

Human Rights and Poverty Reduction

Girls' education through a human rights lens: What can be done differently, what can be made better

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1. Introduction

If rights-based education can be a means to attain gender equality. Otherwise, it tends to transmit gender inequality to the next generation. Rights-based education is a passkey for full and equal enjoyment of all human rights, which adds a qualitative dimension to the existing global focus on quantitative targets. At the turn of the millennium, global strategies converged around the goal of eliminating gender disparities in basic education by the year 2005.¹ Statistically speaking, this target will not be attained. Moreover, previous experiences have shown that it is easier to attain gender parity than to sustain it. Human rights can help in sustaining progress by enforcing equal rights of girls and reinforcing the corresponding governmental obligations.

An illustration of what can happen without human rights protection is the case of *Tatu Shabani*, who was sentenced in 2003 to six months in prison for not attending school.² *Tatu* had been a pupil of *Mkuyuni* primary school in *Morogoro*, in *Tanzania*. She was expelled after she became pregnant: pregnancy was a disciplinary offence. After her expulsion, she could no longer go to school. *Tatu* was in a 'Catch-22' situation, in breach of the law on compulsory school attendance but unable to comply with that law. It is not clear how *Tatu*'s case will figure in education statistics but, legally, she became a delinquent by the mere fact that she had become pregnant as a primary school pupil. Pregnancy ended both her childhood and her education.

This case highlights the rationale behind a human rights approach to education, that of dealing with obstacles beyond – not only within – education. There has been an endless stream of policies and statements on what can be done. Human rights spell out what *should* be done, using as a yardstick global minimum standards that most states in the world have accepted. Thus, human rights complement and strengthen development priorities. The key features of human rights law are outlined in Table 1, through a comparison with the MDGs as the best known blueprint for prioritising development efforts.

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¹ The Education for All (EFA) strategy includes a commitment to eliminating gender disparities in primary and secondary education by 2005 and achieving gender equality in education by 2015 (World Education Forum, 2000). This commitment has been reinforced through its adoption as one of the Millennium Development Goals. For an overview of all globally agreed targets regarding gender equality, see UNIFEM (2003: 4-5).

² Criminal case No. 322 of 2003 at the Primary Court in *Morogoro* Region, *Tanzania*.

Table 1: Differences between human rights law and MDGs

| | | |
|------------------|--|---|
| Who? | Obligations of the state International human rights obligations form part of the law of the land. They pertain to the state and are not affected by changes of government. | Political commitments of a government Changes of government through electoral or non-democratic means routinely alter political commitments. |
| What? | Human rights are grounded in the rule of law Guaranteed rights can be claimed by the population as well as by other states since they form a part of international law. | No remedy for the lack of performance Where monitoring reveals that targets have not been attained, there is no access to justice for those who would have benefited, because MDGs do not create entitlements. |
| When? | Obligations are immediate Minimum global standards are binding upon governments. If beyond their capacity, they can seek international aid. | Long-term goals The year 2015 takes away the immediacy characterising human rights. |
| How? | Legal responsibility Human rights bestow upon individuals the right to hold government legally responsible for violations, both domestically and internationally. | Monitoring Accurate and up-to-date data do not exist where they are most needed, while attainment benchmarks anticipate continued deprivation and rights deficit. |
| How much? | All rights for all girls and women Full and equal enjoyment of all human rights and the elimination of all forms of discrimination against women have not yet been attained anywhere, and are therefore continuous obligations of all governments. | Specified quantitative targets Benchmarks have been defined as 'feasible in even the poorest countries', ³ leaving out too many quantitative (e.g. prevalence of child marriage) and all qualitative benchmarks (e.g. aims and contents of education). |

Differences highlighted in Table 1 do not undermine the core that is shared by global development strategies and international human rights law. Indeed, the focus on poverty reduction enables the right to education to be a powerful tool in making a change in the lives of girls and women. Poverty has been universally affirmed as a key obstacle to the enjoyment of human rights, and it has a visible gender profile. The main reason for this is the fact that poverty results from violations of human rights, including the right to education, which disproportionately affect girls and women. Various grounds of discrimination combine, trapping girls in a vicious downward circle of denied rights. Denial of the right to education leads to exclusion from the labour market and marginalisation into the informal sector or unpaid work. This perpetuates and increases women's poverty. This circular relationship requires human rights mainstreaming.

The focus of global strategies on the *means* of education, i.e. all girls should start and finish primary school, can be usefully complemented by specifying the *ends* of their education. In addition, since education is a lever to provide girls with choices in life, primary schooling may not be enough. Worse, it can in fact obliterate choice if a girl is taught that her destiny is to be a submissive wife and mother. In the words of Sheikh Abdul-Aziz al-Aqil, 'the Muslim woman is a precious jewel whom only her rightful owner can possess, for he has paid dearly for that' (Hirst, 1999).

2. Applying human rights law to mould education: step by step

International human rights law lays down a three-way set of criteria, whereby girls should have an equal right *to* education and equal rights *in* education, and their equal rights should be promoted *through* education. The first step in meeting these requirements consists of overcoming their exclusion from education. The global priority for girls' education has made large indents into this exclusion, with promises to bring it to an end. The subsequent step is

³ UN Doc. A/59/282 (2004), para. 77.

often the segregation of girls into separate schools. The third step typically comprises assimilation of girls into schools designed for boys, then moving towards adapting education to suit girls.

Separate schools for girls and boys were an international norm as late as 1960. At the time, the UNESCO Convention on Discrimination in Education legitimised separation on the grounds of sex, religion and language. The rapporteur for that Convention explained that 'the separation of schools for pupils of the two sexes was still too widespread in practice for the Convention to be able to affirm that, at the international level, it amounted to a proscribed form of discrimination' (Juvigny, 1963: 18). For various reasons, segregation in education persists, despite the fact that (in the famous words of the US Supreme Court) separate is always unequal. However, its human rights impact is not assessed.

Integrating girls into mainstream schools without altering curricula and textbooks perpetuates the stereotypes that impede gender equality. School textbooks tend to portray women as staying at home while men are making history. A survey regarding women in primary school textbooks has revealed that in Peru, for example, women are mentioned ten times less than men (Valdes and Gomariz, 1995: 105). In Croatia, a study of secondary school textbooks has shown that sons are the subject of 42% of the material on family life, and daughters of only 17%.⁴ A study of school textbooks in Tanzania revealed that girls doing domestic chores constituted the favourite topic for explaining to children English and Kiswahili grammar (Mbiliyi, 1996: 93-94). This type of analysis is the first step towards change, which is taking place rapidly in many countries and in all regions of the world. There are, however, obstacles.

The change of terminology, from 'sex' to 'gender', challenges the historically constructed inferior role of women in public and private life, in politics and in the family, within and outside of school, in the labour market and in the military. The purpose of human rights is to challenge and change this discriminatory heritage. However, difficulties begin with the very language: in many languages, the term 'gender' cannot be translated. And the necessary process reaches far beyond linguistics, into investigating the ways in which different societies perceive what gender relations are and what they should be.

At a lower level of abstraction, an illustration of obstacles is governmental response to girls or female teachers wearing headscarves. Turkey's commitment to secularism in education has brought about a ban on headscarves; breaching this ban entails denial of access to education. The International Labour Organization (ILO) has assessed negative effects of lack of education on women's employment: 'women's level of education is very low in Turkey (one out of every two women jobseekers has only a primary school education), as is their level of participation in the workforce' (Tomasevski, 2002: paras 57-58).

Adapting education to the equal rights of girls necessitates women's voices in decision-making. In the Philippines, for example, 'women's disproportionate under-representation in top-level positions continues to be evident. This is particularly observed in the education sector where women constitute the majority of the schoolteachers but are not equitably represented as the positions go up.'⁵

3. School first: freeing girls from child marriage

Human rights research has demonstrated that the biggest obstacles to girls' education lie beyond the education sector. Indeed, those most frequently identified by governments in their reports under human rights treaties are early marriage, pregnancy and unpaid household work (Tomasevski, 2002).

⁴ Summarised results of the research project, 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/august00.htm>.

⁵ UN Doc. CEDAW/C/PHL/4, 1996, para. 162.

As the respective governments themselves have reported, in Gabon 'children aged 10 could be married',⁶ although the legally set minimum age is 15. In Eritrea, the minimum age for marriage is 18 but 'girls are often betrothed between the ages of 8 and 14'.⁷ Tanzania has stated that 'Islamic law in Zanzibar seems to recognize the possibility that girl children may be married before they reach puberty and without their consent'.⁸ In Niger, girls are married at puberty, as young as nine.⁹ A similar situation has been described by Mozambique.¹⁰

Rural communities usually consider that a girl is no longer a child when she has her first menstruation. This is when initiation rites take place or are concluded and she is ready for married life. Some rural communities practise initiation rites on girls even before their first menstruation, sometimes when they are only seven years old.

Through marriage, girls of primary school age not only are precluded from school, but also lose their rights as children. Child marriage transforms a school girl into an adult, even if she is only seven years old. As the Committee on the Rights of the Child noted regarding Madagascar, married girls are 'considered as adults and therefore no longer eligible' to enjoy the rights they should have as children, including the right to education.¹¹ Cutting off girls' education so early deprives them of adolescence and burdens them with adult responsibilities long before they are able to cope. The child rights rationale requires prolonging the rights of the child to the age of 18. Applied in education, this would alter not only the practice but also the very design of education strategies.

4. Opposing legalised discrimination against girls

The process of change does not always head in the direction of raising the minimum age for marriage. Yemen has exemplified this by lowering the age from 18 to 15 so that the age is the same for boys and girls: 'The minimum age of maturity for men [is set] at 10 years, on the attainment of puberty, and for women at 9 years, also on the attainment of puberty'.¹² In the Democratic Republic of Congo, 'the marriageable age has been reduced from 16 to under 14 years'.¹³

As well as a marriage age which can be much too low, a comparison of domestic laws reveals that legalised discrimination continues in many parts of the world. Table 2 highlights how often the minimum age for marriage is lower for girls than for boys.

Table 2: Minimum ages for marriage for girls and boys

| Americas | Asia | Western and other |
|-----------------|------------------|---------------------|
| Argentina 16/18 | Armenia 17/18 | Austria 15/18 |
| Bolivia 14/16 | Cambodia 18/20 | Japan 16/18 |
| Chile 12/14 | China 20/22 | Liechtenstein 18/20 |
| Guatemala 14/16 | Indonesia 16/19 | Luxembourg 16/18 |
| Mexico 14/16 | Korea 16/18 | Moldova 14/16 |
| Nicaragua 14/15 | Kyrgyzstan 17/18 | Monaco 15/18 |
| Suriname 13/15 | Turkey 14/15 | Poland 16/18 |
| | Uzbekistan 16/17 | Romania 15/18 |
| | Vietnam 18/20 | |

Note: In a slowly increasing number of countries there is no difference in the minimum age for marriage.

Source: Melchiorre (2004).

⁶ UN Doc. CRC/C/41/Add.10, 2001, para. 71.

⁷ UN Doc. CRC/C/41/Add.12, 2002, para. 70.

⁸ UN Doc. CRC/C/8/Add.14/Rev.1, 2000, para. 161.

⁹ UN Doc. CRC/C/3/Add.29/Rev.1, 2001, para. 18.

¹⁰ UN Doc. CRC/C/41/Add.11, 2001, para. 69.

¹¹ UN Doc. A/51/41, 1996, para. 235.

¹² UN Doc. CRC/C/70/Add.1, 1998, para. 6.

¹³ UN Doc. CRC/C/3/Add.57, 2000, paras 69 and 81.

The discriminatory practice of setting a lower minimum age for marriage for girls than for boys demonstrates that a global consensus, necessary for the elimination of child marriage, has yet to be attained. The wording of two pertinent human rights treaties nudges governments to prohibit and eliminate child marriage. However, the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) has been accompanied by reservations regarding the continuation of religious and customary laws, especially with respect to marriage and family (Tomasevski, 1999: 16 and 37). The Convention on the Rights of the Child (CRC) has triggered similar reservations regarding laws and practices that legitimise girls being married when they should be at school (Tomasevski, 1995: 275-81). Peer pressure has proved to be an effective way of translating human rights law into practice. This is comprised of governmental objections to such reservations as incompatible with global human rights standards, and of assistance in removing obstacles which impede change.

The Committee on the Rights of the Child constantly reminds governments of the necessity to bestow equal rights upon girls. For India, it has noted that 'religion-based personal status laws perpetuate gender inequality in areas such as marriage'.¹⁴ In Bangladesh, the statutory minimum age of marriage set at 18 does not apply to the majority of the population. Official statistics record 10 as the minimum age for marriage: '5 per cent of 10-14-year olds and 48 per cent of 15-19-year olds are currently married'.¹⁵

4. Education of child mothers for the sake of the rights of both children

The Charter on the Rights and Welfare of the African Child requires states to ensure that girls who become mothers before completing their primary education 'have an opportunity to continue with their education on the basis of their individual ability'.¹⁶ Translating this obligation into practice necessitates enforcing the right to education of pregnant girls and child-mothers. The Supreme Court of Colombia has confirmed that there should be an alteration of school regulations which envisaged penalisation of pregnancy by suspension from education. The Court has found that 'the conversion of pregnancy - through school regulations – into a grounds for punishment violates fundamental rights to equality, privacy, free development of personality, and to education'.¹⁷ The Committee on the Rights of the Child has formulated its view on the expulsion of pregnant schoolchildren by using Lesotho as the case in point: 'such action is not only discriminatory against girls but also a violation of the right to education'.¹⁸

Change is neither fast nor easy, and therefore requires governmental prioritisation. There are frequent clashes between societal norms, which pressurise girls into early pregnancy, and legal norms, which aim to keep them in school. In Malawi, 'girls are encouraged to marry early and ridiculed if they continue with their education'.¹⁹ Parents, teachers and community leaders tend to support the expulsion of pregnant girls from school, rationalising this choice by stating the need to uphold moral norms that prohibit teenage sex; pregnancy is treated as irrefutable proof that this norm has been breached. Adult men, including teachers, who seem to be responsible for most teenage pregnancies have remained beyond the remit of punishment. Societal norms are not automatically changed through the adoption of international or domestic guarantees of equal rights for girls, nor are they altered through democratic decision-making, in which girls would not have a voice in any case. Law provides a powerful lever for change.

The law, however, cannot supplant the resources that are needed to eliminate discrimination

¹⁴ UN Doc. CRC/C/94, 2000, para. 64.

¹⁵ UN Doc. CRC/C/65/Add.22, 2001, paras 208 and 222.

¹⁶ Organization of African Unity, Charter on the Rights and Welfare of the African Child, 1990, Article 11 (6).

¹⁷ Corte Constitucional de Colombia, *Crisanto Arcangel Martinez Martinez y Maria Eglina Suarez Robayo v. Colegio Cuidad de Cali*, No. T-177814, 11 November 1998.

¹⁸ UN Doc. CRC/C/15/Add.147, 2001, para. 53.

¹⁹ UN Doc. CRC/C/8/Add.43, 2001, para. 66.

against girls exacerbated by poverty. Indeed, poverty is closely associated with adolescent childbearing: 'In Indonesia, the Philippines and Viet Nam, the poorest adolescents are nearly seven times as likely to have children as their better-off counterparts.' (UNFPA, 2002: 37.) Donor priorities can transform girls' right to education from rhetoric into reality, supporting the elimination of financial obstacles so that all girls – no matter how poor – can complete their schooling.

5. Eliminating gender discrimination through investment in prolonged girls' education

Research into the effects of education on poverty reduction has demonstrated the importance of continuing with secondary education, as opposed to just completing primary education. Moreover, without secondary and university education there will be a lack of teachers, meaning primary education is doomed to extinction. For girls in many countries, the problem of a shortage of female teachers is not the only issue here. Similar research findings show that secondary education helps to eliminate child marriage and/or early childbearing. Education statistically decreases fertility levels when it is at least seven years long (UN, 1995; Singh and Samara, 1996: 153).

The length of schooling is, of course, only one component; the content of education is crucially important. A statement by the government of Laos, whereby 'women's duties include bringing up children, as well as other household duties'²⁰ illustrates continued resistance to changing gender roles. Governments should take the lead here, because parental investment in a daughter's education may be negatively influenced by custom. In Bangladesh, 'marriage of a female child often entails a considerable financial burden on the parents, and it is often perceived that investments made in the education of the girl child may not benefit her own family but the family of her husband and in-laws'.²¹

Education is not financially self-sustaining, especially basic schooling for the poor. Hence, it has been made into governmental responsibility. What girls can do with their education later determines whether such education will prove to have been financially sustainable. Moreover, education influences private choices made by the parents and the girls themselves. If women cannot be employed or self-employed, own land, open a bank account, or get a bank loan, if they are denied freedom to marry or not to marry, if they are deprived of political representation, education alone will have little effect on their lives. All other human rights – or the lack thereof – profoundly affect education.

The right to education has been shown to act as a corrective to the free market, with a growing acceptance of the necessity for government intervention. The importance of free public education for girls has been summarised by the government of Lebanon thus:²²

It is worth pointing out that there is a connection between the preponderance of females over males in free education, as females outnumber males in State education in particular (and most of them are from low-income families). By contrast, there is a higher ratio of males to females in private fee-paying education (and the proportion of those from middle- and high-income families is appreciably higher than is the case in State education). This suggests that males take preference over females when the family has to pay fees to educate their children. The high cost of education and the diminishing role of the State school may therefore result in the practice of discrimination against females, as well as breaches of the principle of equal educational opportunities for both sexes.

The unwillingness of parents to send their daughters to primary school has often been traced to the absence of an economic rationale for investing in their daughters' education. Parental motivations for sending children to school can be undermined by 'a double loss: first they

²⁰ UN Doc. CRC/C/8/Add.32 (1996), para. 74.

²¹ UN Doc. CRC/C/3/Add.38, 1995, para. 52.

²² UN Doc. CRC/C/70/Add.8, 2000, para. 209.

cannot participate in farming and herding and thus contribute to subsistence, and, second, they might be able to get a job after school but would be unwilling to accept farming again' (Hagberg, 2000: 38). This has also been noted by the parents in Burundi: 'Since girls cannot get jobs if they have only primary education, parents ask: why pay for them to sit six years in classroom, when they could be at home working?' (Jackson, 2000: 29). Similarly, research in South America has confirmed that, in rural areas, 'a sizeable proportion of parents perceive education as irrelevant to their children's future and thus prefer that they work' (Salazar *et al.*, 1998: 148). Such obstacles to parental motivations do not disappear spontaneously with growing wealth, as Saudi Arabia illustrates: 'Is there any logical justification for spending huge amounts of money on women's education when thousands of female graduates face the prospect of either remaining at home or entering a single profession, girls' education, which is already overcrowded?' (Al-Rashid, 1999).

Human rights provide helpful guidance, requiring examination of the entire legal status of girls and women in society, as well as the sources of law which determine it. In many countries, interpersonal relations between individuals, and within families and communities, are governed by religious law or societal custom. In duty-based societies, communitarian values take precedence over realisation of individual rights. Hence, a broad range of factors, and their confluence, shape the effects and impacts of educational strategies. Inconsistencies among education laws, and laws regulating family status and women's economic and labour status, impede effective and self-sustaining change (UN, 1997: 42). Human rights mainstreaming makes a huge difference. It brings all the rights of all girls and women to bear on the way that education is designed and practised. The economic rights of girls and women, in particular, influence the effectiveness of education in poverty reduction.

6. Summary

Rights-based education necessitates moving equal rights of girls and women from the margins to the core of education strategies. The reason for this is that education operates as multiplier, enhancing the enjoyment of all rights and freedoms where the right to education is effectively guaranteed, as opposed to depriving people – especially girls and women – of the enjoyment of many – if not all – rights and freedoms where the right to education is violated.

The ultimate goal is ambitious. Increasing the quantity of education for increased numbers of girls and women does not necessarily have a positive impact on equality. Rather, the impact can be negative if the girls are taught about their own unworthiness, if they are precluded from applying their education to enhancing their political or economic rights and their freedom from forced or child marriage (Tomasevski, 2001). Rights-based education necessitates adjustment of the purpose and content of education to the equal rights of girls and women, no less than translating human rights into educational strategy and practice, and moving beyond equal access to education and equality in education, to education *for* equality.

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