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I. INTRODUCTION

Questions concerning education were the most serious questions of the era. All those who worked in that sphere knew that in solving those problems, they were faced with difficulties arising from the moral and economic disorder of the world today. It would be dangerous to take account only of material conditions in solving them. The right of all to education was indisputable. The right to share in the heritage of mankind formed the basis of our civilization, and could not be denied to anyone. Without education, the individual could not develop his personality, which was the aim of human life and the most solid foundation of society. Education was the first prerequisite for progress. That was the reason for article 23, which proclaimed that education must be free and compulsory, and that there must be equal access to higher education with no restriction other than individual merit.¹

This statement was made by the Brazilian representative to one of the committees working on the formulation of the Universal Declaration of Human Rights, and expresses basic ideas about why education should be included as a human right. Education was included in the Universal Declaration of Human Rights as article 26 and in the International Covenant on Economic, Social and Cultural Rights as articles 13 and 14 as the human right to education. This means that education is regarded as something that is necessary for all human beings at all times in all societies and that the state is responsible for fulfilling or making it possible to fulfill this right for everyone.

1. U.N. Doc., Third Committee, 21 Sept.–8 Dec. at 597 (1945).

The right to education is one of the economic, social, and cultural rights which as a whole seek to secure social justice and equality in Max Weber's "disenchanted world." The International Covenant on Economic, Social and Cultural Rights is a juridically binding document and therefore more specific than the Universal Declaration with regard to what is meant by the right and its implementation. The rights included in this Covenant have the common features of requiring resources and time in order to be implemented. One main principle by which the implementation of these can be measured is by nondiscrimination and equality and another is by establishing and defining what is the "core" or the minimum requirement of the right. The implementation of the rights identified in the Covenant is guided by the first and second parts of the Covenant text. The first part states that everyone has the right to self-determination (to freely pursue economic, social, and cultural development and to freely dispose of personal wealth, etc.), and the second part determines the obligations and duties of the state in this work in addition to the scope of limitations on the state (the inclusion of the rights in the national law, etc.).

The Universal Declaration of Human Rights declares the right to education while the Covenant states further that the state is the main actor responsible for implementing this right. The criteria contained in the Covenant are nondiscrimination and equality across gender, race, ethnicity, and religion. However, these texts are universal and therefore general in their formulations. They leave room for differing interpretations of what is meant by education; what are the types of education included here, what are the possibilities and the limitations of this right; and what are the problems connected with the implementation process. What do these quite general and abstract formulations mean when one attempts to apply them to specific contexts around the world? What does the right to education really mean in terms of curriculum, duration of schooling, expenditure, etc., and what does it imply when one seeks to implement or fulfill this right?

In this paper I will attempt to elucidate both the development and implementation of this right by investigating two aspects of the context or adoption of the right. First, I will briefly describe some general characteristics of the human rights norm system. Second, I will examine the discussions in the UN documents that lead to the formulation of this right in the Universal Declaration. The discussions that lead up to article 26 will primarily be examined and the covenant text in articles 13 and 14 will be mentioned in connection with this discussion. Here it will be possible to investigate what the main discussions were, the motivations and conceptualizations of education of those who contributed to the formulation of the right, and how this can contribute and shed light on the implementation of this right today in various contexts. This will be followed by some suggestions of ways to put into effect and thus evaluate the implementation of the right to education.

II. BACKGROUND THEORIES OF EDUCATION

In modern societies the educational institution is considered the principal socialization agent outside the family, and it is also one of the most important social dividing mechanisms. In the West, education has been associated with "progress," "civilization," and "development" for the last two to three centuries. After the Second World War, during the period of national restoration and the gaining of independence from colonization, theories of development proliferated and education in various forms became an important factor in the "development process." On the one hand, education can facilitate consciousness-raising and contribute to personal development and the shaping of identity and integrity. On the other hand, education can be a means of improving life on both the individual and the collective level. Education can secure good jobs, good wages, social status, social mobility, and national development. It imparts skills and knowledge to be used in family life and is a source of power individually and in the community.

The different theories of education that have been most common in the national development context can roughly be grouped into human capital theories and theories of consciousness-raising. The human capital theories attempt to prove that education (investment in human capital) will promote economic growth. This theory postulates the need for skilled technicians and professional experts in capitalist societies. Government agencies, private foundations, and international organizations such as the World Bank and the International Monetary Fund, were actively involved in the ideal of investing in human capital. There was a definite belief that investing in education and training, which was socialization to the capitalistic, technical society, would lead to economic growth and progress, especially in third world countries.

Neo-Weberian and neo-Marxist theories of education have focused on the negative aspects of education, such as the reproduction and reinforcement of inequality of social structures and systems and educational wastage, i.e., dropping out of school or repeating classes—the "loss" of attained knowledge and skills in general.² The Weberians have focused on how different status groups in society compete for wealth, power, and prestige where education is an important element in this competition. Education serves to reinforce the "status cultures" by defining "insiders" and "outsiders" of the dominant culture. The Marxists and others focus on the reproduction of inequality inherent in the educational system, and maintain that the educational system therefore is no more than one of the systems of domination

2. See, e.g., J. Karabel & A.H. Halsey, *Power and Ideology in Education* (1979).

of the ruling class. Thus, education is also an arena for political struggle. Class society is reproduced and reinforced on both the individual and collective level: class-based personality traits are reinforced as well as the whole culture and structure of the classes. Wider patterns of power, interests and control are reflected in the educational system and underlie the values that are taught. The educational system is part of the class structure which reproduces and reinforces class consciousness and social inequality. There is a focus on the waste and dysfunction of education, the inefficiency of the educational systems, and the inequalities of opportunities and results.

This critical theoretical approach has been applied to many of the colonial systems where the educational system was controlled and managed by the colonial power and where an indigenous elite often was picked out to be educated. This elite was socialized into the colonial power's culture and consciousness and often internalized the colonial norms and values of domination.

The Weberian and Marxist approaches also stress education as a very important socialization mechanism. They have focused on positive aspects of education, such as the teaching of class consciousness and the learning of cultural values and norms. The Marxist-inspired conscientization theory and program of Paulo Freire is one example.³ His theory and praxis is that learning how to read and write is part of learning how to "read" and interpret reality. He focuses on the inner aspects of education, how education is essential for the personal development of a human actor, for the ability to comprehend the structures and systems of action surrounding the actor. This theoretical approach also poses education as the key to escape a life situation of poverty and oppression. His praxis has been literacy campaigns and programs in Brazil.

Previous research on education has, in line with these theories, primarily focused on the outcomes of education. For the human capital theorists especially, it was important to legitimate education as an essential part of national "development" and "progress."⁴ This research documented many links between an actor's educational attainment and other social statuses and positions. It was documented that education facilitates social mobility, leads to high status occupations, correlates with high wages, leads to power positions in the political and economic sphere, influences child care and domestic work, etc. During the last ten to fifteen years, research has focused more on the context of education. This includes class interaction, contents of school books, and the role and action of the teacher and pedagogical

3. P. Freire, *Pedagogy of the Oppressed* (1972).

4. See, e.g., Schulz, "Investment in Human Capital" in *Economics of Education* 13-33 (M. Blaug ed. 1968).

programs. The contents of education reflects the social organization of knowledge; the curriculum defines which knowledge is valid and the pedagogy defines what type of transmission of knowledge is valid. There have been studies on the degree of power, control, and influence held by teacher and pupil in deciding the selection, organization, pacing, and timing of the knowledge transmitted and received.⁵

These different aspects of education will all be included in the discussion of how to evaluate the implementation of the right to education. The general evaluation of the equality of education can be divided into formal equality, equality of opportunity, and equality of results. Some aspects of education are easier to evaluate. One way to distinguish between the different aspects of education is by roughly dividing the evaluation into two categories: quantitative and qualitative aspects of evaluation. The quantitative aspects include the documentation of literacy percentages, waste and repetition percentages, numbers of schools in an area, number of teachers on different levels of education, quantification of various educational facilities, and expenditures for education. The qualitative aspects are more problematic to evaluate, because the generation of data is more time- and resource-consuming. It involves the evaluation of the content of education in various ways: the pedagogical techniques, class integration and interaction, the teacher's role, analysis of textbook material, the pedagogical ideology, and power structures in the classroom and in relation to the larger society.

This will be discussed further in the last part of this article. In order to have some human rights reference points and criteria for evaluating the implementation of a right, it is necessary to look at some of the characteristics of the human rights system.

III. BACKGROUND: THE HUMAN RIGHTS SYSTEM

Ideas of human dignity and the intrinsic value of human beings have a long tradition in Western thought, beginning with theories of natural rights and later including theories of social justice. The visions of these ideas are the same: the emancipation and freedom of human beings and the active and creative human actor. The values of equality and social justice are also a part of these visions, although there are differing conceptions of freedom and the means by which to attain freedom, social justice, and equality. This has resulted in two types of rights and two conventions as part of the UN system, one convention emphasizing the economic, social, and cultural

5. J. Karabel & A.H. Halsey, *supra* note 2, at 307-65.

aspects of freedom and equality, and another emphasizing the civil and political aspects of freedom and equality.

The definition of human rights is twofold: they can be defined in terms of the external, objective world and in terms of the subjective and social world. Although human rights are not objective entities in themselves, they have objective aspects. In the objective world they can be defined as formal norms (laws) embodying a set of ideals. These ideals represent certain moral values regarding the human condition and social action. They are high ideals, and it is important to note that most human rights are not absolute normative aims but possibilities for creating a meaningful existence in the subjective and social world. These formal norms in the form of rights are held unconditionally and equally by all actors by virtue of their status as human beings. Rights both restrict social action (the "negative" rights) and promote social action (the "positive" rights). They regulate social action in different types of relationships between the individual and the collective, such as the individual versus the state, and between collectives. Rights involve actions that limit or promote action of the Other toward the Self and duties limit or promote action of the Self towards the Other. In laying restrictions on all social actions, human rights protect both individuals and collectives against actions, at the same time as they impose duties and responsibilities on all actions.

Not only can human rights be defined in terms of the external world of formal norms for social action, but they also play an important existential role in the explanation of meaning in our existence. Using our moral sense is one mechanism for creating meaning; the moral sense in this context is a part of individual self-interpretation and expressed in the moral considerations implicit in social action. Human rights, embodying morality and thus expressions of the human moral sense, enable moral action. Intersubjectivity directs the moral sense and morality towards the Other and the social world and is fundamental to being a social human being. Human rights are thus not only a vital expression of a human need in the internal, subjective world but also of intersubjectivity in the social world. They represent a fundamental dimension of meaning in both the subjective and the social world.

The moral aspect is the essential aspect of the human rights system compared to conventional theories of development. Human rights lose their meaning if they are used as pure instruments for development and improvement of material conditions. The moral dimension presupposes a moral rationality implicit in the action for fulfilling human rights. This concept of moral rationality is based on the Kantian ethics of treating actors not as means only but also as ends in themselves. The human rights system can further be described by the following characteristics: universality, individ-

uality, paramountcy, practicability, and enforceability. Various aspects of these characteristics are often used as arguments against the human rights claim.

Perhaps the main argument against the human rights system concerns its claim of universality. In claiming universality, rights are not bound in time or space and imply the equality of all individuals. All human beings can claim these rights by virtue of being human beings independent of context and time in history. Implicit in this claim is the belief that all human beings have something in common by virtue of being human beings. The claim to universality is expressed in the articles on discrimination: the freedom from discrimination on account of sex, color, race, ethnic origin, language, or religion. Universality is an important principle in defining groups of individuals as human beings, people who at other times in history have not been defined as such, e.g., slaves, women, indigenous populations, minorities, and people of color.

One misconception about human rights pertains to the claim that they are only rights of individuals, the misconception being that this contradicts collective and social action. Human rights are rights of the individual, but the individual is a social individual included in various collectives. Also, as these are rights for all individuals, implementation implies collective and social action. The individuality of rights refers to the belief in human dignity and that all individuals should be treated as ends in themselves, not merely as means. It is further connected to the belief that all individuals are creative and active agents. Individuals act both as individuals and as collectives, both morally and instrumentally, and individual rights will therefore imply rights for the collective and vice versa. First and foremost, though, the emphasis on individuality protects the individual from the state institution. Individuality is specified in the documents and is the result of the historical development of the human rights idea. The universality and individuality claims imply social equality, and the problem of implementing these criteria is the problem of making an equal distribution.

Paramountcy refers to the principle of human rights taking priority over other norms for action and also to the interrelationship of the rights within the human rights system. The interrelationship is the balancing between the realization of one right at a certain expense of another. There will always be a question of priority in the implementation process of rights, as in all political processes. This does not mean that one or several rights take priority as such, nor does it mean that the fulfillment of one right necessitates the violation of other rights or the creation of a hierarchy of rights. The principle of the human rights system is that all rights are to be held equally, but the reality of the implementation process necessitates a certain form of priority. The exceptions to this are the so-called "absolute rights," rights that have

to be fulfilled in their totality as they are expressed. These are the right to life, freedom from torture and slavery, and the right to justice before the law.

The practicability of a right is also used as an argument against the human rights system, especially against economic and social rights. They are regarded as too idealistic and unrealistic and therefore impossible to implement. This pertains especially to social and economic conditions of poverty in third world countries. The formulation of the right to education is highly idealistic, too idealistic to be implemented in poverty-stricken areas, some argue. One important aspect of human rights is that to have any meaning at all, the necessary conditions to exercise the right have to be there. The right is meaningless if it is impossible to implement or if it is irrelevant in its context. Here, the important point is that realizing a right is always dependent on the context in which it is to be implemented, and the realization of a right will therefore vary a great deal from context to context. The implementation of one right can also depend on the implementation of another right.

Enforceability refers to the ability to implement a right, or the sanctioning of rights. The possibilities for effective sanctioning of rights via the human rights system are few and weak compared to traditional sanctioning institutions such as penal laws. The possibilities for sanctioning through the international community are first, the UN Human Rights Committee, which evaluates reports on human rights conditions; second, the system of reporting on human rights by commissions, states, or individuals; and third, international courts. In reality, the sanctioning of human rights violations is most effective through the state institution, and therefore the primary way of assuring punishment is through the incorporation of human rights into national constitutions or formal norm systems. Enforceability and practicability are both aspects of implementation.⁶

These principles point towards two main actors: the individual and the state. It is primarily the state that should secure implementation, sanction violation, and secure an equal distribution of human rights, especially in the case of the economic, social, and cultural rights. The right to education brings in a slightly different relationship. This is the relationship between state, parents, and child. The right to education focuses principally on primary education, which basically should be undertaken during childhood and which is essential for further education. Although human rights are for all individual human beings, adults are the principal actors who work to secure human rights, and children thus depend on adults for the promotion of children's rights. The question then becomes what relationship is there be-

6. L.J. MacFarlane, *The Theory and Practice of Human Rights* 9-14 (1985).

tween parents and the state concerning the rights of the child? According to human rights principles, the state has the responsibility for rights implementation, but parents in many societies have a primary responsibility for the rights of the child. In those societies where this is not so, the question is still relevant, only here it will be the relationship between the state and a larger family or community. Both the state and the family can fail to fulfill their responsibilities for the child. Therefore, evaluating this right also raises questions concerning the relationship between the state, the family, and the child. How much responsibility should parents be given and how much responsibility should the state be allowed in order to secure the rights of the child?

The evaluation of the implementation of the right to education requires first an examination of the educational tradition in its context in order to see whether it is meaningful to speak of such a right. Next, it will be necessary to investigate whether the state takes responsibility for implementing the right through legislation, political policies, and programs. It will also be necessary to investigate the equality and justice dimensions of education and the priority put on education related to other rights fulfillment and also within the educational system. Last, one would have to determine whether education has been placed in a hierarchy of rights implementation.

IV. THE PROCESS OF FORMULATING THE RIGHT TO EDUCATION

The work on the Universal Declaration of Human Rights started in February 1946, followed by various committee meetings in the Economic and Social Council, the Committee on Human Rights and the Drafting Committee before the Declaration was adopted in the General Assembly on 10 December 1948. Simultaneously with the work on the Declaration the work on the International Covenant on Economic, Social and Cultural Rights had started. The Covenant, however, required more time and work since it was longer and also a juridical document.

The starting point of the work on the education article was the submission of drafts from all the involved parties. These were either extracts of the relevant parts of the national constitution that had clauses on education, draft proposals made by the governments, or observations made by the members of the Commission on Human Rights' first session. These are collected in "The Secretarial Outline and Documentation" from May 1947. The drafts all varied in length but were quite similar in content. A few are very short (e.g., United States) while others were quite lengthy (e.g., Cuba). The following are aspects that were repeated often in most of the drafts.

First, there seems to be a large consensus that "every person has the right to education." Every person refers primarily to children. Furthermore,

there seems to be consensus about education being free of charge. This is later specified in the Covenant to be provided by the state. Some drafts state that primary education should only, or especially, be free for those without financial means. In these drafts there is an emphasis on the duty of the state to provide primary education, and also adult education, if necessary. Many drafts also state that primary or "fundamental" education should be compulsory. Some drafts also stated that the state was responsible for providing and building a public school system that would be free and give the same education to everyone. Some even specified the amount of money to be spent on education. It was emphasized that education should be in the national language, this with reference to the numerous colonial school systems that had foreign systems and languages—English, French, Portuguese, Spanish, and German in many countries in Africa and Asia. A number of drafts included the possibility of having alternatives to the public educational institutions provided by the state.

The principle of equality in the educational system was a point that was repeated. There should be no discrimination; everyone should be given an equal opportunity and the same education in the same educational system. Some specific points are worth noting. Egypt and Syria were the only countries to mention equality of the sexes in the educational system. Nicaragua mentioned that education is also in the interest of the state, not only the right of the individual. Syria stressed the uniformity of education. Mexico, Guatemala, Nicaragua, and Poland made provisions for the content of education. Mexico stressed socialist education, Nicaragua moral and technical education, Poland that religious instruction be compulsory, and Guatemala that the main aim of education be literacy.

A. The Discussions: Conceptualization on a General Level

It is clear from the discussions about the formulation of the article on the right to education that Nazism and the war experience had a great influence. Almost all of the main issues that were debated at some length had references to this history. Not only the representative from the World Jewish Congress and the Catholic church but many national delegates referred to this event in history.

Compared to discussions on other articles of the Declaration one can conclude that the discussion about the right to education was largely consensual and therefore not long. There was no question as to whether to include this specific right in the Declaration. The main issues that were debated were of a more general nature and some of them are still typical dilemmas of the human rights system. I have identified the following main issues: whether it should be stated that education should be compulsory

and free; whether to include the purpose and content of education, the role of the state versus the role of the family, or the right of the child versus the right of the family; whether to include a clause on nondiscrimination, intolerance, and racism; and whether to include a sentence on minority rights to education in the minority's own language. All of the above issues were discussed with reference to the war experience and Nazism. There was a definite belief in education as a socialization agent but at the same time a definite fear of education being used to socialize youth in a racist, destructive, and totalitarian ideology.

B. Compulsory and Free Education

The question of education, at least primary or "fundamental" education, being free was never a point of disagreement. However, there was a suggestion from the United Kingdom that there should be a sentence connecting "free" to the availability of a country's resources, since countries' resources varied to such a great extent. This was not accepted on the grounds that it would legitimate the neglect of the implementation of the right if one could refer to scarcity of resources.

The use of the word "compulsory" was opposed by some of the members. The main reason for this opposition was that this word was too specific for the general nature of an international declaration. It was also found objectionable because it could imply coercion to education both by the state and the family (parents) and because the child could be forced to any specific type of education. The French representative intervened with the comment that the word "compulsory" should be interpreted as protecting the child's rights and that coercion in no way was implied. This implied that the child had certain rights that neither the state nor the parents could deny. Those who argued for the inclusion of this word claimed that it was very important for the right and protection of the child, and this would focus the attention on the state's and on the parent's responsibility to fulfill this right of the child. The family and the state have to regulate and sanction their actions to a great degree. "As the child is too young to defend his rights, his right to education should be protected for him."⁷ This was particularly argued by Eleanor Roosevelt from the United States. The Soviet delegate also stressed the inclusion of free and compulsory education, although with the proviso that if education was compulsory then work should also be compulsory. This position was later abandoned.

The main disagreement, however, was whether or not the word "com-

7. U.N. Doc. E/CN.4/AC.1/SR.15/1947, at 5 (1947).

pulsory" implied that the state had a monopoly on education and whether it could decide the child's education and therefore infringe on parents' rights to decide the type of education their children should receive. This is the issue of responsibility for children and rights of children versus potential violations against them both by the state and the parents. The vote on whether or not to include the word "compulsory" showed eight to seven in favor of its inclusion.

C. The Purpose and Content of Education

"At that time the Commission had felt that, in the interest of the child and of mankind in general, the Declaration should not set forth directives regarding the system of education, but should, however, indicate the factors which would favour the development of human personality."⁸ This statement is in accordance with the general opinion that the Declaration should be formulated in order to be universal for all countries to be able to accept. Nevertheless, the representatives who discussed this right felt it was necessary to give some guidelines for the content and purpose of the system of education.

This discussion was clearly influenced by references to the war experience. In the first place, there were strong reasons not to mention the content, purpose, spirit, or ideology of education, because having a right to education is pointless if one does not specify the "spirit" or purpose behind this education. The youth of Nazi Germany had received education, but an education and socialization that was immoral, racist, destructive, and contrary to the human rights idea. The representative from the World Jewish Congress felt especially strongly on this issue, the issue of including the "spirit of governing education which was an essential element. Neglect of this principle in Germany had been the main cause of two catastrophic wars."⁹

Most of the delegates seemed to agree on this: that some general formulations on the "spirit" or "morals" of education should be included in the text. In the suggestions of what these formulations should be, there was a difference of opinion between representatives who were secular and those who wanted to include the specification of religious education. The delegate from the Soviet Union emphasized the importance for the states that did not have a state church to include specifications as to the general purpose and content of education. He felt that it was essential for the secular states in

8. U.N. Doc. E/CN.4/SR.67/1948, at 15 (1948).

9. U.N. Doc. E/CN.4/AC.2/SR.8/1947, at 3-4 (1947).

order to "combat intolerance" and "struggle against fascism and the horrors of war."¹⁰

On the one hand the article must therefore specify that the education should reflect the idea of human rights and be an effective instrument of peace by fighting intolerance, racism, fascism, and war and stressing the values of democracy, freedom, and equality. On the other hand, the socialization aspect was also stressed, especially by the Soviet Union, which argued that the right to education should combat illiteracy and ignorance and teach the student his or her duties to society. The Soviet representative wanted the following sentence: "Education must be given to the individual to enable him to fulfill his obligations to the community."¹¹ This was not accepted but is an important point bringing in the question of the instrumental aspect of education and the aspect of teaching duties, obligations, and responsibility to the community and the state. This discussion resulted in the second part of article 26 of the Declaration, which reads as follows:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.¹²

D. The Role of the State Versus the Role of the Parents

This issue is closely connected to the previous issues; it involves the role of the state versus the role of the family concerning the child and the child's rights. Delegates presented two views, one favoring the right of the state to determine the child's education and the other favoring the right of the family. The concrete point of disagreement was whether there is a right to establish private education institutions or whether the state has both a monopoly and full responsibility for all children's primary education.

Again, the war and the education of the Nazi youth was used as an argument and example of how the state could misuse its responsibility to provide children with education. The Soviet representative emphasized this aspect strongly and stated that the article should clearly define the role of the state. The representatives from Lebanon and the Netherlands argued for the rights of the parents to decide the child's education, and also for freedom

10. U.N. Doc. E/CN.4/AC.2/SR.8/1947, at 4 (1947).

11. U.N. Doc. E/CN.4/SR.4/1948 (1948).

12. Universal Declaration of Human Rights adopted 10 Dec. 1948, art. 26(2), G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

to establish private educational institutions. They also referred to Nazism in arguing that the parents had the right and the full responsibility of determining the "spirit" of their children's education.

The different views were that the article as it was, giving the state responsibility for the provision of the educational institutions, did not exclude parents' rights to determine the kind of education for their children. It was above all the child who should be protected and whose rights should be secured. These rights could not be secured if the state was left no responsibility. However, the state could be left with the responsibility of providing educational institutions. The Lebanese and Dutch delegates wanted a clause concerning parents' rights to choose their children's education and the right to establish private education institutions, because the words "free" and "compulsory" could be interpreted to give the state exclusive responsibility. This discussion, which overlaps some of the other issues raised, was the background for the third point of the education article: "Parents have a prior right to choose the kind of education that shall be given to their children."¹³

E. Against Discrimination, Intolerance, and Racism

There was also a discussion as to whether or not the article should have a clause on nondiscrimination (race, sex, language, religion). The argument for this standpoint was that it was absolutely necessary since the situation in most countries had been and still was such that there was a systematic inequality of education attainment. Often power elites had exclusive access to education. The Soviet delegate referred to the situation before the revolution when only the nobility and the upper class, a small percentage of the population, received education. There were also references to the situation in many colonies where education was used to create an elite of the indigenous population in order to have "natives" who would control their own people and work for the colonial power. Also in this discussion there was reference to the Nazi system, where there was discrimination against Jews, Gypsies, the mentally retarded, and others. The principle of discrimination in education was pointed out as detrimental and something to be fought.

Those arguing against this clause stated that nondiscrimination was already included in the preamble of the Declaration and that placing it in this article would be a repetition. In the final draft, there was no specific sentence on nondiscrimination by the article, which begins "Everyone has the right to education . . ." and continues with the specification about higher education, that it "shall be equally accessible to all on the basis of merit."¹⁴

13. *Id.* at art. 26(3).

14. *Id.* at art. 26(1).

Nondiscrimination is, however, a general principle for all the rights in both the Declaration and the Covenant.

F. Education for Minorities in their Own Language

Those who favored a clause guaranteeing education in one's own language argued that this was essential to the purpose of education. In this discussion there was also reference to the colonial history of many countries where the education provided was that of the colonial power's language and culture. To secure cultural identity and integrity one should be educated in one's own language and culture.

The arguments against this were first that rights of minorities are covered elsewhere, and second that granting minorities education in their own language would imperil the work for national unification in heterogeneous societies. The Chilean representative mentioned this point in reference to his country, which he described as a heterogeneous society that was struggling to unify into a national whole. His argument was that if education in the languages of minorities would be a part of the right to education it would in some ways contradict one of the ultimate aims of education, which was to unify a nation through learning one and the same language. The specification of minorities' language was not included in article 26. However, this issue is a topic of concern in many countries today, as evidenced by the numerous ethnic conflicts in the world.

G. Discussion

It is clear from these discussions about article 26 that there was no question about everyone's right to education, and that it should be free and compulsory. The main disagreement concerned the roles of the state and the parents with regard to the content and system of education. This point goes to the heart of one of the main characteristics of the human rights system, namely the relationship between the individual and the state and the responsibilities of these respective actors. The state can fail to meet its responsibilities and can abuse the rights of its citizens. Only the state, however, can secure an equal distribution of this resource and secure it for everyone. Therefore, the responsibility for the right to education cannot be left solely to the parents. Here, the arguments citing examples from the colonies and tsarist Russia were used to exemplify how education was unequally distributed and was a source of power for those few who attained it. It was also used to socialize a certain group into the norms and values of the dominating culture.

It is implicit in the article that the state is primarily responsible for securing education for everyone and that should be compulsory. However, part 3 is designed to guarantee that the state will not decide the contents and institutional structure of the education with no possibility for the parents to intervene. Parents thus have the ability of deciding to a certain extent, although the main responsibility of sanctioning the right is on the state.

The role of the state becomes explicit in the Covenant's article 13. Each part of the article starts with "[t]he States Parties to the present Covenant" and continues to list the responsibilities of the state, the content, purpose, etc.¹⁵ The state is to secure everyone the right to education, and primary education is to be compulsory and free. This implies the responsibility to make educational institutions available but says nothing about what would be taught and why. The second part, however, makes this clear: "Human rights and fundamental freedoms" and the "promotion of understanding, tolerance and friendship among all nations, racial or religious groups" should be taught for "the full development of the human personality" and for the maintenance of peace.¹⁶ This puts definite limits on types of education, but simultaneously it is general and open to many interpretations and alternatives. With respect to implementation it says nothing about how one promotes respect for human rights and how the human personality is best developed, how one promotes understanding, tolerance and friendship, and fundamental freedoms. Further, none of these concepts is defined. However, this is in keeping with the general and ideal nature of the document.

It is evident that what was discussed in the formulation of the Declaration article and not included has been included and elaborated on in the Covenant text. Parts 1 and 2(a)-(c) are basically the same as parts 1 and 2 of the Declaration. Parts 2(d) and (e) are not included in the Declaration text. These are quite specific in nature and refer to education for those who have not had any education, development of a system of schools at all levels, adequate fellowship systems, and teaching staff. Societies may have other ways of organizing their education and socialization process besides a formalized school system; children may learn from parents and peers by other means, such as oral traditions. Therefore, this sentence can be argued to be too culturally specific. On the other hand, a school system can be defined in different ways.

Parts 3 and 4 of article 13 of the Covenant are a further specification of part 3 of article 26 in the Declaration about the rights and responsibilities of parents. Part 3 secures for parents and legal guardians the right to choose

15. International Covenant on Economic, Social and Cultural Rights, *opened for signature* 19 Dec. 1966, *entered into force* 3 Jan. 1976, art. 13, G.A. Res. 2200 A (XXI), 21 U.N. GAOR, Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

16. *Id.* at art. 13(1).

the education for their children outside the public school system by means "which conform to such minimum educational standards as may be laid down or approved by the State." If there were not such requirements, there would be no meaning in having a universal right to education. If parents are to choose and determine their children's education, there has to be some minimal standard that can legitimize that it is a part of fulfilling a universal right. The fact that it is the state that should approve and secure these minimum standards opens the possibility for each culture to determine its own way. This might be based on family, kinship, or regional traditions and will more easily be approved by the state. The state, however, can use it as a way of discriminating against minorities or oppositional groups.

V. EVALUATING THE IMPLEMENTATION OF THE RIGHT TO EDUCATION

On the basis of the above discussions about general characteristics of the human rights system, and of the specific discussion on the formulation of the right to education in the Declaration, I will indicate concrete ways of implementing the right to education.

The principles of the human rights system that are relevant in this connection are first of all, the difference between the ideal and reality. Second, there are the principles of universality and individuality; namely, the equality of opportunity to attain education, the equality of the results of educational attainment, and the formal equality of education. Third, the concepts of paramountcy and enforceability should be discussed by investigating primarily the state's legal provisions, its political policies, and programs for the provision of education. Last, one should evaluate the purpose and content of education to determine whether it accords with the human rights idea. This includes the investigation of the cultural norms and values that are transmitted.

These aspects can be evaluated by using qualitative and quantitative data. There are quantitative data on literacy percentages, wastage percentages, number of schools, number of teachers, school facilities and attendance scholarships, and other matters. Qualitative data will describe policies and programs, the content of the educational process, evaluation of the school structure, pedagogy, textbooks, teachers, and classroom interaction.

A. Determining the Context

The evaluation of a right is, needless to say, dependent on the general context and is specifically dependent on the history of the context of the rights. In

this case one has to examine closely the history of education and transmission of cultural knowledge in the actual country or area of examination. This will serve as a point of reference when one evaluates implementation of the right. It is essential to the evaluation that the ideal is not confused with reality, because the reality of the rights situation in a country can be far removed from the ideal.

One has to determine what kind of history education has in order to make an evaluation of the current situation. In this examination the focus is on the human rights principles. This analysis will expose the basis for a rights fulfillment. The basis will provide criteria for deciding how much time and resources are needed for an improvement and fulfillment of a minimum requirement. The history of education will differ from context to context and also in relation to the present general context. The examination of the history of the right and its economic, social, and political context will give grounds for evaluating the time and resource aspects. Those contexts that have difficult situations for rights implementation will need longer time and resources than those that have both a longer history of rights fulfillment or a different situation of resources available for implementation.

The historical examination of education also serves another end, namely the realization of the right to education. The historical examination will indicate whether the concept of education is congruent with the general concepts of the human rights idea. If there is no such congruence, it might be meaningless to discuss the right to education in the first place. But if there are definite concepts of what education is, what the purpose and content should be, why and for whom, then these conceptualizations will aid in the realization of the right to education.

In the following I will give specific suggestions on how to evaluate the educational situation. These suggestions are based on a study on India and will therefore have concepts and categories specific to this context. However, these categories and concepts are applicable to a number of other societies in the world.

B. Quantitative Method

There are certain aspects of education that can be quantified to describe the education situation. Such descriptive educational statistics include percentages of literacy, enrollment rates, dropout rates, and repetition rates, and other quantifiable aspects of education.

The most basic criterion by which to "measure" education in the modern world is literacy. The simplest definition of literacy is the ability to read and write with comprehension. Defining "comprehension" is a problematic issue and will not be discussed here more than to say that it has to do with being

able to read and write and being functionally literate.¹⁷ Literacy rates give estimates of what proportion of the population is capable of reading and writing with comprehension. UNESCO publishes the *Yearbook of Education* which contains literacy rates for populations of most of the countries in the world. These are estimates, because the data are difficult to collect, especially in countries where the literacy level is very low. Nevertheless, this yearbook gives an approximate level of literacy as compared to other countries in the region and the world. It also gives an indication of the distribution by gender and age. However, the best data sources are nationally generated data of different kinds. If such information is not collected, countries should begin to do so.

Distributions by gender, social class, age, region/state, urban/rural area, religion, ethnicity, and other dividing mechanisms are factors in the equality principle. These rates will usually reveal significant divisions.

Literacy is a basic measurement of attainment of reading and writing skills. Most people learn to read and write in formal educational institutions, but it is also possible to attain literacy through non-formal literacy programs. However, the right to education requires a school system and free and compulsory education for all up to the age of fourteen. A "school system" can be defined as any kind of institutionalized arrangement of knowledge and cultural transmission.

The second main measurement for evaluating the implementation of the right to education is therefore to consider enrollment rates and estimates of educational wastage. Enrollment rates show how many people are enrolled at various school stages, but this rate can be misleading in evaluating educational attainment if there is a high rate of wastage. Wastage can take two forms: the student drops out of school before completing the class or level or the student fails the class or level and therefore has to repeat the class before moving on to the next. Wastage can be expressed by indexes, which are computed in various ways using different types of educational indicators, or simply be represented by rates of repetition and promotion of grades or by dropout rates. Wastage indexes or dropout and repetition rates are dependent on a certain time span, which means that the data have to be collected over time.

The enrollment and wastage rates depend on the school system in the country. Many countries have a system with an elementary level (one to five, six, or seven years), a middle level (two or three years), and a secondary level before the higher education starts. The Covenant's requirement of free

17. Although this is the definition of literacy, it is not used in the registration of literacy done by UNESCO and other worldwide agencies. For example, the United States has a large number of functional illiterates, but is registered with virtually 100 percent literacy in UNESCO's *Educational Yearbook*.

and compulsory education for everyone up to the age of fourteen encompasses schooling up to the secondary or higher secondary level. The evaluation of the right to education will be primarily focused on elementary education. This level is essential for going on to the other levels; elementary education is the most basic aspect of the right to education. However, secondary and higher education will also be considered for comparison with the other educational levels. This implicates the equality principle between the levels of education and the different priorities made as to the different levels.

To get the correct perspective on the enrollment rates with respect to the implementation of the right, it is necessary to consider them in relation to the wastage of education. There can be a high rate of enrollment but at the same time high dropout and repetition rates. In some countries this is due to the school system, where the children have to take exams, even at the lowest levels, at the end of the school year in order to move on to the next grade. The lower grades thus limit access to higher education. Enrollment rates, dropout rates, and repetition rates all have to be examined with reference to demographic factors such as gender, region, religion, etc. to determine whether the distribution in these various categories meets the equality dimension. One would expect the same patterns to emerge for these rates as for the literacy rates, since they are all related.

Literacy, enrollment, and wastage rates indicate that steps taken to implement the right to education exclude certain groups. These data must be put into their context. A variety of complex factors may cause people not to start school or to drop out or have high rates of repetition. These factors can vary from individual to structural explanations. On the individual level, such problems can be attributed to a lack of motivation or incentive for a number of reasons. Structural explanations can include the family economic situation that requires work (domestic, agricultural, or paid labor) to survive; religious or traditional reasons; long distance to school (which can be a crucial aspect for girls' education); and quality of teacher or material conditions of the school.

The barriers to education can be divided into socioeconomic and educational reasons, which can be evaluated both quantitatively and qualitatively. The socioeconomic barriers include the economic condition of the family. Rural families in poor countries often live in poverty, which forces children to work both in and outside the home instead of attending school and causes malnutrition and poor health. Parents' attitudes toward education, as influenced by the parents' occupation, class, religion, and social traditions, may also create barriers to education.

Scarcity of schools and a long distance to schools can be barriers to education. A poorly designed or irrelevant curriculum and ineffective teaching methods may also contribute to nonenrollment and dropout. Admissions and grading policies can cause dropout. Some school systems require ex-

aminations for promotions to the next grade, and some curriculums are such that parents' help is necessary for the completion of homework. Also, there are schools that have admission fees and other costs, such as uniforms, textbooks, meals, and utensils, that have to be covered by the students.

A lack of efforts to promote enrollment can cause low attendance. Incentive schemes like scholarships for certain groups, free meals, free textbooks, and uniforms may be crucial factors for parents deciding whether to send children to school, especially at the primary level. The material state of the school and the number and sex of the teacher are also important. Amenities like drinking water, toilet facilities, blackboards, mats or furniture to sit on, and other accommodations are all factors that can keep students in or out of school. For example, lack of drinking water might be a single reason for dropping out of school. Also, the fewer teachers per school, the poorer the quality of education is likely to be. In some contexts, it is essential that girls have female teachers. Studies show that girls are often kept at home because there are only male teachers and because there is only coeducation.

Inadequacies in the educational system can be due to inequality in expenditures resulting from a priority on particular grade levels within the education system or the general priority put on education as compared to other public expenditures. Imbalances in expenditures can lead to inequalities between age groups, states, regions, educational levels, and the quality of education. Expenditure indicates both the distribution within the system of education, but also indicates how much priority is put on education in relation to other parts of the national budget. This is an aspect of the paramountcy principle.

In considering the expenditure dimension of education, one can determine the percentage of the national budget allocated to education, compare this with other countries in the region and the world, and examine how much is actually spent both on the national budget and on the state or regional budget. Money budgeted might not actually be spent as planned. One should also find out how much is spent per capita. It is also necessary to examine these data over time to see if there has been a steady increase or a decrease in allocations and expenditures. These statistics should also be compared with figures from other states and regions. If these quantitative data are difficult to get or simply do not exist, then there is a need to begin generating this type of data and also data on the more qualitative aspects of education.

C. Qualitative Aspects

Data on the qualitative aspects of education are scarcer than data on quantitative aspects and require more time and resources to generate. Data that do exist are often scattered and fragmented. Such data pertain to the more

general reasons for nonenrollment such as the reasons and motivations for not sending children to school, the pattern of gender roles and class structures, socioeconomic situations, and the conceptualization and perceptions of education in society. These data also pertain to the more specific school situation and the content and purpose of education. These are aspects of the pedagogy, the school system, the classroom situation, the role of the teacher and the classroom interaction, and the content of the textbooks. Finally, there are data that illustrate whether school policies and programs are effective.

Attitudes of the parents and policies of the state are important factors in determining whether children attend school. Parents may fear education, believe that only a certain elite group or class is allowed to be educated, believe that only one gender (usually males) should be educated, etc. Such attitudes can be closely connected to religious beliefs, which may involve a mix of state and family influences. The role of the state can be determined by examining school institutions and facilities and the quality of education provided and by examining efforts to promote education, especially among those groups and classes who are largely excluded from the educational system. These aspects of the educational system should also be evaluated with reference to the human rights ideals of tolerance, equality, world peace, and the development of the personality. The curriculum, the content of the textbooks, and the interaction in the classroom should also promote human rights norms and values. The studies that have been done are mostly from Western countries, although there are an increasing number coming from the rest of the world. There are a number of studies on the reasons for disparities in educational attainment, especially by class and gender, as well as on the content of textbooks and teacher learning material, on the pedagogy, on the teachers—who they are and what values they have—and on student and teacher interaction. There is still, however, a need for more comprehensive studies on these aspects from non-Western countries.

VI. CONCLUSION

Education is a human right. This implies several things. It means that it is to be held equally by all human beings and that it should be given importance with respect to other normative standards and claims. However, the problem of speaking of a human right to education is the problem of realization. Education has to be put into effect in order to evaluate the implementation of the right, and the realization of the right to education is essential if the right is to have meaning in the "real" world. The difficult task of the realization of the right is that it has to be applicable or transferable to all contexts in the world. Considering human rights norms and studying the actual discussion behind the formulation of these norms provide some guidelines for

implementing the right to education. It is evident from the foregoing discussion that the formulation of the right is still general and somewhat abstract. I have indicated some concepts, indicators, and categories that can be used for the realization and ultimately for evaluating the implementation of the right to education in a specific country or region.

The evaluation of the right to education has to be considered as an ongoing comparison between the ideal and the real. The implementation of the right will in this way always be relative to the history and the present conditions in the country or region being examined. At the same time, for the right to education to have any meaning as a human right, education in any context should follow as closely as possible the human rights idea.

VII. APPENDIX

Article 26 of the Universal Declaration of Human Rights

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religion groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- a) Primary education shall be compulsory and available free to all;
- b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.