertise in a specific field, in my case a long track record of working on economic and social rights, the human rights of women and the rights of the child, seemed to have been decisive. My mandate on the right to education was created by the Commission on Human Rights in its resolution 1998/33 of 17 April 1998 and I was appointed in August 1998.

The Commission's decision to appoint a Special Rapporteur on the right to education originated in a widely shared assessment that economic, social and cultural rights had been neglected, if not marginalized. The text of the resolution whereby my mandate was created, typically for economic and social rights, was inexact on the contours of the mandate<sup>1</sup> as a consequence of the need to generate and sustain consensus within the Commission. Advancing human rights is a process

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<sup>1</sup> The Commission on Human Rights in its resolution 1998/33 of 17 April 1998 mandated me to (i) Report on the status, throughout the world, of the progressive realization of the right to education, including access to primary education, and the difficulties encountered in the implementation of this right; (ii) Promote assistance to Governments for urgent plans of action to secure the progressive implementation of the principle of compulsory primary education free of charge for all; (iii) Focus on gender, in particular the situation and needs of the girl child, and to promote the elimination of all forms of discrimination in education; (v) Develop regular dialogue with actors such as UNESCO or UNICEF, and with financial institutions, such as the World Bank.

and the initial definition of an agenda for the future is narrow and cautious, to be broadened and deepened as work progresses. Much work is needed to redress the previous neglect of the right to education. Much too little can be done within the United Nations, where the right to education is one out of very many issues on the agenda, thus the necessity of providing external academic and professional input in the deliberations and evolving policies of the Commission on Human Rights.

My work on the right to education therefore extends far beyond my role as the Special Rapporteur and encompasses research, teaching and training at the Raoul Wallenberg Institute at Lund University. The two are closely linked. Special Rapporteurship is an honorary function, entailing much unpaid work and a great deal of battling to assert and defend the right to education, particularly for all the children who do not know that such a right exists, least of all that they should be enjoying it. The logic of human rights work is that rights are denied and violated hence the essential task is to expose and oppose denials and violations. By no stretch of imagination could one imagine deniers and violators sitting back and applauding. Special Rapporteurs thus continue in their existing jobs so as to remain financially and organizationally independent. Where their professional and academic work can be molded to support their UN work, as my case has fortunately been, much can be done.

Working as a Special Rapporteur encompasses three tracks: annual reports provide a summarized overview of relevant developments worldwide, country missions are carried

out to examine the pattern of problems *in situ*, while obstacles or alleged violations are tackled through correspondence with the respective governments. My three annual and two mission reports (Uganda and England) are available on the homepage of the High Commissioner for Human Rights ([www.unhchr.ch](http://www.unhchr.ch)) in English, French and Spanish, as are resolutions of the Commission on Human Rights and other pertinent documents. My UN reports are also available at [www.right-to-education.org](http://www.right-to-education.org).

UN reports are limited to 28 pages and so a great deal of economizing is needed to cover all pertinent issues; the coverage is necessarily superficial. There is only one annual report while funding available for missions effectively permits only one every second year. The style in which these reports are written does not facilitate easy reading. Therefore, this series of publications addresses each important dimension of the right to education in turn.

The publications are kept short, the multitude of legal information is provided separately so as to facilitate easy reading, and real-life examples are used as much as possible to exemplify the relevance of the human rights approach to education not shying away from the complexities embodied in the need to balance different, often conflicting rights. The Primers are circulated in a limited number of copies to stimulate discussion and invite critical comment. All comments and suggestions are thus welcome.

K. Tomaševski  
Lund, 18 January 2001

## Introduction

Conceptualization of the right to education has not advanced a great deal as is evidenced in the absence of a clear-cut answer to a simple question: when is the right to education fully realized? Our failure to secure schooling for all children tends to focus all attention on the needed but lacking schools, funds, and teachers. This keeps attention focused on the means. Securing them does not automatically mold education towards desired ends, provided that there was a global agreement on what education is *for*. Varying ends are laid down, in theory and in practice, ranging from *vocationalist* to *liberationist*. The field of human rights is a rare exception in having defined both the ends and the means of education hence there is a legal framework to guide education. It is, regrettably, poorly known outside the human rights community, which is small and often dissociated from the world of education. This text aims to provide a quick overview of the questions that should be posed so as to bring education and human rights closer together, ultimately to fully integrate (or mainstream, as the currently fashionable terms has it) human rights in education.

The postulates embodied in educational policies and laws sometimes repeat the need for education to include teaching about human rights, but these are notoriously wide apart from what happens in the classroom. Our knowledge is inversely correlated with the importance of the object of our interest: we know a great deal about the postulates of education policies and laws since these are available, usually in a codified form. We know less about the inputs in the process of teaching and

learning, and least of all about what children and young people actually learn.

Discussing human rights in education is thus not luxury but necessity. Without a clear vision of the inter-relationship between the right to education and rights in education, promoting human rights education or human rights through education remains impossible. UNESCO has had this to say about the need to make the curricular messages compatible with the process of education:

Consistency between the methods used in international education and its messages is an imperative. The institutional environment of schools and the processes of teaching and learning must be consistent with the objectives of peace, co-operation, justice, human rights and ecological sustainability.<sup>2</sup>

Studying experiences in putting into practice requirements of international human rights law in different regions and countries reveals a great deal of similarity and difference. The realm of the possible is delineated by *minimal* standards which should be sought worldwide and the full realization of the right to education is often expressed in terms of *optimal* standards. A unique task of governments is to elaborate educational strategy, regulate education by setting and enforcing these standards, carry out continuous monitoring, and undertake corrective action whenever it is necessary. This

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<sup>2</sup> UNESCO – *Guidelines for Curriculum and Textbooks Development in International Education*, Paris, [undated], para. 17.

task, carried out by governments collectively and individually, forms the background for standard-setting and monitoring. The challenge upon the human rights advocates is to integrate *all* human rights dimensions of education into educational strategies and monitoring schemes. This requires real-life problems to be identified, questions which they pose to be openly addressed, and solutions sought through comparative research. Identical problems are faced by different countries because human rights are truly universal. The essential prerequisite is to accept the inevitable consequence of the rights-language, which is the violations-language. Violations are dealt with by domestic courts and human rights commissions in very many countries. The rights-language is seldom used, however, reflecting the abyss between education and human rights.

Education is widely – albeit wrongly – perceived as inherently good. Getting all children to school is then equated with their right to education. Questions about what and how children are taught are asked rarely, usually when abuses *of* and *in* education are detected. Children can be exposed to advocacy of racism or incitement to genocide. Remedying the harm done by such abuse is difficult, often impossible. The main purpose of human rights is to provide safeguards against abuse of power, and children should have a right to be protected from unsafe food or water in school, from physical or sexual abuse, from brainwashing or indoctrination. Many would say that they do have such a right, which is true when this assertion is understood as a normative statement, but not true as an empirical statement. Because we learn too little and too late about abuses *of* and *in* education, and they are rarely

identified as human rights violations, there are few human rights safeguards in place, least of all where they are needed the most. Their development is recent and fragmentary, hampered by the widespread and erroneous image of education being inherently good.

Historically, religious schools had often constituted the initial outreach of institutionalized education, combining proselytizing with literacy. Compulsory education followed, merging moral upbringing, nation-building, and improving the quality of the labour force. The rights-language entered much later. When it did, the apparent conflict between education being compulsory and at the same time a human right had to be addressed. Because the state has the power of compelling children to attend school, human rights safeguards have been particularly directed at compulsory education. The US Supreme Court has explained that ‘students in such institutions are impressionable and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.’<sup>3</sup> Indeed, education can be used to promote empowerment, but it can also be abused to justify repression. Brian Hill has defined education and law enforcement as the two main agencies of social control.<sup>4</sup> Human rights safeguards are thus necessary to prevent abuse and orientate education

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<sup>3</sup> US Supreme Court – *Edwards v. Aguillard*, 482 U.S. 578, 19 June 1987.

<sup>4</sup> Hill, B. V. – Values education: The Australian experience, *Prospects*, vol. 28, No. 2 June 1998, p. 177.

towards being, at least, human-rights friendly. There is no historical heritage whereupon these human rights safeguards can be based. Education was historically defined as a duty rather than a right until fifty years ago, while the rights of the child emerged at the international level only a decade ago and are slowly being translated from words into deeds.

What happens in schools is seldom examined through the human rights lense, the most important reason being that the notion of rights in education is new. If a state or church did

not force children into school, education was left to families and communities. If a state forced children to go to school, this was seen as the state's prerogative and no questions were asked about what happens to children therein. Evidence of abuses of education and in education is not systematically collected and remains largely unknown. The absence of knowledge about human rights safeguards that are needed to prevent these abuses hampers their development and facilitates the perpetuation of abuses.

## Explicit and hidden messages in schooling

Officially decreed objectives and purposes of education tend to affirm the promotion of human rights, often repeating the wording of international human rights instruments which posits strengthening of respect for human rights, understanding and tolerance among nations, racial and religious groups, equality of sexes, peace and environmental protection. In Saudi Arabia, however ‘education aims at the implantation of the Islamic creed in new generations and the development of their skills so as to enable them to contribute to the building of their society.’<sup>5</sup> On this basis, the general objectives of education are laid down as follows:

- The purpose of education in Islam is to have student understand Islam in a correct and comprehensive manner; to plant and spread the Islamic creed; to furnish student with the values, teachings and ideals of Islam.
- Promoting the spirit of loyalty to Islamic law by denouncing any theory or system that conflicts with this law and by honest conformity with general provisions of this law.<sup>6</sup>

The key prerequisite for human rights education can be denoted as a requirement upon *all* education to support

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<sup>5</sup> Saudi Arabia’s Constitution of 1 March 1992, Article 13.

<sup>6</sup> *Development of Education in the Kingdom of Saudi Arabia. National Report prepared by the Ministry of Education*, Center for Statistical Data and Educational Documentation, Riyadh, 1996, p. 24.

human rights rather than countering the basic principles. This is an immense challenge because the language of human rights is necessarily abstract. Concepts such as human dignity or equality, or else accountability and empowerment, necessitate searching for functional equivalents in different languages and their translation into the corresponding rules of conduct for those actors that have power over others and could thus abuse it. Such concepts tend to reflect phenomena which most people easily recognize because they have seen or experienced them – a sense of powerlessness in the face of abuse of power. However, these concepts convey an image of the world as it should be – not as it is – hence human rights messages are often far apart from the experiences of people at whom they are directed. The last part of Primer No. 3 brought up a story of a former child soldier, regrettably typical, who does not conform to the image of the world as it should be, including the portrayal of children in such an idealized world.

The term *human rights education* has been coined to denote a specialized branch of education which has been mushrooming in the past decade, prompted by the profound change which human rights movements around the world had instigated and which led to the United Nations Decade for Human Rights Education (1995–2004). Although the United Nations have recommended that human rights education start at primary school, it is usually confined to the upper part of the education pyramid. Translating abstract terms into the language which children can understand is a considerable challenge.

Human rights education would probably be classified by many educationists into ‘values education,’ which

## Box 1

### Medium is the message: Language in South American education

For many decades, the education offered by Latin American States was uniform and took no account of students' local, regional, ethnic or linguistic culture patterns. From the time mass primary education was introduced in the last century, school was considered essential to the formation of the nascent Latin American nations. Thus school was supposed to 'hispanicize' the population, teach basic civics and provide the conceptual tools necessary for people to function in society. In this century, mass schooling in rural areas has made education an important instrument of linguistic and cultural unification.

During the 1930s, the view was that isolation and lack of linguistic communication were the main problems that caused discrimination against indigenous communities. In many Latin American countries special educational programmes were set up for the indigenous communities with the aim of improving their command of Spanish (or Portuguese). This process was called 'bilingual education,' meaning that the indigenous language was used as a communicative bridge with the new language, the country's official language; today, in technical terms, this approach is called 'transitional bilingual education,'

since once the official language has been learnt, the vernacular or mother tongue is abandoned.

In the 1970s, a new bilingual education movement began in Latin America, known as 'intercultural bilingual education,' the aim of which is that indigenous children should master both languages simultaneously and create a dialogue of respect between the indigenous culture and the dominant national culture; many programmes of this kind have been implemented, reflecting the highest level of non-discrimination in the educational system.<sup>8</sup>

generally denotes curricular contents that reflects common human values. At the beginning of the past century, this used to be termed 'moral instruction'<sup>7</sup> and has subsequently developed into various types of 'moral education.' Religious education is the main vehicle for 'values education' in many countries, in others it may be civic or democratic education. Until recently, human rights

education was rarely present in school. A study for UNESCO by the Consortium of Institutions for Development and Research in Education in Europe (CIDREE) revealed that, in 1993, environmental education

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<sup>7</sup> Sadler, M. – *Moral Instruction and Training in Schools*, Longmans, Green & Co., London, 1980.

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<sup>8</sup> Sub-Commission on Prevention of Discrimination and Protection of Minorities – Joint working paper on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination prepared by Mr. José Bengoa, Mr. Ivan Garvalov, Mr. Mustafa Mehedi and Mrs. Shanti Sadiq Ali, U.N. Doc. E/CN.4/Sub.2/1998/4 of 10 June 1998, paras. 135–137.

## Box 2

### What are the ‘facts’ which children have to learn?

I know that, in my own case, as a child of the empire learning about Canada’s place within the Commonwealth in the 1950s, I felt a certain pride sitting before the once and former empire, done up in pink in the Oxford Junior Atlas. I was like Marlow in Joseph Conrad’s *Heart of Darkness*, who as “a little chap would look for hours at South America, or Africa, or Australia” and lose himself “in the glories of the exploration.” Year after year, we studied the great British

and French explorers, tracing their journeys with different colored dotted lines across oceans and continents, in ship and on snowshoe, as they trod across what they took to be lands that were theirs for the civilizing.

We spent long hours coloring the nations of Africa and South America, saving out pinks (the mapping color of a healthy and robust white domination?) for the British Empire and the Commonwealth, in what

seemed to me until recently the most innocent of school busywork. The shading of mountain and coastline along boundary after borderline added a therapeutic moment to the school day. Maps were an art form that even the artistic underachievers could reasonably achieve, all the while bringing us along on this great historical ride that left the world a colorful mosaic, with consequences that we might spend the rest of our lives figuring out and living through.<sup>10</sup>

was taught in 14 countries, inter-cultural education in 12, antiracism in 10, while human rights education only in five.<sup>9</sup>

The introduction of human rights education as a specific part of the curriculum is not the principal topic of this text, it is rather the necessity of ensuring that *all* parts of the curriculum, including the whole process of education, conform to the minimal human rights standards. All research into ‘values education’ shows how much confusion it creates where its

explicit messages collide with the implicit messages contained elsewhere in the curriculum. These can be as simple as the language of instruction, as Box 1 shows by depicting developments in South America.

International human rights instruments define the purposes of education at such a high level of abstraction that their translation into many languages as well as into a language which teachers and learners can understand constitutes a considerable challenge. This abstract language is, as is mentioned above, routinely copied into domestic education laws and policies. It is

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<sup>9</sup> CIDREE – *Values Education in Europe: A Comparative Overview of a Survey of 26 Countries in 1993*, NFER (National Foundation for Educational Research), Slough, Berkshire, 1994, vol. 8, p. 44.

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<sup>10</sup> Willinsky, J. – *Learning to Divide the World. Education at Empire’s End*, University of Minnesota Press, Minneapolis, 1998, p. 145–146.

rarely verified how teachers, authors of textbooks, parents and children themselves have understood and internalized these explicit values which education is required to promote. What is known as human rights, democracy, or values education, comes late in the curriculum and is preceded by subjects which are deemed to be factual, such as history, or geography.

Gearóid Ó Tuathail has chosen as the first sentence in his book about uses and abuses of geography to state that ‘geography is about power.’<sup>11</sup> This challenges the assumed objectivity of geography, which we have all internalized at school because the geographical maps which depicted the world, we were taught, reflected facts and we had to learn them as such. Questioning these ‘facts’ comes much later, after schooling has finished, as Box 2 illustrates.

Curricula and textbooks reproduce the authoritatively defined ‘facts and values that children should learn, but these are mediated by teachers. Their role in what children and young people learn and how has therefore attracted a great deal of attention in the development of human rights safeguards in education.

In the words of the Supreme Court of Canada, teachers are the medium of the educational message and their position of trust and influence requires holding them to high standards both on and off duty. The younger their learners, the more vulnerable they are to teachers’ abuse of trust and influence. The Court has justified a dismissal and a subsequent criminal conviction of a teacher who had ‘taught his classes that Jewish people seek to

destroy Christianity and are responsible for depressions, anarchy, chaos, wars and revolution’ expecting his students to reproduce his teaching in class and on exams and penalizing them by bad marks if they failed to do so.’<sup>12</sup> The teachers’ conduct in the classroom is obviously an object of scrutiny so as to prevent distortions of education, but the Court has widened its purview also to teachers’ out-of-school behaviour. It has defined the framework for assessing the role of teachers as follows:

A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate.

Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their position. The conduct of a teacher bears directly upon the community’s perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community’s confidence in the public school system as a whole.<sup>13</sup>

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<sup>11</sup> Ó Tuathail, G. – *Critical Geopolitics: The Politics of Writing Global Space*, Routledge, London, 1996, p. 1.

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<sup>12</sup> Supreme Court of Canada – *R.V. v. Keegstra*, [1990] 3 S.C.R., 697, p. 714.

<sup>13</sup> Supreme Court of Canada – *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R., 825, paras. 44, 45 and 42–43.

This position of trust and influence often broadens the requirements upon teachers often reach far beyond their educational qualifications into their ideological or religious allegiance. The ILO dealt with fitness for teaching in the pre-reunification Germany in the 1980s, with regard to the requirement of faithfulness to the constitutional order which had led to the exclusion of teachers on the grounds of their membership in the communist party. The ILO Commission observed:

A teacher obviously has a duty not to abuse his function by indoctrination or other improper influence on his pupils. Further, in activities and statements outside his service, he must bear in mind the compatibility of what he does and says with his responsibilities. When he violates these duties, he can be subject to disciplinary measures quite apart from any general duty of faithfulness to the basic order. Whether a breach of duty has been committed must however be determined on the basis of the actual conduct. There can be no justification to assume that, because a teacher is active in a particular party or organization, he will behave in a manner incompatible with his obligations.

The Commission recognizes that public activities undertaken by a teacher and known to his pupils may exert an influence on the latter. That, however, applies to all teachers, whatever their political orientation, and raises the wider issue of

the role which it may be appropriate to permit teachers to play in public life. Guidance on this question is provided by the Recommendation concerning the Status of teachers, adopted in October 1966 by a Special Intergovernmental Conference convened by UNESCO, in collaboration with the ILO. According to paragraphs 79 and 80 of this Recommendation, 'the participation of teachers in social and public life should be encouraged in the interests of the teachers' personal development, of the educational service and of society as a whole' and 'teachers should be free to exercise all civic rights generally enjoyed by citizens and should be eligible for public office.'<sup>14</sup>

Post-reunification, the Federal Constitutional Court of Germany has found that a law which demoted university professors in the former East Germany into 'academic assistants,' thus reducing their participation in academic decision-making, breached the constitutional guarantee of freedom of education.<sup>15</sup>

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<sup>14</sup> Report of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine the observance of the Discrimination (Employment and Occupation) Convention, 1958 by the Federal Republic of Germany, Geneva, 26 November 1986, paras. 568–569.

<sup>15</sup> Federal Constitutional Court of Germany – Decision of 26 February 1997, 1 BvR 1864/94 and BvR 1102/95.

## Orientation and contents of the curriculum

What children should learn in school and how the learning process should be organized is the source of never-ending challenge and change. The usual approach is to review the contents and process of learning from the viewpoint of the child as future adult, while the Convention on the Rights of the Child requires that the best interests of the child be given prominence. The choice in the Convention to refer to the best interests of each individual child highlights the need for the educational system to become and remain adaptable.

The countervailing pressures of globalization and localization in the 1990s highlight the need for adaptability. International flows of capital, information and trade are countered by the process of decentralization and/or localization in education, which facilitates responsiveness to the local needs and affirmations of specific ethnic or linguistic or religious identities. Making education responsive to the immediate reality facing children in their own community and to the rapidly changing global realities is the challenge of the new millennium.

The knowledge, skills and values that the current generation of the future adults will need in their lifetime is not only unknown but unknowable. A large part of the curriculum is dealing with the past rather than the future, and presentations of this past create never-ending controversies. History is, alongside geography, taught as a collection of facts. Many human rights challenges have targeted definitions of what these 'facts' are, as well as the selection of

those facts that are deemed relevant for the children to learn. Traditional human rights safeguards against censorship have thus figured prominently in education, but many problems reach far beyond censorship and require much more knowledge about the process whereby curricula, syllabi, and textbooks are created so as to design appropriate human rights safeguards.

The amplitude of controversies related to the contents of educational curriculum has been vividly illustrated by the conflict between 'creationism' and 'evolutionism' in school curricula in the United States. Darwin's *Origin of Species* created a stir at the time when it was first published by demonstrating how natural selection occurs, prompting much opposition from many religious communities, whose belief in design by the Creator the theory of evolution had shattered. US courts became first involved in this subject-matter in 1927, when a teacher had been dismissed for teaching evolution, which was deemed to constitute an anti-religious doctrine. It was deemed unacceptable at the time to teach that human beings evolved from other species rather than having been created by God.<sup>16</sup> US courts revisited the issue in the 1960s. A law banning the teaching of evolution was declared unconstitutional in 1968 to lead further to the affirmation that 'creationism' represented a religious dogma and hampered scientific education.<sup>17</sup> The issue was not settled (nor has it been ever since) and the US Supreme Court had to rule

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<sup>16</sup> Supreme Court of Tennessee – *Scopes v. State*, 154 Tenn. 105, 289 S.W. (1927).

<sup>17</sup> US Supreme Court – *Epperson v. Arkansas*, 393 U.S. 97, 12 November 1968.

whether the school curriculum should include the theory of evolution, or the biblical account of human creation, or both. The Court has upheld the theory of evolution, emphasizing the need for the science curriculum and for the effectiveness of instruction in science.<sup>18</sup> The issue is, however, still subjected to a great deal of legislative and judicial controversy in the United States.

The powers of state and locally elected school boards to determine education policy and curricula of public schools has been affirmed by the US courts,<sup>19</sup> including decisions on the selection of school textbooks or the selection of books in school libraries.<sup>20</sup> Differently in Canada, a 1997 decision to ban from kindergarten and primary school books used as teachers' reference depicting children with same-sex parents was nullified by the court because it had been made on religious grounds regardless of the requirement that schools be secular.<sup>21</sup>

The contents of schoolbooks often triggers controversy beyond the usual human rights agenda. McDonalds took to court a Dutch publisher of schoolbooks because a previously published newspaper article was included in a textbook for

learning Dutch. That article depicted food offered in McDonalds restaurants as unhealthy and referred to the company's abusive practices in South America. The Dutch courts have found against McDonalds, deeming that the inclusion of the text had purely didactical purposes and noting that McDonalds did not react when the newspaper article had originally been published.<sup>22</sup>

#### Textbooks: Re-writing history

The orientation and methods of education involve much more than transmission of knowledge and skills. The values which education espouses might be openly endorsed or cloaked behind apparent neutrality of the curriculum but they are part and parcel of any education. The orientation of education might be secular or religious, the methods used might favour teaching children *what* to think or else *how* to think. The power which is exercised by those authorities which decide on the values, contents and methods of education ought to be subject to human rights safeguards lest it may be abused with impunity.

There are different ways of attempting this. One consists of censorship, that is, filtering out whatever the authorities may assess as inappropriate for schoolchildren. This may be in the best interests of the children but it may also constitute abuse of power. Another is then to enable children to protect themselves, particularly today, when vast amounts of informa-

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<sup>18</sup> US Supreme Court – *Edwards v. Aguillard*, 482 U.S. 578, 19 June 1987

<sup>19</sup> US Supreme Court – *Board of Education v. Pico*, 457 U.S. 853, 25 June 1982.

<sup>20</sup> *Smith v. Board of School Commissioners of Mobile County*, 827 F. 2d 684 (11<sup>th</sup> Cir.) 1987; *Mozert v. Hawkins County Board of Education*, 827 F. 2d 1058 (6<sup>th</sup> Cir.) 1987.

<sup>21</sup> Supreme Court of British Columbia – *James Chamberlain et. al v. The Board of trustees of School District No. 36 (Surrey)*, A972046, judgment of 16 December 1998.

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<sup>22</sup> Hof Leeuwarden, Judgment of 28 June 1989, NJ 1991/18, upheld by Hoge Raad, Judgment of 15 June 1990, No. 14181, NJ 1991/432.

tion are beyond censoring powers of any authority. Laurent Wirth has proposed that schoolchildren be exposed to historical examples of abuses of history in the curriculum in order to enable them to recognize manipulation and protect themselves against it.<sup>23</sup> Marc Ferro has suggested for any study of history to ‘begin by drawing up a list of conflicts and taboos and look at them through the eyes of other people.’<sup>24</sup> The practice of states follows, however, the traditional censorship route, not always in the best interests of children.

The *Ienaga* case in Japan (1965–1997) dealt with descriptions of Japanese war atrocities during the Second World War in school textbooks, where Professor Saburo Ienaga challenged the alterations to his textbooks, such as deletions of references to the rape of Chinese women by the Japanese soldiers or to bacteriological experiments by the notorious Unit 731. Terminological changes were also part of the case. For example, from ‘Japan’s aggression against China’ as written by Ienaga, the formulation was changed into ‘Japan’s advance into China.’ After three decades of litigation, the Supreme Court of Japan has vindicated Professor Ienaga’s battle against censorship but has upheld the constitutionality of the institutionalized screening of school textbooks, that is, the government’s ‘competence to decide the content of education

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<sup>23</sup> Facing misuses of history, general report by Laurent Wirth, in *The Misuses of History. Learning and Teaching about the History of Europe in the 20<sup>th</sup> Century*, Oslo (Norway), 28–30 June 1999, Council of Europe Publishing, Strasbourg, July 2000, pp. 52–53.

<sup>24</sup> Keynote address by Marc Ferro at the symposium *Towards a Pluralist and Tolerant Approach to Teaching History: A Range of Sources and Didactics*, 10–12 December 1998, Brussels (Belgium), Council of Europe Publishing, Strasbourg, November 1999, p. 125.

for children to the extent that is necessary and reasonable.’ The accepted objective was to make the contents of textbooks ‘accurate, neutral and fair.’ The Court has found that the process of authorizing school textbooks has to result in determining whether their contents is ‘fair and non-biased concerning politics and religion; whether the contents is accurate; and whether the contents is suitable for the stage of children’s mental and physical development.’ The Court’s rationale has been that ‘children and students do not have enough capability to criticize the content of class education and they can hardly chose a school or a teacher. In addition to guaranteeing equality of opportunity in education. The content of education is required to be accurate, neutral and fair, and to have a certain national standard regardless of region and school.’<sup>25</sup> Obviously, agreement on what is ‘accurate, neutral and fair’ is often difficult to reach amongst historians themselves, thus illustrating the sensitivity of the process whereby such assessments are made.

Having examined the controversies regarding descriptions of Japanese atrocities during the Second World War, the Court found that Professor Ienaga’s reference to the 731 Unit had been unjustifiably deleted:

At the application for authorization of the revised textbook under consideration in 1983, the Minister of Education attached a comment of modification on the description newly adding the issue of ‘the 731 Unit’ to

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<sup>25</sup> Supreme Court of Japan – *Ienaga v. Japan*, (O) No. 1428 of 1986, Judgment of 16 March 1993, para. 2.

delete the description entirely with the reason that it was too early to take up the issue in textbooks without having reliable studies at the time. The comment shall be considered as an illegal act as a deviation of his discretion since there were unacceptable mistakes in the process of his judgment on the recognition of theories at the time and on the evaluation that the description infringed the former standard of authorization.<sup>26</sup>

In her highly praised book *The Rape of Nanking*, Iris Chang has linked the censorship of school textbooks to what she has called ‘the selective amnesia of the entire Japanese education system,’ noting that changes started taking place in the 1990s, when previous oblivion was replaced by disputes about the number of Chinese civilian casualties.<sup>27</sup> The numbers range between 15,000 (preferred in Japanese school books) and 300,000 (which Iris Chang asserts is the accurate estimate). Deciding on a number that would be accurate is thus a considerable challenge.

The idea that many different views about the same event, phenomenon or personality could be legitimate, although different or even mutually contradictory, rather than only one being right and all others wrong, is difficult to reconcile with

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<sup>26</sup> Supreme Court of Japan – *Ienaga v. Japan*, (O) No. 1119 of 1994, Judgment of 29 August 1997, para 4 (3).

<sup>27</sup> Chang, I. – *The Rape of Nanking. The Forgotten Holocaust of World War II*, Penguin Books, 1997, pp. 205–209.

the single-version history which all children in the world are taught. Colliding perceptions and interpretations of the same event are common in real life but are expunged from history textbooks. The one-and-only, objectively and/or scientifically true version of history is as impossible as it is widespread. Admiral Eduard Baltin, who was leading the Russian Black Sea fleet until his retirement, noted that “history is based mainly on lies and prejudices.”<sup>28</sup> There may be few exceptions in experimental schools and pilot programmes, altering the image of history from factual to subjective.

Textbooks for history are often re-written following changes of government or victories in political or armed conflicts. The Council of Europe has tackled abuses of education in the field of history twice, the first time after the Second World War and the second time after the end of the Cold War. This brought forth recollections of the rupture of history as a profession in 1914, when historians had ‘placed their scholarship at the service of the war effort,’<sup>29</sup> and revived assertions that history is inherently subjective. As is typical in human rights work, mobilization was each time triggered by documented abuses of history. The Council of Europe has thus acknowledged that ‘all political systems have used history for their own ends.’<sup>30</sup>

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<sup>28</sup> Jack, A. – Putin prepares to retreat from reform, *Financial Times*, 22 September 2000.

<sup>29</sup> Keynote address by Georg Iggers, in *The Misuses of History. Learning and Teaching about the History of Europe in the 20<sup>th</sup> Century*, Oslo (Norway), 28–30 June 1999, Council of Europe Publishing, Strasbourg, July 2000, p. 13.

<sup>30</sup> Council of Europe – Recommendation No. 1283 on history and the teaching of history in Europe, Parliamentary Assembly, 22 January 1996.

### Box 3

#### What will Indonesian history textbooks say about the year 1965?

Pramoedya Ananta Toer worries that Indonesians have no sense of history. He's afraid that if everything is quickly forgiven, and so forgotten, nothing will be learnt from the past. "If we don't know our history, we'll always make the same mistakes, year after year."

Official accounts of Indonesian history glory in tales of revolution and popular

solidarity. Reality is different. Indonesians don't like to talk about the past because the revolutionary struggle was as much about killing each other as defeating colonial powers. Pramoedya isn't shy about this hidden history.

"Everything came from the government, everything was a provocation," he says.

Communists were attacked by the army in 1948, he believes, to impress the West. In reaction, the left turned on Islam and slaughtered many Muslims. Then more communists – perhaps as many as a million suspected sympathizers – were killed in the aftermath of the alleged communist-backed coup in 1965.<sup>32</sup>

Re-writing history to blank out atrocities which are likely to be subsequently defined as human rights violations has been condemned by El Hadji Guissé and Louis Joinet as an attempt to exclude specific events or phenomena from the category of crimes against humanity.<sup>31</sup> Recent political changes in Indonesia may result in the re-writing of history textbooks, as Box 3 illustrates through part of an interview with Pramoedya Ananta Toer, an immensely popular and previously much censored Indonesian writer.

The rule of thumb for re-writing history is abundance of expertise on what others should alter in their history books

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<sup>31</sup> Commission on Human Rights – Progress report on the question of the impunity of perpetrators of human rights violations prepared by Mr. Guissé and Mr. Joinet, U.N. Doc. E/CN.4/Sub.2/1993/6 of 19 July 1993, para. 91.

and how, while being unable or unwilling, or both, to do it in one's own history books. Remco Raben has commented on the dilemma in the Netherlands:

The history of Dutch violence in Indonesia during the war of independence hardly left the realm of those directly involved. The same nation that calls for openness in Japan about its crimes in the Pacific War remains silent about its own role in the aftermath of that war. A strong case is the recurrent Dutch show of indignation about the failure of Japanese history books to tell the true story of

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<sup>32</sup> Vatikiotis, M. – Unreconciled: Interview with Pramoedya Ananta Toer, *Far Eastern Economic Review*, 15 June 2000.

Table 4:  
Performance league in mathematics and science

Singapore	643	Latvia	493	Canada	531
South Korea	607	Spain	487	Germany	531
Japan	605	Iceland	487	Norway	527
Hong Kong	588	Greece	484	Thailand	525
Belgium (Flanders)	565	Romania	482	New Zealand	525
Czech Republic	564	Lithuania	477	Israel	524
Slovakia	547	Cyprus	474	Hong Kong	522
Switzerland	545	Portugal	454	Switzerland	522
Netherlands	541	Iran	428	Scotland	517
Slovenia	541	Kuwait	392	Spain	517
Bulgaria	540	Colombia	385	France	498
Austria	539	South Africa	354	Greece	497
France	538	Singapore	607	Iceland	494
Hungary	537	Czech Republic	574	Romania	486
Russia	535	Japan	571	Latvia	485
Australia	530	South Korea	574	Portugal	480
Ireland	527	Bulgaria	565	Denmark	478
Canada	527	Netherlands	560	Lithuania	476
Belgium (Wallonia)	526	Slovenia	560	Belgium (Wallonia)	471
Thailand	522	Austria	558	Iran	470
Israel	522	Hungary	554	Cyprus	463
Sweden	519	England	552	Kuwait	430
Germany	509	Belgium (Flanders)	550	Colombia	411
New Zealand	508	Australia	545	South Africa	326
England	506	Slovakia	544		
Norway	503	Russia	538		
Denmark	502	Ireland	538		
United States	500	Sweden	535		
Scotland	498	United States	534		

*Source: Performance by 13-year olds in the Third International Mathematics and Science Study, reproduced in 'World education league: Who's top?,' The Economist, 29 March 1997.*

Japanese cruelties in Indonesia and elsewhere. At the same time, Dutch textbooks keep mum about the darker side of colonialism and, in particular, about the painful moments during the decolonisation struggle.<sup>33</sup>

Maria Schmidt, at the time the director of the Institute for Twentieth-Century History in Hungary, set a rule whereby those directly implicated in crimes could not be trusted to write about these crimes. She was referring to a controversy in Hungary at the time about the writing, or re-writing, of events leading to 1956, and argued that former communists should not be writing Hungary's history.<sup>34</sup> Such disputes rarely become part of the human rights agenda, domestic or international, despite the effects which their resolution have on the orientation and contents of school textbooks.

#### Methods of instruction

Forcing children to memorize information that may or may not be useful is part of education-in-practice worldwide and is reinforced by testing. It is relatively easy to design tests for items which have to be memorized and accurately repeated, with little alteration between different languages and

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<sup>33</sup> Raben, R. – Loss, victimhood and guilt: The colonial past in the Netherlands, in Dorsman, R. et al. (eds.) – *Truth and Reconciliation in South Africa and the Netherlands, Compilation of papers presented at a seminar on 27 November 1998*, SIM (Netherlands Institute of Human Rights), SIM Special No. 23, Utrecht, 1999, p. 56.

<sup>34</sup> Hungary's history: Past but present, *The Economist*, 7 August 1999.

cultures. Internationally comparable data have thus far been generated for mathematics and science. They are shown in Table 4, and they placed at the very top of the performance tables Singapore, South Korea, Czech Republic, Japan and Hong Kong.

The anxiety in the Western world has been considerable. On the one hand, the expectation that any ranking must place the West at the top was shattered with East Asia and Eastern Europe outperforming the West. On the other hand, the spirit of competitiveness which any such ranking kindles reaches beyond educational performance to encompass competitiveness of national economies. The background is a vision of education as an investment in human capital and an engine for enhancing international competitiveness.

Results of these tests demonstrate that children can be effectively taught mathematics and science in those countries which would not appear at the top of a performance table if funding for education was assessed, or a self-image of the quality of education which is provided. The underside of excellent performance is not assessed in any form of international performance table although the price for children in the best performer, Singapore, is high:

Just ask the boy who was caned by his mother for scoring 83% in a science exam – despite being the fourth highest scorer in the class. In an earlier incident, he was caned for scoring 73% in a maths exam, according to *The Straits Times*.

Now the nine-year old gets so anxious over exams that he suffers from asthma, cold sweats and

diarrhoea. His mother makes him spend six hours a day on homework, the paper reports. During school holidays he spends eight hours a day on revision and preparation for the next term's work. His mother isn't apologetic, saying she maintains the pressure because she wants him to get into a prestigious secondary school and to succeed in life.

The tale has many Singaporeans upset. "The mother should be caned," says one irate educator. "Kids like this are traumatized every time they have to take an exam."

According to a recent survey of 1,742 children aged 10 to 12 commissioned by The Straits Times, students are more afraid of exams than of their parents dying.<sup>35</sup>

Caning remains legal in Singapore, and the government has reserved the right not to apply the requirement in the Convention on the Rights of the Child to prohibit corporal punishment of children. The orientation of schooling towards rote-learning is being altered, with the rationale that it has outlived its usefulness with the shift to post-industrialization and/or knowledge based economy. The government of Singapore has been encouraging creativity, having introduced in 1997 *Thinking Schools – Learning Nation* programme, which promotes problem-solving and teamwork in primary and

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<sup>35</sup> Saywell, T. – Education: Thinking out of the box, *Far Eastern Economic Review*, 14 December 2000.

secondary schools. Similarly, the thrust of education in South Korea has been challenged by the Committee on the Rights of the Child, which has objected to the highly competitive nature of South Korea's educational system.<sup>36</sup>

#### Teaching and learning as two separate processes

As mentioned above, testing children in mathematics and science is relatively easy because they are unlikely to develop their own interpretations and offer answers that deviate from what the questions require. In subjects where children learn the official curriculum at school, while a different version of the same events, phenomena or values might be learned at home, and yet a third one in the street or from television, testing produces results that differ from what is expected.

Josep Fontana, a Spanish historian, has claimed that efforts by education authorities to brainwash children tend not to produce the intended results, suspecting that any imposition upon teachers and children promises not to be effective, indeed counterproductive. 'Patriotism is irrational and it is not formed through education,' he has held, adding that the stultifying mass of facts which children have to memorize does not have much of a chance to instill in them enthusiasm.<sup>37</sup>

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<sup>36</sup> Committee on the Rights of the Child – Concluding observations: Republic of Korea, U.N. Doc. CRC/C/15/Add. 51 of 13 February 1996, para. 16.

<sup>37</sup> Valls, F. – 'La Academia no está legitimada para censurar,' *El País*, 2 July 2000, p. 12–13.

## Box 5

### Europe's history as 15-year olds have learned it

Our question *what do you associate with Adolf Hitler?*

Elicited interesting responses due to the rather different experiences of European societies with Hitler and National Socialism. Some countries were victims, others perpetrators, helpers, or by-standers in respect of the Nazi crimes. However, Hitler is nearly the only historical person that we could reasonably expect all European students to know. Only Columbus and Napoleon may compete with him in this respect. There exist completely different interpretations of National Socialism. It can be considered as a consequence of long-term German history versus a chance phenomenon caused by a charismatic mad person.

As anticipated, two independent concepts of Adolf Hitler resulting from the students' answers were *mad criminal* and *great leader*. Very typical regional differences were found. A high above-average criminal interpretation appeared in Scandinavia and the Western European countries of Greece, Spain, South Tyrol, Flemish Belgium and France and not unexpectedly Israel. In contrast to that, a high below-average criminal interpretation was found among

Palestinian and Israeli Arab adolescents, who might reason that the enemy of their enemy couldn't be bad. But in Eastern and parts of Central Eastern Europe, like Hungary and Slovenia, we find a similar result. These countries must have other reasons, because most of them suffered under Hitler more than in other parts of Europe. Perhaps the war was scarcely remembered in their official tradition because of apparent similarities to the Stalin era. And the Holocaust was sometimes neglected in the official version of history.

We asked *what do you associate with the changes in Eastern Europe since 1985?* After skipping two items, two stable independent concepts remained *process of liberation* and *defeat of socialism*. Lithuanian and Spanish adolescents chose a bit above average for *liberation* and *defeat of socialism*. This may be thought to be the best answer, but why in such different states? Was this because one was involved and the other lies far away? Norwegian, Swedish, Finnish and Czech students interpreted the reforms more as *liberation* and less as *defeat of socialism*. Similar interpretations in Nordic

social-democrat societies and in post-socialist but neo-liberal countries are not at all trivial. Arabs in Israel and Palestine and Slovenes see little or no *liberation*, but much of *defeat of socialism*.

Perhaps the fact that the small differences between the averages in Russia, Estonia, Ukraine, Bulgaria, Italy and Great Britain is even more astonishing, especially for the societies whose everyday life has changed dramatically since 1985. An enormous proportion of students crossed undecided immediately. For the items *freedom of the member states* of the Warsaw Pact and *treason against socialist ideas* this was 50%. This is much higher than in other item groups. Apparently, they are not indoctrinated by an official version of history but, more surprisingly, there seems no strong social memory in their families and neighbourhoods about the political changes in Eastern Europe. The assumption of fierce and controversial debates about today's crises and improvements, with causal historical attributions of both, was not supported by the students' answers. They reflected a situation of historical oblivion.<sup>38</sup>

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<sup>38</sup> Van der Leeuw-Roord, J. (ed.) – *The State of History Education in Europe. Challenges and Implications of the "Youth and History" Survey*, Edition Körber-Stiftung, Hamburg, 1998, pp. 30–35.

The *Youth and History* survey asked in 1995 a sample of 31,000 15-year old pupils from 24 countries in Europe as well as Israel, Palestine, and Turkey, a series of questions about what they have learned about history. A uniform questionnaire with closed questions was administered so as to make results comparable and to start probing into the

gap between what is taught, which is fairly well known, and what the pupils actually learn, which is much more important but poorly known. As Box 5 illustrated, views about Adolf Hitler and the end of the Cold War revealed an array of pupils' views, many of which are far apart from the official curricula.

## Recognizing and eliminating discrimination

Education can be seen as a means to retain and eliminate inequality. Accepting that education is a capacious concept, and can serve two mutually contradictory purposes, requires determining the purpose which education *should* serve and then eliminating those factors and processes that lead in the opposite direction. Endowing the institutions and processes of education with the capacity to achieve desired rather than unwanted outcomes necessitates reviewing education in its entirety by human rights criteria. This has not been done, at the international or domestic level. This text raises some of the questions that ought to guide such a review, and a detailed examination of pertinent issues follows in *Primer No. 6*.

Safeguards against the institutionalization of disadvantage which results in ‘educational ghettos’<sup>39</sup> are today much more needed than ever before. Parallel processes of decentralization and privatization are likely to increase unequal access to education unless they are effectively countered from the local to the global level. Such ‘educational ghettos’ are evidenced in differences between the quality of schools that children can attend, but they also permeate educational curricula and textbooks. The portrayal of women has recently attracted attention to reveal how biased it has always been. Similarly, the movements for indigenous and minority rights have placed

on the human rights agenda review of curricula and textbooks, also revealing many sins of commission and omission. Nothing of the kind has been done for people with disabilities, who are likely to be missing from school textbooks altogether. Because they are as often as not also missing from schools, they remain excluded.

History of human rights, short as it is, has evolved through broadening the categories of people endowed with rights in concentric circles. First it had been adult, white, propertied, male citizens. Then rights were gradually extended to women, to non-white people, to non-citizens. This process of inclusion is far from finished – every layer of discrimination reveals another one underneath. This process has barely started in the field of education.

At the turn of the millennium, international education strategies have placed much emphasis on the elimination of gender discrimination. This is a welcome change from the previous neglect of gender in both human rights and in education. All other internationally prohibited grounds of discrimination have remained invisible in education strategies and statistics, including their intersection with gender. However, if discrimination is not fully exposed, it cannot be effectively opposed. Opposing discrimination necessitates, first and foremost, its definition and many efforts by different domestic courts and international human rights bodies have demonstrated that this is not easy. Our definitions tend to be unidimensional and subsume discrimination under one of the prohibited grounds even if the result conflicts with common sense by depleting individuals of all their characteristics except one, be it gender, or race, or religion, or disability. One of the

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<sup>39</sup> IWGE – *Disadvantage, Dialogue and Development Co-operation in Education. Meeting of the International Working group on Education (IWGE)*, Feldafing, Munich, 23 – 26 June 1998, International Institute for Educational Planning, Paris, 1999, p. 56.

first cases before the CERD Committee (Committee on the Elimination of Racial Discrimination) concerned a woman of Turkish origin in the Netherlands, who was affected by a series of prejudices merging her provenance with race and with religion and deriving from her marital status an assumption that childbearing would dominate her life thenceforth. She had worked in small, privately owned factory, married a Turkish husband, and was pregnant with their first child. The owner and manager of the factory wished to discontinue her employment, openly saying that she would be bearing one child after another, using maternity and sick leave to its utmost. She tried to initiate criminal proceedings against him for a racist statement.<sup>40</sup> This particular case necessitated tackling at least four different grounds of discrimination – race, provenance, religion, and gender – because any one of them is merely a part of a tightly woven mosaic and cannot be disentangled from the rest.

Internationally prohibited grounds of discrimination have been gradually extended. The most comprehensive listing of prohibited grounds of discrimination has been included in the 1989 Convention on the Rights of the Child and it encompasses race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the children themselves or their parents and/or guardians. This one could – but does not – guide the creation of data in education. Discrimination thus remains unrecorded in international education statistics,

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<sup>40</sup> Committee against Racial Discrimination – *Yilmaz-Dogan v. The Netherlands*, Communication No. 1/1984, U.N. Doc. CEDR/C36/D/1/1984.

which creates a vicious circle: discrimination is invisible and one can pretend that it not exist because it is officially unrecorded; because there is no quantitative data, anybody trying to prove that discrimination is taking place is due to fail due to the absence of data. It is impossible to effectively oppose discrimination without exposing it first.

Ensuring that children attend school is only one component of the right to education. What children are taught about themselves and others, how they are educated, can amount to indoctrination, advocacy of racism or sexism, propaganda of war, or stultifying regurgitation of useless bits of information. Knowledge of the variety of purposes to which education can be devoted – explicitly and implicitly – has led to introducing requirements upon the orientation and contents of education aiming at conformity with human-rights values.

This focus on human rights education provides an opportunity to balance the conventional prohibitory approach in international human rights law by a constructive one – reviewing curricula, re-writing textbooks. One can find prohibitions of incitement to discrimination in domestic laws, but there are few attractive and successful models for advocating non-discrimination. The highly educated youth in Western Europe regretfully does not show a diminished propensity for racism, although great deal of effort has been expended to strengthen the prohibition of incitement to discrimination in quite a few countries. Examples of prejudicial portrayal of racial or ethnic minorities, of migrants, of women and girls, are easy to find in textbooks. Revising the existing curricula and textbooks is necessary so as to convey positive images of the (previous) victims of discrimination

rather than merely prohibiting the perpetuation of negative representations.

Such representations are not confined to the texts of schoolbooks but go broader and start earlier. In 1975, David Milner published in England his findings on pre-school children's racial preferences.<sup>41</sup> He used white and black dolls, finding that all white five-year olds preferred a white over a black doll, 80% of African-Caribbean children showed the same preference as did 30% of children of South Asian origin. He repeated the experiment two years later, after the children underwent two different types of education. One group had a mixture of teachers and students from all three categories, including as diverse a curriculum and teaching tools as could be mustered at the time. The second one, the control group, had none of this. After merely two years, the repeated experiment showed that half (40 rather than 80%) of Afro-Caribbean pupils retained their preference for the white doll, while the preference by Asian pupils for white dolls also diminished almost by half. What would have happened if children had been exposed to an integrated or exclusionist education for ten, fifteen or twenty-five years was the question which David Milner would have liked to explore. This experiment created a stir at the time as it would today, demonstrating the extent of fear, and the corollary self-censorship, which impedes tackling questions which are crucial for children – what they learn and how they learn it.

There are few people who are at ease when addressing differences in race, colour, sex, religion, provenance, or disability.

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<sup>41</sup> Millner, D. – *Children and Race*, Penguin, Harmondsworth, 1975.

Those of us who have been taught *what* we should think shy away from asking how and why children learn to discriminate against 'others'? Who and how creates the 'us' and 'them' for the new generations to internalize? Which differences between humans are identified to define some as 'us' and exclude others as 'them'? Why are some differences chosen as the boundary between 'us' and 'them' in the particular time and place? How are children made to internalize them? What makes children re-define or abandon such boundaries, or rebel against them? Answers to these and many other questions would require talking to the children and young people themselves. This is rarely done. Despite the requirement of the Convention on the Rights of Child that children be treated as people with rights, they remain objects of education.

Centuries of experience in practising and justifying discrimination have created within international human rights law a listing of prohibitions, presented in Box 6, which single out those grounds of discrimination that were prevalent in history hence should be eliminated as a matter of priority. Prohibitions of discrimination have been fairly successful in rejecting ideas whereby girls or black or indigenous children should not be admitted to school because they are female, black or indigenous. Once in school, however, children are not necessarily taught that females, black or indigenous people have been excluded from education, and much else, for centuries and thus cannot compete with the categories that were privileged on equal terms. The individual abilities of individuals were irrelevant since they belonged to a privileged or disadvantaged category. The latter were treated as unworthy of education because of features which had nothing to do with them as individuals.

## Box 6

### Key treaty provisions on the elimination of discrimination in education

*UNESCO Convention against Discrimination in Education* (1960):

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

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

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

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

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

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

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

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

*ILO Convention Concerning Indigenous and Tribal Peoples* (1989):

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

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

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

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

Box 6 reproduces excerpts from the principal global human rights treaties which address the most prevalent pattern of discrimination world-wide and specify how its elimination should be approached within education. This is the topic of

*Primer No. 6*, which will explore discrimination in detail, starting from the paucity of quantitative data needed to monitor access to school by all internationally prohibited grounds of discrimination, then looking into learners' performance, the

#### Box 7:

#### Racial segregation in schooling – A glance into South Africa, Australia and Fiji

The 1995 Constitution of South Africa has banned unfair discrimination, providing for special measures for individuals and categories disadvantaged by such unfair discrimination, and extending the purview of human rights protection from the traditional vertical relations between the state and the individual to horizontal relations between individuals. The Constitution has allowed the establishment of educational institutions based on a common culture, language or religion, at the expense of the communities themselves, prohibiting such independent educational institutions from discriminating on the basis of race. The

obligation to respect freedom to establish schools based on a common language has created the opportunity for those able to afford it to set up their own schools. Since the financial endowment of different communities in South Africa has historically been racially stratified, allowing the testing of children for their linguistic competence in Afrikaans as a criterion for their admission to school, it is feared, could perpetuate racial segregation in schooling. The Constitutional Court was in 1996 faced with the first case which probed into this politically explosive association between race and language,<sup>42</sup> and it is likely that many more will follow.

In 1992, the Human Rights Commission of Australia dealt with the closure of a school which had been attended by aboriginal children – 138 out of 142 learners were aboriginal. That closure was justified by budgetary savings necessitated by fiscal stringency, which was reinforced by declining enrollments and low school attendance. The Commission has found that the one important reason for closing the school was its image of 'an aboriginal enclave.' The learners were thus to be dispersed amongst the neighbouring schools. However, this caused concern that a mere absorption of the aboriginal children into mainstream schools would severely disadvantage many aboriginal

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<sup>42</sup> Constitutional Court of South Africa – The Gouteng Provincial Legislature: Dispute concerning the constitutionality of certain provisions of the School Education Bill of 1995, CCT 39/95, 4 April 1996, para. 5.

composition of the teaching staff, explicit and implicit discriminatory messages in curricula and textbooks, and prospects for the full enjoyment of all human rights to which education should contribute – equally – for all.

children. The Commission has singled out the orientation and quality of education for aboriginal children as the key factor:

“[The] evidence [of teachers] emphasized the need to better equip young Aboriginal people for higher grades and their ultimate step into the wider community as young adults. Their fear that it is not sufficient merely to provide special classes or to rally on some broad based assertion that it is good for both white and aboriginal children to learn the details of the other’s culture. There is, in their view, the fundamental need to develop the confidence and the self-esteem of each aboriginal children who either because of his or her racial background or disadvantaged

economic or domestic environment or for some other reason, will have difficulty in relating to the new school.”<sup>43</sup>

An interview with the prime minister of Fiji at the time, Sitiveni Rabuka, brought to light his own experience of racially segregated education. Asked whether schools were segregated, he confirmed that ‘some schools are reserved for Fijians’ and continued: “I went to a purely Fijian school and when I came out of that, everything was Fijian for me. I went straight into the army which is another Fijian-dominated institution. My tolerance level of other races was very low.”<sup>44</sup> Major-General Rabuka had led the

two military coups of 1987, which toppled a newly-elected coalition government – for the first time Indian-led, to then win the elections in 1992 and 1994, within an electoral system which ensured a parliamentary majority for the indigenous Fijians. The descendants of indentured Indian labourers (brought to Fiji in 1879–1916 to work on sugar cane fields) reached 43% of the population in the 1990s but remained deprived of land rights and confined to limited political representation. A constitutional review in 1996–1997 started the process of forging a bridge over the abyss of this racially divided country but came to a halt with another military coup.

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<sup>43</sup> Human Rights and Equal Opportunity Commission of Australia – *Aboriginal Students Support & Parents Awareness Committee Traeger Park School v. Minister of Education Northern Territory of Australia*, HREOCA 4, 26 February 1992.

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<sup>44</sup> Interview with Prime Minister Sitiveni Rabuka – ‘The last ten years have been very educational for me,’ *The Courier*, No. 160, November–December 1996, p. 14.

Two facets of discrimination merit particular attention because they are closely related to ‘educational ghettos.’ Box 7 includes three different accounts of racial segregation. The first one points out the need to eliminate racial segregation in South Africa, which is an immense challenge because discrimination tends to cumulate. There is an overlap between race, language and religion, hence eliminating discrimination requires a multi-pronged strategy. Eliminating racial discrimination while protecting minority rights to mother-tongue education, including for Afrikaans-speakers, accentuates complexities of translating human rights from theory into practice. The second one summarizes a case before the Human Rights Commission in Australia, which

brings out the dilemma embodied in balancing two objectives. On the one hand, separating the indigenous children (aboriginal in Australia) might offer an opportunity for a better concentration on their own priorities and needs, while mixing them with non-aboriginal children may lead to their further marginalization. On the other hand, a dominantly aboriginal school easily continues as an ‘educational ghetto’, conforming to the famous dictum of the US Supreme Court that separate always means unequal. The third account presents a racially segregated educational system in Fiji. The internationalization of the division of people into ‘us’ and ‘them’ is a typical outcome where children are educated in separate schools.

## Inter-generational transmission of stereotypes

One illustrative example of education used to retain and reinforce segregation and inequality is Afghanistan. The military victories of Taliban in 1994–96 resulted in its effective military control over most of the country and were followed by the transition of Taliban into a *de facto* governing regime. Although Afghanistan had been proclaimed to be an Islamic state in 1992, the then-government did not seem to advocate a denial of human rights to women. Explanations for the subsequent Taliban's interpretation of the Sharia law to require the seclusion of women to home and their preclusion from schooling were sought in a mixture between restrictive interpretations of the Sharia law and the customary practices in parts of Afghanistan.<sup>45</sup> Taliban's official pronouncements in the areas over which it had gained military control denied women freedom of movement as well as the rights to education and to work.<sup>46</sup> Since this happened just after women's rights were mainstreamed in the 1993 Vienna Declaration and Programme of Action and a commitment to gender equality forged during the preparations for the

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<sup>45</sup> The Taliban-specific interpretation of Sharia law is reportedly related to the Pashtun customary law (*Pashtunwali*) rather than solely to Qu'ran.

<sup>46</sup> This denial challenged Afghanistan's 20<sup>th</sup> century development from the unveiling of women in 1959 by Afghanistan's king of the time Zahir Shah, and the secularization associated with the Soviet-supported regime in 1978–89 which, *inter alia*, entailed equal rights for girls and women as well as measures to decrease the high illiteracy rate among women (an estimated 80%).

Beijing Conference, the international attention for women's rights was at a high point. Taliban's model of legislating and enforcing denials of women's rights represented an open and explicit defiance of the evolving international commitment to the equal rights for women and the attainment of gender equality. Foreign and international reactions were thus rapid and vehement. Human rights of women were mentioned for the first time in the history of the Security Council. It denounced 'the discrimination against girls and women', noted 'with deep concern possible repercussions on international relief and reconstruction programmes in Afghanistan', but in the same breath called upon 'all States and international organizations to extend all possible humanitarian assistance to the civilian population of Afghanistan.'<sup>47</sup> Within the United Nations, responses to Taliban's evolving policy of denying women and girls their previously recognized rights varied. UNICEF had suspended assistance in areas under Taliban's control, where discriminatory practices against girls and women prevented them from having access to education. Foreign humanitarian agencies were required not to employ female staff, neither Afghani nor expatriate. Even the UN Special Rapporteur on human rights in Afghanistan, whose report detailed those developments, had been prevented from bringing along a female human rights officer.<sup>48</sup> The

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<sup>47</sup> Security Council resolution 1076 (1996) of 22 October 1996, paras. 11 and 12.

<sup>48</sup> Commission on Human Rights – Final report on the situation of human rights in Afghanistan submitted by Mr. Choong-Hyun Paik, Special Rapporteur, U.N. Doc. E/CN.4/1996/64 of 27 February 1996, paras. 69, 70, 72–73, 76, and 86–87.

banning of education for girls elicited particularly fierce international reactions because it went against the grain: a condemnation of female generations of the future to illiteracy, with a justification that girls did not need education, placed Taliban at odds with the whole world, including other countries applying Sharia law, which were all trying to increase and improve education for girls. Possibly because of many international protests, one subsequent interpretation of this ban was 'that the education of Afghan girls had not been banned but only suspended until a segregated system could be organized.'<sup>49</sup> Another interpretation was that both boys and girls could be sent to school up to the age of twelve.<sup>50</sup> The division of labour between the Taliban's ministries of religion and education in Afghanistan further reinforced segregation and inequality. Education of girls pertains to the ministry of religion, boys's education to the ministry of education. As likely as not, girls are taught about their lesser worth and kept in school much too short a time to enable them to question that idea. Boys are, in the meantime, probably taught about their superiority showing that education is capacious enough to accommodate rights and wrongs. Long enumerations of the purposes of education in international

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<sup>49</sup> Commission on Human Rights – Final report on the situation of human rights in Afghanistan submitted by Mr. Choong-Hyun Paik, Special Rapporteur, U.N. Doc. E/CN.4/1997/59 of 20 February 1997, para. 80.

<sup>50</sup> Commission on Human Rights – Final report on the situation of human rights in Afghanistan submitted by Mr. Choong-Hyun Paik, Special Rapporteur, U.N. Doc. E/CN.4/1998/71 of 12 March 1998, para. 31.

human rights treaties require promoting human rights, but how does one introduce the language of rights against the heritage of wrongs?

Studies into school textbooks have revealed them keeping women at home while men are out in the public making history. A survey of the portrayal of women in textbooks used in primary education in South America has revealed that in Peru, for example, women are mentioned ten times less than men.<sup>51</sup> In Croatia, a study of secondary school textbooks has revealed that the books focus on adults rather than children. When children are portrayed, they tend to be sons rather than daughters: sons have been present in 30% of the material on family life and daughters in 15%, while in secondary school textbooks the percentage of sons has been even higher, 42%, and only 17% for daughters.<sup>52</sup> A study of school textbooks in Tanzania has shown that girls doing domestic chores represents a favourite topic in such apparently neutral fields of study as learning English and Kiswahili grammar. A primary-school textbook for Kiswahili thus depicts a girl on her school-free day:

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<sup>51</sup> Valdes, T. and Gomariz, E. – *Latin American Women: Compared Figures*, Instituto de la Mujer and FLASCO (Facultad Latinoamericana de Ciencias Sociales), Santiago de Chile, 1995, p. 105.

<sup>52</sup> Summarized results of the research projects entitled Portrayal of Women in Croatian Textbooks, carried out by a team led by Branislava Baranovic of the Institute for Social Research, are available on the website of women's human rights group B.a.B.e. (Be active, Be emancipated) at <http://members.tripod.com/~CRWOWOMEN/augustoo.htm>.

Today is Saturday.  
You don't go to school on Saturday.  
You will work here, at home.  
First, you will wash your school uniform.  
After that, fetch the water.  
Then you clean the compound.  
After we have finished eating, you will wash the dishes.  
Then you will go to the shop to buy sugar and rice.<sup>53</sup>

A recognition of the fact that women can be victimized by discrimination because of their race as well as sex, or because they are indigenous as well as female has become a noticeable feature of the 1990s. The process of revising school curricula goes on in quite a few countries so as to identify and replace discriminatory and/or stereotyped portrayal of girls and women.<sup>54</sup> The Committee on the Rights of the Child urged a changed image of women 'in school textbooks by adopting suitable messages to combat inequalities, stereotypes and social apathy.'<sup>55</sup>

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<sup>53</sup> Mbilinyi, D.A. – Women and gender relations in school textbooks, in: Mbilinyi, D.A. and Omari, C. (eds.) – *Gender Relations and Women's Images in the Media*, Dar es Salaam University Press, Dar es Salaam, 1996, p. 93–94.

<sup>54</sup> The Special Rapporteur on women's rights of the Inter-American Commission on Human Rights identified a range of countries in which reform of curricula and textbooks was undertaken to eliminate gender discrimination. Organization of American States – *Annual Report of the Inter-American Commission on Human Rights*, Doc. OEA/Ser.L/V/II.98, Washington, D.C., 1998, pp. 1017–1018.

<sup>55</sup> Committee on the Rights of the Child – Report on the eighth session (Geneva, 9–27 January 1995), U.N. Doc. CRC/C/38, 20 February 1995, General debate on the girl child, 21 January 1995, Annex V, para. 3 (a), p. 72.

## Religion in secular schools

In 1978, UNESCO forged the concept of a right to be different, asserting: 'All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such.'<sup>56</sup> This concept was re-visited by Albie Sachs in the year 2000, and he took it one step further, affirming 'the right of people to be who they are without being forced to subordinate themselves to the cultural and religious norms of others.'<sup>57</sup> Accommodating the choices which parents have made for the education of their children and all the differences amongst learners triggers endless controversies and court cases. Educational systems which are officially committed to respecting human rights in education, including such a right to be different, are continuously forced to examine the boundaries for recognizing, accepting and accommodating diversity.

Public schools which are secular necessarily create controversy because of that particular choice, which routinely predates the emergence of international human rights law. The Human Rights Committee has examined a complaint against 'compulsory instruction for atheists in the history of religion and ethics' to find that such instruction, if 'given in a neutral and objective way and [if it] respects the convictions of parents

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<sup>56</sup> UNESCO – Declaration on race and racial prejudice, adopted by the General Conference of UNESCO on 27 November 1978, Article 1 (2).

<sup>57</sup> Constitutional Court of South Africa – *Christian Education South Africa v. Minister of Education*, Case CCT 4/00, judgment of 18 August 2000, para. 24.

and guardians who do not believe in any religion' does not constitute a human rights violation.<sup>58</sup>

The German Federal Constitutional Court has found that the affixation of a crucifix in non-denominational primary schools in Bavaria breached the constitutional protection of the freedom of religion. The Court has discussed the duty of schools to be religiously neutral, and pointed out that 'through the cross symbol deep, lasting effect was being exercised on the mental development of easily influenceable school-age children.' The exercise of parental choice to send their children to a private school without such religious symbols is not a feasible alternative for those who do not wish their children to learn 'under the cross,' the Court has found, because the fees charged in private schools made them unaccessible for many parents. The Court has then summarized the need to reach a balance between preserving the historical importance of Christianity and accommodating the contemporary religious diversity:

The Federal Constitutional Court has drawn the conclusion that the legislature is not utterly barred from introducing Christian references in designing the public elementary schools, even if those with parental power who cannot avoid these schools in their children's education may not desire any religious upbringing. There is a requirement,

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<sup>58</sup> Human Rights Committee – *Erkki Hartikainen v. Finland*, Communication 40/1978, Views of 9 April 1981.

however, that this be associated with only the indispensable minimum of elements of compulsion. ... [The cross] cannot be divested of its specific reference to the beliefs of Christianity and reduced to a general token of the Western cultural tradition. It symbolizes the essential core of the conviction of the Christian faith, which has undoubtedly shaped the Western world in particular in many ways but is certainly not shared by all members of society, and is indeed rejected by many. ... Positive religious freedom is due to all parents and pupils equally, not just the Christian ones. The conflict arising cannot be resolved according to the majority principle, for the fundamental right to religious freedom specifically is aimed in a special degree at protecting minorities. Insofar as the school, in harmony with the Constitution, allows room for [activating religious convictions in State institutions], as with religious instruction, school prayers and other religious manifestations, these must be marked by the principle of being voluntary and allow the other-minded acceptable, non-discriminatory possibilities of avoiding them.<sup>59</sup>

Many court cases have been generated in Western Europe around the wearing of headscarves, and a quick review of some of them illustrates the road traveled in trying to

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<sup>59</sup> Federal Constitutional Court of Germany – Order of the First Senate of 16 May 1995, 1 BvR 1087/91.

discern what the proper human rights response should be. Muslim girls have sometimes refused to attend physical exercise although it constitutes part of the compulsory curriculum. The Equal Treatment Commission of the Netherlands has found that the refusal of a school to allow Muslim girls to wear long-sleeved T-shirts, long trousers and headcaps constituted discrimination. Having examined a complaint concerning the prohibition of loose headscarves which girls wanted to wear during physical exercise, the Commission did not find a human rights violation because the rationale for that prohibition was the safety of learners during exercise. In another case, the efforts of a school to accommodate a Muslim girl by offering her to wear clothing adapted to her religious convictions, and a separate dressing room, have been found to constitute sufficient accommodation.<sup>60</sup> In yet another case, the Commission determined that a young woman had been a victim of discrimination due to her headscarf. As part of her practical training at a teachers' college, which requires teaching at a primary school, she wanted to teach at her former primary school but was rejected. The reason was her answer to the question whether she would wear a headscarf in the positive.<sup>61</sup> However, in a case from Turkey, the European Commission of Human Rights had held that a young

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<sup>60</sup> Equal Treatment Commission of the Netherlands – Rulings 1998–79 of 6 July 1998, 1997–149 of 24 December 1997, and 1999–106 of 23 December 1999.

<sup>61</sup> Equal Treatment Commission of the Netherlands – Ruling 1999–103 of 22 December 1999.

woman's choice of particular educational institution (at issue was her enrollment in a secular university) entails the acceptance of the rules adopted by that university. Consequently, the Commission has determined that the prohibition of wearing a headscarf does not constitute a human rights violation.<sup>62</sup>

In France, courts have been busy with adjudicating a series of cases revolving around headscarves. They have alternatively quashed and upheld the expulsion of girls from educational institutions due to headscarves, demonstrating how complex the balance between secularism and religion is to reach in practice. The Conseil d'Etat, French functional equivalent of a constitutional court, has thus drawn the line between tolerating the display of religious symbols and inhibiting provocation or proselytizing:

In educational institutions, displaying symbols whereby learners manifest that they pertain to a particular religion is not by itself incompatible with secularism as long as it is confined to exercising their freedom of expression and manifesting their religious beliefs; such freedom does not, however, permit the learners to display religious symbols which, due to their very nature, or to the particular circumstances in which they are displayed, individually or collectively, or to their ostentatious or demonstrative character, constitute

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<sup>62</sup> European Commission on Human Rights – *Karaduman v. Turkey*, Application No. 16278/90, Decision of 3 May 1993, *Decisions & Reports*, vol. 74, 1993, p. 93.

an exercise of pressure, provocation, proselytizing or propaganda.<sup>63</sup>

In Switzerland, public education is required to respect religious convictions of every individual child and her or his parents. In a case involving a Muslim teacher who had been wearing a headscarf, the Swiss Federal Court has opted for a restrictive approach and ruled against such a display of religious convictions. The rationale has been fear of disputes amongst children belonging to different religions, and their parents, which unrestricted tolerance of all possible religious symbols could engender. Moreover, because teachers are a role model for learners, the Court has affirmed the particular need for teachers to be religiously neutral.<sup>64</sup>

These sketches from the recent court case revolving around headscarves within educational institutions show the long and uphill road towards recognizing, accepting and accommodating everybody's right to be different. Perhaps this will remain

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<sup>63</sup> Conseil d'Etat has said: 'dans les établissements scolaires, le port par les élèves des signes par lesquels ils attendent manifester leur appartenance à une religion n'est pas par lui-même incompatible avec le principe de laïcité, dans la mesure où il constitue l'exercice de la liberté d'expression et de manifestation de croyances religieuses, mais cette liberté ne saurait permettre aux élèves d'arborer des signes d'appartenance religieuse qui, par leur nature, par les conditions dans lesquelles ils seraient portés individuellement ou collectivement, ou par leur caractère ostentatoire ou revendicatif, constitueraient un acte de pression, de provocation, de prosélytisme ou de propagande ...' Case *Kherouaa, Kachour, Balo & Kizic*, decision of 2 November 1992.

<sup>64</sup> *X v. Etat du Canton de Genève*, Arrêt du Tribunal Fédéral, 123 I 296, 12 November 1997.

impossible, and some of the avenues towards fully accommodating all facets of diversity will remain closed. It is gratifying, however, to see how much the human rights rationale has influenced judicial interpretations of human rights in education. Much as reconciling collective and individual rights, the rights of parents and the rights of each child, the rights of teachers and the rights of learners, is – and will always remain – difficult, the realization of human rights is a continuous process and addressing its full complexity moves it forward.

The effects of religious and societal norms in schooling reach far beyond officially displayed symbols and authoritatively designed curricula and the wearing of religious symbols to encompass rejection or acceptance of individual lifestyles. Suffice it to recall that children born out of wedlock have until recently experienced a host of legalized denials of their rights because their parents' behaviour was deemed immoral, and this remains to be tackled in many parts of the world. Children's sexuality is a taboo issue in many countries and is wished away from schooling. When it makes an appearance, few teachers are enabled or empowered to cope. The Supreme Court of Colombia examined in 1998 a complaint by two boys who had been prevented from continuing their education by attending evening classes because of their homosexuality. They had had to opt out of full-time schooling because they had to work to finance their own survival and education but wanted to continue through evening classes. The Court has faulted the school for having failed to exhibit the values of tolerance and respect of diversity, adding that a public school could not preclude entry to learners by asserting that 'homosexuality is sinful.' Thereby, the school violated the boys' right to education, their freedom from discrimination and the

right to full development of their personality.<sup>65</sup> In Canada, a decision to ban from kindergartens and primary schools textbooks used as teachers' reference manuals which depicted children with same-sex parents has been nullified by domestic courts because it had been made on religious grounds regardless of the requirement that schools be secular.<sup>66</sup>

The exclusion of human sexuality from schooling has been broached by these precedent-setting cases but it is still a taboo in much of today's world. The next section addresses a vivid example of excluding sexuality from schooling, in the narrow sense of this word, which is evidenced in the practice of expelling school girls if they become pregnant.

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<sup>65</sup> Supreme Court of Colombia – *Pablo Enrique Torres Gutierrez and José Prieto Restrepo v. Instituto Ginebra La Salle*, T-147493, Judgment of 24 March 1998.

<sup>66</sup> Supreme Court of British Columbia – *James Chamberlain et. al v. The Board of trustees of School District No. 36 (Surrey)*, A972046, judgment of 16 December 1998.

## School discipline

In many countries education constitutes both a right and a duty of the child. School attendance is enforced for children within the compulsory school age and the child's behaviour in school is strictly regulated. Serious offences entail expulsion. Thus a child finds herself in the midst of a conflict of laws – according to one, she should be attending school, but another precludes her from doing so because she committed a grave offence, which is often pregnancy.

The notion of education as a duty is much older than that of education as a right and the specification of the child's duties in school is far more widespread and detailed than enumerations of the child's rights. The imbalance favouring duties at the expense of rights is gradually being altered. In particular, restrictions upon school discipline have considerably increased in the past decades to protect the learners' – especially the child's – dignity against humiliation or degradation. They have been subjected to much challenge.

### Pregnancy as an offence

Pregnancy as a disciplinary offence does not affect boys. They cannot get pregnant and cannot risk punishment. Education should, in theory, enhance the girls' ability to make informed choices.<sup>67</sup> The practice of defining pregnancy as a

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<sup>67</sup> Commission on Human Rights – Right to freedom of opinion and expression, resolution 1999/36 of 26 April 1999, para. 9(b)

disciplinary offense routinely leads to the expulsion of the pregnant girl from school, sometimes precluding her from continuing education. The lack of access to information that would have enabled the girl to make any choice, least of all an informed one, is usually the background to this practice. The frequent clash between societal norms which pressurize girls into early pregnancy and legal norms, which aim to keep them in school, makes this phenomenon difficult to tackle. Moreover, the practice of expelling pregnant teachers from school forms part of not too distant history and points to the heritage of precluding school children from being exposed to pregnancy. If the expulsion of pregnant school teachers seems to have become history, this is not so if teachers are not married.<sup>68</sup>

Information about the definition of pregnancy as a disciplinary offence leading to expulsion from school is regrettably fragmentary, scarce and outdated. In Africa, pregnant girls are reportedly expelled from primary and secondary schools in Liberia, Mali, Nigeria, Swaziland, Tanzania, Togo, Uganda, and Zambia, while change has been introduced in Bolivia, Botswana, Chile, Côte d'Ivoire, Guinea, Kenya, and Ma-

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<sup>68</sup> The ILO Freedom of Association Committee has dealt with the expulsion of unmarried pregnant teachers in Saint Lucia. According to a 1977 regulation, 'an unmarried teacher who becomes pregnant shall be dismissed upon becoming pregnant a second time if still unmarried.' The case revolved around non-application of a collective agreement which aimed to alter that regulation. The regulation itself was consequence rather than cause. The expulsion of pregnant but unmarried schoolteachers was aimed at portraying to school children 'the ideal of a married family life,' for which teachers were expected to serve as role models. Freedom of Association Committee – 270<sup>th</sup> Report, Case No. 1447 (Saint Lucia).

## Box 8

Girls who become pregnant while at school are allowed to return to school (albeit not the same school), if they can comply with all requirements. The gaps between back-to-school rules and practice have been summarized as follows:

**Rule:** No pregnant girl can write an examination in any school.

**Practice:** Affected girls find this rule extremely punitive. If they have prepared for an examination before becoming pregnant (or knowing that they were pregnant), they have to wait two years until they are allowed to take that examination.

**Rule:** The girl-mother should not be above the age limit for admission.

**Practice:** Girls who leave school because of pregnancy can apply for re-admission two years thereafter (after pregnancy, delivery and the expiry of another year, defined as mandatory maternity leave), and are certain to be above the age criteria for the class they should be continuing in.

**Rule:** A testimonial and school report from the previous school are required for re-admission.

**Practice:** For all girls who left their previous school without informing the head

teacher about the reason for leaving (which is often the case), it is unlikely that the head teacher would agree to give any testimonials.

**Rule:** The girl-mother has to furnish her own identity card and the birth certificate of her baby for re-admission.

**Practice:** The process of getting a birth certificate is so long and cumbersome that this would delay re-admission even further, while those without identity papers may take even longer to obtain them.<sup>70</sup>

lawi.<sup>69</sup> Such information is usually collected as the first step towards affirming the girls' right to education. The coming into force of the Charter on the Rights and Welfare of the African Child in November 1999, which includes an explicit requirement upon states to secure that pregnant girls continue their education, is likely to reinforce the momentum for change.

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<sup>69</sup> *School Drop-out & Adolescent Pregnancy: African Education Ministers Count the Cost. A Report on the Ministerial Consultation held from 15 to 18 September, 1994, Mauritius*, Organized by Forum for African Women Educationalists (FAWE) in collaboration with the Government of Mauritius, pp. 23–24 and 58–60.

Change does not come easily. The views of parents, teachers and community leaders tend to support the expulsion of pregnant girls from school, rationalizing this punitive choice by the need to uphold moral norms which prohibit teenage sex, with pregnancy treated as irrefutable proof that this norm was breached and the culprit has to be punished. Adult men, including teachers, who seem to be responsible for most teenage pregnancies have remained beyond the reach of punitiveness.

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<sup>70</sup> Summarized from 'Botswana re-entry policy,' *FAWE (Forum for African Women Educationalists) News*, vol. 8, No. 3, July–September 2000, pp. 18–20.

Societal norms are not automatically changed through the adoption of international or domestic guarantees of the equal right to education for girls nor are they usually altered through democratic decision-making, in which girls routinely do not have a voice. Law thus provides only a starting point for the process of change. In Africa, Botswana has led the way through its policy of readmitting girls who have been expelled because of pregnancy so that they could continue education.<sup>71</sup> Difficulties in putting this in practice are illustrated in Box 8.

The Supreme Court of Colombia has established an important precedent by demanding that school regulations which penalized pregnancy by suspending pregnant girls from schooling and re-routing them into tutorials be altered; pregnant girls should continue normal schooling. The Court has thus summarized the underlying rationale:

... although a suspension from school attendance does not imply a definitive loss of the right to education, it does imply the provision of instruction to the pregnant schoolgirl in conditions which are stigmatizing and discriminatory in comparison with other pupils for her ability to benefit from [the right to education]. Surely, the stigmatization and discrimination implied in the suspension from school

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<sup>71</sup> Bayona, E.L.M. and Kandji-Murangi, I. – *Botswana's Pregnancy Related Educational Policies and Their Implications on Ex-pregnant Girls' Education and Productivity*, Research Priorities for the Education of Girls and Women in Africa, Abridged Research Report No. 16, Academy Science Publishers, Nairobi, undated, p. viii.

attendance have converted this method of instruction 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.<sup>72</sup>

### Corporal punishment

Alongside the definition of what punishable offences are, the administration of school discipline can be particularly harsh. Children themselves cannot challenge it because their rights remain largely unrecognized, and so this task is left to their parents. They, however, tend to follow two different paths – some wish corporal punishment to be banned, others want it preserved.

An attempt by parents (whose religious doctrine posited that physical punishment of children was legitimate and necessary) to challenge Sweden's policy against corporal

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<sup>72</sup> The quoted part of the judgment reads as follows: 'aun que la 'desescolarización no implica la pérdida absoluta del derecho a la educación, sí implica su prestación conforme a una condición que tiende a estigmatizar a la alumna embarazada y a discriminarla frente a los restantes estudiantes en la recepción de los beneficios derivados del [derecho a la educación]. ... [e]xigir – por vía reglamentaria – el embarazo de una estudiante en causal de sanción, viola los derechos fundamentales a la igualdad, a la intimidad, al libre desarrollo de la personalidad y a la educación.' Corte Suprema de Colombia – Crisanto Arcangel Martínez Martínez y María Eglina Suárez Robayo v. Colegio Ciudad de Cali, No. T-177814, 11 de noviembre de 1998.

## Box 9

### Violence against children breeding violence by children

What common feature binds the childhood of Adolf Hitler, Joseph Stalin, Pol Pot, Saddam Hussain and Charles Manson? Each was punished physically – relentlessly and severely. Defenders of corporal punishment in school may argue that these are exaggerated examples, but a mountain of psychological studies bear out the connection between the violent treatment of children, whether at the

hands of teachers or parents, and their propensity for violence and aggression in later life.

The more violence they suffered as a child, the more violence-prone they become as adults. Not everyone who has been caned or smacked at school will become a Pol Pot, but there is no escaping the fact that violence begets violence. The difference is only a matter of degree.

Caning may be effective in stopping pupils from doing what the teacher forbids. But it is a short term solution. After being caned, children will behave ... until the next time. More importantly, the lesson that they learned will be a highly negative one. It is that human interaction is based on force, that might is right. The more they are exposed to such treatment, the more likely they are to deal with others not by reason but by force.<sup>74</sup>

punishment of children forced the European Commission on Human Rights to revisit the issue that had already been the object of considerable litigation. The parents complained against the encroachment upon their ‘ability to express and implement their own convictions in the upbringing of their children’ embodied in Sweden’s 1979 law, which was ‘intended to encourage a reappraisal of the corporal punishment of children in order to discourage abuse.’<sup>73</sup> The Commission did not find that a general

policy against corporal punishment amounted to a threat of indoctrination of children against their parents’ conviction that corporal punishment was legitimate and necessary. The Committee on the Rights of the Child has consistently held that corporal punishment is incompatible with the Convention on the Rights of the Child, although the Committee’s frequent reiteration of that view testifies to the fact that corporal punishment is practised to discipline school children in many countries. Box 9 presents an excerpt from an editorial which hailed the banning of corporal punishment in schools in Thailand.

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<sup>73</sup> European Commission on Human Rights – *Seven individuals v. Sweden*, Application No. 8811/79, decision of 13 May 1982 on the admissibility of the application, *Decisions and Reports*, vol. 29, p. 111–112.

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<sup>74</sup> A lesson learned: Spare the rod (editorial), *Bangkok Post*, 15 September 2000.

## Towards Human Rights Education

The prevalence of compulsory primary education provides evidence of the global commitment to ensuring that all children benefit from schooling. The existence of compulsory education is, however, indicative of the realization of only one component of the right to education because parental freedom of choice might not be recognized. More often, the rights of the child are not recognized, which then poses an inevitable dilemma for human rights education: how to introduce it to learners whose rights are not recognized. Moreover, the rights of their teachers may also not be recognized and so their ability to teach about something they have not experienced should not be assumed.

Although the child is today treated as the principal subject of the right to education, the child is not party to decision-making on its realization. International human rights law divides decision-making between the parents and the state. Each principal actor can – and routinely does – claim to represent the best interest of the child. The child’s right to education is reflected in the duty of the parents, community and the state to educate the child as well as the duty of children to educate themselves. The inter-generational dimension is evidenced in adults designing education in the best interests of the child and, as often as not, disagreeing among themselves as to what the best interests of the child might be. This is illustrated in Box 10, which presents two facets of decision-making regarding the language of education for refugee children.

The United Nations Commission on Human Rights has emphasized that the knowledge of human rights should become a priority throughout the process of education.<sup>75</sup> Because it is well known that children learn through observation rather than exhortation, the recognition of their rights in education would greatly facilitate human rights education.

The International Commission on Education for the Twenty-first Century has singled out as the first pillar upon which education should be founded ‘learning to live together by developing an understanding of others and their history, traditions and spiritual values.’<sup>76</sup> Confidence in education is indeed boundless and a frequent article of faith holds that human rights education can make a difference in facilitating the process of moving from war to peace. The material which is prepared by actors involved in such education is forward-rather than backward-looking and it often presents cheerful images of the ease with which people can solve their disagreements and conflicts peacefully. Moreover, teaching manuals routinely shy away from even mentioning the word ‘violation’ let alone describing violations so that learners could understand what human rights protection entails. A summarized description of the history of Guatemala in the past four decades can be given as example:

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<sup>75</sup> Commission on Human Rights – United Nations Decade for Human Rights Education, resolution 2000/71 of 26 April 2000, preamble.

<sup>76</sup> UNESCO – *Learning: The Treasure Within: Report to UNESCO of the International Commission on Education for Twenty-first Century*, UNESCO Publishing, Paris, 1996, p. 22.

## Box 10 Which language of instruction for refugee children?

Teaching children in refugee camps necessitates the choice of language while the consequences of this decision emerge later. Pilar Aguilar and Gonzalo Retamal have pointed to some of these consequences:

“Mozambican refugee children who followed the national syllabuses of Swaziland, Zambia and Tanzania, had to learn Portuguese in order to resume

schooling in Mozambique. Similarly, the use of the Sudanese curriculum for Eritrean and Tigrean refugee children in Eastern Sudan limited the participation of refugee children in UNHCR-funded schools and, indeed, a parallel non-formal system in the mother tongue was established by the refugees themselves.”<sup>78</sup>

Aid for Afghani refugees in Pakistan and Iran had been generous during the Cold

War but educational programmes failed to include a language policy:

“The polarization of Dari- and Pashtu-speaking refugee communities in Iran and Pakistan with little opportunity to learn each other’s language is likely to have a lasting effect on social integration and nation-building inside Afghanistan.”<sup>79</sup>

Guatemala has been subjected to civil discord since 1954. The increasing severity of internal conflict in the eighties drove a large part of the indigenous rural population to the more remote mountainous areas of the country for safety. The high incidence of social violence and armed conflict in the region has taken a toll on children.<sup>77</sup>

Guatemala’s Truth Commission (*Comisión de Esclarecimiento Histórico*, CEH) has authoritatively determined that genocide

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<sup>77</sup> Bensalah, K. et al. – *Education in Situations of Emergency and Crisis, Education for All 2000 Assessment, Thematic Studies, World Education Forum, Dakar, Senegal, 26–28 April 2000*, Emergency Educational Assistance Unit, Paris, October 1999, p. 51

took place in Guatemala. Because ‘the aim of the perpetrators was to kill the largest number of group members possible,’ the Commission could do no more than establish the number of major massacres.<sup>80</sup> Terms quoted above, such as

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<sup>78</sup> Aguilar, P. and Retamal, G. – *Rapid Educational Response in Complex Emergencies: A Discussion Document*, UNESCO-IBE, UNESCO-UIE, UNICEF, and UNHCR, Geneva, 1998, p. 27.

<sup>79</sup> Rugh, A.B. – *Education for Afghans. A Strategy Paper*, Save the Children and UNICEF Afghanistan, Peshawar/Islamabad, July 1998, p. 33.

<sup>80</sup> *Guatemala: Memory of Silence. Report of the Commission for Historical Clarification*, Guatemala City, February 1999, para. 113. Text is available at <http://hrdata.aas.org/ceh/report..>

‘civil discord’ and ‘social violence’ are not likely to create a background against which the current and new generations could understand how and why violations of human rights took place. Without understanding these violations, it is unlikely that human rights protection can be envisaged for the future. And yet, materials for human rights education tend to avoid any mention of violations.

Where education is aimed at peace-making, it is likely to omit those human rights components which are seen as unrelated, such as polygamy. A training package developed by the Norwegian Red Cross and UNICEF, and used in Sierra Leone in the year 2000, has encompassed a module on peace and human rights education which included a story depicted as a ‘cultural way of managing conflict.’ The story goes like this:

There was a man who had two wives. These wives had four children each and they were all living in the same compound though they had separate huts. One of the wives was very quarrelsome. As a result the husband was always out of the home to have peace of mind. The wife who did not like *palava* became fed up. She went to a traditional healer to tell him the problem. The healer told her that the problem was simple. The woman could not believe it. The traditional healer told her to put water into her mouth as soon as her mate started abusing her. He further told her that she must not swallow the water nor allow it to drop from her mouth. If she did, evil spirits will haunt her. The

woman obeyed and there was peace in the compound.<sup>81</sup>

This story illustrates two facets of the process which learners are likely to go through following the lead provided by this story. Firstly, they will not associate polygamy with human rights; the latter may be included in a training manual on gender, which is likely to be kept separate from the one on peace-making. The story treats polygamy as part of Sierra Leone’s landscape and there is nothing nudging the learners – or their teachers – to question it. Secondly, there is a casual reference to abuse as a possible cause for one of the co-wives having become labeled as quarrelsome; it is possible that the husband was continuously beating her. Again, there is no indication that whatever abuse might have taken place has anything to do with human rights. The happy end of this story is the silencing of a woman. It is likely that the message which learners will internalize is that women should keep their mouths shut, whatever may be happening to them.

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<sup>81</sup> Rapid Response Education Programme – Peace and Human Rights Education, mimeographed, UNICEF, Ministry of Youth, Education and Sports, and the Norwegian Refugee Council, Freetown, March 2000, p. 45.









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