The State of the Right to Education Worldwide

Free or Fee: 2006 Global Report

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List of acronyms and abbreviations

ACHPR	African Commission on Human and Peoples' Rights (www.achpr.org)
ACHR	Asian Centre for Human Rights (www.achrweb.org)
ADB	Asian Development Bank (www.adb.org)
ADEA	Association for the Development of Education in Africa (www.adeanet.org)
AFESD	Arab Fund for Economic and Social Development (www.arabfund.org)
AIDS	Acquired immune deficiency syndrome (www.unaids.org)
APE	Association de parents d'elèves
APHRN	Asia Pacific Human Rights Network (www.aphrn.org)
AU	African Union (www.africa-union.org)
AUSAID	Australian Government's overseas aid program (www.ausaid.gov.au)
BESSIP	Basic Education Subsector Investment Programme
B-E	BOLSA-ESCOLA (www.mec.gov.br/secrie or www.caixa.gov.br)
C.12	Committee on Economic, Social and Cultural Rights (www.ohchr.org)
CALS	Centre for Applied Legal Studies (www.law.wits.ac.za/cals)
CAMPE	Campaign for Popular Education (www.campedbd.org)
CARICOM	Caribbean Community (www.caricom.org)
CCA	Common Country Assessment: see UNCCA
CCJ	Comisión Colombiana de Juristas (www.coljuristas.org)
CCPR	International Covenant on Civil and Political Rights (www.ohchr.org)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (www.womenwatch.daw.cedaw)
CELS	Centro de estudios legales y socials (www.cels.org.ar)
CEPAL	Comisión Económica para America Latina, ECLAC in English (www.eclac.org)
CERD	Convention on the Elimination of Racial Discrimination (www.ohchr.org)
CIDEP	Centro intersectorial para el desarrollo económico y progreso social (www.cidep.org.sv)
CIDH	Comisión interamericana de derechos humanos (www.cidh.oas.org)
CIPRODEH	Centro de investigación y promoción de los derechos humanos (www.ciprodeh.org.hn)
CIS	Commonwealth of Independent States (www.cisstat.com or www.cis.minsk.by)
CODEHUCA	Comisión para la defensa de los derechos humanos en Centroamerica (www.codehuca.org)
CODESRIA	Council for the Development of Social Science Research in Africa (www.codesria.org)
CoE	Council of Europe (www.coe.int)
CORTEIDH	Corte interamericana de derechos humanos (www.corteidh.or.cr)
CRC	Convention on the Rights of the Child (www.ohchr.org)
CRIN	Child Rights International Network (www.crin.org)
CWIN	Child Workers in Nepal (www.cwin.org.np)
DFID	Department for International Development (www.dfid.gov.uk)
DHR	Defensoría de los habitants de la República de Costa Rica (www.dhr.go.cr)
DNI	Defensa de los niños internacional (www.dnicostarica.org)
ECHR	European Court of Human Rights (www.echr.coe.int)
ECLAC	United Nations Economic Commission for Latin America and the Caribbean, CEPAL in Spanish (www.eclac.org)

EEA	European Economic Area (www.ec.europa.eu/eea)
EFA	Education For All (www.unesco.org/education/efa)
EI	Education International (www.ei-ie.org)
EICV	Enquête integrale sur les conditions de vie des ménages au Rwanda
EPLF	Eritrean People's Liberation Front (www.shabait.com)
ERRC	European Roma Rights Centre (www.errc.org)
EU	European Union (www.europa.eu)
EUMAP	EU Monitoring and Advocacy Program (www.eumap.org)
EURYDICE	Information Network on Education in Europe (www.eurydice.org)
FAWE	Forum for African Women Educationalists (www.fawe.org)
FEER	Far Eastern Economic Review (www.feer.com)
FLACSO	Facultad Latinoamericana de Sciencias Sociales (www.flacso.org)
FUNDEF	Departamento de desenvolvimento de politicas de financiamento da educacao básica (www.mec.gov.br/sef/fundef)
FTI	Fast Track Initiative (www.worldbank.org)
FYROM	The Former Yugoslav Republic of Macedonia (www.vlada.mk)
G-8	Group of 8 (www.en.g8russia.ru or www.g8.gov.uk)
GATS	General Agreement on Trade in Services (www.wto.org)
GCE	Global Campaign for Education (www.campaignforeducation.org)
GDP	Gross Domestic Product
GER	Gross Enrolment Rate
HDR	Human Development Report (www.hdr.undp.org)
HIPC	Heavily Indebted Poor Countries (www.worldbank.org/hipc or www.wordlbank.org/debt)
HIV	Human immunodeficiency virus (www.unaids.org)
HRC	Human Rights Committee (www.ohchr.org)
HRW	Human Rights Watch (www.hrw.org)
IBE	UNESCO International Bureau For Education (www.ibe.unesco.org)
ICESCR	International Covenant on Economic, Social and Cultural Rights (www.ohchr.org)
ICRC	International Committee of the Red Cross (www.icrc.org)
IDA	International Development Association (www.worldbank.org/ida)
IDASA	Institute for Democracy in South Africa (www.idasa.org.za)
IDB	Inter-American Development Bank (www.idb.org)
IFC	International Finance Corporation (www.ifc.org)
IHF	International Helsinki Federation (www.ihf-hr.org)
IIEP	UNESCO International Institute for Educational Planning (www.unesco.org/iiep)
IISS	International Institute for Strategic Studies (www.iiss.org)
ILO	International Labour Organization (www.ilo.org)
IMF	International Monetary Fund (www.imf.org)
INEP	Instituto nacional de estudios e pesquisas educacionais (www.inep.gov.br)
IPEC	International Programme for the Elimination of Child Labour (www.ilo.org)
IRIN	Inter Regional Information Network (www.irinnews.org)
JCTR	Jesuit Centre for Theological Reflection (www.jctr.org.zm)
KIPPRA	Kenya Institute for Public Policy Research and Analysis (www.kippra.org)
MDGs	Millennium Development Goals (www.un.org/millenniumgoals)
MDRI	Multilateral Debt Relief Initiative (www.worldbank.org/debt)
MONEE	Monitoring in the CEE/CIS and Baltics (www.unicef-icdc.org)
MRG	Minority Rights Group (www.mrg.org)

NAFTA	North American Free Trade Agreement (www.mac.doc.gov/nafta)
NER	Net enrolment rate
NGO	Non-governmental organization
NPAA	National Programme for the Adoption of Acquis Comunaitaire
OCHA	Office for the Coordination of Humanitarian Affairs (www.ochaonline.un.org)
OECD	Organization for Economic Cooperation and Development (www.oecd.org)
ODI	Overseas Development Institute (www.odi.org.uk)
OHCHR	Office of the High Commissioner for Human Rights (www.ohchr.org)
OSCE	Organization for Security and Cooperation in Europe (www.osce.org)
PA	Palestinian National Authority (www.pna.gov.ps)
PDDH	Procuraduría para la defensa de los derechos humanos (www.pddh.gob.sv)
PROGRESA	Programa de educación, salud y alimentación (www.progresa.gob.mx)
PROVEA	Programa Venezolano de educación-acción en derechos humanos (www.derechos.org.ve)
PRSP	Poverty Reduction Strategy Paper (www.worldbank.debt)
PTA	Parents & Teachers Association
RTE	Right to Education Project (www.right-to-education.org)
SADTU	South African Democratic Teachers' Union (www.sadtu.org.za)
SAHRDC	South Asia Human Rights Documentation Centre (www.hrdc.net/sahrdc)
SDF	School Development Fund
SFAI	School Fees Abolition Initiative (www.ungei.org)
SGB	School Governing Body
Sida	Swedish International Development Agency (www.sida.se)
SIPRI	Stockholm International Peace Research Institute (www.sipri.org)
SUHAKAM	Malaysian Human Rights Commission (www.suhakam.org.my)
TI	Transparency International (www.transparency.org)
UIS	UNESCO Institute for Statistics (www.uis.unesco.org)
UN	United Nations (www.un.org)
UNCCA	United Nations Common Country Assessment (www.un.org/esa)
UNDP	United Nations Development Programme (www.undp.org)
UNESCO	United Nations Educational, Scientific and Cultural Organization (www.unesco.org)
UNICEF	United Nations Children's Fund (www.unicef.org)
UNOSOM	United Nations Operation in Somalia I and II (www.un.org)
UNOTIL	United Nations Office in Timor-Leste (www.unmiset.org)
UNRWA	United Nations Relief and Works Agency for Palestine Refugees (www.un.org/unrwa)
UPE	Universal Primary Education
USAID	United States Agency for International Development (www.usaid.gov)
USSR	Union of Soviet Socialist Republics
VAT	Value Added Tax
VSO	Voluntary Service Overseas (www.vso.org.uk)
WBI	World Bank Institute (www.worldbank.org/wbi)
WEF	World Education Forum (www.unesco.org/education/wef)
WTO	World Trade Organization (www.wto.org)

Preface, acknowledgments and anti-acknowledgments

This report took six years to prepare and more than thirty people, mostly volunteers, have contributed to putting it together. The incentive was my own field experience in many poor countries, where children could not go to primary school because it was priced out of their reach. It was public education, legally free but really for-fee. Many of my graduate students came from countries afflicted by such financial privatization of public education and have helped to make the human rights case against it. It is simple. Preventing poor students from studying at the university is bad enough, but forcing primary-school children to work because they are too poor to pay for nominally free public school is intolerable. It is much too cruel as a public policy and contrary to common sense as a development strategy.

To add insult to injury, the rhetoric on the right to education continues unchanged. International resolutions, declarations and recommendations are churned out by one part of 'the international community' while another part makes its denial inevitable by forcing governments to levy charges. To explain to bright graduate students how education can be at the same time affirmed and denied within the United Nations, although the organization is formally committed to human rights, is no easy task. Many of them joined my efforts to document bitter global conflicts about the future of education and the whole human rights edifice and the ensuing conflicting advice given to individual governments. This knowledge-building exercise gradually deepened and broadened through a mixture of desk-research and field-work.

Primary education is the focus of the report because the original reasons for declaring it to be each child's birthright remain unchanged. Eighty years ago, the rule that governments should make education free and compulsory had been extrapolated from the practice of the industrialized countries and adopted by 'the international community' of the time, which thereby laid down an excellent strategy against child labour. That model was carried into the universally guaranteed right to education, which the United Nations had loudly proclaimed and then quietly betrayed. Globally, drivers of education are a bank (which does not advocate free public services because by definition they do not make money) and governments of countries that are exporting their education services (which would lose billions if education became a free public service). The global division of labour keeps human rights in their place, as sugar-coating for the bitter pill of economic exclusion. Worse, challenges of such exclusion are often impeded by the denial that education is a human right. But then, human rights work cannot be easy by definition. To their credit, many former students of mine are carrying on, undeterred.

The laws, policies and practices in 170 individual countries have been examined to document whether the right to education is recognized or denied, to discern why this is so, and to highlight the impact of the model that was chosen or imposed. The Nordic model, where education is a free public service, stands out in opposition to *access* to education dependant on the ability to pay its cost, which has become a global norm. This free or for-fee dichotomy guides this report.

If the Nordic model pertains to the best practices, the global pledges to universalize primary education are a prototype of a 'worst practice' because so far they have all been broken. Reasons for their failure are *not* discussed. The information which would trigger such analysis is *not* collected. If the first step towards finding a solution is to agree on the problem, global policymakers are a long way from solving the problem because key questions are avoided. Hence, this report.

Its message is that breaking the tradition of global failures to universalize primary education requires re-moulding the alphabetical soup of MDGs, EFA, FTI, or SFAI into a unified global strategy based on individual entitlements and corresponding public responsibilities. This is exactly what is globally missing and what human rights require. The shortcomings of the global labyrinth which today generates recipes for education are evidenced in the sins of omission and commission. The omission to define governmental obligation to make primary education free and compulsory denies education as a human right. Governments are pressurized *not* to provide free education but to transfer its cost to families and communities. If *free* education is mentioned, there is loud silence about public investment which would make this possible. The necessary policy lever - public finance - is conspicuously absent because of the prevailing distaste for taxation. The global design of education corresponds to the policy of the US government (which denies that education is a right), amplified by the World Bank (ditto), and not challenged by global actors in education and in human rights.

This report responds to the need for such a challenge. Education should be universalized so as to encompass *all* children. To ensure that this is so, education should also be compulsory. To be compulsory, it has to be free. This is what today's post-industrializing countries have been practising during the past two centuries. The need for a human rights challenge stems from the proverbial double standard, whereby we apply to the poor much lower standards than we would accept for ourselves.

Challenging the institutionalized denial of the right to education necessitates highlighting the damage caused by this denial. Three exploratory predecessors tested various approaches and methods, gradually adapting them to this task. The first mini-version of what gradually evolved into this report was published in January 2001 as the Right to Education Primer No 2.[1] It examined what governments themselves had said about their willingness and ability to provide free primary education. Structural adjustment packages made this impossible in many poor countries; governments were forced to violate their own laws, and children paid the price by getting less education than their parents. That part of research was financed by Sida (Swedish International Development Agency). My sincere thanks for Sida's generosity, which facilitated wide dissemination of the initial research findings. They were free in all different meanings of this word and extensive feedback has made the continuation of this project considerably easier. I owe a debt of gratitude to my webmasters, Rastko Lazic and Miki Rsumovic, for keeping our key communication tool, www.right-to-education.org beautiful and effective. It is my pleasure to thank many assistants, interns and volunteers for the huge amounts of work they have done, especially Sara Gustaffson, Inge Jacobs, Tihana Majcen, Renata Mesquita, Andrew Egan, and most of all Angela Melchiorre and Duncan Wilson.

[1] Tomasevski, K. – *Free and Compulsory Education for All Children: The Gap Between Promise and Performance*, Novum Grafiska, Gotenburg, 2001, available at www.right-to-education.org

The second predecessor of this report was a background study entitled 'School fees as hindrance to universalizing primary education', commissioned for the EFA Global Monitoring Report 2003/4.[2] Chris Colclough, as the director of the EFA team, ensured financial support for the necessary research and its translation from the *legalese* into a language which educationists and economists could understand. A huge amount of work was needed to locate, analyse and summarize official documentation in education, human rights and development finance for some 200 countries and territories. The research team sifted through mountains of governmental and intergovernmental documents and exhibited patience and persistence as well as impressive linguistic competences. My heartfelt thanks to Angela Melchiorre, Beth Asher, Carin Jonsson, Katrien Beeckman, Liham Alkan Olsson, Nanna Magnadottir, Shirley Myers and Victoria Serra for exceeding the call of duty and for their sense of humour, which made everything so much easier.

The third summarized version of the global clash between free and for-fee educational models was published in 2005.[3] The process of peer review and the subsequent feedback facilitated shaping this report in its final form. The last phase in its preparation was supported by the DFID (Department for International Development) and my sincere thanks to Desmond Bermingham and his education crew. This report aims to complement the Education International's Barometer and I am happy to acknowledge my debt of gratitude to Education International for its support throughout the past years.

Anti-acknowledgments are in order because monitoring the state of the right to education world-wide should be a task of the formally established United Nations human rights bodies and UNESCO. My six years (1998-2004) as the Special Rapporteur on the right to education of the (former) United Nations Commission on Human Rights placed me in the frontline of the battle for the right to education as a participant-observer within the intergovernmental world which we call 'the international community'. Having been a critic of the United Nations Commission on Human Rights,[4] I was pleased to witness its abolition because it had lost credibility. The first such move within the United Nations in its six decades of existence is a hopeful sign. It may evolve into holding other intergovernmental actors accountable for doing what they have promised to do.

There has been much too little international support for the many battles for the right to education. My warmest thanks go to the frontliners in Argentina, Bolivia, Brazil, China, Colombia, Croatia, Ecuador, El Salvador, Dominican Republic, Ethiopia, Gambia, India, Indonesia, Kenya, Malaysia, Serbia, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe. You know who you are and how risky it would have been to publicly list your names. If this report makes your victory even a tiny bit easier, it will have served its main purpose.

Katarina Tomasevski
Copenhagen, August 2006

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[2] UNESCO – *Gender and Education for All: The Leap to Equality. EFA Global Monitoring Report 2003/4*, UNESCO Publishing, Paris, 2003.
[3] Tomasevski, K. – Globalizing what: education as a human right or as a traded service?, *Indiana Journal of Global Legal Studies*, vol. 12, Winter 2005, No. 1, pp. 1-78.
[4] Tomasevski, K. – Has the right to education a future within the United Nations? A behind-the-secenes account by the Special Rapporteur on the right to education 1998-2004, *Human Rights Law Review*, vol. 5, 2005, No. 2, pp. 205-237, available at www.right-to-education.org.

INTRODUCTION

When the international community is called upon to furnish support in education in any of the areas in need around the world, who does such a call go to? There is no clear answer to this question because there is no unified global governance in education. There are six different tracks which overlap and often conflict with each other. A different definition of what education is and a distinct vision of its design characterizes each of them. Each generates official documents which convey a different image of the reality of education. All six types of official documents are used in this report to describe their divergent and conflicting influences on the educational design, policy and practice in individual countries.

To answer the question of who acts in the name of the international community in education, most people would point to the United Nations (UN). Within the UN, the United Nations Educational, Scientific and Cultural Organization (UNESCO) is formally recognized as the lead agency in education as its very name indicates. Yet UNESCO has been calling for "greater harmonization and alignment in the approaches of multilateral organizations".[1] Because this has not been accomplished, different global institutions furnish "conflicting advice to governments".[2] Individual countries are vulnerable to such conflicting advice when they need external finance for education but that advice is hugely expensive. Only 2% of educational funds come from international aid, while governments finance 63% of its cost and 35% is privately funded.[3] (In comparison, only 8% of compulsory education is privately funded in the OECD).[4] Within the 2% of internationally funded education, much is taken up to finance parallel creditors' and donors' bureaucracies and to generate mountains of documents, which each of them requires to record its own endeavours. Mark Sundberg (of the World Bank) has found that "500 days of technical assistance costs the same as employing 5,000 teachers".[5] Employing additional teachers is likely to be advice furnished by international bodies supporting education as a public service, but disallowed by international financial institutions because the public sector's payroll would increase in consequence. In accord with an old English adage whereby he who pays the piper calls the tune, additional teachers will not be employed but there will be space for additional consultants. Because children will not learn without teachers to teach them, consultants will be deployed to find out why no learning is taking place. Their recommendation to employ additional teachers is, again, unlikely to be heeded.

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[1] Smith, P. (Assistant Director-General for Education at UNESCO) – Building a world of learning for all, March 2006, available at http://portal.unesco.org/education.
[2] Report by the Director-General on Global Action Plan to Achieve the Education for All (EFA) Goals, Doc. 174 EX/9, March 2006, para. 7.
[3] UNESCO - *Bulletin of the UNESCO Education Sector*, Paris, No. 5, April-June 2003.
[4] OECD – *Education at a Glance: OECD Indicators 2004*, Paris, 2004, pp. 233-240.
[5] Bounds, A. – World Bank casts doubt on consultants' effectiveness, *Financial Times*, 8 June 2006.

Such conflicting advice originates in clashing global approaches to education. This report advocates the rights-based approach, but acknowledges that it is excluded from the global design of education. Although UNESCO is formally committed to the right to education,[6] many other global stakeholders are not. UNESCO has listed them to include other ”UN agencies, civil society organizations and NGOs, groupings and alliances of countries, development banks and bilateral aid agencies and parts of the private sector”.[7] All these diverse global actors have a stake in education, but their definitions of education are incompatibly different. The private sector is not governed by public but private law, which treats education as a commercial service to be sold and purchased. This inevitably conflicts with education defined as a free public service. Development banks operate according to a different rulebook, where education figures as an expenditure item to be decreased to diminish fiscal deficit. This conflicts with the requirement in international human rights law to prioritize the right to education in budgetary allocations so as to ensure (at least) free and compulsory education for all children.

These divergent global approaches to education reflect the fact that there really is no single international community. The obvious question is, then, how come that this is so.

Why don’t we have a single global strategy for education?

Free and compulsory education for all the world’s children forms the backbone of international human rights law but does *not* shape global educational strategies. This plural, *strategies*, reflect the fact that there are no less than five alongside the rights-based one. All are inter-governmental but rules of decision-making vary. In formal policy-making, it is one-state-one-vote. In decision-making to finance such policies, it is one-dollar-one-vote.

The weight of individual governments in global educational governance is, therefore, determined by the power of their purse. Endless controversies about the influence of the US government on the United Nations, deriving precisely from its power of the purse, illustrate this well.[8] For other creditor and donor governments, the ministry of foreign affairs may be supporting global declarations on the right to education, while its ministry of trade simultaneously negotiates increased exports of education. These are incompatible in theory but easily reconciled in governmental policy. In the worst case scenario, such a government may be accused of hypocrisy for profiting from the lack of educational opportunities in poor countries. Critics are easily silenced by the profits generated for national educational institutions. The country’s ministry of finance may support debt servicing which impedes free primary education in poor indebted countries, while its gender ministry may at the same time lament the educational exclusion of girls which such debt servicing entails.

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[6] UNESCO’s self-description is ”standard-setter in the field of education, assisting the international community and countries in efforts to ensure the right to education – EFA’s normative pillar – and to overcome barriers to its enjoyment”. Report by the Director-General on the follow-up to the EFA Strategic Review and UNESCO’s Strategy for the 2005-2015 period, Doc. 171 EX/8, March 2005, para. 26.

[7] Report by the Director-General on Global Action Plan to Achieve the Education for All (EFA) Goals, Doc. 174 EX/9, March 2006, para. 8.

[8] The tone of media reporting can be illustrated with the USA described as “*numero uno*, the UN’s chief paymaster [which] must be obeyed”. America’s war for hearts and minds: Mind your language, *The Economist*, 17 June 2006.

Critics may be pacified because some debt relief has been granted, but maybe not because aid is likely to have decreased in consequence. [9]

Headlines relating to debt relief tend to be big while few people read the small print in the voluminous official documents.[10] How much or how little of the promised debt relief will trickle down to education depends on that small print, which describes the conditions of debt relief for each country and circumscribes the fate of education.[11] The general rule is that all funds should be deployed to reduce poverty but definitions of poverty-reducing allocations keep expanding. At their worst, these definitions are circular and all debt-relief funds are statistically classified as if they were used for poverty reduction.[12]

As Table 1 shows, countries seeking debt relief are required to comply with six global prescriptions for their education, each generated within a separate track in the labyrinth which constitutes global educational governance. These tracks are listed in chronological sequence, from the international human rights law which is the oldest and lays down universal standards, to the MDGs which were created at the turn of the millennium to delineate minimal quantitative targets which even the poorest countries should be able to reach. Each of the poorest countries should report under the human rights treaties it is a party to, submit due reports to the bilateral and multilateral donors, prepare a PRSP (Poverty Reduction Strategy Paper) so as to qualify for debt relief, generate an EFA plan, notify its commitments under the GATS, and also prepare its strategy and reports on the MDGs.

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[9] An example was debt relief to Nigeria in 2005-2006. The portion which Nigeria paid to its creditors was, in the case of the United Kingdom, $3 billion, equivalent to Britain's total aid to Africa at the time. Because that repayment was classified as Britain's aid to Africa, statistics showed a huge increase in aid although there really was hardly any. *The Data Report 2006*, available at www.data.org. This practice is widespread amongst creditor countries, as Peter With has described taking Denmark as an example: "when Denmark cancels bad debt owed by poor developing countries, this is actually deducted from the Danish aid budget". With, P.– Debt relief. Good business for the Danish government, *Development Today*, No. 14-15/2005, available at www.development-today.com

[10] The biggest headlines relating to debt relief resulted from the decision of G-8 in June 2005 to cancel the debts of 20 poorest countries to multilateral institutions, known as the MDRI (Multilateral Debt Relief Initiative). All qualifying countries are also encompassed by the HIPC Initiative (Heavily Indebted Poor Countries), where they have had to meet stringent conditions for debt relief. Preparatory documents include PRSPs (Poverty Reduction Strategy Papers), endorsed by the IMF and the World Bank, which provide blueprints for education.

[11] In 2001-2005, debt relief was estimated at US$1 billion per year, of which 40% should have been available for education, but a big question remains: "since many of these countries would otherwise be in default, it is unclear what proportion of these funds represents genuine new resources to the nations concerned, if not to their education sectors". *Education for All: Is the World on Track?, EFA Global Monitoring Report 2002*, UNESCO Publishing, Paris, 2002, p. 175.

[12] The IMF and the World Bank have conceded that "the definition of poverty-reducing expenditures has evolved over time". In Burkina Faso, poverty-reducing expenditure encompasses "health, education, roads, youth and employment, promotion of women, agriculture, environment and justice". In Mozambique, the definition includes "health, education, HIV, roads, sanitation, public works, governance and judicial system, agriculture and rural development". Zambia and Congo/Kinshasa have adopted a circular definition: all funds obtained through debt relief are classified as poverty-reducing allocations. IDA/IMF - Heavily Indebted Poor Countries (HIPC) Initiative - Statistical Update, Prepared by the Staffs of the World Bank and the IMF, 4 April 2005.

Table 1: Six global blueprints for education

Human rights law	1921/1948	International human rights law defines universal human rights obligations corresponding to the right to education, which prioritize each child's right to free and compulsory education	The existing network of human rights treaties obliges each state party to periodically report on its compliance with international obligations, comprising education; these reports furnish authoritative interpretations of the right to education and self-assessments of governmental performance
OECD/ G8	1960/1975	Internally, the OECD countries apply human rights law; externally, different policies guide bilateral and multilateral aid, and distinct conditions apply to bilateral and multilateral debt relief; policy coherence figures high on the agenda but the value of educational exports to poor countries dwarfs aid and debt relief	Numerous and diverse policies define the ends and means for bilateral and multilateral aid, with education routinely separated from human rights; extensive documentation by aid recipients is required by each donor; its conflicting external roles as donor, creditor, and exporter of educational services are disjoined
World Bank	1963	The largest provider of external funding for education, it pursues its own strategy, and is a gatekeeper in assessing countries' eligibility for development finance and debt relief	There are 139 countries and territories to which the World Bank has provided loans to education in 1963-2006, and small grants have been provided to countries which qualified for debt relief; extensive documentation and literature describes the ends and means of its involvement in education
EFA/UNESCO	1990	The Education for All (EFA) strategy pledged to universalize education in 1990 and again in 2000; it is based on the commitments of international agencies (UNESCO, UNDP, UNFPA,UNICEF and the World Bank) and ministers of education; the EFA has remained with UNESCO, while global consensus was reached for lower standards embodied in the MDGs	Individual countries are expected to prepare national EFA Action Plans, which overlap with their MDG plans, the PRPSs, and their reports under human rights treaties; a biannual global monitoring report, prepared within UNESCO, tracks progress in developing countries and countries in transition
WTO/GATS	1995	The GATS (General Agreement on Trade in Services) has formally institutionalized the sale or purchase of education; less than one third of WTO members have made commitments to liberalize trade in education services	Official documents generated by the secretariat and individual governments have clarified that education as a free public service (as a rule coinciding with compulsory education) remains governmental responsibility and is exempt from trade law
MDGs/UN	2000	A global consensus was forged around the Millennium Development Goals (MDGs) in 2000 by the heads of states or governments; they include primary school completion for all children by 2015	Individual countries are expected to prepare their own strategies, plans and progress reports; extensive documentation is generated by the United Nations to track global, regional and country progress towards the MDGs

Countries which do not seek but provide aid (or debt relief), members of the OECD, [13] are bound by international human rights law internally and, indeed, they ensure free and compulsory education for all children and young people. Their individual and collective decisions on aid and/or debt relief [14] are not founded on education as a universal human right. Rather, their varied and vague commitments to the MDGs or the EFA are degraded so as to prioritize safeguards for their exports under the WTO rules.[15]

The global discord illustrated in the six parallel tracks summarized in Table 1 routinely hinders instead of helping poor countries. Their low fiscal revenues and high fiscal deficits impede increasing public finance to make (or keep) education free so that it could reach all children. Human rights law mandates increased public investment in education but international financial institutions demand reduced fiscal deficit. Because it is a condition for accessing international development finance, human rights law is ignored. In consequence, public education which should be free has been converted into for-fee as the cost of education has been transferred from governmental to family budgets.

The chronological sequence of global regulatory regimes for education in Table 1 highlights the fact that international human rights law had been in place and binding upon all concerned governments when they branched off into five separate intergovernmental pathways. Nevertheless, it was *not* used as a reference point. The left column in Table 2 reproduces the similar, often identical wording of the relevant international human rights instruments, both global and regional. They have laid down the minimal definition of the right to education as a universal human rights to comprise free and compulsory education for all children. The right column in Table 2 reproduces current global political commitments in education. They emerged as of 1990 [16] as an expression of a desire to forge an international community which would speak about education with one voice, reflecting a shared vision of the minimum that should be attained worldwide. Although international human rights law already defined that minimum, it was ignored. The evasive language of the global political commitments reflects the underlying decision *not* to use the law as guidance. Table 2 shows that legal obligations, binding upon all individual governments, did not inform their collective strategy. The excerpts from global targets for education promised by international conferences between 1990 and 2005 demonstrate that it took fifteen years to revert to the wording of the Universal Declaration of Human Rights that education should be free and compulsory.

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[13] Created in 1960, the OECD (Organization for Economic Cooperation and Development) is often dubbed 'the rich man's club' because its original membership was confined to Western and/or Northern developed industrialized countries.

[14] Political decisions on debt relief and/or aid may be made by the G-7 or G-8 but preparatory work is done within the OECD through periodic meetings "with the personal representatives of the G8 leaders (Sherpas and sous-Sherpas)". OECD work on G8 priorities, June 2006, available at www.oecd.org

[15] For example, the G-8 Moscow Declaration has affirmed education as a public good but added "strong protection of intellectual property rights". OECD – Meeting of the Education Committee at Ministerial Level, G-8 Ministerial Meetings on Education: Moscow Declaration, Doc. EDU/EC/MIN(2006)5/FINAL, 15 June 2006, para. 4, available at www.oecd.org

[16] The first decade, 1990-2000, is described in chapter entitled 'Unwilling, unable or unlike-minded? Creators of global education strategy' in Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 93-106.

Table 2
International law *versus* global targets 1990-2005

International legal guarantees	Global political commitments
Universal Declaration (1948): Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. *UNESCO Convention against Discrimination in Education* (1960): The States Parties to this Convention undertake to formulate, develop and apply a national policy which, ... will... in particular … make primary education free and compulsory. *International Covenant on Economic, Social and Cultural Rights* (1966): Primary education shall be compulsory and available free for all. *Protocol of San Salvador to the American Convention on Human Rights* (1988) The States Parties to this Protocol recognize that … primary education should be compulsory and accessible to all without cost. *Convention on the Rights of the Child* (1989): States Parties … shall, in particular… make primary education compulsory and available free for all. *Charter on the Rights and Welfare of the African Child* (1990): States Parties to the present Charter … shall in particular: provide free and compulsory basic education. *(Revised) European Social Charter* (1996): … the Parties undertake, either directly or in co-operation with public and private organizations … to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.	*Jomtien Conference on Education for All* (1990): Every person - child, youth and adult - shall be able to benefit from educational opportunities designed to meet their basic learning needs. Universal access to, and completion of, primary education (or whatever higher level of education is considered as "basic") by the year 2000. *Dakar World Education Forum* (2000): We re-affirm (...) that all children, young people and adults have the human right to benefit from an education that will meet their basic learning needs ... Ensuring that by 2015 all children … have access to and complete free and compulsory primary education of good quality. *United Nations Millennium Development Goals* (2000): Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling. *World Summit Outcome* (2005): We reaffirm our commitment to support developing country efforts to ensure that all children have access to and complete free and compulsory primary education of good quality.

Those fifteen years, 1990-2005, when the global targets even rhetorically offered much less than what is mandated by international human rights law reflect deep divisions within the international community regarding the very design of education. The implicit rule is silence about that and any other facet of the global discord. This follows from the rhetoric of partnership and hides underlying conflicts between incompatible concepts. Such incompatible concepts inhibit coherent policy-making for education but, more importantly, they openly flout human rights protection to which most governments are formally committed. Also, they undermine the rule of law by disregarding parts of the law which are found inconvenient and supplanting it by arbitrariness. The exercise of public powers which is not carried out according to legal rules is by definition illegal, and this report documents the fate of many governments which were pressurized into violating their own law by levying charges in public education which the law mandates to be free. Global targets have been agreed upon and flouted precisely because there is no single or effective set of rules for making them and against breaking them.

Because there are no clear global rules entailing accountability, today's entitlements in public education are based on a country-code lottery. They are considerable for those lucky to have been born in wealthy countries and absent for those who had no such luck. There is no coherence check between external policy priorities of creditor and donor countries and their internal educational policies. Amongst children in poor and indebted countries, some may benefit from debt relief and others not, depending on which side of the border they might live. Global strategies are informed by these unequal rights but do not challenge them. It is taken for granted that the OECD countries ensure primary school for 96% of their children, Latin America and East Asia encompass 94%. In education, this is defined as universal coverage although thousands of children are missing. Educational statistics accept that one in ten children is out of school because education is defined as universal where the coverage reaches 90%.[17] If it is not education *for all* in the wealthy parts of the world, is it surprising that strategies elaborated for the poor promise even less?

How and why the existing global targets nullify human rights?

Quite a few governments which subscribed in 2000 to the most broadly accepted set of global targets (the MDGs), have changed in the six years after they were adopted. Most will be out of office fifteen years later and the MDGs may well be forgotten by 2015. Promises are easy to make because they can be broken with impunity. The notion of partnership which underpins them impedes accountability: "In a world of partnerships, no one is to blame, failure is unfortunate, and we move on to planning more of the same for the next decade".[18]
The failure to reach the first global target, gender parity, in 2005 was accompanied by the British Secretary of State for International Development's statement: "there is no escaping the fact that we have collectively failed.[19]

[17] UNESCO/UNICEF – *Children Out of School: Measuring Exclusion from Primary Education*, UNESCO Institute for Statistics, Montreal, 2005, available at www.uis.unesco.org.
[18] Klees, S.J. – World Bank education policy: new rhetoric, old ideology, *International Journal of Educational Development*, vol. 22, 2002, p. 455.
[19] Department for International Development - *Girls' Education: Towards a Better Future for All*, DFID, London, January 2005, p. iii.

This report argues that an important reason for such collective failures is the avoidance of law, with its inherent symmetry between individual rights and corresponding governmental obligations. Indeed, the 2006 EFA Global Monitoring Report found that 94 countries did not reach the target of gender parity.[20] There is no evidence that huge amounts of paperwork generated around that target helped the minority of countries which have attained gender parity in education. More importantly, numerical parity between girls and boys at school does not lead to women's better salaries and incomes or their increased voice in political or economic decision-making.[21] This is particularly the case with primary education, to which the MDGs are confined.

Global strategies addressed to the poor were created through consensus-building and this lowered political commitments to a minimum that everybody could agree to, only primary school and then gain only by 2015. What should have been affirmed as each child's birthright was converted into a long-term development goal. Thus, the MDGs avoid the language of human rights or public responsibilities. Instead, education is seen as governmental expenditure, not investment, and is legitimized only if it is proved to be effective in reducing poverty. At best, primary-school leavers are seen "a mass of cheap low-skilled labour". [22] But there is no requirement for primary schooling to be long enough to - at least - keep children at school until they reach the minimum age of employment. Table 3 lists countries where the primary school 'graduates' children when they are much too small to be allowed to work and, thus, help reduce poverty.

Table 3
School-leaving age below the minimum age of employment:
Officially defined ages at which children start and finish schooling by country

Sub-Saharan Africa:	Latin America and Caribbean:
Angola 6-9	Bolivia 6-13
Benin 6-11	Dominican Republic 5-13
Burundi 7-12	Haiti 6-11
Cameroon 6-11	Honduras 7-12
Cape Verde 6-12	Jamaica 6-11
Chad 6-11	Panama 6-11
Congo/Kinshasa 6-13	Suriname 6-11
Equatorial Guinea 7-11	Trinidad & Tobago 5-11
Eritrea 7-13	Asia and Pacific:
Ethiopia 7-12	Afghanistan 7-12
Guinea-Bissau 7-12	Burma/Myanmar 5-9
Kenya 7-13	Bangladesh 6-10
Lesotho 6-12	Laos 6-10
Malawi 6-13	Pakistan 5-9
Mozambique 6-12	Philippines 6-12
Niger 7-12	Middle East:
Nigeria 6-11	Egypt 6-13
Rwanda 7-12	Iran 6-10
Senegal 7-12	Kuwait 6-13
Swaziland 6-12	Saudi Arabia 6-11
Tanzania 7-13	Sudan 6-13
Zambia 7-13	Eastern Europe and Central Asia:
Zimbabwe 6-12	Albania 6-13

[20] EFA/UNESCO – *Global Monitoring Report 2006*, available at www.efareport.unesco.org.
[21] Tomasevski, K. – Girls' education through a human rights lens: What can be done differently, what can be made better, ODI, February 2005, available at www.odi.org.uk/rights.
[22] A survey of business in India, *The Economist*, 3 June 2006.

Note: This table lists countries in which compulsory education ends before the global minimum age for employment of 14. The information is authoritative since is was officially forwarded to UNESCO by the respective ministries of education.

Source: *Global Education Digest 2005: Comparing Education Statistics Across the World*, UNESCO Institute for Statistics, Montreal, 2005, available at www.uis.unesco.org.

Table 3 shows that children can finish school at the age of 9, as in Angola or in Burma/Myanmar. These countries might formally comply with the MDGs if all children complete three years of primary school but this is not education worthy of its name. Although it is well known that at least six years of education are necessary to sustain literacy, there is no global 'quantity control'. UNESCO and UNICEF 'assume' that primary school lasts six years [23] but apparently do not react when this is not the case. Human rights correctives have been discarded although they are more than eighty years old. Free and compulsory education was linked to the elimination of child labour in 1921 by the International Labour Organization (ILO) when the minimal school-leaving age was set at 14. In 1999, the entitlement to free education was raised to 18 for children victimized by intolerable forms of child labour.[24] The rationale was - and is - that the right to education unlocks other rights when guaranteed, while its denial precludes the enjoyment of all human rights.

Human rights safeguards for education encompass its quantity and quality and reach much further: all human rights apply in education and education should be designed so as to enhance human rights.[25] The instrumentalization of education for poverty reduction should have triggered questions about the quantity and quality of education necessary to help reduce poverty but such questions have been avoided. The reason has been pinpointed by Lyn Davies: "how we ever let a bank decide educational policy will be a puzzle for educational anthropologists of the future". [26]

Why education should not have been entrusted to World Bank's economists?

In the field of human rights, international cooperation is seen as support for governments to comply with their human rights obligations. In education, the pledge has been that any government willing but unable to ensure primary education will obtain the funds it needs. Governments which have tried to hold creditors and donors accountable for promised aid have learned that help is not forthcoming. They get much less than they ask for, much later than needed, and notorious conditionalities force them to ignore human rights guarantees and produce, instead, strategies eligible for funding.

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[23] UNESCO/UNICEF – *Children Out of School: Measuring Exclusion from Primary Education*, UIS, Montreal, 2005, p. 14.

[24] A description of rights-based education as the linchpin for usually separate 'sectors' of education and child labour can be found in: Tomasevski, K. – *Manual on Rights-Based Education: Global Human Rights Requirements Made Simple*, UNESCO Bangkok, 2004, pp. 41-42, available at www.right-to-education.org

[25] These safeguards structured into 4-A scheme (requiring education to be available, accessible, acceptable and adaptable) have been summarized in: Tomasevski, K. – *Human Rights Obligations in Education: The 4-A Scheme*, Wolf Legal Publishers, Nijmegen, 2006.

[26] Davies, L. – Comparative education in an increasingly globalised world, *Comparative Education Bulletin* No. 7 (2004), Comparative Education Society of Hong Kong, p. 6, www.hku.hk/cerc/ceshk

Such problems are expunged from official documents on external funding for education, which describe issues as purely technical. An obituary to John Kenneth Galbraith singled out what he had deemed to be the greatest problem with economics, its "wilful denial of the presence of power and political interests".[27] This shortcoming provides an entry point for human rights as safeguards against abuse of power. Gunnar Myrdal, also an economist, described another shortcoming thirty years ago:

> Place an economist in the capital city of any underdeveloped country and give him the necessary assistance and he will in no time make a plan. No sociologist, psychologist or anthropologist would ever think of doing such a thing.[28]

Today's economists tend to advocate economies of scale or efficient delivery of services, missing the key features of education as it evolved in each country and trying to straightjacket it into a one-size-fits-all model. When the World Bank examined education in Lebanon in 1999, the reasons why education was religiously segregated apparently remained beyond its remit. Its proposal for a radical change, without understanding how education functioned and why, demonstrated how pertinent Gunnar Myrdal's critique of economists remains thirty years later:

> A distinguishing characteristic of Lebanon's education system is that schools are run by religious communities. The community-level administration of schools, combined with the sectoral[29] division of the education system, may result in ineffective school mapping. These factors also prevent the country from using potentially promising economies of scale, and they have also led to substantial transportation needs for students who attend religious schools not located in the communities in which their families reside.[30]

If education is reduced to an instrument for poverty reduction, economies of scale and efficient delivery of services may appear useful to rapidly and massively produce cheap labour. But this is not education worthy of the name. Education was made compulsory in order to forge a collective identity and it was made free so that it could be made compulsory; nation-states were created through education. That education in Lebanon has not been made either free or compulsory highlights the long and uphill road ahead.

That education should be free and compulsory is absent from the World Bank's educational vocabulary. This would integrate human rights law, which obliges governments to provide education or ensure that it is provided, and this necessitates adequate and sustained public funding. Instead, education is analysed in terms of supply and demand. In the year 2000 Donald Winkler (of the World Bank) described needed improvements "to imply strengthening performance and efficiency among existing consumers of education". His description of broadening access to education was "delivering this service to those not currently consuming".[31]

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[27] Obituary: John Kenneth Galbraith, *The Economist*, 6 May 2006.
[28] Myrdal, G. – *The Challenge of World Poverty: A World Anti-Poverty Programme in Outline*, Penguin Books & Panteon Books, New York, 1956, p. 8.
[29] The term should have been 'sectarian' instead of 'sectoral', denoting education divided alongside the boundaries of religious sects rather than education as a sector.
[30] The World Bank - *Lebanon: Public Expenditure Review - Education Sector*, MNSHD Discussion Paper Series No. 2, September 1999, para. 6, p. 2.
[31] Winkler, D. – Educating the poor in Latin America and the Caribbean: Examples of compensatory education, in: Reimers, F. (ed.) – *Unequal Schools, Unequal Chances: The Challenges to Equal Opportunity in the*

To describe school children as consuming some efficiently delivered service goes against the very notion of what education is. It aims to facilitate children's learning and teaching may – or may not - facilitate this process. The 'service' which is efficiently delivered may comprise brightly painted school rooms and pretty books but no learning will take place when school children do not understand the language of instruction, for example.

Education is unlikely to facilitate children's learning where the yardstick of efficient delivery denies teachers their rights. Providers of public services, notably teachers, are in many countries disempowered by denials of their labour rights and professional freedoms, and impoverished through budgetary cuts. The quality of public education suffers in consequence with the justification that public funding is scarce and should not be used to subsidize those who can purchase education on the free market. They will be encouraged to do so "if the quality of public services is suitably below that of private providers".[32] Thus, impoverishment of public education so as to trigger an exodus by all those who can afford to do so forms part of educational reform in many countries.

Gratifyingly, there is a great deal of opposition, worldwide, to re-moulding education to fit the World Bank's model. This report focuses on making education free so that all children, no matter how poor, can go to school. In international human rights law, this is called the right to education. The World Bank talks about 'handouts.' Alfredo Sfeir-Younis, then the representative of the World Bank to the United Nations Commission on Human Rights summed things up thus:

> In our experience, the poor people do not like to have handouts and are willing to pay for services as long as these are of appropriate quality. [33]

It is difficult to imagine reactions of the Finns or the Swedes to somebody insultingly calling their cherished right to free education a 'handout'. This is unlikely to happen because countries which are not borrowers are immune from World Bank's recipes. Resort to such a derogatory term, 'handouts,' highlights the World Bank's resistance to education as a free public service. The complementary assertion that people do not *like* public services to be free is belied by the many, many protests, world-wide against the conversion of previously free into for-fee public services. Least of all could the World Bank use Finland or Sweden as a model (regardless of their excellent educational performance) because this would require a profound change of its education strategy and a halt in much, if not all, of its lending for education.

This resistance to defining education as a human right informs global education strategies. The World Bank avoids both the term *right* and its implications, following the US model of denying that education is a human right. Worse, the term *human rights* is often abused in the proliferation of recipes for rights-based development.

Americas, David Rockefeller Center for Latin American Studies, Harvard University & Harvard University Press, 2000, p. 120.

[32] Mahal, A. – Policy implications of the distribution of public subsidies on health and education: The case of Karnataka, India, *Comparative Education Review*, vol. 49, No. 4, November 2005, p. 596. The author, Ajay Mahal, thanked in the introductory note the World Bank for "having financed some of the research". (id., p. 552)

[33] Economic, social and cultural rights, Item 10 of the 57th session of the Commission on Human Rights, Geneva, March 19 to April 27, 2001, Statement by the World Bank Special Representative to the United Nations and to the World Trade Organization, Mr. Alfredo Sfeir-Younis, The World Bank Office in Geneva, 2 April 2001, p. 22.

The OHCHR (Office of the High Commissioner for Human Rights) has stated that governments should strengthen the people's ability to meet their own needs by "creating conditions in which the market can supply the services that they demand".[34] Of course, the market does not supply services, they are purchased at a price. When the part of the UN secretariat which should possess expertise on the difference between human rights law and commercial law confuses the two, it is necessary to ask why this is so.

The shortest and simplest answer is that intergovernmental actors would place themselves on a collision course with much of their influential constituency if they were to tackle denials of the right to education. The biggest shareholder, the USA, would necessarily become a target of critique. So would the World Bank and its sister institution, the International Finance Corporation (IFC), which is expanding private education. Mauritania is cited as an example, with the World Bank coming in first and "modifying legal framework to facilitate private sector expansion" and so opening the door for the IFC to offer loans to private educational institutions.[35] The underlying rationale is that *excess demand* for education should be channelled to private schools because the overall aim is "to reduce demand on public education".[36] That approach denies that compulsory education is governmental responsibility. E*xcess demand* cannot exist in compulsory education; all children have the right to education because they need the processes of socialization and qualification which education entails. Education is compulsory for their parents, who are free to choose the education best suited to their children but not to deprive their children of education. It is also compulsory for the state, which ought to ensure that all its young generation is educated. Its own future is jeopardized if it fails to do so.

How would human rights law alter global targets?

International human rights law mandates progressive realization of the right to education and anticipates that international cooperation will facilitate this process. The proclamation of education as a universal human right, in 1948, aimed to broaden entitlements. Paying for the education of other people's children is domestically ensured through taxation but there is no international equivalent. One adult in Europe has to pay for the education of three children with a GDP per capita of $25,000, while one African adult has to educate six children with a GDP per capita of $500. There is no global commitment to remedy this unequal burden. In consequence, the term *right* to education is avoided because *access* to education does not entail corresponding governmental obligations. *Access* spans education purchased on the free market or financed through charity. If there is no access to education, this can be defined as *excess demand* or lamented as inequitable but cannot trigger an accusation of a human rights violation.

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[34] OHCHR – *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, Doc. HR/PUB/06/8, United Nations, New York and Geneva, 2006, p. 2.
[35] International Finance Corporation – *Investing in Private Education: IFC's Strategic Directions*, Health and Education Group, June 2001, IFC, Washington D.C., July 2001, p. 26, available at www.ifc.org
[36] Chapman, D. – *Management and Efficiency in Education: Goals and Strategies*, Education in Developing Asia, vol. 2, Asian Development Bank & Comparative Education Research Centre of the University of Hong Kong, Manila & Hong Kong, 2002, p. 26.

A schematic list of changes entailed in the integration of international human rights law is summarized in Table 4. Its left column describes key features of international human rights law and its right column highlights shortcomings of global targets.

Table 4
Differences between human rights law and global targets

Who?	**Obligations of the state** International human rights obligations form part of international law. They pertain to the state and are not affected by changes of government.	**Political commitments of governments** The MDGs and the EFA and similar outputs of international conferences are often discarded when governments change. A new government is not bound by political commitments of a previous government.
What?	**All human rights for all** Universal human rights standards apply globally. The key principle of non-discrimination mandates all equal rights for all.	**Quantitative targets** An increase in school enrolments from 40 to 60% is applauded as a success, not recorded as a violation of the right to education of the 40% of children who remain excluded from school.
What if not?	**Accountability** Internationally guaranteed rights can be claimed by individual subjects of rights (including children) as well as by other states since they form a part of international law. The state which violated human rights is obliged to right wrongs.	**Impunity for failure** Political commitments can be broken with impunity. When promised targets are not attained, there is no access to justice for those who should have benefited.
When?	**Immediacy** Minimal global human rights standards are binding upon governments who speak and act in the name of their states. Human rights obligations are continuous because human rights protection is a permanent process.	**Postponement into the future** The year 2015, when the goal of universal primary education is to be attained, takes away the immediacy characterizing human rights obligations. Today's children are openly denied their right to education with a promise that a next generation might fare better.
How much should be achieved?	**Free and compulsory education for all children until the minimum age of employment** The rule whereby education should be free and compulsory until children reach the minimum age of employment was set in 1921 in order to move towards the elimination of child labour. At the time, the minimal school-leaving age was 14, today's standard has moved to 18 for the worst forms of child labour.	**Undefined completion of undetermined primary school** The process of consensus-building lowered globally agreed targets to a minimum that all could agree to, "feasible in even the poorest countries". [37] The primary school promised in a long-term perspective has not been defined and it may be as short as three years. Children may complete it by attending school without actually learning, and be 'graduated' into labouring, soldiering or marriage at the age of nine.
Whose performance is monitored ?	**Human rights are universal, monitored and litigated throughout the world** Monitoring governmental human rights performance and complaints of human rights violations reach all corners of the world. The wealth or the poverty of any country does not prevent its government from being held to account for human rights violations.	**Targets refer only to poor countries and only their performance is monitored** Monitoring progress regarding the MDGs or the EFA encompasses only poor countries. They are subjected to monitoring while the wealthy countries define the yardstick and assess the performance of the poor but exempt themselves from any monitoring of their own performance.

[37] U.N. Doc. A/59/282 (2004), para. 77.

The purpose of international human rights law is to provide safeguards against abuse of power. Its exclusion from the current global targets has facilitated abuses of power inherent in making and breaking promises. The targets are based on an assumed commitment by individual governments and intergovernmental agencies. They are flouted more often than not because there is no such commitment. To assume commitment where there is none impedes the agency necessary to expose and oppose its absence. This is precisely what human rights work is about. Its key purpose is exposing and opposing human rights violations, including in education.

For intergovernmental agencies, "partnership with Government is not an option but an obligation".[38] This partnership becomes uncomfortable when governmental abuses of power collide with their formal commitments to education or poverty reduction. Such issues can be avoided by pretending that they do not arise. If this were the case, there would be no need for human rights safeguards because there would be no abuse of power. But then, there would be no need for global targets because all would have been attained long ago.

Why are human rights violators bad educators?

This report compares public investment in education with military expenditure in each of the world's regions to demonstrate the effect of governmental priorities. This subject-matter lies beyond the sector of education and at the heart of human rights analysis. National taxation or international aid which subsidizes wars and repression inflicts a direct toll on education by depleting it of funds which could be but are not available. The law mandates priority for human rights in resource allocation, which is turned on its head where the priority is bestowed upon repression and warfare. An indirect toll is inflicted upon education by silencing opposition to such distorted priorities.[39] The global silence about absent governmental (and intergovernmental) commitment to education as well as to human rights facilitates the perpetuation of distorted priorities and the silencing of their critics.

That many governments (and intergovernmental agencies) are *not* committed to the global targets for reducing poverty or to ensuring education for all is amply illustrated throughout this report. Two paradigmatic examples illustrate why this lack of commitment should be exposed and opposed:

- A government which denies human rights as a matter of policy is unlikely to exempt education and accept its responsibilities therein. Such a government is likely to deprive people of education lest they would learn that rebellion against oppression is their birth-right. Rich governments of poor countries, such as in Chad or Equatorial Guinea, use funds generated by exporting oil to reinforce their own power. While they could easily finance education, the poverty of the country is used as an excuse for not doing so. Intergovernmental agencies step in to help the poor country, a job that its rich government could but would not do. Such supplanting of governmental functions necessitates silence about governmental abuses of power, which is ruptured when victims, or human rights

[38] Cantwell, N. – *Starting from Zero: The Promotion and Protection of Children's Rights in Post-genocide Rwanda July 1994 – December 1996*, Innocenti Insights, UNICEF International Child Development centre, Florence, 1997, p. 77.

[39] Judicial action against distorted governmental priorities in resource allocation is described in: Tomasevski, K. – Strengthening pro-poor law: Legal enforcement of economic and social rights, ODI, January 2005, available at www.odi.org.uk/rights

organizations, expose human rights violations which are taking place. Often, inter-governmental agencies are retrospectively defined as facilitators of human rights violations. Examples include intergovernmental support for the *genocidaire* governments in Rwanda or Guatemala,[40] or the World Bank's funding for the transmigration programme in Indonesia in the 1980s, which generated inter-communal conflicts after the turn of the millennium.[41]

- A government may transform education into institutionalized brainwashing, instructing people that theirs is the best, indeed the only possible way of life. Turkmenistan is an example, with its strictly controlled contents of schooling revolving around Ruhnama, a 'national spiritual code' penned by its president [42] and proudly displayed on the government's website.[43] The urge to enrol all children to school so as to attain global numerical targets avoids a question which should be asked: if education amounts to institutional brainwashing, would it not be better to defend the right of children and young people *not* to go to school?

The governments of Chad, Equatorial Guinea or Turkmenistan can easily promise more and better education at some international forum because their populations cannot hold them accountable. Their international partners are unlikely to hold them accountable for broken promises because they also have a track record of broken promises. This is why human rights and corresponding governmental obligations matter and this is precisely why they are avoided in the current global targets.

Human rights law defines what governments should and should not do. Amongst the should-do, ensuring education for all children tops the list. The reasons go far back into history. The Governor of Virginia complained in 1676 how difficult it was to govern people who were "poore, endebted, discontented and armed".[44] Free public education was instituted, amongst other reasons, to make new generations economically self-supporting, which was cheaper than suppressing their wrath triggered by perpetual pauperism. Fast forward to concerns about unknown numbers of *madrassas*, religious boarding schools in Pakistan and elsewhere, and to post 9/11 fears of what might be taught there. The government of Pakistan neither provides education nor does it know who is educating its youth. That public authorities ought to take charge of education because it is simply too dangerous not to do so holds true today as it did three hundred years ago.

The question whether governments have done all they should have done to enable new generations to learn what they need to know is pertinent everywhere. An editorial in Le Monde has lamented "irresponsible policies which have not prepared the youth for the future but have rather

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[40] Tomasevski, K. – *Minority Rights in Development Aid Policies: An Issues Paper*, Minority Rights Group, London, November 2000, pp. 6-7.
[41] Commission on Human Rights – The right to education. Report submitted by Katarina Tomasevski, Special Rapporteur: Mission to Indonesia, 1-7 July 2002, U.N. Doc. E/CN.4/2003/9/Add.1, paras. 12-13, available at www.right-to-education.org
[42] The EU's relations with Turkmenistan – Overview, http://europa.eu.int/comm/external_relations/turkmenistan (April 2006).
[43] Ruhnama (or Rukhnama) appears in translation to Belarus, Croatian, Czech, Dutch, English, French, German, Hungarian, Italian, Russian, and Turkish at www.turkmenistan.gov.tm/ruhnama (April 2006).
[44] Commission on Human Rights – Report submitted by Katarina Tomasevski, Special Repporteur on the right to education: Mission to the United States of America, 24 September – 10 October 2001, U.N. Doc. E/CN.4/2002/60/Add.1, para. 11.

loaded a €100 billion public debt onto their shoulders".[45] The price of this sin of omission is widespread youth unemployment, dotted with occasional outbursts of violence, especially where the fault line between the rich and the poor corresponds with the boundaries of belonging marked by race, religion, language, or provenance. Micro-level exclusion from education has been exposed and opposed in France and in many other wealthy countries. Macro-level exclusion has been globally institutionalized by legitimizing "strategies that aim to ensure certain populations do not develop".[46] A profound revision of the global targets for education is needed to effect change.

The long experience in governmental provision and financing of education in today's rich part of the world gradually distilled into necessary human rights safeguards. Respect of freedom impedes governmental abuse of power inherent in *compulsory education*. Human rights law bestows upon parents freedom to choose education for their children. It is guaranteed in the Netherlands or Norway but denied in Cuba or China. Respect of collective freedom is based on painful experiences of education imposed upon the indigenous or minorities in violation of their human rights. While these guarantees are meticulously regulated and fiercely litigated in all regions of the world,[47] they are not even mentioned in the current global targets for education.

Using human rights as the lens for examining education necessitates challenging exclusion from education and also asking what education is for. Educational statisticians often refer to their work as bean-counting and question its inherent limitations. Abdou Moumouni criticised schooling for its own sake ("*scolariser pour scolariser*") in 1964.[48] The OECD did likewise in 1992 by coining the term "dead-end education".[49] Schooling, which is what global targets prioritize, is not the end but merely a means for education.

All-encompassing compulsory education without human rights safeguards institutionalizes indoctrination as "a feature of all school systems, whether used for the good or for ill". [50] Economists have found in indoctrination an explanation for governmental insistence on providing rather than only financing education.[51] Human rights safeguards have been designed, nationally and internationally, to slant education towards the good and away from the ill but they tend to be ignored. Ethiopia gets international financial support for education although killings of teachers and students have often taken place. They remain un-investigated and this facilitates their continuation. Loud applause accompanies improved educational statistics, loud silence governmental human rights abuses.

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[45] "Une jeunesse qui ne supporte pas, ou mal, cette France bloquée et commence à prendre conscience de l'irresponsabilité des politiques passées à ne pas prépaper l'avenir, sauf à avoir accumulé 100 milliards d'euros de dette publique sur ses épaules". Jeunesse en colère (Edito du Monde), *Le Monde*, 9 March 2006.

[46] Bradbury, M. – Normalising the crisis in Africa, *The Journal of Humanitarian Assistance*, www.jha.ac/articles/a043.htm, 3 June 2000, p. 4.

[47] A summary of the existing jurisprudence on the right to education and human rights in education is provided in: Tomasevski, K. – *Human Rights Obligations in Education: The 4-A Scheme*, Wolf Legal Publishers, Nijmegen, 2005.

[48] Moumouni, A. – *L'éducation en Afrique*, Présence Africaine Éditions, Paris/Dakar, second edition, 1998, p. 141.

[49] OECD – *High-Quality Education and Training for All*, Paris, 1992, p. 92.

[50] Waters, T & Leblanc, K. – Refugees and education: Mass public schooling without a nation-state, *Comparative Education Review*, vol. 49, 2005, No. 2, p. 131.

[51] John Lott has argued that collective indoctrination provides the most convincing explanation for public provision of education. The rationale is "not that people were going uneducated but that they received the 'wrong' type of education". Lott, J.R. – An explanation for public provision of education: The importance of indoctrination, *Journal of Law and Economics*, vol. 33, April 1990, available at www.jstor.org

As this report shows, human rights violations inevitably impose themselves as an issue which cannot be ignored, this is the proudest accomplishment of human rights activism of the past four decades. Whenever human rights are ignored in the design of development finance strategies, responses to violations tend to be chaotic.[52]

Compulsory, government-provided schooling may be perceived as an imposition that people may silently reject (illustrated by the phenomenon of *déscolarisation* in West Africa) or actively oppose. Armed attacks on schools and teachers as symbols of oppression have been reported from the Philippines and Thailand. Suppressing such attacks pertains to law enforcement. Preventing them requires an understanding of reasons for rejecting school and coming "to grips with deep-seated Muslim grievances in the distant south of each country". [53]

Human rights law requires such analysis. It necessitates asking questions which bean-counting avoids. Does it matter if a country has just gone through an armed conflict? Burundi's Education for All (EFA) plan is an excellent example of precise statistics on the number of children to be schooled and its failure to even mention decades of conflict, warfare and political violence. In consequence, nobody knows the size of the population. A match between a number of children to be schooled (however inaccurate it may be) and needed funds is necessary for donors and creditors. Burundi's EFA plan has carefully avoided any mention of the country's past as well as the words Hutu and Tutsi. This converts 'education' into a technical exercise, which can work on paper but not in real life.

Why should we care?

Kierra Box, 17 at the time, became a minor public figure in the United Kingdom for having organized Hands Up for Peace campaign in February 2003, on the eve of the second war against Iraq. She was determined to alter her campaign from anti-war towards pro-peace and explained things thus:

> You care if you can afford to care. If you've got problems in your own world, you've got less time to worry about other things. [54]

Where children have to work so as to pay the cost of their primary school, double shifts leave them little time to sleep, let alone time and energy and freedom to organize protest campaigns. Education should provide children with qualification and socialization they need before venturing into adulthood. Often, they are forced to exit school without a qualification necessary to earn their livelihood and are socialized into surviving as best they can, in conditions of rights-lessness. Children who grow up under repression are unable to confront it because they know of no alternative system to compare it with, or revert to, once repression is gone.

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[52] An extensive historical survey of the creditors' and donors' responses to human rights violations in aid receiving countries is contained in: Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000.

[53] Hill, H. & Warr, P. – The trouble with Manila and Bangkok, *Far Eastern Economic Review*, vol. 169, No. 3, April 2006, p. 16.

[54] Brooks, L. – Kid power, *Guardian* (London), 26 April 2003.

Organizing protest campaigns is the most difficult where this is needed the most. As this report shows, there are at least 150 soldiers for every 100 teachers in the world. The rule of thumb is that a government which responds to popular demands prioritizes education, a dictatorship depletes it of funding. The priority for military expenditure is visible in the Middle East as is the priority for public investment in education in Latin America.
The strong commitment to the right to education in Latin America originated in the struggle against military dictatorships. Chile ruled by General Pinochet had a model of education imposed while human rights were denied. Hence, vindication of the right to education remains part of the battle for human rights. That the language of the right to education is rarely used is a consequence of the fact that the Cold War might have ended elsewhere but not in human rights. Advocacy for education as an entitlement, a right against the state often leads to a label of populism or worse. Nevertheless, as the first section in this report shows, no less than 15 African governments have pledged the abolition of charges in primary school so as to make education gradually free. This could alter pessimistic forecasts relating to the future of education to optimism. Thus far, there has been too little publicity for this process and not enough political and financial support.

This report argues that primary education should be freed from financial obstacles so that all children can go to school. This is mandated by international human rights law and was endorsed in the 2005 World Summit Outcome. However, country entries show that the cost of primary school may be more than 30% of the annual family budget and five times more than budgeted by the ministry of education. Much more information is needed to facilitate the momentum for rolling back charges in primary school, in Africa and elsewhere.

Moreover, levying charges in public primary school is illegal in many countries, but the law is unknown or - worse - it is ignored. Nothing can be more harmful for the rule of law than international support for national policies that are illegal. This will change only after such apparent abuses of power have been brought into the open and effectively opposed. The best argument for opposing this practice of ignoring law is its resulting arbitrariness, evidenced in the educational toll of betrayed global promises to universalize education. This is most visible in Sub-Saharan Africa, which is examined first.

SUB-SAHARAN AFRICA

Educational toll of World Bank's recipes

Sub-Saharan Africa is not expected to ensure primary education for all children even by the year 2015. Large numbers of out-of-school children and little schooling which is provided to those who pass through formal education underpin such pessimistic forecasts. The UIS (UNESCO Institute for Statistics) reported for 2004 that 30% of children in seven countries (Burkina Faso, Central African Republic, Congo, Djibouti, Eritrea, Mali and Niger) never even start school let alone attend regularly. It added that Africa was the only region where the end of primary education denoted exit from education for the majority of children.[1] A look back reveals that during the 1990s enrolments in African primary schools declined by 10%.[2] For the 1980s, Stephen Lewis, then an advisor for the United Nations Programme of Action for African Economic Recovery and Development, called statistics on Africa "a chronicle of despair".[3]

It had not been a chronicle of despair during the first decades of independence. The earliest promise was made in 1961 at the All Africa States Conference. The pledge was that free, universal and compulsory primary education would be attained by 1980.[4] The reach of education rapidly broadened and deepened because it was designed as a free public service, financed and provided by the government. This often entailed 'nationalizing' education and, sometimes, also banning all non-state educational institutions. The global blueprint at the time was subsidy-without-liberty and there was no international attention for denials of freedom in education until the Cold War had ended but then education as free public service was replaced by the free market.

The design of education in Africa thus went through a cycle of de-privatization during the first post-independence decade in the 1960s and then a cycle of re-privatizations in the 1990s. The initial de-privatizations were described as *nationalization* of education. They were mandated by the law which made education a governmental monopoly in Benin, Guinea, Central African Republic, Congo/Brazzaville, later also in Ethiopia, Mozambique, Nigeria, and Tanzania.[5] Education was hugely important for newly independent countries. It was seen as the key to nation-building through the state's control over schools, curricula and teachers. Free and compulsory education was expected to trigger indigenous development.

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[1] *Global Education Digest 2004: Comparing Education Statistics Across the World*, UNESCO Institute for Statistics, Montreal, 2004, p. 26, available at www.uis.unesco.org

[2] Colclough, C. and Al-Samarrai, S. - *Achieving Schooling for All: Budgetary Expenditures on Education in Sub-Saharan Africa and South Asia*, IDS (Institute for Development Studies) Working Paper No. 77, Brighton, November 1998, p. 3.

[3] UNICEF - *The State of the World's Children 1989*, Oxford University Press, New York, 1989, p. 20.

[4] Final Report of the UNESCO/UNECA Conference of African States on the Development of Education in Africa, Addis Ababa, 1961, quoted from: Eshiwani, G.S. – *Education in Kenya since Independence*, East African Educational Publishers, Nairobi, 1993, pp. 132-133.

[5] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 28-31.

Hopes that education would attain such goals were short-lived. In 1983, direct charges in public education were imposed in Malawi, following the World Bank's advice.[6] Its lending for education mandated cost-sharing and the financial responsibility for education was transferred from governments to families and communities. The World Bank's rationale was that "judicious use of modest fees" would make public schools accountable to taxpayers and, more importantly, to the school children's parents. [7]

A great deal of critique was directed at the conversion of the previously free into for-fee primary school because it inevitably led to the economic exclusion of the poor. In 1990, noting that cost-sharing was more appropriate in post-primary education, the World Bank nevertheless hailed the significant sums raised by school fees in primary school.[8] Its 1992 commitment to social expenditure, including primary education,[9] responded to that critique. The World Bank's education strategy affirmed in 1999 that many states recognized education as a human right but did not add that it did likewise. It remains silent on governmental obligations to secure free primary education for all school age children and never mentions that education should also be compulsory. An affirmation of governmental obligations to ensure that education is free and compulsory would entail support for corresponding budgetary allocations and was not forthcoming.[10] Because education is a right guaranteed in international human rights law and in national constitutions, it forms part of the law in most World Bank's borrowers.[11] The law did not inform the World Bank's design of education although it is formally committed to promoting the rule of law. Educational policies violating countries' laws proliferated. The World Bank's in-house survey, in 2002, showed that charges ('school fees') were much more widespread than had been assumed. They were found in 97% of the 79 countries surveyed and imposed even where the borrower's laws mandated primary education to be free. That survey explained the paucity of data by noting that "these fees may be formally unconstitutional" or "technically illegal".[12] In 2006, informal surveys of World Bank's task teams revealed a host of "illegal fees".[13]

There has been no in-house review of the impact of the World Bank's support for illegal charging of school fees as yet. Reconsiderations followed after the turn of the millennium because the effect of for-fee instead of free primary school was to institutionalize economic exclusion and jeopardize both universalizing primary education and poverty reduction. In September 2001, a statement that the World Bank "opposes user fees for primary education" acknowledged the inevitable economic exclusion of the poor but charges were to be opposed only where levied by the central government, not by local authorities or schools. [14]

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[6] Tomasevski, K. - *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 73-73.
[7] The World Bank - *Education in Sub-Saharan Africa: Policies for Adjustment, Revitalization and Expansion*, Washington, D.C., 1988, p. 53.
[8] The World Bank - *Primary Education*, Washington, D.C., 1990, p. 44-45.
[9] The World Bank's *Adjustment Lending Policy, Operational Directive 8.60* of 21 December 1992, specifies that explicit conditionality may be appropriate to enhance the poverty orientation of social expenditures and to sustain their levels. (available at www.worldbank.org)
[10] The World Bank's endorsement of free primary education had been included in its education sector policy paper in 1980 but not in its 1999 education strategy. (*Education Sector Policy Paper*, World Bank, Washington D.C., 1980, and Education Sector Strategy, World Bank, Washington D.C., 1999)
[11] Kathleen Florestal and Robb Cooper have noted the need to ascertain "specific requirements concerning basic education, set out in constitutional acts or human rights charters". (Florestal, K. and Cooper, R. - *Decentralization of Education. Legal Issues*, World Bank, Washington D.C., June 1997, p. 15)
[12] Kattan, R.B. and Burnett, N. - *User fees in primary education*, The World Bank, July 2004, available at www.worldbank.org/education/pdf/EFAcase_userfees
[13] *Education for All Global Monitoring Report 2006*, Table 3.4, p. 84. (available at www.unesco.org)
[14] 'The World Bank and user fees in health, education and water', *World Bank Issue Brief*, September 2001.

Such charges are justified by calling them *community participation*. They are routinely triggered by insufficient funding for education by the central government, often due to debt servicing.

The conflict of interests, ensuring repayment of its loans *versus* freeing education from debt burden, was settled in favour of debt servicing. This necessitated tackling "excess demand for educational services, particularly at lower levels of education, and [tapping] increased household interest in paying for quality education".[15] That *excess demand* was to be absorbed so that education does "not cost the State anything".[16] This triggered expansion of private education as well as re-design of public schooling to make "the cost of education lower for governments".[17] Creeping privatization altered public education from free to for-fee. Charges, called school fees as the World Bank named them, had been introduced in many African countries but were rarely recorded.[18] In consequence, public education remained legally free but was in practice for-fee.

Reports by African governments under international human rights treaties often referred to structural adjustment programmes which made legally mandated free education fiscally impossible. Voluminous literature which exposed the human toll of conflicting global blueprints ensued. The global response has been diversification. The World Bank formally joined global strategy-making for education and instituted its own reporting procedure for debt relief, adding to "the multiplication of initiatives, each one with separate reporting needs".[19] Poverty reduction strategies became the lock opener for international development finance, especially debt relief. Primary education was defined as a lever for poverty reduction and poverty reduction strategies were expected to accommodate two conflicting requirements. On the one hand, public investment in primary education should be increased so as to help reduce poverty. On the other hand, that investment should remain affordable by the yardstick applied by the World Bank.

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[15] Sosale, S. – *Trends in private sector development in World Bank education projects*, Policy Research Working Paper No. 2452, The World Bank, Washington D.C., September 2000, p. v.

[16] Chauveau, F. – *Stratégies pour les jeunes défavorisés: Etat des lieux en Afrique francophone sub-saharienne*, Institut international de planification de l'éducation, Paris, 1998, p. 113.

[17] Community schools were a favoured model but Yolande Miller-Grandvaux and Karla Yoder proved that they did *not* cost less than public schools: "While the cost of education is lower for governments in many cases, actual costs per pupil are the same as those for public school students or even higher in some cases, and are being covered by NGOs and communities". Miller-Grandvaux, Y. & Yoder, K. – *A literature review of community schools in Africa*, Support for Analysis and Research in Africa (SARA) Project, Academy for Educational Development, USAID, Bureau for Africa, Washington D.C., February 2002, mimeographed, p. 31.

[18] Beedeeanum Conhye and Medjomo Coulibaly found that financial contributions by families to nominally free public education were not made into "a focus of systematic or wide-scale research in sub-Saharan Africa" in the 1990s. Conhye, B. & Coulibaly, M. – *Policies, Procedures and Strategies for the Allocation of Resources for Education in Sub-Saharan Africa: A Review of the Literature*, ADEA (Association for the Development of Education in Africa) and CODESRIA (Council for the Development of Social Science Research in Africa), Dakar, 1999, p. 36.

[19] Caillods, F. & Hallak, J. – *Education and PRSPs: A Review of Experience*, UNESCO, International Institute for Educational Planning, Paris, 2004, p. 153, available at www.unesco.org/iiep

Freeing education from debt bondage

Table 5 illustrates how education fared in the Poverty Reduction Strategy Papers (PRSPs). They are formally country-owned strategies but need the World Bank's approval.[20] Despite its pronouncements in support of free primary education, the World Bank has not reviewed the PRSPs so as to detect where charges are levied in order to develop a funding strategy to eliminate them. As Table 5 shows, all indebted African countries levy charges with the sole exception of Sao Tomé and Principe. Only three governments (Chad, Ethiopia and Ghana) recorded their preference for retaining such charges, all others expressed their commitment to rolling them back, at least partially. The funds necessary to replace them were expected from debt relief. [21]

Debt relief has facilitated the abolition of school fees in Uganda and Tanzania, a similar model may apply in Zambia or Mauritania. However, only primary education is eligible and it has been made cheaper although not free. The reason is that the funds needed to make education free have not been forthcoming. Because public funding for education was - and is - insufficient to cover direct, indirect and opportunity costs of school, the definition *free* education was reduced to *fee-free*.[22] The yardstick was *not* the elimination of *all* financial obstacles which keep children out of school which would have ensued from international human rights law and national constitutions. The global track through which school fees were imposed or rolled back remained separated from both international and national law.

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[20] Tomasevski, K. – Not education for all, only for those who can pay: The World Bank's model for financing primary education, *Law, Social Justice & Global Development* (An electronic law journal), 5 October 2005, available at www.right-to-education.org

[21] The United Kingdom mobilized the G-8 to agree to finance debt relief, which was approved at the July 2005 G-8 Summit in Gleneagles and became known as the MDRI (Multilateral Debt Relief Initiative). That decision led the World Bank to identify 18 countries as eligible, known in the jargon as those who reached the completion point. These are: Benin, Bolivia, Burkina Faso, Ethiopia, Ghana, Guyana, Honduras, Madagascar, Mali, Mauritania, Mozambique, Nicaragua, Niger, Rwanda, Senegal, Tanzania, Uganda, and Zambia. An additional list of 11 countries reached the decision point and became eligible for some debt relief. These are: Burundi, Cameroon, Chad, Congo/Brazzaville, Congo/Kinshasa, the Gambia, Guinea, Guinea-Bissau, Malawi, Sao Tome & Principle, and Sierra Leone. In addition, 9 countries have been classified as potentially eligible for debt relief: Burma/Myanmar, Central African Republic, Comoros, Côte d'Ivoire, Laos, Liberia, Somalia, Sudan, and Togo. (The Multilateral Debt Relief Initiative, Enhanced Heavily Indebted Poor Countries Initiative (HIPC), List of Participating and Potentially Eligible Countries, 28 March 2006, available at www.worldbank.org.) The International Monetary Fund (IMF) announced on 21 December 2005 full debt relief to 19 countries: Benin, Bolivia, Burkina Faso, Cambodia, Ethiopia, Ghana, Guyana, Honduras, Madagascar, Mali, Mozambique, Nicaragua, Niger, Rwanda, Senegal, Tajikistan, Tanzania, Uganda, and Zambia. (IMF to extend 100 percent debt relief for 19 countries under the MDRI, www.imf.org).
There is one exception in the World Bank's and the IMF's lists of eligible African countries and that is Mauritania, whose change of government through a military coup in 2005 reportedly raised questions about the accuracy of the data provided by the previous government.

[22] UNICEF started a School Fee Abolition Initiative (SFAI) in 2005 in cooperation with the World Bank. It identified six African countries as pioneers in the abolition of school fees, namely Ethiopia, Ghana, Kenya, Malawi, Mozambique and Tanzania, to harness their 'experiential knowledge.' No definition of how school were defined and what was taken to constitute their abolition was provided. Further information is available at www.ungei.org.

Table 5: Free or for-fee primary education in African PRSPs

Country	Eligibility for debt relief	The year of the PRSP	Are charges levied in public primary school?		Is government planning to continue these charges?		
			Yes	No	Yes	No	Partially
Benin	2006	2003	√			√	
Burkina Faso	2006	2000	√				√
Cameroon	Not yet	2003	√			√	
Cape Verde	No	2005	√			√	
Chad	Not yet	2003	√		√		
Ethiopia	2006	2002	√		√		
Gambia	Not yet	2002	√			√	
Ghana	2006	2003	√		√		
Guinea	Not yet	2002	√				√
Kenya	No	2004	√			√	
Madagascar	2006	2003	√			√	
Malawi	Not yet	2002	√			√	
Mali	2006	2003	√			√	
Mauritania	Not yet	2001	√			√	
Mozambique	2006	2001	√				√
Niger	2006	2002	√			√	
Rwanda	2006	2002	√				√
Sao Tome & Principe	Not yet	2005		√		√	
Senegal	2006	2002	√			√	√
Sierra Leone	Not yet	2005	√			√	
Tanzania	2006	2000	√			√	
Uganda	2006	2000	√			√	
Zambia	2006	2002	√			√	

Note: Not all PRSPs have explicitly described the formal or informal charges which are levied in public education and such gaps have been filled from other authoritative sources, such as governmental reports under human rights treaties. Details and references are provided in each country entry.

Sources: The PRSPs (Poverty Reduction Strategy Papers) are available, alongside other relevant documents and updates, at www.worldbank.org. Those which were classified by the World Bank as full PRSPs have been analysed, regardless of their formal name. These are: Benin - Poverty Reduction Strategy Paper 2003-2005 (March 2003); Burkina Faso - Poverty Reduction Strategy Paper (May 2000); Cameroon – Poverty Reduction Strategy Paper (April 2003); Cape Verde - Interim Poverty Reduction Strategy Paper (January 2002); Chad – National Poverty Reduction Strategy Paper (June 2003); Ethiopia - Sustainable Development and Poverty Reduction Program (October 2002); Gambia – Strategy for Poverty Alleviation [SPA II] (April 2002); Ghana - Poverty Reduction Strategy 2003-2005: An Agenda for Growth and Prosperity (March 2003); Guinea – Poverty Reduction Strategy Paper (January 2002); Malawi - Poverty Reduction Strategy Paper: Final Draft (August 2002); Madagascar – Poverty Reduction Strategy Paper (October 2003); Mali - Poverty Reduction Strategy Paper: Final PRSP (February 2003); Mauritania - Poverty Reduction Strategy Paper (December 2000); Mozambique - Action Plan for the Reduction of Absolute Poverty 2001-2005 (October 2001); Niger - Full Poverty Reduction Strategy Prepared by the Government of Niger (January 2002); Rwanda - Poverty Reduction Strategy Paper (2001); Senegal - Poverty Reduction Strategy Paper (November 2002); Sao Tome and Principe - National Poverty Reduction Strategy. Final version (December 2002); Sierra Leone - Interim Poverty Reduction Strategy Paper (June 2001); Tanzania - Poverty Reduction Strategy Paper (October 2000); Uganda – Uganda's Poverty Eradication Action Plan (March 2000); Zambia – Poverty Reduction Strategy Paper 2002-2004 (March 2002).

Constitutional guarantees *versus* fiscal policies

Mutually conflicting global blueprints for education are reflected in bifurcated national policies. Constitutional guarantees reflect the requirements of international human rights law. They mandate primary education to be free and compulsory and oblige governments to ensure that this is so immediately or, at least, progressively. Making education free and compulsory requires public funding, but governmental and intergovernmental policies for financing education do not follow what the law mandates. This is the case in international development finance as well as in national budgetary allocations. The constitution may mandate primary education to be free but the government may levy or tolerate charges and education is effectively for-fee. Many governments have declined their own responsibility for violations of constitutional guarantees of free education and point their finger to Washington D.C., the headquarters of the World Bank and the IMF. Most have cited structural adjustment programmes as the trigger for impoverishment of public education. International human rights law and their constitutions would have required high budgetary allocations to make or keep education free, while cost-sharing policies favoured by the World Bank and the IMF made it for-fee.

Among 46 countries in Sub-Saharan Africa listed in Table 6, only three – Mauritius, Sao Tomé and Principe, and Seychelles - guarantee free primary education. In the majority, primary education should be made free immediately or progressively as the constitutions mandate. That *should* is contrasted by governmental policies which have institutionalized formal or informal charges as Table 6 shows.

Table 6: Laws and policies on free or for-fee primary education in Africa

Country	Legal guarantees of free education		Governmental policies on free or for-fee education	
Angola		No	For-fee	
Benin	Progressive		For-fee	
Botswana		No	For-fee	
Burkina Faso	Progressive		For-fee	
Burundi		No		Free
Cameroon		No		Free
Cape Verde		No	For-fee	
Central African Republic		No	For-fee	
Chad	Yes		For-fee	
Comoros		No	For-fee	
Côte d'Ivoire		No	For-fee	
Congo/Brazzaville	Yes		For-fee	
Congo/Kinshasa	Yes		For-fee	
Equatorial Guinea	Yes		For-fee	
Eritrea	Progressive		For-fee	
Ethiopia		No	For-fee	
Gabon	Yes		For-fee	
Gambia	Yes			Free
Ghana	Yes		For-fee	
Guinea		No	For-fee	

Guinea-Bissau	Yes		For-fee	
Kenya		No		Free
Lesotho	Progressive			Free
Liberia		No		Free
Madagascar	Yes			Free
Malawi		No		Free
Mali	Yes		For-fee	
Mauritania	Yes		For-fee	
Mauritius	Yes			Free
Mozambique		No	For-fee	
Namibia	Yes			Free
Niger	Yes		For-fee	
Nigeria	Progressive			Free
Rwanda	Yes			Free
Sao Tomé & Principe	Yes			Free
Senegal	Yes			Free
Seychelles	Yes			Free
Sierra Leone		No		Free
Somalia		No		Free
South Africa		No	For-fee	
Swaziland	Yes			Free
Tanzania		No		Free
Togo	Progressive		For-fee	
Uganda		No		Free
Zambia		No		Free
Zimbabwe		No		Free

Note: Where the constitution mandates primary education to be free, this is denoted by a 'yes'. The absence of such guarantee is marked with a 'no'. The third option, 'progressive' reflects a commitment to gradual introduction and broadening of free education as circumstances permit. This term, 'progressive', reflects the requirement of international human rights treaties on the progressive realization of the right to education where it cannot be guaranteed fully and immediately.

Sources: Angola - *Human Development Report: Angola 1998*, UNDP (United Nations Development Programme), Luanda, 1998; Benin - E/1990/5/Add.48, 2001, paras. 322 and 395-397 and CRC/C/15/Add.106, 1999, para. 324; Botswana - CERD/C/407/Add.1, 2002, para. 36; Burkina Faso - CRC/C/65/Add.18, 2002, paras. 13, 323, 341, 375 and 515; Burundi - CRC/C/3/Add.58, 1998, paras. 50, 55 and 195; Cameroon - CRC/C/28/Add.16, 2001, paras. 192-193 and 217; Cape Verde - CRC/C/11/Add.23, 2001, para. 14 9; Central African Republic - CRC/C/11/Add.18, 2000, paras. 67-68 and CRC/C/15/Add.138, 2000, para. 49; Chad - CRC/C/3/Add.50, 1997, paras. 37, 42 and 176; Comoros - CRC/C/100, 2000, para. 640; Côte d'Ivoire - CRC/C/8/Add.41, 2000, paras. 81, 83 and 173; Congo/Brazzaville - Education pour tous: Bilan à l'an 2000: Rapport national du Congo; Congo/Kinshasa - CRC/C/3/Add.57, 2000, paras. 25, 149 and 156; Equatorial Guinea - E/CN.4/1996/67, paras. 66-67; Eritrea - CRC/C/41/Add.12, 2002, paras. 16, 87, 302 and 329; Ethiopia - CRC/C/15/Add.144, 2001, paras. 66-67; Gabon - CRC/C/41/Add.10, 2001, paras. 82, 177, 215 and 218; Gambia - CRC/C/3/Add.61, 2000, paras. 176, 179, 183 and 189; Ghana - CERD/C/43/Add.3, 2002, paras. 57 and 122; Guinea - CRC/C/3/Add.48, 1997, para. 140 and E/C.12/1/Add.5, 1996, para. 193; Guinea-Bissau - CRC/C/3/Add.63, 2001, paras. 214-217; Kenya - Status report on preparatory activities and way forward for the economic recovery strategy paper for Kenya, Prepared by the Government of the Republic of Kenya on 12 September 2003; Lesotho - CRC/C/11/Add.20, 1998, paras. 180, 187 and 192; Liberia - CRC/C/28/Add.21, 2000, paras. 73-78; Madagascar - CRC/C/8/Add.5, 1996, paras. 215, 218 and 220; Malawi - CRC/C/8/Add.43, 2001, paras. 38, 67 and 253-255; Mali - CERD/C/407/Add.2, 2002, paras. 129-130; Mauritania - CRC/C/8/Add.42, 2001, paras. 1, 226, 249 and 267; Mauritius - CRC/C/3/Add.36, 1995, para. 100 and E/1990/5/Add.21, 1994, para. 338; Mozambique - CRC/C/41/Add.11, 2001, paras. 374, 396 and 458-459; Namibia - CRC/C/3/Add.12, 1993, paras. 343-346 and *Monitoring the 20/20 Compact*, UNICEF, Windhoek, June 1997; Niger - CRC/C/3/Add.29/Rev.1, paras. 273-274 and 306; Nigeria - Education for All: The year 2000 assessment,

Federal Ministry of Education, Abuja, 2000; Rwanda - CERD/C/335/Add.1, 1999, para. 63; Senegal - E/1990/6/Add.25, 2000, paras. 105 and 108; Seychelles - CERD/C/430/Add.1, 2003, paras. 359, 374 and 377; Sierra Leone - CRC/C/3/Add.43, 1996, para. 77 and CRC/C/15/Add.116, 2000 para. 374; South Africa - CRC/C/51/Add.2, 1998, paras. 394 and 399; Sudan - Report on Sudan: Education for All. The year 2000 assessment, Ministry of Education, Educational Assessment Department, Khartoum, 2000; Swaziland - The development of education: National report of Swaziland by the Ministry of Education, 24 June 1996; Tanzania - Primary education development plan 2002-2006, Ministry of Education Dar es Salaam, 2002; Togo - CCPR/C/TGO/2001/3, paras. 80 and 84; Uganda - CERD/C/358/Add.1, 2001, para. 86 and Education strategic investment plan 1998-2003, Government of Uganda, Kampala, November 1998; Zambia - CRC/C/11/Add.25, 2002, paras. 329, 362, 442 and 482; Zimbabwe - CERD/C/329/Add.1, 1998, paras. 3 and 15, E/1990/5/Add.28, 1997, para. 194 and CRC/C/15/Add.55, 1996, para. 19.

As Table 6 shows, an increasing number of governments have promised to make education free so that all children can go to school. Children are the majority of Africa's population and poor children are the majority within that majority. Moreover, shifts from war-supporting to peace-building budgetary allocations were announced by the new government in Burundi, in August 2005, and the new government of Liberia followed suit in February 2006. Burundi and Liberia buttressed the trend which emerged in the 1990s. In 1994, the new government of Malawi abolished school fees which the previous regime (notorious for human rights violations) had introduced following the advice of the World Bank. Uganda followed in 1997. Nigeria made a bold announcement that it would re-institute free primary education with the change from military to civilian governance. The government of Cameroon announced that primary education would be free in 2000, and Lesotho followed at about the same time. Tanzania abolished most direct charges in primary education in 2001 and Kenya in 2003. Madagascar followed that same year. Thereafter, a snowballing effect has led the proliferation of similar promises.

The pledges which have been translated into governmental policy and made a change on the ground were often associated with changes of governance, with a new government promising to un-do the damage done by previous regimes and invest in education. This was a corollary of democratization. If given a voice, people will insist on free primary education. If it responds to the demands of the electorate, government will make free education a priority. Many do not as the imbalance between military expenditure and public investment in education exemplifies.

Educational cost of military expenditure

Obstacles to ensuring free education are never only external and Sub-Saharan Africa is no exception. Distorted priorities in resource allocation are exemplified in the imbalance between military expenditure and investment in education and, even more, in the paucity of reliable data.

Table 7 reproduces the available data on fiscal priorities in Africa in the 1990s. For many countries no data are available, for those where statistics are available, the figures may not be reliable. However, citing statistics which are imperfect underlines the need to create better data.

High military expenditures in many African countries were associated with warfare or repression. Table 7 also shows high allocations to education, exceeding 20% of governmental budget in Botswana, Côte d'Ivoire, Senegal, South Africa and Togo. However, these allocations did not find favour with the World Bank. By its criteria, primary education should have been prioritized rather than universities.[23] Its recipe was successful and budgetary allocations were altered through a zero-sum-game in many African countries.

Increasing public investment for education through reductions of military expenditure was not successful at all. The IMF and the World Bank committed themselves to monitoring unproductive military expenditure in early 1990s because it is, alongside corruption, the biggest obstacle to channelling money to education.[24] Sadly, the conclusion of one of the first studies into the absence of the statistics on military expenditure is, ten years later, still valid:

> There can be no true dialogue on security policies aimed at reducing excessive military expenditure if there is no reliable and disaggregated data, comparable in time and space.[25]

Imperfect as they are, the figures in Table 7 highlight the imbalance between military expenditure and investment in education in the 1990s in Angola, Burundi, Cameroon, Equatorial Guinea, Ethiopia, Mauritania, Sudan, Tanzania and Uganda. Although lip service has often been paid to the opportunity cost of military expenditure, little has been done to curtail it.

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[23] A typical recipe was that no more than 20% of the education budget should be allocated to universities and "especially those countries that have not achieved universal primary education coverage (Mauritania and Niger, for example) are likely to have a distorted allocation that favors an elitist university system and does not adequately support basic education". The World Bank – *Constructing Knowledge Societies: New Challenges for Tertiary Education*, Washington D.C., 2002, p. 82.

[24] Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, 2003, pp. 9-14.

[25] Herrera, R. – *Statistics on Military Expenditure in Developing Countries: Concepts, Methodological Problems and Sources*, OECD, Paris, 1994, p. 39.

Table 7
Fiscal priorities in Africa in the 1990s:
Educational investment and military expenditure
as percentages of GNI and government budget

Country	Gross National Income		Government budget	
	Education	Military	Education	Military
Angola	5.2%	21.2%	10.7%	41.1%
Benin	2.6%	1.4%	15.2%	8.3%
Botswana	9.3%	4.7%	20.2%	9.8%
Burkina Faso	1.6%	1.6%	11.1%	5.9%
Burundi	3.9%	7.0%	18.3%	26.7%
Cameroon	2.5%	1.8%	9.9%	10.6 %
Congo (Rep.)	6.1%	3.5%	14.7%	8.4%
Côte d'Ivoire	6.4%	0.8%	40.8%	3.4%
Equatorial Guinea	2.0%	3.2%	5.6%	16.5%
Ethiopia	4.3%	8.8%	13.7%	29.1%
Ghana	4.2%	0.8%	19.9%	3.1%
Kenya	6.8%	1.9%	16.7%	7.1%
Lesotho	7.9%	2.6%	18.5%	6.5%
Madagascar	5.9%	1.2%	10.2%	7.4%
Mauritania	4.5%	4.0%	18.9%	18.9%
Nigeria	0.7%	1.6%	11.5%	8.1%
Senegal	3.5%	1.7%	33.1%	8.2%
South Africa	5.9%	1.5%	23.9%	5.0%
Sudan	0.6%	4.8%	1.7%	46.8%
Tanzania	2.1%	1.4%	11.4%	10.1%
Togo	4.8%	1.8%	26.2%	9.4%
Uganda	2.3%	2.3%	21.4%	13.9%
Zambia	2.5%	1.0%	17.6%	3.5%

Source: *Advancing the Campaign against Chile Labor: The Resource Allocations of National Governments and International Financial Institutions*, vol. III, U.S. Department of Labor, Washington D.C., 2004, Table A.1, pp. 108-119.

The Security Council has often dealt with the exclusion from education resulting from man-made disasters, especially in Africa. It has affirmed the importance of school "in halting and preventing recruitment and re-recruitment of children".[26] Nevertheless, its priorities have been security-and-survival, postponing education for a time when normalcy might be restored. Restoring normalcy has proved impossible without an investment in education. This has been the case especially in overlapping and mutually reinforcing cycles of civil wars and economic crises.

Long lists of countries with on-going or recently ended conflicts have prodded the Security Council to review what should be done for children.[27]

[26] Security Council resolution 1539 (2004) of 22 April 2004, paras. 8-9.
[27] In 2004-2005, six countries were on the Security Council's agenda due to on-going warfare (Afghanistan, Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Liberia and Somalia), and additional nine were added because of the heavy toll of those conflicts for children (Chechnya, Colombia, Myanmar, Nepal, Northern Ireland, Philippines, Sri Lanka, Sudan and Uganda). The Indonesian province of the Aceh and the occupied Palestinian territories were also included because of the widely documented harm inflicted on children, in and out of school. General Assembly/Security Council - Children in armed conflict. Report of the Secretary-General, U.N. Doc. A/58/546-S/2003/1053, available at www.un.org/Docs/sc

Little information on a peace-dividend that children could have benefited from when conflicts were brought to an end has been made available. Furthermore, the availability of information on military expenditure has not improved after the turn of the millennium. Table 8 uses data from two different sources, which triggers even more caveats than is usual for interpreting them. For military expenditure, SIPRI (Stockholm International Peace Research Institute) is used as the source because it provides wide coverage and consistent annual analysis. For investment in education, the UNDP has been used as the source.

Table 8
Military expenditure and investment in education in Africa in 2002
as percentage of GDP

	Military expenditure	Public investment in education
Angola	3.7%	2.8%
Benin	…	3.3%
Botswana	4.0%	2.2%
Burkina Faso	1.8%	…
Burundi	7.6%	3.9%
Cameroon	1.4%	3.8%
Cape Verde	0.7%	…
Central African Republic	1.0%	…
Chad	1.4%	2.0%
Côte d'Ivoire	…	4.6%
Congo	…	3.2%
Equatorial Guinea	…	0.6%
Eritrea	23.5%	4.1%
Ethiopia	5.2%	4.6%
Gabon	…	3.9%
Gambia	0.9%	2.8%
Ghana	0.6%	4.1%
Guinea	2.9%	1.8%
Guinea-Bissau	…	2.1%
Kenya	1.7%	7.0%
Lesotho	2.7%	10.4%
Liberia	(7.5%)	…
Madagascar	(1.4%)	2.9%
Malawi	(0.9%)	6.0%
Mali	(1.8%)	2.8%
Mauritania	1.9%	3.6%
Mauritius	0.2%	3.3%
Mozambique	2.4%	2.4%
Namibia	2.9%	7.2%
Niger	1.1%	2.3%
Nigeria	1.1%	…
Rwanda	3.3%	2.8%
Senegal	1.5%	3.6%
Seychelles	1.7%	7.5%
Sierra Leone	(2.2%)	3.7%
South Africa	1.6%	5.3%
Swaziland	(1.8%)	5.5%
Tanzania	1.5%	…

Togo	…	2.6%
Uganda	2.4%	2.5%
Zambia	…	2.0%
Zimbabwe	3.2%	4.7%

No data is available for Comoros, Congo/Kinshasa, Sao Tomé and Principe, and Somalia.

Sources: The data on military expenditure originate from SIPRI (www.sipri.org). The figures in brackets denote estimates or statistics for an earlier year if no data was available for 2002. The data on public investment in education originate from the UNDP 2005 Human Development Report (http://hdr.undp.org/statistics).

The figures on public investment in education in Table 7 point to the key reason for educational underperformance in most countries: budgetary allocations to education are simply too low to allow for the universalization of primary schooling. In Africa, budgetary allocations needed to ensure primary school for all children have been estimated at 11.5% of GDP.[28] As Table 7 shows, only in Lesotho have budgetary allocations reached that benchmark. The high priority for education in Kenya, Malawi, Namibia and Seychelles reflects governmental efforts to make education free. Their example demonstrates the scope of the challenge. Also, it epitomizes the change that would need to take place globally to support public investment in education.

Troubling global targetology

The obstacle course which African governments have to navigate so as to obtain global financial support for expanding and improving education is exemplified in the MDGs, which have set the bar too low. Because international development finance is effectively confined to primary school as the MDGs specified, primary schooling has had to be prolonged to step over that low bar but to remain within the limits imposed by the donors and creditors on the deployment of public funds.

[28] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 28-31.

Table 9
African governments prolonging primary schooling
in 2003-2004

Country	2003	2004
Burkina Faso	7-12	6-15
Cameroon	7-11	6-11
Comoros	6-11	6-13
Côte d'Ivoire	6-11	6-15
Congo/Brazzaville	6-11	6-15
Congo/Kinshasa	6-11	6-13
Eritrea	7-11	7-13
Ghana	6-11	6-14
Guinea	7-12	7-16
Kenya	6-12	6-13
Liberia	6-11	6-15
Madagascar	6-10	6-14
Malawi	6-11	6-13
Mali	7-12	7-15
Mauritania	6-11	6-14
Mozambique	6-10	6-12
Somalia	6-12	6-13
Togo	6-11	6-15

Note: In only eight countries in Sub-Saharan Africa secondary education was in 2000 provided to more than half of the school age children (the age range was from 12-13 to 17-18 years). These were Botswana (79%), Cape Verde (75%), Gabon (60%), Mauritius (77%), Namibia (72%), South Africa (87%) and Swaziland (60%). For all except South Africa, these figures were estimates, hence the coverage may be lower. For Seychelles, UNESCO did not create education statistics due to the lack of internationally comparable population data.

Sources: EFA Global Monitoring report 2003/4 - *Gender and Education for All: The Leap to Equality*, UNESCO Publishing, Paris, 2003, available at www.unesco.org. and UIS - *Global Education Digests 2004 and 2003: Comparing Education Statistics across the World*, UNESCO Institute for Statistics, available at www.uis.unesco.org

Table 9 shows that no less than 18 African countries tried to overcome the MDG straight-jacket by prolonging primary education. The main reason was the lack of international financial support, including debt relief, for secondary education. Hence, definitions were altered. Mamadou Ndoye has highlighted how harmful the MDGs are because they have reduced education to primary schooling:

> The increased harshness of the selection-elimination process at the end of primary school will throw millions of 11, 12 and 13 year old children out of the system, with no real prospects for training or preparation to enter the workforce. Such an appalling situation may discourage both families and communities.[29]

[29] Ndoye, M. - Secondary education: the missing link, *ADEA Newsletter*, vol. 16, 2004, No. 3, Association for Development of Education in Africa, July-September 2004, p. 3.

The World Bank's commitment to private financing of secondary and university education has indeed discouraged families and communities because its cost is beyond the reach of the vast majority. It has defined its role as "strengthening the private sector's role over time at the non-compulsory levels of education [which will] release public resources to be utilized at the primary level".[30] Confining education to primary school fares ill against findings by the UIS (UNESCO Institute for Statistics) that no country has ever universalized primary school without a minimum of 35% secondary-school enrolments.[31]

Education obviously cannot be *the* priority for any African government because an investment in primary school yields an economic rate of return after children reach adulthood and start working. This means that economic benefits of today's public investment in primary education will materialize in a decade or two. The pressures of daily survival, for governments or families, take priority over investment in education. This reinforces the need for external support, which is evidenced in the fact that children aged 5-15 constitute 13% of the population in the OECD countries but more than 30% in Africa.[32] Lifelong learning is publicly financed in the OECD[33] while in Africa meagre funds have to be stretched to school the large proportion of children in the population. As a consequence, today's child in the OECD will enjoy 18 years of education, an African child will have *access* to merely 3 years of schooling.[34]

Even these few years of primary school may not be free, pricing it beyond the reach of the poor. The three exceptions, Mauritius, Sao Tomé and Seychelles, are addressed first because they provide free primary education.

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[30] Sosale, S. – *Trends in private sector development in World Bank education projects*, Policy Research Working Paper No. 2452, The World Bank, Washington D.C., September 2000, p. 15.
[31] *Global Education Digest 2004: Comparing Education Statistics Across the World*, UNESCO Institute for Statistics, Montreal, 2004, pp. 8 and 13, available at www.uis.unesco.org
[32] *Education at a Glance 1999. OECD Database*, CD-ROM. The World Education Indicators Programme (WEI), co-ordinated by the OECD and UNESCO, enabled the first comparisons between the OECD and some developing countries (Argentina, Brazil, Chile, China, India, Indonesia, Jordan, Malaysia, Paraguay, Philippines, Uruguay and Thailand) as well as Russia.
[33] UNESCO's *World Education Report* perceptively observed that "the adult population is running out of people to educate" and the attention in the OECD countries switched to prolonging education throughout adulthood. (UNESCO - *Teachers and Teaching in a Changing World. 1998 World Education Report*, Paris, 1998, p. 29)
[34] *Global Education Digest 2004: Comparing Education Statistics Across the World*, UNESCO Institute for Statistics, Montreal, 2004, p. 4, available at www.uis.unesco.org

COUNTRIES PROVIDING FREE PRIMARY EDUCATION

Mauritius

In Mauritius primary and secondary education has been free since 1977. The government has explained that it "is discharging its obligation to provide primary education that is compulsory and available free to all by providing all primary school children with a midday snack as an incentive to regular attendance and ensuring that each village council area has at least one primary school, i.e. the primary schools are within walking distance for all pupils". It has then summed up its plans as follows: "As from January 2003, all school children will proceed to secondary school up to at least the age of 16. By 2006, education will be compulsory up to the age of 16".[35] Educational statistics demonstrate that primary education has been universalized with net enrolments of 97%.[36] It encompasses only children aged from 5 to 10, hence its prolongation to the age of 16 conforms to both human rights law and educational best practice.

There is little difference between public and private schools during the compulsory cycle because government's subsidies cover the basic costs for both options. Freedom of parental choice is thus ensured regardless of the parental wealth or poverty. In its reports under human rights treaties, the government has noted that it resisted 'suggestions' by the World Bank in 1982 to impose charges in secondary education and has continued its policy of keeping education free so that all children can stay in full-time education until the age of 16. [37]

Sao Tomé and Principe

With its population of merely 140,000, Sao Tomé was hardly known internationally before the discovery of oil. In the summer of 2003, just as preparations for auctioning oil exploration rights started in earnest, a military coup took place and people recalled that "white men with short haircuts and American accents" had been spotted on the island.[38] In its PRSP, finalized just months before the coup, the (then) government noted that there had been nine changes of government in twelve years.

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[35] U.N. Docs. E/1990/5/Add.21, 1994, para. 338, CRC/C/3/Add.36, 1995, paras. 4 and 96, and written submission to the Office of the High Commissioner for Human Rights of 25 October 2002, No. 624/2002 HR/3/C.

[36] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org

[37] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 120.

[38] A coup in Sao Tomé: Troubled waters over oil, *The Economist*, 19 July 2003.

Due to all that political upheaval triggered by the discovery of oil, education is not expected to be a major beneficiary of the forthcoming oil wealth. The government pointed out in its PRSP that primary education was free of charge but it also noted declines in school enrolments. They were "an external manifestation of poverty" and 20% of children could not even start school.[39] There is a large gap between that self-critical assessment by the government and the official statistics, which show the enrolment in primary education of 97%.[40] As is often the case, officially reported school enrolments present a much better educational panorama in a country than is actually the case.

The government has planned to extend compulsory education to 6 years (now the school-leaving age is 12) and to make it all-encompassing by the year 2015. While primary education would remain free of charge so that all children can complete six years of compulsory schooling, payments have been introduced in post-compulsory education. Educational authorities have been delegated powers to specify fees for enrolment and tuition in secondary education. [41]

Seychelles

In Seychelles Aeducation is free to all students and is compulsory for all children up to the age of 16" and has been made universal. Indeed, official statistics show the net enrolment in primary school to be 100%.[42] Governmental policy is to ensure full enrolment and thereby also equal access to school for all school age children. This necessitates a broad definition of *free* education to reach beyond the compulsory curriculum to extra-curricular activities which poor children might not be able to afford:

> The Ministry of Education ensures that school activities which are undertaken during the school day are provided free of charge and that resources are made available to subsidize those children who cannot afford to undertake out-of-school activities, for example music and dance.[43]

This rationale of making education free so that it can become all-encompassing, and then made compulsory for all children, provides the benchmark for the review of the majority of African countries which follows. All country entries reveal the same problem: because education has not been made free, it has not been universalized. This report applies the yardstick stemming from international human rights law, whereby each government is obliged to make education compulsory and should be held accountable for failing to do so. This accountability extends to international organizations which have lowered the global benchmark to a mere completion of primary school by the year 2015. Thereby, they are denying the children's right to education as well as undermining the corresponding governmental obligations.

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[39] National Poverty Reduction Strategy, Final Version, Democratic Republic of Sao Tomé and Principle, Ministry of Planning and Finance, Sao Tomé, December 2002, available at www.worldbank.org
[40] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[41] National Poverty Reduction Strategy, Final Version, Democratic Republic of Sao Tomé and Principle, Ministry of Planning and Finance, Sao Tomé, December 2002.
[42] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[43] U.N. Docs. CERD/C/430/Add.1 (2003), para. 359 and CERD/C/430/Add.1 (2003), paras. 374 and 377.

COUNTRIES WITHOUT FREE EDUCATION

Angola

Warfare lasted almost throughout the country's independence, from 1975 to 2002, and has left an imprint on Angola's educational landscape. Although poverty-driven exclusion from education is widespread, Angola's problem is not poverty but wealth. Its oil wealth could comfortably ensure free education for all. The oil reserves under exploitation are estimated at $40 billion and signing bonuses for the exploration of potential oil fields were estimated in 2006 at $100 million.[44] And yet, key public sectors, such as education, are starved of funds. In addition, there is little knowledge about the numbers of children there may be in the country. Educational and other statistics are based on mathematical models because the size of the population is not known.

This leaves international and foreign agencies working in education with a difficult choice. They can to carry out their programmes at their own cost so as to reach as many beneficiaries as they can afford to. If they openly challenge biased governmental priorities, they risk the closure of their programmes or worse. That risk is high. In a typical case, the Human Rights Committee found Angola's government to have violated human rights of Marques de Morais, a representative of the Open Society Institute. The government's response to his articles critical of Angola's president had been to have him arrested at gunpoint by 20 armed policemen and placed in incommunicado detention.[45] Such cases illustrate how little leverage external agencies working in Angola have in questioning governmental priorities.[46]

Angola's oil wealth and decades of warfare have enabled the country's *oiligarchy* to transfer the cost of education to international and foreign aid agencies, diverting public revenues to other purposes.[47] Human rights organizations and those exposing corruption have documented the unwillingness of the government to deploy available resources to benefit the population. Angola was occasionally on the international peace-making agenda during the previous decades but these efforts were largely unsuccessful. The war came to an end with the death of the main opposition leader and, probably, the war-weariness of most combatants. The high price of warfare is still reflected in the priority for military expenditure in the government's budget and the associated battle for control over Angola's oil wealth. [48]

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[44] Hoyos, C. – Angola aims to redistribute its oil wealth, Financial Times, 1 December 2005.
[45] Human Rights Committee – Communication No. 1128/2002, *Marques de Morais v. Angola*, Views of 29 March 2005.
[46] Le Billon, P. – Aid in the midst of plenty: oil wealth, misery and advocacy in Angola, *Disasters*, vol. 29, 2005, No. 1, p. 18.
[47] Hodges, T. – *Angola from Afro-Stalinism to Petro-Diamond Capitalism*, James Currey/Indiana University Press, 2001.
[48] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 297-303.

The end of warfare was expected to generate a peace dividend. Indeed, in January 2004 the Security Council assessed information on peace-dividends to benefit children where conflicts had been brought to an end, such as in Angola. The representative of Angola noted that "more than 600,000 children affected by conflict had been successfully reintegrated in the education system" but education was not made free. Only birth registration certificates were exempt from the charges that are levied on all public services.[49] The Human Rights Watch has provided a part of the explanation for this transfer of the cost of public services from the government to the population:

> The Angolan government has consistently mismanaged its substantial oil revenues. The sums involved are staggering. From 1997 to 2002, unaccounted for funds amounted to some $4.22 billion. In those same years, total social spending in the country - including Angolan government spending as well as public and private initiatives funded through the United Nations Consolidated Inter-Agency Appeal - came to $4.27 billion. In effect, the Angolan government has not accounted for an amount roughly equal to the total amount spent on the humanitarian, social, health, and education needs of a population in severe distress.[50]

The Global Witness has carried out similar investigations to discern where Angola's oil wealth might have gone.[51] One of its conclusions has been that "the Angolan government has not yet accounted for the missing billions but is seeking another injection of cash from the donor community without providing any assurance that this cash will benefit the Angolan people".[52] The IMF found in 2000 that Angola's defence expenditure exceeded investment in education almost ten times.[53]

In the first post-independence years, education fared much better. Tuition fees were abolished in 1977 and school enrolments in primary education trebled by 1979.[54] Then they plummeted during decades of warfare. Governmental commitment to free and compulsory education disappeared in the early 1990s with its shift to the free market. The 1992 Constitution obliges the state only to "promote access to education" and does not promise either free or all-encompassing primary education. UNICEF reported in 2004 that it was putting "one million children back in school".[55] Sustaining that process through domestically generated public funding does not appear to be high on the government's agenda. Angola may have one of the fastest growing African economies but its benefits are not trickling down to the population.

Contemporary global efforts to promote or even impose good governance face Angola's oil wealth as the key obstacle. Alerting African countries to the likely impact of the scramble for their oil wealth, Fred Mudhai summed up developments in Angola as follows:

> While Angola was engaged in talks with the IMF over transparency in its oil revenue accounting, China offered the country a massive $2 billion loan.[56]

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[49] 'Despite progress in protecting children in armed conflict, general situation remains grave and unacceptable, Security Council told', Security Council, 4898th meeting, Press release SC/7985, 20 January 2004, p. 7.
[50] Human Rights Watch - *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights,* January 2004, available at www.hrw.org/reports/2004/angola0104
[51] Global Witness – *Time for Transparency: Coming Clean on Oil, Mining and Gas Revenues*, March 2004, this and previous reportas are available at www.globalwitness.org
[52] Laura Riberiro - Aid to Angola: Will it help to boom or bust? *Development Today*, no. 7/2003.
[53] IMF – Angola: Recent Economic Development, Staff Country Report 00/111, mimeographed, August 2000.
[54] U.N. Doc. CEDAW/C/AGO/1-3 (2002), p. 23.
[55] Mario Ferrari (UNICEF Representative in Angola) - The rebuilding starts with children, *International Herald Tribune*, 16 April 2004.
[56] Mudhai, F. – Chinese assistance to Africa may not necessarily be good, *The Sunday Standard* (Nairobi) 28 August 2005.

Benin

Despite the constitutional guarantee of progressively free education, governmental reports under human rights treaties and its self-assessments within the EFA process confirm that charges are levied. In its 1999 report under the Convention on the Rights of the Child, the government described its educational performance thus:

> The obligation to attend school has been statutory since 1975 but has remained a pious hope.[57]

The most important reason was (and is) the cost of education, 25% of which is borne by parents.[58] The 1990 Constitution states that "primary education shall be compulsory" and "the State shall progressively ensure that public education is free of charge". However, the government reported in 2001 that "the State fixed the rates of school fees" thus:

> In an effort to avoid major regional disparities in contributions to the cost of nursery and primary education, the State, by Circular No. 3888/MENRS/CAB/DC/DEP/SPES of 17 September 1996, fixed the rates of contributions to school fees as follows: Atacora, Borgou: minimum CFAF 500, maximum CFAF 1,000; Mono, Zou: minimum CFAF 1,000, maximum CFAF 2,000; Atlantique, Ouémé: minimum CFAF 1,000, maximum CFAF 3,000.[59]

An earlier decision to exempt girls in rural areas from tuition fees was found inoperable by the Committee on the Rights of the Child: "girls are still denied access to education [as] school administrators continue to resist the new policy, asserting that non-payment of school fees for girls impacts negatively on school budgets".[60] The government has explained that "the parents of school children bear the cost of the furniture and educational materials used by their children and pay fees ('*droits d'écolage*'). Their contributions in the education sector also consist of various fees and charges ('*cotisations*')".[61] The reason for imposing charges has been identified by the government thus:

> The successive structural adjustment programmes to which Benin has been subjected since 1989 have not yet enabled it to adopt a detailed plan for implementation of the principle of compulsory and free primary education for all.[62]

The World Bank has estimated the cost of education for 1998, as 57% borne by the government, 28% by the parents, 5% by NGOs and the rest by local communities and the schools themselves.[63] The PRSP pledged in 2003 that primary education would be universalized, and a pillar of that strategy would be "continued subsidies for free enrolment in public primary schools".[64] This commitment apparently refers only to a partially free education in the future because other-than-enrolment charges are to be continued.

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[57] U.N. Doc. CRC/C/15/Add.106 (1999), para. 53.
[58] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 67.
[59] U.N. Doc. E/1990/5/Add.48 (2001), paras. 322 and 324.
[60] U.N. Doc. CRC/C/15/Add.106 (1999), para. 53.
[61] République du Benin, Ministère de l'Education Nationale et de la recherche scientifique: *Education pour tous - Bilan à l'an 2000, Rapport final*.
[62] U.N. Doc. E/1990/5/Add.48 (2001), paras. 396-397.
[63] Banque mondiale – *Le système éducatif béninois: Performance et espaces d'amélioration pour la politique éducative*, Série Développement Humain de la Région Afrique, Document de travail, janvier 2002, p. 40.
[64] Benin - Poverty Reduction Strategy Paper 2003-2005 (March 2003), available at www.worldbank.org.

Botswana

Botswana is hailed, and with good reasons, as an exception to military coups and armed conflicts which have affected so many African countries. Its natural wealth, especially diamonds, has fuelled its development. Nevertheless, Botswana may have the highest HIV prevalence rate in the world,[65] and this cautions against rose-tinted assessments of the model of development - and education - it has chosen. Experiences from similar countries highlight the elimination of gender discrimination as a pillar of HIV/AIDS prevention and the crucial role which education can play. Education is generously funded, with 25% of the government's budget allocated to it, and there is a widespread image that primary school is both free and all-encompassing. It is, however, only partially free and 19% of children do not even start primary school.[66]

The government of Botswana claims that, subsequent to the abolition of school fees in 1987, it "provides free primary, secondary and technical education and to some extent free university education".[67] While school fees were formally abolished, 'donations' have continued to be collected in the form of cash, free labour, transportation or school meals.[68] Boarding schools are used for primary-school children from remote areas and this inevitably increases the cost of education. Some of it has been relocated from governmental to family budget. This comprises the cost of meals for children while boarding as well as the cost of their transportation home and back to school during their year-long separation from their families. Moreover, access to this relatively-free education excludes all children without citizenship.[69] Official statistics do not record their numbers, hence it is not known how many children can access school only after paying the required fees.

The fact that education is not a constitutionally guaranteed right has made governmental policies on education immune from human rights challenges. The government's commitment is to attain 10 years of basic education by 2015. Its long-term strategy is not to affirm education as a human right but only to make it 'available'.[70] School fees have been introduced in basic education at the rate of an annual 300 pula ($54) in junior and 450 pula ($81) in senior secondary schools. The Minister of Education, Jacob Nkate, said: "We are asking the parents to share costs as government cannot to everything due to budgetary constraints".[71]

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[65] Updated statistics are available at www.unaids.org

[66] The EFA/UNESCO *Global Monitoring Report 2006* has reported the net enrolment rate in primary school of 81%, with 21% of boys and 18% of girls out of school.

[67] U.N. Doc. CERD/C/407/Add.1 (2002), para. 36.

[68] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 68.

[69] U.N. Doc. E/CN.4/2006/45/Add.1, para. 45.

[70] *Millennium Development Goals. Status Report 2004: Achievements, Future Challenges and Choices*, Government of Botswana, Gabarone, 2004.

[71] Botswana: Access to education may be limited by new fees policy, *IRIN News*, 5 December 2005, available at www.irinnews.org

Burkina Faso

The law made education compulsory in 1996 for all children aged 6 to 16 but this has not yet been translated into practice, ten years later. In 2003, the Ministry of Basic Education reported that only 41% of boys and 31% of girls attended primary school.[72] The government pinpointed the reasons for such underperformance as the "lack of school infrastructure, human resources, [and] teaching materials" and added that Ano measures have been taken to ensure that education is free".[73]

The law stipulates that education should be compulsory but not that it should be free. Also, there is no commitment to make primary education free in the PRSP. Rather, the PRSP anticipated that girls in 20 provinces would be exempt from monthly school fees.[74] Alongside such charges levied in public schools which keep them un-free, the number of schools is insufficient. Thus, many parents are forced to send their children to private schools and pay the full cost of education.[75] The ability to pay for education is limited to a small segment of the population. Of an estimated 12 million, only 50,000 have jobs in the formal sector and get regular salaries.[76]

Formal announcements whereby schools were instructed not to charge fees have been made many times. Because public funds which the schools needed to function were not provided, schools have continued levying charges. The government has described the ensuing conflict between formally adopted governmental regulations and the reality on the ground. Children have been expelled from school for non-payment of school fees "despite the legal ban on expelling children before they reach the age of 16".[77]

Burundi

In August 2005, Pierre Nkurunziza made an announcement that "primary school pupils will no longer pay school fees".[78] The new government of Burundi thus joined a range of transitional governments, reaching back to Malawi in 1994 or Kenya in 2002, whose key electoral pledge had been to make education free.

Reflecting the ambivalence of the previous regimes towards human rights, the Constitution guarantees "equal access to education".[79] It does not affirm the right of each child to education which would entail corresponding obligations of the state. Also, the manner in which educational planning was carried out left a lot to be desired. Burundi's 2004 EFA Plan of Action posited the number of primary-school children who would need to be schooled to the year 2015 to be 2,075,793 and they would need 27,677 classrooms and 36,417 teachers.[80]

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[72] Kobiané, J.-F. et al. – Parental death and children's schooling in Burkina Faso, *Comparative Education Review*, vol. 49, 2005, No. 4, p. 475.
[73] U.N. Doc. CRC/C/65/Add.18 (2002), para. 341.
[74] Burkina Faso - Poverty Reduction Strategy Paper (May 2000), available at www.worldbank.org
[75] U.N. Doc. CRC/C/65/Add.18 (2002), paras. 155, 357, and 515.
[76] The World Bank's 'Doing Business' report, *The Economist*, 17 September 2005.
[77] U.N. Doc. CRC/C/65/Add.18 (2002), para. 515.
[78] Burundi: New president lays out policy, *IRIN News*, 29 August 2005, available at www.irinnews.org (September 2005).
[79] U.N. Doc. CRC/C/3/Add.58 (1998), paras. 55 and 50.
[80] *Burundi: Plan d'action national d'Education Pour Tous (EPT),* October 2004, available at www.unesco.org/education/efa/db

Two features of that EFA Plan merit attention:

- The first one is its scrupulous avoidance of any mention of decades of conflict and violence. Indeed, the words Hutu and Tutsi do not appear anywhere in the EFA Plan. That education could have been exempt from the political agreement that ended warfare is difficult to imagine. Chege Mbitiru has explained that "the agreement under which Mr Nkurunziza [the President of Burundi as of August 2005] will govern entrenches ethnicity as Burundi's basic law. Hutus and Tutsis are to share power this way and that way and in such and such proportions".[81] And yet, the EFA Plan converted children to numbers and presented educational planning as a purely technical exercise.

- The second interesting feature is that, after years of armed and political conflict, it is obvious that precise numbers of school children in the EFA Plan originated from mathematical models that extrapolated results of a pre-independence census. How many school children there may be in Burundi is not known but this is hidden behind such precise figures. Indeed, the number of children within primary-education age range (7 to 12) has been set at 1,158,000 and that figure is used to create educational statistics.[82] How close or far that figure may be from the real number of children who should go to school is not known.

The education law mandates 6 years of primary education, thus all children between the age of 7 and 12 should go to school. The most important reason why many could not go to school alongside warfare was the cost of education, which the new government has promised to reduce. The (previous) government claimed in 1998 that "the fees which parents have to pay for primary education are relatively affordable". It did not provide evidence that this was indeed the case. On the contrary, it described how the formal prohibition of excluding poor children from school did not work in practice:

> The ministerial directive is firm and clear: there shall be no discrimination against indigent children. In practice, however, headmasters continue to send indigent pupils home, if they have not paid their fees.[83]

Moreover, the previous government increased charges: "An increase in the registration fee ('*minerval*') is planned for school year 1999-2000. A part of it will be earmarked for funding school textbooks, for the functioning of primary schools and for school inspections".[84]
In 2005, UNICEF's representative, Catherine Mbengue, highlighted the consequence: only a third of school age children attended school. [85]

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[81] Mbitiru, C. – A chance to brag over Burundi deal, *Daily Nation* (Nairobi), 29 August 2005.
[82] EFA/UNESCO Global Monitoring Report 2006, available at www.unesco.org
[83] U.N. Doc. CRC/C/3/Add.58 (1998), para. 195.
[84] République du Burundi, Ministère de l'Education Nationale: *Bilan de l'Education Pour Tous à l'an 2000. Rapport préliminaire*, Bujumbura, Août 1999.
[85] IRIN – Burundi: New call for free child education, 1 July 2005, available at www.irinnews.org

Cameroon

The Constitution affirms that "the State shall guarantee the child's right to education. Primary education shall be compulsory". The government has avoided the human rights language and has referred only to "equality of opportunity for access to education".[86] Also, it affirmed that education was not free and described the distribution of its cost thus:

(a) Parents of pupils, 80 percent of whose required contribution goes to fund school operating costs;
(b) Decentralized local communities (communes), through programmes for the construction and equipment of schools and anti-malaria prophylaxis or "*nivaquinization*" for pupils;
(c) Parents' associations, which make an appreciable contribution to the outfitting and running of schools.[87]

These financial barriers impeding the education of the vast majority of the poor in the country were diminished after the government's political commitment to make primary education free. In his annual message to the youth of the country, in 2000, the President of the Republic announced that public primary education would be free. The delegation of Cameroon announced before the United Nations Commission on Human Rights that "beginning with the new school year (October 2000), primary education will be compulsory and free in Cameroon".[88] Subsequently, the government noted in its PRSP that, a year later, enrolments increased to 95% as the result of the government's decision to eliminate school fees.[89]

The changed governmental policy eliminated some but not all financial obstacles to universalizing primary education. The decrease of teachers' salaries by 50% in 1997 [90] has not yet been remedied. Teachers' salaries do not enable them to teach because they are below the subsistence level. Moreover, not all fees have been eliminated. Education International has reported that the costs of uniforms and textbooks continue to be a barrier for many poor children.[91] In addition, the Cameroonian press reported in 2005 that charges were still levied for medical examinations and certificates (which have been charged a long time under the name of 'insurance') as well as for examinations.[92]

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[86] U.N. Doc. CRC/C/28/Add.16 (2001), paras. 192-193.
[87] U.N. Doc. CRC/C/28/Add.16 (2001), para. 217.
[88] Discours de son excellence Monsieur A. Kontchou Kouomegni, ministre d'etat charge des relations exterieures du Cameroon, 56eme session de la Commission des Droits de l'Homme, Geneva, le 22 mars 2000.
[89] Cameroon: Poverty Reduction Strategy Paper, April 2003, available at www.worldbank.org
[90] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 120.
[91] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 63.
[92] Rentrée: les inscriptions s'accélèrent, *Cameroon Tribune*, 1 septembre 2005, available at www.cameroon-tribune.cm

Cape Verde

The Constitution includes an unusual provision on education, whereby everybody is free to learn, to receive education, teach and attend school.[93] There is no explicit guarantee of the children's right to education nor is there an obligation for the government to make at least primary education free. Nevertheless, over two-thirds of the population are literate. It is important to add that the population is small (estimated at 435,000) and the number of those who migrated abroad is estimated to be twice the size of those who have remained in Cape Verde.[94]

In its PRSP, the government has affirmed that, although it allocates 7% of GDP to education, primary education is not free: "the efforts of parents are estimated at four-tenths of the state's expenditure".[95] Indeed, the co-responsibility of parents is prioritized in governmental policy: "the State, together with families, must bear the costs of compulsory education".[96] There is no supplementary guarantee that the state will act *in loco parentis* for children who do not have parents and for those children whose parents simply cannot afford the cost of education. The six years of primary school encompass children aged 6 to 12. Secondary education is even nominally for-fee. Exceptions are formally provided only for the poorest families,[97] and such families have to prove that their annual income is below $1700.[98]

Central African Republic

There is no explicit guarantee of the right to education in the 1995 Constitution. Rather, "children are guaranteed access to sources of knowledge, instruction, culture and vocational training".[99] The government has admitted that education "for the most part, depends on international assistance". It has also affirmed that primary school is not free: "school fees for foreign children enrolled in Central African public schools are not the same as those of citizens".[100]

The fate of education considerably worsened in the 1990s and educational enrolments decreased to 43% in 2000 from 46% in 1990. The reasons were consecutive political crises and armed conflicts as well as corruption.[101] Educational performance has not improved after the turn of the millennium. Education International has reported insufficient budgetary allocation to education as a barrier to improvement, especially arrears in the payment of teachers' salaries.[102]

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[93] U.N. Doc. CRC/C/11/Add.23 (2001), para. 149.
[94] De Figueiredo, A. – The price of progress, *New African*, August-Septmeber 2005, p. 46.
[95] Interim Poverty Reduction Strategy Paper (PRSP), Republic of Cape Verde, Ministry of Finance and Planning, Praia, Jan. 2002, available at www.worldbank.org
[96] U.N. Doc. CRC/C/11/Add.23 (2001), para. 149.
[97] US State Department Country Report on Human Rights Practices 2002, www.state.gov/g/drl/rls/hrrpt/2002
[98] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 67.
[99] U.N. Doc. CRC/C/11/Add. 18 (2000), paras. 67-68.
[100] U.N. Doc. CRC/C/11/Add.18 (2000), para. 68.
[101] République Centrafricaine – *Objectifs du millénaire por le développement 2003-2015: Rapport nacional,* Septembre 2004.
[102] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 68.

The President, François Bozizé, stated in September 2005 that salaries of civil servants, overdue from January 2005, had just been paid while students' allowances and old age pensions remained unpaid for one full year.[103] Schools reopened in January 2006 after they had been closed ten weeks because of a strike by unpaid teachers and other civil servants. President Bozizé has anticipated a fiscal emergency: "We are on the verge of a catastrophe".[104]

Chad

The poor are defined in Chad as "people with no possessions who cannot enrol their children in school".[105] Despite a constitutional guarantee whereby education provided by the state should be free, the government acknowledged in 1996 that in practice "the pupils' parents bore 70% of the cost of education".[106] Moreover, 15% of schools are 'spontaneous', established and financed by communities to remedy the government's neglect of education.[107] Adoum Mbaïosso claimed in 1990 that more than 90% of Chad's population was illiterate and that school was "a social niche for the privileged in the ocean of the illiterates".[108] To extend the reach of education, people have had to establish and finance schools themselves.[109]

Despite prospects of oil wealth in Chad, the constitutional guarantee of free education is unlikely to be translated into reality. A World Bank-designed arrangement for channelling oil wealth into poverty reduction collapsed when the government changed its policy in December 2005, having decided to allocate oil revenues to state security as the priority sector.[110]

The forthcoming oil wealth was to be allocated to poverty alleviation and the scheme for doing so was supposed to constitute a World Bank's 'best practice' model. A special Monitoring and Control Commission for Oil Revenue (*Collège de contrôle et de surveillance des revenues pétroliers*) was created. Its first report, in July 2005, came two years after oil had started flowing and contributing 40% of the government's budget. Funds for poverty reduction, in which education was identified as one of the principal beneficiaries, should have become available. This was not the case and the Commission's findings made the World Bank "very concerned".[111]

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[103] Tuquoi, J.-P. – L'appel du Centrafricain Bozizé, à la tête d'un pays ruiné, *Le Monde*, 16 septembre 2005.
[104] Central African Republic: Schools reopen as two-month strike ends, *IRIN News*, 5 January 2006, available at www.irinnews.org
[105] Chad: National Poverty Reduction Strategy Paper, June 2003, p. 41, available at www.worldbank.org
[106] Rapport national sur le developpement de l'education, Commision nationale tschadienne pour l'UNESCO, N'Djamena, juillet 1996.
[107] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 157.
[108] Mbaïosso, A. – *L'éducation au Chad: Bilan, problèmes et perspectives*, Éditions Karthala, Paris, 1990, pp. 140 and 247.
[109] Esquieu, P. & Péano, S. – *L'enseignement privé et spontané dans le système éducatif tchadien*, Institut international de planification de l'éducation, Paris, 1994, p. 78.
[110] Chad: Parliament defies World Bank, scraps 'future generations' oil fund, *IRIN News*, 30 December 2005, available at www.irinnews.org
[111] World Bank reaction to Chad-Cameroon Pipeline Oversight Committee's report on mission to sites of projects financed by oil revenues, News Release No. 2006/038/AFR, 26 July 2005.

Urbain Moyombaye has said: ”I want to tell the World Bank that all the publicity they made around this project has amounted to nothing”. Indeed, the World Bank has implicitly acknowledged that this was so and pulled out.[112]

Commercial exploitation of oil became feasible through vast foreign investments in the late 1990s and the export of oil through Chad-Cameroon pipeline started in July 2003. This altered what had previously been known as ‘the Chad rule’, that is, global silence on the human rights situation in poor African non-English-speaking countries.[113] The interest for Chad triggered by its oil wealth is not likely to benefit human rights, however. Chad was placed on the United Nations human rights agenda in 2003,[114] on the eve of the completion of the oil pipeline and immediately taken off.

Questions relating to the use of Chad’s oil wealth have been placed on the international agenda but, as yet, remain unanswered. The priority of the US government seems to be continued military support to the government of Chad, justified by the threat of terrorism.[115] The continued French military support is justified by preventing a spill-over of the crisis in the neighbouring Darfour.[116] Oil may well be in the background in both cases.

Oil wealth has not made a visible difference in the government’s conduct, notably its obligation to pay its own employees. The government noted in 1997 that “difficulties in paying civil servants regularly reduce the chances of completing a normal school year and undermines the willingness of State employees to collaborate in implementing the programme”.[117] This continued into 2005, and triggered strikes by unpaid public employees, including teachers.[118] Amongst the unpaid or poorly paid civil servants, temptations of oil wealth may have been too hard to resist, hence widespread corruption. The Ministry of Education has estimated that only 38% of the funds budgeted for education actually reach schools.[119]

Congo/Brazzaville

In its EFA Plan, the government described the road travelled thus far by highlighted that education had been first ‘nationalized’ and then privatized. Soon after independence, in 1965, education had been ‘nationalized’ (which meant that only state schools were allowed) and private education was legalized after the shift to the free market in 1995.[120] That denial of freedom in education in 1965-1995 was similar to many other African countries and was not internationally challenged as was customary during the Cold War.

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[112] Musa, T. – Chad-Cameroon: Oil, injustice and despair, *New African*, January 2006, p. 75.
[113] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 295-296.
[114] Amnesty International – *Contracting out of Human Rights: The Chad-Cameroon Pipeline Project*, Doc. POL 34/12/2005, London, September 2005, p. 15.
[115] Khatchadourian, R. – Chad: Blowback in Africa, *International Herald Tribune*, 29-30 April 2006.
[116] Chad:The French connection, *The Economist*, 22 April 2006.
[117] U.N. Doc. CRC/C/3/Add.50 (1997), para. 176.
[118] Poirson, A.-C. – Où est passé l’argent du pétrole tchadien?, *Le monde diplomatique*, Septembre 2005.
[119] Gray, I. and Reisch, N. – *Chad’s Oil: Miracle or Mirage? Following the Money in Africa’s Newest Petro-State*, Catholic Relief Service and Bank Information Center, Washington D.C./Baltimore, 2005, p. 56.
[120] Republique du Congo – *Plan national d’action de l’éducation pour tous (PNA/EPT*), Ministère de l’enseignement primaire et secondaire charge de l’alphabetisation, Brazaville, novembre 2002.

The 1992 Constitution has stipulated that public education should be free and that education should be compulsory until children reach 16 years.[121] The heritage of governmental control has remained in a milder form, with the Constitution stipulating that all education "shall be placed under the surveillance and control of the State," [122] and the 1995 education law clarifying that this means only oversight and pedagogical control.[123]

The 1995 education law has repeated the guarantee of free public education but also affirmed the right to establish private schools. Impoverishment of public education has contributed to the expansion of private schools, and they reached a third in 2002 (737 of 2,495), creating an exodus from public education by all who could afford the cost. Moreover, the government has reported that "primary schools function because of the financial contributions of the parents" despite the constitutional guarantee whereby public education should be free.[124] The reason is not poverty. Oil exports could easily generate sufficient funds to educate all children, if they were deployed for that purpose.[125] In its 2002 EFA Plan, however, the government referred to its debt service which amounted to 91% of the budget and pointed out that a demand for its repayment would completely paralyze the country.[126] Years of oil exports have led to impoverishment rather than enrichment of the country's public sector, including education.

The 2002 Constitution did not introduce any change in education except for enriching its governmental infrastructure by no less than three ministries: one for primary and secondary education, another for vocational and technical education, and the third for university education and scientific research.[127] Available statistics on education are fragmentary but unofficial estimates are that less than half of school age children go to school, considerably fewer than two decades ago.[128] One important reason is the reliance on parental financial contributions ('*cotisations*') in primary school. Many parents cannot finance the education of their children because of impoverishment. Insufficient numbers of teachers in public schools force parents to move their children to private schools. In practice, children's education depends on the financial capacity of their parents. The government has admitted that more than a quarter of school aged children are excluded from school due to its cost.[129]

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[121] "Toute personne a droit à l'éducation. Tout l'enseignement est place sous la sourveillance et le contrôle pédagogique de l'État. L'ensegnement public est gratuit. L'enseignement fundamental est obligatoire. La scolarité est obligatoire jusqu'à l'âge de size (16) ans". Constitution de la Republique du Congo du 15 mars 1992, article 37, *La situation des droits de l'homme et de la justice en République du Congo: Rapport de misión,* Comisión internationale de juristes, Genève, 1996, Annexe 1, p. 115.
[122] *Education pour tous: Bilan à l'an 2000. Rapport national du Congo*, www.unesco.org/education/efa
[123] "Toute personne a droit à l'éducation. Tout l'enseignement est place sur la surveillance et le contrôle pédagogique de l'Etat. L'Etat veille à l'égal accès à l'enseignement et à la formation profesionnelle. L'enseigement public est gratuit. L'enseigement fundamental est obligatoire. Le droit de créer des écoles privées est garanti". Loi 25/95 du 17 novembre 1995.
[124] *Education pour tous: Bilan à l'an 2000. Rapport national du Congo*, www.unesco.org/education/efa , translation by the author.
[125] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 296-297.
[126] Republique du Congo – *Plan national d'action de l'éducation pour tous (PNA/EPT)*, Ministère de l'enseignement primaire et secondaire charge de l'alphabetisation, Brazaville, novembre 2002.
[127] Information is available on the official site of the government www.gouv.cg (July 2005).
[128] Congo-Brazzaville: Laughing looters, *The Economist*, 7 May 2005.
[129] Republique du Congo – *Plan national d'action de l'éducation pour tous (PNA/EPT)*, Ministère de l'enseignement primaire et secondaire charge de l'alphabetisation, Brazaville, novembre 2002.

Congo/Kinshasa

On 18 December 2005, half of the 24 million registered Congolese voters adopted a new Constitution through a referendum.[130] Although warfare had not been stopped throughout the country, peace-making progressed to the Constitution for Congo, and further to elections. The Constitution has listed and described the rights which people should have, the government should guarantee, and the courts should enforce. All that necessitates country-wide institutions, which have yet to be established. Furthermore, much controversy, as always, revolves around who the people are, who should be defined as Congolese so as to be entitled to the full set of rights envisaged in the Constitution.

The history of international involvement in Congo is as long as its existence as a formally independent state, dotted with unsuccessful attempts at peace-making and marked by long support for a government (headed by president Mobutu) hostile to human rights.[131] The educational toll has been high. A guarantee of the right to education formed part of the 1986 Transitional Constitution, promising free education for all children up to the age of 15. Implementing measures were never put in place. The government described in 2000 the abyss between the law and the reality by stating that the law required "primary education to be free of charge" but added:

> The State has been shifting the burden massively on to parents, who must finance the running of schools and the teachers' pay. In short, they must meet very heavy school expenses calculated in hard currency, whereas most heads of family are unemployed or have not been paid for several months.[132]

Parents have been the 'milk cows' of Congolese education as Juvénal Bazilashe Balegamire has found,[133] because they have shouldered its whole financial burden throughout the past decades. The 2005 Constitution is supposed to change this situation. It guarantees the right to education, specifying that primary education is compulsory and free in public schools.[134] There is no mention of the duration of primary school and this may translate into only a few years of schooling. Provincial authorities are mandated to provide pre-school, primary and secondary education (on the basis of the formula whereby the provinces keep 40% of the revenue they raise) while the establishment of schools is a shared responsibility of central and provincial authorities. The reality at the time when these constitutional guarantees were adopted was described by Antoine Roger Lokongo thus:

> There have been strikes by teachers and civil servants who want their salary arrears paid. The average salary is US$10 a month in a country where rent begins at $50 a month and its costs $5 to top up one's mobile phone with 500 units.[135]

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[130] DRC says 'yes' to constitution, 22 December 2005, www.businessinafrica.net.
[131] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 255-264.
[132] U.N. Doc. CRC/C/3/Add.57 (2000), paras. 25 and 15.6
[133] Balegamire, J.B. – Children, children's rights and the context of their education in South Kivu in the Democratic Republic of the Congo, *Prospects*, vol. 29, No. 2, June 1999, p. 243.
[134] "Toute personne a droit à l'éducation scolaire. Il y est pourvu par l'enseignement national. L'enseignement primaire est obligatoire et gratuity dans les établissements publics". (Article 43) Projet de Constitution de la République Démocratique du Congo, adopted by the Senate in May 2005 and approved by the referendum of 21 December 2005, available at http://confinder.richmond.edu
[135] Lokongo, A.R. – Congo: A nation in intensive care, *New African*, February 2006, p. 47.

Côte d'Ivoire

The educational toll of conflicts is poorly documented for understandable reasons, and Côte d'Ivoire is no exception. It has been an exception because the usually reticent African Commission on Human and Peoples' Rights condemned human rights violations in Côte d'Ivoire in 2004.[136]

Following a military coup in 1999, the country was gradually divided along the north-south line with the government excluded from the north.[137] As of September 2002, the northern-western half of the country is under the control of the FN (*Forces nouvelles*) and the southern part under the control of the government. International efforts to reunite the country through an agreement on power-sharing have not borne fruit. Elections scheduled for October 2005 have been postponed, international mediators (GTI, le *Groupe de travail international*) could not report to the Security Council that a fragile cease-fire was progressing into peace-making.[138] The Security Council has anticipated sanctions targeting specific individuals for blocking peace-making and a confidential list of 95 people suspected of grave crimes was prepared by the OHCHR.[139] Efforts at peace-making have continued as did humanitarian aid. Both, as elsewhere, have excluded education although it has been paralysed in most parts of the country. And, once peace-making bears fruit, one wonders how the conflict will be explained to children, who are one of its principal victims.

The educational toll of the on-going conflict will become known once it is brought to and end. A part of the conflict revolves around citizens' rights, including in education. The 1998 census revealed that 26% of the population were not citizens of Côte d'Ivoire, many are likely to be immigrants but some cannot prove citizenship because of the widespread lack of identity documents. Some 3 million people do not have identity documents out of a population estimated at 17 million.[140]

Once the country reverts to peace-time conditions, the constitutional and legal basis of education-related rights and freedoms will probably have to be altered. The existing constitutional guarantees are unclear. The government reported in 2000 that, by law "all citizens are guaranteed the right to education, as a means of acquiring knowledge, developing their personality, raising their living standards, training, taking an active part in social, cultural and professional life and exercising their citizenship". The vagueness of that guarantees was criticised by the government itself. Also, it noted that primary school should have been but was not free. Its accomplishment was to reduce registration fees for public schools.[141] Moreover, the need to define the ends and means of education has been high-lighted by Sassongo Silue. What he has dubbed 'the civil servant mentality' permeates formal education, the goal of securing civil-service life-long employment.

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[136] Murray, R. – Developments in the African human rights system 2003-4, *Human Rights Law Review*, vol. 6, 2006, No. 1, p. 163.
[137] Akarue, J. – Côte d'Ivoire: The French connection, *New African*, December 2004; Côte d'Ivoire: A perilous peace deal, *The Economist*, 16 April 2005.
[138] Rémy, J.-P. – Les 'patriotes' de M. Gbagbo, en colère contre la dissolution du Parlement, paralysent Abidjan, *Le Monde*, 16 January 2006.
[139] Tuquoi, J.-P. – Le Conseil de sécurité de l'ONU est prêt à des sanctions, *Le Monde*, 1 septembre 2005.
[140] Côte d'Ivoire: back to reality, *The Economist*, 1 July 2006.
[141] U.N. Doc. CRC/C/8/Add.41 (2000), paras. 19, 81-83, and 173.

This goes back to "the colonial schooling system that was meant to train middle-level manpower for the colonial administration" which, he argues, the African elite has merely updated.[142]

The conflict-induced collapse in the provision of public services has precluded any schooling for more than one million children.[143] Even before recent militarization, the government reported that "many children find themselves on the street without having completed primary education".[144] Many of them, especially boys, will by necessity rather than choice end up as military recruits for one or the other side in the conflict.

Equatorial Guinea

The extremes of wealth and poverty overlap in Equatorial Guinea. Its GDP per capita made it the sixth wealthiest country in the world in 2004, while its human development index ranked it at the very bottom.[145] Equatorial Guinea's rate of economic growth was reportedly 70% in 2003.[146] Its tiny population could easily enjoy the fruits of oil exports and, yet, not even primary school has been universalized.

Although the 1991 Constitution guarantees "the right to general basic education which shall be compulsory, free and guaranteed", half of school age children were not attending school in the 1990s. In 2001, the last year when the Special Rapporteur of the United Nations Commission on Human Rights on Equatorial Guinea visited the country, the budgetary allocations to education decreased further and, thus, also its coverage.[147] The situation has not improved subsequent to the inflow of the oil wealth, as described by César Chelala:

> Most of Equatorial Guinea's primary and secondary schools don't support basic conditions for children's education. Sixty percent of schools don't have potable water, and 50 percent don't have toilet facilities. As a result, there is a high rate of children dropping out of school or repeating classes. In some schools, there are up to 96 children per room.[148]

Equatorial Guinea had been the first African country formally placed on the United Nations Agenda for human rights violations, in 1971, and it was kept on the agenda three decades.[149] It was not taken off the agenda because of an improvement in the human rights situation. Rather, the reason was its oil wealth and its consequent ability to mobilize support amongst fellow-governments to halt further inquiries into human rights violations.[150]

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[142] Silue, S.J. – *Education, Literacy and Development in Africa*, CASAS (Centre for Advanced Studies of African Society), CASAS Book Series No. 10, Cape Town, 2000, pp. 65 and 70.
[143] Security Council – Second report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, U.N. Doc. S/2004/697, paras. 47 and 50.
[144] U.N. Doc. CRC/C/8/Add.41 (2000), para. 81.
[145] Human development index, *The Economist*, 24 July 2004.
[146] Equatorial Guinea, the last rush for black gold, Advertising supplement, *Far Eastern Economic Review*, 28 August 2004.
[147] U.N. Docs. E/CN.4/1996/67 (1996), paras. 66-67 and E/CN.4/2001/38 (2001), para. 84.
[148] Chelala, C. – The boom that only oils the wheels of corruption, *International Herald Tribune*, 6 August 2004.
[149] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 98-100.
[150] Shaxson, N. – UN accused over human rights, *Financial Times*, 20-21 April 2002.

There is no indication that the situation has improved, on the contrary, but attention has shifted from the abuse of physical power to the abuses of economic power. Reports of the misappropriation of the rapid and huge oil wealth by the president, Teodoro Obiang Nguema and his family (many of who are ministers in his government) have extended from NGO reports to congressional inquiries in the USA. Detailed information on the bank accounts and the purchases by the ruling family has been widely publicised.[151] The United Nations office in Equatorial Guinea has remained silent. Bacar Abdouroihamane, the UN resident coordinator, has explained:

> We work hand in hand with the Government and this is crucial because we rely financially on the Equatorial Guinean government.[152]

Eritrea

Descriptions of the long armed struggle for Eritrea's independence included well-deserved praise of the EPLF's (the Eritrean People's Liberation Front) accomplishments in education. Despite three decades of warfare, education was compulsory on the premise that "no young person becomes a fighter until they can read and write and understand that they may die". Girls and boys were educated together and young people encouraged to master their mother tongue as well as English and Arabic.[153]

Post independence, the government's pledge was to make primary education "gradually available to all school-aged children" as well as to make it free: "Basic education will be free at the point of entry. Surcharges and fees may in future be levied at post-basic level".[154]

Subsequent to its military victory, the EPLF became the sole political and/or governing party when the country became independent in 1993. It initially demonstrated a strong commitment to education by doubling and trebling enrolments and respecting diversity through a commitment to multilingualism.[155] However, it continues being labelled as "the secretive ex-guerrilla government".[156] Little information is, indeed, available about human rights or their violations in Eritrea. This paucity of information typically indicates that human rights safeguards are not in place. Human Rights Watch has claimed the "rule by force and caprice" as well as a purposeful governmental policy to isolate the country from the outside world.[157] The government avoids dialogue about human rights and justifies prioritizing security over education by its border conflict with Ethiopia.[158]

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[151] Astaud, A. – Riggs Bank, blanchisseuse des dictateurs, *Le monde diplomatique*, Août 2005.
[152] Yedder, O.B. – *Equatorial Guinea: Building the dream. An IC Special Report*, published simultaneously in July 2005 issues of *African Bussiness*, *New African*, and *Middle East* magazines, p. 13.
[153] Burgess, D. et al. – *Eritrean Journey*, War on Want, London, October 1985.
[154] *The Development of Education: National Report*, Ministry of Education, 1995, mimeographed, p. 6.
[155] Pool, D. – *Eritrea: Towards Unity in Diversity*, Minority Rights Group, London, July 1997, pp. 20-21.
[156] Eritrea: A myth of self-reliance, *The Economist*, 29 April 2006.
[157] Human Rights Watch – Eritrea, in: *World Report 2006*, New York, 18 January 2006, available at www.hrw.org
[158] U.N. Doc. CEDAW/C/ERI/1-3 (2004), p. 6.

The government has described the constitutional guarantee whereby "every citizen has the right of equal access to publicly funded social services" to be inherently limited by "the State's resources and capacity". It has clarified that "basic education (grades 1-7) is free and compulsory for all citizens". Nevertheless, in that same report the government has denied that primary education was actually free. It has summarized its policy thus: "the community and direct beneficiaries will be made to contribute varying amounts towards financing the cost of education".[159]

The government's self-assessment in 2004 highlighted the abyss between promise and performance. Although its policy remains to eventually make education free and compulsory, its commitment had been to ensure six years of primary school for all in 2002 and this was not accomplished. Educational statistics show that 298,891 children were enrolled at the time but it is impossible to estimate how many remained – and still remain - out of school. Their number is likely to be much higher than the number of children at school but nobody knows how much. The government has pointed out that "there has been no survey or census conducted in the country before or after independence", and estimates of Eritrea's population range between 2.5 and 3.5 million.[160]

Ethiopia

Integration of human rights in international cooperation has been revealed in all its complexity with regard to Ethiopia. The commitment of creditors and donors to poverty reduction has made Ethiopia a prime recipient of their financial support due to the poverty of the country and its population. At the same time, well documented human rights violations, especially in education, epitomized the need for correctives against facilitating such abuses through international financial and political support for Ethiopia's government.

The aftermath of elections in May 2005 brought about killings of demonstrators, arrests and detentions, only partially known because of "a complete blackout on information", as Tim Clark, the head of the EU delegation in Ethiopia, has stated.[161] The United States and the European Union finance one-third of Ethiopia's budget[162] and thus also a large part of the financial cost of repression because aid is fungible. The political cost of the donors' support for human rights violations was evidenced in the joint statement by 21 donors to Ethiopia, in June 2005, which requested a full investigation into the deaths of demonstrators and release all of all those that had been deprived of their liberty.[163] This gesture of public disapproval aimed to dissociate the donor-and-creditor community from governmental abuses of power but policies to support human rights, including in education, and help prevent their violations proved to be in short supply.

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[159] U.N. Doc. CRC/C/41/Add.12 (2002), paras. 18, 87, 302 and 392.
[160] U.N. Doc. CEDAW/C/ERI/1-3 (2004), pp. 4, 18 and 20.
[161] Gilmore, I. – Ethiopia accused of rights abuse, *Guardian Weekly*, 9-15 December 2005.
[162] Ethiopia: Hoping that a star won't fizzle, *The Economist*, 13 August 2005.
[163] Ethiopia: Donors demand full probe into post-election deaths, 30 June 2005, available at www.irinnews.org (July 2005).

Perhaps by coincidence, Ethiopia's Prime Minister, Meles Zenawi had at the time of the post-electoral repression an internationally visible position in the Commission for Africa, which advocated increased financial support for development.[164] That visibility may have ruptured the donors' and creditors' silence on human rights abuses in Ethiopia.[165] As is often the case, donors were disunited. The European Union did not cut down its aid, the United Kingdom did.[166] Also, the African Commission on Human and Peoples' Rights adopted a condemnatory resolution, deploring the killing of demonstrators by Ethiopia's security forces.[167]

The previous global silence undoubtedly facilitated human rights violations. There had been many well-documented violations of the rights of teachers in Ethiopia[168] as well as numerous reports on the suppression of students' and pupils' demonstrations.[169] With increasing commitments to human rights by many donors, one would have expected them to take account of such violations and develop safeguards against them. This has not been the case.

On the donors' side, education and human rights have remained two separate and un-connected 'sectors', with education a sector of its own without any mention of human rights therein, and human rights perhaps a part of the 'justice sector'. On the government's side, attempts by the United Nations to elicit from the government permission to visit the country, including mine while I was the Special Rapporteur on the right to education,[170] were met with government's intransigence and a silent support of its peers, including its donors. At its website, Sida has explained why Sweden supports Ethiopia thus: "Support from the outside world is of great importance to Ethiopia. However, the Ethiopian government maintains an independent position towards donor countries and asserts its right to choose the country's development path".[171]

Education has fared badly on that development path. By 2004, only 57% of school age children enrolled in school[172] and there is no data on how many persist and are likely to complete at least primary school to start working at the age of 12. The key reason is that education in Ethiopia is un-free in many different meanings of this word, including not being free of charge. The 1995 Constitution stipulates that "every Ethiopian national has the right to equal access to publicly funded social services". The choice of *access* rather than *right* to education points to an underlying decision not to recognize education as a human right.

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[164] The Commission for Africa was established by British prime minister, Tony Blair, to develop a blueprint for "a strong and prosperous Africa". Further information and documents are available at www.commissionforafrica.org
[165] Gilmore, I. – Ethiopia condemns withdrawal of $375m in western aid, *Guardian Weekly*, 6-12 January 2006.
[166] Cronin, D. – Michel refuses to slash Ethiopian aid, *European Voice*, 27 April – 3 May 2006.
[167] African Commission on Human and Peoples' Rights - Resolution on the human rights situation in Ethiopia adopted during the 38th ordinary session, 21 November – 5 December 2005, available at www.achpr.org
[168] Tomasevski, K. - *Education Denied: Costs and Remedies*, Zed Books, London, 2003, Box 12.2: Teachers' rights fare ill in Ethiopia, p. 179.
[169] Human Rights Watch – Ethiopia. Lessons in repression: Violations of academic freedom in Ethiopia, vol. 15, No. 2 (A), New York, January 2003.
[170] Tomasevski, K. – Has the right to education a future within the United Nations? A behind-the-scenes account by the Special Rapporteur on the Right to Education 1998-2004, *Human Rights Law Review*, vol. 4, No. 3, Autumn 2005, in print.
[171] Sida: Why does Sweden provide support to Ethiopia, available at www.sida.se (July 2005).
[172] Pereznieto, P. & Jones, N. – *Educational choices in Ethiopia: What determines whether poor children go to school?* Young Lives Policy Brief No. 2, available at www.younglives.org.uk

The Constitution further stipulates that "the State has the obligation to allocate ever increasing resources to provide to the public health, education and other social services".[173] In practice, the priority for military expenditure has slanted resource allocation in the opposite direction of what the Constitution mandates.

One year before the Constitution, in 1994, the government announced "introducing cost sharing mechanisms" so as to reduce the burden on the public sector.[174] Its educational strategy anticipated "encouraging community participation [and] introducing cost sharing mechanisms".[175] The word *participation* means that "families have to pay for new buildings or additional teachers' salaries either with cash or labour.[176]

There is no constitutional or legal guarantee that education should be free nor has such a guarantee been included in the PRSP. The Committee on the Rights of the Child was concerned in 2001 that "insufficient resources among education authorities, schools and parents are having a negative impact on children's enrolment". It recommended defraying the cost of education for children with insufficient means.[177] The PRSP has anticipated that education would be financed by government, donors and communities.[178] The constitutional obligation of the government to increase public resources for education has not been translated into practice, leaving a large part of its cost to donors, families and communities.

In examining Ethiopia's PRSPs, the World Bank and IMF noted in 2004 "the need to shift expenditures from military outlays toward social spending".[179] The government's commitment in the PRSP should have led to a reduction in the military expenditure from 13.2% of GDP in 1999 to 4.3% in 2004.[180] This did not happen but Ethiopia nevertheless qualified for debt relief. A part of this excessive expenditure was associated with the war between Ethiopia and Eritrea. It ended with an agreement in 2000 to settle its immediate cause, disputed borders between the two countries, through arbitration. Although both countries had agreed to accept that verdict, Ethiopia refused to do so without visible dissent by its donors and creditors for flouting the rule of law.[181] Another part of Ethiopia's excessive military expenditure is associated with repression, which has also not triggered visible dissent by the creditors' and donors' community.

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[173] Proclamation No. 1/1995 of the Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 1st Year No. 1, Addis Ababa, 21 August 1995.
[174] Transitional Government of Ethiopia – *Education and Training Policy*, E.E.P. – 86, Addis Ababa, April 1994.
[175] Transitional Government of Ethiopia – *Education Sector Strategy*, Addis Ababa, September 1994.
[176] Jones, N. - Children's issues ignored in Ethiopia's PRSP process, *id21 insights #56*, June 2005, available at www.id21.org.
[177] U.N. Doc. CRC/C/15/Add. 144 (2001), paras. 66-67.
[178] Ethiopia - Sustainable Development and Poverty Reduction Program (October 2002), available at www.worldbank.org
[179] IMF & IDA - Heavily Indebted Poor Countries (HIPC) Initiative – Statistical update, 31 March 2004, pp. 15 and 19. (available at www.worldbank.org/hipc/Statistical_Update_March_2004.pdf)
[180] IDA/IMF – Ethiopia: Joint staff assessment of the Poverty Reduction Strategy Paper, 27 August 2002, available at www.worldbank.org
[181] Eritrea and Ethiopia: Backing the favourite, *The Economist*, 29 October 2005.

Gabon

The 1996 education law has stipulated "free schooling" as a governmental obligation and has made education compulsory for all children between the ages of 6 and 16. Implementing free and compulsory education was to be facilitated by free transportation for school children (which had operated for a time in the late 1990s) and free supplies for schools (which were proposed but not implemented).[182]

Education should have been made free and compulsory but the government acknowledged in 2001 that "schooling is not really free" and added a self-critical assessment:

> The school system as a whole does not have a very satisfactory record. The curriculum aims solely to enable schoolchildren to move up to the secondary level, even though the majority of them will not do so. They are therefore ill-prepared for working life. Many of those who do not complete primary education will swell the ranks of the unemployed or turn to crime, and most are condemned to a life of poverty. These problems can be attributed to many factors: serious deficiencies in the management of the education system, inadequate planning, poor distribution of income and a lack of oversight, resulting in a shortage of teaching material, poorly qualified teachers and overcrowded classes.
> One reason for children dropping out of school is that many parents do not have the means to buy school supplies or to pay private school fees for their children: children may not repeat a year more than once in State schools and must switch to a private school if they wish to continue their studies.[183]

Most of these problems remain to be addressed. By 2003, merely 78% of school aged children enrolled in primary school,[184] and there is no data how many attend school and manage to complete it. For those who do so, school-leaving age is merely 11 and the government does not seem to have developed a policy of what these young primary school leavers could do.

Gambia

The 1997 Constitution guarantees that "basic education shall be free, compulsory and available to all" and in its reports under international human rights treaties, the government announced in 2000 that it would gradually ensure free and compulsory education for all children aged between 7 and 16.[185]

A key part of governmental strategy was the elimination of financial barriers which had kept poor children out of school. The cost of education was identified as the major "barrier to educational participation of the poor who constitute one third of the Gambian population".[186] This led in 2002 to a commitment by the government to make primary education free.

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[182] U.N. Doc. CRC/C/41/Add.10 (2001), paras. 83 and 213.
[183] U.N. Doc. CRC/C/41/Add.10 (2001), paras. 215-216.
[184] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[185] U.N. Doc. CRC/C/3/Add.61 (2000), paras. 176-179.
[186] U.N. Doc. CRC/C/3/Add.61 (2000), paras. 183 and 189.

Gambia has made a commitment to ensure schooling for 90% of 7-12 year old children by 2005 but has failed to translate that commitment into performance. Only 79% of 7-12 year olds were enrolled in school in 2003.[187] Girls have been given priority in freeing primary education from various fees and charges that are levied and the government has allocated 22% of its budget to education in 2005.[188]

The government is planning to make primary education free and universal by 2015 but secondary school will remain for-fee.[189] This strategy complies with the MDGs since it anticipates universal primary education but it does not comply with international human rights law. The school-leaving age is merely 12, and children are much too young to be 'graduated' into adulthood at that age. In its reports under human rights treaties, the government has made a commitment to implement its law which guarantees available, free and compulsory basic education up to the age of 15.[190] That commitment remains unfulfilled and has been effectively replaced by the much lower benchmark embodied in the MDGs.

Ghana

The constitutional guarantee of basic education which should be free, compulsory and available to all has not been translated into governmental policy.[191] Ghana epitomizes bifurcated policy-making because education was shaped by the 1987 structural adjustment programme rather than the law of the land. The government of the time referred in its official report for the 1996 International Conference on Education to its commitment to "contain and partially recover costs" of education. That policy originated in the notorious 'conditionalities' imposed by the World Bank. The government institutionalized user fees in primary school and formally banned only those charges which were not "officially endorsed by the Ministry of Education".[192] The government's self-description of Ghana's system of education still refers to the 1987/88 reform as guidance, while less attention has been devoted to the 1996 commitment to universalize basic education by making it free and compulsory.[193]

That commitment followed from the 1992 Constitution, which has affirmed that "basic education shall be free, compulsory and available to all".[194] These constitutional guarantees were inspired by the fact that education was neither free, nor compulsory, nor available to all those who could not afford the cost:

> The implementation of a policy of self-financing and cost recovery for social services by government under the auspices of the World Bank has had dire implications for the right to education. Basic education, implying education up to the Junior Secondary School Level is not free, compulsory and available to all as provided under the Constitution of the Republic.

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[187] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org
[188] The Gambia, *New Internationalist*, No. 381, August 2005, p. 36.
[189] Gambia: Strategy for Poverty Alleviation (SPA II), April 2002, available at www.worldbank.org
[190] U.N. Doc. CRC/C/3/Add.61 (2000), paras. 176-177 and CERD/C/431/Add.3 (2002), para. 122.
[191] U.N. Doc. CERD/C/431/Add. 3 (2002), paras. 57 and 122.
[192] *The Development of Education 1994-1996. National Report from Ghana by the Ministry of Education*, April 1996, p. 17.
[193] Ghana's education system, available at www.ghana.gov.gh. (July 2006)
[194] The education-related provisions of the Constitution and government policies in education are available at www.ghana.edu.gh/present/policies.html (March 2006).

> There are thousands of children who do not attend school either as a result of unavailability of schools within easy reach, or as a result of parents' inability to pay the required fees.[195]

Ten years later, Ghana's educational performance has not improved. By 2003, merely 59% of 6-11 year olds enrolled in primary school.[196] The debt relief process might lead to making education less costly but there was no commitment to make it free in the 2003 PRSP. Yaw Osafo-Maafo, the minister of finance, said in explanation: "if you are educating people and you keep educating them without providing jobs for them, you are going to create a bigger problem at the end of the day".[197] That logic apparently guided the government not to make primary education free but, rather, to focus on investments with immediate returns. Education has also been defined by its potential role in poverty reduction, to enable Ghanaians to "acquire skills which will make them functionally literate and productive to facilitate poverty alleviation".[198]

Although the PRSP has confirmed that one third of out-of-school children could not meet the high cost of education, there was no pledge to eliminate that financial barrier. The government has only pledged that "regulations on illegal fees will be enforced to ensure that the approved fees are charged".[199] Education International has thus summed up the current situation: "Schools charge fees and pupils are required to purchase uniforms and books".[200]

Guinea

Just after Guinea's independence, the 1958 Constitution affirmed the right to education and subsequent laws specified that primary school should be compulsory and free. In its reports under human rights treaties, the government self-critically described the gap between the law and the reality on the ground saying that "the principle of free primary education is guaranteed by law but is not always applied".[201] Nevertheless, in its PRSP the government has made a commitment only to "reduce private expenditure on education, especially for disadvantaged population groups" rather than to make primary education free.[202] This model of education is profoundly different from the one pursued during Guinea's early post-independence years.

Those years have been described by Ali Mazrui and Michael Tidy thus: "in 1961 all private educational institutions were brought under government control so that their curricula could be re-orientated.

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[195] The Ghana Committee on Human and Peoples' Rights – *Human Rights Report on the Republic of Ghana (1993)*, Accra, 1993, p. 31-32.
[196] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[197] Ashmah, G.F. – Ghana: Highway to heaven?, *New African*, August/September 2004, p. 28.
[198] Aims and objectives of education as defined by the Ministry of Education and Sports, available at www.ghana.gov.gh/governing/ministries/social/education.php (July 2006).
[199] Ghana - Poverty Reduction Strategy 2003-2005: An Agenda for Growth and Prosperity (March 2003), available at www.worldbank.org
[200] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 128.
[201] U.N. Doc. E/C.12/1/Add.5 (1996), para. 193.
[202] Poverty Reduction Strategy Paper (January 2002), available at www.worldbank.org

All schools have compulsory political education and emphasize communal vocational activity".[203] Freedom of education was gradually restored with the shift to the free market but only in the sense of economic freedom. Private schools were permitted to open and operate although the government has preserved the right to control education, at least in the law.[204] The World Bank has praised Guinea's shift to private education:

> The private sector was almost completely absent in education in Guinea until 1990. Yet by the end of the decade, the growth in enrolments of private schools accounted for much of the overall growth in the system.[205]

The privatization of financial responsibility for education which that promotion of private schools entails, combined with levying charges in public schools, has impeded making primary education all-encompassing. Only 66% of 6-12 year olds enrolled in primary school by 2003,[206] and estimates are that about one-third of school age children cannot even start school.

Guinea Bissau

The Constitution stipulates that "the State is responsible for the promotion of free and equal access of all citizens to different educational levels". This could imply that education is free throughout public institutions at all levels of the educational pyramid but the government has admitted that 90% of education is externally funded.[207] In consequence, creditors' and donors' policies shape education.

The trend of privatizing financial responsibility for education has been reflected in the law, whereby children have a right "to formal, private and cooperative schools".[208] Obviously, children cannot have 'a right' to private education because access depends on their ability to pay the required cost. 'Formal' schools should be free of charge but a variety of charges are levied due to insufficient public funding for education. The government has acknowledged in 2001 that "more than half of the population of school age" remain out of school. Those who enrol often get too little schooling. At least one third of rural schools offer one or two years of primary education.[209] Moreover, it is not known how many children remain out of school because the registration of children at birth is fragmentary:

> A large number of Guinean children, especially of single mothers and in rural areas, are not registered at birth. Only when it is time to go to school, aged six or seven (for those who have access to school), are they registered.[210]

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[203] Mazrui, A.A. and Tidy, M. – *Nationalism and New States in Africa*, East African Educational Publishers, 1984, p. 306.
[204] U.N. Doc. CRC/C/Add.48 (1997), para. 140.
[205] The World Bank – Guinea: A steady growth path to achieve Education for All, *Education Notes*, April 2002.
[206] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[207] U.N. Doc. CRC/C/3/Add.63 (2001), paras. 216-217.
[208] U.N. Doc. CRC/C/3/Add.63 (2001), para. 215.
[209] U.N. Doc. CRC/C/3/Add.63 (2001), para. 214.
[210] National Strategy for the Reduction of Poverty (Estrategia nacional para a reducao da pobreza) from 2000, quoted from Alternative report on the implementation of the Convention on the Rights of the Child by Associacao dos Amigos da Crianca, July 2001, available at www.crin.org

Reasons for this educational under-performance do not revolve only around poverty but include biased budgetary allocations. While poverty is the key obstacle for much of the population, this is not the case for the government. In examining Guinea-Bissau's PRSPs, the World Bank and IMF have noted "fiscal slippages associated with heavy defense spending". On-going conflicts in the region have affected Guinea-Bissau and distorted budgetary allocations. The IMF and the World Bank pointed in 2004 to the financial gap of $18.3 million needed to pay the salaries of civil servants.[211] In addition, Alex Vines reported in November 2005 that the salaries of civil servants are paid with an average delay of three months.[212]

In such conditions, it is impossible to imagine that education would function. Indeed, overlapping political and armed conflicts have paralysed education and other basic services. Their re-starting requires shifting priorities from military expenditure to civilian investment, which is difficult even to design while the global attention focuses on conflicts. Prioritizing education as a pillar of peace-making is as difficult as it is necessary:

> If the elected leaders are unable or unwilling to shoulder their sovereign responsibilities, especially in the absence of viable and accountable State structures, neither peace nor development can emerge or endure. [213]

Kenya

The fate of free primary education in Kenya is likely to be determined by its fiscal policy and safeguards against corruption rather than any existing or future legal guarantees. In November 2005, the majority of voters rejected a draft Constitution[214] which would have entrenched human rights guarantees, including the right to education. That shifted the country back to its first post-independence Constitution which does not include human rights safeguards.

Campaigning did not focus on such safeguards or on governmental responsibilities in education or any other sector where governmental services are needed for the vast numbers of people who cannot afford to purchase them. Rather, the focus was on the division of powers within government. That focus brought to light past abuses of power, especially corruption. It led to ministerial resignations, including the then minister for education, George Saitoti, for his involvement in corruption scandals during the previous regime.[215] The previous government, led by president Moi, had been targeted by aid cutoffs, often because of corruption.[216]

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[211] IMF & IDA - Heavily Indebted Poor Countries (HIPC) Initiative – Statistical update, 31 March 2004, pp. 15 and 19, available at www.worldbank.org
[212] Vines, A. – West Africa: Fragile stability, *The World Today*, November 2005, p. 26.
[213] Security Council – Report of the Secretary-General on developments in Guinea-Bissau and on the activities of the United Nations Peace-Building Support Office in that country, U.N. Doc. S/2004/456, paras. 20-22 and 28.
[214] The Draft Constitution was rejected by 57-43% margin, having split both the political establishment and the government into 'orange' and 'banana' campaigns. Vasagar, J. – Kenyans reject new charter, *Guardian Weekly*, 25 November – 1 December 2005.
[215] Vasagar, J. – Secret dossier on corruption rocks Kenya, *Guardian Weekly*, 27 January – 2 February 2006.
[216] Tomasevski, K. – *Between Sanctions and Elections*, Pinter/Cassell, London, 1997, pp. 186-189.

Before the change of government, free primary education became a part of domestic law in 2001,[217] and it was to be entrenched in a new constitution. However, the corresponding obligations of the public authorities were asymmetrical. The central government would have preserved control over the revenue while local authorities would have been obliged to ensure free education.[218] Localizing the financial responsibility for education without ensuring fiscal transfers to poor parts of the country was likely to collapse the promise of free education.[219] That model was rejected through the defeat of a draft constitution and it remains to be seen how the financial responsibilities for education will be allocated in the future.

Three years after the change of government through elections in December 2002 triggered expectations of a new model of governance, the initial hopes turned into frustration for many. Education was high on the agenda during the change of government in 2002-2003. Free primary education had been an electoral promise of the National Rainbow Coalition (NARC) government and was its first initiative upon winning the elections. The new government also prioritized "the provision of free primary education" in its relations with creditors and donors.[220] This initiative was hailed but external financial support was not generous and 80% of the necessary funding was Kenyan.[221]

The Task Force on the Implementation of Free Primary Education summed up in February 2003 the types of costs which would have to be supplanted by public funding so as to make primary education free:

> The first step towards the implementation of FPE [Free Primary Education] was the abolition of all kinds of fees, levies and user charges that have for decades kept a large number of children and youth out of school. These charges included:
> - Textbooks and writing materials
> - Registration fee
> - Tuition fee
> - Development levy
> - Activity fee
> - Caution money
> - School trips
> - Examination fees for school-based exams
> - Teachers' tours and safaris
> - Payment of teachers employed by school committees/Parents' Associations. [222]

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[217] The 2001 Children's Act (Cap 586 Laws of Kenya) has obligated the government to provide children with free basic education.

[218] Several drafts of a future constitution were generated in 2002-2005 and the last one, dubbed 'the Wako Draft' after the Attorney General, Amos Wako, was formally adopted by parliament, published in *Kenya Gazette Supplement* No. 63 on 22 August 2005, and rejected by the referendum in November 2005.

[219] Simiyu, N. – The Wako Draft and its likely impact on our public finance, *Sunday Nation* (Nairobi), 28 August 2005; Wandera, N. – Special report: Central government to retain authority over taxation, *The Financial Standard* (Nairobi), 30 August 2005.

[220] Status report on preparatory activities and way forward for the economic recovery strategy paper (ERS) for Kenya, Prepared by the Government of the Republic of Kenya on 12 September 2003, mimeographed.

[221] Muthwii, M. – Free primary education: the Kenyan journey since independence, Nairobi, 22 September 2004, mimeographed.

[222] *Report of the Task Force on Implementation of Free Primary Education*, Ministry of Education, Science and Technology, Nairobi, February 2003, p. x.

All these costs have not been eliminated and education has not been made free. Rather, only school fees were abolished, i.e. the charges for enrolment and tuition were replaced by governmental subsidies.[223] The prices of textbooks and uniforms have remained prohibitively high while the capitation grant given each school was set below the actual cost of schooling.[224]

Moreover, the influx of huge numbers of children into schools after the fees were abolished created a shortage of teachers. An estimated 1.3 million additional children turned up for school in 2003.[225] As in other countries, salaries for teachers to educate school children were not provided for. The reason was the definition of teachers' salaries as a public-sector expenditure to be reduced rather than an educational investment necessary to ensure that children who enrol are taught so that they can learn. Education International has reported that "the teacher crisis may have been averted but for the fact that recently 30,000 teachers were dismissed on the recommendation of the World Bank".[226] The narrow focus on the abolition of school fees has thus undermined both the universalization of education and its quality.

The official statistics showed an increase of 17.6% in enrolments triggered by the abolition of school fees, from 6.131 million in 2002 to 7.208 in 2003.[227] How far or how close that increase has brought Kenya to making primary education all-encompassing remains guesswork. The key obstacle is that only some 40% of children are registered at birth according to the immigration minister, Lina Kilimo.[228] Hence, nobody knows how many school age children there may be in Kenya. Estimates of the number of out-of-school children at the time of the abolition of school fees ranged between 1.5 and 3.3 million.[229]

Prospects for making primary education free are uncertain. The initial effect of the abolition of school fees in 2003 was a large increase in the numbers of children at school, as was the case whenever free education had been introduced earlier. Kenya's history shows close correspondence between making education free or for-fee and the consequent high or low numbers of children going to school. An educational expansion followed the abolition of school fees in 1973 and enrolments peaked in early 1980s.[230] However, primary education was never made completely free.

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[223] In September 2005, each school was given 1,020 shillings per pupil, about $14. Out of that 480 shillings were intended for textbooks and other learning materials and supplies, and 540 shillings for all other costs, such as examinations and extra-curricular activities. As a comparison, the cost of a single school uniform at the time was about 1,000 shillings ($13). The capitation grant for each pupil with a disability was higher, 3,020 shillings. Each school also received 30,000 shillings for sanitation and 25,000 shillings for water. *The Standard (Nairobi)*, School & Career Supplement, 1 September 2005.

[224] Tomasevski, K. – Both arsonist and fire-fighter: the World bank on school fees, *Bretton Woods Update*, No. 49, January-february 2006, available at www.brettonwoodsproject.org

[225] Ochieng, S. - Kenya: 40 Years of independence, *New African*, January 2004 and Ma'anit, A. – Africa: Things fall into place, *New Internationalist, The Unreported Year 2003*, London, January 2004, p. 5.

[226] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 164.

[227] The provisional statistics of the Ministry of Education for 2003 are found in the *Official Kenya Education Directory, 2005 Edition,* Express Communications (www.expressmediakenya.com), Nairobi, 2005, pp. 49-50.

[228] Birth registration to become mandatory, *The Standard* (Nairobi), 1 September 2005.

[229] *Report of the Task Force on Implementation of Free Primary Education*, Ministry of Education, Science and Technology, Nairobi, February 2003, pp. 4 and 14.

[230] Ghai, D. et al. – *Planning for Basic Needs in Kenya: Performance, Policies and Prospects*, International Labour Office, Geneva, 1979, p. 37.

It was close to being free in 1974-1984, when the central government bore 60-65% of the cost of primary school.[231] As the government's financial support diminished, fees of various kinds crept back into public education. In 1988, cost-sharing was formally introduced and enrolments subsequently decreased.[232] The ups and downs in educational enrolments have always reflected increased or decreased charges throughout Kenya's history.[233] Whether the increased numbers of children going to school after school fees were abolished will have adequate teaching to make their school attendance worthwhile remains an open question.

Lesotho

The government of Lesotho made a commitment to make primary education gradually free in 1999 and has been working to make it free ever since. The reason was the government's concern that education could not be made compulsory because it was not free.[234] The World Bank noted on the eve of the government's decision that the government Ais aware that such a move has serious budgetary implications,[235] and, indeed, the government had reported in 1998 that free primary education would be implemented as soon as resources became available.[236]

The government strategy has been to free education from numerous charges during the initial years of schooling and to gradually ensure seven years of education for all children. The decision to make education free required the identification of all charges which were levied, called 'school fees' following the World Bank's nomenclature. The ensuing list was long and included no less than 17 different types of charges, only one of which were school fees:

Registration fees ($0.6 – 7.7)
School fees ($0.6 in primary and $13 in secondary school)
Book fees (rental of textbooks at school, minimum fee $1.5)
Fees for school meals ($7.7 at primary and $77 at secondary school)
School development or building fees ($1.3 to 13)
Uniform fees (charged by few schools because uniforms are purchased commercially)
Examination fees ($0.6 per exam)
School maintenance fees ($0.9 – 13)
Sports fees ($3.2)
Government levies ($3.2 at secondary school)
Boarding fees (average of $45)
Library fees (charged by few schools)
Laboratory fees (charged by few secondary schools)

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[231] Nyachieo Bogonko, S. – *A History of Modern Education in Kenya (1895-1991*), Evans Brothers (Kenya), Nairobi, 1992, pp. 195-204.
[232] *Development of education 1995 to 1996. National report from Kenya by the Ministry of Education*, Nairobi, July 1996.
[233] Bedi, A. et al. – *The Decline in Primary School Enrolment in Kenya*, Kenya Institute for Public Policy Research and Analysis (KIPPRA), KIPPRA Discussion Paper No. 14, Nairobi, May 2002, p. 16.
[234] *The Development of education 1996-1998. National report of Lesotho for presentation at the forty-fifth session of the International Conference on Education by the Ministry of Education*.
[235] The World Bank - Project Appraisal Document, Second Education Sector Development Project, 25 March 1999, Report No. 18388-LSO. (*EFA Global Monitoring Report 2003/4*, p. 45)
[236] U.N. Doc. CRC/C/11/Add.20 (1998), para. 198.

Fees for practical subjects (charged by secondary schools for home economics or computers)
Fees for medical assistance (charged by remote schools for first-aid kits)
Fees for energy costs (water supply, heating or cooking)
Fees for school administration [237]

Primary education was declared free for children who started school in 1999-2000. As a result, the intake in primary school increased to 183% of the previously estimated number of school-aged children. This revealed how many children had been excluded from school because of its cost while not even their approximate numbers has been known.[238] It had been hugely expensive for poor parents, the vast majority of the population, to send their children to school: "children over six years and well over-age are sometimes sent to pre-schools until the ages of eight or nine because their parents cannot afford primary school".[239]

The prospects of making – and keeping – primary education free in Lesotho are uncertain although 10.4% of GDP was allocated to education in 2002, the largest such investment in the Africa. The 'serious budgetary implications' noted by the World Bank stem from the imbalance between huge numbers of children to be schooled and the small numbers of adults who earn sufficient income to contribute to governmental revenues. The need for international financial support to sustain the universalization of primary education is, thus, obvious but how much or how little of it will materialize is uncertain.

Liberia

At the end of 2005 wide publicity accompanied the election of Ellen Johnson-Sirleaf as Liberia's president because she became the first African female head of state. Also, she joined the legion of African leaders who are former World Bank officials. As became frequent in recent African elections, one of her pledges was free primary education.[240] Because one of her key appointments, Anthonette Sayeh as the minister of finance, was also a former World Bank official[241] speculation ensued regarding an educational strategy which the new government was likely to adopt: will primary education be free as she promised or for-fee as is the World Bank's practice? A series of open letters asked her to share the responsibility of the political elite for the mass illiteracy in Liberia, reminding her that the business of government was conducted in a language which the majority neither spoke nor understood.[242]

Constitutional and legal guarantees regarding education had been "left dormant" as the (previous) government stated in 2000[243] because schools had been destroyed by warfare and the governmental budget depleted.

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[237] Lerotholi, L.M. – *Tuition Fees in Primary and Secondary Education in Lesotho: The Level and Implications for Access, Equity and Efficiency*, UNESCO/IIEP, Paris, 2001, pp. 49-78.
[238] *Gender and Education for All: The Leap to Equality, EFA Global Monitoring Report 2003/4*, UNESCO; Paris, 2003, p. 45.
[239] U.N. Doc. CRC/C/11/Add.20 (1998), para. 192.
[240] Price, S. and Tonpo, J. – Liberia: A lesson for Africa's Big Men, *New African*, December 2005, pp. 20-21.
[241] Tonpo, J.A. – Liberia: A new beginning, *New African*, February 2006, p. 37.
[242] Tajudeen, A.-R. – Liberia: Can Mama Ellen deliver liberty?, *New African*, March 2006, p. 35.
[243] U.N. Doc. CRC/C/28/Add.21 (2000), para. 21.

The vicious war in the 1990s triggered international sanctions as well as attempts at peace-making and, subsequently, peace-keeping.[244] The price of warfare was neglect of education: "School fees were increased significantly [and] in both public and private schools, families of children were asked to provide their own books, pencils and paper".[245] The obligation of parents to finance the education of their children was stipulated in the law:

> Every parent, guardian or other persons having control of any child between the ages of six and sixteen years shall cause such child to attend a recognized public or private school regularly during the entire time the school is in session, provided such parents or guardians have the means to meet the minimum requirements of the school. The law on completely free education at the elementary and Junior High levels shall be left dormant during the next five years.[246]

How many Liberian parents could understand the legal English in which that legal provision was formulated is unknown. The majority could not finance the education of their children because primary school was much too expensive. Save the Children found in 2005 that the annual cost of primary school for one child (£33) amounted to over half of an average annual income (£62).[247]

The future will show whether the constitutional and legal guarantees of free education will be "left dormant" or the presidential promise of free education will materialize.

Madagascar

The constitutional definition of the right to education makes the state "duty-bound to organize education that is public, free of charge and accessible to all".[248] That duty was jeopardized by debt servicing obligations, as admitted by the World Bank:

> During the first half of the 1990s, public spending on education relative to the gross domestic product (GDP) declined more than 40 percent, coinciding with a fivefold rise in the country's interest payment on the external debt. As the debt service burden began to ease after 1995, public spending on education began to recover.[249]

Also, the government reported in 1996 that "numerous schools are closed due to the failure of parents to finance the education of their children".[250]

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[244] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 285-288.
[245] US State Department Report on Country Human Rights Practices for 2000, www.state.gov/g/drl/rls/hrrpt/2000
[246] U.N. Doc. CRC/C/28/Add.21, 2000, no paragraph numbering.
[247] Save the Children - *Name: 60 million girls. Class: none*, London, 2005, available at www.savethechildren.org.uk
[248] U.N. Doc. CRC/C/8/Add. 5 (2001), para. 215.
[249] The World Bank – *Education and Training in Madagascar: Towards a Policy Agenda for Economic Growth and Poverty Reduction. A Summary of Key Challenges*, Africa Region Human Development Working Paper Series, Washington D.C., September 2001, p. 1.
[250] *Rapport national sur le developpement de l'education 1994-1996*, Ministère de l'Education Nationale, avril 1996.

Two years later, children's education was still deemed to be the sole responsibility of their families and communities, although the government conceded that they "cannot always afford to contribute to the costs of the child's needs and operate the school cooperative".[251] In 2001, the government reported that "the fact of making already poor communities responsible for the salary of the schoolmaster and for financial participation in school building has discouraged more than one community".[252]

The government's poverty alleviation strategy (PRSP) noted that the cost of education was the single most important barrier to universalizing primary education and, after the turn of the millennium, the new government abolished school fees and enrolments surged from 70% in 2002 to 82% in 2003. That expansion was financed through relocation of funds earmarked for debt servicing to education.[253]

Two problems have remained on the path towards making education free so that it could be universalized:

- Primary education was not made completely free. Some charges were abolished, others were retained. The government has stated that primary school children are exempt from enrolment fees ('*frais d'inscription'*) but there are other "possible school fees" related to school attendance.[254] These are likely to jeopardize children's completion of the full cycle of primary education.
- The abolition of (some) school fees was applied only to the children who complied with the administrative requirement of civil registration. This excludes some 2.5 million children out of the total population of Madagascar, which is estimated at 17.8 million.[255]

Malawi

In the early 1980s Malawi was an object of debates in educational literature, which centred on the World Bank's introduction of school fees. They had been introduced by the government following the World Bank's advice and plummeting school enrolments ensued.[256] A decade later, the international spotlight was on Malawi again when the new government abolished these school fees. The government that had introduced them was gone, its departure hastened by international sanctions for human rights violations.[257]

1994 was a year of optimism as a democratically elected government replaced the previous dictatorship. The new government promised to un-do some of the damage inflicted by the previous regime and one of its first acts was to abolish school fees.

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[251] U.N. Doc. CRC/C/8/Add.5 (1998), para. 220.
[252] U.N. Doc. CRC/C/8/Add.5 (2001), para. 220.
[253] Madagascar: Progress at last?, *The Economist*, 1 January 2005.
[254] Madagascar: Poverty Reduction Strategy Paper, October 2003, available at www.worldbank.org.
[255] Pompey, F. – Le president Malgache gère l'ile comme son enterprise, *Le Monde*, 21 July 2005.
[256] Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 72-76.
[257] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 297-303.

The World Bank did not approve:

> The declaration of free primary education in 1994 undermined popular commitment to the school committees as parents believed and expected that the government would now take over the full cost of primary education.[258]

In its reports under human rights treaties, the government has explained the background thus: "In 1994, the new Government introduced a programme called Free Primary Education (FPE). The FPE programme abolished the payment of tuition and all forms of charges and also abolished a school uniform requirement".[259] The rift between different approaches to designing education repeatedly came to light. The government has pointed out that it is not its own law which guides education. Rather, it is the Policy and Investment Framework (PIF) 1995-2000, written "for World Bank's approval. [260]

The government's plan was to enrol 90% of school-aged children by the year 2000 and, eventually, "free and compulsory education [would be introduced] for all children aged 6 to 13 years".[261] Thus far, primary education has been provided only for children aged 6-11 and educational statistics still reflect a huge surplus of children who enrol, with a gross enrolment rate of 140% in 2003.[262]

Education has not been made compulsory as yet because it is neither all-encompassing nor completely free. Neither the educational infrastructure nor the budgetary allocations suffice to educate all the children.[263] Moreover, there were not enough teachers needed to educate huge numbers of children at school. Teachers' salaries lied beyond 'the sector' of education where the priority was not to increase the public-sector salary bill. The Economist has summed up what went wrong with education due to the creditors' and donors' concerns regarding teachers' salaries thus:

> Donor money helped Malawi's primary schools scrap their fees [in 1994].
> But the schools soon succumbed to 'access shock': 1.2 million extra pupils sitting at the feet of teachers working double or triple shifts.
> If donors think ahead only two or three years, such 'capacity constraints' argue for spending less: why pay for every child to go to school, if there is no one to teach them? But over a longer time-span, these constraints argue for spending more: why not train the teachers, as well as paying the fees? [264]

Although budgetary allocation to education doubled from 3.8% to 7.5% of GNP and recurrent expenditure on education trebled, this was not enough. Many children could not even start let alone complete primary school.[265] Additional funds needed to ensure education for all children have not been forthcoming, however.

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[258] Kattan, R.B. and Burnett, N. - User fees in primary education, Annex 5 - The case of Malawi: What can go wrong with the elimination of user fees?, The World Bank, July 2004, (www.worldbank.org/education/pdf/EFAcase_userfees)
[259] U.N. Doc. CRC/C/8/Add.43, 2001, paras. 253-255.
[260] U.N. Doc. CRC/C/8/Add.43 (2001), paras. 253-255.
[261] U.N. Doc. CRC/C/8/Add.43, 2001, paras. 253-255.
[262] EFA/UNESCO *Global Monitoring report 2006*, available at www.unesco.org
[263] U.N. Doc. CRC/C/8/Add.43 (2001), paras. 38 and 67.
[264] The $25 billion question: Special report on aid to Africa, *The Economist*, 2 July 2005.
[265] Castro-Leal, F. – *Who Benefits from Public Education Spending in Malawi? Results from the Recent Education Reform,* World Bank Discussion Paper No. 350, The World Bank, Washington D.C., December 1996.

Ten years passed again from Malawi's democratic and educational transition and the initial optimism has been replaced by pessimism. Corruption became an exposed but un-opposed phenomenon, leaving observers to note that Malawi's democratic transition has 'democratized' - and thus increased - corruption. The electoral victory of Bingu wa Mutharika, formerly of the World Bank, did not make a dent in prevailing creditors' and donors' pessimism.[266] An ODI/IPRAD assessment of what went wrong in 1994-2004 did not mince words. It highlighted the hasty approvals of fictitious budgets (by the government, creditors and donors), the stop-go donors' budgetary support with conditions first agreed and then ignored.[267]

Education was profoundly affected by both fictitious budgets and diverse creditors' and donors' conditions. The impact of their increased pessimism might result in further reductions in international financial support to education and, thus, in a reversal of the 1994 strategy to make education free so that it could be universalized.

Mali

The Constitution provides that education "shall be compulsory, free and secular" but the government has described a different reality: "Education in Mali was in crisis throughout the decade 1991-2001 for reasons relating, inter alia to obsolete and inadequate facilities, the low-level of school grants, a shortage of teachers, and the restructuring of the teaching profession".[268] One consequence of that prolonged crisis in education has been a heavy financial burden imposed on the parents:

> The associations of pupils' parents [*Associations de Parents d'Elèves* (APE)] finance basic education by providing school buildings, equipment and furniture. The parents also pay APE fees, purchase educational materials, and pay other fees, such as those for school cooperatives.[269]

These charges are levied in public education, which is nominally free; they have obliterated the boundary between public and private education. In the 1990s, it was estimated that just over a half of primary schooling (52%) was financed by the government, about 16% by external donors, some 10% by external creditors (primarily the World Bank), and 15% by the parents.[270] Public education has been effectively privatized by shifting the financial responsibility from governmental to family budgets, further complicating the educational landscape. In their analysis of education in Mali, Paul Esquieu and Serge Péano have shown that official statistics describe only a half of Malian education.

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[266] Malawi: Democratizing corruption, *Development Today*, No.14/15/2005, available at www.developmenttoday.com

[267] ODI & IPRAD – *Drivers of Change and Development in Malawi*, Overseas Development Institute & Institute for Policy Research for Analysis and Dialogue, Lilongwe, 2005, mimeographed.

[268] U.N. Doc. CERD/C/407/Add.2 (2002), paras. 129-130.

[269] *Developpement de l'education au Mali 1995-1996*. Rapport presente a la 45e session de la Conference Internationale de l'Education, Ministère de l'education de base & Commission nationale malienne pour l'UNESCO.

[270] Esquieu, P. & Péano, S. – *Foncionnement et financement de l'enseignement fondamental malien*, Institut international de planification de l'éducation, Paris, 1996, pp. 67-107.

There is a range of different types of schools, such as Islamic, Catholic, NGO, community or 'private' in the narrow sense of this term. These diverse types of schools are a response to the government's failure to provide education throughout the country. Amongst them, community schools have been particularly popular as an inexpensive alternative to public education. That image, as Karen Tietjen has shown, does not quite reflect the reality:

> A fundamental idea behind community schooling is that while the school serves the community, the community supports the school. If the community is almost uniquely defined to mean the households with enrolled pupils, then the diversification of financial responsibility essential to school survival is lacking. The community school becomes a non-profit private school for parents who are able to pay.[271]

The government has identified as the key reason for its educational underperformance being "severely hit by several years of structural adjustment".[272] After structural adjustment came the debt relief process. The PRSP has identified "high costs of schooling" as the principal obstacle to universalizing primary education but did not propose a strategy to overcome that barrier.[273]

Mauritania

The military coup in August 2005 triggered little international protest, despite formal political commitments to opposing unconstitutional changes of government in Africa and beyond.[274] A consequence was that Mauritania did not qualify for debt relief in 2005 but was promised that such a decision would be made in the near future. The reason for such a supportive global reaction was in part that the coup was bloodless and surgical while the previous government had been unpopular. Another part of the explanation is the country's natural wealth, including oil, and the associated foreign policy priorities.[275]

Mauritania has a constitutional guarantee whereby "equality of opportunity is guaranteed to all in public education, which is free of charge at all levels". The (previous) government conceded, however, that not even primary school was free: "Parents are often called upon to contribute to the purchase of supplies and textbooks, and to participate in the building and upkeep of school premises".[276]

The 1991 Mandatory Basic Education Act stipulated that all children, boys and girls, should complete six years of schooling between the ages of 6 and 14. That law was not enforced and in 2003 merely 67% of children were enrolled in school.[277]

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[271] Tietjen, K. – *Community Schools in Mali: A Comparative Cost Survey*, USAID, Office for Sustainable Development, SD Publication Series Technical Paper No. 97, Washington D.C., June 1999, p. 81.
[272] U.N. Doc. CERD/C/407/Add.2 (2002), para. 129.
[273] Mali - Poverty Reduction Strategy Paper: Final PRSP (February 2003).
[274] Reeve, R. – Regime change in Africa: Dealing with the dictators' club, *The World Today*, November 2005, pp. 24-25.
[275] Mohammad-Mahmoud & Ould Mohamedou – Variation sur l'usage du coup d'Etat en Mauritanie, *Le monde diplomatique*, Novembre 2005, pp. 8-9.
[276] U.N. Doc. CRC/C/8/Add.42, 2001, paras. 226 and 267.
[277] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org

The main reason for low enrolments is the lack of schools as well as the expense of sending children to those that exist. There has been no governmental policy to make education free so that it could be made compulsory. Rather, the law strengthened parental obligations to finance the education of their children through sanctions for those parents who did not ensure that their child went to "the nearest school".[278] The World Bank calculated for 1998 that parental financial contributions amounted to a half of the cost of public education.[279] There was, nevertheless, no mention of the costs of education or the charges that are levied in primary school in the PRSP.[280] Whether the new government will try to make education free through debt relief so as to universalize at least primary schooling is an open question.

Mozambique

The Supreme Court of Mozambique initiated in May 2005 hearings in a case against a former Minister of Education, Alcido Nguenha, concerning his misuse of Swedish aid for education which financed, *inter alia*, scholarships for two of his children for their university education in South Africa.[281] That case grew out of an audit of Swedish educational aid to Mozambique in December 2001, which revealed that a third of the spent funds had no proper supporting documentation.[282] Inevitably, questions have emerged about transparency in financial management and absent safeguards against corruption and many remain un-answered. Such questions have attained an increased importance with the donors' shift to budgetary support. That change makes tracing the fate of their financial contributions impossible and raises questions of their accountability to their taxpayers. Also, such questions have highlighted the need for human rights safeguards, especially for guaranteed freedom of information in order to ensure that international development finance is used for the education of the poorest rather than the wealthiest.

This is particularly necessary in Mozambique because the poorest are required to furnish much of the cost of primary school, which many simply cannot afford. Primary education should last seven years but most children can afford to go to school a much shorter time. In 2001, only 3% of children who had started primary school continued to the seventh year. [283] The principal reason is that most cost of education is borne by parents because the government finances only teachers' salaries. Education International has reported that "a matriculation fee is charged for each child".[284] The government has described the situation on the ground as follows:

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[278] U.N. Doc. CERD/C/421/Add.1 (2004), para. 169.
[279] Banque mondiale – *Le système éducatif mauritanien: Eléments d'analyse pour instruire des politiques nouvelles*, Série Développement Humain de la Région Afrique, Document de travail, Novembre 2001, p. 41.
[280] Mauritania - Poverty Reduction Strategy Paper (December 2000), available at www.worldbank.org
[281] Supreme Court in Maputo to rule on fraud charges, *Development Today*, vol. 15, No. 9, 20 June 2005.
[282] Spotlight on Mozambique: Sweden demands millions refunded, halts sector support, *Development Today*, vol. 12, No. 21-22, 15 March 2003.
[283] Supplementary information regarding the situation for children in Mozambique by Save the Children Norway, September 2001, available at www.crin.org/docs/resources/treaties/crc.29/mozambique
[284] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 205.

> There is no systematic data on which to quantify the importance of the direct contribution by households to education. However, there is evidence that in most urban and peri-urban schools, excluding wages, which are all paid by the State, funds for non-wage expenditure come from cash contributions the level of which is decided upon by joint agreement between parents and the schools.[285]

The 1990 Constitution includes the right to education, defining it as "a right and duty of all citizens". There is no corresponding obligation upon the state. Rather, it should only "promote greater and equal access to the enjoyment of this right by all citizens".[286] That constitutional model represented a profound shift from the state's monopoly of educational provision of 1975. [287]

The process of re-privatization of education in the 1990s encompassed public as well as formally private schools by transferring much of the cost of education from the state to the family budget. The government's explanation was "the implementation of the structural adjustment measures than began in 1987".[288] The PRSP confirmed, in 2001, "the need to establish a system of partial cost recovery in education". Introduction of free education was not proposed in the PRSP. Rather, only measures to exempt "the poorest households from social action tax" have been planned.[289]

Namibia

Namibia's Constitution provides that "primary education shall be compulsory and the state shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining state schools at which primary education will be provided free of charge".[290] In its reports under human rights treaties, the government regularly states that primary education is free as required by the Constitution although it reported in 1993 that "school fees are seldom charged".[291] Different from the government, academic literature depicts a different reality:

> Although the payment of school fees is not compulsory for those parents who genuinely cannot afford it, the schools which depend on those fees put a lot of pressure. At times contributions other than the official school fees are imposed on the parents. Again, although officially the wearing of school uniforms is not compulsory, educational institutions put a lot of pressure on all learners to be in uniform.[292]

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[285] U.N. Doc. CRC/C/41/Add.11 (2001), para. 458.
[286] *Constitution of the Republic of Mozambique* (English translation by AIM), Articles 92 and 93, Supplement to *Mozambiquefile* No. 174, Maputo, 1991.
[287] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 30-31.
[288] CRC/C/41/Add.11 (2001), paras. 458-459.
[289] Mozambique - Action Plan for the Reduction of Absolute Poverty 2001-2005 (October 2001), available at www.worldbank.org
[290] *Know Your Constitution!,* Legal Assistance Centre, Windhoek, March 1990, p. 11.
[291] U.N. Doc. CRC/C/3/Add.12 (1993), para. 346.
[292] Hinz, M. Et al. (eds.) - *The Constitution at Work: 10 Years of Namibian Nationhood*, University of Namibia, Windhoek, 2000, p. 342.

UNICEF has also reported that primary education was not free: "Technically, no school fees are payable at the primary level. However, families are under pressure to contribute to the school development fund and they have to pay for transport, books, and uniforms". [293]

A part of these divergent assessments of the extent to which education is for-fee rather than free may result from unclear law. While the Constitution posits that primary education should be free and compulsory, the 2001 Education Act and regulations for its implementation allow imposition of charges for School Development Fund (SDF). Exemptions are formally provided for those who cannot pay, such as orphans or children of very poor parents. This inability to pay is assessed through a procedure which is by definition humiliating. Also, it is unclear whether public funds to supplant the payments which the poor cannot make, and which the schools need to function, are available.[294] Thus, schools are left in a catch-22 quandary. If they do not collect the necessary payments, they may be unable to operate; if they insist on payments, poor children are excluded from school. There has been no public policy as yet to address this problem.

Niger

The Constitution provides that "parents have the duty to educate children, with State support" and the education law has added that it is "the obligation of the State to make primary education compulsory and free". The government has interpreted the right to education and its corresponding obligations thus:

> The [law] sets forth the right of the child to education and the obligation of the State to make primary education compulsory and free. Education is compulsory from 4 to 16 years of age. No child, boy or girl, can be taken out of or excluded from the education system for any reason whatsoever before the age of 16 years.[295]

Research into education has shown that teachers' salaries are inadequate for them to be able to teach. A recruitment freeze imposed as part of a typical structural adjustment programme triggered a switch to 'contract teachers', whose salaries are barely $65 per month, a half of what a trained teacher would get.[296] Laouali Malam Moussa has further clarified that 63% of the teaching corps are such 'contract teachers', without proper education or training, hired at much lower wages and without recognized labour rights.[297]

The PRSP has noted that "Niger is one of the few developing countries in the world where education is financed almost entirely by the government".[298] The government has contradicted its assertion that it finances education 'almost entirely' by highlighting the inability of children to comply with the law on compulsory education because of their Aprecarious financial and

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[293] UNICEF - *Monitoring the 20/20 Compact,* Windhoek, June 1997.
[294] Personal communication from the Human Rights and Constitutional Unit of the Legal Assistance Centre in Windhoek, 11 January 2005.
[295] U.N. Doc. CRC/C/3/Add.29/Rev.1 (2001), paras. 273-274.
[296] Transparency International – *Stealing the Future: Corruption in the Classroom. Ten Real World Experiences*, Berlin, 2005, p. 62.
[297] Malam Moussa, L. - Teacher training and quality of learning in Niger, *NORRAG News*, No. 35, July 2005, p. 34.
[298] Niger - Full Poverty Reduction Strategy Prepared by the Government of Niger (January 2002), available at www.worldbank.org

economic means".[299] It has added that "communities and families have become impoverished and can no longer meet the educational expenses of their children".[300] There is, nevertheless, no public policy to openly address this contradiction between compulsory education which should be but is not free. Its impact is seen in law school enrolments. Barely 38% of children (45% boys and 31% girls) enrolled in primary school in 2003.[301]

Nigeria

The homepage of the Federal Ministry of Education helpfully enables Nigerians to pay school fees or purchase vouchers for the amount of due fees on-line.[302] To computer-literate parents, this is a time-saving device and they are also likely to be able to pay the required charges. One might ask whether a more helpful service would not be an effort to eliminate these charges with a view to the vast majority who cannot pay them, least of all on-line. Cordelia Okpei, a radio journalist in Lagos, has questioned the role of a government which does not provide any public service:

> If I want electricity, I buy gasoline for my generator. If I want to educate my children, I pay school fees and if I want water, I pay for my own borehole and carry it home. This government does nothing for me.[303]

Nigeria made a promising, bold announcement that free primary education would be introduced with the change from military to civilian governance in 1999. This had added to the previous attempts to make primary education free, which were quite a few. A notable example was the introduction of UPE (Universal Primary Education) in 1975 by the military government of the time, headed by General Obasanjo. Initially, the UPE was financed through an oil boom and accompanied by pledges that all education would be made free. By 1983, the UPE was in shambles without the earnings from exporting oil to sustain it.[304] Formally, primary education has remained free as of 1976 because none of the subsequent governments, military or civilian, has formally introduced charges in primary school.

As in many other African countries, education was 'nationalized' early in Nigeria's independence. Schools were taken over by government so as to ensure that the state would have a monopoly of education. The military government validated that 'nationalization' in 1977.[305] The process was described, legally, as the 'extinguishment of the private proprietors' title to the schools and the transfer of the schools to the state governments".[306] It was triggered by the end of the Biafra civil war, in 1967-1970, and inspired by a desire to establish uniform education throughout the country so as to dismantle the patchwork of schools ran mostly by various religious denominations.[307] Creating a nation required education to be Nigerian rather than English or Islamic.

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[299] U.N. Doc. CRC/C/3/Add.29 (2001), para. 28.
[300] U.N. Doc. CRC/C/3/Add.29/Rev.1 (2001), paras. 28 and 306.
[301] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org
[302] The website address is www.fmegovng.org/onlinetransaction.php (January 2006).
[303] Houreld, K. – Rat poison, gin and hot shrine, *Guardian Weekly*, 5-11 August 2005.
[304] Uchendu, P.K. – *Politics and Education in Nigeria*, Fourth Dimension Publishers, Enugu (Nigeria), 1995, pp. 132-135.
[305] *Archbishop Okogie and Others v. Attorney General of Lagos*, Court of Appeal, Lagos, 1980.
[306] Nwabueze, B.O. - *Crises and Problems in Nigeria's Education*, Spectrum Books, Ibadan (Nigeria), 1995, p. 160.
[307] Uchendu, P.K. – *Perspectives in Nigerian Education*, Fourth Dimension Publishing, Enugu (Nigeria), 1993, pp. 46-47.

Nigeria's Constitution does not affirm that education is an enforceable right. It stipulates that the government would strive to provide free, compulsory and universal primary education "when practicable". Moreover, education is the prerogative of state governments and the central government should only guarantee respect of fundamental rights and determine the minimum standards in education. Making education free is therefore a complex endeavour in every sense of this word.

It was President Obasanjo who announced plans for universal primary education in 1999, the same General Obasanjo who had launched that same programme in 1976.[308] The Universal Basic Education Programme was launched with the aim of providing free and compulsory universal basic education for every Nigerian child.[309] The translation from promise to performance has been hampered by numerous obstacles, related to corruption or decentralization. A widely publicised case was the indictment of a former federal minister for education:

> The recent dismissal of Nigeria's Education Minister Fabian Osuji is an example of high-level political corruption. He allegedly paid six members of the National Assembly US$400,000 in bribes to vote for a rigged education budget. An aggrieved parliamentarian, who was not satisfied with the amount he received, revealed the scam. Nigeria's Independent Corruption Commission has since indicted Osuji.[310]

The responsibility of individual federal states to define and put in practice basic education for all has led to considerable differences between northern and southern states, particularly with regard to the education of girls.[311] The first time-bound target was set at the National Stakeholders' Consultation as "free education for females at all levels by the end of 2002".[312] It did not happen. Education International thus summed up the situation: "Currently, education is neither free and compulsory nor universal".[313]

Rwanda

The Constitution of Rwanda, adopted in June 2003, says that "every person has the right to education".[314] The education law has clarified that primary education is compulsory and free in public and other government-supported schools.[315] The process of making education free so that it could be made compulsory has barely started, however.

Previous surveys found school fees, the prices of meals and uniforms to be "the principal factor for parental decisions not to send their children to school".[316]

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[308] Mazrui, A.A. and Tidy, M. – *Nationalism and New States in Africa*, East African Educational Publishers, 1984, p. 310.
[309] Olusegun Obasanjo, President of Nigeria - A fairer, more stable world, *EFA 2000 Bulletin*, No. 38, January-March 2000.
[310] Transparency International - *Stealing the Future: Corruption in the Classroom. Ten Real World Experiences*, Berlin, 2005, p. 10.
[311] U.N. Doc. CRC/C/SR.1022 (2005), paras. 21-24.
[312] U.N. Doc. CEDAW/C/NGA/4-5 (2003), p. 39.
[313] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 220.
[314] The text of the Constitution is available at www.cjc.gov.rw/eng/constitution (June 2003).
[315] Organic Law No. 20/203 Organizing Education in the Republic of Rwanda of 3 August 2003.
[316] Core Welfare Indicators Questionnaire Survey, National Poverty Reduction Programme, Ministry of Finance, Kigali, 2001, mimeographed.

Charges were widespread and 98% of children were paying fees in public primary schools. The fees were estimated at 30% of the cost of education.[317]

The Special Rapporteur on human rights in Rwanda suggested in 1999 that "Rwanda would benefit enormously from an effective system of free public education, at the very least at primary level".[318] Much of the necessary funding was expected from 'the international community'. The failure of the United Nations to prevent the 1994 genocide, anticipated by the Special Rapporteur on summary executions, Bacre Waly Ndiaye,[319] subsequently led to generous aid *in lieu* of reparations. This has fuelled hopes that primary education could be made free but governmental policy on free or for-fee primary education is unclear.

In Rwanda's 2001 PRSP, there was no reference to making education free. Rather, the government planned to "reduce private costs" of education.[320] The Minister of Education claimed in June 2003 that a proposal for the abolition of school fees had been tabled but, confusingly, advocated that such a proposal be made following the examples of Tanzania and Uganda which have abolished school fees. The definition of the 'school fees' to be abolished in Rwanda was narrow since 'other charges' were to be kept in place.[321] How much of the cost of education will be supplanted by increased public funding for education, and how many 'fees' or 'charges' will be kept in place is not known as yet. Moreover, there is a discrepancy between the law, which mandates compulsory education to be free and governmental policy of cost-sharing in which anticipates "greater and predictable contribution from beneficiaries".[322]

Senegal

Senegal's policy in the 1990s was described by the government of the time thus: "from the pre-school level to university, public education is free of charge and received by all pupils and students subject to the availability of places".[323] This commitment to free education for those within the system, which the majority cannot enter, goes back to the early years of independence. Education was provided in French and a place at school was available only for a minority, urban and French speaking.[324] The National Education Law of 1991 anticipated ten years of basic education to be instituted within a decade. Also, education was to be made relevant, to include national languages rather than only French. The legitimacy of indigenous languages was formally affirmed in 2003 [325] and it is not known as yet whether this change has been scaled up from experimental projects. Cost effectiveness is, as in all other poor and heavily indebted countries, a major constraint.

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[317] *Enquête integrale sur les conditions de vie des ménages au Rwanda (EICV) 1999-2000*, Kigali, 2001.
[318] U.N. Doc. E/CN.4/1999/33, paras. 55 and 84.
[319] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 251-252.
[320] Rwanda - Poverty Reduction Strategy Paper (2001), available at www.worldbank.org
[321] The World Bank - *Education in Rwanda: Rebalancing Resources to Accelerate Post-Conflict Development and Poverty Reduction*, Washington D.C., 2004, pp. xi and 58-59.
[322] Ministry of Education - Education Sector Policy, September 2002, available at www.mineduc.gov.rw
[323] U.N. Doc. E/1990/6/Add.25 (2000), para. 108.
[324] Harber, C. – *Politics in African Education*, Macmillan, London, 1989, p. 142.
[325] Diagne, M. – Planification linguistique au Senegal: L'introduction des langues nationals dans le système éducatif formel, *AGORA INFOS, Bulleting d'Exchange d'Expériences Pédagogiques sur d'Education aux Droits Humains et la Paix*, Trimestriel du GRA-REDEP, vol. 4, no. 10, Dakar, Août-Octobre 2003, pp. 10-11.

The change of government in 2000 was followed by a major emphasis on education by the new government. This was also reflected in the 2001 Constitution, which has included an affirmation of the right to education: "The State has a duty and responsibility to educate and train young people in public schools. All children – boys and girls – in every part of the country have the right of access to school". [326]

What this 'right of access' means has not been clarified as yet. The reason for the absence of a clear guarantee of free and compulsory education for *all* children is that the government cannot ensure it. By 2003, it managed to increase net enrolments in primary school to 76% for boys and 69% for girls.[327] The government allocated in 2001 no less than 30% of its budget to education and initiated a new design of development based on education, called the OMEGA project.[328] Efforts to move further in that direction have apparently failed to trigger sufficient international financial support.

The initiatives at the turn of the millennium led to some international support, evidenced in the fact that 62% of the investment in the building of additional schools is financed through development cooperation or, in the current vocabulary, by external partners.[329] The recurrent costs, especially teachers salaries, are not financed by those external partners. An inexpensive substitute for adequately trained and paid teachers has been found in 'educational volunteers'. By 2003, these 'volunteers' have increased to 76% of the teaching corps, often with no more than primary education and no teacher training.[330] The negative impact on the quality of education has been visible and negative, exacerbated by the policy of teaching and learning in French, the mother tongue of a minuscule minority of teachers and pupils.

Extending the reach of public primary school to *all* children in the country would necessitate determining how much of an obstacle the costs of education constitute so as to gradually eliminate them. In 2003, the government reported that gross enrolment rate in primary education reached 72%, describing as obstacles "the inconsequential (sic) financial resources" and an insufficient number of schools.[331] Nevertheless, the cost of education was not mentioned in the PRSP.[332]

Moreover, the government's report on the rights of the child in 2006 has exhibited ambivalence regarding free and for-fee education. The report has first stated that "education is free" to then admit that the charges levied upon families ('*frais d'écolage'*) are constantly increasing and increasingly difficult for poor families to pay.[333] Universalizing primary education without identifying and eliminating these financial obstacles is, as we have learned from history, impossible.

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[326] Article 22 of the Constitution adopted by referendum on 7 January 2001, U.N. Doc. CERD/C/408/Add.2 (2001), para. 82.
[327] U.N. Doc. CRC/C/SEN/2 (2006), para. 249.
[328] U.N. Doc. CERD/C/408/Add.2 (2001), paras. 84-85.
[329] U.N. Doc. CRC/C/SEN/2 (2006), p. 19.
[330] U.N. Doc. CRC/C/SEN/2 (2006), paras. 265-268.
[331] *A better world for all: Follow-up on the Millennium Development Goals*, République du Senegal & Nations Unies, May 2003.
[332] Senegal - Poverty Reduction Strategy Paper (November 2002), available at www.worldbank.org
[333] U.N. Doc. CRC/C/SEN/2 (2006), paras. 43 and 282.

Sierra Leone

"You see, sir, in Sierra Leone education has become a matter of privilege, not of right," [334] was what a child told Kingsley Banya in 1998. Two years earlier the government conceded that education "is not a right yet" [335] and the Committee on the Rights of the Child noted that "free education [was provided] to children in the first 3 years of primary school" in 2000.[336]

A vicious war formed a large part of the background for this ill fate of education.[337] Warfare was followed by international support for trials of those deemed to bear the heaviest responsibility for human rights abuses. Much less attention was paid to re-starting and reforming education, which had helped to spawn warfare.[338]

To re-start education, the government outlined an ambitious plan in its 2001 PRSP:

> The aim is to introduce free primary education (that is, for classes 1-6) with effect from September 2001 in all Government-owned and assisted schools. The Government will continue to fund the payment of the salaries of teachers, provision of textbooks, teaching a learning materials and fees to facilitate wider access to primary schools. The on-going school transportation programme that provides subsidized bus fares to school children in the capital city will be expanded and extended to the major provincial towns and rural areas. [339]

International financial support for education has enabled the government to declare that primary education is free. However, Transparency International has found that public funds needed to replace previously charged school fees amount to a mere $0.70 per term, and pupils still have to pay 'extra' fees.[340] By 2003 net enrolment in primary school reached 79%, [341] and prospects for universalizing education are uncertain.

Somalia

A country without a central government the last fifteen years obviously cannot have any public services, including education. Two parts of the country, Somaliland and Puntland, are effectively separate countries while those parts of the remaining Somalia which are relatively peaceful have re-instituted traditional forms of education while international agencies, inter-governmental and non-governmental, provide some formal schooling to children which they can reach.

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[334] Banya, K. – Review of Educational Reform and Transformation of Southern Africa by Dickson Mungazi and Kay Walker, *Comparative Education Review*, vol. 42, No. 3, November 1998, p. 539.
[335] U.N. Doc. CRC/C/3/Add. 43 (1996), para. 77.
[336] U.N. Doc. CRC/C/15/Add. 116 (2000).
[337] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 280-284.
[338] Tomasevski, K.- *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 30-31.
[339] Republic of Sierra Leone - Interim Poverty Reduction Strategy Paper, Freetown, June 2001, available at www.worldbank.org
[340] Transparency International – *Stealing the Future: Corruption in the Classroom. Ten Real World Experiences*, Berlin, 2005, p. 73.
[341] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org

Somalia has been singled out in the UNESCO/UNICEF global review of exclusion from education as the worst performing country in the world with "1.6 million out of 1.8 million eligible children – nine out of ten girls and boys – unable to access education".[342] Because nobody knows the size of Somalia's population no statistics can possibly be accurate. Nevertheless, such 'official' statistics indicate that indigenous education is poorly known and not recorded as education [343] although it has continued. The model which Hassan Keynan has dubbed as 'somalisized Quranic school' [344] predates state-provided schooling and has continued in the aftermath of 1991, after the state has effectively disappeared. Because indigenous education much as indigenous governance conforms to somalisized Islamic models, post-9/11 fears are likely to loom large in reactions of 'the international community.'

The 10% of school aged children who are counted by international agencies as attending a formal school are also likely to be financed internationally. The absence of a government, through which most aid is usually provided, has led to minuscule aid flows to Somalia. While the UNOSOM, the US-UN military intervention, cost $1.5 billion, aid to Somalia fell to $30 million in 1997 and has continued decreasing.[345] Different from UNOSOM's ambitious plan to create a renewed statehood in Somalia, the subsequent trust of intergovernmental strategies has become that solutions to Somalia's problems should be internal. Also, the necessary resources should, 'the international community' has asserted, come from the Somalis themselves.[346]

This is indeed the most likely scenario, that a central government will emerge through indigenous forms of governance after warfare has been halted rather than through externally supported negotiations. The government which was formed through negotiations, mostly outside Somalia, elected as the president of the Federal Republic of Somalia Yusuf Ahmed. Having taken up that post, he said: "Somalia is a failed state and we have nothing". [347] While it has indeed become customary to refer to Somalia as a 'failed state' it would be much more accurate to call it a destroyed state. Somalia had been a target of the US-UN military intervention in 1992-1995 [348] and that opened the way for subsequent years of warfare. All public services were halted and they have been re-instituted in Somaliland and Puntland, which remain internationally un-recognized and, thus, unsupported.

The inauguration of the president and the government-to-be took place in 2005, 14 years after the previous government had been toppled, in 1991. It was preceded by 14 peace conferences, one per year on average. These negotiations were supposed to generate an agreement on the future governance for Somalia as it had been in 1991.

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[342] *Children Out of School: Measuring Exclusion from Primary Education*, UNESCO Institute for Statistics, Montreal, 2005, p. 24.
[343] Westerlund, D. & Evers Rosander, E. – *African Islam and Islam in Africa*, Hurst & Company/London and Nordic Africa Institute/Upppsala, 1997, p. 321.
[344] Keynan, H. – Notes on indigenous education in Somalia, in: Brock-Utne, B. (ed.) – *Indigenous Forms of Learning in Africa,* Rapport Nr. 7 1994, Pedagogisk Forsningsinstitutt, Universitet i Oslo, Oslo, 1994, p. 133.
[345] Bradbury, M. – A review of Oxfam Somalia programme 1995-1997, Oxfam, Oxford, 1997, mimeographed.
[346] United Nations consolidated appeal for Somalia October 1996 – December 1996, UNDHA (United Nations Department for Humanitarian Affairs), vol. 1: Joint programmes and projects, New York/Geneva, December 1996.
[347] Ali Ahmed, F. – Somalia: A new beginning?, *New African*, December 2004, p. 30.
[348] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 270-275.

Representatives of the key warring parties (often referred to as 'warlords') were expected to agree to give up arms and respect the decisions of whoever would become formally elected by themselves.[349] Formally, things improved and Somalia's parliament had an opening session in February 2006 far away from Mogadishu, the national capital.[350] Informally, international attention shifted to Mogadishu, triggered by a military victory of the Union of Islamic Courts over US-backed militias.[351] This made Somalia, once again, a battlefield, this time defined as part of the US anti-terrorism strategy.[352]

South Africa

The post-apartheid government has not managed to universalize education or to make it free after a full decade of having in place a constitutional guarantee of basic education for all. The model which the government chose in the transition from apartheid, embodied in the 1996 Schools Act, was to allow considerable school autonomy in public education, including the charging of fees. A minimum is provided for each child out of budgetary resources but it is below the actual cost of education. Schools are allowed to supplement these public funds by levying charges. These can be five times higher in rich (almost always while) than in poor schools (which are almost always black). [353]

The previous segregated educational systems were brought into a common frame but a uniform, common public school does not exist as yet. Although most children attend public schools, they reflect the wealth or the poverty of residential zones. This feature was exacerbated by the decentralization of financial responsibility for education in 1994. Inequalities between and within provinces are slowly diminishing through equalization grants from the central government but they are still striking because these grants are too small. [354]

Although the constitutional guarantee of basic education is unconditional, estimates of children who are out of school are above 300,000 [355] and precise figures are not available. Public funding for education reached 7% of GDP and 22% of the total budget in 1995. The government claims that further increases are impossible because education is the largest budgetary item.[356] Public funding prioritizes the poorest schools and the poorest communities around schools and immensely complicated formulas are used for calculating these two-fold poverty indices. There is, however, too little public funding available because the government does not favour increasing the general tax or imposing special educational taxes.

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[349] Koskenmäki, R. – Legal implications resulting from state failure in light of the case of Somalia, *Nordic Journal of International Law*, vol. 73, 2004, pp. 1-36.
[350] UN envoy in Somalia urges leaders to chose reconciliation over chaos, UN News Service, 26 February 2006, available at http://allafrica.com (March 2006).
[351] Rice, X. – Islamic militia defeats Somali warlords, *Guardian Weekly*, 9-15 2006.
[352] Somalia: The rising fear of a war of proxies, *The Economist*, 15 July 2006.
[353] Reschovsky, A. – Financing schools in new South Africa, *Comparative Education Review*, vol. 50, 2006, No. 1, p. 35.
[354] National Treasury - *Intergovernmental Fiscal Review 2003*, Pretoria, October 2003, p. 67 available at www.treasury.gov.za
[355] Mestry, R. – Children's right to basic education: Implications for the state to fund schools in South Africa, *International Journal of Education Law and Policy*, Issue 1-2, December 2004, p. 296.
[356] Motala, S. – Education, in: Robinson, S. & Biersteker, L. (eds.) – *First Call: The South African Children's Budget*, IDASA (Budget Information Service and Youth Development Trust), Cape Town, 1997, p. 124.

The government often reiterates its commitment to free primary education but school governing boards have discretion in imposing fees. Poor parents have a right to seek exemption but this scheme does not function well. The Education Department has explained on its website (www.education.gov.za) the complexity of this conditional right to free education. An application for waiving school fees ought to be submitted to the school, which is supposed to help poor parents get an exemption rather than admit a child whose parents can pay the fees. The procedure assumes that all parents are literate and can cope with the necessary paperwork, which is not the case. Poor parents are advised to take the following steps:

> The school may ask you to pay school fees. However, if you cannot afford the required amount or can pay a lesser amount, you may write a letter to the school governing body (SGB) requesting exemption from paying school fees. The school governing body will inform you of its decision. A copy of the regulations dealing with school fees is obtainable at the school. The school must also assist you if you need help with your application for exemption. You can lodge an appeal with the Head of Department in the province. S/he will explain the reasons if you were not granted exemption.
> If it is determined that you can afford to pay the fees, and fail to do so, legal steps can be taken against you to ensure that you pay any outstanding fees. (Note that no child may be refused admission to school due to parents' inability to pay school fees. The school may also not withhold your child's results or exclude him/her from any educational activity if you cannot afford to pay school fees.)

The Council of the SADTU (South African Democratic Teachers' Union) has noted that "the legal right to exemption from school fees for poor people is not enforced" which affects especially AIDS orphans.[357] Legislative changes which are likely to come into force in 2006 have empowered the Minister of Education to decide on the schools which are fee-free, probably some 40% of schools in the poorest parts of the country.[358] The aim is apparently to establish a two-tier system, whereby the majority of schools will continue levying charges while a minority will be made free of charge. Unequal education will thus be further re-inforced, with fee-charging schools able to provide an education which is far superior to that in fee-free schools, which will only have the minimal governmental budgetary allocation at their disposal. Time will tell whether this will function and, if so, what the effects will be.

In the meantime, there is a great deal of debate on governmental constitutional obligations in education. They were intensified on the tenth anniversary of the Constitution, on 8 May 2006. The Constitution states that "everybody has the right to (a) a basic education, including adult basic education, and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible".[359] In its first report under the Convention on the Rights of the Child, in 1998, the government outlined its interpretation of this constitutional guarantee. Although basic education is a fundamental right it is not free.

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[357] SADTU - Issues discussed and resolutions passed by the National General Council, July 2003, available at www.sadtu.org.za

[358] South Africa: Controversial education bill raises temperatures, *IRIN News*, 19 May 2005, available at www.irinnews.org

[359] The Constitution of the Republic of South Africa, 1996, as adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly; and amended by the Constitution of the Republic of South Africa Amendment Act, 1997 (Act No. 35 of 1997).

School fees are set "by majority resolution of the parent body" as a reflection of school autonomy. Legal safeguards for the poor are embodied in the principle that "no learner may be excluded from a school because of the non-payment of his or her school fees".[360] The practice is different: "procedures involved in obtaining the exemption are cumbersome; the school governing body is often un-cooperative, resisting the loss of (scarce and valuable) income; the parents are reluctant to seek rebates as they fear that their children might be ostracised or victimized.[361]

The clash between the explicit affirmation of the right to education, whose corollary is children's guaranteed access to public education, and the right of public schools to deny access to children unless they can pay the required fees, has yet to be addressed so as to determine what the right to education means in South Africa. The imposition of charges upon people who cannot afford them has triggered legal challenges. Faranaaz Veriava has described a case which exemplifies the underlying problem, *Sorsa and Sorsa versus Simonstown School*. It was launched by the Centre for Applied Legal Studies (CALS) in 2003 and the background was as follows:

> When the applicants' daughters began attending the school in 1998, the applicants entered into an informal agreement with the previous school principal to pay school fees of R50 per month per child. This agreement was to continue until their financial situation improved and they were able to pay the full amount of school fees requested by the school. The applicants, however, asked the school principal whether there was a subsidy for parents who could not afford to pay school fees. At the time the applicants did not know that the term used in law to describe assistance to parents who cannot afford to pay school fees is not 'subsidy' but 'exemption.' They were told that the school did not provide any subsidies to parents. The agreement lasted until May 2000 when the applicants' financial hardship worsened and they stopped paying anything towards their children's school fees. In 2001 a new school principal was appointed, under whom the applicants were asked to pay the full school fees. The applicants explained their financial situation to the school and asked if they could not get a subsidy from the school to assist them. Again they were told that the school did not provide subsidies to parents who could not afford to pay school fees. On 13 November 2002 the applicants received a summons from the school claiming arrears in school fees of R24,174. A default judgment was granted against them on 19 November 2002.[362]

That judgment obligated the parents to pay full school fees and thereby it enforced a private contract between the school and the parents. Legal enforcement of a commercial contract effectively treated a public school as if it were private. The key difference between private and public schools is that the former are entitled to condition children's access to education by the payment of fees, while the latter should be open to all school age children.

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[360] U.N. Doc. CRC/C/51/Add.2 (1998), para. 399 (f).
[361] User fees and the cost of basic education, *Quarterly Review of Education & Training in South Africa*, December 2001, p. 6.
[362] Veriava, F. – Enforcing the current laws on school fees: *Sorsa and Sorsa v Simonstown School*, Magistrates Court, Case 2759/02, 29 May 2003, *ESR Review: Economic and Social Rights in South Africa*, Community Law Centre (University of the Western Cape), vol. 4, No. 2, June 2003, pp. 11-12.

Having legitimized parental payments as a condition of children's education, the government of South Africa has converted public into private schools. Individual cases like *Sorsa and Sorsa versus Simonstown School* are usually settled out of court, but the systemic problem remains unaddressed.

As long as individual parents are pitted against individual schools, the problem is impossible to solve. Schools are forced to seek the funds they need and, if they cannot obtain them from the government, poor parents are harassed into paying or their children are excluded from school. The racial profile of poverty in South Africa, inherited from the decades of apartheid, compounds economic by racial exclusion.

Solving the multi-layered problems of educational exclusion necessitates both the willingness and the ability of the government to ensure sufficient public funding for education. This requires revisiting the model adopted a decade ago, which institutionalized payments in public schools and privatized a considerable part of the financial responsibility for public education. The rationale for this peculiar model has been explained thus:

> The central dilemma facing the new government was how to reconcile its commitment to equity and redress, and at the same time maintain strict financial discipline. A firm stand against increasing education spending was made. Merely redistributing existing budgets that had been allocated to the relatively privileged subsystems (the while, Indian and coloured schools) would not result in a major increase in overall per capita amount, but would have likely led to a mass exodus of privileged learners from the public sector. Given the unwillingness to commit huge additional funds to education and the difficulty of reducing the teacher salary bill, the new lawmakers' only option was to allow parents to supplement the state's contribution. [363]

The effects of the model which South Africa's government has chosen are seen in the official statistics, which show that only 89% of school age children enrolled in primary education in 2003.[364] South Africa is therefore far from universalizing primary education because 11% of children do not even enrol in school. Even more important than such depressive official statistics is the role which education should have played in transition from apartheid, to "heal the divisions of the past" and "free the potential of each person" as the preamble of the Constitution has stated.[365] These goals necessitate moving away from "US developed statistical packages and planning models" exported through the World Bank [366] to define a model of education that would lead towards a society based on democracy, social justice and human rights as the Constitution requires.

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[363] Fleisch, B.D. – *Managing Educational Change. The State and School Reform in South Africa*, Heinemann, Sandown (South Africa), 2002, p. 78.
[364] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[365] Preamble to the Constitution of the Republic of South Africa, 1996, as adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly; and amended by the Constitution of the Republic of South Africa Amendment Act, 1997 (Act No. 35 of 1997).
[366] Badat, S. – Educational politics in the transition period, in: Kallaway, P. et al. (eds.) – *Education After Apartheid: South African Education in Transition*, University of Cape Town Press, Cape Town, 1997, p. 23.

Swaziland

There were no constitutional guarantees in education or any other human rights safeguards in Swaziland for thirty years. The Constitution was adopted in July 2005, promising free education for all primary-school children within three years.[367]

If translated into governmental policy, introduction of free education will make a big change in easing the financial burden imposed upon the family. In its reports under human rights treaties, the government has conceded that school children's parents financed 29.6% of the cost of public primary education.[368] Education International has reported that the government pays only teachers' salaries while families bear all others costs, including the upkeep and repairs of schools, housing for teachers, books and supplies.[369] The IRIN News quoted Alexander Tsabedze, a Swazi school headmaster, at the beginning of school year 2003-2004:

> The problem is school fees - and it's not a new one. Parents scramble to come up with money for tuition, school uniforms, transportation, boarding, and other fees. What is measurably worse this year is the number of parents who are out of work, and the growing population of children without parents. [370]

Despite the new constitutional guarantee of free education, the Ministry of Education's mission statement has remained confined to promoting 'affordable' rather than 'free' education.[371] The coming years will show whether primary education will be made free and universalized, or remain within the reach of only those who can afford its cost.

Tanzania

The government of Tanzania has planned to gradually revert to free education, as it had been in its early post-independence decades, through its commitment to abolish the charges levied in primary education in 2001. The official announcement was that "the government will abolish school fees and other mandatory parental contributions from January 2002 so that no child may be denied schooling".[372] The abolition of school fees had figured prominently in Tanzania's PRSP because debt relief provided some of the funds needed to replace school fees. Their value was estimated at merely 1% of the recurrent educational budget.[373] Much as in other countries where debt relief financed the abolition of school fees, the funds proved insufficient and education was made only partially free; school fees were abolished but other charges were kept in place. Debates about the meaning of free education, about differences between fees and other charges, mandatory and voluntary financial contributions, have continued ever since.

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[367] The Constitution of the Kingdom of Swaziland, signed into law on 26 July 2005, text available at www.gov.sz
[368] *The Development of Education. National Report of Swaziland by Ministry of Education*, 24 June 1996.
[369] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 275.
[370] Swaziland: Fees keep AIDS orphans out of school, available at www.irinnews.org
[371] The home page of the Ministry of Education (www.gov.sz/home.asp?pid=57) was not adjusted to the promise of free education in the 2005 Constitution by May 2006.
[372] Tomasevski, K.- *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 139-141.
[373] Tanzania - Poverty Reduction Strategy Paper (October 2000), available at www.worldbank.org

Education was free in Tanzania's early history but also permeated with the ideology of *ujamaa* socialism, based on President Nyerere's 1967 book *Education and Self-Reliance*. That model of all-encompassing free public education had initially been praised. The ILO's (International Labour Organization) was thus formulated:

> Tanzania deserves credit for taking the bold step of bringing about UPE [Universal Primary Education] in such a short time and at a reasonable cost. The share of education in the Government recurrent and capital expenditures was only 15 percent in 1980/81 and the proportion of the total expenditure on education only 4.6 percent of the GDP in 1978/79. [374]

Initially, that model had been enthusiastically supported by donors but their support switched in the 1980s to structural adjustment.[375] Reduced educational budgets and increased payments by families led in decreased school enrolments and, then, increasing illiteracy.[376] The memories of free education resonated in 2001 as background for the abolition of school fees:

> In the 1970s under the dynamic leadership of the founding father of our nation Mwalimu (Teacher) Julius Kambarage Nyerere with donor funding we had achieved near universal primary education (UPE) reaching [enrolment] peaks of 98% in 1980. Inadequate economic growth and donor-driven notions of cost-sharing, cost-recovery and user-charges led to introduction of primary school fees. After introduction of school fees enrolment started to decline and reached bottom low of 57% in 2000. [377]

The UPE (Universal Primary Education) introduced in 1977 led to a huge expansion of enrolments but also transferred most of the cost of education from the government to the creditors and donors. The ILO reported that "out of Ts. 350 million budgeted for 1983-84, more than Ts. 300 million are expected to be financed by donors".[378] School fees were re-introduced in the nominally free public schools under the name of a 'development levy' in 1984.[379] Thereafter, reliance on external funding has remained a key feature of Tanzania's education. The Economist reported in 2004 that 45% of governmental budget originated from foreign aid. [380]

Creditors' and donors' funds have always been conditioned by reforms and Tanzanian education lost the central tenants of its original design. As Brian Cooksey and his team anticipated in 1994, the dominance of creditors and donors in educational policy increased.[381] Creditors took the lead, especially the World Bank. In 1999, it explained cost sharing as follows:

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[374] International Labour Office – *Basic Needs in Danger: A Basic Needs Oriented Development Strategy for Tanzania,* ILO, Addis Ababa, 1982, p. 110.
[375] Tomasevski, K. – *Development Aid and Human Rights*, Pinter Publishers, London, 1989, p. 174.
[376] Tomasevski, K. - *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 69-77.
[377] Sector based educational development funding: Strengths and weaknesses as seen from a partner country by Joseph Mungai MP, Minister for Education and Culture, United Republic of Tanzania, May 2002, mimeographed.
[378] International Labour Office – *Distributional Aspects of Stabilization Programmes in the United Republic of Tanzania, 1979-84: Report of an ILO Mission*, ILO, Geneva, 1988, p. 40.
[379] Kitaev, I. – *Private Education in Sub-Saharan Africa: A Re-examination of Theories and Concepts Related to Its Development and Finance*, International Institute for Educational Planning, UNESCO/IIEP, Paris, 1999, p. 30 and 81.
[380] Reform in Tanzania: Nyerere betrayed, fortunately, *The Economist*, 3 January 2004.
[381] Cooksey, B. et al. – Education for self-reliance and *harambee*, in: Barkan, J.D. (ed.) – *Beyond Capitalism and Socialism in Kenya & Tanzania*, East African Educational Publishers, Nairobi, 1994, p. 230.

> Households pay the bill whether through taxes or direct payments, so cost sharing is really a question of clarifying who benefits and who pays. [Cost sharing was needed] to encourage parental contributions and improve accountability to parents concerning how resources are spent.[382]

The World Bank justified the charges levied on parents by their willingness to pay. Their ability to do so was not analysed because too many simply could not pay for education. Tessa Peasgood and her team found "pupils being continually harassed due to failure to raise school fees and not wearing a uniform. Pupils were even beaten because of this".[383] Field work carried out to determine how much parents had to pay and how that compared with their income found that education was simply unaffordable for many. An NGO, Maarifa Ni Ufunguo, found in 2001 that charges levied for four school children exceeded by a third an average annual income of a poor couple.[384] Another NGO, TEN/MET, reported in 2001 on the types of charges. They included school fees, charges for school meals, examination fees, the costs of security personnel, telephone and water. They added up to over 20,000 shillings ($20) [385] without the cost of school uniform, textbooks or supplies.

The abolition of school fees in 2001 triggered, as in other countries, a huge increase in the numbers of school children. Nevertheless, the government's plan that all children would be at school by 2005 did not materialize because numbers of entrants in primary school started decreasing in 2004. Estimates have been than 10% of 7 year olds do not even enrol.[386] The biggest obstacle, as before was the cost; education was made cheaper but not free. Previously levied fees were replaced by a capitation grant of about $10 per school child per year, 40% of which was earmarked for learning materials. That funding formula was based on the funds that were available rather than the funds that would be needed to offer children education worthy of the name.

That the abolition of (some) school fees was an improvement was beyond doubt but how much was actually accomplished and what remained to be done so as make education for all a reality became an object of controversy. Different assessments of successes and shortcomings have pitted the Ministry of Education against HakiElimu, an NGO critical of the government's performance.[387] A perception that everybody was in partnership with everybody else has been replaced by international mobilization to allow independent assessments of educational design and performance in Tanzania as well as to respect freedom of information and expression.

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[382] The World Bank – *Tanzania: Social Sector Review*, Washington D.C., October 1999, pp. 16, 49 and 82-83.
[383] Peasgood, T. et al. – *Gender and Primary Schooling in Tanzania: Report of a Joint Team from the Institute of Development Studies, Sussex, and the Ministry of Education and Culture, Dar es Salaam*, Gender and Primary Schooling in Africa Programme, Research Report 33, Institute of Development Studies, Brighton, September 1997, p. 144.
[384] Cost sharing: A case study of education in Kilimanjaro, Maarifa Ni Ufunguo, Arusha, February 2001, mimeographed.
[385] TEN/MET Secretariat – Tracking fees in primary education and basic health services: Impact on basic rights in Tanzania, Tanzania Education Network (TEN) & Mtandao wa Elimu Tanzania (MET), Arusha, undated.
[386] HakiElimu – Three years of PEDP (Primary Education Development Plan) implementation: Key findings from government reviews, July 2005, available at www.hakielimu.org
[387] Tanzania: Government bans education NGO, *IRIN News*, 5 October 2005, available at www.irinnews.org

Togo

Marie-France Lange has coined a term *déscolarisation* to describe the process of rejection, abandonment of public school in Togo. It is a helpful concept because it forces asking questions about the ends and means of education, and about human rights safeguards which are necessary in making such decisions. She has traced the beginning of *déscolarisation* in Togo to the early 1980s. Previous annual increases in the numbers of children at school reached 72% in 1980 to then decrease to 53% in 1985. She has pointed to the budgetary austerity introduced in 1982 through structural adjustment, which froze salaries, increased taxes, and halted public employment. Going to school and bearing the burden of studying in an alien language, suffering the humiliations of failure at exams and corporal punishment so as to become unemployed – or even unemployable – was not an attractive proposition.

Neither public participation in the making of governmental policy nor public protest against it was possible due to the military rule, effectively as of 1963.[388] Yves Ekoué Amaïzo has claimed that "vital decisions are taken by a small group of military men," even today.[389]

Togo's 1992 Constitution obliges the government to progressively introduce free public education to encompass at least all children up to the age of 15.[390] Education has not been made free. The government assessed it in 1996 as "relatively free".[391] Ten years later, the Human Rights Watch found education very expensive. Annual school fees were $6-20, and to them was added the full cost of books, supplies, meals and transportation. The minimum salary was nominally set at a monthly $28 at the time, but this applied to a minority of public employees.[392] For the rest, primary education was – and is - unaffordable.

At the turn of the millennium, tuition fees in primary school were only reduced and that solely for girls.[393] During the presentation of its report to the Committee on the Rights of the Child, in 2005, the governmental delegation stated that "tuition fees for girls had been lowered considerably in order to encourage their enrolment in primary education [but] no recent data was available on the school enrolment rates". Also, it admitted that "budget allocations for education had been reduced largely as a result of Togo's political problems".[394]

These 'political problems' impeded the attainment of free education throughout the 38 years of the rule by President Eyadéma. The continuation of the same model of governance was ensured through replacing him with his son, first through a military coup and then through elections.[395] This has revived international concerns about the absence of constraints upon the government in Togo, especially human rights safeguards.[396]

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[388] Lange, M.-F. – *L'école au Togo: Processus de scolarisation et institution de l'école au Togo*, Éditions Karthala, Paris, 1998, pp. 241-268 and 293.
[389] Ekoué Amaïzo, Y. – Togo: Same old problems, *New African*, April 2006, p. 66.
[390] République du Togo, Constitution de la IV République 1992, Article 35.
[391] Developpement de l'education. Rapport national du Togo par la Ministère de l'education nationale et de la recherche scientifique, Lomé, Juin 1996.
[392] Human Rights Watch – Failing Our Children: Barriers to the Right to Education, September 2005, available at http://hrw.org/reports/2005/education0905 (December 2005).
[393] U.N. Doc. CCPR/C/TGO/2001/3 (2001), para. 84.
[394] U.N. Doc. CRC/C/SR.1018 (2005), paras. 70 and 79.
[395] Toulabor, C.M. – Election á hauts risques dans un Togo déchiré, *Le monde diplomatique*, April 2005; Togo: Who's in charge?, *The Economist*, 30 April 2005.
[396] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 294-295.

Uganda

The introduction of Universal Primary Education (UPE) proved to have worked when the first 'UPE generation' finished primary school in 2003. Education was not made really free nor has it been universalized, however.[397]

The UPE started with the government's announcement in 1997 that "four children per family are entitled to free primary education".[398] That education would be free for four children per family (*abaana bana basome* or let us have four children studying in Luganda) was quickly translated in popular parlance into *abaana bona basome* or let us have all children go to school; the difference was only one letter.[399] A similar 'translation' was done in English.

International creditors and donors hailed Uganda's for making primary education free although this was neither done nor had it been promised. Also, education is not defined as an enforceable right in Uganda.[400] This precludes human rights challenges of governmental policy. It has been formulated in the language of *investment* and *access* rather than education as a public service.[401] The PRSP described in 2000 the successful introduction of free primary education in 1997, positing as the central challenge for the future keeping children at school and improving the quality of education.[402]

The World Bank has hailed Uganda's 'big bang' approach. It its interpretation, the removal of the financial constraints on the demand side increased access to school. Translated from World Bank's jargon, parents had previously not been able to afford sending their children to school but the 'big bang' lowered that barrier.[403] Because the World Bank advocates neither free nor compulsory education, praise for Uganda was based on increasing the number of children at school at a low cost to public purse.

The beginning of the 'big bang', in 1997-1998, showed what we fondly call 'the international community' to be divided. Most donors supported the abolition of school fees and the surge of children to school. The IMF opposed hiring additional teachers to educate all these children.[404] The abolition of the fees in 1997 was partial, tuition and PTE (parents and teachers association) fees were eliminated for four children per family. Direct costs were thus considerably reduced from the pre-1997 situation, when parental payments "accounted for 75 percent of school income".[405] However, the costs of education have remained high:

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[397] Tomasevski, K.- *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 136-138.
[398] U.N. Doc. CERD/C/358/Add.1 (2001), para. 86.
[399] Sempebwa, E.K.K. – UPE does not exist, *The New Vision* (Kampala), 3 January 2000.
[400] The objectives and directive principles of state policy state that "the State shall promote free and compulsory basic education". Further, Article 34 (2) specifies that "a child is entitled to basic education which shall be the responsibility of the State and the parents of the child", and Article says: "All persons have a right to education". *Constitution of the Republic of Uganda*, Government of Uganda, 1995.
[401] *Education Strategic Investment Plan 1998-2003*, Government of Uganda, November 1998, para. 1.3.
[402] Uganda's Poverty Eradication Action Plan (March 2000), available at www.worldbank.org
[403] The World Bank – Achieving universal primary education in Uganda: The 'Big Bang' approach, *Education Notes*, April 2002.
[404] Commission on Human Rights - Report of the Special Rapporteur on the right to education, Katarina Tomasevski: Mission to Uganda, U.N. Doc. E/CN.4/2000/6/Add.1.
[405] Tumushabe, J. et al. – *Gender and Primary Schooling in Uganda. A Report Sponsored by the Forum for African Women Educationalists (FAWE),* Ministry of Education and Sports/Republic of Uganda and Institute of Development Studies (IDS), Brighton, October 1999, p. 29.

> Despite UPE (Universal Primary Education) eliminating tuition and most PTA (Parents and Teachers Association) fees, the costs to families of sending children to school are very high, on average about Ushs. 26,900 (about US$ 16). Poor people spend less, but even for a family in the bottom quintile of wealth, they spend about Ushs. 10,300 per child (US$ 6) or Ushs. 41,200 (US$ 25) if they have four children in school. This is a very large barrier recognizing that a daily wage in agriculture is only Ushs. 1,000 (US$ 0.60). [406]

By 2005, Uganda has fallen out of favour with some of its donors because of perpetuating the same government through lifting time-limits on the presidential term of office, increasing military expenditure, and repression. The United Kingdom reduced its aid, as did Norway. [407] Whether charges in primary education will be increased to make up for diminished foreign aid is an open question.

Zambia

Zambia's was one of the governments which formally acknowledged their inability to ensure free primary education when it ratified the International Covenant on Economic, Social and Cultural Rights in 1984. It stated that "the financial implications are such that full application cannot be guaranteed at this stage". In 1999, the government self-critically stated "that it cannot meet all the expectations in the area of education. Private and community schools provide basic education outside the formal system and this is encouraged as an alternative avenue". [408] It affirmed in 2002 that "there is no legislation that guarantees the right to education".[409] Instead, its policy of cost sharing required parents "to contribute to the education cost of their children in the form of user fees".[410]

In the early 1990s, families financed just under a half (44%) of the cost of primary schooling [411] but by the end of the decade, their financial contribution increased to twice as much as the government's.[412] Direct charges increased from K20 in 1991 to K1,000 in 1994 with the annual cost of keeping one child in primary school estimated at $24.[413] Widespread impoverishment reduced the parental ability to pay for the schooling of their children but, nevertheless, a child could be excluded from school for the failure to pay fees even if the parents are unable to pay them.[414] The background was that too many parents were – still are - simply unable to finance the education of their children. Michael Kelly has described key problems:

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[406] Klees, S. et al. - Policy options for achieving quality primary education for all children in Uganda, 18 September 2002, mimeographed.
[407] News: Uganda, *NewsAfrica*, 31 August 2005; Uganda: Sweden, Denmark remain critical, but calm, *Development Today*, vol. 15, No. 12, 19 August 2005.
[408] U.N. Doc. CEDAW/C/ZAM/3-4 (1999), p. 32.
[409] U.N. Doc. CRC/C/11/Add.25, 2002, para. 329.
[410] *The development of Education 1994-1996. A national report of Zambia*, Ministry of Education, Lusaka, February 1996.
[411] *"Will the poor go to school?": Cost-sharing in education in Zambia*, A study sponsored by Oxfam-Zambia and Jesuit Centre for Theological Reflection, Lusaka, October 2001, p. 20. (available at www.jctr.org.zm., July 2003)
[412] Seshamani, V. - *Cost Sharing in Primary Education in Zambia: A Budgetary Analysis*, Jesuit Centre for Theological Reflection, Lusaka, July 2001, mimeographed, p. 3.
[413] Watkins, K. - *Education Now: Break the Cycle of Poverty,* Oxfam International, Oxford, 1999.
[414] U.N. Doc. CRC/C/11/Add.25 (2002), paras. 482 and 442.

> [In rural areas] where there is almost no such thing as a cash economy, raising the kwacha equivalent of a few dollars is scarcely possible. In most of the country, the increasing prices of food, the introduction of user charges in health, or lay-offs of large numbers of government employees combine to make many Zambian families too poor to make any education-related payments.[415]

A commitment to seven years of free basic education was announced in February 2002 by the president of Zambia. This included the abolition of school fees and obligatory school uniforms.[416] This commitment was repeated in the PRSP one month later. The government recalled the Universal Declaration of Human Rights, whereby elementary education should be free and compulsory and highlighted the high cost as the principal obstacle to universalizing education.[417] The commitment to free education was made for primary school alone while secondary schools were to be funded 80% by user fees.[418]

Although the government formally declared that primary education should be free as of 2002, this pledge has not been translated into reality. Human Rights Watch found in 2005 that schools continued to charge fees.[419] Some of the fees were abolished but others were merely re-named as Venkatesh Seshamani has described:

> Although the government abolished user fees, this did not effectively reduce the financial burden of the parents since practically all schools simply raised the PTA charges to cover the lost fees. [420]

The conditions Zambia had to meet to reach the completion point and, thus, attain debt relief pitted the ministries of finance and education against each other.[421] Reduced budgetary allocations to education were needed to qualify for debt relief and educational retrogression continued. The World Bank conceded that Zambia "had achieved universal primary completion in 1990, [but] has since then suffered a substantial decline".[422] The UIS singled out in 2004 Zambia, alongside Zimbabwe, as two countries which provided less schooling in 2004 than in 1990.[423] With the announcement of debt relief in February 2006 [424] possibilities for making primary education less expensive for the children and their parents are likely to improve.

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[415] Primary education in a heavily indebted poor country. The case of Zambia in the 1990s: A report for Oxfam and UNICEF prepared by M.J. Kelly, School of Education, University of Zambia, Lusaka, October 1998, mimeographed, p. 28.
[416] Ministry of Education – *Strategic Plan 2003-2007 (Final Version – February 2003),* Lusaka, February 2003, p. 11.
[417] Republic of Zambia – *Zambia Poverty Reduction Strategy Paper 2002-2004*, Ministry of Finance and National Planning, Lusaka, March 2002, p. 77., available at www.worldbank.org
[418] *'They've got class': A policy research report on Zambian teachers' attitudes to their profession*, VSO (Voluntary Service Overseas), London, 2002, mimeographed, p. 12.
[419] Human Rights Watch – *Failing Our Children: Barriers to the Right to Education*, September 2005, available at http://hrw.org/reports/2005/education0905 (December 2005).
[420] Seshamani, V. - Cost sharing in primary education in Zambia: A budgetary analysis, Jesuit Centre for Theological Reflection, Lusaka, July 2001, mimeographed, p. 3.
[421] EFA an empty promise unless debt is cancelled, interview with Michael Kelly, 7 September 2004, available at http://allafrica.com/stories/200409072161.html
[422] Achieving education for all by 2015: Simulation results for 47 low-income countries, The World Bank, Human Development Network, Africa Region and Education Department, 24 April 2002, mimeographed, p. 21.
[423] *Global Education Digest 2004: Comparing Education Statistics Across the World*, UNESCO Institute for Statistics, Montreal, 2004, p. 15, available at www.uis.unesco.org
[424] Mbewe, A. – Zambia: All sweetness as debts are cancelled, *New African*, February 2006, p. 55.

One of the first necessary steps is an increase in teachers' salaries. In 1999, the World Bank found that "at a starting salary of about $660 annually teachers are paid almost 25% below the CSO (Central Statistical Office) estimate of poverty line for a household with two adults and four children".[425] In 2004, the monthly cost of living on the basis of a minimal bread-basket was calculated at $160 while average teachers' salaries were $130.[426]

Zimbabwe

Zimbabwe was singled out by the UIS, alongside Zambia, for providing less schooling in 2004 than in 1990.[427] This is likely to have deteriorate further because the cost of schooling has continued increasing. A letter to the editor of *New African* from Harare described in 2004 how primary schools were increasing their fees every six weeks just to cope with inflation.[428] How much they increased fees and charges in 2006, when the inflation rate exceeded 1000%, is difficult to imagine. That letter confirmed what the Committee on the Rights of the Child had said already in 1996: "primary education is neither free nor compulsory" in Zimbabwe. [429]

This educational retrogression made Zimbabwe unrecognizable from the country whose post-independence accomplishments in education had been hailed, and for good reason. School fees were abolished seven months after independence and "by 1984 primary enrolments were approaching 100 per cent of school-age children".[430] Education was not completely free [431] but its expansion in the 1980s was a result of the abolition of most charges. Their re-introduction in the 1990s worked in the opposite direction.

In 2000, the net enrolment in primary education diminished to 80% and in secondary education it was halved to 40%.[432] The government placed the blame on the World Bank and the IMF. In its report to the 1996 Conference on Education, it highlighted structural adjustment as the cause of its educational retrogression. It noted diminishing public expenditure on education and the 1991 law whereby fees were introduced in public primary education.[433]

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[425] The World Bank - Program appraisal document on a proposed credit to the Republic of Zambia in support of the first phase of the Basic Education Sector Investment Program (BESSIP), 5 March 1999, Report No. 19008 ZA, pp. 1 and 4.
[426] Transparency International – *Stealing the Future: Corruption in the Classroom. Ten Real World Experiences*, Berlin, 2005, p. 78.
[427] *Global Education Digest 2004: Comparing Education Statistics Across the World*, UNESCO Institute for Statistics, Montreal, 2004, p. 15, available at www.uis.unesco.org.
[428] AZimbabwe inflation@, letter from Cathy Buckle from Marondera (Zimbabwe), *New African*, January 2004.
[429] U.N. Doc. CRC/C/15/Add.55 (1996), para. 19.
[430] Pape, J. - Changing education for majority rule in Zimbabwe and South Africa, *Comparative Education Review*, vol. 42, 1998, No. 3, p. 257.
[431] "It is often stated that primary schooling in Zimbabwe is free to the individual, or his parents. This derives, historically, from the abolition of tuition fees at the primary level shortly after independence. Although this act certainly made primary schooling cheaper, it did not, by any means, succeed in making it free". Colclough, C. et al. – *Education in Zimbabwe: Issues of Quantity and Quality*, Education Division Documents, No. 50, SIDA, Stockholm, December 1990, p. 77.
[432] *EFA Global Monitoring Report 2003/4.Gender and Education for All: The Leap to Equality*, UNESCO Publishing, Paris, 2003, tables 5 and 7.
[433] *Development of Education: National Report of Zimbabwe by the Ministries of Education and Higher Education*, 30 June 1996, pp. 2 and 10-11.

In an interview in May 2002, president Robert Mugabe tried to square the circle saying that "some contribution should come from the people towards the education of their children at the primary level," to then shift the blame to the IMF:

> We were saying the IMF did not want us to proceed with our education-for-all campaign. The IMF was saying no, you cannot educate everyone at the same time. And I said to them, tell me which children I should leave out of school. I can't have an immoral attitude to the education of our people. [434]

Much as elsewhere, it was not only the right to education at stake but human rights in general. Endless verbal duels between the government of Zimbabwe and Western governments, primarily the United Kingdom, were amplified when human rights bodies of the United Nations and the African Union responded to calls to condemn human rights violations in Zimbabwe. There has been no impact in terms of a changed governmental policy. Worse, even in publicising authoritative information of the country's shortcomings, the government has had the upper hand. A mission to Zimbabwe by the African Commission on Human and Peoples' Rights was carried out in June 2002 but its report was published in January 2005, three years later. And then, that report summarized the findings of the mission and devoted ample space to the government for rebutting its findings and recommendations. [435]

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[434] Mugabe: No remote control ever again!, *New African*, Special report, May 2002, p. 13-14.
[435] Murray, R. – Developments in the African human rights system 2003-4, *Human Rights Law Review*, vol. 6, 2006, No. 1, p. 163.

EASTERN EUROPE AND CENTRAL ASIA

Transition from the Second to the Third World

During the Cold War global surveys by the United Nations used to single out 'the socialist countries of Eastern Europe' (as they were then called) for having achieved "universal, compulsory and free education at the primary level".[436] That region was the never-named Second World, in-between the First and the Third World. One of its defining features were free public services as the pillar of its model of human rights.[437] That model has been abandoned and the universalization of education which it enabled has disappeared with it. The background was what Adam Przeworski has termed the "road that would lead to the First World". [438]

The most visible consequence of the end of the Cold War was to make the former 'Eastern Europe' invisible. It persists as a region only in the geopolitics of the United Nations.[439] Central European countries have joined the European Union on the road to the First World. Those countries which were determined to be ineligible for membership in the European Union were re-classified as developing countries and joined the Third World. Their policy-making was re-cast into the mould for poor and heavily indebted countries and, similarly to Africa, the operative documents are the PRSPs rather than national constitutions. That change was best summarized in 1991 by Giles Merritt when he wrote that "Eastern Europe is being treated as if it were yet another Third World development problem".[440]

The end of the Cold War imposed upon its losers a double transition, to a market economy and to a democracy. The introduction of the free market, including in education, constituted an ideological given of the transition. Political transitions went in stages, demonstrating how many different forms of governance could be called 'democracy'. The identical format of multi-party elections produced incomparably different outcomes. After the first post-cold war decade, a series of peaceful revolutions in Serbia (2000), Georgia (2003), Ukraine (2004) and Kyrgyzstan (2005) aimed to alter the model of governance, showing how little had been changed through multi-party elections which were originally labelled as democratic transitions. The common grievance was corruption and [441] a profound change in economic governance formed its background. Basic public services were no longer free of charge.

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[436] United Nations - *The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress*, United Nations, New York, 1975, para. 494.
[437] A description of different sources of inspiration which led to the proclamation of the universal right to education and its different interpretations in the North/South and East/West is contained in Tomasevski, K. – *Education Denied: Costs and remedies*, Zed Books, London, 2003, pp. 36-66.
[438] Przeworski, D. et al. – *Sustainable Democracy*, Cambridge University Press, Cambridge, 1995. p. 3.
[439] The allocation of seats for 'Eastern Europe' in the newly established Human Rights Council is an illustrative example. The rule of equitable geographical representation has led to 13 seats to be allocated to Africa and 13 to Asia, 8 to Latin America and the Caribbean, 7 to the West, and 6 to the 'Eastern European Group.' Because many former Eastern European countries are new or aspiring members of the European Union, the 'Eastern European Group' has in practice disappeared with the exception of Russia. All information is available at www.unhchr.ch or www.ohchr.org (May 2006)
[440] Merritt, G. – *Eastern Europe and the USSR: The Challenge of Freedom*, Office for Official Publications of the European Community & Kogan Page, London, 1991, p. 16.
[441] Kirgizstan: Another autocrat falls, *The Economist*, 2 April 2005.

They were sold at a price, formally or informally, openly or clandestinely, legally or illegally. Creating capitalism necessitates capital. Safeguards against acquiring capital informally, clandestinely and illegally were thought of late in the process of transition. Corruption was attributed to excessive state intervention in the economy. Hence, reducing the role of the state through privatization was supposed to reduce corruption while democratization would reinforce that process through increased transparency and accountability. The opposite often took place and corruption was 'privatized' and 'democratized'.[442] Charges levied for nominally free public services combined with official salaries set far below the cost of living have institutionalized corruption.

Free and all-encompassing public services were previously defined as human rights to health or education. The World Bank has diagnosed them as "financially unsustainable provision of services to the whole population".[443] Financial sustainability required governments to convert public services from free into for-fee. Lilla Farkas has pointed out that compulsory education "is perhaps the only universal public service remaining free after the political change in Central and Eastern Europe, available to every resident".[444]

Today's educational profile of the region still reflects the heritage of decades of all-encompassing, free and compulsory education. The population is, perhaps, overeducated but formal accomplishments measured in years of schooling do not lead to employment, least of all to poverty reduction. On the contrary, the process of impoverishment took place despite all that education. This casts doubt on the assumption underpinning global anti-poverty strategies whereby education leads to poverty reduction. Youth unemployment rates in Eastern Europe reach one-third or even more of the youth. There is only a minuscule difference in unemployment rates which can be attributed to education. The OECD reported for 2003 an unemployment rate of 27% for university graduates in Moldova while for those without primary school the unemployment rate was 32%.[445]

The transition from government-funded to market-based education has had profound and negative effect as the previous *right* became *access* to education. Educational enrolments decreased, especially during the 'short, sharp shock' when the free market was introduced in the early 1990s. Budgetary allocations to education diminished and large parts of its cost were transferred to 'the consumers'. Much of previously free public education was privatized through levying formal and informal charges. Private education (previously almost non-existent) was legalized, both for separate private institutions as well as within public education.

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[442] White, G. – Corruption and the transition from socialism, in: Levi; M. & Nelken, D. (eds.) – *The Corruption of Politics and the Politics of Corruption*, Blackwell Publishers, Oxford, 1996, p. 150.
[443] Tomasevski, K. - Human rights in Eastern Europe, in: Baehr, P. et al. (eds.) – *Human Rights in Developing Countries Yearbook 1994,* Kluwer Law and Taxation Publishers, Deventer & Nordic Human Rights Publications, Oslo, 1994, p. 98.
[444] Farkas, L. – Education, education, and more education, EUMAP Feature, 6 February 2004, available at www.eumap.org/articles (March 2005).
[445] OECD – *Reviews of National Policies for Education: South Eastern Europe, vol. 2: FYROM, Moldova, Montenegro, Romania, Serbia*, Paris, 2003, p. 112.

During the Cold War was free only in the sense that government was paying all direct and most indirect costs.[446] Freedom *of* and *in* education had been obliterated. Education was a top-down, command-and-control system. All-encompassing enrolments were ensured because education was compulsory and free. If the state imposed education, it did so at its own expense and there was almost no financial cost involved for children, young people and their parents. Learning accomplishments in the parts of the curricula that were easy to memorize and accurately reproduce were impressive. However, an explicit purpose of education was ideological conformity. The 1977 Constitution of the USSR, for example, mandated a "communist upbringing".[447] Educational governance was not based on the law but on the communist party's policy so as to conform to the official ideology.

The model of free, state-provided education laid down by the communist constitutions was transferred to numerous international instruments on economic, social and cultural rights which were generated during the Cold War. The inter-governmental nature of international human rights law-making made this inevitable because inter-governmental organizations reflect the views and priorities of their powerful constituents. After the end of the Cold War, the design of education was altered. The law defining education as a human right was not changed but ignored.

The short, sharp shock in education

The former region of Eastern Europe had consisted of 9 countries. The first post-Cold War decade created 27 countries, a three-fold increase. Two additional countries, Montenegro and Kosovo, are likely to emerge in 2006. That fragmentation prioritized education as an instrument of nation-building. The emphasis was on the language of instruction, on the replacement of history and geography textbooks which had become obsolete overnight. These changes were debated as human rights problems. The replacement of public by privately-financed education was *not* debated as a human rights question but institutionalized as part of the transition to the free market. As John Kenneth Galbraith put it, "there is the private sector and there is the public sector. Once there were capitalism and socialism".[448]

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[446] Guarantees of free education at all levels, from pre-school to post-doctorate, have been abandoned in Eastern Europe but it persist in Cuba. Its 1976 Constitution has thus defined the role of the state: "Education is a function of the state. Consequently, educational institutions belong to the state". Such provisions are supplemented by the state's monopoly of textbook publishing (and school textbooks are distributed free or sold at heavily subsidized prices) and availability of scholarships and stipends, for which government is also the only source". Simons, W.B. – *The Constitutions of the Communist World*, Sijthoff & Noordhoff, Alphen aan den Rijn, 1980.

[447] Article 25 stipulated: "In the USSR there exists and is continually perfected a single system of national education which ensures the general educational and professional training of citizens [and] serves the communist upbringing". The 1976 Constitution of Albania took this one step further: "Parents are responsible for the upbringing and communist education of the children". Simons, W.B. – *The Constitutions of the Communist World*, Sijthoff & Noordhoff, Alphen aan den Rijn, 1980, pp. 18 and 359.

[448] Galbraith, J.K. – *The Economics of Innocent Fraud: Truth for Our Time*, Penguin/Allen Lane, London, 2004, p. 47.

The OECD has thus described the first five years of the shift from public to private education in Poland:

> The most characteristic examples of this process are: the decrease in value of teachers' salaries; the direct involvement of parents in covering part of the running cost of schools; the obliteration of scholarships; the spectacular expansion of studies permitting fee paying in higher education; the widely spread practice among teachers of looking for a second job or other alternative income sources; the rapid increase of market-based forms of education; the almost total neglect of maintenance and repair in order to safeguard normal operational expenditure.[449]

Educational statistics deteriorated after such changes took root. Education remained compulsory but, because it was free no longer, one in five children could no longer finish it in the 1990s. Retrogression was severe in Tajikistan, where the completion of primary schooling decreased by 26%, and in Georgia it was 24%. One in ten children could no longer complete compulsory schooling in Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova and Uzbekistan.[450] Charges for previously free education coincided with rapid impoverishment of the population and led to educational deterioration. Furthermore, previous guarantees of free education were replaced by a much narrowed definition of *free* "to mean free general tuition, not necessarily free stipends or services. There are exceptions even to the free tuition rules".[451] Economic exclusion from education became a key feature of the educational panorama:

> Across the region, services that were once free or provided for minimal fees are now offered at market prices. In light of budget constraints, schools are increasingly encouraged to raise their own funds and introduce fees for 'extra' services. Fees have been introduced, both at primary and secondary level, for extra-curricular activities, elective courses, tutoring and participation in hobby clubs. As a consequence, children from poorer households increasingly face problems.[452]

The ideological underpinning of re-designed education was choice. The former socialist and/or communist model denied choice and ushering choice into education was hailed as a huge improvement. Private schools supplanted inadequate government-funded institutions. In the Czech Republic, "one-quarter of all secondary schools were private by 1994, starting from a base of zero at the start of the decade".[453] People who could purchase education in the country or abroad were free to do so. Those without purchasing power were denied choice. The government's abandonment of financial responsibility for education forced public schools to become self-financing. As many started levying charges to supplement inadequate governmental funding, the previous *right* to education was supplanted by *access* to school, excluding all those who could not afford the cost.

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[449] OECD – *Reviews of National Policies for Education: Poland*, Paris, 1996, p. 115.
[450] UNICEF – *Young People in Changing Societies*, The MONEE Project, Regional Monitoring Report no. 7, UNICEF Innocenti Research Centre, Florence, 2000, pp. 44 and 52.
[451] Heynemann, S.P. (then with the World Bank) – Education and social stability in Russia: an essay, *Compare*, vol. 27, 1997, No. 1, p. 13.
[452] UNICEF – *Children at Risk in Central and Eastern Europe: Perils and Promises*, Regional Monitoring Report No. 4, UNICEF International Child Development Centre, Florence, 1997, p. 53.
[453] UNICEF – *Education for All?*, The MONEE Project, Regional Monitoring Report no. 5 – 1998, UNICEF Innocenti Child Development Centre, Florence, 1998, p. 83.

Enter for-fee education

The World Bank described in 2001 the new model of for-fee education. Charges were introduced formally in line with the privatization of financial responsibility for education. Alongside them, informal charges proliferated to make up the shortfall in the public investment in education:

> Informal user charges are payments that are not explicit and public. They can take several forms. For example, parents may have to pay teachers for extra tutoring in order to compensate for the fact that teacher salaries are low. Legitimate costs of education may be pushed onto parents or the community, such as the costs of heating school buildings. …
>
> User charges are direct financial supports for education, referring to payments by recipients for identifiable elements of education service. Tuition for preschool students, charges for textbooks or laboratory materials, and tuition and dormitory fees for university students are all examples. The rationale for user charges is that individual students receive a large part of the benefit from education and that therefore they (or their families) should bear part of the cost directly. [454]

The principal reason for educational deterioration is shown in Table 10. Keeping education free, as mandated by the law, is premised on adequate budgetary allocations. All countries except Turkmenistan allocate to education less that 6% of GDP, recommended by UNESCO as the necessary minimum to sustain public education. The Baltic countries (Estonia, Latvia and Lithuania) are close to 6%. This relative measure reflects the priority for education in governments' budgets but says nothing about the magnitude of those allocations. Where budgets are small, an apparently generous allocation may be below the actual cost of education. Absolute figures in the right-hand column show public investment in education fifty times larger in the Czech Republic than in Tajikistan. Where public funds for education have proved insufficient, children's parents have had to provide the necessary but missing funds or children have had to abandon school. The gap between the budgetary funds for education and the real cost of educating children has privatized the financial responsibility for education: "households are bearing an increasing proportion of the costs of schooling, direct and indirect, legal and illegal".[455]

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[454] Vandycke, N. – *Access to Education for the Poor in Europe and Central Asia: Preliminary Evidence and Policy Implications,* World Bank Technical Paper No. 511, June 2001, pp. 25-26.
[455] UNICEF – *A Decade of Transition*, The MONEE Project, Regional Monitoring Report No. 8 -2001, UNICEF Innocenti Research Centre, Florence, 2001, p. 89.

Table 10: Public investment in education in Eastern Europe and Central Asia

Country	Budgetary allocation on education for each child 3-18 years old	Budgetary expenditure on education as percentage of GDP
Czech Republic	2,804	3.86%
Hungary	2,568	4.08%
Estonia	2,345	5.95%
Poland	1,783	4.33%
Latvia	1,706	5.76%
Slovakia	1,644	3.46%
Lithuania	1,526	5.02%
Turkmenistan	1,073	6.08%
Bulgaria	958	3.41%
Ukraine	457	2.78%
Moldova	320	4.73%
Azerbaijan	296	3.94%
Georgia	284	1.59%
Kyrgyzstan	203	2.98%
Tajikistan	54	2.12%

Source: UNICEF – *Social Monitor 2002*, The MONEE Project, UNICEF Innocenti Research Centre, Florence, 2002, p. 15.

Two parallel and sometimes overlapping policies have been pursued by Eastern European and Central Asian governments to make up the budgetary shortfall. Informal charges emerged because public funds for education were too small or did not reach schools but, officially, governments preserved a myth that education was free. Or else, public schools have formally been allowed to charge for their services. By 2000, private financing of education exceeded three times budgetary allocations per pupil.[456] Despite all its faults, centrally planned, Soviet-styled education had been free. In Central Asia, that pre-transition model became seen as the good old times:

> Every child in school completed compulsory education. The state paid for textbooks, school uniforms, and free hot meals up to the fourth grade. Teachers had free housing, gas electricity and transport. [457]

Cost recovery *versus* constitutional guarantees of free education

This new model based on user charges permeated national policy-making through the World Bank's policy advice, conditions for loans and debt relief, and the associated research. Its influence on the design of education in Eastern Europe and Central Asia increased as impoverishment re-classified countries from the Second to the Fourth World, the poorest and the most heavily indebted. Ten thus re-classified countries are listed in Table 11. The model designed for individual countries to qualify for debt relief, described in the previous section on Sub-Saharan Africa, was also applied to Eastern Europe and Central Asia. Constitutional guarantees of free education became irrelevant. They were replaced by the PRSPs (Poverty Reduction Strategy Papers). These transferred policy-making on education from national capitals to Washington D.C.

[456] UNICEF – *Social Monitor 2003*, The MONEE Project, UNICEF Innocenti Research Centre, Florence, 2003, p. 7.
[457] UNDP – *Central Asia 2010: Prospects for Human Development*, United Nations Development Programme, Regional Bureau for Europe and the CIS, undated, p. 48 and 168.

Table 11: Education in Eastern European and Central Asian PRSPs

Country	Year	Levying charges in primary school		Retaining charges		
		Yes	No	Yes	No	Partially
Albania	2002		√		√	
Armenia	2003		√		√	
Azerbaijan	2003		√		√	
Bosnia & Herzegovina	2004		√		√	
Georgia	2003		√		√	
Kyrgyzstan	2003	√				√ (the poor)
Moldova	2004	√		√		
Mongolia	2003	√				√ (the poor)
Serbia & Montenegro	2004		√		√	
Tajikistan	2002	√				√ (the poor)

Sources: Albania - National Strategy for Socio-Economic Development of (February 2002); Armenia – Poverty Reduction Strategy Paper (November 2003); Azerbaijan - State Programme on Poverty Reduction and Economic Development 2003-2005 (May 2003); Bosnia and Herzegovina – Mid-Term Development Strategy of Bosnia and Herzegovina [PRSP] (March 2004); Georgia – Economic Development and Poverty Reduction Program [Draft] (June 2003); Kyrgyzstan - Expanding the Country's Capacities: National Poverty Reduction Strategy 2003-2005 (January 2003); Moldova - Economic Growth and Poverty Reduction Strategy Paper (2004-2006) [May 2004]; Mongolia – Economic Growth Support and Poverty Reduction Strategy (July 2003); Serbia and Montenegro – Poverty Reduction Strategy Paper (June 2004); Tajikistan - Poverty Reduction Strategy Paper (October 2002). Full texts of all these documents are available at www.worldbank.org

The PRSPs were a requirement in the debt relief process and a blueprint of free or for-fee primary education. As Table 11 shows, six countries have opted for keeping primary education free and four for a for-fee model. The choices of the four conflicted with their constitutional guarantees, as Table 12 shows. It portrays the continuing constitutional guarantees of free and compulsory primary education in all countries in the region. It also highlights their inability (or unwillingness) to ensure that education is free. Conflicts between constitutional guarantees and governmental policies remain to be reconciled. The World Bank's recipe has been to change the constitutions or to circumvent them.[458] Most countries have opted for circumvention.

[458] The World Bank – *Hidden Challenges to Education Systems in Transition Economies*, September 2000, p. 45.

Table 12
Legally free, really for fee education in Eastern Europe
and Central Asia

Country	Free education legally guaranteed		Charges levied	
Albania	Yes		Yes	
Armenia	Yes		Yes	
Azerbaijan	Yes		Yes	
Belarus	Yes		Yes	
Bosnia and Herzegovina	Yes		Yes	
Bulgaria	Yes		Yes	
Croatia	Yes		Yes	
Georgia	Yes		Yes	
Kazakhstan	Yes		Yes	
Kyrgyzstan	Yes		Yes	
Macedonia (FYROM)	Yes		Yes	
Moldova	Yes		Yes	
Romania	Yes		Yes	
Russia	Yes		Yes	
Serbia and Montenegro	Yes		Yes	
Tajikistan	Yes		Yes	
Turkey	Yes		Yes	
Turkmenistan	Yes		Yes	
Ukraine	Yes		Yes	
Uzbekistan	Yes		Yes	

Sources: Albania – CEDAW/C/ALB/1-2, 2002, pp. 37-39; Armenia – E/1990/5/Add.36, 1998, paras. 257-259 and 276, and CRC/C/28/Add.9, 1997, para. 52; Azerbaijan – E/1990/6/Add.37, 2003, paras. 328-338, and State Programme on Poverty Reduction and Economic Development 2003-2005; Belarus – CRC/C/65/Add.15, 2001, para. 189; Bosnia and Herzegovina – E/CN.4/2003/38, 2003, para. 18; Bulgaria – E/1994/104/Add.16, 1996, paras. 280 and 310; Croatia – E/1990/5/Add.46, 2000, para. 407 and E/C.12/1/Add.73, 2001, para. 19; Former Yugoslav Republic of Macedonia (FYROM) – CRC/C/15/Add.118, 2000, and CRC/C/8/Add.36, 1997, paras. 190 and 201; Georgia – E/1990/5/Add.37, 1998, paras. 240, 253-256, and 288; Kazakhstan – CRC/C/41/Add.13, 2002, paras. 257 and 277; Kyrgyzstan – CRC/C/41/Add.6, 1999, paras. 205-206, and CEDAW/C/2004/I/CRP.3/Add.1/Rev.1, 2004, para. 5; Moldova – CRC/C/28/Add.18, 2002, paras. 272, 293 and 298; Romania – CRC/C/15/Add.199, 2003, paras. 52-53, and CEDAW/C/ROM/4-5, 1999, para. 30; Russian Federation – E/C.12/4/Add.10, 2001, para. 435, and CERD/C/62/CO/7, 2003, para. 14; Serbia and Montenegro – CCPR/C/SEMO/2003/1, 2003, paras. 671-672; Tajikistan – CRC/C/28/Add.14, 1998, para. 4; Turkey – E/CN.4/2002/60/Add.2, paras. 27 and 30; Turkmenistan – Common Country Assessment (CCA), United Nations Country Team, paras. 71-74; Ukraine – CRC/C/70/Add.11, 2001, paras, 52, 129 and 685; Uzbekistan – CRC/C/41/Add.8, 2001, paras. 237-239.

The gap between what the law says and what the government does is not new. It was a feature of the region during the Cold War. Although formal constitutional guarantees existed for many human rights and individual freedoms, governments ignored them. Their reports under international human rights treaties were evasive or misrepresented reality.[459] This practice has continued. Governmental reports under international human rights treaties describe education as it is defined in international law and national constitutions and a reality to match. Often, the same government will at the same time portray different realities of education. It will assert that education conforms to the human rights law in its human rights reports and argue the opposite while seeking funding from international creditors and donors. Also, governments often claim that education is free as legally required while non-governmental sources point out that education is really for-fee. Governments are reluctant, for obvious reasons, to formally acknowledge that they are in breach of their own law.

The pre-transition model of education included many breaches of the law, including the denial of freedom to be different, especially to minorities. The subsequent fragmentation forged 30 states out of the previous 9. Transition was triggered by increased popular opposition to the denial of individual freedoms and minority rights. Volumes have been written about the many conflicts which this facet of transition generated. Much as elsewhere, destruction has proved to be expensive. Also, creating and defending the many new states has turned out to be costly.

Educational cost of militarization

The toll of high military expenditure has been expressed by an IMF research team as a rule of inverse correlation: the higher military expenditure, the worse a country's governance.[460] Translating that rule into practice would immensely benefit education but obstacles exist within the IMF itself. A desirable priority of civilian investment documented by IMF's researchers encounters huge obstacles even in getting access to data on military expenditures, let alone heeding IMF's policy advice on their reduction.[461]

Partial access to information on both military expenditure and public investment in education is shown in Table 13. The fact that all countries, with the sole exception of Belarus, allocate to education less than 6% of GDP, which is recommended by UNESCO as the indispensable minimum, highlights the fiscal stringency within which public education operates. High military expenditures in Russia, Serbia or Turkey illustrate the opportunity cost for education.

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[459] Tomasevski, K. – Limits to diversity: Soviet and East European human rights policies and international standards, *Soviet Union/Union Sovietique*, vol. 13, 1986, No. 1, pp. 45-110.
[460] Gupta, S. et al. – Corruption and military spending, *Working Paper of the International Monetary Fund*, Washington D.C., February 2000, p. 16.
[461] Stevenson, J. – *Preventing Conflict: The Role of the Bretton Woods Institutions*, IISS (International Institute for Strategic Studies), Adelphi Paper 336, Oxford University Press, October 2000, p. 31.

Table 13
Military expenditure and public investment in education in Eastern Europe and Central Asia as percentage of GDP in 2002

	Military expenditure	Public investment in education
Albania	1.2%	…
Armenia	2.7%	3.2%
Azerbaijan	2.0%	3.5%
Belarus	1.4%	6.0%
Bulgaria	2.7%	…
Croatia	2.5%	4.2%
Cyprus	1.6%	5.6%
Georgia	0.9%	2.5%
Kazakhstan	1.0%	…
Kyrgyzstan	(1.5%)	3.1%
Macedonia (FYROM)	2.8%	4.1%
Moldova	0.4%	4.0%
Romania	2.3%	3.5%
Russia	(4.0%)	3.1%
Serbia and Montenegro	4.5%	…
Tajikistan	(1.4%)	2.4%
Turkey	4.9%	3.7%
Turkmenistan	(2.9%)	…
Ukraine	(2.9%)	4.2%
Uzbekistan	(0.8%)	…

Note: There is no data for Bosnia and Herzegovina and Kosovo because both security and education were externally financed in 2002.

Sources: The data on military expenditure originate from the SIPRI Yearbook (www.sipri.org) and refer to the year 2002. Where the figure is in brackets, this means that only an estimate was available or a figure for an earlier year has been used to indicate the order of magnitude. The data on public investment in education originate from the UNDP's 2004 Human Development Report (http://hdr.undp.org/statistics).

Even more importantly, Table 13 demonstrates how little is known about fiscal priorities in individual countries. Precise figures are often missing altogether or replaced by guesstimates. The paucity of data in Table 13 leads far beyond the sector of education, to defining features of each particular regime which influence what happens in education and how much of that is publicly known. The missing figures for public investment in education for Albania, Bulgaria, Kazakhstan, Serbia and Uzbekistan demonstrate the impossible task of designing educational policies, or aid for education, without knowing its cost. Also, international financial support to education in such conditions is likely to fuel corruption.[462]

[462] Transparency International - *Global Corruption Report 2003. Special Focus: Access to Information*, Profile Books, London, 2003.

Free access to information in the possession of any government is as important to discern the fate of education as whatever may be formally examined within 'the sector of education'. Impolite labels used by journalists, such as "a warlord-ruled narco-state" for Tajikistan, or "the world's most totalitarian state" for Turkmenistan[463] underline the need to scrutinize official and unofficial sources to discern how different the realities which they portray may be. Suppression of independent investigation of governmental policy and practice by definition impedes such scrutiny. A lesson from decades of human rights work is another rule of inverse correlation: the absence of information on human rights violations points to the denial of human rights. At best, in such conditions education amounts to little more than institutionalized indoctrination. Integrating human rights in education therefore necessitates reaching beyond 'the sector of education' to examine the state of human rights in each country as well as the interface between education and human rights.

INDIVIDUAL COUNTRIES

Albania

Albania epitomizes problems of transition from a centrally planned to a market economy through a process of impoverishment which led it onto the list of the Highly Indebted Poor Countries (HIPC). Education could not have remained unaffected by that process of impoverishment. As governmental budgetary allocations to education diminished, charges upon families increased to make up the shortfall. UNICEF reported in 2000 that "in the elementary system, the main cause of dropout and decrease in the number of enrollments was inability to afford the required school expenses".[464] The World Bank diagnosed in 2001 an increased "private coverage of educational costs," [465] at the time when widespread impoverishment reduced the families' ability to finance the education of their children. Furthermore, the global design of education as an independent sector translated nationally into a disjointed vision of the future. Education was in theory supposed to lead to poverty reduction but in practice the lack of employment prospects after school diminished the motivation to pay for schooling for those who could afford to do so. The unemployment rate by many estimates exceeded 40% in 2005. [466]

During the first decade of Albania's transition, international attention focused on consecutive mass exoduses which epitomized problems within the country.[467] International attention focused on halting emigration rather than tackling its causes. After the turn of the millennium, international priorities have remained externally oriented, politically and militarily looking towards Albania's role in supporting global recipes for the future of Kosovo. On the human rights agenda, trafficking in people has been prioritized and, again, its causes within Albania have remained largely un-addressed.

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[463] Kirgizstan: One down, four to go, *The Economist*, 2 April 2005.
[464] UNICEF - Assessment of Social and Economic Conditions in Albania, Tirana, 2000, mimeographed.
[465] Palomba, G. and Vodopivec, M. – *Financing, Efficiency, and Equity in Albanian Education*, World Bank Technical Paper No. 512, Washington D.C., June 2001, p. 28.
[466] Tihon, F. – Berisha intends to speed up Albania's EU entry, *European Voice*, 8-14 December 2005.
[467] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 330-335.

The pre-transition decades of all-encompassing, free and compulsory education still bear fruit because going to school became a habit and enrolment statistics remain good. For the school year 2002-2003, the enrolment rate in primary school was reported by the government at 94% [468] and by the OECD at 90%.[469] School attendance figures are fragmentary but indicate that some 11% of children in the compulsory school-age do not attend school.[470] There may be many more who are not recorded in the official statistics.

Conflicting global strategies are reflected in Albania in colliding laws. Because children are supposed to be at school, the minimum age of employment was set at the school-leaving age. Children who leave school earlier, most often because they cannot afford its cost and have to work, are legally not allowed to work because they are supposed to attend school. The law forces them to work illegally:

> One of the difficulties is the Labour Code's specification of the legal employment age at 16. According to the Law on Pre-university Education, mandatory education ends at 14 years of age. Yet the actual legislation does not permit children of 14-15, who no longer go to school, to work. As a matter of fact, many children of this age work illegally.[471]

This confusion exemplifies conflicting international influences on the national design of education. The pressure to adjust national legislation to conform to international human rights standards has generated laws which formally conform to minimal global standards. Thus, children should be at school until the age of 16 and should not work earlier. The assumption underpinning these global standards, that the government will ensure that all school age children are at school, is not congruent with Albanian reality. This reality does not inform policy-making because it is fragmentated into 'sectors'. Education is separated from child labour both globally and domestically, employment-creation for the young is separated from the elimination of child labour. Global policies on the public finance necessary to translate these varied prescriptions into governmental practice are a decisive but separate 'sector.'

Albania's Constitution guarantees the right of all citizens to education and equal access to all levels of education. This is premised on education being fully financed from the state budget. [472] The budgetary allocations to education are much too small, however. Only 2.4% of GDP is allocated to education [473] and this cannot suffice for such a large proportion of school children in Albania's young population. The budgetary allocations to education would have to be at least trebled to meet its actual costs.

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[468] Government of Albania - *Annual Statistical Report on Education 2002-2003*, Ministry of Education, Tirana, 2004.
[469] OECD – *Reviews of National Policies for Education: South East Europe, vol. 1: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo*, Paris, 2003, p. 40.
[470] Osmani, E. and Rapo, S. – *Drop outs in compulsory education*, Tirana, 2000, mimeographed.
[471] Mita, N. and Anastasi, A. – Educational rights in Albania, in: De Groof, J. and Lauwers, G. (eds.) – *No Person Shall be Denied the Right to Education: The Influence of the European Convention on Human Rights on the Right to Education and Rights in Education*, European Association for Education Law and Policy & Wolf Legal Publishers, Nijmegen, 2004, p. 99.
[472] OECD – *Reviews of National Policies for Education: South East Europe, vol. 1: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo*, Paris, 2003, pp. 37-38.
[473] Raxhimi, A. – In the bleak midwinter, *Transitions Online*, 10 February 2005, available at www.tol.cz

In its reports under international human rights treaties, the government has highlighted the overcrowding in urban schools adding that "only 65 per cent of schools are in acceptable condition".[474] Inadequate budgetary allocations are informally supplemented by parental payments and, when parents are too poor to afford them, children have to work. In consequence, primary education has gradually become de-universalized.

Armenia

Reports by different parts of the government of Armenia portray a different reality of education in the country. In its 2003 PRSP, the government stated that primary education was already universalized and outlined its strategy for secondary education.[475] This would appear good and Armenia could be praised for having met the MDG goal of universal primary education. However, official statistics exist only for school enrolments (94%) and primary school is only three years long, encompassing children aged 7 to 9.[476] That children could be defined as 'educated' at the age of 9 shows how inadequate the MDGs are. At that age, children have not acquired a sufficient learning basis not to relapse into illiteracy later in life, they are not legally allowed to work, and they are much too young for adulthood which school-leaving age is supposed to denote.

A profound crisis in education preceded the optimistic governmental self-assessment of its performance regarding primary education in 2003. In its reports under international human rights treaties, the government pointed out in 1998 that the first objective of its strategy was "to prevent the educational system from breaking down under conditions of extremely limited financial means".[477] A year earlier, the government described the entry of the World Bank into educational policy-making and the change from free to for-fee education which this entailed:

> On instructions from the World Bank, consultants on textbook issues will provide professional assistance in setting up the programme. Contrary to previous practice, the books will not be distributed free, but for a fixed fee representing a year's rental.[478]

Before transition 8% of Armenian GDP had been spent on education and virtually all education was free of charge. During the first decade of transition, Armenia's GDP decreased by at least 70% and public funding for education diminished to an annual $33 per capita. After examining Armenia's report on the elimination of gender discrimination through education in 1997, the CEDAW Committee found that school fees and costs of transportation contributed to low school attendance rates; girls were affected more than boys.[479]

The collapse of public finance was not caused by the transition alone. The war for Nagorno-Karabakh added to deteriorated public finance. It remains one of the 'frozen conflicts' which accompanied the fragmentation of the former Soviet Union.[480]

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[474] U.N. Doc. CEDAW/C/ALB/1-2 (2002), pp. 37 and 39.
[475] Armenia – Poverty Reduction Strategy Paper (November 2003), available at www.worldbank.org.
[476] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org.
[477] U.N. Doc. E/1990/5/Add.36 (1998), para. 276.
[478] U.N. Doc. CRC/C/28/Add. 9 (1997), para. 152.
[479] U. N. Doc. CEDAW/C/ARM/1/Corr.1 (1997), para. 48.
[480] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 356-361.

As a consequence of political and economic crises, by the turn of the millennium private financing of education equaled the budgetary allocations, each accounting for an estimated 1.5% of the GDP. The World Bank described the transfer of the financial responsibility for education from governmental to family budget thus:

> Most schools levied some kind of informal fee, often for a 'maintenance fund', but it would be illegal to make such fees compulsory, and many parents were said not to have the means to contribute.
> Expenditure on private tuition is made primarily by parents of public school pupils for private lessons provided by public school teachers. The scale of the expenditure was such that it approximately doubled the total income of teachers in 1996.
> Under the Soviet system, textbooks were provided to all pupils free of charge.
> The fiscal collapse following independence forced the government to shift these costs to parents, with the result that by 1997 fewer than one in three children had access to textbooks. The cost of a full set of textbooks could amount to as much as $40 per pupil (about two months' salary for the average teacher).[481]

A comparison between governmental reports and World Bank's documents reveals a typical gap in accountability which results from the two sides pointing the finger at each other for having made decisions which drove education out of the reach of the poor. The government has lamented the World Bank's decision to impose charges upon school textbooks, the World Bank has lamented the subsequent high prices of textbooks. The World Bank has critiqued the emergence of 'private tuition' in public education, the government has described how "low wages have forced teachers to offer private tuition, creating a two-tier system of education".[482] When the salaries fall below the level necessary to ensure to employee's livelihood, corruption becomes inevitable. Research carried out within the MONEE Project found that places in prestigious schools as well as the children's improved grades were ensured through parental payments.[483]

This pattern of informal charges transformed education from free into for-fee. Although it was driven by necessity because schools could not function because of insufficient funds sent them by central or local government, it also created ample opportunities for corruption. The boundary between need and greed is impossible to discern because charges are informal, unrecorded and illegal. Financial support for the poor, who could not afford any such payments, was designed to include a public and potentially humiliating procedure: "assistance to children from low-income and poor families is organized based on appeals by parents and by special decisions of the School Executive Committees".[484]

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[481] Perkkins, G. and Yemtsov, R. – *Armenia: Restructuring to Sustain Universal General Education*, World Bank Technical Paper No. 498, Washington D.C., March 2001, pp. 6 and 10-11.
[482] U.N. Doc. CRC/C/94 (2000), para. 338.
[483] UNICEF – *Young People in Changing Societies*, The MONEE Project, Regional Monitoring Report no. 7, UNICEF Innocenti Research Centre, Florence, 2000, p. 52.
[484] CEDAW/C/ARM/1/Corr.1 (1997), para. 48.

Azerbaijan

The reports of the government of Azerbaijan under human rights treaties and interviews with school children read as if they described two different countries. In its human rights reports, the government quotes its legislation which guarantees ten years of free compulsory education for all. Also, according to the government education is also free at the university.[485] School children in Azerbaijan who were asked by the Council of Europe to assess the education they were receiving at the same time, in 2003, lamented that education was not free. They would have loved not to have to pay various charges which were constantly levied upon them.[486]

The government has reduced the gap between legally mandated free education and the practice of levying charges by re-defined the meaning of *free*. It has been confined to "free tuition at public educational institutions".[487] That narrow definition of free education has been further reduced by permitting public institutions to enrol paying pupils and students so as to supplement their income. Thus, "fee-paying study groups" [488] emerged within public schools with predictable differences in treatment between paying and non-paying pupils.

A governmental subsidy is, in theory, available for those unable to make any payments: "Poorly off pupils in fee-paying educational establishments are paid allowances by the State on the basis of the standard fees payable in State teaching establishments of the same kind and type".[489] Whether there are public funds available to subsidize poor school children and, if so, how many poor children they reach is not known.

Azerbaijan's PRSP has contradicted its human rights reports because it explains that compulsory education should be but is not free. Also, it has highlighted the reasons why public schools have been allowed and/or forced to levy charges:

> Almost all education institutions lack basic textbooks and teaching materials and supplies to perform to an acceptable standard. There have also been reductions in the budget funds available for maintenance and repairs, resulting in deterioration in the overall physical conditions of many school buildings, especially in rural areas. [490]

The reasons for the inadequate public investment in education, which has created this abyss between what the law mandates and what the government says and does, are many. Alongside the effects of transition shared with other countries in the region, they include the aftermath of the war for Nagorno-Karabakh [491] as well as a host of questionable governmental policies regarding deployment of its oil wealth. The Economist may not have exaggerated much when it labelled Azerbaijan as "a world champion of corruption". [492]

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[485] U.N. Doc. E/1990/5/Add.30 (1996), para. 170.
[486] Council of Europe – The right and access to education: Presentation of research conducted by youth participants, Forum for Children and Families, Strasbourg, 28 November 2003, Doc. CS-Forum (2003) 7, p. 8.
[487] U.N. Doc. CERD/C/440/Add.1 (2004), para. 240.
[488] U.N. Doc. E/1990/6/Add.37 (2003), para. 330.
[489] U.N. Doc. E/1990/5/Add.30 (1996), para. 167.
[490] State Programme on Poverty Reduction and Economic Development 2003-2005, (Final draft), Ministry of Economic Development, available at www.economy.gov.az (May 2003).
[491] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 356-361.
[492] Belarus and Azerbaijan: Use a long spoon (editorial), *The Economist*, 29 April 2006.

As is typical for petro-states, oil prevails over human rights and too few questions about governmental abuses of power have been asked by Azerbaijan's bilateral donors and international creditors.

Belarus

Different from Azerbaijan, Belarus has been a target of sanctions for human rights violations. Cynics could easily attribute that arbitrary resort to human rights in Western foreign policies to the fact that, different from Azerbaijan, Belarus is not an oil exporting country.

The European Union (EU) imposed diplomatic sanctions in 2004 because of 'authoritarianism' in Belarus.[493] A travel ban in 2006 followed widespread vote-rigging in presidential elections, documented by many international electoral observers.[494] A proposal to deny Belarus preferential treatment for its exports to the EU came next, justified by the failure of the government of Belarus "to implement international labour rules".[495]

Vladimir Senko, the ambassador of Belarus in Brussels, drew the EU's attention to those governmental policies that sustain popular support, especially free education and free health care. He pointed out that Belarus allocated 6% of its GDP to education, as much as the members of the European Union.[496] This argument replicated endless verbal duels between Western and Eastern Europe rehearsed throughout the Cold War. They revolved around the priority for free public services in the East as different from the priority for political freedoms in the West.

Accordingly, the government of Belarus claims in its reports under international human rights treaties that both primary and secondary education are free and all-encompassing.[497] Independent verification of this assertion is difficult to come by because human rights organizations and educational institutions have been harassed by the government for publicising information critical of governmental performance of its policy. Official statistics shows enrolment rates in primary school of 94% but these refer to children aged from 6 to 9. [498] While the government claims that education is free, including free textbooks in primary, secondary and higher education,[499] NGOs report differently. They have pointed out that the Council of Ministers, in its resolution No. 964 of 19 June 1998, laid down "the order for collection of the pupils' payments to use textbooks and training aids and also their sale to the population at full cost".[500]

The former United Nations Commission on Human Rights noted the constraints upon freedom to gather and disseminate information in its 2005 annual resolution on the human rights violations in Belarus.[501]

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[493] Cronin, D. – Belarus faces tougher EU sanctions, *European Voice*, 23-29 March 2006.
[494] Dombey, D. – EU travel ban on Belarus officials, *Financial Times*, 7 April 2006.
[495] EU ponders slashing Belarus trade preferences, *European Voice*, 15-21 June 2006.
[496] Senko, V. – Belarus and international obligations, *European Voice*, 9-15 March 2006.
[497] U.N. Docs. CRC/C/3/Add.14 (1993), para. 89 and CRC/C/65/Add.15 (2001), para. 189.
[498] EFA/UNESCO Global Monitoring Report 2006, available at www.unesco.org
[499] U.N. Doc. CRC/C/3/Add. 14 (1993), paras. 89 and 189.
[500] NGO 'shadow' report under the Convention on the Rights of the Child, 1998, available at www.crin.org
[501] Commission on Human Rights – Situation of human rights in Belarus, resolution 2005/13 adopted on 14 April 2005 by a vote 23-16-14. Text available at www.ohchr.org

Condemnations of the government's human rights record reach back to 1997, to critiques of the government's "intolerance of dissent".[502] That policy of intolerance was epitomized in the detention and fine, amounting to 20 monthly salaries, of Vladimir Velichkin. His crime was to distribute copies of the Universal declaration of Human Rights on the Human Rights Day, 10 December 2000. His attempt at human rights education had been treated as a picket and Velichkin had to submit a complaint to the Human Rights Committee to have his rights vindicated five years later.[503] Neither resolutions of the former Commission on Human Rights nor the views of the Human Rights Committee have triggered any change in governmental human rights policy.

Bosnia and Herzegovina

The past decade of educational development in Bosnia and Herzegovina enables assessing 'the international community' in action. Because Bosnia and Herzegovina was effectively an international protectorate, at least from 1994 to 2004, its education was both designed and implemented by 'the international community.' The IC, which stands for the International Community, has become the shorthand reference to all decisions, policies and programmes regarding Bosnia and Herzegovina.

Whatever internal divisions might have existing within the IC, it was seen to speak and act as a supra-sovereign power. Its priority was to stop warfare and that was accomplished.[504] The attribution of warfare to ethnicity, however, entrenched ethnic differentiation as the pillar of governance, including in education. One could have expected that the IC would do the opposite, namely diminish the importance of ethnic fault-lines after it has diagnosed them as the cause of conflict and warfare. Moreover, the administrative and financial burden which was created by parallel, ethnically based governance structures is heavy. For a population of 3.7 million, no less than 17 police forces have been set up.[505] Also, there are 13 ministries of education [506] for a school-going population of a half million.[507] Besides questionable sustainability of such an administratively complex and expensive system, the pattern of ethnic segregation which it institutionalized does not bode well for the future. Indeed, education was converted into "a vehicle for creating three separate national histories, languages and cultures".[508]

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[502] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 326-327.
[503] Human Rights Committee – Views of the Committee regarding communication No. 1022/2001 of 20 October 2005, U.N. Doc. CCPR/C/85/D/1022/2001 (2005).
[504] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 344348.
[505] Bosnian police: Serbs back down on unified force, *Guardian Weekly*, 14-20 October 2005.
[506] OSCE – Raising debate: Is BiH respecting its international commitments in the field of education. Questions for the Citizens of BiH, OSCE Mission to Bosnia and Herzegovina, May 2005, available at www.oscebih.org
[507] Official statistics vary depending on their source and purpose. A statistical description of the pre-war educational profile facilitates assessing the likely size of the contemporary educational endeavour: "Before the war there was universal education for all children between 6 and 14. The education system consisted of 2211 schools with 22,939 teachers and 538,475 pupils". Saferworld – *The True Cost of Conflict*, Earthscan, London, 1994, p. 161.
[508] OECD – *Reviews of National Policies for Education: South East Europe, vol. 1: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo*, Paris, 2003, pp. 111 and 117.

History shows that segregated education creates segregated society and the long-term impact of the parallel educational systems established by the IC is yet to be seen. Sustaining this complex foreign-made institutional infrastructure may have become financially impossible already. In November 2005, the delegation of Bosnia and Herzegovina informed the Committee on Economic, Social and Cultural Rights that withdrawals of foreign aid had started and "public spending decreased by 10 per cent".[509]

Financial sustainability of education has also been undermined by its dissociation from employment and self-employment of school leavers. Education could have had a crucial role in enabling people to become economically self-sustaining. Karl Bildt, the first High Representative in 1996-1997, has highlighted "the official jobless rate above 40%" at the tenth anniversary of the IC's set off.[510] Jonathan Steele has been less diplomatic and referred to "a highly visible financial apartheid in which an international salariat lords it over a war-wounded and jobless local population".[511]

The model of education which this 'international salariat' developed and implemented in Bosnia and Herzegovina is immensely complicated. All educational powers were assigned to local authorities while human rights protection was retained for central public institutions. At the intersection between education and human rights, the powers, capacities and 'political policies' of the local authorities vary a great deal. And yet, they were supposed to ensure the highest level of human rights protection. Most education-related cases have revolved around the creation and destruction of school textbooks until they described the country's recent history to the satisfaction of the IC. The issue of levying charges in public education came to the ombudsman's attention because it was challenged as a human rights violation:

> The Ombudsmen abolished payment of school fees for secondary schools. In some of the Cantons enrollment fees were introduced for secondary education. School steering boards, upon proposal of directors, determined levels of the fees and they varied from 20 to 50 KM. Pupils and their parents lodged complaints with the ombuds-institution and the Ombudsmen issued recommendation immediately to stop collection of the fees and to return money to pupils. This recommendation sprang from a direct violation, as the "right to education shall be recognized and made accessible to any child", which is not the case if fees are introduced.[512]

The wording used, whereby the ombudsman "abolished" the payment of school fees, suggests the ombudsman's ability to effect change. A change has ensued in policy-making so as to clearly define governmental obligations to ensure free and compulsory education for all school age children. They rely on the willingness and the capacity of the local (cantonal) authorities to translate that requirement into reality. Decentralization of the financial responsibility for education created huge inequalities, with some cantons able to raise three times more than others. Also, individual schools have been allowed to raise additional funds "through commercial activities".[513]

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[509] Committee on Economic, Social and Cultural Rights reviews initial report of Bosnia and Herzegovina, 15 November 2005, www.unog.ch/website/news_media.nsf (March 2006) p. 8.
[510] Bildt, K. – 10 Years after Dayton: Bosnia still has a long way to go, *International Herald Tribune*, 21 November 2005.
[511] Steele, J. – Bosnia, a stunted regime, *Guardian Weekly*, 18-24 November 2005.
[512] *Report on human rights situation in the Federation of Bosnia and Herzegovina for 2001 by the Office of the Ombudsman*, mimeographed, Sarajevo, February 2002.
[513] OECD – *Reviews of National Policies for Education: South East Europe, vol. 1: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo*, Paris, 2003, p. 127.

The school-fees case represented a challenge of levying charges ('school fees') despite the legal requirement that compulsory education be free. This *free* is often interpreted to impede only tuition fees. Education was universalized on the IC's watch, in 1994-2004, because the poor "cannot afford the cost of textbooks and other materials, and extra-curricular activities are not subsidised".[514] As the Special Representative of the Commission on Human Rights noted in 2003, "excessive out-of-pocket expenses and costs associated with enrolment militate against access to education".[515]

Bosnia and Herzegovina has been included in the list of poor and heavily indebted countries but the government is committed to make education free. Its capacity to do so will depend on the terms for debt servicing. Also, a large part of public funds for education is used for the immensely complex educational bureaucracy which the IC has created. How it will be sustained and whether it should be preserved have become urgent questions. An even more urgent question has been raised by the OSCE as a post-IC development of education in Bosnia and Herzegovina was placed on the international agenda:

> With some 25 per cent of the country's young people wishing to leave permanently, there is much to do and no time to lose.[516]

Bulgaria

Private education introduced in Bulgaria during the first stage of transition, first at the university and then throughout the educational pyramid. The government explained in 1994 that "education in private schools, colleges and other private educational institutions is not free of charge".[517] Public education should have remained free of charge but this was not the case. The government admitted in 1996 that "paid educational and pedagogical services in the State-run schools have risen and are fast becoming a burden for many parents".[518]

This shift from public to private financing, from free to for-fee education was the World Bank's 'advice.' It objected to public financing of schools because it limited their capacity "to mobilize funds from other sources". Schools were, then, encouraged to pursue "opportunities to increase their own resources to offset declining budgets".[519] As the consequence of increasing costs, enrolments after the forth year of compulsory education decreased to 87%.[520] As in other countries in the region, compulsory education has been de-universalized.

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[514] *Bosnia and Herzegovina: National Report on Follow-up to the World Summit for Children*, Sarajevo, 2000, p. 9-10.
[515] U.N. Doc. E/CN.4/2003/38 (2003), para. 18.
[516] OSCE – Investing in the future: BiH education reform, 5 August 2004, available at www.osce.org/item/207.html
[517] U.N. Doc. CEDAW/C/BGR/2-3 (1994), para. 76.
[518] U.N. Doc. E/1994/104/Add.16 (1996), para. 310.
[519] Fiszbein, A. (ed.) – *Decentralizing Education in Transition Societies: Case Studies from Central and Eastern Europe*, WBI Learning Resources Series, The World Bank, Washington D.C., March 2001, p. 36.
[520] OECD – *Reviews of National Policies for Education: South East Europe, vol. 1: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo*, Paris, 2003, pp. 176-178.

Bulgaria formally complies with the MDG goal of universalized primary education, but only four years of schooling constitute less than half of the European Union's average. On the eve of its membership in the European Union, in 2007 or 2008, it is likely that the bar will be raised by the government so as to offer more and better education to all.

The model of education introduced in the 1990s has had freedom of choice as its pillar: "each and every citizen has the right to choose his/her school and type of education in accordance with his/her own preferences and possibilities".[521] The reference to 'possibilities' comes uncomfortably close to affirming that those who are able to pay for the education for their children are free to do so, while those without purchasing power are left without choice, whatever their preferences may be. The resulting economic exclusion from education has a noticeable racial profile in Bulgaria and this has facilitated its human rights challenge.

Minorities, especially the Roma, have been particularly victimized by the merger between privatized financing of public schools and institutionalized discrimination. A half of Roma children within compulsory school age (7-16) were found to be out of school in 1999.[522] Various projects to provide them financial incentives, such as free school meals or free textbooks, have been initiated.[523] Individual projects cannot remedy a systemic problem, however, and human rights litigation has proved to be an effective method to challenge discriminatory exclusion from education.

The European Roma Rights Centre won in 2005 a precedent-setting court victory against Bulgaria's Ministry of Education on the integration of human rights in education policy. The case revolved around educational and residential segregation of the Roma, epitomized in School no. 103 in the national capital, Sofia. The school had 100% of Romani children, the court found, while teaching and learning took place "in conditions of misery". The Ministry of Education argued that everybody had a right to free choice of school, which equally applied to the Romani parents and children. In theory, they were free to change their residence and their school. In practice, they were unable to do so due to poverty and societal exclusion. The court did not accept such 'free choice' but decided that the Romani school children were subjected to racial segregation and unequal treatment.[524] This judgment had rapid and broad ripple effects as it promised to change governmental inaction in the face of widespread misery and segregation of the Roma.

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[521] U.N. Doc. E/1994/104/Add.16 (1996), para. 280.
[522] UNICEF – *Young People in Changing Societies*, The MONEE Project, Regional Monitoring Report no. 7, UNICEF Innocenti Research Centre, Florence, 2000, p. 53.
[523] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 56.
[524] *European Roma Rights Center v. Ministry of Education*, case no. 11630/2004, judgment of the Sofia District Court, 25 October 2005, English translation at www.errc.org

Croatia

In its reports under human rights treaties, the government of Croatia routinely states that primary education is free and all-encompassing as its Constitution requires. Its self-assessment has been that "elementary schooling is free and available to all".[525] Differently, the OECD has described Croatia's education by highlighting "chronic under-funding and lack of equity and transparency in budgetary allocations".[526]

The government's assertion that primary education is 'available to all' refers only to Croatian citizens. As in other countries created through the fragmentation of previous multi-ethnic states. In Eastern Europe, many constitutional rights have been confined to the citizens. In its turn, access to citizenship depends on the ethnic origin. Children without citizenship do not have a right to free education while minority children may not go to school at all. Education International has found that exclusion from education victimizes all non-citizens, including asylum seekers.[527] The Committee on Economic, Social and Cultural Rights has voiced a similar concern, having found that "the Roma and children of undocumented aliens do not go to school".[528] These 'undocumented aliens' are often victims of stringent citizenship requirements, which impose long waiting periods on those who are not ethnically Croatian and require payments for basic public services which are free for citizens.[529]

The narrow definition of the right to education as a citizens' rather than a human right is particularly controversial because of the many recent armed and political conflicts justified by ethnicity. The violent fragmentation of the Former Yugoslavia and the conflicting narratives of victimhood have created a great deal of controversy in donors' and creditors' human rights policies,[530] many of which have not been settled as yet.

The exclusion of non-citizens from education is not visible from the laws and statistics on education but is widespread. It particularly affects the Roma, whose access to citizenship is notoriously difficult and whose social exclusion is institutionalized. Human rights litigation has proved to be a lever for change. Potentially precedent-setting cases challenging the total exclusion of the Roma from education or their segregation into substandard schooling, are on-going.[531]

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[525] U.N. Docs. CRC/C/8/Add.19 (1994), paras. 50 and 316, and E/1990/5/Add.46 (2000), para. 407.
[526] OECD – *Reviews of National Policies for Education: South East Europe, vol. 1: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo*, Paris, 2003, p. 278.
[527] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 88.
[528] U.N. Doc. E/C.12/1/Add.73 (2001), para. 19.
[529] Minority Rights Group – *Minorities in Croatia*, London, September 2003, p. 16.
[530] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 349-351.
[531] Plese, B. – Racial segregation in Croatian primary schools: Romani students take legal action, Roma Rights, No. 3-4/2002, available at www.errc.org

Georgia

The government of Georgia claimed in its PRSP, in June 2003, that primary education had already been universalized.[532] This is not confirmed in internationally comparable statistics which place the enrolments in primary school for 2003 at 89%,[533] while school attendance and completion are likely to be even lower. The subsequent transition of governance through the 'rose revolution' [534] raised expectations that governmental performance would substantially improve and that government's self-assessments would come closer to reality.

Also, corruption-free public services constituted an important popular demand at the time of the 'rose revolution', including in education. One facet of previous governmental policy made corruption in education inevitable because teachers' salaries had been set below the official poverty line. In 1995, the average teacher's salary of $10 per month was insufficient to cover the cost of public transportation to and from work.[535] The consequences were detrimental and affected all public education.

In particular, informal charges in the form of 'private tuition' emerged so as to supplement inadequate teachers' salaries. The Committee on the Rights of the Child was concerned in 2000 that "low wages have forced teachers to offer private tuition, creating a two-tier system of education".[536] Other forms of corruption proliferated, such as the sale and purchase of school places, exam results and grades. In its reports under human rights treaties, the government admitted that such "an informal system of payments" has transferred the financial responsibility for education to "Georgian households [which] fund much of the educational institutions".[537]

Formal legal guarantees of free education continued unchanged but the abyss between them and governmental policy broadened. The government allowed schools to charge tuition and other fees as well as to collect funds from parents as 'additional expenses' or 'voluntary contributions.' NGOs reported how these charges were levied in practice:

> Teachers inform pupils of the necessity for additional payments for the needs of the school. There are always reasons for additional payments: school and class funds, new school inventory, etc. The fees are legal to a certain extent. Parents are requested to pay for additional expenses. Schools also receive voluntary contributions and they have a right to organize fund-raising events. Unfortunately, children very often participate in the collection of the fees.[538]

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[532] Georgia – Economic Development and Poverty Reduction Program [Draft] (June 2003), available at www.worldbank.org
[533] EFA/UNESCO – *Global Monitoring Report 2006*, available at www.unesco.org
[534] A ranbow of revolutions, *The Economist*, 21 January 2006.
[535] Heynemann, S.P. – The transition from party/state to open democracy: the role of education, *International Journal of Educational Development*, vol. 18, 1998, No. 1, p. 27.
[536] U.N. Doc. CRC/C/94 (2000), para. 338.
[537] U.N. Doc. E/1990/6/Add.31 (2001), para. 240.
[538] NGO alternative report under the Convention on the Rights of the Child, Georgia NGO CRC Coordinative Council, Tbilisi, December 1999, available at www.crin.org

Although the law mandates the first eight years of schooling to be free, for-fee education was formally introduced: "Fee-paying instruction and other activities are permitted at State-run educational institutions; the profits are at the disposal of the respective institutions' administrations".[539] The permission to levy charges was a likely government's response to its inadequate funding of public schools. The reasons for Georgia's "chronically under-funded education"[540] were, according to Neil MacFarlane, that "the Georgian state started weak and was further damaged by two de facto secessions and a civil war". He has added that Georgia was "deeply dependent on western assistance," much of which was wasted through corruption.[541] As a consequence, formal and informal payments cover almost the entire cost of education. How much and how fast the post-2003 government will be willing and able to change the policy of public funding and thereby improve educational performance is an open question.

Kazakhstan

The government of Kazakhstan claims in its reports under human rights treaties that primary education is free.[542] This *free* means that tuition should not be charged in primary, secondary and higher education. However, the government has highlighted that children "from families in difficulties" do not go to school, even in primary education.[543] The main reason is that a large part of the cost of education has to be paid by school children's families.

A survey of school children's views by UNESCO has revealed a gap between the government's assertion that education is free and the reality. A 15-year-old school girl from Kokshetau and her 12-year-old friend have thus described the situation at school:

> All schools charge some kind of money for school needs. Many parents cannot pay this and this is the reason their children do not attend. Government must help poor families because even free schools charge any kind of money for school needs. Teachers loose their dignity in front of children collecting this money.[544]

The children's view that the teachers' dignity was jeopardized by collecting money from their pupils is reinforced by the teachers' low salaries. Gulnar Adambai has observed that "corruption in Kazakhstan is diverse in its form and method and has spread to every level of education".[545] The principal reason has been inadequate public funding for education which necessitated levying charges, including to supplement inadequate teachers' salaries

The Asian Development Bank has confirmed the children's findings. It has found that the cost of textbooks was fully transferred to families in 1996. Additional charges for school supplies and school meals were subsequently added to what the families have had to pay for 'free' education.

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[539] U.N. Doc. E/1990/5/Add.37 (1998), paras. 256, 260 and 288.
[540] U.N. Doc. E/1990/6/Add.31 (2001), para. 240.
[541] MacFarlane, S.N. - Georgia's revolution and the region: Is it catching?, *The World Today*, February 2004, pp. 14-15.
[542] U.N. Docs. CRC/C/41/Add.13 (2002) para. 257 and CERD/C/439/Add.2 (2004) para. 117.
[543] U.N. Docs. CRC/C/41/Add.13 (2002) paras. 257 and 277.
[544] UNESCO Almaty Cluster Office – *Education for All through Voices of Children*, Almaty, undated, pp. 9 and 14, available at www.unesco.kz (December 2004).
[545] Adambai, G. – Petty corruption on a grand scale, *Transitions Online*, 27 May 2005, available at www.tol.cz

The reason is that "only about 57 percent of the estimated costs of running the education sector could be financed by the government".[546] Nonetheless, the Asian Development Bank has encouraged a further transfer of the cost of education from governmental to family budget. Its aim has been to increase overall funds for education and this entailed privatizing the financing of public education as well and promoting private education.[547]

Kyrgyzstan

Outside perceptions of changes in Kyrgyzstan attributed to the 'tulip revolution' in 2005 high expectations. The popular protest at fraudulent elections in February 2005 forced thus 'elected' president Askar Akayev to flee the country and led to a change of government.[548] Expectations that governance would also change were short-lived and by the end of 2005 the new government was described as repeating the pattern of abuses of power inherited from the previous one.[549] Any new government, willing to change the model of governance, will have an immense challenge on its hands to constrain abuses of power through the rule of law. This will entail altering the inherited model of education which is based on a discrepancy between what the government should do and what it actually does.

The right to free education was part of the legacy of the former Soviet Union and it was prolonged through legal reform in 1997, which mandated secondary alongside primary education to be free and compulsory. Nonetheless, a year earlier fees had been introduced throughout public education. Because the Constitution posits that education should be free and the law follows suit while the government introduced payments through its cost-sharing policy, the resulting model was based on an inherent contradiction. The Asian Development Bank has described the still un-answered question triggered by the rift between the law and the governmental policy:

> Fees are being gradually introduced to educational institutions, but the practice remains controversial in terms of whether it is prohibited by the constitution or not.[550]

The background to shaping educational policy in open contradiction to what the law mandates was the "successful implementation of the structural adjustment programmes, [making] Kyrgyzstan often viewed as a 'showcase' for market reforms in Central Asia".[551] The reforms revolved around a typical structural adjustment package, which comprised reduced governmental expenditure and thus also diminished public funding for education. To make up the shortfall in the budgetary allocations to education, cost sharing and cost recovery were introduced in public education. In addition, private education was legalized and promoted to reduce demand on public education.

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[546] Akanov, A. & Suzhikova, B. – Kazakhstan , in: Brooks, D.H. & Thant, M. (eds.) – *Social Sector Issues in Transitional Economies of Asia*, Asian Development Bank/Oxford University Press, 1998, pp. 264-268.
[547] Asian Development Bank – Report and recommendation of the President to the Board of Directors on Proposed Loans and Technical Assistance Grant to the Republic of Kazakhstan for the Basic Education Project, Doc. RRP:KAZ 283440, Manila, 1997.
[548] Kirgizstan: Not a bed of tulips, *The Economist*, 8 October 2005.
[549] International Crisis Group – *Kyrgyzstan: A Faltering State*, Asia Report No. 109, 16 December 2005, available at www.crisisgroup.org
[550] Brooks, D. – The Kyrgyz Republic and Mongolia, in: Brooks, D.H. & Thant, M. (eds.) – *Social Sector Issues in Transitional Economies of Asia*, Asian Development Bank/Oxford University Press, 1998, p. 348.
[551] Rysalieva, S. Dj. & Ibraeva, G.A. – *Educational Financing and Budgeting in Kyrgyzstan*, UNESCO/IIEP, Paris, 1999, p. xii.

The (previous) government acknowledged in 1999 that "the State is short of the resources it needs to keep the schools fully funded. Accordingly, families are having to spend more on their children's education".[552] Nevertheless, governmental reports under international human rights treaties did not concede that public schools charged for education and NGOs have provided the missing information. Education International has found that parents had to pay "administrative fees".[553] In their submission to the Committee on the Rights of the Child, NGOs have described the reality of for-fee education thus:

> Officially, education is free (Law of Education and Constitution of the Kyrgyz Republic). Nevertheless, every year, education departments issue decrees on maximum annual education fee to be paid by parents (usually it is an average of one month minimum wage (about 100 soms). Governmental schools charge fees more than the maximum amount fixed by decree where payment is compulsory. As a rule, no receipts are issued. According to questionnaire review, the average amount charged per child is 300-500 soms per year and may go beyond 1000 soms. Money is being charged for school building repairs, textbooks, training (monthly), presents for teachers and the principal, etc. Schools become too expensive for many families. [In consequence] the number of children not attending school is much higher than that in official statistics. Attendance figures are mostly over-reported due to the financial and prestige pressure upon school administrators and teachers to maintain high official attendance figures.[554]

The World Bank has also confirmed that "parents constantly have to contribute money to meet the needs of the school, such as heating, buses, teacher salaries, books, and supplies," [555] and has identified a range of charges: tuition fees, charges for supplementary teaching, for books and uniforms, for classroom supplies and school repairs, for school excursions and school meals, as well as for the transport of children to and from school.[556] The necessary question is, then, what happens with all the poor who cannot afford all these payments. The Committee on the Rights of the Child noted in 2000 that "education fee discounts" were nominally available to poor families with many children, [557] but there was – still is – no data available on how many were unable to pay such discounted fees. A much broader set of questions remains for the government and its international 'partners' to address, notably: what are the consequences of an educational model where the government is openly violating the law of land? How can a government design a strategy against corruption when payments are levied in education which is legally free?

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[552] U.N. Docs. E/1990/5/Add.42 (1999), paras. 217-218 and CRC/C/41/Add.6 (1999), paras.205- 206.
[553] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 173.
[554] NGO "shadow report" under the Convention on the Rights of the Child, June 2000, available at www.crin.org
[555] The World Bank – *Hidden Challenges to Education Systems in Transition Economies*, Washington D.C., September 2000, p. 29.
[556] Vandycke, N. – *Access to Education for the Poor in Europe and Central Asia: Preliminary Evidence and Policy Implications*, World Bank Technical Paper No. 511, Washington D.C., June 2001, p. 14.
[557] U.N. Doc. CRC/C/15/Add.127 (2000), para. 21.

Macedonia (The Former Yugoslav Republic of Macedonia)

In the Former Yugoslav Republic of Macedonia (FYROM),[558] there is a constitutional guarantee of free primary education, which should last eight years long and is defined as free and compulsory. The requirement of free education is interpreted by the government narrowly, to mean only that tuition is nominally free of charge (as government pays teachers' salaries) and that applies only in primary school. Secondary education, starting when children are 11 years old, is not compulsory and should be also free of charge.[559] Nonetheless, the government of Macedonia admitted in its reports under human rights treaties that costs of such nominally free education were high:

> Although primary education is free of charge and is funded through the budget of the Republic of Macedonia, the expenses for textbooks, reference literature, school materials and equipment are paid by the students, i.e. by their parents.[560]

The World Bank has confirmed that charges were levied for supplementary tuition, transportation, books and supplies and an unspecified 'other' purposes.[561] In consequence, educational enrolments in primary school diminished to 91% in 2003,[562] de-universalizing previously all-encompassing compulsory education.

Moreover, the government has allowed public schools and universities to raise additional funds by levying various charges and to retain them. There is no comprehensive information about the funds thus raised, hence neither the full cost of education nor the proportions of governmental and parental contributions are known.[563] Also, this policy institutionalizes corruption because little is known on the charges that are levied and their destination.

The two divergent realities of education were revealed in the governmental report to the Committee on the Rights of the Child in 1997 as the government incorporated NGO comments in its own report. These 'comments' pointed out that "free education in primary schools is only of a declarative character". In addition, the 'comments' described the discriminatory pattern of economic exclusion from education. The minorities, especially the Roma, were particularly victimized because of the prevalent poverty amongst them, which was created by institutionalized discrimination against them.[564]

The term 'minorities' does not exist in Macedonian law and 'members of communities' is used instead.[565] Most attention is devoted to the Albanian 'community', especially in education.

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[558] In the aftermath of Macedonia's declaration of independence, a dispute over the name 'Macedonia' pitted Greece against that state-in-the-making. Greece opposed its use of the name 'Macedonia,' claiming that it constituted an usurpation of its own Macedonian historical and cultural heritage. Thus the official name 'The Former Yugoslav Republic of Mecedonia.' Valinakis, V. – *Greece's Balkan Policy and the 'Macedonian Issue'*, Stiftung Wissenschaft und Politik, Ebenhausen, 1992.
[559] U.N. Doc. CERD/C/MKD/7 (2006), para. 187.
[560] U.N. Doc. CRC/C/8/Add.36 (1997), paras. 20 and 188-189.
[561] Vandycke, N. – *Access to Education for the Poor in Europe and Central Asia: Preliminary Evidence and Policy Implications*, World Bank Technical Paper No. 511, Washington D.C., June 2001, p. 15.
[562] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[563] OECD – *Reviews of National Policies for Education: South Eastern Europe, vol. 2: FYROM, Moldova, Montenegro, Romania, Serbia*, Paris, 2003, pp. 45 and 47.
[564] U.N. Doc. CRC/C/8/Add.36 (1997), paras. 190 and 201.
[565] U.N. Doc. CERD/C/MKD/7 (2006), para. 2.

The results of the 2002 census revealed that the Albanians constituted 25% of the population (a half million of the total population of two million)[566] and extensive legislative and policy adjustments have been initiated in the past five years to "protect members of non-majority communities from discrimination".[567] The Committee on the Rights of the Child has found that "poor primary and secondary education" leads to increasing numbers of children not enrolling or dropping out, especially the minorities and – even more – minority girls.[568] This process has not been halted and reversed and, furthermore, it has not yet been systematically documented. The key obstacle is the very design of human rights policy, which excludes poverty. The government of Macedonia has attributed low educational enrolments and performance of minority children to "tradition, lifestyle, religion and customs," [569] without mentioning the cost of education which families are expected to shoulder and the inability of many, especially amongst minorities, to do so due to widespread impoverishment.

Alongside minorities, migrants are also affected by educational exclusion. The merger between exclusion and discrimination is compounded in their case because the right to education is confined to citizens. This excludes considerable - but unknown - numbers of the Roma as well as all other children without citizenship. Although such children may be allowed to attend school, "UNICEF and NGOs have reported that they were not graded nor given certificates for the completion of their studies".[570]

Another huge obstacle to improving education in Macedonia is the status of teachers. The International Helsinki Federation found in its report for 2004 a "continued restrictive policy with respect to social and labour rights". The lack of human rights safeguards for public-sector employees victimizes, in particular, teachers.[571] Before the transition, the right to work was formally affirmed as a constitutional right. Post-transition, the notion of a right to work disappeared as did the priority for employment-creation in governmental policy. The European Union called the estimated unemployment rate of over 30% in Macedonia "horrible". [572] The employed, including teachers, fare only slightly better than the un-employed because respect of their labour rights and trade union freedoms is conspicuous by its absence.

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[566] U.N. Doc. CERD/C/MKD/7 (2006), appendix 1.
[567] U.N. Doc. CERD/C/MKD/7 (2006), para. 42.
[568] U.N. Doc. CRC/C/15/Add.118 (2000), para. 44.
[569] U.N. Doc. CERD/C/MKD/7 (2006), para. 185.
[570] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 182.
[571] Macedonia, in: Human *Rights in the OSCE Region: Europe, Central Asia and North America. Report 2005 (Events of 2004)*, available at www.ihf-hr.org
[572] Beatty, A. – Adding more borders to Europe's map, but the young might quit, *European Voice*, 19-25 January 2006.

Moldova

The government of Moldova reported in 2002 that public education was free but "the number of paying students in both private and State institutions has been increasing" [573] The formal introduction of payments in nominally free public education created an inherent conflict between the treatment accorded to those who could afford to make payments and those unable to pay. The required payments were far beyond the reach of the poor. That same year, in 2002, the OECD estimated that school fees, textbooks, and clothes needed for school cost an average $100 per year, which translated into three average monthly incomes of $35.[574] As a consequence of such high cost of nominally free public education, the enrolments in primary school decreased to 79% in 2003.[575]

The reason for these formal and informal charges was reduced budgetary allocation to education. "Only 40% of the current costs of education" was met by the government by the turn of the millennium. That transfer of the cost of education from the government to the family was premised on an assumed willingness and ability of families to make the required payments. The willingness was a theoretical question for many because they were unable to make any payments due to widespread impoverishment:

> Public allocations are far less than needed, and the degree of the population's pauperization does not allow for any official set of instruments for parents' cost sharing in covering the deficit, although unofficial attempts are made.[576]

The Economist has called Moldova a "post-Soviet wreck," [577] and its consecutive governments have not yet developed a policy to implement their constitutional obligation to ensure at least primary education for all children. Instead, governmental self-description has shifted to "the new role of the state as the facilitator of democracy and the market economy" with an explicit acknowledgment that "over 30% of services in education" are for-fee rather than free. Because the budgetary allocations to education remain much below its cost, there is "an increased reliance on charging fees for services rendered".[578]

Also, the salaries of public officials, including teachers, are much below the cost of living. This discrepancy has inevitably led to corruption and the perception that education belongs to the most corrupt sectors.[579] Research carried out within the MONEE Project confirmed many forms of corruption in education, including parental payments so as to secure places for their children in prestigious schools or their improved grades.[580]

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[573] U.N. Docs. CRC/C/28/Add.19 (2002), paras. 293 and 298.
[574] OECD – Thematic *Review of National Policies for Education: Moldova*, OECD, Paris, 2002, p. 15.
[575] EFA/UNESCO – *Global Monitoring Report 2006*, available at www.unesco.org
[576] UNDP – *National Human Development Report, Republic of Moldova 1999: Transition and Human Security*, United Nations Development Programme, Chisinau, 2000, p. 90.
[577] Troubled Moldova: Tilting westward, *The Economist*, 29 January 2005.
[578] OECD – *Reviews of National Policies for Education: South Eastern Europe, vol. 2: FYROM, Moldova, Montenegro, Romania, Serbia*, Paris, 2003, p. 126.
[579] Government of the Republic of Moldova - Economic Growth and Poverty Reduction Strategy Paper (2004-2006), Chisinau, May 2004, available at www.worldbank.org
[580] UNICEF – *Young People in Changing Societies*, The MONEE Project, Regional Monitoring Report no. 7, UNICEF Innocenti Research Centre, Florence, 2000, p. 52.

Those who cannot afford any payments get scant attention and no help from the government, which has admitted that the fate of poor children is to have to work so as to earn their livelihood:

> Children of families in a precarious financial state are compelled to work in order to support themselves, diminishing their school attendance and possibilities to study and graduate.[581]

Poverty has been removed from the international human rights agenda, where the focus is on the politicization of education, especially in Transdniestria. Closures of school for using Latin instead of Cyrillic script and the harassment of parents, teachers and children for refusing to change their language and script have been a case in point.[582] The European Union has implicitly defined that practice as a human rights violation and has imposed sanctions on selected governmental officials from Transdniestria:

> Minister of Education Elena Bomeshko and nine other officials were banned from travelling to the EU in February 2005 after the Transdniestrian authorities – who declared independence from Moldova in 1991 – closed Moldovan Latin-script schools in the capital Tiraspol and the towns of Bendery, Dubasar and Rybnitsa.[583]

Romania

The lack of a single international community in education has been exemplified in mutually contradictory global recipes for Romania. While international human rights bodies have advocated continued and increased public funding so that compulsory education would remain free, international financial institutions have favoured the privatization of education, including levying charges in public education so as to transfer its cost from the government to families and communities.

The World Bank critiqued the pre-transition model because "private sources contributed only negligible amounts," and the previous reliance on the central government as the source of most educational funds was first altered through decentralization. The contribution of the central government was reduced to 62% of the cost of compulsory education while the local authorities were supposed to contribute 24%.[584] The missing 14% was to be made up by the school children's parents. Their financial contributions increased with time and, also, with the progress of their children up the educational pyramid. The OECD has thus summed up the future trajectory for Romania:

> Given the nature of the economy, it is inevitable that the future financing of education, at all levels, will require increased mobilization of non-government sources of financing, including student fees.[585]

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[581] U.N. Doc. CRC/C/28/Add.19 (2002), para. 293.
[582] Moldova, in: *Human Rights in the OSCE Region: Europe, Central Asia and North America. Report 2005 (Events of 2004),* available at www.ihf-hr.org
[583] Beatty, A. – Partial reprieve for rogue state's officials, *European Voice*, 8-14 December 2005.
[584] Fiszbein, A. (ed.) – *Decentralizing Education in Transition Societies: Case Studies from Central and Eastern Europe*, WBI Learning Resources Series, The World Bank, Washington D.C., March 2001, pp. 91 and 99.
[585] OECD – *Reviews of National Policies for Education: Romania*, Paris, 2000, p. 89.

The constitutional changes in 2003 formally abandoned the previous model of all-encompassing public education. Public education should remain free during the compulsory cycle, [586] but parallel educational systems have been introduced throughout the educational pyramid. Three types of schools and universities - state, private and confessional – profoundly altered the educational landscape. The extent to which education will remain free is subject to changes in the legislation as well as dependant on governmental policies. In theory, public education should remain free and available to all children in the compulsory school age. In practice, public education may not be either available or free. The Committee on the Rights of the Child recommended to the government to "make every effort to ensure that compulsory education, and possibly secondary education, is free for all children".[587] However, such recommendations by international human rights bodies have thus been marginalized in the design of education and are unlikely to be given prominence in the future.

Russia

The government of the Russian Federation routinely reports that its legislation is in line with its international human rights obligations and this is indeed so with regard to the wording of its laws. Russia's educational performance, however, has deteriorated from the all-encompassing compulsory education when it had been the Soviet Union to subsequently diminished enrolments, let alone attendance and completion. The officially reported enrolments decreased to 90% in 2003 for primary school, which encompasses children aged 7 to 9 years. [588] An important reason why education has been de-universalized was the introduction of various formal and informal charges. Because education was free no longer, it could not be kept compulsory.

The Committee on the Rights of the Child concluded in 2005 "that different charges for primary school continue to be levied despite the legal guarantee of free primary education". [589] The government admitted in 2001 that reality was profoundly different from what the law of the land stipulated:

> Approximately 4% of 7-year olds who should be attending school are not, whereas the figure for 15-year olds is 34.7%. [590]

The fact that all children do not even enrol, although education remains nominally free and compulsory, is an outcome of the transfer of financial responsibility for education from the central government to regional and local authorities, from governmental to family budget.

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[586] The previous Constitution, adopted in 1991, mandated equal access to all levels and types of education, all education was supposed to be public and at least nominally free. Educational reforms were initiated in 1993 through negotiations with external donors and creditors, mainly the World Bank and the European Union so as to improve "school and university funding through extra-budgetary and local resources". By 1999, families covered 16% of the cost of education and formal charges were introduced for examinations and certificates. OECD – *Reviews of National Policies for Education: South Eastern Europe, vol. 2: FYROM, Moldova, Montenegro, Romania, Serbia*, Paris, 2003, pp. 271-276 and 290-291.
[587] U.N. Doc. CRC/C/15/Add.199 (2003), para. 53.
[588] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[589] U.N. Doc. CRC/C/RUS/CO/3 (2005), para. 64.
[590] U.N. Doc. E/C.12/4/Add.10 (2001), para. 453.

Human rights guarantees remain a part of the federal legislation while the financial responsibility for education has been decentralized. In its reports under international human rights treaties, the government explained how the financing of compulsory education had been "delegated to the regions, whose possibilities are unequal. Regional per capita expenditure on child education varies appreciably (by up to one third). The shortage of budgetary financing is stimulating the commercialization of education and limiting the availability of high-quality education".[591] That explicit recognition of inequalities and the educational exclusion of the poor resulting from decentralization has not led to governmental policy to halt and reverse exclusion and to diminish inequalities.

Decentralization was initiated in the first phase of transition, in 1992. The federal government reduced its contribution to the educational budget to 14.5% while the local authorities were supposed to cover the remaining 67.5%. That model forced poor regions "to choose between heating schools during cold winter months and paying teachers' salaries on time".[592] A vivid journalistic description conveyed the teachers' efforts to keep schools functioning against all odds:

> The most remarkable thing is that schools still function as well as they do. It is an impressive, even moving, experience to visit decrepit little schools in the provinces where a bunch of dedicated middle-aged women, on tiny salaries and without any modern books or equipment, instil the basics of maths, science and Russian literature into the heads of their pupils. "Schools have been abandoned by the state, but survive because they are part of civil society," says Artem Yermakov, a thoughtful journalist working on a newspaper for teachers".[593]

The abandonment of the financial responsibility for schools by the central government was a part of dismantling the centrally planned system in the name of transition to the free market. During that process "approximately half of the population has become poor".[594] Human rights problems have spanned widespread institutionalization of children, often resulting from the financial inability of their parents to care for their children due to impoverishment. Disturbing reports have emerged about the treatment of children in the nominally educational institutions where such 'economic orphans' are placed, including resort to torture.[595]

Thus, poor children have paid the price of the collapse of previously all-encompassing free public services. Post-transition, the poor have been excluded from education, which the Soviet Union championed as a basic human right. Post-compulsory education has been priced of out the reach of many while the NGOs have pointed out that primary school children are also forced to abandon school because they cannot afford its cost. In accordance with the theoretical underpinning of the transition to the free market, their fate was marginalized in favour of prioritizing economic freedom: "fee-paying forms of education and private schools have gained ground".[596]

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[591] U.N. Doc. CRC/C/65/Add.5 (1998), paras. 38 and 301.
[592] Canning, M. et al. – *Reforming Education in the Regions of Russia*, World Bank Technical Paper No. 457, Washington D.C., December 1999, pp. 19 and 34.
[593] A survey of Russia, *The Economist*, 21 July 2001, p. 16-17.
[594] Tchernina, N. – *Economic Transition and Social Exclusion in Russia*, International Institute for Labour Studies & UNDP, ILO, Geneva, 1996, Research Series No. 108, p. 97.
[595] U.N. Doc. CRC/C/RUS/CO/3 (2005), paras. 34, 36 and 39.
[596] U.N. Doc. CEDAW/C/USR/5 (1999), para. 23.

Much as everywhere else in the world, the introduction of the free market in education proved to work for the privileged minority. Moreover, levying formal and informal charges in nominally free public education has amplified space for corruption. The boundary between the collection of funds necessary for schools to function, and the imposition and misappropriation of charges by officials who were abusing their powers, has become difficult to discern. No less than 3,500 crimes of fraud, bribery or misappropriation of public funds in public education were formally investigated in 2004 alone.[597]

The pattern of economic exclusion from education has been exacerbated by discrimination. The denial of free movement and residence, inherited from the Soviet Union, has been kept in place. A residence permit (*propiska*) has remained necessary for children to enrol in public school. Without it, children can only gain access to education if they can pay informally to obtain a *propiska*, or formally pay the cost of private school. Overcoming the administrative hurdle to enrol a child in school often necessitates paying a bribe to obtain the all-important *propiska*,[598] or else paying the full cost of education in a private school. The Committee on the Elimination of Racial Discrimination has pointed out that "the lack of residence registration is used to deny a number of political, economic and social rights," including the right to education.[599] Such discriminatory exclusion has been exacerbated through the localization of financial responsibility for education, whereby the boundaries of belonging were narrowed down to regions and localities treating all migrants, internal or international, as 'the other.' This pattern of discrimination has particularly victimized migrants and minorities, and especially the Chechens. The warfare in Chechnya and related human rights abuses elicited muted global condemnations in the past decade,[600] while Russia's regained international stature indicates that little change can be expected in the future.

The pattern of forced migration which human rights abuses in Chechnya triggered has exposed the legalized denial of the basic rights of Chechen migrants within Russia. Alongside a residence permit, they have also been required to obtain a migrant's card. A precedent-setting judgment by the European Court of Human Rights has declared the exclusion of Chechen children from public school because of their lack of administrative certificates (such as *propiska*) to constitute a human rights violation.[601]

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[597] Transparency International – *Stealing the Future: Corruption in the Classroom. Ten Real World Experiences*, Berlin, 2005, p. 8.
[598] Karush, S. – A little booklet that controls all, *The Russia Journal*, Moscow, 23 March 2002.
[599] U.N. Doc. CERD/C/62/CO/7 (2003), para. 14.
[600] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 361-366.
[601] European Court of Human Rights – *Timishev v. Russia*, Applications Nos. 55762/00 and 55974/00, judgment of 22 November 2005.

Serbia (with references to Montenegro and Kosovo)

The fragmentation of the Former Yugoslavia entailed creation of five states in the 1990s, accompanied by human rights violations which have become notorious world-wide. That process continued in 2006 with Montenegro becoming the 192nd member of the United Nations in June 2006.[602] The previous federal 'state union' with Serbia was broken up through Montenegro's referendum on independence in May 2006.[603] The result of the referendum was a thin majority for independence,[604] and Montenegro became an independent state a month later. Its education system has been effectively separate from Serbia's as of 1990,[605] but changes will inevitably follow from Montenegro's newly acquired statehood.

Another new state is likely to ensue from the negotiations about the status of Kosovo. They were formally launched in 2006, with informal predictions of Kosovo's forthcoming independence widely publicised. This process is expected to bring to an end the "human rights black hole" which Kosovo became under the UNMIK (United Nations Mission in Kosovo).[606] Following the NATO military intervention in 1999, the UNMIK has had sovereign powers which ranged between issuing constitutional and legislative acts and operating all public services, with full immunity from any legal challenge whatsoever.[607] Future will show how much of an impact the six years of unaccountable powers of 'the international community' will have on the public perception of human rights and corresponding responsibilities of those exercising sovereign powers.

The model for human rights protection developed by the UNMIK has excluded many economic and social rights, including the right to work. Furthermore, its disregard of employment creation so as to ensure sustainability of human rights protection is evidenced in the unemployment rate of 58%.[608] The design of education could have facilitated employment and self-employment by graduates but 'sectoral' planning has impeded linkages between education and labour, with hopes that the introduction of the free market will somehow alleviate widespread poverty and further impoverishment generated by warfare and associated militarization.

The estimated unemployment rate is, like all other statistics for Kosovo, a guesstimate because the most recent credible census was held in 1981 and a new one may or may not be held in the near future.[609] The Ministry of Education, Science and Technology formally assumed its responsibilities in March 2002 with a heritage which will be extremely difficult to sustain.

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[602] Pertinent information is available at www.un.org
[603] Montenegro's independence: State-building, *The Economist*, 4 March 2006.
[604] Traynor, I. – Europe's newest state wins poll seal of approval, *Guardian Weekly*, 26 May – 1 June 2006.
[605] OECD – *Reviews of National Policies for Education: South Eastern Europe, vol. 2: FYROM, Moldova, Montenegro, Romania, Serbia*, Paris, 2003, pp. 195-264.
[606] Third Annual Report 2002-2003 by the Ombudsperson in Kosovo (OIK) addressed to Mr. Michael Steiner, Special representative of the Secretary-General of the United Nations, 10 July 2003, mimeographed.
[607] Nilsson, J. – UNMIK and the Ombudsperson Institution in Kosovo: Human rights protection in a United Nations 'surrogate state,' *Netherlands Quarterly of Human Rights*, vol. 22, 2004, No. 3, p. 395.
[608] OECD – *Reviews of National Policies for Education: South East Europe, vol. 1: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo*, Paris, 2003, p. 111.
[609] Commission backs Kosovo census, *European Voice*, 2-8 March 2006.

The international design of an education for Kosovo included a much praised educational inclusion of children with disabilities, with167 staff employed for 510 children.[610] The ratio of one employee for each three children, and the related cost, is likely to be impossible to sustain after international aid comes to an end.

The independence of Montenegro and the likely independence of Kosovo have considerably diminished the territory of Serbia. The multitude of conflicts, sanctions, prolonged warfare and two decades of a notoriously repressive regime have inflicted a heavy toll on education and all other public services. Much as the sanctions and warfare, the resulting impoverishment is also blamed on the enemy: "Military mentality and patriotic rhetoric make sound economic reasoning impossible. The deterioration of living conditions is not attributed to conflict and war but to the enemy".[611]

Previously marginalized economic reasoning came back with the vengeance after Serbia was included in the list of poor, heavily indebted countries, which made governmental policy subject to the endorsement of the IMF and the World Bank. As in other HIPC countries, private education was introduced in 1995, starting from the university and secondary school. Primary education had been exempted at the time, and private primary schools were legalized later, in 2003.[612] Also, private financing was introduced in public education in parallel with diminished budgetary allocations.

In its reports under human rights treaties, the (former) government described in 1996 how inadequate budgetary allocations were supplemented by 'other financial resources' to then concede that public education, which should have been free, was privately financed:

> According to the annual financial statement for 1995, other income realized by primary schools amounted to 10.6% of budget receipts, by secondary schools 18,8%, and by faculties even 67.4% of budget receipts.[613]

By the turn of the millennium, primary education remained free in a narrow sense, that is enrolment or tuition fees were not charged, but other costs have been transferred to families. These are many: textbooks and supplies, insurance for accidents, children's fund contributions, school meals, excursions, transportation, membership in children's organizations, heating, and school repairs. UNICEF's estimate was in 2001 that parental financial contributions amounted to 25% of the total cost of primary education.[614] The Common Country Assessment (CCA) of the United Nations agencies in Belgrade estimated in 2003 that private financing of education reached 50% of its total cost.[615] That CCA's estimate was implicitly challenged by the OECD.

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[610] Sommers, M. and Buckland, P. – *Parallel Worlds: Rebuilding the Education System in Kosovo*, International Institute for Educational Planning, Paris, 2004, p. 84.
[611] Dimitrijevic, V. – *The Insecurity of Human Rights After Communism*, Norwegian Institute of Human Rights, Oslo, Publication No. 11, April 1993, p. 50.
[612] Belgrade Centre for Human Rights - *Human Rights in Serbia and Montenegro 2003*, Belgrade, 2004, p. 253.
[613] *Development of Education in the FR Yugoslavia*. Report for the 45th Session of the International Conference on Education UNESCO-IBE (Geneva, 1996), Yugoslav Commission for UNESCO, Beograd, 1996, p. 37.
[614] Primary education in the Federal Republic of Yugoslavia – Analysis and recommendations, UNICEF, Belgrade, June 2001, mimeographed, p. 21.
[615] *Common Country Assessment for Serbia and Montenegro (CCA*), United Nations Country Team, Belgrade, October 2003, p. 39-40.

Its review of education in Serbia in 2003 found that budgetary funds financed 76% of the cost of education,[616] which is closer to UNICEF's calculations. However, as in other countries where a variety of charges is levied in primary school which is nominally free, nobody really knows. Regardless of the absence of precise figures, the consensus has been that public education has been priced beyond the reach of the poor, as has been confirmed by the Committee on the Rights of the Child.[617]

The previous decades of all-encompassing free and compulsory schooling have left the legacy of high enrollments. They have remained around 95% in primary education (for children aged 8-14) throughout all the crises, at least according to the official statistics. The future is, however, uncertain. In their review of Serbia's PRSP, the IMF and the World Bank have called for reviewing the public sector "in light of its fiscal implications". [618] In consequence, private financing of public education is likely to increase as well as the inevitable economic exclusion which it entails.

Economic exclusion is never neutral, it always has a distinct racial or ethnic profile. The process of impoverishment has been exacerbated by the need to provide public services for an estimated 800,000 refugees and the internally displaced. Both their numbers and their fate depend on the politics of peace-making. Much as in neighbouring countries, the right to education is interpreted as a citizens' and/or residents' right rather than a human right. The birth certificate and other administrative requirements for school enrolment exclude many internally displaced children, refugees and the Roma.[619]

Tajikistan

In its reports under human rights treaties, the government of Tajikistan has stated that the law mandates education to be free but has admitted that this is not so in practice:

> Owing to the pressure of the economic problems of the transitional period and the implementation of market reforms, the actual means available to State bodies to provide children with the opportunity to obtain the necessary education have diminished.[620]

The background was the crisis triggered by the rapid transition from a centrally planned to a market economy and also an armed conflict in the 1990s. The priority for military expenditure which warfare had generated further decreased public investment in education.

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[616] OECD – *Reviews of National Policies for Education: South Eastern Europe, vol. 2: FYROM, Moldova, Montenegro, Romania, Serbia*, Paris, 2003, p. 349.
[617] U.N. Doc. A/51/41 (1996), para. 892.
[618] The International Monetary Fund and the International Development Association – Federal Republic of Yugoslavia: Assessment of the Interim Poverty Reduction Strategy Paper (PRSP), 23 July 2002, p. 2, available at www.worldbank.org
[619] Amnesty International – Serbia and Montenegro: Amnesty International's concerns and Serbia and Montenegro's commitments to the Council of Europe, Doc. EUR 70/002/2004, 3 March 2004.
[620] U.N. Doc. CRC/C/28/Add.14 (1998), para. 4.

The effect was that 20% of school aged children were out of school in 2000 and teachers' salaries were diminished to $5 per month,[621] much below any existing poverty line. In 2003, the Asian Development Bank conformed that teachers' salaries in Tajikistan were $5 per month, compared to $100 in Mongolia.[622]

Insufficient public investment in education has created, similarly to other countries in Central Asia, a widespread but officially un-documented practice of levying charges in public schools. The NGOs have furnished the missing information:

> Schools collect monthly fees from parents for education of their children. For many families, school becomes quite expensive, and thus a great number of children from low-income families often miss their studies, and sometimes do not attend school at all.[623]

The Committee on the Rights of the Child has confirmed NGO findings and concluded that "the introduction of fees for State education services" has led to discriminatory exclusion of the poor children from education, victimizing especially girls.[624] Indeed, the government had conceded in 2004 that "some health and education services are not longer within the reach of certain categories of the population".[625] There is no governmental policy to tackle this problem as yet.

Turkey

Turkey is in many ways a bridge between Eastern Europe and Central Asia. Its pending application for membership in the European Union leaves a decision whether it will ultimately classified as a European or an Asian country for the future. The opening sentence of Turkey's initial report under the Convention on the Rights of the Child has emphasized that Turkey is "a European, Balkan, Caucasian, Middle Eastern, Mediterranean and Black Sea State all at once".[626] This pivotal geographical position has contributed to the diversity of Turkey's population. It was perhaps to counter this diversity that a unitary, centralized, secular state structure was established and a homogenous citizenry envisaged. Much as everywhere else, education was seen as the key for creating such a homogeneous citizenry. Thus, minority rights remain a contentious issue and a very recognition by the government that minorities exist, the Kurds in particular, and that they should be entitled to minority rights creates endless controversies.

In 2004, for the first time in Turkey, governmental budgetary allocations to education exceeded its military expenditure.[627] Military expenditure had proverbially taken precedence over all other budgetary items and it was for a long time exempt from public scrutiny.[628]

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[621] Davlatov, I.D. & Mulloev, S.M. – *Educational Financing and Budgeting in Tajikistan*, UNESCO/IIEP, Paris, 2000, pp. xiv-xv.
[622] Dedolph, C. – Mongolia: Education for all, *ADB Review*, vol. 35, 2003, No.4: Education, available at www.adb.org
[623] NGO 'shadow report' on the Convention on the Rights of the Child, April 2000, available at www.crin.org
[624] U.N. Doc. CRC/C/15/Add.136 (2000), para. 20.
[625] U.N. Doc. HRI/CORE/1/Add.128 (2004), para. 15.
[626] U.N. Doc. CRC/C/51/Add. 4 (2000), para. 1.
[627] Turkey: Not quite at ease, *The Economist*, 27 November 2004.
[628] Commission on Human Rights – Report submitted by Katarina Tomasevski, Special Rapporteur on the right to education: Mission to Turkey, 3-10 February 2002, U.N. Doc. E/CN.4/2002/60/Add.2, paras. 25-34.

The shift from prioritizing investment in education over military expenditure in 2004 was, thus, a newsworthy item. The need to review and curtail military expenditure because of its high opportunity cost for development was prioritized in the mid-1990s by the International Monetary Fund and the World Bank.[629] Their pledge fell into oblivion although the human rights impact of the influence of the armed forces in Turkey's education is considerable, albeit also exempt from public scrutiny.[630] Turkey's many reforms aimed at meeting the European Union's conditions for a beginning of the negotiations leading towards membership in the EU have had beneficial effects in terms of reducing military expenditure as well as making it gradually less un-transparent than it had used to be.

In its reports under human rights treaties, the government claims that primary education is free[631] and has done so for a long time. Other governmental reports contradict that assertion. In a report to the Council of Europe, the government has acknowledged that "some school equipment and materials are paid for by parent-teacher associations" while the full costs of school meals and transportation have to be paid by the parents. It has added that formally "schools are prohibited from receiving funds directly from parents," but this can be done "on an informal basis".[632]

The reason for levying formal and informal charges in education was its expansion without a corresponding increase in the budgetary allocations. They actually decreased in the 1990s [633] although the number of children at school increased almost by half, from 11 to 15 million.[634] Turkey's population is young, almost one third are school-going children, [635] and this necessitates a huge increase in budgetary allocations to education. The European Union has prioritized it within the conditions for Turkey's commencement of negotiations for an eventual membership in the EU.[636] Also, in its first National Programme for the Adoption of the *Acquis comunaitaire* (NPAA), Turkey committed itself to increase the length of compulsory education to 12 years by 2005.[637] This was not accomplished. An important reason is that free education has not yet been guaranteed even for the first eight years of schooling.

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[629] Tomasevski, K. - *Between Sanctions and Elections*, Pinter/Cassell, London, 1997, p. 7, 11, and 65.
[630] Commission on Human Rights – Report submitted by Katarina Tomasevski, Special Rapporteur on the right to education: Mission to Turkey, 3-10 February 2002, U.N. Doc. E/CN.4/2002/60/Add.2.
[631] U.N. Doc. E/CN.4/2002/60/Add.2, paras. 25-34.
[632] Council of Europe – *The Division of Responsibilities at National, Regional and Local Levels in the Education Systems of Twenty-three European Countries*, Studies and Texts No. 44, Council of Europe Publishing, Strasbourg, 1996, p. 250.
[633] Education for All Year 2000 Assessment: Turkey Report, Ministry of National Education, Ankara, 1999, available at www.unesco.org/wef/countryreports/turkey
[634] Updated figures are available on the website of the Ministry of National Education www.meb.gov.tr
[635] Ministry of National Education - National education at the beginning of 2001, Ankara, December 2000, mimeographed, p. 107.
[636] The Commission of the European Communities recommended redefining budgetary priorities, especially prioritizing education, health and social services. 2001 Regular Report on Turkey's Progress towards Accession, Doc. SEC(2001) 1756 of 13 November 2001, p. 45, available at http://europa.eu.int/comm
[637] Commission of the European Communities - 2001 Regular Report on Turkey's Progress towards Accession, Doc. SEC(2001) 1756 of 13 November 2001, p. 74.

Comparative studies of educational accomplishments in the OECD countries routinely locate Turkey at the bottom, regardless of the yardstick used,[638] and this underlines the priority for a comprehensive education strategy and for elevating the priority of education in budgetary allocations. Accurate statistics on the numbers of children who should be at school are the first step towards such a strategy. There is, however, an abyss between the officially reported statistics and the findings of international agencies on the numbers of out-of-school children.

The Education for All (EFA) 2000 Assessment reported the enrolments in primary school at 87.5% but, as a consequence of the prolongation of compulsory education to eight years in 1997, enrolments decreased.[639] The Ministry of Education subsequently reported an enrollment ratio of 97.6 per cent in primary education,[640] but the EFA 2006 Report lowered that to 86%. [641]

Moreover, the government has acknowledged that there are "children who do not have an identity card and those who are not registered on the civil registries".[642] There is no authoritative information on the numbers of children who cannot claim their rights because they do not exist due to the lack of identity documents. The Common Country Assessment (CCA) by the United Nations agencies in Turkey has singled out the gaps in official statistics:

> Turkey lacks reliable information on a number of areas. To begin with, due to the current state of the birth registration system, the annual number of births is not known. There is no recording system for disabled children.[643]

The UNESCO/UNICEF's research into the number of out-of-school children has found that one-third of the region's out-of-school children are in Turkey.[644] This demonstrates that Turkey remains far from ensuring primary education for all.

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[638] The OECD Centre for Educational Research and Innovation has shown public investment in education in Turkey to be the lowest amongst the OECD countries (3.5 per cent compared with OECD average of 5.7 per cent of GDP), the teachers' salaries are also the lowest, as is the participation in education over the lifecycle, especially for women. The OECD average of 16.9 years of formal education compares with only 9.5 years in Turkey. *Education at a Glance 2001. OECD Indicators*, Paris, 2001.
[639] Education for All Year 2000 Assessment: Turkey Report, Ministry of National Education, Ankara, 1999, available at www.unesco.org
[640] Ministry of National Education - *National Education at the Beginning of 2001*, Ankara, December 2000, p. 107.
[641] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[642] U.N. Doc. CRC/C/51/Add. 4 (2000), para. 199.
[643] United Nations Country Team - Common Country Assessment (CCA), Ankara, December 2000, p. 68.
[644] UNESCO/UNICEF - *Children Out of School: Measuring Exclusion from Primary Education*, UNESCO Institute for Statistics, Montreal, 2005.

Turkmenistan

There are two different images of Turkmenistan depicted in governmental and non-governmental sources. The government tends to extensively cite and quote formal guarantees of the right to education, which are "upheld and protected" in the country, and to summarize the key features of education in Turkmenistan thus:

> Universal access for each citizen to all forms and types of educational services made available by the State; the equal right of all persons fully to realize their abilities and talents; free provision of educational services in public educational institutions; priority accorded to universal human values; an organic connection with national history, culture and traditions; etc. etc. [645]

Differently, non-governmental organizations point out that school children are used as forced labour to pick cotton so as to pay a part of the cost of their 'education.' President Niyazov was quoted in 2004 for his promise not to rely in the future "on schoolchildren to cultivate and pick cotton," [646] but he has not fulfilled that promise as yet. Moreover, Turkmenistan is a major exporter of oil and natural gas which has generated "robust economic growth and comfortable foreign exchange earnings".[647] Hence, children could easily be at school rather than working in cotton fields were their education the government's priority. However, education is not free in Turkmenistan in many different meanings of this word.

The design of education, apparently by president Niyazov himself, is incompatible with the very notion of human rights. What schooling in Turkmenistan consists of is vividly conveyed in the following description:

> Every Monday at 8am, Turkmenistan's schoolchildren line up to recite the oath of allegiance to the president, part of a youth indoctrination programme that is progressively replacing the conventional curriculum. Its core is the two-volume *Ruhnama*, 'The Book of the Spirit', a homespun collection of thoughts on Turkmen history and culture that pupils are required to spend hours studying. Visits to bookstores reveal shelves lined with nothing but the president's works. Meanwhile, compulsory education has been reduced from ten years to nine.[648]

The abuse of education to force school children and young people to work in the fields or to memorize president Niyazov's *Ruhnama* highlights the need for human rights safeguards in education so as to prevent the imposition of collective indoctrination instead of education. Lest there would be conflicting visions for people to learn from, in 2001 "the country's largest library shut its doors; the library had served as a heaven for academics and was the country's last window to foreign scholarship".[649] The closure of rural libraries followed in 2005.[650]

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[645] U.N. Doc. CRC/C/TKM/1 (2005) , para. 163.
[646] Turkmenistan wrestles with child labour issue as cotton harvest approaches, 1 September 2004, available at www.eurasianet.org
[647] World Bank country brief 2005, www.worldbank.org (April 2006).
[648] Turkmenistan: Inside the mad despot's realm, *The Economist*, 27 May 2006.
[649] Human Rights Watch - *World Report 2002: Academic Freedom*, www.hrw.org/wr2k2/academicfreedom.html
[650] Cox, T. & Stroehlin, A. – EU and the Turkmen 'prophet', *European Voice*, 6-12 April 2006.

In its 2004 report on Turkmenistan, the International Helsinki Federation detailed an array of human rights violations. These continue, facilitated by the silence of 'the international community'.[651] The European Union sometimes critiques president Niyazov's "officially sanctioned cult of personality" but provides aid for education and cooperates with Turkmenistan, unsurprisingly, in the energy sector.[652] Efforts to nudge the European Union to apply its human rights commitments in its relations with Turkmenistan continue,[653] but have been unsuccessful thus far.

Ukraine

A great deal of publicity accompanied 'the orange revolution', which seemed to promise a change of governance in Ukraine in 2004. That promise was short-lived and the subsequent elections in 2006 revealed a coalition which had in the meantime lost its unity of purpose.[654] The electoral outcome was a long paralysis during a search for a coalition to revive the ideals behind 'the Orange Revolution'.[655] As time passed, it became increasingly likely that governance, including in education, will revert to its pre-orange-revolution mode.

The governance of education was based on an abyss between appearance and reality. The government reported in 2001 that both primary and secondary education should be free and compulsory but admitted that "there is a gap between the legally established rights and the practical possibilities of exercising them". That gap was caused by the chronic public under-funding of education, arrears in teachers' salaries, and shortages of textbooks.[656]

The "exceptionally difficult financial and economic situation", which the government cited as the reason for under-funding education [657] did not disappear in the aftermath of the orange revolution. Georgiy Kasianov's description of the major types of charges in public primary school indicates how much budgetary allocations to education would have increase so as to make education free as the law requires:

> According to [education law of 1991], state expenditure on the educational sector as a whole should be no less than 10% of GDP. The state has not met this requirement. As might be expected, the lack of state investment in education has led to the growth of compensatory sources of funding. Although education in state schools in legally free, in practice parents have no alternative but to pay.
> According to Ukrainian legislation, teachers' average salaries should be equivalent to the average salary in industry. In actual fact, the average income of teachers falls significantly (almost twice) below. It is also less than the officially established national subsistence minimum of 365 UAH (in 2003) as an average teacher's salary fell to 250 UAH.

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[651] *Turkmenistan: The Making of a Failed State*, International Helsinki Federation for Human Rights, Vienna, 2004, available at www.ihf-hr.org
[652] The EU's relations with Turkenistan, http://europa.eu.int/comm/external_relations/turkmenistan (April 2006).
[653] Beatty, A. – MEPs in bid to block trade deal with Turkmenistan, *European Voice*, 27 April – 3 May 2006.
[654] Wagstyl, S. & Warner, T. – Faded Orange: Why the hero of Kiev faces peril at the polls, *Financial Times*, 24 March 2006.
[655] Ukraine's new government: Hope over experience, *The Economist*, 1 July 2006.
[656] U.N. Doc. CRC/C/70/Add.11 (2001), para. 129.
[657] U.N. Doc. CRC/C/70/Add.11 (2001), para. 685.

> Most schools in Ukraine have established so-called school funds. Parental contributions to these funds are generally considered voluntary, but in practice they are obligatory. According to unofficial estimates, these 'informal' payments represent 2-30% of school budgets.
> The availability of school textbooks represents another socially sensitive problem … After heated debates in Parliament, followed by a special submission of the Parliamentary Committee on Science and Education, the Constitutional Court of Ukraine confirmed that textbooks in state educational institutions should be free (2003), but this norm has never been implemented.[658]

Uzbekistan

In its reports under international human rights treaties, the government of Uzbekistan has claimed that "education is free and universal" and that pupils are, in addition, provided with free textbooks and free warm clothing in winter.[659] The 1992 Constitution specifies amongst the obligation of the state in education to make primary and secondary education free of charge. It also adds, somewhat ominously, that "schooling shall be under state supervision".[660]

The pre-transition heritage of free education in Uzbekistan was first altered through the formal introduction of fees and other charges in higher education. These were denominated as 'income generation' and subsequently they spread throughout public education. The first 12 years of education were made in 1997 compulsory and should have been – but were not - kept free. [661] Alongside various charges which are levied, compulsory education includes work and children are forced to harvest cotton as a part of their 'education'.[662]

Non-governmental reports point out that budgetary allocations are insufficient even to pay teachers' salaries. Various charges are then levied to supplement inadequate public funds. Because financial responsibility for education (including teachers' salaries) was transferred from the central government to the regional authorities in 1991, there is substantial difference between what the central government says and what the regional authorities do. NGOs have described how "schools regularly gather money from parents for repairs and textbooks. Poor families don't have money. Since the average monthly salary is around 6000 soums (equivalent to $8-9), this sum is barely enough to cover some basic needs of the family, let alone provide children with education. To avoid unpleasant situations, children don't attend classes".[663]

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[658] Kasianov, G. – The impact of the ECHR on rights in and to education in Ukraine, in: De Groof, J. and Lauwers, G. (eds.) – *No Person Shall Be Denied the Right to Education: The Influence of the European Convention on Human Rights on the Right to Education and Rights in Education*, Studies in Human Rights in Education, Wolf Legal Publishers, Nijmegen, 2004, p. 599-601.
[659] U.N. Docs. CRC/C/41/Add.8 (2001), paras. 237-239 and CEDAW/C/UZB/1 (2000), para.9.
[660] *Constitution of the Republic of Uzbekistan*, Uzbekiston, Tashkent, 1999, Article 41.
[661] Ziyaev, M.K. et al. – *Educational Financing and Budgeting in Uzbekistan*, UNESCO/IIEP, Paris, 2000, pp. Xiii-xviii.
[662] U.N. Doc. E/C.12/UZB/CO/1 (2006), para. 20.
[663] NGO 'shadow report' under the Convention on the Rights of the Child, Tashkent, 2001, available at www.crin.org

A further description was provided by another NGO:

> While the law stipulates that primary education shall be free of charge, informal costs are very frequent as parents have generally to pay fees to repair the school premises and for the school material. Moreover, financial constraints and an overall decrease in family income constitute, today, the main factors preventing children from attending educational institutions, including primary ones. Indeed, the number of children who drop out of school and start working in order to provide an additional source of income for their families has considerably risen. Official statistics on the matter do not exist but this phenomenon can be clearly observed all around Uzbekistan.[664]

The abyss between portrayals of Uzbekistan in the official and unofficial documents goes much further than education. The United Nations Commission on Human Rights decided in 2003, under its confidential 1503 procedure, that the government of Uzbekistan violated human rights and appointed a Special Rapporteur to investigate.[665] That gesture was followed by a widely reported example of governmental abuse of power, the killing of peaceful demonstrators in Andijan in May 2005.[666] It is likely that nobody will ever know how many people were killed among the estimated 10,000 demonstrators. The European Union responded with sanctions in the form of an arms embargo and a travel ban on governmental officials deemed to have been responsible for the killings.[667]

Descriptions of what happened, how and why vary widely. The government on one side, and the victims and observers on the other side remain so far apart that readers might believe that they are describing two different events and two different countries. A question remains: whose version of history will prevail and be taught to future Uzbek generations?

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[664] OMCT/LAS – Uzbekistan: Violence, repression and denial of economic, social and cultural rights, Report prepared by the World Organization against Torture (OMCT) and the Legal Aid Society (LAS) to the United Nations Committee against Torture, Geneva, May 2002, p. 22.
[665] No action at the CHR: Resolution on Uzbekistan is unlikely to inspire the 60th session of the CHR, *ACHR Features*, ACHRF/15/2004, 7 April 2004, available at www.achrweb.org
[666] Paton Valsh, N. et al. – Violence sweeps Uzbekistan, *Guardian Weekly*, 20-26 May 2005.
[667] Stroehlein, A. – Blind to the 'butcher of Andijan', *European Voice*, 24-30 November 2005.

ASIA AND THE PACIFIC

Divergent models of education

There is a variety of educational models in Asia and most of them are not rights-based. Educational guarantees in national constitutions follow one of the two widespread approaches. The first is *pluralist* and affirms freedom of education, particularly for religious communities. The second could be designated as *uniformist* because it imposes upon children compulsory attendance in public schools which are uniform throughout the country:

- In countries such as Indonesia, Malaysia and Singapore, freedom of education is prioritized over the children's right to education and the state's corresponding obligation to ensure it. This freedom empowers communities, particularly religious or linguistic, to design and carry out education of their children. Thus education may be all-encompassing but is neither provided nor paid by the state. For example, the 1957 Constitution of Malaysia and the 1963 Constitution of Singapore specify that "every religious group has the right to establish and maintain institutions for the education of children in its own religion".[668] This approach safeguards particular features of collective identity but it also reinforces fault-lines in society along religious or linguistic boundaries as well as inequalities between communities. Freedom of families and communities to educate their children at their own expense by definition cannot be exercised by the poor.

- In Burma/Myanmar, Cambodia, China, Laos and Viet Nam education is defined as free and compulsory. Their constitutions reflect the model of uniform, state-provided, free and compulsory education imported from the former Soviet Union. That model denies freedom of choice by equating education and schooling, that is making the attendance in state schools compulsory for all children. Where charges were introduced in government-provided schooling, education became un-free in many different meanings of that word. In China and Viet Nam, private education emerged with the shift to the free market while the original model of all-encompassing public education continues, albeit with much financial responsibility transferred from the government to the family.

Educational models were transplanted from the Western, not only the Eastern part of the North while it was divided in two during the Cold war. Keith Suter has explained the fragility of the 19 Pacific 'entities', with their combined populations of some 7 million and the corresponding difficulties in ensuring their viability based on an un-workable model of education:

[668] Constitutional guarantees of the right to education in Asia and the Pacific are described and analysed in Tomasevski, K. - *Manual on Rights-based Education: Global Human Rights Requirements Made Simple*, UNESCO Bangkok, 2004, pp. 14-16.

> Post-colonial education has had problems [similar to the elaborate national constitutions left by the outgoing colonial powers]. Teachers teach what they were taught; the outgoing powers failed to provide education that would be suitable preparation for those living in independent countries in the South Pacific. Perhaps the educators did not themselves know what would be required and so were guided by their own experience. But if colonial powers could not always get education policy right for their own people, perhaps those they ruled oceans away stood even less chance.[669]

Besides different approaches to education, the extremes of impressive educational accomplishments and huge numbers of out-of-school children also reflect Asia's diversity. Successes of 'the Asian tigers' (Singapore, Hong Kong, Taiwan and Korea) in international assessments of the learners' performance, especially in mathematics, are well known.[670] Their price is less well known. Teaching to test and rote learning is disliked by both pupils and teachers, corporal punishment instils fear in children.[671]

On the other side of the spectrum, large numbers of Asian children do not get any formal schooling. The absence of compulsory education laws in Bhutan, Fiji, Maldives, Nepal or Vanuatu reflects tolerance of educational exclusion.[672]

Formal guarantees of the right to education are found only in a half of the countries in the region as Table 14 shows. The paucity of rights-based approaches to education derives from the reluctance of Asian governments to commit themselves to universally recognized human rights and to bestow upon the people a right to challenge their violations. Different from Africa, the Americas and Europe with their regional human rights organizations, there is none in Asia. The absence of an Asian set of human rights standards, elaborated and adopted by the respective governments to constrain their own powers, explains why the right to education is not recognized in quite a few countries.

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[669] Suter, K. – Pacific storms, *The World Today*, November 2003, pp. 20-21.
[670] Chapman, D. and Adams, D. – *The Quality of Education: Dimensions and Strategies*, Education in Developing Asia, vol. 5, Asian Development Bank and Comparative Education Research Centre, The University of Hong Kong, Manila/Hong Kong, 2002, p. 3.
[671] The harmful sides of learning to compete are described in Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 193-194.
[672] Education is not compulsory according to national education laws in Bhutan (U.N. Doc. CRC/C/3/Add.60, 1999, para. 138), Fiji (U.N. Doc. CRC/C/128/Add.7, 1996, para. 202), Maldives (U.N. Docs. CRC/C/8/Add.33, 1996 and CRC/C/15/Add.91, 1998), Nepal (U.N. Doc. CRC/C/3/Add.34, 1995, paras. 63 and 293), and Vanuatu (U.N. Doc. CRC/C/28/Add.8, 1997, para. 31.

Table 14
Free or fee: The law and the practice in Asia and the Pacific

Country	Legal guarantees of free education		Charges levied in public schools	
	Yes	No	Yes	No
Afghanistan	√		(√)	
Bangladesh	√		√	
Bhutan	√		√	
Burma/ Myanmar	√		√	
Cambodia	√		√	
China	√		√	
Fiji		√	√	
India	√			(√)
Indonesia		√	√	
Korea (North)	√			√
Laos		√	√	
Malaysia		√	√	
Maldives		√	√	
Mongolia	√		√	
Nepal	√		√	
Pakistan		√	√	
Papua New Guinea		√	√	
Philippines	√		√	
Singapore		√	√	
Sri Lanka		√		√
Timor-Leste	√		√	
Thailand	√			√
Vanuatu		√	√	
Viet Nam	√		√	

Note: In Afghanistan education is externally funded while the implementation of the constitutional guarantee of the right to education in India is on-going, hence the use of brackets.

Sources: Afghanistan – The Constitution of the Islamic Transitional State of Afghanistan, adopted by the Constitutional Loya Jirga on 5 January 2004; Bangladesh – CRC/C/15/Add.221, 2003, para. 63, and CERD/C/379/Add.1, 2000, para. 54; Bhutan – CRC/C/3/Add.60, 1999, paras. 39, 138 and 60; Burma/Myanmar – A/56/312, 2001, para. 68; Cambodia – E/CN.4/1999/101, paras. 106-111 and A/57/230/2002, paras. 56 and 64; China – CRC/C/11/Add.7, 1995, para. 165; Fiji – CRC/C/128/Add.7, 1996, paras. 200-207; India - ; Indonesia – CRC/C/137, 2004, para. 81; Laos – CRC/C/15/Add.78, para. 24 and CERD/C/63/Dec.1/Rev.1, 2003; Malaysia – Education for All, Kyoto, November 2001; Maldives – CRC/C/8/Add.33, 1996 and CRC/C/15/Add.91, 1998; Mongolia – CRC/C/3/Add.32, 1995, paras. 41, 188 and 196, and E/1994/104/Add.21, 1998, paras. 114-122; Nepal – E/1990/5/Add.45, 2000, paras. 161 and 180; Pakistan – CRC/C/3/Add.13, 1993, paras. 121 and 182 and CERD/C/299/Add.6, 1996; Papua New Guinea – CERD/C/62/CO/12, 2003, paras. 2 and 4; Philippines – Education for All Report, 2000, available at www2.unesco.org/wef/countryreports ; Singapore - ; Sri Lanka – CRC/C/70/Add.17, 2002, paras. 20-21, 126 and 132; Timor-Leste – Constitution of 22 March 2002, and World Bank – Timor-Leste: Education since Independence: From Reconstruction to Sustainable Improvement, Report No. 29784-TP, December 2004; Thailand – CEDAW/C/THA/2-3, 1997, para. 38; Vanuatu – CRC/C/28/Add.8, 1997, para. 31 and CRC/C/15/Add.111, 1999, para. 17; Viet Nam – CERD/C/357/Add.2, 2000, para. 94.

Table 14 shows that formal guarantees of free education do not exist in quite a few countries but even in those where such guarantees have been enacted, governmental policy may be to levy charges or to tolerate them. As a consequence, primary school is for-fee rather than free in the majority of countries in the region. Jee-Peng Tan and Alain Mingat have concluded that "fees finance a larger proportion of the costs of public education in Asia than they do in other developing regions".[673] Where the government has not accepted an obligation to finance education, such as in Malaysia, cost-sharing is part of the very educational model. However, Don Adams has found that "even in countries where constitutional provisions guarantee free education, user charges are necessary to support schools even in the public sector".[674] The word *necessary* indicates the gap between the law and the policy. Where legal guarantees have not been translated into governmental obligations to ensure adequate public funding of education, families and communities are forced to contribute lacking funds in the form of reverse subsidies, that is, they have to supplement insufficient governmental allocations. The reason for levying charges in primary school is low priority for public education in governmental budgets. The World Bank's 2002 survey of the charging of fees in public primary school revealed that this practice was widespread. In South Asia, fees proved to be the norm rather than an exception. In East Asia and the Pacific fees were also charged in the majority of countries.[675]

Such findings necessitate asking why education as a public responsibility enjoys such a low budgetary priority. Taiwan takes the pride of place as one of the oldest constitutionally earmarked budgetary allocations for education. The original 1947 Constitution required at least 15% of the total national budget to be allocated to education, at least 25% of the total provincial budgets, and at least 35% of the total municipal budgets. It was amended in 1997, preserving the priority for education in the budget but eliminating the previously specified percentages.[676] Fifty years of high and consistent public investment in education bore fruit, as did similar policies in 'the Asian Tigers'. This experience has focussed attention to education as a good private investment, and has generated in Asia much more debate about economic returns to education than in other regions.

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[673] Tan, J.-P. & Mingat, A. – *Education in Asia: A Comparative Study of Cost and Financing*, World Bank Regional and Sectoral Studies, The World Bank, Washington D.C., 1992, p. 40.
[674] Adams, D. – *Education and National Development: Priorities, Policies and Planning*, Education in Developing Asia, vol. 1, Asian Development Bank and the Comparative Education Research Centre, The University of Hong Kong, Manila/Hong Kong, 2002, p. 10.
[675] Bentaouet Kattan R. and Burnett, N. - User fees in primary education, The World Bank, July 2004, available at www.worldbank.org/education/pdf/EFAcase_userfees
[676] The text of the Constitution and the subsequent constitutional amendments as well as the accompanying descriptions of constitutional earmarking are available on the e-government website http://english.www.gov.tw

Questionable economic returns to education

The financial crisis in Asia in 1997-1998 [677] highlighted the importance of education in many ways. Previous public investment in education facilitated weathering the crisis and contributed to questioning many global recipes related to economic or educational development. The World Bank's principal justification for its loans for primary education, that it generates higher economic returns than upper levels of the education pyramid, did not find favour with its regional sister organization, the Asian Development Bank (ADB). The ADB has argued that globalization has "increased the economic value of higher education compared to the value of lower levels of education". This perpetuates a vicious circle where "the wealthy take more education, and taking more education helps families create more wealth".[678]

It is precisely to break this vicious circle that primary education was made a public responsibility. An underlying reason is that primary education does *not* generate return on investment. Primary school leavers do not work nor should they; they are children. Returns to an investment in primary school necessitate secondary and higher education as well as employability of school leavers and graduates. Even where primary education is free in terms of not creating direct costs for families, it creates opportunity costs. These opportunity costs are much higher for poor families than for the wealthy ones, while economic returns to primary education are lower, if not negligible.[679]

The attractiveness of education as a parental investment depends on employment prospects of school leavers and university graduates. Where schooling does not improve employment prospects, it obviously cannot be deemed a good investment. In Asia, girls and women have proved to be particularly disadvantaged. In Indonesia "the higher their level of education, the higher their rate of unemployment". The questioning of education-as-investment assumption has been much more pronounced in China:

> Since the opening up of the economy, the notion that 'education is useless' is fast-developing in regions such as Guandgong because people see faster rates of return in direct employment than in investment in education. Only when the economy has grown to such an extent that it requires more qualified human resources will people begin to look to attainment in higher education for a higher level job.[680]

Such findings confirm the rationale of international human rights law, which defines primary education as a public responsibility. In South Korea all education beyond primary school is beyond the reach of those who cannot pay its cost. Its successful (albeit non-rights-based) model of introducing and sustaining free and all-encompassing basic education has been often praised, and rightly so.[681]

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[677] Gill, R. – *Asia under Siege: How the Asian Miracle Went Wrong*, Epic Management Services, Singapore, 1998.
[678] Asian Development Bank – *Key Indicators 2003*, Special chapter: Education for global participation, abstract and p. 5, available at www.adb.org.
[679] Todaro, M.P. – *Economic Development*, Longman, London, 1997, p. 396.
[680] Lee, W.O. – *Equity and Access to Education: Themes, Tensions, and Policies*, Education in Developing Asia, vol. 4, Asian Development Bank and Comparative Education Research Centre, The University of Hong Kong, Manila/Hong Kong, 2002, pp. 18 and 35.
[681] Tomasevski, K. – *Removing Obstacles in the Way of the Right to Education*, Right to Education Primers, No. 1, Gothenburg, January 2001, p. 15, available at www.right-to-education.org.

The OECD team, which carried out a review of South Korea's education in 1998, had this to say:" We know of no other industrial country where parents and private sector educational institutions bear so high a percentage of the costs of education".[682]

At a time when education is being globally slanted from a public responsibility to a private investment, it is useful to recall why education – especially primary - was made a public responsibility in the first place:

> In making education free and compulsory, the state is acting to safeguard the interests of children whose parents may be unable or unwilling to act in their best interests.[683]

It is not only the interests of children which governments safeguard by investing in education. The whole society benefits where education serves as a societal glue, while armed and political conflicts highlight the cost of neglecting education. This is visible in governmental budgets, in the relative priority for educational investment or for military expenditure, and the impact which such priorities have throughout society.

150 soldiers for every 100 teachers

Official statistics show that 45% of the world's children who are out of school are in Asia, and the largest numbers are in China, India and Pakistan. The preference for military expenditure over educational investment is reflected in the statistics on military expenditure for China and Pakistan and the increasing priority for education in India. As always, statistics are the least available where they are most needed. Verifiable data on China's military expenditure are non-existent while those on its public investment in education are disputed.

Tables 15 and 16 compare investment in education and military expenditure in the 1990s and after the turn of the millennium. They illustrate the doubling of India's investment in education as it moved to make primary education free. The opposite is the case in Pakistan. Low budgetary allocations to education in the 1990s further diminished after the turn of the millennium. Almost 30% of government's budget was earmarked for the military in the 1990s and less than 8% for education. Only 2.7% of Pakistan's GDP was allocated to education in the 1990s to decrease to 1.8% in 2002. That there are at least 150 soldiers for every 100 teachers epitomizes the government's priorities.[684]

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[682] OECD - *Reviews of National Policies for Education: Korea*, Paris, 1998, p. 185.
[683] Gradstein, M. et al. – *The Political Economy of Education: Implications for Growth and Inequality*, CESifo Book Series, the MIT Press, Cambridge, Massachusetts, p. 7.
[684] Human Development Centre - *Human Development in South Asia 1998: The Education Challenge*, Oxford University Press, Karachi, 1998.

Table 15
Fiscal priorities in Asia in the 1990s: Investment in education and military expenditure

Country	Gross National Income		Government budget	
	Education	Military	Education	Military
Bangladesh	2.4%	1.3%	8.7%	10.1%
Burma/Myanmar	0.5%	7.8%	---	93.6%
Cambodia	1.1%	4.0%	8.7%	26.0%
China	2.1%	2.3%	---	22.2%
India	2.9%	2.5%	12.6%	14.6%
Indonesia	1.3%	1.1%	7.9%	8.4%
Laos	2.5%	2.0%	8.7%	11.1%
Malaysia	6.0%	2.3%	25.2%	9.3%
Mongolia	5.7%	2.1%	15.1%	5.9%
Nepal	2.9%	0.8%	13.2%	5.7%
Pakistan	2.7%	5.9%	7.8%	29.9%
Philippines	4.0%	1.4%	20.6%	7.3%
Sri Lanka	3.1%	4.7%	8.9%	18.4%
Thailand	5.2%	1.7%	20.1%	15.1%
Viet Nam	3.0%	2.5%	7.4%	11.6%

Source: *Advancing the Campaign against Chile Labor: The Resource Allocations of National Governments and International Financial Institutions*, vol. III, U.S. Department of Labor, Washington D.C., 2004, Table A.2, pp. 119-125.

Budgets are limited by definition and conflicting priorities are necessarily portrayed in terms of a zero-sum game. Relentlessly high military expenditure necessarily – and detrimentally - affects allocations for education. Education can be prioritized, as the figures for Malaysia in Table 15 illustrate. Its public educational investment is three times larger than its military expenditure. The figures for Burma/Myanmar reflect the priority for military expenditure over all other budgetary items. Accurate data that would portray the full educational cost of military expenditure are proverbially difficult to come by. It is impossible to verify whether 93.6% of Burma's budget was earmarked for military expenditure in the 1990s as the US Department of Labour has calculated. However, even if the data are imperfect, they highlight the association between prioritizing military expenditure in Burma/Myanmar, Cambodia, China and Pakistan and their under-investment in education. In consequence, almost half of children who start primary school in Burma/Myanmar and Cambodia cannot complete it because budgetary allocations to education are much too low in proportion to their GDP as well as in their total budgets.[685] There is an implicit global endorsement of such low priority for education in fiscal allocations because it is rarely challenged. It is taken as a 'fact' rather than an outcome of political decisions.

A comparison between military expenditure and investment in education for 2002 is presented in Table 16. Because it uses different sources than Table 15, all usual caveats apply in full. Such comparisons are necessary to demonstrate trends in budgetary allocations so as to discern whether the relative priority for education has remained the same before and after the turn of the millennium. In many countries, there is a consistent trend to prioritize education (such as in Malaysia) or militarization (such as in Pakistan).

[685] UIS – *South and East Asia Regional Report*, UNESCO Institute for Statistics, Montreal, 2004, pp. 48 and 66.

Table 16
Military expenditure and investment in education in Asia as percentage of GDP in 2002

	Military expenditure	Investment in education
Bangladesh	1.1%	2.3%
Bhutan	…	5.2%
Brunei Darussalam	7.0%	…
Cambodia	(2.7%)	2.0%
Fiji	1.8%	5.5%
India	2.3%	4.1%
Indonesia	1.2%	1.3%
Korea	2.7%	3.6%
Laos	(2.1%)	3.2%
Malaysia	2.4%	7.9%
Mongolia	2.3%	6.5%
Nepal	(1.4%)	3.4%
Pakistan	4.7%	1.8%
Papua New Guinea	…	2.3%
Philippines	1.0%	3.2%
Singapore	5.0%	…
Sri Lanka	3.1%	1.3%
Thailand	1.4%	5.0%

There is no data for Afghanistan, Burma/Myanmar, China, Maldives, North Korea, Timor-Leste, Vanuatu, and Viet Nam.

Sources: The data on military expenditure originate from SIPRI Yearbook 2003 (www.sipri.org). The figures in brackets denote estimates or figures for an earlier year if no data was reported for 2002. The data on public investment in education originate from UNDP's 2004 Human development Report (http://hdr.undp.org/statistics).

Table 16 does not include countries where military expenditure is likely to have remained high in the new millennium, such as Burma/Myanmar or China. Estimates of China's military expenditure for 2003 range between $25 and $60 billion [686] and this explains the absence of figures in Table 16. What is known is that China's military expenditure is continuously increasing. An illustrative official announcement was that China's military budget increased from 9.6% in 2003 to 11.6% of GDP in 2004.[687] Nothing similar has been reported for education.

Such political decisions create costs for education but also additional costs in coping with militarization. Internationalization of military operations in the region has particularly affected the Melanesian part of the Pacific.[688]

[686] China's armed forces: Casus belli, *The Economist*, 11 June 2005.
[687] China hikes public spending on the military, *Far Eastern Economic Review*, 18 March 2004.
[688] The Pacific region spans Micronesia (Federated States of Micronesia, Kiribati, Nauru and Palau), Polynesia (Cooks Islands, Niue, Samoa, Tokelau, Tonga, and Tuvalu) and Melanesia (Fiji, Papua New Guinea, Solomon Islands, and Vanuatu). Micronesia is not addressed in this report because authoritative information on education and on human rights is in short supply.

The case of the Solomon Islands epitomizes global incapability to predict and prevent state failure. The Committee on Economic, Social and Cultural Rights had optimistically anticipated in 1999 that a human rights strategy would be developed through a dialogue between the government and international organizations to focus on rights-based development finance.[689] Instead, the government formally invited foreign military troops to tackle what was termed as a five-year long 'civil breakdown'.[690] The Solomon Islands then became labelled as a failed state.[691]

The global costs of coping with the consequences of decades of militarization are epitomized in Afghanistan, the first country addressed in this section. In theory, the global response needed to facilitate a different future requires a "framework that integrates military, political, economic and social dimensions" of development.[692] If translated into practice, such a comprehensive approach would help overcome the inherent limitations of 'the education sector.' Also, the absence of public investment in education during the past decades in Afghanistan raises still unanswered questions about its impact on security, both national and international.

COUNTRY OVERVIEWS

Afghanistan

The absence of basic public services, devastated infrastructure and unknown human toll has resulted from warfare and foreign military interventions in Afghanistan during the past decades. International interest for human rights in Afghanistan was immense during the Cold War. The keyword of Western foreign policy was self-determination of the Afghani people so that they could liberate themselves from the Soviet occupation. The operative principle was political and financial support for Afghani resistance.[693] That resistance had nurtured what was retroactively labelled as terrorism and triggered yet another military intervention, in 2001. Five years later, Afghanistan has a constitution and a government whose reach is confined to a minuscule part of the country.

Formal education is financed externally, through a myriad of international programmes which have followed the military interventions. Much too little is known about indigenous education.[694]

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[689] Hunt, P. – Relations between the UN Committee on Economic, Social and Cultural Rights and international financial institutions, in: van Genugten, W. et al. (eds.) – *World Bank, IMF and Human Rights*, Wolf Legal Publishers, Nijmegen, 2003, pp. 150-152.
[690] Fickling, D. – Troops fly in to tackle Solomon unrest, *Guardian Weekly*, 17-23 July 2003.
[691] Callick, R. – Australia and the Pacific: Hands on, *Far Eastern Economic Review*, 30 October 2003.
[692] Colletta, N.J. et al. (eds.) – *Social Cohesion and Conflict Prevention in Asia: Managing Diversity through Development,* The World Bank, Washington D.C., January 2001, p. 476.
[693] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 165-170.
[694] There was vast publicity for the Taliban's ban of schools for girls in the 1990s. It triggered widespread international condemnation and a host of externally funded programmes aimed at educating girls. However, there had been little education for girls beforehand and "girls education was unheard of in much of the countryside." (*Education for Afghans: A Strategy Paper*, Save the Children and UNICEF/Afghanistan, July 1998, Peshawar/Islamabad, p. 14) According to Saif Samady, the first schools for girls were opened in 1932 (in Kabul) and 1941 (in Kandahar), while girls constituted merely 14% of pupils in Afghanistan in 1970. (Samady, S.R. – Modern education in Afghanistan, *Prospects*, vol. 31, No. 4, December 2001, p. 591)

Estimates of the size of the Afghani population vary and so do assessments of the reach of foreign-funded formal schooling.[695] Afghanistan's school age population is projected to double by 2025,[696] but nobody is quite sure because the most recent census had been initiated (but not completed) in 1979. Due to the subsequent warfare and population movements, all statistics are actually guesstimates.

Through a huge international logistical effort, primary education was re-started in the aftermath of the 2001 military intervention, in March 2002. There was a special emphasis on girls following the widespread publicity for the denial of the girls' right to go to school by the Taliban. Some 3 or 4 million children were enrolled in school in 2002. The school supplies were flown in by UNICEF,[697] as were school books, written in the United States.[698]

The costs of keeping children at school were considerable, ranging from 350 Afs (4% of GDP per capita of $180) in the first grade to 1,770 Afs (20% of GDP per capita) in the ninth grade.[699] Sustaining education after foreign funds elapse has become an increasingly urgent question.

How the constitutional guarantee whereby "education is the right of all citizens of Afghanistan and shall be provided up to secondary level, free of charge by the state" [700] will be financed subsequent to the termination of external aid is not discussed as yet. How education should be designed so as to facilitate self-sustaining development is an even more important question, also not discussed. Internationally funded programmes in Afghanistan have provided little, if any employment-generation. At the beginning of 2006, the government's revenues have been reported at 4.5% of the GDP while salaries in the public sector were a monthly $50, about 20% of an average rent for an apartment in Kabul.[701] Such issues have been marginalized in the current focus on 'pacifying' vast areas of Afghanistan.

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[695] Children and their rights in Afghanistan, Document presented at the 59th session of the United Nations Commission on Human Rights by Save the Children, Geneva, 2 April 2004; The Human Rights Research and Advocacy Consortium – Report Card: Progress on Compulsory Education, Grades 1-9, March 2004, available at www.afghanadvocacy.org

[696] Asian Development Bank – *Key Indicators 2003*, Special chapter: Education for global participation, p. 11, available at www.adb.org

[697] Estimates are that 7,000 tons of supplies (7 million textbooks, 8 million notebooks and 18,000 blackboards) were brought into Afghanistan and distributed to some 3,000 schools. Buchbinder, D. – Back to school at last for the Afghan girls hungry for knowledge, *Guardian Weekly*, 4-10 April 2002.

[698] "In class, new textbooks written by Afghan scholars at United States Universities replaced the Taliban's religious dogma." *Eastern Economic Review*, 4 April 2002, p. 12.

[699] The Human Rights Research and Advocacy Consortium – Report Card: Progress on Compulsory Education, Grades 1-9, March 2004, available at www.afghanadvocacy.org.

[700] The Constitution of the Islamic Transitional State of Afghanistan, adopted by the Constitutional Loya Jirga on 5 January 2004, Article 43, available at www.af

[701] Afghanistan's economy: Creeping towards the marketplace, *The Economist*, 4 February 2006.

Bangladesh

The constitutional guarantee of free education is gradually translated into governmental promises that education will be made free and thereby universalized. In its reports under international human rights treaties, the government summarized in 1995 the constitutional guarantees of the right to education and training to include "every citizen's right to free primary education".[702] It took five more years for the changing governments to announce that eight years of education would be made free for boys[703] and ten years for girls.[704] This is yet to be translated into practice.

Pledges to make education free have continued but what *free* means has not been precisely defined. If only tuition fees are used as the yardstick, primary school is mostly free but it encompasses only children aged 6 to 10. Moreover, how free primary education is in practice is subject to different assessments.

The government claims that primary education is free. A project looking into corruption in education carried out by the IIEP (International Institute for Educational Planning) found in 2004 that charges were levied. Examinations were the most expensive items to be paid by children's families while school admission fees were the cheapest. An additional, unusual charge described as "entertaining government officers" was also levied.[705] These findings have been confirmed by the CAMPE (Campaign for Popular Education) in its annual reports on the state of primary education in Bangladesh. School fees are levied for school repairs, purchases of supplies and entertaining visitors, while textbooks which should be distributed free of charge are actually sold.

The CAMPE has explained the unusual 'entertainment fees' as a facet of institutionalized political interference in education, which facilitates waste and corruption.[706] That school children ought to pay the cost of decorating schools and providing refreshments for visiting dignitaries[707] is perhaps the most striking example of reverse subsidies, where poor families subsidize the government which does not provide free public services in breach of the law of the land. This expression of enforced gratitude for possible increases of public funding for schools may cost the families more than such public funds are worth.

By most estimates almost 5 million school age children (about 25% of the age group) who should be at school are not, hence there is a long way to go to universalize education in Bangladesh. How many children are at school is uncertain. For 2000, the government reported an enrolment rate of 86% while the Household Expenditure and Income Survey showed a much lower enrolment rate of 65%.[708]

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[702] U.N. Doc. CRC/C/3/Add.38 (1995), para. 24.
[703] U.N. Doc. CERD/C/379/Add.1 (2000), para. 54.
[704] Education for All: The Year 2000 Assessment. Bangladesh Country Report, Primary and Mass Education Division, Dhaka, available at www2.unesco.org/wef/countryreports/Bangladesh (May 2005).
[705] Karim, S. et al. – *Transparency in Education. Report Card in Bangladesh*, IIEP, Paris, 2004, Series Ethics and Corruption in Education, available at www.unesco.org/iiep/eng/focus/etico (November 2005).
[706] *Education Watch 2003/4*, CAMPE (Campaign for Popular Education), Dhaka, February 2005, available at www.campedbd.org (December 2005).
[707] Tregenna, D. – Taking tea with the minister, *Guardian Weekly*, 5-11 May 2006.
[708] The World Bank – *Attaining the Millennium Development Goals in Bangladesh: How Likely and What Will It Take To Reduce Poverty, Child Mortality and Malnutrition, Gender Disparities, and to Increase School Enrolment and Completion?,* Washington D.C., February 2005, p. 49.

Such statistical discrepancies have not been eliminated as yet. Internationally reported enrolments rates show a slight deterioration, from 85% in 1998 to 84% in 2003.[709]

Following the guidance provided by the MDGs, the government has focused its funding on primary schools. Secondary education, starting when children are 10 years old, is provided mostly by religious communities, private schools or NGOs and it is mostly for-fee. Although the precise ratio of governmental, non-governmental and religious schools (*madrasas*) is not known, a rough estimate is that even in primary education about half of schools are governmental with the other half divided between NGO-run schools and *madrasas*. After 9/11, religious schools became seen as a security issue in Bangladesh as elsewhere, especially after the bombing campaign in 2005.[710]

A World Bank's assessment of education in Bangladesh noted in 2005 that "the problem of children not attending school is largely a problem of the poor" but added that "as in other developing countries, the direct costs of attending primary school are typically quite low in Bangladesh".[711] This may well be true when the charges levied in primary school are compared with the salaries of World Bank officials but they are a huge obstacle for the third of Bangladeshi school children whose both parents had no education. Thus they have minuscule incomes. Moreover, children who are the first in their family to go to school obviously have no support at home to facilitate their learning. Schools should – but does not – offer compensatory programmes for such children. The Education Watch 2003/4 has recommended the elimination of all charges for poor children as well as compensatory educational measures for them.[712] Neither of these measures seems to have been placed on the government's agenda as yet.

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[709] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org.
[710] Lintner, B. – Review of *Bangladesh: The New Afghanistan* by Hiranmay Karleker, *Far Eastern Economic Review*, December 2005, available at www.feer.com.
[711] The World Bank – *Attaining the Millennium Development Goals in Bangladesh: How Likely and What Will It Take To Reduce Poverty, Child Mortality and Malnutrition, Gender Disparities, and to Increase School Enrolment and Completion?,* Washington D.C., February 2005, p. 53.
[712] *Education Watch 2003/4*, CAMPE (Campaign for Popular Education), Dhaka, February 2005, available at www.campedbd.org (December 2005).

Bhutan

The government of Bhutan claims that education is free and lists this amongst its notable accomplishments.[713] The definition of free, is, however, very narrow. The government's reports under international human rights treaties have been mutually contradictory. An initial assertion that "education is free" has usually been followed by a description of the charges that are levied:

> Apart from a nominal fee of Nu 5 per annum per student, all schooling facilities are provided free. In addition, schools collect from Nu 10 to Nu 300 per student per annum for the school development fund.[714]

Much as in other countries, such contradictions reveal prevailing confusion about the meaning of *free*. Primary school should be free of charge but this obviously is not the case. In terms of respect for freedom in education, Bhutan has unusual definitions. Its 2004 PRSP has posited 'Gross National Happiness' as its development philosophy and key objective. How that could be attained and what role education would play has not been described.

Moreover, the educational statistics provided in the PRSP placed school enrolments at merely 62% for girls and 82% for boys. (They were five years out of date at the time, referring to 1999, and there are no updated statistics). The government's strategy for universalizing education was not to make education free although this is necessary because the government has acknowledged that "many poor families cannot afford the cost of school uniforms, supplies and transport costs." However, the government has opted for cost-sharing. It has described its policy as "developing a more sustainable education system through the introduction of private participation and cost sharing measures".[715]

The draft Constitution has affirmed in 2005 that "the State shall provide free education to all children of school going age up to the tenth standard".[716] Education is subsumed under the directives of state policy rather than defined as an enforceable right. Moreover, the limitation of constitutional rights to Bhutanese citizens is likely to preclude all children without citizenship from access to school.[717] The government's preference for the term *access to school* instead of the right to education reflects its reluctance to accept an obligation to universalize education.

The draft Constitution has also highlighted the uncertain fate of Bhutanese refugees in Nepal estimated at close to one million, or almost 20% of Bhutan's population. They were driven into exile because they were not deemed eligible for Bhutanese citizenship.[718] The barrier of their lack of citizenship is likely to further impede universalizing primary school.

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[713] O'Donnell, L. - The exclusive Kingdom of Bhutan, *Far Eastern Economic Review*, vol. 168, No. 5, May 2005.
[714] U.N. Doc. CRC/C/3/Add. 60, 1999, paras. 39 and 160.
[715] Poverty Reduction Strategy Paper. A Cover Note to the Ninth Plan Main Document, Department of Planning, Ministry of Finance, Royal Government of Bhutan, 2004, available at www.worldbank.org
[716] The Constitution of the Kingdom of Bhutan, Draft of Tsa Thrim Chhenmo as on 26th March 2005, available at www.constitution.bt (March 2005).
[717] Bhutan's Draft Constitution: Political gimmick or genuine reform? *Human Rights Features*, HRF/122/05, 12 July 2005, available at www.hrdc.net/sahrdc.
[718] Democratic Bhutan: Sincere promise or a ploy?, *ACHR Review* 106/2006, 4 January 2006, available at www.achrweb.org

Brunei Darussalam

In Brunei Darussalam, there is no constitutional guarantee of the right to education nor are other human rights guaranteed. The government's priority is to ensure that "Islamic values and the Islamic way of life [are] integrated in the education system". The aim of education is to forge a national identity "in which all Bruneians, as loyal subjects and under the leadership of the Monarch, play useful roles in fulfilling the needs of the country".[719]

Such education is free for Bruneians, defined as those who have the Bruneian citizenship and also originate from Brunei. Minorities and migrants, including a large Chinese community, are not eligible for free education.[720]

Burma/Myanmar

The government of Burma/Myanmar claims that education is free but the Special Rapporteur on Myanmar has found it to be for-fee. Education is neither free nor is it all-encompassing:

> Official figures of net enrolment and retention rates of school-age children reveal that only half of Myanmar children aged 5 to 15 years complete the primary cycle. Based on these figures, it is estimated that 25 per cent of children never enrol and, out of those who do, only one third are able to complete the full five-year cycle of primary schooling. Furthermore, approximately one quarter of the children in age group 10-14 (about 1.25 million) are engaged in paid work [721]

Also, the All Burma Federation of Student Unions has reported that fees are charged for enrolment, tuition, textbooks, exercise books, school cleaning, examination papers and sports.[722] That education is not free has also been confirmed by the Human Rights Watch in 2005. Alongside the costs of books, supplies and uniforms, parents were also obligated to pay school fees amounting to $18-24.[723]

The reason for neglect of education is the government's priority for militarization and repression, reflected in high military expenditure. The US Department of Labour has estimated that 94% of Burma's budget is allocated to the military.[724] The Economist has estimated that 29% of the budget goes to the military.[725] Whichever of these figures comes closer to the real budget, it is obvious that a minuscule proportion of the budget is allocated to education.

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[719] U.N. Doc. CRC/C/61/Add.5 (2003), para. 252.
[720] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 54.
[721] U.N. Doc. A/56/312 (2001), para. 68.
[722] *Education Report 2002*, Foreign Affairs Committee, All Burma Federation of Student Unions, Chiang Mai (Thailand), May 2003, p. 12.
[723] Human Rights Watch – Failing Our Children: Barriers to the Right to Education, September 2005, available at http://hrw.org/reports/2005/education0905 (December 2005).
[724] *Advancing the Campaign against Chile Labor: The Resource Allocations of National Governments and International Financial Institutions*, vol. III, U.S. Department of Labor, Washington D.C., 2004, Table A.2, pp. 119-125.
[725] The mess that the army has made: Special report on Myanmar, *The Economist*, 23 July 2005.

Amongst many human rights violations which have been documented in Burma after the armed forced changed its name to Myanmar,[726] forced labour figures prominently. Alam Rahman has found that primary education is provided in Burma only to children aged 5 to 9. Thereafter children have a 'right' to work and are counted no longer as school children.[727] Burma has been a target of sanctions by the ILO (International Labour Organization) because of institutionalized forced labour, which was confirmed as governmental policy in 1997. Thus far there has been no change and the ILO's Governing Body found in March 2006 "the continuing lack of any meaningful progress towards abolishing forced labour".[728]

Cambodia

The World Bank has faulted the government of Cambodia for under-spending on education and emphasized that "donors, NGOs and households provided more than 70 percent of total financing for education".[729] Mark Bray and his team have claimed the opposite - that "the government certainly desires to do more for the people".[730] They have provided no evidence of the government's commitment to education, however.

Mutually contradictory assessments also extend to whether education is free. The government's reports under human rights treaties claim that education is free. This is usually followed by a counterclaim, often in the same document, that education is for-fee.

In its reports under international human rights treaties, the government often quotes the Constitution, which specifies that "the State shall provide all citizens with primary and secondary education in State schools free of charge. Citizens shall receive education for at least 9 years. Primary and secondary schooling are free." In 1998, the government stated that "education is, in principle, free of charge and available to all" and added: "Research has shown that each family spends at least 123 000 riels a year on each child receiving primary education (contribution to the school 48%, purchase of books and exercise books 8%, extra tuition 21.2%, miscellaneous costs 4.9%)".[731] The Special Rapporteur on Cambodia found in 2002 that "in practice, families carry about two-thirds of the financial burden of their children's schooling [and] children are withdrawn from school and put to work in subsistence farming".[732]

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[726] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 204-213.
[727] GCE e-news, Global Campaign for Education News, February 2004, available at www.campaignforeducation.org
[728] Press release ILO/06/10 of 31 March 2006, available at www.ilo.org
[729] *Achieving Education for All in Post-Conflict Cambodia*, Education Notes, The World Bank, Washington D.C., July 2002.
[730] Bray, M. and Bunly, S. - *Balancing the Books: Household Financing of Basic Education in Cambodia*, Comparative Education Research Centre, The University of Hong Kong, and The World Bank, CERC Monograph Series No. 4, Hong Kong, 2005, p. 7.
[731] U.N. Docs. HRI/CORE/1/Add. 94 (1998), para. 9 and CRC/C/11/Add.16 (1998), paras. 189, 196 and 199.
[732] U.N. Doc. A/57/230 (2002), paras. 56 and 64.

At the same time, the World Bank highlighted the government's Priority Action Programme (PAP) which channelled funds to individual schools so as to enable schools to stop charging entrance and/or enrolment fees. As a result, there was "a rapid increase in the number of children registering for school in the 2001/02 school year".[733] Other fees seem to have been retained, however. Increased numbers of children who could start school without paying fees were unable to persist due to various charges. There is too little information available about these charges and their influence on the school attendance and completion by poor children, who constitute the vast majority in the country.

The government has listed the categories excluded from education as "orphans, abandoned children, children of poor parents, vagrants, domestic servants, juvenile delinquents between the ages of 7 and 17, disabled children, children who engage in prostitution, beggars and scavengers".[734] There may be many more. Current estimates are that 22% or even 56% of the cost of primary education is paid by families rather than the government.[735] A variety of charges have been identified, ranging from supplementary tutoring (often to compensate for the teachers' inadequate salaries), to the cost of tests and examinations, to the price of school supplies and school meals as well as transport to and from the school.[736]

Also, the government has acknowledged that teachers are so poorly paid that they cannot secure their livelihood by teaching but "are obliged to exercise a secondary activity (e.g. as motorcycle taxi drivers or as farmers) in order to feed their families".[737]

China

During the past decades, the government of China has made many promises that it would ensure free primary education for all children as its Constitution requires. None of these promises has been translated into an effective policy as yet, let alone to reality. In consequence, primary education should be free but is in practice for-fee.

China's legislation defines education as a right as well as an obligation. Parents have to send their children to school under a threat of fine or imprisonment if they fail to do so. School is by law free of charge but charges are levied in practice. Parents may be punished for not sending their children to school even if they simply cannot pay these various charges because they are too poor.

In its reports under human rights treaties, the government routinely quotes the law. The 1986 Compulsory Education Act says that "the State shall not charge tuition fees for students attending compulsory education".

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[733] *Achieving Education for All in Post-Conflict Cambodia*, Education Notes, The World Bank, Washington D.C., July 2002.
[734] U.N. Doc. CRC/C/11/Add.16 (1998).
[735] Bray, M. and Bunly, S. - *Balancing the Books: Household Financing of Basic Education in Cambodia*, Comparative Education Research Centre, The University of Hong Kong, and The World Bank, CERC Monograph Series No. 4, Hong Kong, 2005, pp. 67-70.
[736] *Education for All Global Monitoring Report 2006*, EFA/UNESCO, Paris, 2006, p. 85.
[737] U.N. Doc. CRC/C/11/Add.16 (1998).

However, the 1995 Education Law stipulates that charges can be levied where "the relevant regulations of the State" permit this.[738] Such charges have been regulated by the government despite the fact that they should not be levied in the first place. They are called *miscellaneous fees*: "The schools run for compulsory education by the state could only collect miscellaneous fees, and at the non-compulsory education stage the tuition and miscellaneous fees could be drawn".[739] This contradiction in the law, whereby charging fees is both prohibited and allowed, epitomizes how far China is from the rule of law. Although tuition fees should not be charged, the open-ended notion of *miscellaneous fees* provides ample latitude for the local authorities and individual schools to charge for every possible and impossible item. Also, this amplifies space for corruption because much too little is known about these miscellaneous fees.

China's international human rights obligations include ensuring free education for all school-age children. This requires elimination of all financial obstacles so that all children can go to school. Provision of free education was a pillar of government's definition of human rights during the Cold War when political and civil liberties were rejected in favour of economic and social rights. After China's shift to the free market, political and civil liberties remain rejected while previously free public services – such as education and health – are only available at a price.

The government had set the goal of attaining nine years of compulsory education by 2000 but this was not accomplished. That same pledge is periodically reiterated but the key obstacle, that nominally free public education has been priced out of the reach of the poor, has not been eliminated. Private costs of public education is the most important reason for non-enrolment, non-attendance and school abandonment.

These phenomena are statistically invisible, however. Official statistics reflects the world as it should be, not as it is. There is no authoritative information on the variety of fees that are charged, ranging from exam-paper fees to reading room permit charges, from desk fees to homework-correcting fees. In Beijing, the Education Committee has reportedly approved no less than 14 such *miscellaneous fees*. Although some are ostensibly voluntary, parents complain that all have to be paid.[740]

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[738] The 1986 Compulsory Education Law states that "the State shall not charge tuition for students receiving compulsory education". The 1995 Education Law defined obligations of schools to include collecting "fees according to the relevant regulations of the State and openly revealing the items of fees charged". Further, it clarified: "In cases where schools collect fees from educatees (sic) without regard to the relevant regulations of the State, such fees shall be returned by the order of the administrative departments of education; persons directly in charge and other persons held directly responsible shall be given administrative sanction according to law." *The Laws on Education of the People's Republic of China*, Compiled by the Ministry of Education of the People's Republic of China, Foreign Languages Press, Beijing, 1999.

[739] *The Development and Reform of Education in China 1995-1996*, State Education Commission, People's Republic of China, Beijing, September 1996.

[740] Commission on Human Rights – The right to education: Report submitted by the Special Rapporteur, Katarina Tomasevski – Mission to the People's Republic of China, 10-19 September 2003, U.N. Doc. E/CN.4/2004/45/Add. 1, 21 November 2003, available at www.right-to-education.org

Yidan Wang has explained the reason for widespread charges thus: "limited public funding had led to a shift of fiscal responsibilities to principals and then to parents".[741] That shift is implicitly confirmed in governmental policy. Its proposals have been, for example, that a uniform fee ('one fee for all') should be charged while there should be punishment for imposing 'unauthorized fees'.[742]

Occasional public scandals reveal that unauthorized fees are the rule rather than an exception but punishments appear arbitrary. Moreover, the systemic problem of insufficient public funds for compulsory education remains unaddressed. There may be as many as 389 different charges for public services that should be but are not free. They have been described in a bestselling, albeit illegal book which is called in English 'An Investigation of China's Farmers' or 'A Survey of Chinese Peasants':

> According to government statistics, there are 93 kinds of fees and fund-raising levies related to farmers, formulated by 24 national ministries, committees, offices and bureaus at the central government level. Local governments levy 296 other kinds of fees. Besides all those, there are an incalculable number of so-called 'relevant charges'.[743]

Those who escape rural poverty encounter yet more fees, levies and charges in urban schools. Pupils without a residence permit are forced to pay a much higher price to go to school but their number is not known. Estimates of the number of internal migrants vary between 100 and 160 million. Restrictions upon freedom of movement and residence are exemplified in *hukou*, the requirement of a local residence permits to access public education or health care. This requirement is based on the registration of the child at birth because the local authorities are responsible for providing services to their registered residents. The existing statistics thus refer only to those people who are formally registered. The rest are mostly internal migrants, referred to as 'floating population', who do not exist statistically or legally. A series of regulations has been adopted to somewhat reduce the arbitrariness which colours the exclusion of migrant children from education and to decrease the price of schooling which they are forced to pay.[744] To be allowed to go to school, migrant children are required to pay a 'temporary schooling fee', which amounted to 20,000 yuan in Beijing in 2003, a sum beyond the reach of most migrants.[745]

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[741] *EFA and Beyond: Service Provision and Quality Assurance in China*, The World Bank, Education Notes, July 2005.

[742] Education minister vows to abolish arbitrary fees, 22 February 2005, available at China Education and Research Network, www.edu.cn (August 2005).

[743] Chen Guidi and Wu Chuntao – Crisis in China's countryside (excerpt from 'An Investigation of China's Farmers), *Far Eastern Economic Review*, vol. 168, No. 1, December 2004, p. 60.

[744] These regulations started in 1986 and in 1997 'temporary schooling fees' were introduced and are still charged. In 1998 the regulations stated that all school age children should get compulsory education if they live in a particular place more than six months but only if they have all required permits. The instruction that migrant children should be able to enrol in school was repeated in 2003 but the practice of charging additional fees was legitimized at the same time.

[745] Commission on Human Rights – The right to education: Report submitted by the Special Rapporteur, Katarina Tomasevski – Mission to the People's Republic of China, 10-19 September 2003, U.N. Doc. E/CN.4/2004/45/Add. 1, 21 November 2003, full text available at www.right-to-education.org

Also, children who are not registered at birth do not acquire an entitlement to any public service. The failure to register children at birth is a consequence of China's population control,[746] known in shorthand as 'one-child policy'. Due to widespread son preference, girls are victimized incomparably more than boys by non-registration and the consequent exclusion from public services.

While hosting the international conference on Education for All (EFA) in November 2005, the government promised the abolition of "all tuition fees within two years for compulsory rural education".[747] This was a carefully worded promise, referring only to *tuition fees* while not to a variety of *miscellaneous fees*. Also, the promise to make education partially free referred only to rural areas. Just a month before that conference, the vice-minister for education, Zhang Baoqing, had been 'retired'. The reason was reportedly his outspoken critique of the "unreasonable education charges" that were levied and of government's priority for "big projects while allocating nothing to poor students".[748]

A shift from for-fee to free compulsory education would require doubling if not trebling China's budgetary allocations for education. The OECD has estimated that illegal fees "could well equal official budgets".[749] The government has, however, a 12-year record of broken promises regarding a modest increase of public funding for education to 4% of the GDP. It had been promised in 1994 and was not attained by 2006.

The process of decentralization has imposed the obligation to finance schooling upon local authorities without ensuring that they have resources corresponding to their educational responsibilities. To remedy that problem, the central government would have to considerably increase budgetary allocations to education, put in place an effective mechanism for fiscal transfers as well as safeguards against corruption.[750] Lynette Ong has found that local authorities in rural China "are facing immense debt, the magnitude and causes of which are everyone's guesses because of the lack of transparency". That obstacle is difficult to overcome because "posing fiscal questions to local cadres is audacious, risky and taboo".[751] Also, ensuring that public funds are used as intended would necessitate adequate salaries for public officials and effective safeguards against corruption.

All this is in theory easy for China thanks to its rapid economic growth, increasing wealth and growing governmental revenues. That it has not happened demonstrates the lack of government's political will to implement its own political promises.

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[746] Cangping, W. & Guangzong, M. – *China's Population Situation and Policies*, Foreign Languages Press, Beijing, 2004.
[747] Back education reform with firm legal support (editorial), *China Daily*, 30 November 2005, p. 4.
[748] Chan, M. – Ousting of minister stirs public fury online, *South China Morning Post*, 31 October 2005.
[749] OECD – *Governance in China*, Paris, 2005, p. 34.
[750] The preparation of a new law on compulsory education in 2006 included a debate on how to divide governmental financial responsibilities in public education for the central, provincial and local authorities. A survey of China, *The Economist*, 25 March 2006.
[751] Ong, L. – China's village voices, *Far Eastern Economic Review*, vol. 169, No. 2, March 2006, p. 47.

Fiji

The military coup in Fiji just after the turn of the millennium, in 2000, had removed a democratically elected president because he was a Fijian Indian. The coup reportedly enjoyed broad popular support of indigenous Fijians. Research into its causes and consequences has revealed the crucial role of education in sustaining a divided society and reinforcing polarization along the ethnic fault-line. Carmen White has described the background:

> The groundswell of Fijian support for the coup [was] ultimately a dramatic response, in large part, to growing dual burdens of lower educational attainment and stigmatizing discourses compounded by the unprecedented election to power of a government headed by a Fiji Indian prime minister.[752]

The impact of parallel, segregated education systems did not become politically explosive for the first time in 2000. International attention focused on Fiji in 1987, also because of a military coup. Institutional discrimination against Fijian Indians which followed that coup was placed on the international human rights agenda although Fiji was not formally condemned for human rights violations.[753]

One might assume that the government of Fiji would prioritize public investment in education so as to remedy the existing inequalities, especially because they are also presented as ethnic grievances and lead to military coups. On the contrary, under international human rights treaties the government has reported that "the cost of providing free education to all children would be prohibitive".[754] Education is thus neither free nor compulsory and it remains racially segregated.[755] It thus facilitates inter-generational transmission of inequalities. In the famous words of the US Supreme Court, separate is always unequal.

India

Decades of popular mobilization to make primary education free and all-encompassing in India yielded results after the turn of the millennium. The Ministry of Education reported that school enrolments reached 100% in 2005 for the first time in the country's history.[756] Reaching all children by primary education is gradually becoming a reality, 57 years after India attained political independence. In 1966 the Education Commission (known as 'the Kothari Commission') recommended exactly that, education for all children. It estimated that 6% of GNP for education would be necessary to attain that goal.[757] Neither that budgetary allocations to education nor its universalization have yet been attained but are seen – finally – to be within reach.

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[752] White, C.M. – Between academic theory and folk wisdom: Local discourse on differential educational attainment in Fiji, *Comparative Education Review*, vol. 45, 2001, No. 3, p. 305.
[753] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, p. 374.
[754] U.N. Doc. CRC/C/128/Add. 7 (1996), para. 202.
[755] Tomasevski, K. – *Human Rights in Education as Prerequisite for Human Rights Education*, Right to Education Primers, No. 4, Gothenburg, January 2001, p. 31, available at www.right-to-education.org
[756] *Annual Report 2004/05*, Ministry of Human Resource Development, Department of Elementary Education and Literacy, available at www.education.nic.in (December 2005).
[757] *Education and Development: Report of the Education Commission*, Ministry of Education, New Delhi, 1966.

One of the signposts was the 93rd Constitutional Amendment, which transformed the right to education from a directive for state policy into an individual right.[758] It was passed by unanimous votes in the Lok Sahba in 2001 and by Rajya Sabha in 2002. It took five years to get that short and simple amendment adopted by parliament. It says: "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law determine".[759] After education was affirmed as each child's right, it took four more years to specify fiscal obligations of the central government, governments of individual states and the local authorities. The impetus came from the UPE (United Progressive Alliance) government in 2004. It prioritized education. A 2% surcharge on all taxes was introduced so as to generate additional funds for education. They did not come close to a 18% increase in military expenditure at the same time[760] but the central government increased its financial contribution to education from a tenth to more than one third of the total.[761]

In 2006, a judicial challenge aimed to hasten the translation of the right to education from the law on the books to the living law. The Supreme Court has issued notices to the central and state governments regarding their obligation to ensure education for all children as the Constitution requires. The incentive was anguish because some 97 or 98 million school age children were still labouring.[762] The case was lodged by a coalition of non-governmental organizations, which have argued that elimination of child labour and free and compulsory education were two sides of the same coin.[763] This necessitates integrating children's rights in policy-making and overcoming disjointed policies on education, labour, children and human rights.

The background to the constitutional change in 2001-2002 was accumulated societal anger at a sequence of governments which failed to universalize primary education. The original constitutional pledge, at independence, was to ensure free and compulsory education for all children within ten years. It took 42 more years just to change the Constitution.[764] The Supreme Court facilitated this process by declaring in 1993 that the state's failure to provide education for all children was contrary to the Constitution.[765]

Increased fiscal allocations to education are needed to narrow the gap between parallel systems of poor public education for the poor and fee-charging private schools for those who can afford them.

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[758] The 1949 Constitution listed fundamental rights but the right to education formed part of the directive principles which were not legally enforceable. They aimed to integrate social policy "in the basic law of the land, [and thus] the Directives have set forth norms against which the successes and failures of the State in promoting them could be assessed." Appasamy, P. et al. – *Social Exclusion from a Welfare Rights Perspective in India*, Madras Institute of Development Studies, International Institute of Labour Studies & UNDP, Social Exclusion and Development Policy Series, No. 106, ILO, Geneva, 1996, p. 8.
[759] The Constitution (Ninety-Third Amendment) Bill 2001, Bill No. 106 of 2001, New Delhi, 16 November 2001.
[760] Luce, E. – Finance minister makes downpayment on future reforms, *Financial Times*, 9 July 2004.
[761] The World Bank – *Primary Education In India*, Development in Practice, Washington D.C., March 1997, p. 220.
[762] SC notices to centre, states for ban on child labour, *The Tribune* (New Delhi), 4 February 2006.
[763] The full text of the petition and updated information on the case are available at www.socialjurist.com/PIL_Child_Labour_21A.html
[764] Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 129-131.
[765] Supreme Court of India – *Unni Krishnan v. State of Andra Pradesh*, AIR 1993 SC 2178.

That formula mobilized "financial resources from the community and correspondingly reduced the financial responsibility of the state".[766] In the 1990s, 75% of school children received free education, 51% in urban and 85% in rural schools.[767] The completion of five years of schooling by all children is planned for 2007 and it should be attained through a "zero rejection policy so that no child is left out of the education system".[768]

Indonesia

Indonesia has one of the oldest constitutional guarantees of the right to education, which predates the Universal Declaration of Human Rights by three years. Its 1945 Constitution says: "Every citizen has the right to obtain education. The Government shall create and execute a system of national education provided by law".[769] This 'right to obtain education' was not defined so to require the state to ensure that primary education is free. On the contrary, governmental policy was for a long time to tolerate, if not encourage parental payments:

> Sources from parents are usually in the form of monthly fees, entrance fees, term and final test fees, and extra curriculum fees. On average, fees contribute 35% of the total school revenue, excluding teachers' salaries. [770]

A dual system of public and private, free and for-fee, religious and secular educational institutions forms part of the law. In particular, the law guarantees freedom of fund-raising for "private schooling and education".[771] Governmental obligations in education are gradually being clarified and specified. At the time of my mission to Indonesia as the Special Rapporteur on the right to education, in 2003, the law provided confusing answers to the question whether primary education should be free or for-fee. A draft education law stipulated that central and local government "have to ensure the availability of funds for the implementation of education for every Indonesian citizen from ages seven to fifteen". It added that communities had to provide additional resources and stipulated that every pupil had to pay fees unless exempted. This should have been – but was not - the case for all pupils in compulsory education. School fees were thereby both outlawed and allowed.[772]

Increased public investment in education was elevated among parliamentary priorities as part of democratization after turbulent changes in 1997-1999.[773]

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[766] Tilak, J.B.G. – Free and compulsory education: Legislative intervention, *Economic and Political Weekly,* 14 February, 2004, p. 620.
[767] Tilak, J.B.G. – Education poverty in India, *Review of Development & Change*, vol. 7, No. 1, January-June 2002, p. 25.
[768] *Annual Report 2004/05*, Ministry of Human Resource Development, Department of Elementary Education and Literacy, available at www.education.nic.in (December 2005).
[769] Commission on Human Rights – Report submitted by Katarina Tomasevski, Special Rapporteur: Mission to Indonesia, U.N. Doc. E/CN.4/2003/9/Add.1, available at www.right-to-education.org
[770] McMahon et al. - Improving Education Finance in Indonesia, MONE (Ministry of National Education), UNICEF and UNESCO, Jakarta, 2002, mimeographed.
[771] The House of Representatives of the Republic of Indonesia - Legislation Number 39 of 1999 Concerning Human Rights, Jakarta, 23 September 1999, *State Gazette of the Republic of Indonesia* No. 165 of 1999.
[772] Commission on Human Rights – Report submitted by Katarina Tomasevski, Special Rapporteur: Mission to Indonesia, U.N. Doc. E/CN.4/2003/9/Add.1, available at www.right-to-education.org
[773] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhof Publishers, The Hague, 2000, pp. 222-229.

Legal reform which aimed to transform budgetary allocations for education from discretionary to obligatory was described by the governmental delegation to the United Nations Commission on Human Rights in 2003 as follows:

> One of the major developments registered in the reform of Indonesia's system of education is the adoption of the Fourth Amendment to the Constitution on 10 August 2002. The newly amended Constitution not only guarantees every Indonesian's right to education, but also the corresponding obligation of the state in this regard. Article 31 stipulates the government's obligation to ensure the fulfilment of the right of every citizen to basic education, as well as the financial responsibility which this fulfilment entails. In addition, the state must develop and implement a national education system, and earmark at least 20% of its own and local governments' budgets to meet the system's requirements.[774]

That commitment has yet to be translated into governmental policy. The government introduced its budget for 2005 with an explanatory note that existing constitutional and legal guarantees "have yet to be met". Merely 12% of the budget was allocated to education, much less than the law mandates. The government explained that the obligatory 20% for education was "gradually accommodated".[775] Guy de Jonquieres has found that "investment is desperately needed in basic education, sadly neglected since Indonesia's 1997 financial crisis".[776]

The 2003 education law specifies that government is obliged to guarantee full financing of education for children aged 7-15 and no cost should be charged to children or their families.[777] However, decentralization had shifted fiscal responsibility from the central government to provinces and communities. There is little country-wide information available on the financing of education and what is available points to inequalities. Primary education is free in parts of the country, for-fee in others. Much as elsewhere, the poorest communities and provinces are the least able to ensure public funding for education. Education International has reported that "fees, official and unofficial, including payments for registration, books, examinations, testing, and uniforms" continue to be charged.[778]

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[774] Statement by the Indonesian delegation on the report of the Special Rapporteur on the right to education on her mission to Indonesia in July 2002 before the 59th session of the Commission on Human Rights, Geneva, 3 April 2003.
[775] State Address by the President of the Republic of Indonesia and Government Statement on the Bill on the State Budget for the 2005 Fiscal Year and Its Fiscal Note, Jakarta, 16 August 2004, text available at www.thejakartapost.com (August 2005).
[776] De Jonquieres, G. – Time for Indonesia's president to show his mettle, *Financial Times*, 2 August 2005.
[777] The National Education System, Law No. 20/2003 of 8 July 2003, *Supplement to the Statute Book of the Republic of Indonesia,* No. 78/2003, Articles 11(2) and 34(2).
[778] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 150.

Laos

The government of Laos claims that education is free in its reports under human rights treaties but has conceded that this is not so in its PRSP. Its assertion that education is free has been challenged by the Committee on the Rights of the Child [779] and contradicted by the Asian Development Bank (ADB). The ADB has described the charges levied in nominally free public education. They are called 'community participation,' which consists of "contributing funds [and] providing labor".[780] Alongside such institutionalized charges, there is a variety of informal payments. In its PRSP, the government has described "the levying of unofficial fees or other charges" in addition to official fees and charges.[781] A part of the background has been insufficient budgetary allocations to education as well as the erosion of teachers' salaries.

Independent, critical analysis in Laos is impossible. The government usually claims that such information is "fabricated for political ends with the mere aim of discrediting the image of the Lao Government".[782] Criminal law defines as a crime "propagating information or opinions that weaken the State".[783] Discrepancies in the government's own descriptions of its human rights record are apparently not criminalized as its conflicting assertions of education being free and for-fee illustrate.

Governmental performance in education is kept apart from its human rights record and Laos is no exception. The fact that the government violates its own law by levying charges in education that should be free is not on the international agenda. Also, scant international attention has been paid to protests against the charging of fees and their brutal suppression by the government.[784]

The government is extremely slow with its reports under human rights treaties. The Committee on the Elimination of Racial Discrimination (CERD) noted in 2003 that Laos was "18 years late in submitting its reports". One of the reasons is its unwillingness to expose its human rights record to international scrutiny. Indeed, the Committee deplored "the measures taken by the Lao authorities to prevent the reporting of any information concerning the situation of the Hmong people".[785]

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[779] U.N. Doc. CRC/C/15/Add. 78 (2001) para. 24.
[780] Asian Development Bank - *Lao People's Democratic Republic: Education Sector Development Plan Report*, July 2000.
[781] Lao People's Democratic Republic - National Growth and Poverty Eradication Strategy, June 2004, available at www.worldbank.org
[782] U.N. Doc. A/56/253 (2001), para. 23.
[783] Written statement submitted by the South Asia Human Rights Documentation Centre (SAHRDC), E/CN.4/2004/NGO/127, p. 2.
[784] Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 108-109.
[785] Committee on the Elimination of Racial Discrimination - Decision 1 (63): Situation in the Lao People's Democratic Republic, U.N. Doc. CERD/C/63/Dec.1/Rev.1 (2003).

Malaysia

All-encompassing primary education has been attained in Malaysia without making education free and compulsory. The literacy rate is 93% and 92% of the young finish secondary school while 16% continue to the university.[786] According to the official statistics, 99% of school-aged children attend school.[787] Malaysia's budgetary allocations to education exceed 6% of GDP and 20% of the budget.[788] A new budget announced in 2006 has further increased investment in education with the aim to "boost Malaysia's competitiveness".[789]

Primary education was made compulsory in Malaysia as late as 2003. Instructions issued by the Ministry of Education are that parents should register their children for the six compulsory years of schooling and to "pay all fees due to the school".[790] There is no obvious reason why primary education has not been made free, the government could certainly afford to make it free if it wished to do so. An NGO 'School Report' has criticised the Prime Minister, Abdullah Badawi, for "his insistence on user fee charges".[791]

Malaysia has reserved the right not to make education free and compulsory when it ratified the Convention on the Rights of the Child.[792] Its Constitution does not guarantee the right to education but only provides safeguards against discriminatory exclusion from education. The Malaysian Human Rights Commission (SUHAKAM) described in 2001 the pattern of exclusion from education targeting especially children without birth certificates and identity documents.[793] Much as in other countries, such children tend also to be poor. There is little information available on the impact of the government's failure to guarantee that all children, no matter how poor they may be, can complete the six years of education which have been defined as compulsory.

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[786] *Population and Housing Census 2000: Education and Social Characteristics of the Population*, available at www.statistics.gov.my (December 2003).
[787] Further information is available on the website of the Ministry of Education at www.moe.gov.my (June 2004).
[788] The World Bank – *Malaysia: Social and Structural Review Update*, Report No. 20813-MA, 17 January 2001.
[789] Burton, J. – Education leads Malaysia's new spending plan, *Financial Times*, 1-2 April 2006.
[790] Compulsory education, information on the website of the Ministry of Education, www.moe.gov.my (May 2006).
[791] A 'School Report' of 14 Developing Countries in Asia Pacific to Investigate their Commitment to Basic Education, Asian South Pacific Bureau of Adult Education and Global Campaign for Education, 2005, available at www.aspbae.org or www.campaignforeducation.org (October 2005).
[792] The list of ratifications of all human rights treaties which deal with the right to education and reservations thereto can be found at www.right-to-education.org
[793] SUHAKAM - *Report of Forum on Human Rights of the Disadvantaged 2001*, Malaysian Human Rights Commission, available at www.suhakam.org.my

Maldives

With its total population of merely 300,000 and generous income from tourism, the government of Maldives could easily ensure education for all children. Educational enrolments in primary school have reached 92% in 2003,[794] but there is little information on children beyond the age of 12 or the contents of the education that is provided. It is also uncertain how the government interprets its human rights obligations and, indeed, which obligations it does and does not accept.

The announcement of a constitutional reform came on the heels of dubious elections, which had been preceded by a declaration of emergency.[795] Widespread arrests in August 2005 marked the first anniversary of protests calling for democratization of the country and the introduction of the rule of law.[796] A year later, the fate of demonstrators who had been detained and then brought to court remained uncertain because there is no separation between the executive and the judiciary.[797] Thus, the government is in a comfortable position of adjudicating whether it has violated human rights or not. A constitutional reform announced in March 2005 may define individual rights and corresponding governmental obligations in the future.

Mongolia

The transition from centrally planned and universally provided free education to a market-based system has negatively affected education in Mongolia. The government described in 1995 the gap between the constitutional guarantees and the reality. Free education should have been provided to all children up to the age of 17 but budgetary allocations to education had plummeted with the transition to the free market and much of the cost of education was transferred to families:

> Government expenditure on health, education and other social insurances has decreased sharply. It has had a negative impact on the situation of children and women. The average expenditure per child per year for a family to pay is around US$ 100. This is not a small amount for those poor families, and also for those parents who are working in State-budgeted organizations.[798]

The government's subsequent efforts to halt educational retrogression included a commitment to allocate 20% of its budget to education so as to tackle the worst facets of educational exclusion. The cost of education is considerable because much of the population is nomadic. Subsidizing the cost of housing and food so that children could go to boarding schools has triggered a great deal of controversy because this inevitably increases educational budget.[799]

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[794] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[795] Asian Centre for Human Rights - Maldives: Still dark, ACHR Review 72/2005 of 11 May 2005 and Maldives: The dark side of life, ACHR Review 66/2005 of 30 March 2005, available at www.achrweb.org
[796] Asian Centre for Human Rights – Call for international intervention against Maldives, ACHR Review 86/2005 17 August 2005, available at www.achrweb.org
[797] Urgent: Intervene against state terror in Maldives, ACHR Review No. 126/2006, 24 May 2006, available at www.achrweb.org
[798] U.N. Doc. CRC/C/3/Add.32 (1995), paras. 15 and 196.
[799] Mongolia - Economic Growth Support and Poverty Reduction Strategy, July 2003, available at www.worldbank.org

The National Human Rights Commission has pointed out that earlier attempts "to charge fees in order to run boarding schools simply failed due to weak financial capacities of herder families". The abolition of charges for boarding halved the number of pupils because public funds were not increased. The lack of funds keeps poor children out of school while successful applicants for places in boarding schools are expected study in unheated dormitories. In consequence, both non-enrolment in school and dropping out before the completion of compulsory education continue and affect an estimated 20% of school age children. [800]

Nepal

Dramatic political changes in 2006 may profoundly alter governance in Nepal. An interim government was formed by six main political parties and Maoist rebels,[801] promising to halt years of warfare and bloodshed. A constitutional assembly was planned to agree on a new blueprint for governance, especially to curtail the powers of the monarch.

This might bring to an end ten years of Maoist insurgency, whose educational toll was huge due to increased military expenditures and abuses of education by both warring sides. The Secretary-General of the United Nations was troubled in 2004 by human rights violations which hindered development activities.[802] This was an understatement because in large parts of the country there was no school or children and their teachers were caught in the cross-fire. Sushil Pyakurel, a former member of the National Human Rights Commission, described the situation before he went into a self-imposed exile in 2005 thus:

> The Maoists were opening and closing educational institutions whenever they wanted. They were also imposing their own curriculum on the students. In most schools, children were forced to join the Maoist movement and afterwards they were forced to take up arms and fight. Moreover, the army was killing school teachers, stating that they were supporting the Maoists' activities in the countryside.[803]

More than a decade of warfare has depleted most of the country of teachers. Almost two-thirds of Nepal's development budget had been foreign-funded [804] and much of that funding was halted due to repression and insecurity.

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[800] *Human Rights and Freedoms in Mongolia Status Report 2003*, National Human Rights Commission, Ulaanbaatar City, 2004, pp. 6-7, available at www.nhrc-mn.org (January 2006).
[801] Rahman, M. – Hopes high as Nepal rebels embrace government, *Guardian Weekly*, 23-29 June 2006.
[802] Statement by the UN Secretary General on the situation of human rights in Nepal, *Article 2 of the International Covenant on Civil and Political Rights*, Asian Legal Resource Centre, Hong Kong, vol. 3, No. 6, December 2004, Special report: The mathematics of barbarity and zero rule of law in Nepal, p. 124, available at www.article2.org (June 2005).
[803] Van Voorhis, B. – Target of King's coup: Interview with Sushil Pyakurel, *Human Rights Solidarity*, vol. 15, No. 3-4, May-July 2005, p. 34.
[804] Himalayan horrors: Special report on Nepal, *The Economist*, 16 April 2005.

Some of the roots of the Maoist insurgency were traced to the policy of consecutive Nepali governments:

> The neglect of rural areas by the government seems to have enhanced the appeal of the Maoists, who criticised the government and issued demands for profound reform. Those most in need of development assistance reside in the insurgency-affected districts; however, government programmes tend to avoid those areas, fostering a vicious circle of dissatisfaction with the government and increased support for the Maoists.[805]

Making education free and universal is a challenge for a new government and a gap to be filled in a new constitution. The 1990 Constitution does not guarantee the right to education. Rather, it includes education among guidelines for state policy with a view to "gradual arrangements for free education".[806] The Constitution was the fruit of the mass movement which led to the democratization of the country in 1990. Only few human rights were constitutionally entrenched. Others, such as the right to education, were deemed to be "rights in the making".[807] After the Constitution had been adopted, 14 governments changed in 14 years.[808] The king's self-coup in 2004 was ostensibly carried out to strengthen the government's military response to the Maoist insurgents as they claimed control over 80% of the territory.[809]

The previous government left a legacy of unfulfilled promises in education. It reported in 2000 that it had "declared primary education free" but this meant only "free of tuition fees in public schools up to grade 10".[810] Tuition fees were formally abolished but other charges were left in place although the government admitted that poor parents could not afford the cost of transport, uniforms and textbooks. These were not called *fees* but *charges*, [811] so education was called 'free.' Even that limited governmental promise of 'free' education was not translated into practice. The Child Workers in Nepal Concerned Centre (CWIN) has commented: "The government has directed not to charge admission fees in the primary school, but the schools are charging fees in one or other way".[812] Because the formal abolition of tuition fees was not accompanied by increased public funding needed for schools to function, they continued levying charges under a different name. In 2003, in its PRSP, the (previous) government made a new commitment - that free education would be provided for the "oppressed, backward and below poverty line students".[813] How these criteria would have been defined and applied will never be known.

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[805] Discrimination in Nepal, Human Rights Features, Asia-Pacific Human Rights Network, HRF/43/01, 29 August 2001, available at www.hrdc.net/sahrdc.
[806] *The Constitution of the Kingdom of Nepal 2047 (1990). English Translation*, Ministry of Law, Justice & Parliamentary Affairs, Law Books Management Board, Kathmandu, March 1992, Part 4: Directive principles and policies of the State, Article 26 (8).
[807] Dhungel, S.P.S. et al. – *Commentary on the Nepalese Constitution*, DeLF Lawyers' Inc., Kathmandu, September 1998, p. 199 and 219.
[808] Bergsten, J. - Nepal: Spiralling down to utter ruin, *Human Rights Solidarity*, vol. 14, No. 6, November 2004, p. 3.
[809] Thapa, D. – Reconstructing Nepal, one step at a time, *Far Eastern Economic Review*, vol. 169, No. 4, May 2006, p. 19.
[810] U.N. Doc. E/1990/5/Add.45 (2000), para. 161.
[811] U.N. Doc. CRC/C/3/Add.34 (1996).
[812] *The State of the Rights of the Child in Nepal 2003*, CWIN, Kathmandu, 2003.
[813] Nepal - Poverty Reduction Strategy Paper 2002-2007, May 2003, p. 53, available at www.worldbank.org

The question of free or for-fee is likely to figure prominently in the process of peace-building. The king reconvened parliament in April 2006,[814] four years after he had dissolved it. An interim government followed, committed to a new model of governance and a new constitution. The Asian Centre for Human Rights has asked the question which is routinely avoided: "Are the key actors in the international community ready to accept a Maoist-led democratic government in Kathmandu?" [815]

North Korea

North Korea's is the only government in the world which claims that the right to education is fully enjoyed by everybody and that all education is free:

> By the progressive education system and the popular policy of education, every citizen fully enjoys the right to education. The right to education and its realization is guaranteed by the Constitution and the legislation on education. Education has been completely free in every educational institution since March 1959 by the Cabinet Decision on abolishing tuition fees. In the DPRK [Democratic People's Republic of Korea], there is nobody who has not received primary education thanks to the universal compulsory primary education system that has been enforced since 1956.[816]

There is no independent verification of that self-assessment. The Financial Times has claimed that no official statistics has been published in North Korea since 1965.[817] Kathi Zellweger of Caritas, Hong Kong, has pointed out the positive side of North Korea's educational performance: "Up to now I've yet to meet a North Korean who cannot read or write. In many other countries, that's the big issue".[818] This Soviet-inspired model of education obviously enables most people to become and remain literate. However, school attendance has reportedly decreased from 99% to 85%.[819] More importantly, it is not known what is taught at school and how this is done.

The former United Nations Commission on Human Rights has adopted a series of annual resolutions on "systematic, widespread and grave violations of human rights" in Korea. They have regularly emphasized restricted access to the country as well as limited access to information.[820] Neither data on the military expenditure nor educational statistics exists in a form that would make them internationally comparable. Vitit Muntarbhorn, the Special Rapporteur on Korea of the former United Nations Commission on Human Rights, has noted that heavy militarization of the country raises serious questions about governmental priorities in the allocation of resources.[821]

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[814] Sengupta, S. – Nepal's king offers to turn over power, *International Herald Tribune*, 22-23 April 2006.
[815] Nepal: The price of peace, *ACHR Review*, No. 125/2006, 17 May 2006, p. 3, available at www.achrweb.org
[816] U.N. Doc. E/1990/6/Add.35 (2002), paras. 84 and 87-88.
[817] Fifield, A. – North Korea toys with risk and reward:'The zeal of workers has increased', *Financial Times*, 2 September 2005.
[818] Interview, *Far Eastern Economic Review*, January 2005, available at www.feer.com
[819] U.N. Doc. E/C.12/1/Add. 95 (2003), para. 24.
[820] Commission on Human Rights – Situation of human rights in the Democratic People's Republic of Korea, resolution 2005/11, adopted on 14 April 2005 with 13 votes in favour, 9 against, and 14 abstentions.
[821] Commission on Human Rights – Situation of human rights in the Democratic People's Republic of Korea, Report submitted by the Special Rapporteur, Vitit Muntarbhorn, U.N. Doc. E/CN.4/2005/34, para. 23.

The government defines 'human rights' conditioned by individual obligations: "the protection of one's rights can be guaranteed only by one's performance of the obligations". These include the obligation to work, to protect state security and to defend the state.[822] Moreover, it is reportedly pursuing a policy of deliberate feminization of education,[823] reinforcing the relegation of women to their gender-stereotyped, inferior role.

Pakistan

The Constitution of Pakistan stipulates that "the State shall provide free and compulsory education within a minimum possible period".[824] Five decades cannot be defined as 'a minimum possible period' by the most generous criteria and yet, this has not happened. Educational is not compulsory nor has it been universalized. By 2003 merely 59% of children enrolled in primary school.[825] The main reason is that it is not free.

The charges levied upon families for children in public schools were estimated in 1996 at Rs. 850, more than one-fifth of an average household income of Rs. 4,000.[826] Nevertheless, in its PRSP the government has applauded rapidly growing private education, which caters for 30% of school children.[827] The World Bank has been equally supportive of transferring education from the public to the private sector, hailing the spread of private schools in urban areas where "private education is viewed not so much as a luxury as an affordable necessity". [828] Similarly, the Asian Development Bank has advocated private provision and private funding of education because education is *not* governmental priority: "Public expenditure on education as a percentage of gross domestic product has been less than 2% in every year since 1997 and real expenditure has been declining since 1989".[829] Pakistan epitomizes international agencies, which are formally committed to development, endorsing governmental priority for military expenditure at the expense of education. Suggestions that further increases in military expenditure be facilitated by supplanting public by private funds for education illustrate how much global change is needed to alter such biases.

Public education does not 'deliver results', in the language of international financial institutions and private schools should be promoted instead. The reason are political choices of consecutive governments in Pakistan to keep fiscal allocations to education so low that public schools cannot 'deliver results' or there simply are none. That international agencies shy away from questioning the impoverishment public education speaks volumes about *their* political choices.

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[822] Choi, S.-C. – *Human Rights in North Korea*, Center for the Advancement of North Korean Human Rights, Seoul, 1995, p. 24.
[823] UNICEF – Analysis of the situation of children and women in the Democratic People's Republic of Korea, UNICEF DPRK, Pyongyang, 2003, pp.45-46.
[824] U.N. Doc. CRC/C/3/Add.13 (1993), para. 121.
[825] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[826] *Pakistan Integrated Household Survey, Round 1: 1995-6*, Federal Bureau of Statistics, Islamabad, 1997, mimeographed.
[827] Pakistan - Accelerating economic growth and reducing poverty: The road ahead (Poverty Reduction Strategy Paper), December 2003, p. 67, available at www.worldbank.org
[828] The World Bank - *Improving Basic Education in Pakistan: Community Participation, System Accountability, and Efficiency*, Gray Cover Report, No. 14960-Pak, 6 June 1996, p. 11.
[829] Asian Development Bank – Sector Assistance Program Evaluation for the Social Sectors in Pakistan, SAP:PAK 2005-08, ADB, Manila, July 2005, Executive summary and para. 15.

As the government of Pakistan relinquished its responsibility for providing education, it amplified space for religious schools. General Musharraf explained in the aftermath of 9/11 that "the strength [of *madrassas*] is free board and lodging for hundreds and thousands of poor children, which Pakistan can't afford, certainly".[830]

The cost of government's negligence was made visible only after *madrassas* were, post 9/11, accused of breeding terrorism. The lack of knowledge about them has proved to be a major embarrassment because not even their approximate number is known. Reporting by the Economist is a good example of guesstimates. In 2003, it reported that "Pakistan contains more than 586,000 students in nearly 4,000 *madrassas*. Some 16,600 of these students are foreigners." Later, estimates of the number *madrassas* ranged between 7,000 and 20,000. For an unknown reason, the number was fixed at 12,000 out of which 7,000 are supposed to be undertaking government-designed reforms [831] Françoise Chipaux has claimed that 1.7 million children and young people are educated in religious schools.[832] Hassan Abbas has written there may be 30,000 *madrassas*, whose offer of free education, food, housing and clothing attract thousands driven away from expensive and decrepit public education.[833] Whatever the number of *madrassas* may turn out to be, it is possible that they would have been categorized as 'private' educational establishments which 'deliver results' without creating any financial cost for the government.

Papua New Guinea

Foreign, especially Australian involvement in Papua New Guinea has ranged from various forms of aid to 'cooperative intervention', including deployment of Australian military forces. Reasons have been many. Problems were summed up in an estimate that "15% of the urban workforce counts on crime as its main source of income".[834]

The lack of education which is available and accessible to all epitomizes the model of development which pushes so many children and young people into criminality to ensure their survival. Human Rights Watch reported in September 2005 that charges in primary school amounted to an annual $380, more than half of an average per capita income of $510. [835]

Charges levied in public schools deprive poor children - especially girls - of education.[836] An announcement that "user fees and other associated costs of education should be lifted" was made in 2002 [837] but has not been translated into governmental policy.

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[830] Gen. Pervaiz Musharraf: Absolutely secure, *Far Eastern Economic Review*, 20 December 2001.
[831] Pakistan and America: My enemy's enemy, *The Economist*, 4 October 2003; Madrassa maths, *The Economist*, 21 May 2005; Pakistan's religious schools: The general at war, *The Economist*, 23 July 2005.
[832] Chipaux, F. – Le Pakistan réforme ses écoles coraniques, *Le Monde*, 10 September 2005.
[833] Abbas, H. - *Pakistan's Drift into Extremism: Allah, the Army and America's War on Terror*, M.E. Sharpe, New York, 2004.
[834] Pacific help (editorial), *Far Eastern Economic Review*, 26 April 2004.
[835] Human Rights Watch – Failing Our Children: Barriers to the Rights to Education, September 2005, available at http://hrw.org/reports/2005/education0905
[836] Papua New Guinea aims to 'Accelerate Girls' Education', UNICEF PNG/2004/Pirozzi, 4 February 2005, available at www.unicef.org
[837] VSO - *Listen and Learn: A policy research report on Papua New Guinean teachers' attitudes to their own profession*, Voluntary Service Overseas, London, 2002, mimeographed, p. 12.

The National Education Plan 2005-2014 "aims to provide universal basic education in the long term".[838] However, the lead donor, Australia, has pointed out that "poor governance is systemic" and the government "currently supports a wide range of programs that are not affordable".[839] The societal price of the lack of free education is high. What is often termed a law-and-order problem, namely that many people are driven into earning their livelihood illegally, can be attributed to the unemployment rates estimated at between 60 and 90%.[840]

The government does not plan to make education free, however. The Secretary for Education had stated that "it is not a good idea to abolish school fees [and] the parents who fail to pay should be taken to court because they are parasiting".[841] This statement highlights the government's view that education is parental responsibility rather than a governmental obligation and a birthright of each child. Indeed, international human rights guarantees appear irrelevant in Papua New Guinea and the government has done much too little to bring them home. Its self-assessment had this to say:

> The Constitution, domestic law and the Convention are not yet meaningful in the lives of many rural children. Prevailing 'traditional acceptance' regarding the age of marriage and other issues relating to the protection of the child make both domestic law and the Convention insignificant in the lives of children in many remote and traditional villages. This fact poses serious problems, even though it is considered to be a temporary situation.[842]

Whether the government is planning to change that 'temporary situation' and, if so how, cannot be discerned from its official documents. Papua New Guinea has not submitted any reports under human rights treaties more than twenty years, since 1984. Authoritative information about the right to education as well as all other human rights issues is virtually non-existent.

The Philippines

The Constitution of the Philippines obliges the government to ensure that both primary and lower secondary education are free but this has not been translated into governmental policy or into reality. The Committee on the Rights of the Child (CRC) noted in 2005 that primary education was not universalized because it was not available throughout the country. It acknowledged difficulties in ensuring schooling for children dispersed among 7,000 islands but emphasised that education was not universalized because it was not made free. Families bear the cost of "meals, transportation, school uniforms and supplies" and in many schools no enrolment and tuition charges are also levied.[843] An important reason for transferring so much of the cost of education to the family budget is "a chronic budget deficit caused by spiralling demands on an unreformed and hopelessly inadequate revenue base".[844]

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[838] NEC (National Executive Council) approves National Education Plan 2005-2014, Press release, 20 December 2004, available at www.pm.gov.pg
[839] Australia's Aid Program to Papua New Guinea, 21 October 2002, and Papua New Guinea: Estimated total aid 2005-2006: $492.3 million, both available at www.ausaid.gov.au/country/papua.cfm.
[840] Fickling, D. - Raskol gangs rule world's worst city, *The Guardian* (London), 22 September 2004.
[841] Human Rights Watch – Failing Our Children: Barriers to the Rights to Education, September 2005, available at http://hrw.org/reports/2005/education0905.
[842] U.N. Doc. CRC/C/28/Add.20 (2003), para. 80.
[843] U.N. Doc. CRC/C/15/Add.259 (2005), para. 68.
[844] The Philippines: Gloria in profundis, *The Economist*, 9 July 2005.

An NGO 'School Report' has faulted the Philippines for failing to eliminate 'user fees' (in the language of the World Bank), which impede universalization of education.[845]

Internal problems are not the only cause of the government's inability to ensure free and compulsory education for all children. Conflicts in the allocation of limited resources between debt repayment and education have led to human rights litigation. A group of senators challenged in 1991 the constitutionality of the budgetary allocation of P86 billion for debt servicing which compared to P27 billion for education. The 1986 Constitution of the Philippines obligates the government to assign the highest budgetary priority to education. It obliges the state to provide free public education in the elementary and high school levels and to "assign the highest budgetary priority to education." The issue to be decided was whether debt servicing, exceeding three times the budgetary allocation for education, was unconstitutional. The Court has found that education obtained the largest allocation amongst all the government departments, as the Constitution required, while debt servicing was necessary for the creditworthiness of the country and, thus, the survival of its economy.[846]

The economy has survived thus far but the government's inability to distribute the costs of that survival fairly in the population has encountered many challenges. The Philippine Commission on Human Rights has defined disadvantaged sectors as 'women, children, youth, prisoners/detainees, urban poor, indigenous people, elderly, Muslims, persons with disabilities, internally displaced persons, informal labour, private labour, migrant workers, rural workers and public sector'.[847] The inclusion of the whole public sector amongst the disadvantaged epitomizes the model chosen to ensure the survival of the economy. This includes teachers, whose inadequate salaries are a bottleneck for improving both outreach and quality of education.

There is no governmental policy to ensure free primary education. Charges for enrolment and tuition, those for uniforms, shoes, supplies, and transport, and the cost of textbooks place education beyond the reach of most of these disadvantaged sectors.[848] An additional obstacle is the lack of birth registration. Children without it exist neither legally nor statistically. Birth registration is not free of charge, adding yes another financial barrier for the poor.[849] That financial obstacle is compounded by charges levied in public school, which should be but is not free.

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[845] A 'School Report' of 14 Developing Countries in Asia Pacific to Investigate their Commitment to Basic Education, Asian South Pacific Bureau of Adult Education and Global Campaign for Education, 2005, available at www.aspbae.org or www.campaignforeducation.org (October 2005).
[846] Supreme Court of the Philippines - *Guingona, Jr. v. Carague*, G.R. No. 94571, 22 April 1991.
[847] Commission on Human Rights - *12 Years of Human Rights Advocacy: 1998 Annual Report*, Quezon City, p. 7.
[848] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 236.
[849] U.N. Doc. CRC/C/15/Add.259 (2005), para. 33.

Singapore

Compulsory education was introduced in Singapore in 2003 after primary education had been universalized. Anne Pakir wrote in 2000 that "although education is not compulsory, there is universal acceptance of its importance, with every child enrolling for primary school at the age of six".[850] A careful consideration of human rights dimensions of compulsory education preceded its introduction. The rationale was that "compulsory education is seen as the exercise of the power of the state to impose, regulate, compel and control education. It is thus not seen only - not even mainly - as a right but also as an exercise of the power of the state which necessitates human rights safeguards against abuse".[851] Human rights safeguards included numerous alternatives to public school so as to accommodate the variety of linguistic, ethnic and religious communities in the small but heterogeneous population of Singapore.

Making education free so as to eliminate financial obstacles to compliance with the compulsory education law was done selectively, however. Singapore provides an illustrative example of policy-based charges levied in primary school because citizens are entitled to partially-free education while non-citizens have to pay a large part of the cost:

> In the primary school, Singaporean pupils and those who are children of Singaporeans do not pay school fees. Non-citizen pupils in the primary school pay school fees at different rates. Those whose parents are permanent residents, employment pass holders and diplomats of foreign embassies pay a fee of S$36 (about US $20) per annum. Other non-citizens pay S$960 (about US$ 640) per annum. Still, these rates are much lower than the actual cost (S$2865) per annum of educating a child in the primary school. In line with the philosophy that parents must be responsible for their children's education, miscellaneous fees are charged to all pupils in order to meet part of the cost of materials and supplies that are used in school. The rate of the miscellaneous fees at the primary school level is S$10 per month.[852]

The underlying rationale for not making compulsory education free despite the ability of the government to make it so is two-fold. The law emphasizes parental responsibilities for their children and these are interpreted to demand their financial contribution for the education of their children. Moreover, constitutional guarantees of the freedom of each community to educate their children so as to transmit to the next generation key features of their collective identity sustains diverse types of education in parallel. All their costs are often borne by the parents and communities. Levelling the playing field would require governmental subsidies *all* types of education. The government is apparently not willing to consider such a change.

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[850] Pakir, A. – Singapore, in: Kam, H.W. & Wong, R.Y. (eds.) – *Language Policies and Language Education: The Impact in East Asian Countries in the Next Decade*, Times Academic Press, Singapore, 2000, p. 261.
[851] U.N. Doc. CRC/C/51/Add.8 of (2003), paras. 421-424.
[852] U.N. Doc. CRC/C/51/Add.8 (2003), para. 419.

Sri Lanka

In the 1970s free and all-encompassing education made Sri Lanka a favourite example of a developing country with an excellent performance in the social sector, including education.[853] This heritage was reflected in Sri Lanka's PRSP. The government claimed that primary education had already been universalized and outlined its strategy for secondary education.[854] Indeed, enrolments in primary school show that it is all-encompassing, with gross enrolments often exceeding 100%.[855] Children normally finish primary school at the age of 9, however, while they should be at school at least until the age of 14 by minimal global standards. This demonstrates that a country can comply with the MDG goal of universal primary education but remain far below minimal global human rights standards.

Previous accomplishments in making education free were described by the government in 1996. It emphasized that the abolition of charges in public school went much further than offering free enrolment or tuition:

> A free textbook scheme has operated for most of the period since the 1950s. A free mid-day meal was provided from the 1950s till 1964, when it was discontinued. It was reintroduced in 1989. There is some evidence that school enrolment and school attendance have been greater during the periods when a mid-day meal has been provided. In 1991, a free school uniform was also provided. These measures have meant that the parental costs for education have been minimal.[856]

However, protracted warfare and the underlying political conflict could not have left education unharmed. The cost of war, which is formally traced back to 1983 and was formally ended through an agreement in 2002, has been reflected in diminished budgetary allocations for education. They decreased from 4 to 3% of GDP and from 15 to 10% of government budget. It was not only militarization but also economic policy that transferred some of the cost of education to family budgets. This was exemplified in the privatization of higher education.[857]

The right to education was in some ways protected from the long armed conflict and the associated high military expenditure. Education International reported in 2004 that education was free and, alongside free enrolment and tuition, school books and uniforms were also provided free of charge.[858] The government reported in 2002 that a constitutional reform had been initiated to prolong free education in order to encompass all children between the ages of 5 and 14.[859] This would bring Sri Lanka's policy up to global minimal human rights standards.

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[853] Tomasevski, K. – *Development Aid and Human Rights*, Pinter Publishers, London, 1989, pp. 76-77.
[854] Regaining Sri Lanka: Vision and Strategy for Accelerated Development (February 2003), available at www.worldbank.org
[855] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org
[856] U.N. Doc. E/1990/5/Add.32 (1996), para. 318.
[857] Fernando, S. – Tightening the noose around the people's neck: The IMF standby loan to Sri Lanka, *Human Rights Solidarity*, vol. 11, No. 9, September 2001, p. 28-29.
[858] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 271.
[859] U.N. Doc. CRC/C/70/Add.17 (2002), para. 74.

International support for peace-making has aimed to facilitate re-diversion of funds from military expenditure back to public investment in education. However, the politics of aid through parallel infrastructures set up by the government and by the Liberation Tigers of Tamil Eelam (defined as a terrorist organization by key donors) has made things difficult. The political costs of the previously chosen educational model has included revisiting segregated education, which is deemed to have contributed to conflict generation.[860] Possible changes during peace-making might ensue. They would necessitate peace instead of a low-intensity war [861] which has continued in 2006. These difficulties have inspired Vance Culbert to pose a question which international creditors and donors seldom ask: "if there is resumption of the conflict, in what ways will relief and development organizations have contributed to new capacities for war?" [862]

Thailand

The popular uprising which brought down the military government in 1992 triggered a profound reform of governance and human rights protections were constitutionally entrenched in its aftermath. Education was constitutionally defined as a governmental obligation. The length of compulsory education was thereafter extended from 6 to 9 years so as to unify the school leaving age and the minimum age of employment. Both were set at 15. The purpose was to integrate human rights in governmental policy and thereby link the usually separate sectors of education and labour. The background had been inconsistent age categorizations:

> The minimum compulsory school age creates a problem for child employment when compared with the minimum employment age. Children are only about 11 or 12 years old when they complete compulsory primary school, too young for the labour market which allows legal entry only to 13-year olds. Since just over half of the primary school graduates chose to continue to secondary level in the last decade, many have been entering the labour market illegally. Besides, child labour has traditionally been an important source of free labour in rural farming areas and parents will be hard put to find alternative sources of labour.[863]

The 1997 Constitution enshrined 12-year long free education for all children as a right: "A person shall enjoy an equal right to receive the fundamental education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge." The extension to further three years of free - but no longer compulsory - education has been part of subsequent reforms.[864]

The process of reforming education was halted during the 1997 economic crisis but has resumed in its aftermath. Education has not yet been universalized which means that the constitutionally guaranteed right to education cannot be enjoyed by all children in the country.

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[860] Nissan, E. – *Sri Lanka: A Bitter Harvest*, Minority Rights Group, London, 1996, pp. 35-36.
[861] Ramesh, R. – Sri Lanka on brink of war, *Guardian Weekly*, 5-11 May 2006.
[862] Culbert, V. – Civil society development versus the peace dividend: international aid in the Wani, *Disasters*, vol. 25, 2005, No. 1, p. 55.
[863] U.N. Doc. CRC/C/11/Add.13 (1996), para. 115)
[864] *The Development of Education: National Report of Thailand by the Ministry of Education*, Thailand, International Bureau of Education, Geneva, September 2001, mimeographed.

The process of human rights adjustment has spanned 'an obligation to revise laws regarding child rights to ensure that they comply' with international human rights treaties.[865] This entails extending education to those who are in the country but out of school. The government has described them thus: "children living in remote rural areas, children of poor families, children living in slums, children living in areas that have a different language and culture, children of ethnic minorities such as hill-tribe children and island children".[866] As everywhere else, poverty compounds obstacles faced by such children. Also, education is not defined as a human right but only a right of children who are both citizens and legal residents of Thailand:

> Access to education [for hill tribe people] is limited although the Ministry of Education issued a regulation in 1992 which gave guidelines to provide education to children without domicile and with non-Thai nationality and to provide a certificate of education to such students upon completion of studies. Yet education personnel and schools often do not accept hill tribe children for admission as they do not know about the ministerial regulation. [867]

The reference to 'non-Thai nationality' highlights the fuzzy boundaries between *citizenship* (as the legal link between the individual and the state) and *nationality* (the individual's origin). This fuzziness has been explained by Pahus Phongpaichit and his team as part of their research into exclusion in Thailand. They traced the crucial role of education in the forging of Thai nation in the 19th century through three defining characteristics: the Thai language, Buddhist religion, and loyalty to the Thai crown.[868]

Timor-Leste

On the eve of independence of the youngest member state of the United Nations, Timor-Leste, the UN administration, UNOTIL, carried out a public consultation on priorities for the future state. Education was ranked as the first priority:

> One of Mr de Mello's final acts was to launch East Timor 2020, an easy-to-understand version of the government's development plan, drawn up with input from East Timor's 13 districts. In every one of them, people came up with the same top priority: education.[869]

A combination of enthusiasm for the long-desired independence and generous external funding rapidly reconstructed schools. Most had been ruined in the bloody aftermath of the referendum for independence in 1999. Children were back at school already in October 2000.

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[865] U.N. Docs. CERD/C/292/Add. 2 (1997), para. 18; CRC/C/11/Add.13 (2002), para. 67.
[866] U.N. Doc. CRC/C/11/Add.13 (2002), para. 342.
[867] Chamsuwan, N. and Poomsrikaew, J. - Discrimination against hill tribes, *Human Rights Solidarity*, vol. 14, No. 6, November 2004, p. 17.
[868] Phongpaichit, P. et al. – *Challenging social exclusion: Rights and livelihood in Thailand*, International Institute for Labour Studies & UNDP, ILO, Geneva, 1996, Research Series No. 107, p. 21.
[869] East Timor: Freedom at midnight, *The Economist*, 18 May 2002.

In retrospect, the means were confused with the end. Getting children to school rapidly improved educational statistics but left key questions un-asked. Portuguese was chosen as the language of instruction, which few teachers and even fewer children could speak.[870] This made both teaching and learning immensely difficult, often impossible.

To enable all children to go to school, education is such an impoverished country had to be made free but this has not yet been accomplished. The World Bank described a "temporary abolition of school fees" which consisted of the reduction to one-third of the costs that families previously had to pay. This reduction of charges increased educational enrolments but the question whether primary education should be free remains open. The Ministry of Education regulated in 2002 monthly charges that could be imposed in public primary schools. There has been no systematic monitoring of the charges that are actually levied and these are likely to be much higher:

> After many schools were rehabilitated and became operational, some schools resumed charging fees in order to have some discretionary resources for school supplies, minor repairs, or even teacher salaries. This was often done in consultation with parents. Anecdotal evidence shows that parental contribution has been on a voluntary basis in public schools, and students were not penalized if their parents could not afford to pay. In 2003, rural schools charged parents $1-$3 per month; some as much as $5-$10. For schools serving poor communities, parents were hard-pressed to contribute. [871]

The Constitution includes an explicit guarantee of the right to education and specifies that free and all-encompassing basic education is the goal that should be attained.[872] An immediate guarantee of free education requires government's ability to finance it, which simply did not exist at independence. Much of government's budget was externally financed, leaving the country 'free but hungry' as some observers put it after international and foreign agencies started pulling out. In retrospect, this was premature, leaving that international experiment seen as "a saga of short-termism, ill-directed aid, and conflicting priorities".[873] Timor-Leste had to call in international peacekeepers as the country was plunged into an armed rebellion and communal violence which a divided government could not quell. Linda Polman has attributed this phenomenon to "short, cheap and small" missions that are supposed to help state-building but cannot do so.[874]

When peace is restored and state-building continues, it is unlikely that education will be made free so that all children can go to school. That had not been placed high on the government's agenda. The cost of achieving the MDG targets in education and health was estimated at an annual $203 million.

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[870] Nicolai, S. – *Learning Independence: Education in Emergency and Transition in Timor-Leste since 1999*, International Institute for Educational Planning, Paris, 2004, available at www.unesco.org/iiep.
[871] The World Bank – *Timor-Leste Education since Independence: From Reconstruction to Sustainable Improvement,* Report No. 29784-TP, December 2004, pp. xviii, 12 and 84.
[872] The Constitution says: "The State shall recognize and guarantee that every citizen has the right to education and culture, and it is incumbent upon it to promote the establishment of a public system of universal and compulsory basic education that is free of charge in accordance with its ability and in conformity with the law." Constitution of the Democratic Republic of Timor-Leste, adopted on 22 March 2002 and in force as of 20 May 2002, available at www.gov.east-timor.org.
[873] Donnan, S. – Dili dilemma: How blunders in building a nation are being brutally laid bare, *Financial Times*, 12 June 2006.
[874] Polman, L. – Only the trappings of a legitimate state, *Guardian Weekly*, 9-15 June 2006.

This does not seem feasible with expected annual oil revenues of some $158 million [875] unless there is generous and sustained international aid. Education might, however, become a casualty of the huge costs of international peacekeepers deployed in Timor-Leste in June 2006.

Viet Nam

Viet Nam has a constitutional provision which defines education as both a right and an obligation, and also stipulates that primary education should be compulsory and free. [876] This 'free' has been defined only in a sense of free-of-charge while freedom in education is denied. There is no guarantee of freedom of religion in practice or in the law, hence religious education is severely constrained through governmental regulations which have codified "state control over all aspects of religious life".[877] Education should therefore be free in a material sense but not also in terms of safeguards for freedom *of* and *in* education. Other limitations upon freedom can be gauged from criminal trials of people who were convicted to prison sentences for 'abusing their rights'. The crime in question can be an article placed on the internet to explain what democracy is.[878] Or a crime of 'abusing rights to democracy and freedom' may consist of advocating political reform.[879]

Although the Constitution mandates free education, the government's policy is to levy charges. They were formally introduced in 1993 but primary education was supposed to have been exempt.[880] The World Bank has described that tuition fees were introduced in public schools in 1989, including in primary schools and private education was legalized at the same time. [881] Le Thi, then the director of the Centre for Family and Women Studies, found that the introduction of charges in education, which had previously been free, led to decreased educational enrolments. By mid-1990s, the completion of compulsory education diminished to 72% while 2.2 million children were estimated to be out of school.[882]

The regulatory regime for education is a merger between laws imported from the Soviet Union decades ago and adjusted to the Vietnamese heritage, and as of 1986 they are complemented by free-market-inspired laws. This makes different parts of the law mutually incompatible. Moreover, there is no mechanism to challenge such incompatibilities.

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[875] Timor-Leste: Free but hungry, *The Economist*, 11 March 2006.
[876] The 1992 Constitution obliges the state to "strive to universalize primary education" and "to invest in education on a priority basis." In its listing of the citizens' fundamental rights and duties, the Constitution says: "Education is a right and obligation of citizens. Elementary education is mandatory and free." Also it adds that "the State shall adopt policies on tuition fees and scholarships." Blaustein, A.P. & Flanz, G.H. (eds.) – *Constitutions of the Countries of the World*, Oceana Publications, Dobbs Ferry (New York), Release 92-8, December 1992, pp. 3-35.
[877] Amnesty International – *2005 Report*, available at www.amnesty.org/report2005
[878] Gagged: If this is human rights, then Vietnam has radically redefined it (editorial), *Far Eastern Economic Review*, 3 July 2003.
[879] Jailed: A Vietnamese court hands down a sentence for 'abusing the right to democracy' (editorial), *Far Eastern Economic Review*, 22 July 2004.
[880] Ministries of Education and Finance - Joint Ministerial Circular on Guidance for Tuition Fees for Public Basic Education, No. 14/TT-LB, 4 September 1993.
[881] Prescott, N. – *Poverty, Social Services, and Safety Nets in Vietnam*, World Bank Discussion Paper No. 376, Washington D.C., October 1997, pp. 3-5.
[882] Thi, L. – *The Role of the Family in the Formation of Vietnamese Personality*, The Gioi Publishers, Hanoi, 1999, p. 114.

Although children have a constitutional right to free education, they cannot vindicate their right by challenging governmental policy which negates it. There is a formally recognized right to lodge a complaint against illegal acts of governmental bodies vested with issuing and implanting regulations, including for levying fees and other charges, but few people use them and even fewer succeed.[883] In consequence, there is an abyss between constitutional guarantees and the situation on the ground:

> For every 100 of government spending on primary education, households spend 80. In fact, the government's official fee policy plays a minor role in determining the full price that families face in sending a child to public school. In urban areas, each child enrolled in a public primary school pays an average VND 261,000 per year ($24), despite the fact that official school fees are zero.[884]

The reason for this abyss between nominally guaranteed free education and unruly reality is that, after the turn of the millennium, the government finances only 50% of the total cost of education.[885] The 2003 Social Watch Report described the effects thus:

> Even though primary education is free in public schools, other fees such as the fee for school construction and fees for textbooks and uniforms are relatively high. For a family with two children, the annual education fee could be about 15-30% of the total family expenditure.[886]

This privatization of financial responsibility for education conforms to the World Bank's analysis and prescription: "Given Vietnam's recent high rate of economic growth, it appears likely that willingness to pay for education will increase with time in Vietnam, which provides scope for improving school quality, either through cost recovery in public schools or through increased enrolment in high-quality private schools".[887]

The parental 'willingness to pay' for education has obliterated the notion of education as a public responsibility and the previous model of education as a free public service. The resulting transfer of financial responsibility for education from the government to the family openly conflicts with legally defined governmental responsibilities and, thus, it undermines the rule of law.

Also, this transfer of financial responsibility for education from the government to the family leads to economic exclusion. Its short-term effects can be seen in some of the educational statistics. Its impact will be seen in a long time perspective.

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[883] Buhmann, K. – *Implementing Human Rights through Administrative Law Reforms: The Potential in China and Vietnam*, Djøf Publishing, Copenhagen, 2001, pp. 431-461.
[884] The World Bank - *Vietnam Education Financing,* Washington D.C., 1997, p. 53.
[885] Holsinger, D.B. – *Trends in school finance: a summary of recent evidence*, Asian Development Bank, Hanoi, mimeographed, 2001.
[886] Tran Thi Que & To Xuan Phuc – The Doi Moi policy and its impact on the poor, 2003 Social Watch report, available at www.socialwatch.org
[887] Glewwe, P. & Patrinos, H.A. – *The Role of the Private Sector in Education in Vietnam: Evidence from the Vietnam Living Standards Survey*, The World Bank, LSMS Working Paper No. 132, Washington D.C., March 1998, p. 19.

MIDDLE EAST AND NORTH AFRICA

The post-9/11 concern for education

The global interest for education in the Middle East, particularly for religious education, was triggered by the US war-on-terror. Although the impact of the Arab-Israeli conflict throughout the past six decades could not fail to be reflected *on* and *in* education, it has been globally marginalized.[888] Post-9/11 fears that religious schools might breed terrorism and the lack of knowledge in the global educational industry about religious education generated much more heat than light. They proved wrong the assumption of international creditors and donors whereby governments provide most education or, at least, know where and how it is provided. *Education*, including religious, has turned out to be much more widespread than formal government-provided *schooling*. A puzzling result of literacy surveys have been larger numbers of people in the Middle East who know how to read and write, much larger than the number of people who went to school.[889] The reason is that government-provided schooling is only one of the parallel systems of education.

There is, of course, correspondence between the reach of formal, government-provided schooling and literacy. High levels of literacy are reported from Algeria, Bahrain, Jordan, Libya and Tunisia while Egypt, Mauritania, Morocco, Sudan and Yemen exhibit high illiteracy.[890] In the former group of countries, the government ensures widely, often universally available schooling and education is fully or mostly free. In the latter group, governmental policies vary but education is not universal and is in effect not compulsory. However, formal schooling provides is only one venue for children's learning. Where education is designed in accordance with the global model which focuses on its poverty-reduction or wealth-generation dimensions, the abyss between what children learn in and out of school is huge. That model obliterates the primordial role of education to transmit cultural values and rules of conduct to the next generation, in the broadest meaning of culture as the way of life. This includes the culture(s) of victimhood and varying explanations of the causes and the consequences of conflicts and warfare in the Middle East.

The design of education stemming from global strategies, such as the MDGs, prioritizes quantitative targets. Consequently, it is presented as a technical exercise. Additional funds are needed to get poor children to school and, once at school, they are expected to master a general curriculum so as to complete their schooling and demonstrate their thus acquired literacy and numeracy in appropriate tests. Their basic knowledge and skills should subsequently help reduce poverty. Governments are supposed to invest in education because it yields good returns on investment. Because the underpinning discipline is economics, there is no mention of the politics of education policy. Also, there is no mention of religion. Nobody knows what the quantitative balance between religious and secular education may be in the Middle East and North Africa.

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[888] Tibawi, A.L. – *Islamic Education: Its Traditions and Modernization into the Arab National Systems*, Luzac & Company, London, Second edition, 1979, p. 225.
[889] *The Millennium Development Goals in Arab Countries*, UNDP, New York, December 2003, p. 8.
[890] Hammoud, H.R. – Illiteracy in the Arab World, Beirut, April 2005, Commissioned paper for EFA 2006 Report, available at http://portal.unesco.org/education (November 2005).

Because the MDGs and related educational strategies represent a form of global central planning, the vocabulary "is couched and squeezed in the administrative and spiritless language of the World Bank". [891] There are no goals or targets related to religious education and no internationally comparable data on the incidence and prevalence of religious education. Religious communities do not apply for World Bank's loans. If counted, religious schools are classified as 'private'. In Lebanon, 66% of primary school children attend such 'private', that is religious schools, and in the United Arab Emirates it is almost half (45%).[892]

The instrumentalization of education for poverty reduction, and the World Bank as the key architect of the resulting global strategies, emphasize 'efficient delivery' and 'economies of scale'. When the World Bank discovered religion as the driver of Lebanon's model of education, a clash between its own model and Lebanon's reality at the time became obvious:

> A distinguishing characteristic of Lebanon's education system is that schools are run by religious communities. The community-level administration of schools, combined with the sectoral [893] division of the education system, may result in ineffective school mapping. These factors also prevent the country from using potentially promising economies of scale, and they have also led to substantial transportation needs for students who attend religious schools not located in the communities in which their families reside.[894]

Neither 'effective school mapping' nor 'economies of scale' have shaped education in Lebanon in the past nor are they likely to become its drivers in the future. Education is embedded in the country's model of governance and that model was shaped by Lebanon's turbulent history. An assumption that education was - or could be - designed on an investment-return calculation was not congruent with Lebanon's reality at the time, or as will be after another devastating war in 2006. Analyzing *how* education works and *why* it works that way provides the necessary basis for understanding what changes might be desirable and feasible, and how they might be facilitated.

Parallel systems of education

An essential feature of education in the Middle East is that it is neither unified nor uniform. The 2005 Arab Development Report described three educational systems that run in parallel, government-provided, private and religious, to conclude that these three "mutually exclusive sectors" weaken the social fabric.[895]

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[891] Bayat, A. – Transforming the Arab world: The Arab Human Development Report and the politics of change, *Development and Change*, vol. 6, 2005, p. 1230.
[892] UIS/UNESCO – Arab States: Regional Report, UNESCO Institute for Statistics, Montreal, 2002, available at www.unesco.org/uis
[893] The text should have used the word 'sectarian' to describe education divided alongside the boundaries of the 18 religious sects in Lebanon but was apparently changed into 'sectoral' (denoting 'the sector of education') because the latter term forms part of the World Bank's educational vocabulary while the former does not, or at least did not at the time.
[894] The World Bank - *Lebanon: Public Expenditure Review - Education Sector*, MNSHD Discussion Paper Series No. 2, September 1999, para. 6, p. 2.
[895] UNDP - *Arab Human Development Report 2004: Towards Freedom in the Arab World*, United Nations Development Programme, Arab Fund for Economic and Social Development, and Arab Gulf Programme for United Nations Development Organizations, UNDP, Regional Bureau for Arab States (RBAS), New York, 2005, p. 147.

Government-provided education profoundly changed in the past two decades. It used to be also government-financed but this is no longer the case. The increasing cost of education transferred from governments to families led the 2002 Arab Development Report to note that "education has begun to lose its significant role as a means of achieving social advancement, turning instead into a means of perpetuating social stratification and poverty" and pinpointed the reason:

> There is a danger that the education systems in the Arab countries will be split into two unrelated parts: very expensive private education, enjoyed by the better-off minority, and poor-quality government education for the majority – and even the latter can be costly for the less well-off in view of cost-recovery policies adopted by Arab countries in the context of structural adjustment programmes.[896]

This negative assessment in a publication that became a bestseller, with more than a million copies downloaded within six months of its publication,[897] indicates how much public education was marginalized in inter-governmental and governmental policies and what the toll was for the young. The increasing price of government-provided (nominally free) education and the unaffordability of private schools have amplified the space for religious education. Extremely young populations throughout the region (a half tends to be under 20 years of age) should have led to increased budgetary allocations for education but they were often slashed instead.

Because the Middle East has some of the wealthiest oil-exporters in the world, the yardstick for assessing public investment in education is inevitably raised. The meaning of *free* education is very broad in countries which are both wealthy and generous. The upswing in oil prices in 2006 is likely to increase public investment in education and, thus, offset some of the budgetary reductions in the previous decades. The turmoil of warfare has been reflected in the relentlessly high military expenditures but the focus on conflicts and militarization has also "isolated education from the scene of events and from the list of official and popular political priorities".[898] The downswing in the price of oil further curtailed public investment in education as did structural adjustment programmes, with the "burden of debt increasing and the population continuing to grow".[899]

Increased budgetary allocations to education result in improved educational statistics but their impact may be negative where high unemployment rates amongst graduates contradict the assumption that education leads to poverty reduction or wealth creation. Frustrations and resentment are inevitable if years of learning are wasted because people cannot gain their livelihood after graduating as they (and their parents) were led to believe. That divorce between 'education' and 'youth unemployment' as separate 'sectors' reinforced the paradigm whereby governments should <u>not</u> provide employment. What the youth is supposed to do with the schooling which governments have provided?

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[896] UNDP/AFESD – *Arab Human Development Report 2002: Creating Opportunities for Future Generations*, United Nations Development Programme and Arab Fund for Economic and Social Development, New York, 2002, p. 53-54.
[897] Arab learning: Know thyself, *The Economist*, 25 October 2003, p. 42.
[898] Ministry of Education – *National Report on the Development of Education: State of Kuwait*, prepared by Kuwait National Commission for Education, Science and Culture and the Department of Planning, Ministry of Education, The International Conference on Education, 45th Session, Geneva, 1996, p. 13.
[899] UNICEF – *Women and Children in the Arab Maghreb*, UNICEF Regional Office for the Middle East and North Africa, Amman (Jordan), 1993, p. 16.

As the 2002 Arab Development Report noted, answers to that question are overdue. International human rights law provides the framework for seeking answers to that question because it forces joining separate 'sectors' by the principle that human rights are indivisible. The affirmation of the basic human rights principles in the regional and national law is, however, fragmentary.

Commitments to the right to education

The assumption behind international human rights law whereby national law is created and changed through democratic processes does not fully apply in the Middle East. In some countries, secular and religious law exist in parallel, in others religious law takes precedence. Oman's position is that "the Quran is the divine source of all rights and duties in Islamic society, codified and defined in Islamic Shari'a law." In Saudi Arabia, a formal listing of rights adopted in 1992 clarifies that "the State protects human rights in accordance with the Islamic Shari'a".[900] Subsequent to the shift from secular to religious law in Iran in 1979, the new Islamic Republic of Iran challenged the legitimacy of secular law, including the Universal Declaration of Human Rights which is generally deemed to constitute the universal minimum accepted by all governments.[901]

Although such uncertain status of internationally guaranteed human rights inhibits much human rights work, the right to education in the sense of individual entitlement to public services fares well. The Cairo Declaration on Human Rights in Islam, formally presented to the United Nations by the government of Iran in 1992, affirms the right to education in the following manner:

> The quest for knowledge is an obligation and the provision of education is a duty for society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of society so as to enable man to be acquainted with the religion of Islam and the facts of the Universe for the benefit of mankind.
> Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defence of both rights and obligations.[902]

The League of Arab States adopted the Arab Charter on Human Rights in 1994. It explicitly affirms that "education is a right for every citizen. Elementary education is compulsory and free".[903] This definition restricts the right to education to citizens, which does not conform to international human rights law but is widespread in other regions as well.

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[900] Azzam, F.S. – *Arab Constitutional Guarantees of Civil and Political Rights (A Comparative Analysis),* Cairo Institute for Human Rights Studies, Cairo, 1996, pp. 25-26.
[901] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 158-164.
[902] Letter dated 8 April 1992 from the Permanent representative of the Islamic Republic of Iran to the United Nations Office at Geneva for the Preparatory Committee of the World Conference on Human Rights, U.N. Doc. A/CONF.157/PC/35 (1992), Article 9, p. 4.
[903] The Arab Charter on Human Rights, *The Review of the International Commission of Jurists*, Geneva, No. 56/1996, pp. 57-64.

Governmental policies consistent with this commitment to free and compulsory elementary education did not find favour with the World Bank, however. It has diagnosed that "free education, publicly provided, has been a central tenant of the social contract" but has objected that "this resulted in crowding out of private delivery through a lack of demand, and some consequent ossification in educational development".[904] This reference to the attractiveness of 'private delivery' was re-written post 9/11. The electoral victory of Hamas, the subsequent aid cutoffs, and the fact that Hamas has been providing education for decades ('private delivery' by the World Bank's definition) led the World Bank to change its discourse. In its review of options for resuming external funding for teachers and schools, it has ominously stated: "The crisis could lead the public to look for basic services, such as education, from informal and less secular providers".[905]

The heritage of education as a public responsibility is reflected in the constitutions and laws of Middle Eastern countries. Their legal commitments, in particular to free primary education, are presented in Table 17. Free primary education is guaranteed in all countries in the Middle East and North Africa with the sole exception of Djibouti. Table 17 also shows that this guarantee has been translated into governmental policy in the majority of countries.

Table 17
Free education in the law and in practice:
Middle East and North Africa

Country	Legal guarantee of free education		Charges levied	
	Yes	No	Yes	No
Algeria	√			√
Bahrain	√			√
Djibouti		√	√	
Egypt	√		√	
Iran	√		√	
Israel	√		√	
Jordan	√			√
Kuwait	√			√
Lebanon	√		√	
Libya	√			√
Morocco	√			√
Qatar	√		√	
Saudi Arabia	√			√
Sudan	√		√	
Syria	√			√
Tunisia	√			√
United Arab Emirates	√		√	
Yemen	√		√	

Sources: Algeria – E/1990/6/Add.26, 2000, paras. 161 and 173-174; Bahrain – CRC/C/11/Add.24, 2001, paras. 75 and 249-250, and CERD/C/353/Add.1/rev.1, 1999, para. 4.1; Djibouti –

[904] The World Bank – *Education in the Middle East & North Africa: A Strategy Towards Learning for Development*, Washington D.C., 1998, pp. 5 and 7.
[905] The World Bank – The impending Palestinian fiscal crisis, potential remedies, 7 May 2006, p. 5, available at www.worldbank.org

CRC/C/8/Add.39, 1998, paras. 2,7 and 101, and CRC/C/15/Add.131, 2000, para. 17; Egypt – CRC/C/65/Add.9, 1999, paras. 136-138; Iran – CRC/C/41/Add.5, 1998, paras. 45, 129 and 132, and CRC/C/15/Add.123, 2000, para.2; Israel – CRC/C/8/Add.44, 2002, paras. 156, 910, and 1141; Jordan – CRC/C/70/Add.4, 1999, para.11; Kuwait – CRC/C/8/Add.35, 1996, paras. 163 and 168, and CRC/C/15/Add.96, 1998, paras. 17 and 25; Lebanon – CRC/C/70/Add.8, 2000, paras. 194-199 and 233; Libya – CRC/C/93/Add.1, 2002, paras. 222, 238 and 246-247; Morocco – CRC/C/93/Add.3, 2003, paras. 456, 484 and 631; Oman – CRC/C/78/Add.1, 2000, paras. 172 and 246, and CRC/C/15/Add.161, 2001, paras. 43-44; Qatar – CRC/C/51/Add.5, 2001, paras. 3 and 126, and CERD/C/360/Add.1, 2001, para. 58; Saudi Arabia – CERD/C/370/Add.1, 2001, para. 26, CRC/C/61/Add.2, 2000, para. 143, and CRC/C/15/Add.148, 2001, paras. 6,21, and 39; Sudan – CRC/C/65/Add.17, 2001, paras. 271, 279 and 283; Syria – CRC/C/93/Add.2, 2002, paras. 70-71, 129 and 143; Tunisia – CRC/C/83/Add.1, 2001, paras. 494-496; United Arab Emirates – CRC/C/78/Add.2, 2001, paras. 2, 170 and 251; Yemen – CRC/C/70/Add.1, 1998, paras. 152, 155 and 166.

Governmental policies vary in defining what free education means and in ensuring that such formal guarantees are translated into practice. Where the government is both willing and able to eliminate all financial barriers that might keep children out of school, the definition of free is broad as international human rights law requires. Education can be called *free* where the government only pays teachers' salaries while families are supposed to bear all other costs. Such 'technically free' education leaves "indirect costs of uniforms, tutoring, and books that parents often cannot afford or do not wish to pay".[906] School books tend to constitute a considerable expense and are reportedly provided free of charge in Algeria, Bahrain, Oman, Saudi Arabia, and Syria [907] but not in other countries in the region. Transportation is an additional expense, especially for remote, scattered or nomadic communities and it is reportedly provided free of charge in Algeria, Bahrain, Oman, and Saudi Arabia.[908] All expenses in boarding schools for children "from remote areas" are paid by the government in Libya.[909]

Much as in other regions, there is close correspondence between effective guarantees of free education and the universalization of primary schooling. The UNDP has divided Arab countries into high performers with enrolment ratios close to 100% (Tunisia, Algeria, Syria, Bahrain, Qatar, and Egypt), those where enrolments are low (Morocco, Lebanon, Yemen, Kuwait, Oman and Saudi Arabia), and Djibouti and Sudan with less than half of children enrolled.[910] Obviously, making education free is a necessary but insufficient condition for making formal schooling all-encompassing. Saudi Arabia is a good example since only 67% of school age children start primary school.[911]

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[906] Rihani, M. – *Strategies for Female Education in the Middle East and North Africa*, UNICEF Middle East and North Africa Regional Office, Amman (Jordan), 1993, p. 46.
[907] Algeria – U.N. Doc. E/1990/6/Add.26 (2000), paras. 173-174; Bahrain – U.N. Doc. CERD/C/353/Add.1/Rev.1 (1999), para.4.1; Oman – U.N. Doc. CRC/C/78/Add.1 (2000), para. 60; Saudi Arabia – U.N. Doc. CERD/C/370/Add.1 (2001), para. 26; Syria – U.N. Doc. CRC/C/93/Add.2 (2002), para. 129.
[908] Algeria – U.D. Doc. E/1990/6/Add.26 (2000), paras. 173-174; Bahrain – U.N. Doc. CERD/C/353/Add.1/Rev.1 (1999), para.4.1; Oman – U.N. Doc. CRC/C/78/Add.1 (2000), para. 172; Saudi Arabia – U.N. Doc. CERD/C/370/Add.1 (2001), para. 26.
[909] U.N. Doc. CRC/C/93/Add.1 (2002), para. 238.
[910] *The Millennium Development Goals in Arab Countries*, UNDP, New York, December 2003, p. 7.
[911] UIS/UNESCO – Arab States: Regional Report, UNESCO Institute for Statistics, Montreal, 2002, available at www.unesco.org/uis

Lowering private costs of education has been identified as a priority in the region because of large numbers of children who start school but drop out early. If the full cycle of basic education is counted (nine years of schooling), Djibouti and Sudan are singled out as low performers.[912] Both epitomize the ill fate of education stemming from militarization and warfare.

Educational toll of militarization

An implicit rule of statistics is that particularly large military expenditures are never fully reflected in the official statistics. It is the opposite in education and no official statistics is available where public investment in education is low. The first regional survey by the UIS in 2002 solicited data on the public expenditure on education. Only five governments in the region provided them while ten did not reply.[913]

Table 18 reproduces data on public investment in education compared with military expenditure for 17 countries. It shows that only for nine countries official statistics are available to indicate the size of public investment in education. These show that Israel, Tunisia and Iran allocate budgetary resources close to the UNESCO's recommendation of 6% of the GDP as the necessary minimum. The absence of data from so many countries is likely to mean that public investment in education is low. The data from SIPRI, which does not rely on governments to furnish data on military expenditure and thus provides statistics for all countries, show that some of the highest military spenders in the world are in this region, Oman, Kuwait, Saudi Arabia and Israel. The justifications for this expenditure are well known, its educational toll is seldom discussed. For example, the Committee on Economic, Social and Cultural Rights has noted for Algeria that its educational investment decreased in the 1990s while the military expenditure doubled.[914] There are too few occasions when governments are faced with such questions and there is no global mechanism to hold them accountable for ignoring recommendations to prioritize investment in education over military expenditure.

[912] UIS - *Arab States: Regional Report*, UNESCO Institute for Statistics, Montreal, 2002, p. 45.
[913] UIS/UNESCO – Arab States: Regional Report, UNESCO Institute for Statistics, Montreal, 2002, available at www.unesco.org/uis
[914] U.N. Doc. E/C.12/1/Add.71 (2001), para. 23.

Table 18
Military expenditure and public investment in education
in the Middle East and North Africa as percentage of GDP in 2002

	Military expenditure	Public investment in education
Algeria	3.7%	…
Bahrain	3.9%	…
Egypt	2.7%	…
Iran	(4.0%)	5.0%
Israel	9.2%	7.3%
Jordan	8.4%	4.6%
Kuwait	10.4%	…
Lebanon	4.7%	2.9%
Libya	2.4%	2.7%
Morocco	4.3%	5.1%
Oman	12.2%	4.2%
Saudi Arabia	9.8%	…
Sudan	2.8%	…
Syria	(6.1%)	4.0%
Tunisia	(1.6%)	6.8%
United Arab Emirates	3.7%	…
Yemen	7.1%	…

There is no data available for Djibouti, Iraq and Qatar.

Sources: The data on military expenditure originate from SIPRI Yearbook 2003 (www.sipri.org) . The figures in brackets denote estimates or an earlier year if not figure was reported for 2002. The data on public investment in education originate from UNDP's 2004 Human development Report (http://hdr.undp.org/statistics).

Table 18 reinforces UNICEF's findings on the excessive military expenditure by North African and Middle Eastern governments in the 1990s. Their average military expenditures amounted to no less than 12.6% of GDP, more than double the global average.[915]

[915] Rihani, M. – *Strategies for Female Education in the Middle East and North Africa*, UNICEF Middle East and North Africa Regional Office, Amman (Jordan), 1993, p. 11.

COUNTRIES PROVIDING FREE EDUCATION

According to self-assessments by governments in their reports under human rights treaties, education is free and compulsory in Algeria, Bahrain, Kuwait, Libya, Saudi Arabia, and Tunisia. Their policies are instructive for comparative assessments of free and for-fee education as they illustrate how many different costs have been transferred from the family to the government.

However, governmental self-assessments do not necessarily tell the whole story because education may be free but not all-encompassing. Or education may be free only for citizens while non-citizens do not exist statistically or legally although they may outnumber the citizens. More importantly, making education free is only one facet of governmental human rights obligations because the very model of education may conflict with basic human rights principles.

Algeria

The Committee on the Rights of the Child noted in 2005 that "all children aged 6 to 16 years, including non-national children, are entitled to compulsory and free education without any discrimination". The Committee had to qualify this statement by highlighting institutionalized discrimination against all non-Islamic children, Amazigh children, children born out of wedlock, as well as Western Saharan refugee children. [916]

Governmental policy emphasises quantitative dimensions of education rather than its orientation and contents. In its reports under international human rights treaties, the government has described special measures needed where the population is dispersed regarding transportation and boarding schools:

> In 1997-1998, the scheme consisted in providing disadvantaged pupils with school supplies and textbooks, satchels, smocks and other items of clothing. In addition, an appreciable number of localities, especially the most isolated, have benefited from school transport facilities. This project, initiated by the authorities, provides for the purchase of 700 buses for school transport and the extension of the scheme to cover all departments. Moreover, a decline in enrolment rates was observed two years ago, particularly for girls, because of an increase in boarding-school fees. The State immediately took steps to defray the costs so that they would not serve as a motive for dropping out of school. [917]

The official statistics show that almost all school age children (94%) are enrolled in school during the compulsory education age (6 to 14 years) but their prospects after school are, at best, uncertain. High levels of graduate unemployment undermine quantitative accomplishments in education.

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[916] U.N. Doc. CRC/C/15/Add.269 (2005), paras. 62, and 38, 42 and 72.
[917] U.N. Doc. E/1990/6/Add.26 (2000), paras. 173-174.

Also, education is embedded in governmental policy which heavily influences what is taught. The 2004 Social Watch singled out as its key recommendation to "remove education from the political arena".[918] There is little information available on the impact on education of the deep political crisis which started in 1992. Confused and confusing international responses to the government's annulment of the elections won by FIS (Front islamique du salut) and subsequent repression did little for human rights. Much of that repression has been justified as counter-terrorism. [919]

Bahrain

The government's interpretation of its obligations corollary to the guarantee of free education is broad. It includes "an obligation to transport students to and from school and to provide them with school books and all the requisite educational aids". In addition, "the State supplies the furniture, equipment, instruments and raw materials needed by schools and also provides students with school books free of charge. In addition, it meets the costs of transporting the students to and from their schools and provides them with health care and social and educational counselling".[920]

Kuwait

In its reports under international human rights treaties, the government has clarified the linkage between compulsory and free education thus: "All that is compulsory is also free of charge, since parents cannot be charged education fees for the compulsory stages of education." [921]

The Constitution of Kuwait, however, bestows the right to education only upon Kuwaitis. This denial of rights to all non-citizens, who are statistically the majority of the population, also informs education. Unofficial estimates are that there is only about one million citizens in the population of Kuwait, estimated at 2.3 million.[922] Thus, Kuwait provides an illustrative example of the profound difference in the image of educational accomplishments resulting from its definition. When only citizens are counted, the statistics look impressive. When all residents are counted, the statistics reveal that the majority is excluded from education because some 65% of residents do not possess citizenship.[923] Education International has summed up the situation saying that "870,000 citizens enjoy one of the highest standards of living in the world" while the majority, foreigners, "must pay fees for education". [924]

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[918] Associacion El Amel pour le developpement social – Algeria: Terror, poverty, crisis and earthquakes, available at www.socialwatch.org.
[919] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 179-184.
[920] U.N. Docs. CERD/C/353/Add.1/Rev.1 (1999), para. 4.1, and CRC/C/11/Add.24 (2001), para. 250.
[921] Ministry of Education – *National Report on the Development of Education: State of Kuwait*, prepared by Kuwait National Commission for Education, Science and Culture and the Department of Planning, Ministry of Education, The International Conference on Education, 45th Session, Geneva, 1996, p. 3.
[922] Kuwait and democracy in the Gulf: Just a first step, *The Economist*, 8 July 2006.
[923] Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 189-190.
[924] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 171.

Libya

Education is defined as a right and also a duty in the Constitution. Compliance with this duty is facilitated by "the establishment of schools in which education is offered free of charge" so that "the family does not incur any real costs for the education of its children".[925]
The government has described its definition of free education thus:

> It is a matter of public policy that educational and training services and resources be provided free of charge. This means that the Public Treasury bears the costs of these services and facilities, ranging from the construction of schools, institutions, universities, and training and rehabilitation centres and institutes, to the provision of educational and training equipment and supplies, and the recruitment of teachers and trainers. The State also sets up boarding sections for children from remote areas, and the Treasury pays for their accommodation and living expenses.[926]

That education is free says nothing about a myriad of human rights safeguards which have to be in place. The Committee on Economic, Social and Cultural Rights has praised Libya for "the highest literacy and educational enrolment rates in North Africa" but has also noted that "many of the questions asked by the Committee remained unanswered". These questions dealt with the prohibition of any language other than Arabic in education (especially Amazigh) and the denial of trade union freedoms, including for teachers.[927]

Saudi Arabia

Images of Saudi Arabia's immense oil wealth would lead to thinking that education can be provided free of charge even if almost half of the population are below the age of 20. Nonetheless, by 2003 only 54% of 6-11 year olds enrolled in primary school.[928] Saudi Arabia's other mark of distinction, Islam, turns the spotlight on the contents of education. The purpose of education was officially defined in 1996 as "promoting the spirit of loyalty to Islamic law by denouncing any theory or system that conflicts with this law".[929]

Revisions of school textbooks have reportedly started to eliminate "texts containing religious hatred" [930] in the aftermath of 9/11 and after a series of bombings in Saudi Arabia itself. There has been nothing similar regarding the contents of teaching and learning materials regarding girls and women. That education may transmit gender inequality to the next generation or help to eliminate gender discrimination is well known. The Committee on the Rights of the Child has assessed the situation in Saudi Arabia as follows:

> The Committee observes that narrow interpretations of Islamic texts by State authorities are impeding the enjoyment of many human rights protected under the Convention.
> The Committee is seriously concerned that the State party's policy on education for girls discriminates against girls and is incompatible with the Convention.[931]

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[925] U.N. Doc. CRC/C/93/Add.1 (2002), paras. 222, 238 and 246-247.
[926] U.N. Doc. CRC/C/93/Add.1 (2002), paras. 222 and 238.
[927] U.N. Doc. E/C.12/LYB/CO/2 (2006), paras. 2, 6 and 23-24.
[928] *EFA/UNESCO Global Monitoring Report 2006*, available at www.unesco.org
[929] *Development of Education in the Kingdom of Saudi Arabia. National Report prepared by the Ministry of Education*, Center for Statistical Data and Educational Documentation, Riyad, 1996, p. 24.
[930] A long walk: A Survey of Saudi Arabia, *The Economist*, 7 January 2006.
[931] U.N. Doc. CRC/C/15/Add.148 (2001), paras. 21 and 39.

There are disagreements amongst scholars about interpretations of Islamic law with respect to girls' education. This was apparently ruled permissible in the 1960s and girls started going to school in Saudi Arabia. Another change followed a tragedy in 2002, when schoolgirls burned to death after their school had caught fire because they were not permitted to escape without being properly veiled. [932]

Tunisia

The constitutional guarantee of free education in Tunisia is clear and the government asserts in its reports under international human rights treaties that its performance fully matches these requirements:

> The child's right to education is guaranteed by [1991] Act concerning the educational system. Schooling is compulsory and free between the ages of 6 and 16. Administrative measures have been put in place to ensure the exercise of this right. In addition, the State is required to guarantee an education to all persons of school age.
> As education is a public service, the State provides the greater part of its budget.[933]

However, a tendency towards self-praise is known from earlier Tunisian history. The government developed a ten-year plan in 1958 to universalize primary school. In 1962, it asserted that 90% of boys and 50% of girls were at school and subsequently it claimed "the highest percentage of literacy in the Arab world". [934] Retrospectively, none of this proved to have been true.

In 2001, the government reported that schooling was free but added that "the family contributes relatively little to the cost of education". What this 'relatively little' meant was not defined.[935] At the time, school attendance was reported at 92% for 6-12 year old children but only 60% for those 13 and above.[936]

Those who persist throughout school and university may become 'overqualified jobless',[937] which considerably diminishes the attractiveness of education. Salah Edeen El-Jourchi, of the Tunisian League for Human Rights, has commented on silent emigration of many young men to Europe. They call it "burning". This denotes burning their passports lest they could be returned to Tunisia as well as burning the bridges to their native country.[938]

Tunisia's model of education forms an important part of the background. The enthusiasm for universal education at independence, dubbed after president Babib Bourguiba '*l'école bourguibienne'*, could not be sustained half a century later. The government's continued focus on educational statistics disguises the fact that, according to professor Hassine Dimassi, the former dean of the Faculty of Law of Sousse University, graduates are both half-illiterate and unemployable.[939]

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[932] Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 158 and 160.
[933] U.N. Doc. CRC/C/83/Add.1 (2001), paras. 494 and 496.
[934] Tibawi, A.L. – *Islamic Education: Its Traditions and Modernization into the Arab National Systems*, Luzac & Company, London, Second edition, 1979, p. 163.
[935] U.N. Doc. CRC/C/83/Add.1 (2001), para. 496.
[936] U.N. Doc. CRC/C/83/Add.1 (2001), para. 500.
[937] Beaugé, F. – Tunisia entwined in Ben Ali's web, *Guardian Weekly*, 9-15 December 2005.
[938] El-Jourchi, S.E. – Deteriorating living conditions and job intability, *2003 Social Watch Report*, available at www.socialwatch.org
[939] Labidi, K. – La longue descente aux enfers de la Tunisie, *Le monde diplomatique*, mars 2006.

COUNTRIES NOT PROVIDING FREE EDUCATION

Djibouti

Primary education has not been universalized in Djibouti. The government reported in 1998 that "just under 50 per cent of school-age children are admitted to primary school, and almost 80 per cent of those pupils do not pursue their studies at secondary school." It added that "the Djiboutian Government has clearly affirmed, since the country became independent, its political will to achieve universal elementary education as soon as possible".[940] There is no evidence that there is such a political will, however.

The right to education is not guaranteed as yet and less than half of school age children are enrolled in school,[941] which reveals that Djibouti's educational performance has not improved between 1998 and 2003. Thus, Djibouti is regularly at the bottom of all regional monitoring schemes that assess countries' efforts and accomplishments in education, as has been shown in the introduction to this section. Because education is not free, it is beyond the reach of many. Education International has reported that "costs related to [primary] school attendance are prohibitive for many parents".[942]

Egypt

Governmental policy and the associated statistics present primary education as free and (almost) all-encompassing. As of 1999, the law has obliged the government to provide nine years of free education to all children aged 6-15. This has built on the 1971 Constitution which stipulates that "education is a right guaranteed by the state".[943]

The government's claim that "that all children are entitled to education during the first, compulsory, stage, that education is provided free of charge"[944] is countered in non-governmental sources, which demonstrate that education is *not* provided free of charge. Human Rights Watch found in 2005 that "parents of children in public schools pay registration and health insurance fees, school uniforms and supplies, and often are pressured by underpaid teachers to pay for private tutoring so that their children succeed in school exams.[945]

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[940] U. N. Doc. CRC/C/8/Add.39 (1998), paras. 2, 7, and 101.
[941] *The Millennium Development Goals in Arab Countries*, UNDP, New York, December 2003, p. 7.
[942] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 98.
[943] Education was made compulsory in the 1923 Constitution and in 1944 primary education was mandated to be free. As of 1952, the law mandated all education – from the primary school to the university – to be free of charge. The 1971 Constitution has defined education as a right guaranteed by the state and the 1981 law stipulated that education should be free. The subsequent legal reform in 1999 defined nine years of basic education as the right of all children. National Plan for Education for All, 5 February 2003, available at www.unesco.org/education/efa (December 2005).
[944] U.N. Doc. CRC/C/65/Add.9 (1999), para. 138.
[945] Human Rights Watch – Failing Our Children: Barriers to the Right to Education, September 2005, available at http://hrw.org/reports/2005/education0905 (December 2005).

Much as in other countries, those who are out of school share poverty amongst other characteristics and this routinely translates into their having to start working too early and too much. Coherent data are difficult to encounter because different age categorizations and associates statistics abound.

Having examined educational statistics for Egypt, UNICEF pointed out in 1995 that they were reliable when based on school records but unreliable for calculating how many children were out of school. The reason was deficient demographic data [946] and there is no evidence that the situation has improved in the past decade. In 1998, more than one in ten (11%) school age children (then defined 6-14) were out of school.[947] Although most of out-of-school children work this is not officially recorded. In particular, girls' work within their family is never recorded as 'work'.[948] In 2004, school aged children were defined as 6-11 year olds and 1,610,680 were estimated to be out of school.[949] The key problem is the high cost of education compared with low family incomes. This leads to non-compliance with the compulsory-education law as well as the law prohibiting child labour. Moreover, birth registration data may not exist or, if they do, they are not necessarily correlated to school entry data. As a consequence, many children do not figure in official statistics. Also, Education International has found that the access to public education depends on the proof of citizenship. Children who do not possess it include those with Egyptian mothers and foreign fathers: "400,000 children of foreign fathers are not entitled to attend public schools".[950]

The pillar of education was governmental provision of schooling, from primary to university level, which then led to the employment of school-leavers by the government. In the aftermath of its independence, the government of Egypt aimed to replace parallel education systems by the "national primary school, free and compulsory for boys and girls." This had been a promise and a self-imposed obligation for the government in 1953.[951] By its own estimate, the government still educates most children. Some 92% of children enrol in public education and 8% in what the government calls 'Al-Azhar primary schools'.[952] Its role profoundly changed twenty years later, especially as the link between government-provided education and government-provided employment has been severed:

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[946] Cummings, W.K. & Dall, F.P. – *Implementing Quality Primary Education for Countries in Transition*, UNICEF, MENARO (Middle East and North Africa Regional Office), Amman, 1995, p. 66.
[947] Primary education should last six years but was reduced to five years in the 1990s so as to enable larger numbers of children to complete it
[948] Assaad, R. et al. – The effect of child work on schooling: evidence from Egypt (June 2005), available at www.gdnet/org/fulltext/assaad%20_child%20work.pdf
[949] Hammoud, H.R. – Illiteracy in the Arab World, Beirut, April 2005, Commissioned paper for EFA 2006 Report, available at http://portal.unesco.org/education (November 2005).
[950] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 106.
[951] Tibawi, A.L. – *Islamic Education: Its Traditions and Modernization into the Arab National Systems*, Luzac & Company, London, Second edition, 1979, pp. 117 and 123.
[952] National Plan for Education for All, 5 February 2003, available at www.unesco.org/education/efa (December 2005).

> University graduates from 1962, and graduates of secondary vocational schools and technical institutes from 1964, were guaranteed employment in the public sector until 1990. The employment guarantee significantly increased the private benefits of education, while the abolition of fees at around the same time significantly reduced its private costs.[953]

That model was dismantled when private costs of education increased with structural adjustment programmes. Changes in the 1990s included a quiet abandonment of free education as part of a typical World Bank's policy package. No tuition fees were formally imposed but payments to supplement teachers' insufficient salaries became an established practice.[954] Guaranteed employment by the government withered away at the same time for the same reason. Alexandre Buccianti has claimed that the practice of automatic employment of all university graduates lasted from 1962 to 1985, boosting the number of government employees to over 4 million. Increased graduate unemployment in the 1990s became seen as a security threat.[955] Governmental policy in the face of various self-defined security threats has prompted the European Union to raise human rights in its dialogue with Egypt.[956]

Iran

In the Western media, the electoral victory of president Mahmood Ahmedinejad was attributed to a variety of his positions with regard to the West of Israel. Little was said about his pledges to redistribute Iran's wealth, crack down on corruption and increase teachers' salaries.[957] As a school teacher, he obviously knows how important the teachers' status and salaries are and how much they were previously neglected.

The Constitution obliges the government to "provide people with free education at all levels".[958] The provision of free education "facilitates discharge of the responsibility of parents". Further, the law requires parents "to the extent of their means to make the necessary arrangements for the education of their children".[959] This focus on the parental responsibility to educate their children is reflected in governmental policy, which is apparently based on the principle that the government supports rather than supplants parents. Thus, free school meals are reportedly provided but that only "in deprived regions".[960]

Non-governmental sources indicate that education is not free and that poor parents find the costs of school fees, books and stationary to be beyond their means. These costs are reduced by sending children to "non-formal literacy classes where they are provided with free books and stationary with no obligation to wear uniform." [961]

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[953] Godfrey, M. – *Youth Employment Policy in Developing and Transition Countries – Prevention as well as Cure*, The World Bank, Social Protection Discussion Paper Series SP No. 0320, Washington D.C., October 2003, p. 61.
[954] New and old: A survey of Egypt, The Economist, 20 March 1999.
[955] Buccianti, A. - Egyptian graduates riot over civil service jobs, *Guardian Weekly*, 26 July - 1 August 2001.
[956] Beatty, A. – Human rights doubts could hit Egypt deal, *European Voice*, 8-14 June 2006.
[957] Shafi, I. – Justice & rights, *New Internationalist*, March 2006, p. 30-31.
[958] U.N. Doc. CRC/C/41/Add.5 (1998), para. 9.
[959] U.N. Doc. CRC/C/41/Add.5 (1998), para. 9.
[960] U.N. Doc. CRC/C/41/Add.5 (1998), para. 132.
[961] Mehran, G. – *Girls' Drop-out from Primary Schooling in the Middle East and North Africa: Challenges and Alternatives,* UNICEF Middle East and North Africa Regional Office, Amman (Jordan), 1995, p. 48.

The government had planned that for all children aged 6-10 to complete primary education by the end of 1999.[962] This was not accomplished. The constitutional guarantee of free education extends to the end of secondary education, while free higher education was also anticipated "as far as the country self-sufficiency might allow".[963] This has not been translated into practice either.

There are many important human rights issues alongside the elimination of financial barriers so that education can be universalized, and quite a few have been raised with respect to Iran. The definition of the purpose of education raises questions:

> [The purpose of education is] to train individuals to undertake responsibility, to be aware and skilful to help country's development [and] to accept absolute divinity of God over the world and human beings and get familiar with Velayat-e-Faqih (the principle that orders ommat to follow the Islamic leadership of a qualified clergyman for ever).[964]

That definition especially affects girls and women. Although the literacy rate for girls has been reported at 97%, the minimum age for marriage has been raised from 9 to merely 13. That facet of the status of girls and women in Iran is counterbalanced by an increase in female literacy in the school-going population to a reported 97% as well as the fact that young women outnumber young man at the university.[965] Whether more and better education for girls and women will alter their role in the family and society is a question without an answer as yet.

Iraq

Future historians may use Iraq as a case study of educational retrogression and question the role of the international community. In 2006, Jasem al-Aqrab had this to say:

> Iraqis have suffered immensely over recent years, first from the West's support for a despotic dictatorship, then from 13 years of sanctions that ravaged the country, and finally from a war and occupation that reduced a once-affluent country and its highly educated people to rubble.[966]

The post-war model of education implemented in Iraq is not Iraqi. Both its design and implementation are in the hands of the US government and the consultancy firms which it employs. The USAID has reported for the first year of its education programme in Iraq on its two-pronged support. One part was to restart education which had been halted due to warfare, and another was to lay "foundations for critical reforms to ensure that the education system can play a constructive role in rebuilding social cohesion and progress".[967]

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[962] U.N. Doc. CRC/C/41/Add.5 (1998), paras. 45, 129 and 132.
[963] U.N. Doc. HRI/CORE/1/Add. 93 (1998), para. 18.
[964] The Development of Education: National Report of the Islamic Republic of Iran, Ministry of Education, September 1996, mimeographed, pp. 12-16
[965] Shorn of dignity and equality: Special report on women in Iran, *The Economist*, 18 October 2003.
[966] Al-Aqrab, J. – Laying to rest a brutal lie, *Guardian Weekly*, 24 February – 2 March 2006.
[967] USAID – Iraq Education Program Year 1, May 2003 - March 2004, available at www.usaid.gov/iraq

The first part pertains to foreign aid but the second part is an exercise in what are normally sovereign powers of a state. There was an 'Iraq Ministry of Education' at the time but not created as such bodies are in independent countries. Also, the Order Number One had cleansed some 80,000 people from ministries or universities for their previous membership in the Ba'ath party.[968] Moreover, the process of re-designing education was governed by the rule whereby "American aid contracts must go to American firms".[969] A controversial process of revising textbooks to be used in Iraq started immediately after the war, also by American consultancy firms. The Economist has described the process thus:

> Every image of Mr Hussein and the Baath Party has been removed from all 563 revised textbooks. But so has much else. While 'deSaddamising' the texts, the team revamping the curriculum has deleted anything deemed controversial, including any mention of the war between Iraq and Iran in the 1980s, the Gulf War of 1991, all references to Jews and Israel, Shias, Sunnis and Kurds, and anything critical of America.[970]

The previous Constitution of Iraq stipulated that the state should "safeguard the right to free education at the various primary, secondary and university levels for all citizens".[971] Primary education had been free and compulsory since 1975 and it was universalized in the 1980s. Thenceforth education became a casualty of warfare and sanctions. UNICEF reported an attendance rate of 76% in primary education for 2000.[972] Post-war, there are statistics reflecting the numbers of children in foreign-funded schools but there is little information about children out of school, and none about indigenous education which is likely to have continued.

Israel

Israel has been on the United Nations agenda for human rights violations much longer than any other state, almost forty years. The bone of contention has been condemnations for its human rights violations as of 1968 and the lack of any change that the UN could show for its efforts. The reason is well known political and financial support of the US government for Israel.[973] With regard to Israel's legal responsibility for the occupied territories, including not to obstruct children's education, even dialogue often proved impossible. For example, the Committee on the Rights of the Child "deeply regretted" Israel's refusal to provide information about the situation of children in the occupied territories given its responsibility as the State party to the Convention on the Rights of the Child for the implementation of the Convention there.[974] Such regrets in the face of vast documentation on Israel's human rights violations have demonstrated the inability of international human rights bodies to effect change.

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[968] Steele, J. – US decree strips thousands of their jobs, *Guardian Weekly*, 4-10 September 2003.
[969] The spoils of war: Cleaning up, *The Economist*, 5 April 2003.
[970] Teaching history in Iraq: Another vacuum opens up, *The Economist*, 8 November 2003.
[971] U.N. Doc. CRC/C/41/Add.3 (1996), para. 101.
[972] UNICEF – *The Situation of Children in Iraq. 2003 Update*, Baghdad, 2003, p. 39.
[973] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 60-76.
[974] U.N. Doc. CRC/C/15/Add.195 (2002), para. 2.

In Israel itself, there is no constitutional guarantee of the right to education. The Basic Law of 1992 (the functional equivalent of constitution) includes a short list of basic rights, such as life, dignity, liberty and property, but not the right to education.[975] The 1949 Compulsory Education Law stipulates that "education is compulsory for children and youth up to age 15 inclusive. As a rule, secondary education over the age of 16, although not compulsory, is provided free until age 18, and education for people with special needs is provided free until age 21".[976]

Israel's interpretation of these legal guarantees does not encompass a governmental obligation to make education free. In consequence, not even compulsory education is free:

> Parents are required to purchase books and school supplies for their children, and the law allows a local authority to charge fees for services provided to pupils. In addition to mandatory fees, the school is authorized to collect optional fees for special services, if these are approved by a parents' committee.[977]

Also, there is open discrimination in the allocation of educational funding: "the total investment in education per pupil in Arab municipalities was approximately one-third of the investment per pupil in Jewish municipalities. Government investment per Arab pupil was approximately 60% of the investment per Jewish pupil".[978]

Internationally, human rights and education constitute two separate and unrelated tracks. In the international 'sector of education', Israel's official statistics demonstrate that primary education has been universalized. Moreover, Israel has been transferred from the region where it geographically belongs, the Middle East, to Northern America and Western Europe.[979] Its educational performance in some dimensions matches North American and West European. Comparative statistics collected by the OECD showed Israel to be just below its average of an annual $3,546 per primary school pupil.[980] This facilitates an impressive educational performance by some but, of course, hides institutionalized discrimination against others. It its turn, it is facilitated by one of the highest sustained inflows of aid per capita in the world.[981]

Key questions about education in Israel inevitably probe into the contents of teaching associated with war and peace in the neighbourhood. Orit Ichilov has amplified such basic questions to rifts within Israel, highlighting deep fault-lines between orthodox and non-orthodox Jews and the consequent questions about religious or secular norms for the governance of all public institutions. These basic questions remain un-answered and, in consequence:

> Educating the younger generation for citizenship where little consensus exists regarding a vision of what Israeli society should be, and what binds citizens together, is an extremely difficult task.[982]

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[975] Basic Law: Human Dignity and Liberty, adopted 17 March 1992, available at www.uni-wuerzburg.de/law/is12000
[976] U.N. Doc. CRC/C/8/Add.44 (2002), para. 156.
[977] U.N. Doc. CRC/C/8/Add.44, 2002, para. 910.
[978] U.N. Doc. CRC/C/8/Add.44 (2002), para. 1141.
[979] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org.
[980] OECD – *Education at a Glance Indicators 1998*, Paris, 1998, pp. 69-122.
[981] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 60-76.
[982] Ichilov, O. – Nation-building, collective identities, democracy and citizenship education in Israel, in: Ichilov, O. (ed.) – *Citizenship and Citizenship Education in a Changing World*, The Woburn Press, London/Portland, 1998, p. 69.

Jordan

In its reports under international human rights treaties, the government has summarized the constitutional model of education: "according to the Constitution, the State undertakes to provide education within the limits of its resources, primary education being compulsory for Jordanians and free of charge at government schools".[983] The law obliges fathers to pay the costs of education for their children up to the university.[984] Education is defined as a responsibility between the parents and the state while the reference to 'fathers' rather than 'parents' reflects the prevalent discrimination against women in Jordan's law.

By law, education should be free for the citizens of Jordan. This excludes all non-citizens who encompass large numbers of Palestinian refugees. The additional clause, 'within the limits of the state's resources', alludes to a relative criterion for determining whether the state has done enough. Education is compulsory up to the age of 17 but not all children finish school, many because of poverty. NGOs have commented:

> Although education is compulsory up to the age of 17, the phenomenon of school drop-outs still exists, particularly among females, for numerous reasons such as early marriage, the need to work in order to support a family, domestic service and the failure to enforce the penalties that Jordanian law prescribes in connection with school drop-outs and the employment of children.[985]

Lebanon

That education is not primarily aimed at poverty reduction but forms part of the model of governance is amply illustrated in Lebanon. Education shares the fate of the country. Improvement follows peace-making and deterioration stemms from resumed warfare. The World Bank's diagnosis of "ineffective school mapping" and anticipated benefits from the "potentially promising economies of scale" [986] collide with the reality on the ground and, thus, suggest a model that cannot be implemented even in theory.

The Word Bank's economistic view of education disregarded the impact of the 1975-1990 war as well as its causes and consequences. While it could not be anticipated that warfare would resume, it was a commonsensical assumption that this might be the case. The war in 1975-1990 was closely associated with overlapping regional conflicts as was the Israeli military occupation as is the resumed war in 2006. The process of peace-making has not yet tackled the causes of the war. This would require peace in the Middle East, which has a low priority on the global agenda. Fifteen years after the civil war had ended in Lebanon, it was still too soon to address the causes of war and risk resurgence of violence and warfare. Thus, all this is absent from school textbooks.[987]

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[983] U.N. Doc. CRC/C/70/Add.4 (1999), para. 87.
[984] U.N. Doc. CRC/C/70/Add.4 (1999), para. 87.
[985] NGO 'shadow' report, available at www.crin.org
[986] The World Bank - *Lebanon: Public Expenditure Review - Education Sector*, MNSHD Discussion Paper Series No. 2, September 1999, para. 6, p. 2.
[987] Shadid, A. – Mothers remember what Lebanon seeks to forget, *Guardian Weekly*, 13-19 January 2006.

The fact that the 1932 census has not been updated as yet, almost 70 years later, demonstrates the sensitivity of collective identifiers in Lebanon, especially religion. (Of course, it also casts doubts at the reliability of official statistics, including the statistics on education.) The model of governance formally recognizes people as members of religious communities rather than individuals. The 1943 National Covenant allocated positions of power according to religious affiliation thus: "the president was to be a Maronite Christian, the prime minister a Sunni Muslim, the speaker of the unicameral parliament a Shi'a Muslim, and the chief of staff of the armed forces a Druze".[988] The same model applies in education, where religious communities have the freedom to educate 'their' children.

The political agreement in Taif, that halted the civil war and preceded the Constitution, affirmed freedom of education and protection of private education so as to safeguard the primordial role of religious communities. The 1990 Constitution then entrenched that model. It has limited this collective freedom of education only if it jeopardizes public order and dignity of each religion. Moreover, it has banned challenges of the rights of religious communities to operate their own schools.[989] One consequence is that 66% of primary school children attend private, mostly religious schools.[990] Another consequence is elevated cost of education for families.

The government made primary education free and compulsory by law in 1998. It has admitted, however, that it was made free only in the law while it remained expensive in practice: "In actual fact, education is not free, even for families who register their children in State schools or in private non-fee-paying schools".[991] The resulting cost of education is ultimately paid by children, many of who have to start working much too early:

> In the event that the current trends in the performance of the education system continue, in particular the high rates of school drop-out in favour of child employment, along with the high cost of education, especially private school fees, and the limited intake capacity of State schools, it can be predicted that the phenomenon of illiteracy and semi-illiteracy among children, both as an absolute number and as percentages of the overall age group, will worsen.[992]

In 2005, the government reported that public schools were still educating a minority (39%) and were still not free. Formal charges include registration fees and obligatory contributions amounting to 120,000 pounds ($70). A host of regulations specify additional charges.

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[988] Deegan, H. – *The Middle East and Problems of Democracy*, Open University Press, Buckingham, 1993, p. 104.

[989] Article 10 of the Constitution in French, edited by Béchara Ménassa, at the time the legal counsel to the National Assembly, reads as follows: "L'enseignement est libre en tant qu'il n'est pas contrarire à l'ordre public et aux bonnes mœurs et qu'il ne touché pas à la dignité des confessions. Il ne sera portéaucune atteinte au droit des communautés d'avoir leurs écoles, sous reserve des prescriptions générales sur l'instruction publique édictée par l'Etat." Ménassa, B. – *Constitution Libanaise: Textes et Commentaires et Accord de Taëf*, Les Editions L'Orient, Beyrouth, 1995, pp. 30 and 149.

[990] UIS/UNESCO – Arab States: Regional Report, UNESCO Institute for Statistics, Montreal, 2002, available at www.unesco.org/uis

[991] U.N. Doc. CRC/C/70/Add.8 (2000), paras. 194 and 196-199.

[992] U.N. Doc. CRC/C/70/Add.8 (2000), para. 24.

The government's efforts to reduce the financial burden imposed on the family are hampered by its 'relatively modest' budgetary allocations.[993] Increasing them would require a peace dividend, and there was hardly any during the past fifteen years after the war had formally ended. Insufficient public investment in education translates into continued discrimination against girls and women. The (former) government of Lebanon described why and how increased public funding for education would have made a difference had it been available:

> It is worth pointing out that there is a connection between the preponderance of females over males and 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.[994]

Morocco

Official educational statistics in Morrocco have shown that "the gender gap in literacy among the present younger generation is larger than that of their parents and even grandparents".[995] This highlights an education retrogression instead of progress. Also, it casts a shadow over the government's self-assessments of its accomplishments in education.

At independence, the government's first measures were to unify varied and dispersed schools within the country, change the contents of educational curricula, and switch from French to Arabic as the language of instruction. Its ambition was to universalize at least primary education, which should be "Moroccan in thought, Arabic in language and Islamic in spirit".[996]

Education has been compulsory since 1963 for children aged 7-13. Its duration has gradually been prolonged and today all children aged 8-16 should be at school. The counterpart of making education compulsory is governmental obligation to make it free so that all children, no matter how poor, can complete the compulsory cycle. The official statistics place the enrolment rate at 92% for 6-11 year olds. The government concedes that it has not yet complied with its own law and plans to achieve universal enrolment in secondary education by 2008.[997] Since history is the best crystal bowl, this is unlikely to happen. Primary education should have been universalized by 2002 [998] but this is yet to be accomplished. In 2003, the government found that "some 240,000 children leave school at an early age; half of them leave school before completing their basic education".[999]

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[993] U.N. Doc. CRC/C/129/Add.7 (2005) paras. 306-314.
[994] U.N. Doc. CRC/C/70/Add.8 (2000), para. 209.
[995] Hammoud, H.R. – Illiteracy in the Arab World, Beirut, April 2005, Commissioned paper for EFA 2006 Report, available at http://portal.unesco.org/education (November 2005).
[996] Tibawi, A.L. – *Islamic Education: Its Traditions and Modernization into the Arab National Systems*, Luzac & Company, London, Second edition, 1979, p. 174.
[997] U.N. Doc. E/1994/104/Add.29 (2005) paras. 323, 333-334 and 361.
[998] The government of Morrocco pledged to ensure primary education for all children aged 7-13 by 2002 and to extend it to all children aged 7-16 by the year 2008. U.N. Doc. CRC/C/93/Add.3, 2003, para. 456.
[999] U.N. Doc. CRC/C/93/Add.3 (2003), para. 631.

Such discrepancies between official policies and official statistics indicate that the government has not eliminated the obstacles which impede all-encompassing primary education, especially the financial barriers. Education is not free. The previous guarantee of free education was undermined by the introduction of various informal charges and educational reforms after the turn of the millennium have explicitly introduced cost sharing:

> Improving the financing of [educational] reform by mobilizing extrabudgetary resources and involving the private sector and civil society to a greater extent through the creation of partnerships and the soliciting of contributions from various economic partners, families and local communities to finance education.[1000]

The constitutional guarantee of the right to education says that "all citizens shall have equal rights in seeking education and employment".[1001] The government does not interpret this as its obligation to ensure that all those 'seeking' education actually find it by making it widely available. Also, the Constitution mandates a linkage between education and employment which does not exist in governmental policy. Kamal Lahbib has described the phenomenon of graduate unemployment (*les diplômés-chômeurs*) [1002] to illustrate how often those who have gone throughout the educational pyramid and are 'seeking' employment cannot find it. Where employment prospects after years of schooling are poor if not non-existent, the parental motivation to invest in the education of their children inevitably suffers.

Young children start school in large numbers but drop out after a few initial years of schooling. A part of the problem is the cost of schooling; another part is its purpose. The policy disconnect between education and employment is one facet of its questionable purpose. Another facet is a restricted freedom to learn. An example is Morocco's long attempt to make Western Sahara formally a part of its territory in the name of its 'historical rights' and the associated repression of indigenous movements for self-determination.[1003] This raises questions about the teaching of history and geography at school as well as about human rights safeguards for both teaching and learning.

Palestine

Cynical assessments of the fate of education provided by the Palestinian Authority in 2006 could convincingly argue that it was a victim of democracy. The election of a Hamas-led government led to a halt in aid by individual Western governments and their intergovernmental organizations, teachers could teach no longer because their aid-financed salaries were paid no longer. The United States, Israel and the European Union stopped payments to the Palestinian Authority after Hamas formed a government in March 2006.[1004] Their justification was that Hamas had been listed as a terrorist organization. Soul-searching within the European Union has followed because halting aid meant suspending education. [1005]

[1000] U.N. Doc. E/1994/104/Add.29 (2005) para. 361 (d).
[1001] U.N. Doc. E/1994/104/Add.29 (2005) para. 310.
[1002] Lahbib, K. – Explosion de la vie associative marocaine, *Manière de voir*, No. 84, decembre 2005 - janvier 2006, p. 56.
[1003] Finan, K. – Inextricable, le conflit du Sahara Occidental, *Le monde diplomatique*, Janvier 2006.
[1004] Smith, C.S. – EU halts payments to Palestinian leaders, *International Herald Tribune*, 8-9 April 2006.
[1005] Beatty, A. – Blow to Palestinian funding, *European Voice*, 18-23 May 2006.

The ensuing search for alternative mechanisms to finance Palestinian education prioritized the immediate post-9/11 security concerns rather than the long-term future of Palestinian children and youth. Un-suspending Western aid was seen as a way to prevent Hamas from gaining further ground through its own, independently financed educational and training programmes. Keeping Western aid suspended was defined as a condition for pressurising Hamas into altering its policy.[1006] That conundrum has inflicted a further toll on education, demonstrating how irrelevant global priorities for investment in education so as to reduce poverty have transpired to be in this particular case.

In theory, human rights considerations should have prevailed, especially children's rights, as part of the new notion of global responsibility to furnish protection for populations without a government willing and able to do so, which the United Nations affirmed in 2005.[1007] There are, in addition, reams of international human rights instruments generated during the past decades which define international responsibilities relating to Palestine and the Palestinians. Human rights law has played only a minor role in the Palestinian-Israeli conflict, however, because it was international humanitarian law that should have been enforced. The clarity of Israel's legal obligations as an occupying power did not do much good because international law can only make a difference if it is willingly implemented by individual states, i.e. by governments acting on their behalf, or strictly enforced against those unwilling to abide by it. Decades of UN's condemnations of Israel for its human rights violations did not produce almost any change on the ground.[1008]

What might have been meant as even-handedness of the international creditor and donor community balanced a high level of tolerance of Israel's human rights abuses with a similar tolerance for the other, Palestinian side. The European Union decided that Israel's destruction of EU-funded infrastructure, including schools, did not call for compensation.[1009] Similarly, allegations that the Palestinian Authority (PA) was misappropriating EU's aid had been initially met with disclaimers.[1010]

They were later qualified as 'misuse,' after the electoral vote of no confidence in the Palestinian Authority resulted in the electoral victory of Hamas and triggered probes into the PA's previous financial mismanagement.[1011]

Before the elections and the suspension of Western aid, the Palestinian Authority provided education for more than two-thirds of school age children (about one million) and UNRWA for about a quarter of a million.[1012] The cost of providing nine years of compulsory and free education was significant because Palestinian population is young, with one third attending school. The survey of living conditions in July 2005 revealed that education indeed reached the vast majority of the population.

[1006] Aid to Palestinians: Seeking a bypass, as the money runs out, *The Economist*, 13 May 2006.
[1007] The World Summit in September 2005 has for the first time affirmed a global responsibility to undertake collective action where "national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity." The 2005 World Summit Outcome, U.N. Doc. A/RES/60/1 (2005), para. 139.
[1008] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 60-75.
[1009] Cronin, D. - Israel set to escape claims over damage to EU sites, *European Voice*, 21-27 March 2002.
[1010] Cronin, D. – 'No proof' of abuse of cash to Palestinians, *European Voice*, 11-17 March 2004.
[1011] McGrael, C. – Palestinian Authority 'missing billions', *Guardian Weekly*, 10-16 February 2006.
[1012] Palestinian Central Bureau of Statistics – Education: current main indicators, March 2006, available at www.pcbs.org

Only 4% of the respondents highlighted shortcoming in education, the vast majority prioritized job creation, 69% in the Gaza Strip and 54% in the West Bank.[1013] Job creation was closely associated with the foreign-financed budget of the Palestinian Authority because it was the largest employer. The 'governmental sector' employed 36% of graduates but the unemployment rate remained 22% for university graduates on the eve of aid cut-offs triggered by the elections in January 2006.[1014]

What was described by many commentators as a protest vote against the corruption and cronyism of the Palestinian Authority triggered the change of government.[1015] The Western verdict was immediate and severe as aid was halted and, in consequence, education was suspended. Formal affirmations of education as a universal human right have not helped because the corresponding collective governmental responsibilities have remained in dispute.

Qatar

In Qatar, education should be free according to the law but the government has described that this is not so in practice:

> Education is basically free of charge, its cost being met from the State budget with the exception of some minor fees which were recently imposed due to the difficult economic circumstances that the State has faced in the last few years. These fees, consisting of nominal amounts for educational services provided, are charged in respect of the children of foreign residents.[1016]

The adoption of a law in 2001 which guarantees free and compulsory education for all children was seen as a move towards the abolition of these various fees and charges. The announcement was made while Qatar was presenting its first report to the Committee on the Rights of the child. The Committee welcomed the new law. [1017]

If the law is implemented, education may become free in the material sense of not requiring payments. Freedom of teaching and learning, however, is restricted by the official definition of the purpose of education. The government has summarized it thus:

> Deep rooting the religious education by inculcating in the young generation's minds the belief in Allah the Sole Creator. This helps them develop a sense of piety and conceive the Islamic values and morals that will govern their behaviour and daily practices. [1018]

[1013] Palestinian Central Bureau of Statistics – Survey on the perceptions of Palestinian population towards the socioeconomic conditions, July 2005, PCBS, Ramallah, August 2005, available at www.pcbs.gov.ps (Janauary 2006).
[1014] Palestinian National Authority – Conditions of graduates from high education and vocational training survey (December 2005 – January 2006), Palestinian Central Bureau of Statistics, Ramallah, 27 February 2006, available at www.pna.gov.ps (March 2006).
[1015] Diab, K. – The EU's new Palestinian dilemma, *European Voice*, 2-8 February 2006.
[1016] U.N. Doc. CERD/C/360/Add.1 (2001), para. 58.
[1017] U.N. Doc. CRC/C/15/Add.163, 2001, para. 3.
[1018] *Report on the Development of Education in the State of Qatar*, prepared by Ministry of Education in cooperation with Qatar National Commission for Education, Culture and Science, *International Conference on Education, 45th Session, Geneva, September 1996*, Doha, September 1996, p. 9.

Sudan

Albert Antonioli has coined the term "Sudano-Sahelian illiteracy zone" [1019] to denote the limited reach of public education and the consequent perpetuation of illiteracy therein. That term also alludes to Sudan's duality in being both an African and a Middle Eastern country.

In 2004, it was estimated that at least 2,700,000 children were out of school.[1020] Any such guesstimates are based on unknown and changing population figures. Decades of warfare in the south and recent warfare in and around Darfur have led Jan Egeland, the UN's humanitarian relief coordinator, to claim that no less than six million people have been displaced.[1021] Humanitarian relief by definition excludes education and, more importantly, also accountability for abuses of power so as to impede their perpetuation. The United Nations policy has been to individualize responsibility. The Security Council has transferred documentation relating to abuses in Darfur to the International Criminal Court, with the task to identify the responsible individuals with a view to their eventual trial for 'serious violations of international human rights law'.[1022]

After a peace agreement halted in 2004 the war between the north and the south, considerable international aid has been pledged, no less than $4.5 billion.[1023] If these pledges are translated into disbursements, re-starting public education may be possible and a policy-framework has been developed for South Sudan.[1024] However, overlapping and conflicting policies of potential providers of aid make forecasts difficult. The politics of peace-making has clashed with the politics of humanitarian relief, which have conflicted with foreign policies focussed on Sudan's oil wealth.[1025]

There is little verifiable information about educational policies and practices in Sudan, and what exists highlights the fact that education was - and is - a casualty of warfare.

By some estimates, less than half of children who should be at school are enrolled.[1026] Although the government has reported an attempt to introduce free basic education in 2001. [1027] At the time, "private finance, including school fees, covers more than 50% of the basic education budget".[1028] This ratio may have subsequently improved or deteriorated. There is no statistics on indigenous education while the official educational statistics placed the number of enrolled children in 2003 at just above 3 million, some 60% of an estimated total number of school age children.[1029]

[1019] Antonioli, A. – *Le droit d'apprendre: Une école pour tous en Afrique*, L'Harmattan, Paris, 1999, p. 82.
[1020] Hammoud, H.R. – Illiteracy in the Arab World, Beirut, April 2005, Commissioned paper for EFA 2006 Report, available at http://portal.unesco.org/education (November 2005).
[1021] Cronin, D. – Oiling Sudan's killing machine, *European Voice*, 17-23 March 2005.
[1022] Security Council sends Darfur cases to International criminal Court, UN News Service, 1 April 2005, available at www.un.org/apps/news
[1023] It'll do what it can get away with: Special report on Sudan, *The Economist*, 3 December 2005.
[1024] Taban, A. – South Sudan must not pay for the crimes in Darfur, *Development Today*, No. 6/2005, available at www.development-today.com
[1025] ICRC – *Forum: War, Money and Survival*, International Committee of the Red Cross, Geneva, March 2000.
[1026] *The Millennium Development Goals in Arab Countries*, UNDP, New York, December 2003, p. 7.
[1027] U.N. Doc. CRC/C/65/Add.17 (2001), paras. 279, 283 and 325.
[1028] Republic of Sudan - Report on Sudan. Education for all. The Year 2000 assessment, Educational Assessment Department, Ministry of Education, available at www.unesco.org
[1029] *Education for All Global Monitoring Report 2006*, available at www.unesco.org

Much as in other countries in the region, the orientation and contents of both indigenous and formal education require careful scrutiny by the human rights yardstick. In countries at war, education provided or supported by the government may include pre-military education or military training. An example of the need for caution was UNICEF's attempt to merge indigenous and formal schooling in 1997, where military training for primary school children was included in extracurricular activities.[1030]

Syria

Education was declared to be a right of each citizen in the 1950 Syrian Constitution and primary education was thereafter made free and compulsory in state schools. The government originally planned to universalize primary education within a decade. In 1963 it declared that "places were provided at state primary schools for *all* children of school age for the first time in Syria's history".[1031] This may was not accomplished and difficulties with ensuring education for all children have continued after the turn of the millennium.

The government of Syria has affirmed in its reports under international human rights treaties that "the heaviest share of responsibility for the proper education and upbringing of children is borne by their parents".[1032] Education should be free and all-encompassing but the government admitted in 2002 that this was not the case:

> In spite of the efforts made to enforce the provisions of the Compulsory Education Act, a number of children of compulsory school age, particularly girl children, are still not being enrolled in, or drop out of, school, for social, economic or cultural reasons. Schools at all stages of education continue to suffer from the shortage of material and technological resources required to improve their health and environmental and educational situation.[1033]

As in other countries in the region, education is affected by the fiscal priority for military expenditure over public investment in education. Also, militarization does not affect only educational finance but also the contents of teaching. The government reported in 2004 that "the Office of Military Education in the Ministry of Education has been renamed Department of Extra-curricular Activities". It is perhaps a coincidence, maybe not, that the government of Syria used the same term, extracurricular activities, whereby the government of Sudan described military training in primary school in the above mentioned UNICEF project.

[1030] Abdel Halim, I.M. – *From Khalwa to Qur'an School. Sudan's Experiment to Merge its Cherished Educational Traiditions with Proven Moderns Patters*, UNICEF-MENARO Innovations in Basic Education Series, Case Study No. 4, Amman, 1997, p. 11.
[1031] Tibawi, A.L. – *Islamic Education: Its Traditions and Modernization into the Arab National Systems*, Luzac & Company, London, Second edition, 1979, pp. 146.
[1032] U.N. Doc. CRC/C/93/Add.2 (2002), para. 71.
[1033] U.N. Doc. CRC/C/93/Add.2 (2002), paras. 129, 153 and 31.

The government of Syria has described pre-military education as follows:

> The military education course that used to be taught at secondary school was not related in any manner to military service, but was in line with similar educational courses being given in certain countries that face extraordinary security circumstances. In the Syrian context the purpose was to provide training in civil defence and emergency preparedness in the face of permanent threat that the country faces as a result of Israeli occupation of Palestine and the Syrian Golan Heights.[1034]

United Arab Emirates

Parallel systems of public and private education divide school going children in the United Arab Emirates in two halves. Almost half of children (45%) go to private religious schools, [1035] while the other half attends public schools, which are also religious. The law is mandates public education to be free at all levels:

> Article 17 [of the Constitution says that] education is a fundamental factor in social progress. Within the Federation, it shall be compulsory at the primary level and free of charge at all levels.
> Education is free of charge and the schools provide the requisite books and stationery at nominal prices.
> All children at (pre-university) school age, regardless of their nationality, gender or religion, are entitled to enrol at government schools. There are separate schools for boys and girls.[1036]

Uncertainty about the meaning of free education, however, permeates governmental self-assessments of the educational situation in the country. Thus, in the same report on its compliance with the Convention on the Rights of the Child the government has first reported that education is free to then describe how charitable organizations defray the costs of education levied upon the poor who cannot pay them.[1037] Too little information is available to discern how much education is free and for-fee in practice as well as on what school children are taught and how.

[1034] U.N. Doc. CCPR/C/SYR/2004/3, para. 379.
[1035] UIS/UNESCO – Arab States: Regional Report, UNESCO Institute for Statistics, Montreal, 2002, available at www.unesco.org/uis
[1036] U.N. Doc. CRC/C/78/Add.2 (2001), para. 170.
[1037] U.N. Doc. CRC/C/78/Add.2 (2001), para. 251.

Yemen

In Yemen there is a constitutional guarantee of the right to education but the government has reported that its performance falls short of its requirements:

> Article 32 of the Constitution stipulates that the State, together with society, must contribute to the provision of education. Article 53 further stipulates that all citizens have a right to education which the State must safeguard, in accordance with the law, by making basic education free.
> The education system is facing numerous problems such as [the] lack of a uniform Education Act in the Republic of Yemen [or] the inadequate financial and technical resources of the existing institutions.[1038]

The mention of a 'uniform education law' evokes the history of two states, North and South Yemen, each of which had promised to make education free but failed to do so. Their unification in 1990 was followed by the halving of development aid as a Western response to Yemen's position in the Gulf War.[1039] This was a double loss. Remittances of Yemeni migrants workers were lost because of the Gulf War and development finance plummeted. In consequence, charges in public schools placed education beyond the reach of the poor majority. Creditors and donors returned in late 1990s and have been funding roughly half of Yemen's education budget.

The constitutional guarantee of free education has not yet been implemented and, least of all, enforced. The World Bank found in 1998 that "school fees provide virtually all resources available for school maintenance and various non-salary recurrent costs".[1040] Charges are widespread and they also form part of governmental policy. The government reported in 2002 that it only planned to "exempt girls in rural and remote areas from payment of fees".[1041] It repeated in 2004 that its policy was only to make education partially free for girls. This was planned in the form of "reducing tuition fees for girls and eliminating them altogether for girls from poor families".[1042]

Because 45% of Yemen's public investment in education is financed by external creditors and donors,[1043] their policies matter as much, if not more, than the government's. The leading role of the World Bank in the design of education is important because it does not define education as a right and, hence, does not support government's efforts to make education free. Rather, charges have been institutionalized and exemptions provided only for girls.

This influence of international financial institutions is further examined in the next section, on Latin America. It describes frequent conflicts between international human rights law, which assumes global support for individual governments to make education free as part of their human rights obligations, and the criteria applied by international creditors, especially the World Bank, for public financing of education which work in the opposite direction.

[1038] U.N. Doc. CRC/C/70/Add.1 (1998), para. 152.
[1039] An outline of development policies of North and South Yemen, and then united Yemen, related policies of international creditors and donors is provided in Hashem, M.H. – *Goals for Social Integration and Realities of Social Exclusion in the Republic of Yemen*, International Institute for Labour Studies & UNDP, Research Series 105, ILO, Geneva, 1996, pp. 25-48.
[1040] The World Bank – *Education in the Middle East & North Africa: A Strategy Towards Learning for Development*, Washington D.C., 1998, p. 16.
[1041] U.N. Doc. E/1990/5/Add.54 (2002), para. 154.
[1042] U.N. Doc. CCPR/YEM/2004/4, p. 117.
[1043] *Republic of Yemen: Education Sector Assistance Strategy*, The World Bank, MNSHD Discussion Paper Series No. 3, November 1999, pp. 5 and 12.

LATIN AMERICA

Divergent human rights policies

Different ways in which governments in the region define human rights epitomize its diversity. Cuba and Costa Rica have attained impressive educational accomplishments pursuing profoundly different policies; Argentina has better statistics on primary education than the United States of America; Brazil and Mexico have shown the world what needs to be done to make primary education genuinely free. International cooperation should have supported these commitments but has, more often than not, proved to be an obstacle. The many human rights battles needed to transform military dictatorships into democracies got much too little international support much too late. The 'lost decade' which followed the victory over dictatorships taught the region a bitter lesson in impoverishment. That regional educational commitments have subsequently been raised to the universal completion of secondary education speaks volumes.

An important part of the background for this commitment to education is the long heritage of free public education in the region, starting with 1876 in Uruguay, in 1928 in Chile, or in 1934 in Colombia. This heritage has facilitated heightened expectations of what governments should do while indigenous movements have emphasized what they should *not* do, namely hispanicize rather than educate.[1044] Chile and Uruguay returned to guaranteeing the right to education after defeating military dictatorships. Colombia remains an exception in the region without an effective guarantee of free education.

Much as everywhere else, the cost of for-fee education is expressed in the numbers of children out of school. Much more than elsewhere, this is investigated and documented in Latin America. If charges are levied, the number of children and young people who go to school automatically diminishes.[1045] This finding shifts the spotlight on governmental commitments to make and keep education free. Unfortunately, free *versus* for-fee models also revive Cold-War debates about what human rights are and are not. Cuba's model attracts particular attention:

> Cuba's schools have been remarkably successful in achieving gender equity, reaching rural and disadvantaged populations, and fostering community participation, even in the context of rapidly dwindling resources. Cuba is a poor country, and the past decade has been particularly difficult economically. Yet the success of its schools flaunts conventional wisdom. Education in Cuba is entirely public, centrally planned, and free, in a global reform environment of privatization, downscaling of the state role, and cost recovery.[1046]

[1044] Tomasevski, K. – Removing obstacles in the way of the right to education, *Right to Education Primers*, No. 1, pp. 26-32, available at www.right-to-education.org
[1045] UIS – *América Latina y el Caribe: Informe regional*, UNESCO Institute of Statistics, Montreal, 2001, p. 46.
[1046] Gasperini, L. – *The Cuban Education System: Lessons and Dilemmas*, The World Bank, Education Reform and Management Publication Series, Country Studies, vol. 1, No. 5, July 2000, p. 5.

Opposition to privatization of the financial responsibility for education is not confined to Cuba. However, the language of human rights is not much used in education because it automatically triggers ideological and political battles about human rights which harmed the region during the Cold War. These battles are far from being over, on the contrary. The human rights policy of the United States of America, whose federal government denies that there is any such thing as the right to education,[1047] keeps the Cold War alive. This pits the governments of Cuba or Venezuela, which prioritize social and economic rights, against the US which labels that model as a remnant of failed communist systems.[1048]

The period which became known as *la década perdida* (the lost decade) amplified substantive disagreements about governmental obligations in education. Were governments obliged to provide education or merely to regulate its provision? Were governments obliged to make at least primary education free or to levy charges so as to diminish fiscal deficits and facilitate debt servicing? The recipe was forged in the US capital, the headquarters of the US government, the International Monetary Fund (IMF) and the World Bank, and is thus known as the Washington Consensus.[1049] This blueprint effectively denied the right to education by making corresponding governmental obligations impossible. Adequate and sustained funding for public education was undermined by prioritizing debt servicing, and the shortfall in budgetary funds was made up by levying fees and other charges. This victimised, in particular, children.[1050] Also, it profoundly weakened public education. Both impoverishment and inequalities increased. Although the recipe was supposed to be about economics and human rights were not mentioned, the human rights impact of the Washington Consensus was – and is - profound.

As in other regions affected by the blueprint of international creditors, whatever national legal guarantees of free education may have been in place were made irrelevant. A symbolic gesture by Brazil and Argentina of paying their debts to the IMF so as to regain freedom to deploy public resources through decisions in national capitals rather than in Washington epitomizes the road travelled.

An important part of that journey was privatization of the financial responsibility for education. A parallel system of public and private, free and for-fee schools exists in all countries in the region except Cuba.

[1047] Commission on Human Rights – Report submitted by Katarina Tomasevski, Special Rapporteur on the right to education: Mission to the United States of America, 24 September – 10 October 2001, U.N. Doc. E/CN.4/2002/60/Add.1, paras. 23-29.

[1048] Such statements of US delegations to the former United Nations Commission on Human Rights are described and analyzed in the section entitled 'Economic, social and cultural rights as an orphan of the Cold War' in Tomasevski, K. – Has the right to education a future within the United Nations? A behind-the-secenes account by the Special Rapporteur on the right to education 1998-2004, Human Rights Law Review, vol. 5, 2005, No. 2, pp. 215-220, available at www.right-to-education.org

[1049] The key parts the Washington Consensus which have particularly affected education have been fiscal discipline (reduction of budget deficit, often entailing diminished budgetary allocations to education), altered priorities in public expenditure (routinely converting secondary and tertiary education from free to for-fee), tax reform (where cutting marginal tax rates regularly results in 'strategic deficits', namely governmental revenue becomes insufficient to finance public services, including education), privatization (legal, regulatory and tax incentives for private educational institutions), liberalization of trade in education services, and protection of property rights, including intellectual property rights (which transforms knowledge from a public good into a traded commodity).

[1050] CODEHUCA – *Los niños de la década perdida*, Comisión para la defense de los derechos humanos en Centroamerica, San José (Costa Rica), enero de 1993.

Free education provided by the state is routinely impoverished, while for-fee, private education offers consumers the best education money can buy. The USA is used as the model and is also the magnet, being the largest exporter of educational services and 'importer' of migrants from South America.

A changed vocabulary followed suit and *access* to education replaced the *right* to education, thus educational statistics do not differentiate between education accessed through purchase and education which is available free of charge. Moreover, the boundary between public and private education has been blurred by levying charges in public education. There is no controlled vocabulary as yet in Spanish because the phenomenon is new and policies introducing charges came from Washington, in English, hence the use of the World Bank's term *school fees*. Moreover, the reforms which converted education from free into for-fee were often carried out during dictatorships. This highlights the importance of analysing governmental human rights policy as a whole by the yardstick of all human rights.

Constitutional guarantees of free education

As Table 19 below shows, the law is uniform throughout the region in guaranteeing free education, with the sole exception of Colombia. There are differences in the length of educational cycle which is defined as free and compulsory as country entries in this section illustrate. Also, education may be defined as both a right and a duty, as in El Salvador or Guatemala. If education is compulsory for children, it is also compulsory for their parents and for the state. The very notion of compulsory education denotes rejection of a parental right to deny education to their children. Having made education compulsory, the state has a heightened obligation to ensure that all children can comply with compulsory education laws. This includes the elimination of all financial obstacles that prevent children from completing the compulsory education cycle.

Table 19 highlights the correspondence between legal guarantees of free education and the corresponding (or contrary) governmental policies. The right hand column shows that governmental policy does not follow the country's law in half of the region. The legal commitments to free education are undermined through a policy of levying charges or by a practice of not recording the charges that are imposed by local authorities or individual schools. In both cases, the reason for transferring a part of the cost of education to families and communities is an inadequate public investment in education.

Table 19: The law and the policy on free education in Latin America

Country	Legal guarantee of free education		Policy on charging fees	
	Yes	No	Yes	No
Argentina	√			√
Bolivia	√			√
Brazil	√			√
Chile	√		√	
Colombia		√	√	
Costa Rica	√			√
Cuba	√			√
Dominican Republic	√			√
Ecuador	√		√	
El Salvador	√			√
Guatemala	√		√	
Honduras	√			√
Mexico	√			√
Nicaragua	√		√	
Panama	√			√
Paraguay	√		√	
Peru	√		√	
Uruguay	√			√
Venezuela	√			√

Sources: Argentina – CRC/C/70/Add.10, 2002, paras. 421-425; Bolivia – CRC/C/125/Add.2, 2003, para. 437, and E/C.12/1/Add.60, 2001, para. 25; Brazil – E/1990/5/Add.53, 2001, paras. 756-779; Chile – CRC/C/15/Add.173, 2002, para. 45 and CRC/C/3/Add.18, 1993, para. 173; Dominican Republic – CRC/C/8/Add.40, 1999, paras. 92-93, and E/1990/6/Add.7, 1995, paras. 91-93; Ecuador – CERD/C/384/Add.8, 2002, paras. 142-144, and CRC/C/3/Add.44, 1996, para. 179; El Salvador – E/1990/5/Add.25, 1995, para. 277 and E/C.12/1/Add.4, 1996, para. 22; Guatemala – E/1990/6/Add.34, 2002, paras. 15, 208 and 222, and CRC/C/65/Add.10, 2000, para. 199; Honduras – CRC/C/65/Add.2, 2001, paras. 31 and 323, and E/1990/5/Add.40, 1998, para. 36; Mexico – E/1990/104/Add.18, 1998, paras. 25-26, 111 and 410; Nicaragua – CRC/C/65/Add.4, 1998, para. 54, and CRC/C/3/Add.25, 1994, para. 40; Panama – E/1990/6/Add.24, 2000, paras. 306-307, and CRC/C/8/Add.28, 1995, paras. 9 and 165; Paraguay – CRC/C/65/Add.12, 2001, para. 181, and CRC/C/3/Add.22, 1993, para. 120; Peru -CRC/C/65/Add.8, 1998, paras. 164, 658-659, and 727; Uruguay – CRC/C/3/Add.37, 1995, paras. 136-137 and 231-232; Venezuela – E/1990/6/Add.19, 1999, paras. 307 and 329, and CRC/C/3/Add.54, 1997, paras. 160 and 165.

Models for ensuring free education in the region vary. Costa Rica and Cuba illustrate that free and all-encompassing education can be attained through a profoundly different governmental policy. Human rights research always shows that formal guarantees can be a reflection of governmental policy but also a substitute for it. It is the priorities in budgetary allocations that reflect a commitment to education or its neglect. Cuba's budgetary allocations to education move between 10 and 12% of its GNP (according to governmental statistics).[1051]

[1051] *Panorama regional: América Latina y Caribe, Educación pada todos (EPT): El imperativo de calidad*, Informe de seguimiento de la EPT en el mundo, UNESCO, 2004, p. 5, available at www.unesco.org

Low budgetary allocations in El Salvador, Haiti or Guatemala testify to the abyss between governmental rhetoric and its conduct. Obviously, inadequate public investment in education impedes the attainment of the global minimum of primary schooling for all. The reason is not obvious. It may be government's unwillingness to invest in education of the poor, or its inability to do so. This inability has been an object of intense controversy because of global policies for debt servicing during the past three decades.

The educational toll of the Washington Consensus

Regional commitments to ensuring free education for all children are reflected in the relatively high correspondence between constitutional guarantees and governmental policies in the region. The scope of freedom which a government has at a particular time is constrained by its debt burden and conditions for its servicing. Individual governments, such as Argentina, Bolivia or Brazil, have often described the harm inflicted upon public education by debt servicing. Their reports under human rights treaties have referred to the Washington Consensus and as *the* driver of their shift from free to for-fee education. The two pillars of the Washington Consensus particularly relevant for education were to curtail excessive state intervention and to eliminate budget deficit.[1052] The first part translated into cutting down the 'oversized' public sector, including in education. The second part entailed decreased budgetary allocations to education, which made levying payments to make up the shortfall inevitable. The regional panorama at the beginning of the 1990s was described thus:

> The results of a survey of social trends in nine Latin American countries over the past decade revealed an apparent paradox in the field of education: in absolute and relative terms, school enrolments at all levels increased steadily while the resources allocated to public education shrunk. The explanation is that, over the same period, private education expanded rapidly to meet the demands of the wealthy for higher quality education.[1053]

The Economic Commission for Latin America and Caribbean (ECLAC or CEPAL) found in July 2004 that only 8 countries (Argentina, Brazil, Cuba, Jamaica, Mexico, Panama, Trinidad and Tobago, and Uruguay) ensured budgetary allocations necessary to attain and sustain universal basic education.[1054] An increasing imbalance between public and private investment in education has highlighted how much of its cost has been transferred from governmental to family budgets. Private spending on education averages 1.3% of GDP in the OECD countries while it is 6% in Jamaica, 3.6% in Colombia, 2.6% in Chile and 2.0% in Peru.[1055]

[1052] The most widely cited description of the Washington Consensus is found in Williamson, J. – What Washington means by policy reform, in Williamson, J. (ed.) – *Latin American Adjustment: How Much Has happened?,* Institute of International Economics, Washington D.C., 1990.

[1053] Katzman, R. and Gerstenfeld, P. - Complexities in the evaluation of social development in Latin America during the crisis of the 1980s, ECLAC, Paper presented at the Meeting of Experts on Social Development Indicators, Rabat, Morocco, 8-11 April 1991.

[1054] Financiación y gestión de la educación en América Latina y el Caribe, CEPAL, Julio de 2002, mimeographed.

[1055] The World Bank – *Peru: Education at a Crossroads. Challenges and Opportunities for the 21st Century*, Report No. 19066-PE, 30 December 1999, vol.1: Main Report, p. 24.

The priority for education reflected in budgetary allocations grew to 4.1% of GDP in 2001, a full percentage point more than a decade earlier. However, differences within the region remain huge. In 2003, governments of Argentina, Brazil, Costa Rica, Cuba and Uruguay allocated 18% of their GDPs to social development, compared with an average of 7.5% in Ecuador, El Salvador and Guatemala.[1056]

An increased social investment aims to remedy the damage of 'the lost decade' by broadening democracy to economic and fiscal decision-making. Political parties committed to remedying "economic injustice"[1057] won elections in Argentina, Brazil, Ecuador, Uruguay and Venezuela. Bolivia joined in December 2005 and the elections in Chile, in January 2006, buttressed the regional trend of increased public investment in education.[1058] Another part of the Washington Consensus stands in the way, epitomized in the notion of *strategic deficit*. Such deficit was created by reducing the size of governmental revenue so that there was no option but to cut public services. A key obstacle was the merger between inability and unwillingness "to tax the proprietary classes".[1059] Octavio Augusto Pescador has highlighted this obstacle of decreased governmental revenue as follows:

> Paradoxically, now that democracy has turned policy-making more attentive to the citizens' demands and an independent legislative power works to appropriate increasing resources for education, decreased revenue flows force the executive branch of government to reduce spending on education.[1060]

Fiscal commitments to free education

Law is symmetrical and children's entitlement to free education entails corresponding governmental obligations. These are premised on adults' compliance with their duties, especially those associated with taxation.[1061] Making constitutional guarantees of free education effective revolves around budgetary allocations to education. Discretionary allocations impede the realization of the right to education because they are unpredictable and routinely much below the cost of schooling. Constitutional earmarking specifies that 6% of GDP should be allocated to education, as in Costa Rica and Venezuela. In Brazil, the Constitution mandates 18% of the federal budget and 25% of state and municipal budgets for education. In Ecuador, the constitutional requirement is 30% of the budget of the central government. Such commitments are fiscal expressions of governmental human rights obligations. Their effects depend on whether the law guides fiscal and educational policy or not. Their impact depends on the over-all size of the budget. If the budget is too small, the allocation to education is likely to be below its cost.

[1056] CEPAL – *Panorama social de América Latina*, Doc. LC/G. 2288-P/E, Santiago de Chile, noviembre de 2005, p. 18.
[1057] Perkovich, G. – Giving justice its due, *Foreign Affairs*, vol. 84, No. 4, July/August 2005, p. 89.
[1058] Glaister, D. – US fear grows of left turn in Latin America, *Guardian Weekly*, 18-24 November 2005.
[1059] Bresser Pereira, L.C. – Economic reforms and economic growth: Efficiency and politics in Latin America, in: Bresser Pereira et al. (eds.) – *Economic Reforms in New Democracies: A Social-Democratic Approach*, Cambridge University Press, Cambridge, 1993, p. 46.
[1060] Pescador, O.A. – Education in Mexico: Historical evolution and ethnographic perspectives, *Comparative Education Review*, vol. 46, 2002, No. 4, p. 516.
[1061] Tomasevski, K. – Strengthening pro-poor law: Legal enforcement of economic and social rights, ODI, January 2005, p. 5, available at www.odi.org.uk/rights

As for other regions, Table 20 compares military expenditure with public investment in education. The data show that commitments to education are reflected in much higher allocations than is the case in Africa or Asia. Indeed, in quite a few countries educational investment by far exceeds military expenditure.

Table 20
Public investment in education and military expenditure in Latin America as percentage of GDP in 2002

	Military expenditure	Investment in education
Argentina	1.2%	4.6%
Bolivia	1.7%	6.0%
Brazil	1.6%	4.0%
Chile	3.9%	3.9%
Colombia	4.2%	4.4%
Costa Rica	0.0%	4.7%
Cuba	…	8.5%
Ecuador	2.8%	1.0%
El Salvador	0.8%	2.5%
Guatemala	0.6%	1.7%
Honduras	0.8%	…
Mexico	0.5%	5.1%
Nicaragua	1.4%	…
Panama	(1.1%)	4.3%
Paraguay	0.9%	4.7%
Peru	1.5%	3.3%
Uruguay	1.7%	2.5%
Venezuela	1.4%	…

Sources: The data on military expenditure originate from the SIPRI Yearbook (www.sipri.org). Brackets are used for estimates or figures related to an earlier year if no data was reported for 2002. The data on public investment in education originate from UNDP's Human development Report (http://hdr.undp.org/statistics).

Decreased military expenditures shown in Table 20 have been a 'human rights dividend' secured through the replacement of military dictatorships by democracy. Colombia is, again an exception to the regional trend with the highest military expenditure in the region. Chile is a partial exception and illustrates how long the process of altering a military-driven governmental budget, set during the dictatorship, towards prioritizing social investment is. It is still on-going, sixteen years after the end of dictatorship.

Increased public investment in education has facilitated the universalization of primary education in quite a few countries and the regional commitment is now to universalize secondary education. This process has revealed how broad the definition of free education should be so as to enable *all* children to go to school.

The financial barriers which children need to overcome to go to school are three-fold: direct, indirect and opportunity costs.[1062] Direct costs of education include various fees and other charges levied by schools or education authorities as well as textbooks and other learning materials. Indirect costs are food and clothing, which children would need whether at school or not. Opportunity costs are created when children are sent to school while they could be working. Eliminating charges is the first necessary step but this does not make education free. For those who cannot shoulder indirect costs of sending children to school education is still too expensive. The elimination of all direct and indirect costs does not suffice where families need children's work to survive. It was in Mexico and Brazil that governmental subsidies needed to free children from work so that they could go to school were introduced, field-tested, and are now exported worldwide.

The Brazilian model, *bolsa escola*, has institutionalized conditional cash transfers to families, principally mothers. The same model has also been successfully applied in Mexico, under the original name PROGRESA They have explicitly affirmed governmental responsibility to eliminate financial obstacles which impeded children's education. Parental choices are made possible through cash transfers which supplant children's earnings. Parental commitments to their children's education is ensured through conditioning payments by the children's regular school attendance. Both have been extended to a large part of the poor in both countries.[1063]

This wide spectrum of regional approaches to making education free elucidates how important it is to specifically determine the financial barriers to children's education so that they could be gradually eliminated. The road travelled thus far is first described for countries whose governments are committed to free education. The entries for those countries where an effective policy to make education free is yet to be forged follow.

[1062] These different types of costs and the existing models of for-fee and free education have been described in Tomasevski, K. – *Human Rights Obligations in Education: The 4-A Scheme*, Wolf Legal Publishers, Nijmegen, 2005, pp. 24-29.
[1063] Poverty in Latin America: New thinking about an old problem, *The Economist*, 17 September 2005.

COUNTRIES COMMITTED TO FREE EDUCATION

Argentina

President Néstor Kircher said when Argentina paid its debt to the IMF in January 2006: "With this payment, we are burying a significant part of an ignominious past".[1064] Consecutive economic crises in Argentina profoundly and inevitably affected education just before the turn of the millennium. The first fruits in halting the process of impoverishment became statistically visible only in 2004.[1065] Beyond educational statistics, the aftermath of crises still looms large. Social assistance to families, aimed *inter alia* to help them keep their children at school, amounted in 2004 to $150 while the price of the minimal food basket for a family of five was $124.[1066]

The drama of December 2001, when the country's government seemed incapable of responding to public protests against rapid, deep and almost all-encompassing impoverishment, constituted a turning point. By the human rights yardstick, the issue went far beyond the IMF's economic policy which was seen as a principal cause of impoverishment but formed a part of the continuing battle for human rights. They had been systemically denied by the military dictatorship.[1067]

The government reported in 2002 that free primary education had been universalized and its commitment to keep education free and equitable remained unaltered despite the crisis. Although the financial responsibility for education had been decentralized, "the national State must provide free compulsory education for all the country's inhabitants".[1068] In practice, alleviating the impact of impoverishment throughout the country remains a huge challenge. Nevertheless, educational statistics reflect the government's effort, placing Argentina, with its educational enrolment of 5-14 year olds of 104%, ahead of the United States with 97%. [1069]

Compulsory education had been prolonged from 7 to 9 years in 1993 and, at the same time, the objective was defined as repaying "the debts of the past – that is, compensating the pockets of inequity".[1070] This 1993 education law (*Ley federal de educación*) confirmed that compulsory education should also be free. Its ambition to ensure that this is so for all children was not immediately translated into practice. A deep budgetary crisis in public education affected the teaching profession and all educational institutions.

[1064] Goñi, U. – Argentina unortodox rehabilitation, *Guardian Weekly*, 20-26 January 2006.
[1065] CEPAL – *Panorama social de América Latina*, Doc. LC/G. 2288-P/E, Santiago de Chile, noviembre de 2005, p. 9.
[1066] Garrote, J. & Campos, L.E. – Structural consolidation of social exclusion, *2005 Social Watch Report*, available at www.socialwatch.org.
[1067] CELS – *Informe sobre la situación de los derechos humanos en Argentina 2002*, Centro de estudios legales y sociales, Buenos Aires, 2002, available at www.cels.org.ar.
[1068] U.N. Doc. CRC/C/70/Add. 10 (2002), paras. 425 and 463.
[1069] OECD – Enrolment rates (2002), Table C1.2, *Education at a Glance: OECD Indicators 2004*, Paris, 2005, p. 278.
[1070] Aguerrondo, I. – Can education measure up to poverty in Argentina?, in: Reimers, F. (ed.) – *Unequal Schools, Unequal Chances: The Challenges to Equal Opportunity in the Americas*, David Rockefeller Center for Latin American Studies, Harvard University Press, 2000, p. 147.

The impoverishment generated by consecutive economic crises made post-compulsory education a luxury. Compared with the priority for earning some income so as to survive, investment in an increased income in the future through education pales into insignificance. Moreover, the impoverishment of public universities was accompanied by mushrooming private institutions, *microempresas educativas*, which further restricted access to only those able to pay their fees.[1071]

Brazil

It was no coincidence that Brazil, alongside Argentina, announced in January 2006 that it paid its debts to the IMF so as to re-gain freedom for a future "built on strong investment in education".[1072] The (previous) government noted in 2001 that it "needed to overcome a number of major barriers comprising adjustment programmes and a series of international financial crises before it could implement wide-ranging social policies".[1073]

Education is defined as a collective good as well as an individual public right in Brazil. This associates individual entitlements with corresponding public responsibilities. The principal bearers of this responsibility are the local authorities and the federal states. The 1988 Constitution specified obligatory allocations of 18% for the federal budget, and 25% for state and municipal budgets:

> With Brazil's 1988 Constitution, the percentage of government funding to be assigned to [education] increased to 18 per cent at the federal level and 25 per cent at the state and municipal level. More recently, the Teaching Development and Enhancement Maintenance Fund (FUNDEF) was introduced, with the immediate objective of ensuring a minimum expenditure per student and a special minimum wage for teachers. The Fund reaffirmed the need for the states, federal district and municipal districts to comply with the provisions of Brazil's 1988 Constitution, which stipulates that 25 per cent of the tax revenues and other transferred income should be allocated to the maintenance and development of the education system and that states must allocate 60 per cent of this funding to basic education as from 1998, ensuring that 15 per cent of tax revenues are also allocated to this area. This new legal provision stated that the responsibility for providing the necessary funding falls within the competence of the states, the federal district and the municipal districts. However, owing to their widely varying social and economic levels, which results in low annual outlays per student, particularly in north-east and north Brazil, the Federal Government, under Decree 14/96, assumes responsibility for supplementing the amounts allocated to FUNDEF whenever the allocation per student falls below a nationally defined minimum level.[1074]

[1071] CELS – *Informe sobre la situación de los derechos humanos en Argentina 2002*, Centro de estudios legales y sociales, Buenos Aires, 2002, available at www.cels.org.ar.
[1072] Brazil: Lula's leap, *The Economist*, 4 March 2006.
[1073] U.N. Doc. E/1990/5/Add.53 (2001), para. 18.
[1074] U.N. Doc. E/1990/5/Add.53 (2001), paras. 758-759.

This scheme, which was in 2004 extended to all basic education, necessitates monitoring so as to determine whether funds are earmarked for education as they should be, and whether the earmarked funds are deployed as they should be. Because financial responsibilities for education are allocated to different tiers of government, from central to local, monitoring reveals a variety of best and worst practices in this huge and diverse country. Transparency Brazil has shown that in 63% of municipalities there were cases of embezzlement and in 60% the funds earmarked for education were used for other purposes.[1075] The contribution of the civil society has also proved crucial in exposing and opposing budgetary allocations inconsistent with constitutional mandates.[1076] The law gives standing to a broad range of actors, from individual citizens to trade unions, to vindicate the right to education. This entitlement encompasses primary education for all, while free secondary education is to be realized progressively.

In an illustrative case, initiated by the federal ministry (*Ministerio Público*) against municipal authorities of Novo Cruzeiro, the court has ordered the municipal authorities to ensure free transportation to children within 30 days or pay fines. The children had not been able to go to school three years. The federal ministry, after many attempts to enforce the children's right to education, resorted to court so as to ensure that obligations mandated by the Constitution were implemented. The case revolved around repairing roads and organizing transport for school children but the issue was much broader:

> Without education, the fundamental objectives of the Republic, namely the construction of a free, fair and understanding society, the guarantee of national development, the eradication of poverty and marginalization, and the reduction of social inequalities, will not be achieved.[1077]

The definition of *free* education is indeed broad, as described in the introduction to this section. Governmental policy includes the elimination of charges as well as supplementary entitlements. These span teaching and learning materials, school transport, school-based food or health services where these are indispensable to enable children to complete the schooling they are entitled to. *Bolsa escola* has been extended to some 10 million children to enable the children to regularly attend school.[1078] Its elimination of opportunity costs enabled 97% of children aged 7 to 14 to enrol in school,[1079] a higher percentage that 93% in the United States of America, as Table 24 in the last section of this report shows.

[1075] Transparency International – *Stealing the Future: Corruption in the Classroom. Ten Real World Experiences*, Berlin, 2005, p. 31-33.

[1076] When those entitled to free public education are deprived of it because mandated budgetary allocations have not been made or funds have been misappropriated, freedom of information and the right to challenge governmental decisions and actions are necessary to ensure access to justice. Ação educativa, an NGO, has launched an exemplary case which questioned whether the legally required 30% of the budget of Sao Paolo was allocated to education. It involved a judicial challenge of the lack of transparency in budgetary processes and of discretionary powers in ressource allocation which earmarking was designed to constrain. Information is available at www.acaoeducativa.org/acaonajusticia

[1077] Tribunal de Minas Gerais – Apelacao civel no. 000.197.843-2/2000.

[1078] Aguiar, M. & Araújo, C.H. – *BOLSA-ESCOLA: Education to Confront Poverty/L'éducation pour combattre la pauvreté*, UNESCO Office in Brazil, Brasília, 2002.

[1079] Moreno, C.E. & Taranto Goulart, O. – Acesso e qualidade do ensino fundamental: direito de todos?, in: Portella Kruppa, S.M. (ed.) – Economic solidaria e educacao de jovenes e adultos, INEP, Brasilia D.F., 2005, available at www.publicacoes.inep.gov.br

Costa Rica

All-encompassing basic education has been attained in Costa Rica, with enrolments in compulsory education revolving around 100%.[1080] The country takes the price of place for having been the first in the world to abolish the army, on 1 December 1948. Symbolically, the keys to the military barracks were handed over to a school, previous military expenditures transformed into investment in education.[1081]

Costa Rica's commitment to education goes further back as the 1869 Constitution mandated primary education to be compulsory both for boys and for girls as well as free. It was to be fully financed by the state. Subsequent constitutional changes have strengthened the right to education by making the allocation of 6% of GNP obligatory and this was retained in the most recent constitutional changes in 1997.

Compulsory education was gradually extended to secondary school and then also to pre-primary education, altogether 12 years. Basic education remains free but 'voluntary' financial contributions have been imposed by individual schools and, despite the Constitutional Court's judgment that such charges are unconstitutional, they continue.[1082] The schools justify levying charges by insufficient funding provided by the government.[1083] The abolition of these 'voluntary' contributions requires increased public investment in education and, then, effective access to remedy wherever they are involuntary. Opposition to such charges is mounting but it might take a change of government to respond to the popular demand to make compulsory education genuinely free.

Cuba

It is as difficult as it is necessary to analyse two facets of education in Cuba separately. On the one hand, its accomplishments in ensuring free education have been much praised and rightly so. On the other hand, the government's denial of educational pluralism and repression of all attempts to teach and learn alternatives to governmental ideology and policy have been frequently condemned, also rightly so. International human rights law requires both facets to be examined in conjunction because both are important to make education free, in all different meanings of this word.

These two facets tend to be separated and Cuba described in comparative education does not resemble Cuba described in human rights literature. The priority which the US government has attached to condemning and sanctioning Cuba keeps the Cold War alive.

[1080] U.N. Doc. CRC/C/65/Add.7 (1998), para. 61.
[1081] Richards, C. – A world without armies!, *New Internationalist*, No. 381, August 2005, p. 21.
[1082] The Ministry of Education has confirmed that obligatory charges should not be levied in public compulsory education but has not done anything to halt them. That such charges are not voluntary is seen from the practice of schools to demand proof of payment of 'voluntary contributions' as a requirement for school enrolment. Schools justify their practice by insufficient public funds they receive for electricity, water and sanitation, and telephone.
[1083] *Informe anual 2004*, Defensoría de los habitantes de la República de Costa Rica, available at www.dhr.go.cr

Within the United Nations, US initiatives (direct or by proxy) have yielded a number of condemnatory resolutions on human rights violations in Cuba.[1084] These have been increasingly depleted of substance [1085] because dialogue on human rights was supplanted by political posturing, as is often the case within the United Nations. The European Union has tried out a less confrontational and condemnatory response to human rights violations in Cuba by imposing and lifting diplomatic sanctions but that approach has not yielded any change in governmental policy either.[1086]

The Inter-American Commission on Human Rights has reacted on a number of occasions to repression in Cuba. Often, education was targeted and especially human rights education. The Commission has found that restrictions upon political rights, freedom of expression and freedom to form and express opinions have, during past decades, institutionalized permanent and systematic denial of fundamental rights.[1087]

Education is free in Cuba in the sense of being free of charge [1088] but it is not free in the sense of freedom to teach and learn. The law mandates "educating the young as communists". [1089] Their possible resistance to being educated as communists is defined as "a residual ideological problem", whose eradication is everybody's task.[1090] In the government's interpretation, the right to education means access to government-controlled and government-provided schools and universities.

The development of education, culture and science is the prerogative of the state, and they should be founded on Marxism-Leninism. For example, "artistic creativity is free as long as its content is not contrary to the Revolution". Because education is defined as a function of the state, all educational institutions belong to the state and all education is provided free of charge.[1091] The meaning of *free of charge* triggered in 1983 a dilemma. All learning materials and textbooks had been distributed free of charge but the students' union (there is only one in the country) asked whether students should not be allowed to buy books. The parliamentary verdict was that this was permitted by the law. Students could purchase books which then became their personal property for future use in work or study.[1092]

[1084] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 80-89.
[1085] The Commission on Human Rights adopted on 14 April 2005 its resolution 2005/12 on the situation of human rights in Cuba whose only substantive phrase was an affirmation that "all people are entitled to respect for their human rights".
[1086] Beatty, A. – EU envoys target asto on human rights abuse, *European Voice*, 8-14 June 2006.
[1087] Comisión Interamericana de Derechos Humanos – CIDH informa sobre situación de derechos humanos al concluir sesiones, Comunicado de prensa No. 35/05, 28 de octubre de 2005, available at www.cidh.oas.org
[1088] U.N. Doc. E/CN.4/1994/51 (1994), para. 50.
[1089] "La formación comunista de la joven generación es una preciada aspiración del Estado, la familia, los educadores." *Código de la niñez y la juventud*, Ministerio de justicia, La Habana, 1999, Articulo 3, p. 3.
[1090] Vega Vega, J. – Legislación sobre el tratamiento a los menores con trastornos de conducta, *La legislación penal y algunas regulaciones administrativas*, Editorial de ciencias socials, La Habana, 1984, p. 9.
[1091] Simons, W.B. – *The Constitutions of the Communist World*, Sijthoff & Noordhoff, Alphen aan den Rijn, 1980, pp. 110-111.
[1092] Vega Vega, J. – *Cuba: Su historia constitutcional. Comentarios a la Constitución cubana reformada en 1992*, Ediciones Endymion, Madrid, 1997, pp. 260-262.

Mexico

Ensuring educational enrolment for 95.7% primary school age children has been an impressive achievement for Mexico. This is a higher percentage than Finland's 94.4% or Luxemburg's 93.4%.[1093] Primary education has thus become 'almost universal'. It is universal by the criterion of educational statistics, which deem enrolments above 90% to constitute universal education. It is not universal because an estimated 1.5 million children in a school-going population of 33 million remain out of school.[1094] The government's commitment to extend compulsory education and its parallel offer of pre-primary education facilitated quantitative expansion. In 2003, enrolments in secondary education reached 86%. [1095]

These measures to make education free and all-encompassing were neither rapid nor easy. Mexico is the country for which the Washington Consensus, described in the introduction to this section, was initially created. One consequence of its recipe was bifurcated education, where the public sector continued (albeit considerably impoverished) and private education was formally introduced on an equal footing. The constitutional amendments in 1993 "established that private individuals could provide all types and modalities of education" and further legal reforms that same year" encouraged the increased participation of private individuals in the funding of education".[1096]

Public primary education has become 'almost free' because most financial barriers have been gradually eliminated. These included various charges as well as textbooks. The cost of learning materials alone could reach 40% of the family budget of the poor. The government's policy has then been to deliver free school books to the poorest areas in the country.[1097] The model of making education free also through the elimination of opportunity costs of education, PROGRESA (*Programa de educación, salud y alimentación*), has contributed to making education universal as the introduction to this section has noted. It is based on the knowledge that family survival takes precedence over children's education. Education yields benefits in a long term perspective while ensuring survival cannot be postponed. To eliminate such cruel choices, the family (almost always mothers) are provided with financial assistance conditioned by children's school attendance. What started as a pilot project in 1992 (and is thus older than Brazilian *Bolsa escola*) has been extended to cover almost half of all rural families by the turn of the millennium.[1098] The programme has been re-named into Opportunities (*Oportunidades*) and amplified to encompass health and nutrition for children alongside education.[1099]

[1093] OECD – Enrolment rates (2002), Table C1.2, *Education at a Glance: OECD Indicators 2004*, Paris, 2005, p. 278.
[1094] Logros del programa nacional de educación, Secretaría de la educación pública, www.sep.gob.mx/wb2 (January 2006).
[1095] Instituto nacional para la evaluación de la educación – *La calidad de la educación básica en México*, México City, 2004.
[1096] U.N. Doc. E/1994/104/Add.18 (1998), paras. 25-26 and 410.
[1097] COMEXANI – Avances y retrocesos: Balance de una década. Informe sobre los derechos y la situación de la niñez en México 1998-2000, Colectivo Mexicano de apoyo a la niñez, available at www.laneta.apc.org/comexani (March 2001).
[1098] Morley, S. & Coady, D. – *From Social Assistance to Social Development: Targeted Education Subsidies in Developing Countries*, Center for Global Development & International Food Policy Research Institute, Washington D.C., August 2003, pp. 105-106.
[1099] Information is available at www.progresa.gob.mx

As elsewhere, the right to education was affirmed as an enforceable right after education had been ensured for the majority. The underlying paradox has been described as follows:

> The larger the number of victims, the smaller chance they have to legally claim their rights. This issue is particularly important for the right to education because the majority of cases revolve around collective victimization.[1100]

Such collective victimization does not necessarily imply large numbers of individuals excluded from education. Often, the excluded share a particular collective feature which identifies them as victims of discrimination. The indigenous rebellion in Chiapas on 1 January 1994, coinciding with the coming into force of the NAFTA (the free trade agreement between Mexico, Canada and the United States), drew global attention to the fact that impoverishment never was - nor can be - neutral. In Mexico, discrimination characterizes the indigenous "as the other, the inferior other".[1101] Compensatory programmes designed to overcome the indigenous educational deficit therefore reach beyond education into remedying such collective victimization.

Uruguay

Public education has a long tradition in Uruguay and the government has emphasized its continuous adherence to the original principles laid down by José Pedro Varela in 1876, whereby "education should be obligatory, free and non-religious." The 1967 Constitution has added freedom of education, which encompasses freedom to teach, to learn, and to establish and operate educational institutions. The government has described its model of education thus:

> The Constitution in force since 1967 recognizes education as one of the priority human rights and it makes this recognition manifest by proclaiming the freedom of education, including the right to teach, the right to learn and the right to establish and operate teaching institutions. The compulsory and free status of primary, secondary, agrarian, technical and higher education are the pillars on which the country's whole education system rests.[1102]

Uruguay's educational reforms in the 1990s have been exceptional because they did not follow the regional trend of privatization. Instead, the government strengthened public education by increasing budgetary allocations so as to extend its reach towards the poor, especially in pre-primary stages. The quality of education was improved through budgetary allocations for additional teaching and learning time for the poor. These remedial measures were aimed at overcoming the negative educational impact of the military dictatorship, until 1985, and subsequent structural adjustment programmes.[1103]

[1100] "Cuanto mayor es el número de damnificados, menor es la posibilidad de reclamo jurídico.La cuestión es especialmente importante para el derecho a la educación, porque en gran parte de los casos de afectación de ese derecho se trata de vulneración de tipo colectivo." OHCHR - *Diagnóstico sobre la situación de los derechos humanos en México,* Mexico City, 2003, p. 129, available at www.governacion.gob.mx (January 2006).
[1101] "El indio es el otro, y un otro inferior." Comisión internacional de juristas – *México: Rebelión indígena en Chiapas*, Ginebra, febrero 1994, p. 43.
[1102] U.N. Doc. CRC/C/3/Add.37, 1995, paras. 136 and 231.
[1103] Lanzaro, J. – *La reforma educativa en Uruguay (1995-2000): virtudes y problemas de una iniciativa heterodoxa*, CEPAL, Serie political sociales, No. 91, Santiago de Chile, julio de 2004, p. 9.

The principal objective of these remedial measures was articulated by its key proponent, Germán Rama, in the truism whereby "equal schooling for unequal individuals amplifies inequalities" ("enseñanza igual para individuos desiguales amplía la desigualdad"). [1104]

Increased budgetary allocations to education did not ensure adequate funding for such ambitious reforms, especially during economic crises at the turn of the millennium. Thus, one of the first pledges of the government elected in 2005 was to increase budgetary allocations to education from 2.9 to 4.5% of GDP. [1105]

Venezuela

Changes in governmental policy which have become known as the 'Bolivarian revolution' have included making education free. The 1999 Constitution, also known as 'Bolivarian' [1106] has entrenched education as a constitutional right. It says:

> Everyone has the right to an education. The State shall create and maintain schools, institutions and services sufficiently endowed to ensure access to education and to culture, with no limitations other than those deriving from the vocation and from aptitude. Education provided by public institutions shall be free in all cycles. However, the law may establish exceptions with respect to higher and special education in the case of persons with means.[1107]

Despite the constitutional exception regarding charges that could be levied 'in the case of persons with means', the jurisprudence has preserved free university education. In a series of court cases, the Supreme Court has affirmed that public university education should remain free. It had added that the government has an obligation to control the charging of fees by private universities so as to prevent abuses.[1108]

This affirmation that education should remain free at the university has facilitated a range of measures against levying charges in compulsory education. The Ministry of Education has affirmed education should be free, otherwise it could not be compulsory. It prohibited conditioning pupils' enrolment by any type of payment. Voluntary financial contributions are allowed if these are approved by the majority of the assembly of school children's parents, to which all have been properly invited.[1109]

[1104] *La República* (Montevideo), 12 de junio de 1991.
[1105] Brovetto convocó a todos para el debate educativo, 17/05/06, available at www.presidencia.gub.uy.
[1106] The official name of the state has been changed as of 1999 to the Bolivarian Republic of Venezuela. The preamble of the Constitution invokes the 'historic example' of the Liberator, Simón Bolívar (1783-1830) and professes determination to remodel governance in accordance with his ideals. *Constitución de la República Bolivariana de Venezuela 1999*, Conforme a la Gaceta Oficial No 5.435 de fecha 24 de marzo de 2000, Imprenta Nactional Carácas, 2000.
[1107] U.N. Doc. E/1990/6/Add.19 (1999), para. 307.
[1108] PROVEA – *Venezuela ante el Comité de Derechos Económicos, Sociales y Culturales*, Venezuela, 2002, pp. 49-52.
[1109] La educación, un derecho humano – Tríptico, Instituto para la defense y educación del consumidor, *El Nacional (Carácas)*, 26 July 2002.

Alongside the banning fees and other charges, indirect and opportunity costs of education have been reduced. Various forms of family subsidies as well as free school uniforms and supplies have been introduced to facilitate school attendance and completion by poor children.[1110] These do not reach all the pupils who need them, however.

As education was made increasingly free, primary schooling has been universalized. School enrolments (encompassing children aged from 7 to12) routinely exceed 100% and net enrolments revolve around 95%. However, primary education ends too early and almost half of children cannot continue their education. For children aged 13-15, net enrolments were just over half (58%) in 2000).[1111]

This early exit from formal schooling is closely related to poverty as a double barrier. After private costs of education were minimized in primary school, the cost of secondary school remains a burden which many poor families cannot afford. Also, family poverty impedes children's exposure to an environment conducive to learning at home, such as home libraries or computers, which would enhance their motivation to continue going to school.[1112] The increased price of oil in 2006 may provide an additional motivation to the government to universalize secondary education, especially by eliminating the financial barriers which poor children face.

COUNTRIES NOT PROVIDING FREE EDUCATION

Bolivia

The electoral victory of Evo Morales in December 2005 is likely to result in a profoundly changed model of education. The electoral platform of the MAS (Movement to Socialism) promised no less,[1113] and a new constitution is to be agreed through a participatory process. The government is likely to revert to free education (in all different meanings of this word). This was anticipated in legislative changes in 1994 [1114] but subsequently abandoned. A key actor behind the 1994 reform was Victor Hugo Cárdenas, the first indigenous vice-president of Bolivia. He made Bolivia's indigenous heritage politically visible for the first time in the country's history.[1115] Now it has become more than visible with the first indigenous president.

[1110] U.N. Doc. CRC/C/3/Add.54 (1997), para.165.
[1111] PROVEA – *Situacion de los derechos humanos en Venezuela: Informe anual octubre 2001/septiembre 2002*, Carácas, 2002, pp. 172-173.
[1112] PREAL – *Informe de progreso educativo en Venezuela*, Carácas, August 2002, p. 2.
[1113] Glaister, D. – Triumph for Bolivia's champion of the poor, *Guardian Weekly*, 23 December 2005 – 5 January 2006.
[1114] Serrano Torrico, S. – *Ley de reforma educativa (Ley No. 1565, 7 de julio de 1994*), Editorial Serrano, Cochabamba, 1994.
[1115] The 1994 educational reform should have abandoned the model of instruction-memorizaton-reproduction and built a new model of teaching and learning which would have reflected the country's racial, ethnic, linguistic and religious diversity. Four years later, Victor Hugo Cárdenas concluded that diversity as a cross-cutting dimension of educational reform had disappeared. "Desarrollar la interculturalidad": Entrevista con Victor Hugo Cárdenas, *Protagonistas (Revista por la defensa de los derechos de los niños, niñas y adolescentes),* DNI (Defensa de los Niños Internacional), Cochabamba, vol. 1, No. 2, June 1998.

Previous governments left a heritage of unfulfilled promises. The government's self-assessment in 2003 pointed out that "education is the highest function of the State" according to the Constitution, and free primary education should be ensured to all. The *should* remains to be translated into *is*.[1116] A series of governments thereafter made it difficult to discern what their educational policies were and whether any of them were actually implemented. It is indicative that the cost of education was not mentioned in the 2001 PRSP, [1117] thus leaving measures and resources needed to make education free outside the deft relief process.

That omission took place at a time when the Committee on Economic, Social and Cultural Rights noted that "70 per cent of children under 9 years of age do not attend school." [1118] Often the reason was – and is - that there are too few schools in rural areas. In urban areas, the (former) government described how many children had to work and forego school:

> The National Diagnostic Study of Bolivian Youth showed that dropping out begins in adolescence (at 14 in the urban and 12 in the rural areas). There are two main reasons, namely, in the cities the need to work and in the rural areas the inadequacy and poor quality of the supply, factors which the educational reforms are intended to address.[1119]

The conflict between the constitutional guarantee of free education and the governmental policy of levying charges was tackled by the ombudsman (*defensor del pueblo*) in 2003. It was brought to the ombudsman's attention by parents whose children had been suspended from school due to the failure to pay charges (*pensiones*).. The ombudsman concluded that levying charges "undoubtedly violates the right to education". [1120] Remedying such human rights violations has been left to the new government, which has just taken office in 2006.

Chile

The election of Michelle Bachelet as the president of Chile in January 2006 attracted global attention because she is a woman. Hers was the fourth consecutive mandate of Concertación, the alliance which designed and implementing the post-Pinochet transition in Chile after their first electoral victory in 1990. The long-term strategy for redressing violations of human rights embodied in educational policies imposed during the dictatorship aims to "reverse of the most critical aspects of the effects of the military market-led and privatization-centred reform".[1121] The educational model imposed during General Pinochet's rule in Chile has been widely debated in the human rights literature because it was introduced at a time which epitomized institutionalized human rights violations.[1122] It made education un-free in many different meanings of this word.

[1116] U.N. Doc. CRC/C/125/Add.2 (2003), para. 437.
[1117] Bolivia - Poverty Reduction Strategy Paper (March 2001).
[1118] U.N. Doc. E/C.12/1/Add.60 (2001), para. 25.
[1119] U.N. Docs. CRC/C/65/Add.1 (1997), para. 81, and CRC/C/125/Add.2 (2005).
[1120] *VI Informe annual del Defensor del pueblo, República de Bolivia (Gestión 2003),* La Paz, 2004, Resumen executivo, p. 10.
[1121] OECD – *Reviews of National Policies for Education: Chile*, Paris, 2004, p. 247.
[1122] Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, p. 108.

The strike of 600,000 secondary school pupils in May and June 2006 elevated the political priority of education on the agenda of the new government. It was the largest and the longest public protest since the fall of the dictatorship. The strike had started with a protest against high cost of transportation to and from school and snowballed into a demand to make education free. In her televised address to the nation, Michelle Bachelet promised a legal reform which would ensure the right to quality education for all. [1123]

Free education is constitutionally guaranteed but only for children between 6 and 13, [1124] and that guarantee is not fully translated into practice nor is it enforceable. A constitutional amendment in 2003 extended compulsory schooling to 12 years but did not state that it would be free.[1125] An individual entitlement to free public education is not interpreted as a constitutionally protected right. Nevertheless, Chilean courts have had to tackle expulsions or public humiliation of pupils whose parents failed to pay charges levied by schools, and have upheld the primacy of children's education over commercial debts of their parents embodied in their failure to pay fees and other charges.[1126]

Constitutionally guaranteed freedoms have gradually been amplified to include freedom from gender discrimination. A precedent-setting case before the Inter-American Commission on Human Rights exposed routine expulsions of pregnant girls from school. That case was settled through a negotiated solution and Mónica Carabantes, the victim, was awarded a public apology and a stipend to continue her interrupted studies.[1127] Despite the adoption of a law which prohibits discrimination against pregnant girls and women, discrimination continues especially in private education.

In its review of Chile's educational policy, the OECD pointed out in 2004 how much "Chilean traditions of authoritarianism and male domination define the context within which schools operate". It emphasized inherent limitations of micro-level changes which could be attained in individual schools saying that "the opportunities available to each gender speak louder that the contents of the books or the lectures of teachers".[1128] The first female president in the history of Chile has made it a priority to speak as loudly as possible about gender equality.[1129] Perhaps freeing education from discrimination against the poor and from gender discrimination, doubly victimizing poor girls, might become governmental policy.

[1123] Delano, M. - Bachelet ofrece reformas para frenar la huelga de estudiantes en Chile, *El País*, 3 de junio de 2006.
[1124] The Chilean Constitution stipulates: 'Primary education is compulsory, and the State is required to finance free of charge a system for this purpose, intended to ensure access to it by the whole population. In this manner, compulsory and free education for children in the 6 to 13 age group is safeguarded and guaranteed." (U.N. Doc. CRC/C/3/Add.18, 1993, para. 173)
[1125] OECD – *Reviews of National Policies for Education: Chile*, Paris, 2004, p. 13.
[1126] Derecho a la educación, *Informe anual sobre derechos humanos en Chile*, Facultad de derecho, Universidad Diego Portales, Santiago de Chile, January 2003, pp. 414-416.
[1127] Comisión Interamericana de derechos Humanos – Informe de solución amistosa No. 33/02, P. 12.046, *Mónica Carabantes v. Chile.*
[1128] OECD – *Reviews of National Policies for Education: Chile*, Paris, 2004, p. 258.
[1129] Legrand, C. – Michelle Bachelet élue présidente du Chili, *Le Monde*, 17 January 2006.

Colombia

The constitutional guarantee of the right to education defines governmental obligations as freeing education from fees and other charges only for those who cannot afford to pay them. This formulation has been interpreted by consecutive governments restrictively and education is in practice not free.

The Constitutional Court has merged the right to education and the rights of the child to conclude that free education is a right of all children up to the age of 18.[1130] The government has not accepted the Court's ruling. Further, the Court's efforts to ensure the right to education and other denied rights of the internally displaced has encountered government's unwillingness to perform its human rights obligations.[1131] Such cases illustrate deep disagreement about governmental human rights obligations between the government and Colombian human rights institutions. The United Nations have helped much too little to enforce human rights because, throughout decades of well-documented violations, no consensus proved possible for a principled and decisive action.[1132]

There has been a series of educational reforms based on liberalization and privatization, increasing the choice for those with purchasing power and denying any choice to those who rely on public education. The educational reform of 1996 decentralized educational finance and authorized local authorities to impose charges in public schools.

These vary and no country-wide data is available but Comisión colombiana de juristas (CCJ), a human rights organization, has calculated that the cost of keeping a child in a public school corresponds to 13% of an average annual income.[1133]

The Committee on Economic, Social and Cultural Rights has found the levying of fees to be "a practice contrary to the Covenant [because it] prevented a number of children from having access to free primary education and their families had to institute legal proceedings in order to obtain such access".[1134] This has worked in individual cases which were brought before the Constitutional Court. The problem is systemic and massive, however, and necessitates changed governmental policy and altered fiscal priorities.

As in other countries where education is beyond the reach of the poor, not even primary education has not been universalized.[1135] The scope of exclusion from education is not known because guesstimates of the size, structure and distribution of the population are based on the 1993 census. The effects of forced and voluntary migration resulting from warfare and violence are not known.

[1130] *El derecho a la éducacion en la Constitución, la jurisprudencia y los instrumentos interncionales*, Defensoría del pueblo Colombia, Bogotá, 2003, p. 89.
[1131] Tomasevski, K. – *Human Rights Obligations in education: The 4-A Scheme*, Wolf Legal Publishers, Nijmegen, 2006, p. 39.
[1132] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, p. 124.
[1133] Comisión colombiana de juristas – *El disfrute del derecho a la educación en Colombia. Informe alterno presentado a la Relatora Especial de Naciones Unidas sobre el derecho a la educación*, Bogotá, 2004, pp. 53-54.
[1134] U.N. Doc. E/C.12/1/Add.74 (2001), para. 27.
[1135] U.N. Doc. E/CN.4/2002/17 (2002), para. 111.

Educational statistics show a gross enrolment in primary school of 111% and a net enrolment of 84% [1136] but their accuracy is questionable because of the absence of accurate and updated demographic data.

Colombia remains an exception in the region because the government is not committed to free and compulsory education for all. This is opposite to the obligation Colombia undertook in 1968, 38 years ago, by becoming a party to the International Covenant on Economic, Social and Cultural Rights.[1137] The failure of what we call 'the international community' to react when a government violates some human rights obligations easily becomes perceived as a licence to violate them all, as the case of Colombia illustrates clearly and painfully.

Ecuador

Formal constitutional guarantees in Ecuador belong to the most generous in the world, promising free education all the way to the university.[1138] The constitutional requirement to allocate 30% of the budget to education has not been translated into governmental policy, however. On the contrary, educational allocations diminished from 13% of the budget in 1998 to 7% in 2000.[1139]

A huge obstacle is the proverbial priority for debt repayment over investment in education. In 2005, it was described by the Financial Times thus:

> The pursuit of [increased social spending funded by oil revenues] had brought Mr Correa to blows with the World Bank which last month [July 2005] refused to disburse a $100 million loan, the second tranche of its fiscal aid programme for Ecuador. The government's prioritisation of social spending above paying down debt will continue.[1140]

A large part of the price is paid by children. The abyss between promise and performance in education is cloaked underneath a confusing terminology in governmental reports under human rights treaties. The government reported in 2002 that "all Ecuadorians have free access to education without discrimination of any kind".[1141] This was a considerable improvement from the government's acknowledgment in 1996 that discrimination persisted, "particularly on the basis of differences in ethnicity, gender or economic status or disabilities".[1142]

[1136] Comisión colombiana de juristas – *El disfrute dele derecho a la educación en Colombia. Informe alterno presentado a la Relatora Especial de las Naciones Unidas sobre el derecho a la educación*, Bogotá, agosto de 2004, p. 49.

[1137] Commission on Human Rights – The right to education. Report submitted by Katarina Tomasevski, Special Rapporteur: Mission to Colombia, 1-10 October 2003, paras. 8 and 13-20.

[1138] The Constitution has affirmed education as an inalienable human right and an essential duty of the state, society and family, stipulated that basic education should be compulsory, and provided that education should be free up to the completion of upper secondary school (*bachillerato*). With respect to the university, the Constitution stipulates that nobody should be deprived of university education because of financial obstacles. Also, the Constitution has affirmed the duty of the state to ensure education for persons with disabilities as well as bilingual intercultural education. These constitutional guarantees have been premised budgetary earmarking, whereby the central government is obliged to allocate 30% of its budget to education.

[1139] *Informe alternativo: Derechos económicos, socials y culturales*, Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo – Ecuador, Quito, December 2001, p. 35.

[1140] Weitzman, H. – Ecuador's deal with Chávez worries the While House, *Financial Times*, 10 August 2005.

[1141] U.N. Doc. CERD/C/384/Add.8 (2002), para. 142.

[1142] U.N. Doc. CRC/C/3/Add.44 (1996), para. 74.

That improvement was merely linguistic. Marena Briones found in 2004 that more than 100,000 children (37%) could not even start primary school.[1143]

As governments changed, their vocabularies followed suit but education remains out of reach for too many children because it is – in open contradiction to the Constitution – not free. Charges levied in public schools are often defined as voluntary or presented as parental or community 'participation'. No information on such charges is available in official documentation. They are brought to light through surveys of household expenditures. Data collected within SIISE (*Sistema Integrado de Indicadores Sociales*) revealed as the main reason for children's non-enrolment or dropping out the cost of supposedly free public education. This was singled out by 68.6% of the respondents. Analyses of household expenditure demonstrated that 93.2% of households paid annual enrolment fees and 26.9% paid additional monthly fees.[1144]

NGO reports confirm such findings. *Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo* has pointed out that only teachers' salaries and a part of school maintenance costs are paid by public funds while all other costs of education have been transferred to the families.[1145] Human Rights Watch has calculated that the cost of primary school which families have to pay corresponds to an annual average of $250, and this translates into two monthly salaries of agricultural workers.[1146]

El Salvador

The law stipulates that "all inhabitants of the Republic have the right and the duty to receive preschool and basic education that equips them to assume their role as useful citizens".[1147] Who is empowered to define what makes a citizen 'useful' (and how an inhabitant is converted into such a 'useful citizen' through education) is a question to which answers substantially differ:

> For the government, the ultimate purpose of education is to make individuals productive and competitive. Why not educate them to become critical and democratic citizens? [1148]

In a country which underwent a war in the name of values which would have freed people from being treated as instruments for enhancing productivity and competitiveness, it is important to keep asking what education should be for.

[1143] Briones Velasteguí, M. – Un 2015 impostergable, *Hoy* (Ecuador), 18 June 2004.
[1144] Arcos Cabrera, C. – Derechos y política pública en educación, Reunión de Trabajo de Investigadores de las Defensorias del Pueblo, UNESCO, Quito, junio 2004, mimeographed.
[1145] *Informe alternativo: Derechos econónicos, socials y culturales*, Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo – Ecuador, Quito, 2001, 2da edición corregida, p. 38.
[1146] Human Rights Watch – Failing Our Children: Barriers to the Right to Education, September 2005, available at http://hrw.org/reports/2005/education0905 (December 2005).
[1147] U.N. Doc. CRC/C/3/Add.9 (1993), para. 28.
[1148] "Para el gobierno la finalidad última de la educación es la de formar personas productivas y competitivas. ¿Por qué no formar una cuidadanía crítica y democrática?" *El derecho a la educación: Análisis de las principales barreras para alcanzar los acuerdos de Dakar en los municipios de influencia de la CEES. Resultados de investigación*, CEES (Concertación Educativa de El Salvador), San Salvador, abril 2005, p. 21.

Also, it is important to review governmental policy by the yardstick of the obligations it should perform in the name of the state. Free education is guaranteed in the law, and it should be nine years long to encompass primary and lower secondary school. Charges are, nevertheless, levied. They have continued even after the government's commitment to eliminate them in 2003.

The Ombudsman's Office (*Procuraduría para la defensa de los derechos humanos*) has summarized results of a household survey in 2001, which showed that 25% of the respondents identified excessive costs of education as the principal impediment for children to go to school. A variety of fees ('*cuotas*' or '*cuotas volunatrias'*) were nominally voluntary but obligatory in practice. In October 2003, the imposition of such charges was formally banned by a legislative decree.[1149] Their prohibition was not accompanied by increased budgetary allocations to education so as to enable schools to function without levying charges. On the contrary, budgetary allocations to education decreased from 19.5% of the budget in 2003 to 15.3% in 2006, which translates into 3.2% of GDP in 2003 and 2.1% in 2006.[1150]

These budgetary allocations to education should be trebled to conform to the minimum of 6% of GDP recommended by UNESCO. This illustrates the low priority of public education.

In consequence, the nominally free education is in practice for-fee because charges continue. Research by the CIDEP (*Centro intersectorial para el desarrollo económico y el progreso social*) has shown in April 2006 that families finance 45% of the cost of public education. The government's contribution amounts to an annual $235 per pupil and families contribute another $192.[1151] Many families cannot afford to send their children to school. An annual $192 exceeds the legally guaranteed monthly salary. In consequence, poor children are formally or informally excluded from school. Educational statistics refer only to those children who are at school and the scope of exclusion is not known. Most children start school but are pushed out early by the high cost of education. Educational enrolments are close to 90% for children aged 7-13 but they fall to 72% for 15 year olds.[1152] These figures are likely to be recalculated after results of the 2006 mini- census are disseminated. Demographic data are unlikely to be accurate because they have not been updated in a long time.

There is little specific information about the charges that are levied. Some schools reportedly charge an annual 20-50$, while school meals have to be paid separately. School meals have been introduced as part of 'healthy schools' project but have to be paid by school children's parents or children have to work to earn the needed funds.[1153] Alongside such charges, text-books, uniforms and transport have priced education out of the reach of many. The largest proportion of school age children who are not at school (24%) state that this is so because school is too expensive.[1154]

[1149] Procuraduría para la defensa de los derechos humanos - *Recopilación de resoluciones e informes especiales sobre la niñez y juventud*, San Salvador, 2003, p. 35.
[1150] *Primer informe de la Procuraduría para la defensa de los derechos humanos sobre el derecho a la educación en El Salvador*, San Salvador, abril de 2006, mimeographed, pp. 58-60.
[1151] Cáceres, M. – Educación: Padres aportan el 45% al presupuesto, *El Diario de Hoy* (San Salvador), 26 de abril de 2006.
[1152] Chacón, J. – Las finanzas del conocimiento en El Salvador, Centro de Investigación sobre Inversión y Comercio de El Salvador, CEICOM-Observatorio del Sur, San Salvador, 2004, mimeographed.
[1153] Human Rights Watch – Sin descanso: Abusos contra niñas trabajadoras domésticas en El Salvador, New York, January 2004, available at www.hrw.org
[1154] *Entendiendo el trabajo infantil en El Salvador*, Ministerio del trabajo y prevision social, San Salvador, 2002, available at www.mintrab.go.sv

The government conceded in 1995 "the absence of incentives to offset the opportunity costs to the family of sending a child to school" and was faulted by the Committee on Economic, Social and Cultural Rights for "the apparent lack of action by the authorities to remedy the situation".[1155] The situation did not improve a decade later. The IPEC/ILO has calculated that the average cost of keeping a child at school (fees, contributions, transport, uniform, books, supplies and school meals) was an annual $275, an equivalent of the minimum agricultural wage for four months.[1156] This figure is higher than the $192 estimated by the CIDEP mentioned above, and this demonstrates the lack of governmental commitment to ascertain the real cost of education so as to then make it free.

The government has introduced measures to lower the cost of schooling in parts of the country. Enrolment fees were decreased and 'voluntary contributions' replaced with a public subsidy (*bono de gratuidad*). Although this subsidy is merely $13, it proved to immediately increase enrolments in one school from 500 to 800.[1157] Replacing the full cost of education by public subsidies so that poor children could go to school is not on the government's agenda.

Guatemala

In Guatemala, "the Political Constitution states that all inhabitants have the right and obligation to receive initial, pre-primary, primary and basic education" and stipulates that public education should be free.[1158] Basic education (from pre-primary to secondary) is also defined as an individual obligation. Compliance is impossible where education has to been priced out of reach of the poor, who are the majority in the country.

Children who cannot afford to go to school have to work. The government described in 1995 a model whereby children finance their own education:

> The Ministry of Labour and Social Security, bearing in mind that the Labour Code provides that minors who work may exercise of their own will their right to conclude labour contract in person, has undertaken to help young people to complete the formalities for obtaining a work permit themselves and to ensure that their wages are used by them to meet their own needs, especially their education.[1159]

The main reason why children have to work so as to pay the cost of their education are inadequate budgetary allocations. After the turn of the millennium, the already small 2.7% of GDP was further decreased to 2.5% in 2002.[1160]

[1155] U.N. Docs. E/1990/5/Add.25 (1995), para. 277 and E/C.12/1/Add.4 (1996), para. 22.
[1156] Godoy, O. – El Salvador: Trabajo infantil doméstio. Una evaluación rápida, IPEC/ILO, 2002, p. 23.
[1157] Chacón, J. – *El derecho a la educación: Análisis de las principales barreras para alcanzar los acuerdos de Dakar en los municipios de influencia de la CEES (Concentración educativa de El Salvador) – Resultados de investigación*, CEES, San Salvador, April 2005, pp. 58-59.
[1158] U.N. Doc. CRC/C/3/Add.33 (1995), paras. 99 and 260.
[1159] U.N. Doc. CRC/C/3/Add.33 (995) para. 102.
[1160] De León, S.O. – *Informe: Situación de los derechos económicos, sociales y culturales – Guatemala 2003,* Desc Gua (Derechos económicos, sociales y culturales en Guatemala), Guatemala City, 2003, p. 25.

The charges that are levied in primary school are often described as parental or community 'participation'. The full cost of textbooks, supplies and uniforms are borne by families. Registration fees are charged in all schools; they are higher in urban and lower in rural schools. Additional charges include costs of school construction or repair, photocopies for exams, or school meals or snacks. Moreover, this 'community participation model' involves a significant investment of time for the children's parents. They have to take it off work, which regularly they cannot afford.[1161]

The government acknowledged in 2002 that primary education was not universalized, citing a wide range of factors, from budgetary limitations to the range of indigenous languages in the country.[1162] The 'community participation model' was amplified by supplementing - perhaps supplanting – public schools with education cooperatives: "The education cooperatives programme aims to provide comprehensive basic education to all Guatemalans in order to help improve people's overall level of education and information by providing education at accessible prices".[1163] The key words, *accessible prices*, highlights the lack of the government's commitment to making education free.

Virgilio Álvarez Aragón has lamented that education has never been a political priority in Guatemala, that there never was a 'push' to universalize education. Statistical disputes about enrolments hide the fact that almost a third of school aged children remain out of school, even if some enrol to begin with. Álvarez claims that, alongside the poverty of the pupils and the poverty of education, a major barrier is the ideological discourse which delegitimized education in the eyes of many.[1164] An example of abuse of education was the 1956 Law on Education which defined its purpose as "opposing communism and other totalitarian systems".[1165] That law was adopted two years after the Cold War had started through a military coup in Guatemala.[1166]

Honduras

The Constitution guarantees the right to education and describes its key features. Education has to be grounded in the national spirit ('*principio hondureñista'*). Basic education ought to be free of charge for children and paid for, in full, by the state.[1167] This guarantee of free education has been undermined by economic and fiscal policies of consecutive governments. This was noted by the government in 1998:

> The Government has taken a number of economic structural adjustment measures which have infringed or diminished in one way or another the rights recognized in the Covenant on Economic, Social and Cultural Rights; the effect has been further to impoverish the already disadvantaged groups. [1168]

[1161] PRODESSA – A Health and Education Rights Project: Survey Regarding the Transfer of Costs to the Population of Basic Health Services and Primary Education, Proyecto de Desarrollo Santiago, Guatemala, September 2001, mimeographed.
[1162] U.N. Doc. E/1990/6/Add.34 (2002), para. 222.
[1163] U.N. Doc. E/1990/6/Add.34 (2002), para. 15.
[1164] Álvarez Aragón, V. – *Ilusiones y desencantos: Situación de los docents en Guatemala*, FLACSO (Facultad Latinoamericana de Sciencias Soiciales), Guatemala, 2004, pp. 17 and 35.
[1165] Menéndez, L.A. – *La educación en Guatemala 1954-2000*, Ediciones Superación, Guatemala, 2002, p. 76.
[1166] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, 2002, p. 148.
[1167] CIPRODEH – *Los derechos fundamentals: Texto introductorio sobre drechos fundamentals*, CIPRPDEH (Centro de investigación y promoción de los derechos humanos), Tegucigalpa, 1996, p. 161.
[1168] U.N. Doc. E/1990/5/Add.40 (1998), para. 38.

The Committee on Economic, Social and Cultural Rights has recommended "integrating human rights in the process triggered by the Poverty Reduction Strategy Paper and the whole Highly Indebted Poor Countries Initiative".[1169] However, the PRSP does not propose making education free but only increasing the age-range of children in compulsory education. The only reference to the cost of education and the consequent exclusion of the poor is a proposal for "scholarship programs for poor students".[1170]

Children pay the highest price of this omission: "the lack of access to education makes self-employment their only survival strategy." [1171]

Poverty has a visible racial profile in Honduras. As the consequence of centuries of institutionalized racial discrimination, there is an almost automatic link between being indigenous and being poor. Although international legal obligations of Honduras include ample safeguards for indigenous rights, these are not affirmed in the national law nor are they integrated in poverty-reduction and education policy.[1172] The indigenous constitute about 10% of the population but precise data are not available. Specific figures vary because different studies have used different definitions. Moreover, some 20% of children are not registered and thus do not acquire statistical and legal existence; most of them are both poor and indigenous.[1173]

Alongside indigenous rights, children's rights are also kept out of governmental policy. Although international human rights law requires children to be treated as subjects of rights, governmental policy is to treat them "as objects and not subjects of rights".[1174] Official statistics show that one in 10 children younger than 10 years works.[1175] The children's right to education is premised on adequate public investment in education. In 2002, the government allocated a quarter of its budget to education but this did not prove sufficient to ensure education for all children.[1176]

Nicaragua

Poverty is a defining feature of Nicaragua's public education. Although primary education should be free, the government reported in 1994 that

> it has become necessary to ask parents to make a modest contribution themselves, the problem becoming critical where the parents are very poor and cannot afford this, especially when they have several children of school age.[1177]

[1169] U.N. Doc. E/C.12/1/Add.57 (2001), para. 34.
[1170] Honduras - Poverty Reduction Strategy Paper (September 2001).
[1171] U.N. Doc. CRC/C/65/Add.2 (1999), para. 31.
[1172] U.N. Docs. CRC/C/65/Add.2 (1999), para. 21 and E/C.12/1/Add.57 (2001), para. 33.
[1173] U.N. Doc. CRC/C/15/Add.105 (1999), para. 21.
[1174] U.N. Doc. CRC/C/15/Add.105 (1999), para. 12.
[1175] U.N. Doc. CRC/C/65/Add.2 (1999), paras. 396-398.
[1176] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 143.
[1177] U.N. Doc. CRC/C/3/Add.25 (1994), para. 40.

Five years later, there was no mention of poverty-driven exclusion from education in the PRSP. The only measure that has been anticipated is "scholarships for rural students in the fourth to sixth grades".[1178]

Juan Arrien has highlighted the need to mainstream education and examine the educational impact of the development model. Its concentration of enrichment in a small part of the population and impoverishment of the majority cannot be remedied by small-scale educational projects. Such micro interventions off-set the effects of macro-policies.[1179]

Indeed, prospects for attaining primary education for all by the year 2015 are gloomy with almost a quarter of school-aged children (23%) out of school. Moreover, the rate of illiteracy amongst school aged children grew to 14% in 2002.[1180]

Educational enrolments in primary school reached 82% in 2004, with a school attendance rate estimated at 77%.[1181] The enrolments are planned to reach 90% by 2015.[1182] There is no plan to encompass all school age children by education, not even by 2015. Also, there is no commitment to increase budgetary allocations for education from the low 3.7% of GDP.[1183] They would have to be at least doubled to provide a basis for the universalization of education.

It was different in the 1980s, when Nicaragua was a recipient of numerous international awards for its literacy programme (*Cruzada de alfabetización*), which in 1980 launched a new vision and mission of the then new Sandinista government.[1184] The right to education was written into the 1987 Constitution [1185] but possibilities for its implementation were jeopardized by the US intervention and the subsequent change of government in 1990.[1186] The early efforts bore fruit. In comparing the illiteracy rates in poor countries, Samuel Morley and David Coady highlighted the illiteracy rate for women in Bangladesh of 60% and pointed out that was merely a half, 30%, in Nicaragua and equal for both sexes.[1187] Public investment in education of the 1980s was reflected in the literacy statistics a decade later.

[1178] Nicaragua - A Strengthened Growth and Poverty Reduction Strategy (September 2001).
[1179] Arrien, J.B. – La alfabetización en Nicaragua, Commissioned paper for EFA 2006 Report, available at http://portal.unesco.org/education (November 2005).
[1180] U.N. Doc. CRC/C/15/Add.265 (2005), para. 54.
[1181] *Primer informe del Observatorio desde sociedad civil respecto al complimiento de estrategias del Plan nacional de educación, los compromisos de Dakar y la Ley de la participación educativa*, IDEUCA & FEDH-IPN, Managua, junio 2004.
[1182] *Seguimiento a la Cumbre del Milenio: Nicaragua. Primer Informe*, Sistema de Naciones Unidas, Banco Interamericano de Desarrollo y Banco Mundial, Managua, diciembre 2003.
[1183] Ministerio de educación, cultura y deportes – *Estado del sistema de educación básica y media*, Edición 2004, Gobierno de Nicaragua, Managua, 2004.
[1184] Arrien, J.B. & Mátus, L. – *Nicaragua: Diez años de educación en la revolución*, Ministerio de educación de Nicaragua, Managua, 1989.
[1185] The right to education is classified as a social right: "Los nicaragüenses tiened derecho a la educación y a la cultura," *Constitución Política de Nicaragua y sus reformas*, PDDH (Procuraduría para la defensa de los derechos humanos), Managua, 2004, Article 58.
[1186] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nojhoff Publishers, The Hague, 2000, pp. 128-131.
[1187] Morley, S. & Coady, D. – *From Social Assistance to Social Development: Targeted Education Subsidies in Developing Countries*, Center for Global Development & International Food Policy Research Institute, Washington D.C., August 2003, pp. 17.

Thereafter, consecutive governments have displayed what the Committee on the Rights of the Child has called an "insufficient political will to increase the budget for programmes and policies for children".[1188] The lack of public investment in education will become statistically visible in the data on illiteracy in the decades to come.

Panama

In Panama, all pre-university education should be free but the budgetary resources necessary to make this come true have yet to be found. A decade ago, the government described what it should do to make education free thus:

> Free education shall entail the State's obligation to furnish students with all the equipment necessary for their instruction until they complete their basic general education. Free education shall not preclude the establishment of a tuition fee payable at the non-compulsory levels. It must also be stressed that the State is required to provide pupils with all necessary equipment during their basic general education. [1189]

However, the Committee on Economic, Social and Cultural Rights has been concerned "about the inadequacy of resources allocated to address the problems of primary and secondary education".[1190] Primary education has been universalized and enrolments have reached 99% for both boys and girls in 2003.[1191] However, primary school encompasses children aged from 6 to 11. Formally, Panama has complied with the MDG goal of universal primary education. At the age of 11, however, children cannot be deemed capable of starting adult lives. The international minimum is to keep children at school at least until the age of 14. Also, the regional commitment is to ensure secondary education for all.

Paraguay

The government acknowledged in 1993 that it could make even primary education free:

> The current National Constitution guarantees free education and stipulates that primary education is compulsory. However, in present social conditions it is impossible to enforce this constitutional guarantee on account of the high cost of living.[1192]

That self-assessment was made just one year after the 1992 Constitution had been adopted. It includes a guarantee of life-long education based on community culture as well as an explicit guarantee of free and compulsory basic education for all children.[1193]

[1188] U.N. Doc. CRC/C/15/Add.265 (2005), para. 16.
[1189] U. N. Doc. CRC/C/8/Add.28 (1995), para. 165.
[1190] U. N. Doc. E/C.12/1/Add.64 (2001), para. 23.
[1191] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org
[1192] U.N. Doc. CRC/C/3/Add.22 (1993), para. 120.
[1193] The 1992 Constitution has defined education as a fundamental right and a public service. It has adopted a broad notion of the right to education in the sense of life-long learning *of* and *in* community culture ("Toda persona tiene derecho a la educación integral y permanente que como sistema se realiza en el contexto de la cultura de la comunidad.") Differently, basic education has been explicitly defined as a responsibility of the state: "La educación escolar básica es obligatoria, siendo en las escuelas públicas de carácter gratuito."

Despite the economic crises of the 1990s, primary school enrolments reached 89% in 2003. [1194] Most children started school. Primary school lasts until children reach the age of 11.

More than half leave school by the age of 12 to start working.[1195] The reason is the high cost of education and uncertain returns on such an investment. Few additional years of schooling do not offer better employment prospects.

After the turn of the millennium, education has not been made free. Only the cost of tuition is assumed by the government through the payment of teachers' salaries. The Committee on the Rights of the Child has been "concerned about the continuing poor quality of education [and] the non-tuition costs of compulsory school".[1196]

Peru

An immensely complicated scheme was set up in the 1990s with the aim of making public education free while offering a choice of private education. The government has described that scheme thus:

> Early, primary and secondary education is compulsory and guaranteed as a right established by the 1993 Peruvian Political Constitution, which specified that education is provided without charge at State institutions at the various levels, including higher education at public universities. In addition, the 1993 Political Constitution states that "in order to ensure the widest choice in the educational offering and to benefit persons unable to meet the cost of their education, the law determines the method of subsidizing private education in every form, including community and cooperative modalities".[1197]

The intent was obviously to make public education free as well as to subsidize private education so as to allow for a choice between the two. Making education free is a huge challenge because one-third of Peru's population are school age children. Peru has an exceptionally young population, even by Latin American standards. Educational allocations increased in the 1990s after the lost decade of the 1980s but they still left families to bear 41% of the cost of public education. Charges included enrolment, membership in parent-teacher associations and school meals, with additional charges sometimes levied for school repairs, water and electricity, or educational supplies, adding to all that additional costs of transportation and uniforms.[1198] Education International has highlighted the costs of uniforms and books for which parents have to pay the full price.[1199]

[1194] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org
[1195] The educational statistics for 1998-2002 showed enrolments of 90% for school children aged 6-11 and only 44% for school children aged 12-14 in the second phase of basic education. *Derechos humanos en Paraguay 2002*, Coordinadora de Derechos Humanos del Paraguay, Asunción, December 2002, pp. 363-364.
[1196] U.N. Doc. CRC/C/15/Add.166 (2001).
[1197] U.N. Doc. CRC/C/65/Add.8 (1998), paras. 658-659.
[1198] The World Bank – *Peru: Education at Crossroads. Challenges and Opportunities for the 21st Century*, Report No. 19066-PE, 30 December 1999, p. 25.
[1199] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 234.

Challenges of the abyss between the constitutional guarantee of free education in public schools and the practice of levying charges have been numerous:

> There have been cases in which children and/or adolescents are removed from school without justification, for example because their parents cannot pay the enrolment fees or the dues of the Parents' Association, in State schools. In such cases, the Ombudsmen for Children and Adolescents and the family procurators intervene, arranging for the child to be enrolled immediately and informing the Administrative Office of the Ministry of Education.[1200]

Such individual cases can vindicate an individual child's right to education but cannot remedy a systemic problem. The gap between the pledge of free education and the lack of governmental policy to translate it into practice is large and does not seem to be diminishing.

[1200] U.N. Doc. CRC/C/65/Add.8 (1998), para. 164.

THE CARIBBEAN

Varied constitutional models

Different from the prevalence of constitutionally guaranteed free and compulsory education in Latin America, there is an emphasis on safeguards for freedom in education in the Caribbean. In this report, the Caribbean is defined by the membership in the Caribbean Community (CARICOM).[1201] There is no common policy on education in the CARICOM. Moreover, models of education differ. Countries such as Guyana or Suriname originally adopted a model of guaranteed free education for all children while Grenada, St Vincent and Grenadines, and Trinidad and Tobago prioritized freedom of parental choice. Constitutionally guaranteed freedom of education supports parallel systems of private and public, religious and secular education. This dividing line routinely coincides with for-fee and free schools. Private schools tend to be religious and to charge fees although they are often subsidized by the government.

These different models of education originate from the legal tradition which was implanted during colonial times.[1202] Most countries in Latin America inherited continental European law, the civil law system, and with it Europe's legal tradition of defining education as a public responsibility. The common law is widespread in the Caribbean and is based on the English tradition, now reinforced by the influence of the US law. That model law prioritizes constitutional guarantees of freedom to provide education by religious communities or private entrepreneurs. Education is seen primarily as a parental responsibility and constitutional guarantees of religious and economic freedom offer choice. Because education is generally not free, choice is determined by the family's purchasing power. Because choice is exercised at one's own cost, the poor do not have any choice; children can only go to school if it is free.

The two different models of education, rights-based and choice-based, have been merged in most countries. The responsibility of the state to finance or provide a minimum to all children led to guarantees of free education. Safeguards for individual and collective freedoms, especially freedom of religion, preserved and broadened parental choice. Constitutional guarantees in individual countries are presented in Table 21. Education as a free public service is less prevalent than in Latin America but, still, the majority of countries have such a guarantee, at least in the law. However, charges are levied even in such nominally free education in the majority of countries, as Table 21 demonstrates.

[1201] The members of CARICOM are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. Further information is available at www.caricom.org

[1202] The continental European and Anglo-American models of education are described in Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 44-50.

Table 21
Constitutional guarantees and free or for-fee policies in the Caribbean

Country	Legal guarantee of free education		Policy on charging fees	
	Yes	No	Yes	No
Antigua and Barbuda	√		√	
Barbados	√			√
Belize	√			√
Grenada		√	√	
Guyana	√		√	
Haiti		√	√	
Jamaica		√	√	
St Kitts and Nevis	√			√
St Lucia		√	√	
St Vincent and Grenadines		√	√	
Suriname	√		√	
Trinidad and Tobago	√		√	

Sources: Antigua and Barbuda – CRC/C/28/Add.22, 2001, paras. 32, 224, 226-228, and 245; Barbados – CRC/C/3/Add.45, 1997, para. 174; Belize – CRC/C/3/Add.46, 1997, paras. 214 and 229; Grenada – CRC/C/3/Add.55, 1997, para. 125; Guyana – CERD/C/62/Dec.2, 2002 and E/1990/5/Add.27, 1995, paras. 107, 120 and 142; Haiti – CRC/C/51/Add.7, 2002, paras. 174-175 and 184, and E/CN.4/2003/116, paras. 63-66; Jamaica – CRC/C/70/Add.15, 2003, para. 116, and E/1990/6/Add.28, 2001, paras 139, and 144-148; St Vincent and Grenadines – CRC/C/28/Add.18, 2001, paras. 42, 307, 313 and 350; Suriname – CRC/C/28/Add.11, 1998, paras. 15, 118 and 124; Trinidad and Tobago – E/1990/6/Add.30, 2000, paras. 274-275, 277 and 303, and CRC/C/11/Add.10, 1996, para. 113.

Conflicts between constitutional guarantees of free education and governmental policies of levying charges demonstrate that the Caribbean has been affected by the trend to privatize financial responsibility for education much as the rest of the world. This trend has reinforced the model of making parents financially responsible for educating their children. In countries where education was defined as a public responsibility and the government obliged to ensure free education, contrary governmental policies have impeded the universalization of education and undermined the rule of law. The country entries for Guyana and Suriname below illustrate how deeply decisions on financing education affect the existing inequalities in society and how much they are a product of unequal access to decision-making.

Different from other regions, budgetary allocations to education in the Caribbean are relatively high and Table 22 shows the most recent figures for individual countries. The regional average is 5.6% of GDP, close to the UNESCO's recommended minimum of 6% of GDP and more than half of the countries in the region have exceeded that minimum.

Table 22
Public investment in education in the Caribbean
as percentage of GDP in 2002

	Public investment in education
Antigua and Barbuda	3.2%
Barbados	6.5%
Belize	6.2%
Dominica	5.0%
Dominican Republic	2.4%
Guyana	4.1%
Jamaica	6.3%
St Kitts and Nevis	7.7%
St Lucia	7.3%
St Vincent and Grenadines	9.3%
Trinidad and Tobago	4.0%

No data is available for Grenada, Haiti, and Suriname.
Data on military expenditure is not available for most countries and has not been included.

Source: *Human Development Report* (http://hdr.undp.org/statistics).

Table 22 confirms the iron role of statistics whereby data is the least available where the performance is suspected to be the worst. No data is available for Haiti, where there is hardly any public education left as the country entry illustrates. The country entries for Grenada and Suriname below point to inadequate budgetary allocations to education as the key barrier to universalizing primary education. The lowest allocation shown in Table 22, 2.4% of GDP in the Dominican Republic, highlights how much of an obstacle inadequate public investment in education is. The lack of public services in Haiti generates exodus to the neighbouring Dominican Republic, increasing the numbers of children to be educated. The law obliges governments to ensure education for all children on their territory and assumes that their inability to do so would trigger international financial support. This should but does not work in practice.

As a consequence, poverty-based exclusion from education is widespread, especially in Haiti and the Dominican Republic. This facet of exclusion has obtained heightened importance due to the AIDS pandemic. The Caribbean has the highest infection rates in the world second only to Africa. Most infections occur amongst the young. There is also a visible gender profile of vulnerability to HIV/AIDS with girls and young women at a risk which is three or six times higher than that for boys and men.[1203] This further reinforces the need for all-encompassing education which is free in all different meanings of this word.

Authoritative information on the educational performance and human rights policies is not available for all countries. As for other regions, governmental reports under human rights treaties are used as the principal reference because they describe the governments' own understanding of their human rights obligations in education and self-assessment of their performance.

[1203] CEPAL – *Panorama social de América Latina*, Doc. LC/G. 2288-P/E, Santiago de Chile, noviembre de 2005, p. 40.

INDIVIDUAL COUNTRIES

Antigua and Barbuda

In Antigua and Barbuda, almost half of primary schools are private. There are 24 private schools and 30 governmental schools. There are no internationally comparable statistics on school enrolments and attendance but the government has highlighted a key problem. Primary education ends when children are 11 years old and many cannot continue going to school. While this would qualify as a success by the criterion of the MDGs, where only primary education should be ensured, governmental policy is to define the minimum for all children as primary and secondary school.

However, this ambition has not yet been translated into reality. Almost half of children who finish primary school (45%) cannot continue in free, government-owned secondary schools due to their lack of capacity. Private secondary schools are beyond the reach of many because they all charge fees.[1204]

The right to education is, similarly to many other countries, confined to citizens. This excludes from free public education all children who do not possess required documents, such as the birth certificate, the proof of citizenship and/or residence. The government has conceded that 'economic migrants' have to purchase education for their children:

> There seems to be some discrimination in access to free, public education with respect to the children of immigrants. Immigrant parents report that they are often advised by Ministry of Education officials to seek to place their children in private fee-paying schools for one or two years until space opens up in a Government school. This policy is not written down, but seems to have emerged purely as an attempt by Ministry officials to deal with the shortage of school spaces generated mainly by the recent tremendous influx into the country of so-called 'economic migrants'. [1205]

Barbados

Countries which have achieved universal primary education, such as Barbados, have had education as a free public service for a long time. The achievement of primary education as envisaged in the MDGs is evidenced in the educational statistics, which show enrolments of 100%.[1206] However, this achievement terminates children's education at the age of 10, which is the legally determined age at which children finish primary school.

Children are obviously much too young at the age of ten for anything except going to school. Gratifyingly, the MDG goal has not been accepted in Barbados as the benchmark for governmental policy. Thus, education is compulsory in Barbados up to the age of 16 and free public education has been extended to secondary schooling. [1207]

[1204] U.N. Doc. CRC/C/28/Add.22 (2001), paras. 246-248.
[1205] U.N. Doc. CRC/C/28/Add.22 (2001), para. 226.
[1206] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org
[1207] U.N. Doc. CRC/C/3/Add.45 (1997), para. 174.

Belize

Parallel educational systems in Belize are defined by two coinciding criteria. The public-private distinction is reflected in private schools charging fees while public schools are nominally free. Public schools are government-run while private schools are religious. Although religious schools are often subsidized by the government, they charge fees.

The government has described this model of education as 'Church-State partnership'. The majority of children attend religious schools and do not benefit from almost-free public education. The reason is that government-run schools lack capacity:

> Within the primary education system of 274 schools, Catholic schools serve 62 per cent of all pupils, government schools 10 per cent, Anglican 10 per cent and Methodist 8 per cent, 30 of these schools are privately run.[1208]

Over a third of the parents have singled out the lack of money as the principal reason why their children cannot go to school.[1209] Primary education is all-encompassing by the criterion of enrolments [1210] but not also attendance and completion. Also, it encompasses only children between the ages of 5 and 10. Although schooling itself is free for those who can enrol in a government-run school, the cost of uniforms and textbooks places school beyond the reach of many poor children.[1211] After the completion of primary school at that early age, many children cannot continue school because its cost increases in secondary education.

Dominican Republic

The parents' wealth or poverty profoundly affects the quantity and quality of education which children get in the Dominican Republic. A large proportion of children attend private schools but an unknown proportion cannot go to any school. Although the official statistics place enrolments in primary school at 96.4%,[1212] these figures refer to children who possess the required proof of birth, citizenship and residence and exclude many, especially Haitian children. They can attend private schools if they can afford to do so, which excludes the vast majority.

The choice which parents can exercise regarding education of their children is determined by their wealth. The difference in affordability of education has been described by the government thus:

> The poorest 40 per cent of the population increased their ordinary expenditure on education by about 430 per cent while the equivalent figure for the richest 5 per cent was approximately 125 per cent. [1213]

[1208] U.N. Doc. CRC/C/3/Add.46 (1997), para. 229.
[1209] Hunt, H. – *Leave no Child Out: The Report of a Survey on Why Children Don't Go to School and on How Schools Can be Child-Friendly*, The Human Rights Commission of Belize (NGO), Belmopan, December 2003, p. 27.
[1210] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org
[1211] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 42.
[1212] EFA/UNESCO *Global Monitoring Report 2006*, available at www.unesco.org
[1213] U.N. Doc. CRC/C/8/Add.40 (1999), para. 93.

The rapid increase of the cost of education for the poorest demonstrates a conflict between governmental policy and its human rights obligations. The law defines primary education as both free and compulsory: "Primary education is free and compulsory for all school-age children, i.e. as from the age of seven. Secondary education is also free of charge".[1214] However, the guarantee of (relatively) free education applies only to some 1.5 million children who go to public schools, while 1 million attends private schools, which charge fees. The option of going to public school is foreclosed for children without the necessary documents. The Committee on the Rights of the Child noted that the 1996 census did not encompass children of Haitian origin born in the Dominican Republic. This formally decreased the number of children formally recorded as bearers of rights, including the right to education. The Committee has highlighted continuing exclusion from education victimizing "pregnant adolescents, unregistered children, children with disabilities and children of Haitian origin".[1215]

A precedent case against the Dominican Republic before the Inter-American Court on Human Rights affirmed that all children, whether they are citizens of the country where they live or not, have the right to education.[1216] Two Haitian girls, Dilcia Yean and Violeta Bosico, were unable to secure a registration of their birth and could not qualify for Dominican citizenship. The lack of these documents precluded them from enjoying almost all human rights, including the right to education. After the case had started before the Inter-American Commission on Human Rights, the government announced that all children would be allowed to enrol and attend school, regardless of their possession of birth and citizenship certificates. In its judgment, the Inter-American Court of Human Rights has confirmed that the government has an obligation to provide free and compulsory education for all children.[1217]

That case dealt with the tip of the iceberg, the fate of two girls, so as to bring to light the fact that unknown numbers of children are deprived of education. How many there may be in the Dominican Republic is not known. What is known is that their education requires considerable public investment in the Dominican Republic while an important reason for their leaving Haiti is the collapse of public administration and the consequence absence of any public services and employment opportunities. In such a situation, the global model is 'the international community' helping the Dominican Republic to ensure education for all the children who would otherwise have none until public education in Haiti is institutionalized (also with the help of 'the international community'). Instead, there is a large number of small-scale projects carried out by various parts of 'the international community' but no blueprint to address systemic problems and, least of all, available funding to tackle them.

Grenada

The government of Grenada summarized in 1997 its interpretation of the law. It was that no charges should be levied for school enrolment while there was silence on other charges and the costs of education for families in general. It described the law as saying "that pupils be admitted to all government schools, assisted primary, and all-age schools free of charge."

[1214] U.N. Doc. E/1990/6/Add.7 (1995), para. 91.
[1215] U.N. Doc. CRC/C/15/Add.150 (2001), paras. 12, 22 and 41.
[1216] Comisión Interamericana de Derechos Humanos - Informe No 28/01, Caso 12.189 *Dilcia Yean y Violeta Bosica v. República Dominicana*, 22 de febrero de 2001.
[1217] Corte interamericana de derechos humanos – *Caso de las niñas Yean y Bosico vs. República Dominicana*, Sentencia de 8 de septiembre de 2005, available at www.corteidh.or.cr

Rather than imprecise legal drafting, this formulation indicated an in-built possibility of imposing charges once children are admitted to school.

Indeed, the government has confirmed that "children contribute a minimal fee to their school to ensure a hot nutritious daily meal".[1218] Whether that fee, or others that might be levied, is the principal obstacle to universalizing education is not known. Educational statistics show that 88% of school age children (from 5 to 11 years) are enrolled [1219] but there is no information on the obstacles keeping the others out of school. There are no internationally comparable statistics on school attendance and completion for those who have enrolled in primary school and it may be that these figures are considerably lower because enrolment is apparently free of charge while schooling in likely to become more expensive for the parents thereafter.

Guyana

In Guyana, free education was introduced in 1976. Education was supposed to be free from the nursery to the university as the government was supposed to assume full financial responsibility for public education.[1220] A government's self-assessment, twenty years later, has described how that original model collapsed:

> While the introduction of a system of free education appeared to work very well for a while, poor administration and unreliable maintenance, among other things, caused a general decline to set in causing the education standards of the country to drop significantly. The physical condition of many schools is extremely unsatisfactory with poor sanitary facilities and inadequate or non-existent water supply. Inadequate furniture, a high incidence of vandalism and theft and a shortage of qualified personnel, are also factors which seriously inhibit the right to education.[1221]

Rather than trying to make the original model work, the government introduced parallel, private education for all those able to pay the costs. The rationale has been that private, for-fee educational institutions would "complement state-run free tuition schools" at all levels. [1222] The definition of free education in public schools has been narrowed down to free tuition only. In its PRSP, the government had admitted that insufficient funding for education forces teachers to charge "fees for extra lessons," so not even tuition has remained free.

Nevertheless, the government has not suggested increasing budgetary allocations to education. Rather, its strategy has been to "develop criteria for targeting poor families with vouchers" that would alleviate some of the education-related costs.[1223]

[1218] U.N. Doc. CRC/C/3/Add.55 (1997), paras. 125 and 127.
[1219] *Education for All Global Monitoring Report 2006*, available at www.unesco.org
[1220] U.N. Doc. E/1990/5/Add.27 (1995), para. 107.
[1221] U.N. Doc. E/1990/5/Add.27 (1995), para. 120.
[1222] U.N. Doc. CEDAW/C/GUY/2 (1999), para. 171.
[1223] Guyana - Poverty Reduction Strategy Paper (May 2002), available at www.worldbank.org

Whether even that limited commitment to making education somewhat more affordable (rather than fee) will be translated into reality depends on overcoming "a vicious circle of political and economic tensions and increased racial violence".[1224] These are exacerbated by the impoverishment of adults and the denial of a future to children through the lack of education which has been priced out of their reach.

Haiti

Public education as well as all other public services have collapsed in Haiti and the new government, formed in early 2006, has a huge task on its hands to rebuild them. In its relations with the donor community, it has prioritized education. Prime minister René Préval asked for "help in improving access to school and in providing school meals".[1225]

Only 11% of school children were in public schools in 2002 and the private sector educated 89%. The constitutional guarantee, whereby "the Haitian State recognizes and guarantees the right of all children to education" has become in practice meaningless.[1226] Education International has reported that "even in public schools the costs of school fees, books, materials and uniforms are prohibitive for many families".[1227]

Franz Verella, while working on the rehabilitation of Haitian infrastructure in 2005, commented: "For the last 40 years every effort has been made to destroy state apparatus".[1228] Five international peace-keeping missions were deployed in Haiti in 1994-2005, each one leaving the job un-done.[1229] The most recent one succeeded in holding elections, but it is uncertain whether the elections will lead to a resumption of public services.[1230]

These various military interventions were preceded and supported by international sanctions and interspersed with elections.[1231] The lack of basic services has remained outside their remit and the situation has worsened. A vicious circle ensued whereby the continued freeze in international aid was justified by the human rights situation, which was aggravated by the lack of basic services.[1232] The lesson that Marc Houben has drawn from external efforts to help countries torn by political and economic crises that "significant progress in the delivery of essential services must be made in the first 100 days to avoid paying the price of the loss of political credibility" [1233] has not been heeded.

[1224] U.N. Doc. CERD/C/64/Dec. 1 (2004), para. 4.
[1225] Haiti: An uphill struggle, *The Economist*, 24 June 2006.
[1226] U.N. Doc. CRC/C/51/Add.7 (2002), para. 184.
[1227] *Education International Barometer on Human and Trade Union Rights in the Education Sector 2004*, Brussels, 2004, p. 140.
[1228] Caroit, J.-M. – Haiti still waiting for aid, *Guardian Weekly*, 18-24 February 2005.
[1229] Wrobel, P. – Failed missions, failed state: Haiti and the UN, *The World Today*, February 2005, available at www.theworldtoday.org.
[1230] Haiti: Making the best of an election in a failed state, *The Economist*, 18 February 2006.
[1231] Tomasevski, K. – *Responding to Human Rights Violations 1946-1999*, Martinus Nijhoff Publishers, The Hague, 2000, pp. 135-143.
[1232] U.N. Doc. E/CN.4/2003/116, paras. 63-66.
[1233] Houben, M. – Operations in Iraq: The New Face of International Crisis Management, September 2004, available at www.dias-online.org.

Jamaica

In its reports under human rights treaties, the government has stated that its budgetary stringency confines free education to primary schooling. Public funds were relocated from secondary to primary education in the reform of 1994-1995 and cost-sharing was introduced in secondary education.[1234] The low quality of primary education and the absence of free secondary education have resulted in "an illiteracy rate of 31 per cent among the 15-19 age cohort of primary school leavers".[1235]

While the completion of primary school may be deemed as a success if quantitative targets embodied in the MDGs are used as a sole criterion, the fact that children have neither been made literate nor can continue their education because it is too expensive cannot be deemed acceptable by the human rights yardstick. Moreover, primary school starts ends when children are only 11 years old. This is much below the global minimum of 14, which would keep children at school until they reach the minimum age of employment.

This policy of inadequate funding for too short primary schooling and cost sharing in secondary education does not seem to be under review. The World Bank has thus described the policy of cost sharing:

> As the shortfall in public expenditure became more and more severe, by 1992/93, the difference between what it actually cost the schools to operate and what the [Ministry of Education] allocated was estimated to be $519 million. This led the Ministry of Education to institutionalize a cost-sharing scheme beginning in the 1994/95 school year.
> The scheme established the principle that beneficiaries of the public education system should contribute to its development and operation through payment of fees, and that fees are the property of the GOJ [Government of Jamaica] that must be collected and legally accounted for. While the Government continues to pay school-level salaries, schools are free to charge fees to defray the cost of class materials, books, supplies, utilities, maintenance of classrooms, equipment, laboratories, sports, and other facilities, as well as the use of medical services, libraries, and other services and materials, food and lodging.[1236]

St. Vincent and Grenadines

Generous budgetary allocations to education do not necessarily translate into an impressive educational performance. The highest allocation shown in Table 22, 9.3% of GDP for education in St. Vincent and Grenadines, has not yet led to the universalization of primary school.

There are only 17,000 school age children (that is, aged 5-11) and the government's inability to ensure that education is free and compulsory appears paradoxical.

[1234] U.N. Doc. CRC/C/8/Add.12 (1994), para. 69.
[1235] U.N. Doc. E/1990/6/Add.28 (2001), para. 148.
[1236] The World Bank – *Jamaica Secondary Education: Improving Quality and Extending Access*, vol. I: Main Report, Report No. 19069-JM, 17 December 1999, P. 42.

The law mandates education to be compulsory but the government reported in 2001 that there has "yet been no move to institute compulsory education in the country". This was explained by widespread poverty. The government has attributed the fact that education has not been made either universal or compulsory to the fact that "some parents have insufficient income to provide food for the children to take to school or to pay for transportation". [1237]

The government had claimed earlier that education in government schools was free of charge but in 2001 the Committee on Economic, Social and Cultural Rights "noted with concern the recent significant increase in educational fees".[1238] These fees seem to be a continuing obstacle to universalizing primary education because the net enrolment reached 90% in 2002. [1239] One in ten children thus does not even enrol, while there is no information available on school attendance and completion.

Suriname

One of the earliest Compulsory School Attendance Acts in the region was adopted in Suriname in 1870.[1240] Nevertheless, education has not yet been extended all children; it is neither compulsory nor free. The number of school age children (that is, children between 6 and 11) is estimated at 51,000 and enrolment in primary school for the school year 2002-2003 was estimated at 65%.[1241] One of the principal reasons why universal primary school has not yet been attained is that it is not free.

Suriname's law is clear and "the State is obliged to provide free education at all levels" but charges are levied even in primary school. The government's definition of *free* education, however, is narrow. It explained in 1998 that *free* refers only to tuition: "the State-run schools have a registration fee and the denominational schools ask an annual 'parental contribution'." [1242] These contributions were estimated at an annual $8-12 a decade ago and there is no information on how much they have increased in the meantime.[1243] Most schools in the interior of the country are private hence access to school is dependent on the family's ability to pay various fees and contributions. This leaves many poor children out of school.

In 2001, a subsequent governmental report has been evasive with regard to free or for-fee education. It stated that education is 'in principle' free and the government 'virtually' finances education. Then, the government explained the financing of education thus:

> The allocation to education in the national budget has decreased from 19% in 1992 to 5% in 1994; it increased to 9% in 1996 and fell back to 5% again in 1997. As a result of decreasing state income, the Government is no longer capable of providing full funding for education. For some years now, a growing financial input is required of students.[1244]

[1237] U.N. Docs. E/C.12/1/Add.21 (1997) and CRC/C/28/Add.18 (2001), para. 307.
[1238] U.N. Docs. CRC/C/28/Add.18 (2001), paras. 313 and 350 and E/C.12/1/Add.21 (2001), para. 42.
[1239] *Education for All Global Monitoring Report 2006*, available at www.unesco.org
[1240] U.N. Doc. CRC/C/28/Add.11 (1998), para. 15.
[1241] *Education for All Global Monitoring Report 2006*, available at www.unesco.org
[1242] U.N. Doc. CRC/C/28/Add.11 (1998), para. 15.
[1243] U.N. Doc. CRC/C/15/Add.130 (2000), para. 51.
[1244] U.N. Docs. CRC/C/28/Add.11 (1998), para. 124 and CEDAW/C/SUR/1-2 (2002), p. 31.

Trinidad and Tobago

In Trinidad and Tobago, "the right to education is not enshrined in the Constitution." [1245] In consequence, the government does not perceive the elimination of financial barriers which keep children out of school as its obligation. Education is seen primarily as parental responsibility as the government described in 1996:

> The difficulties faced by those wishing to access not only public, but also private schools is the expense of textbooks and uniforms, which are mandatory to attend classes and which must be provided by parents, who are not always in a financial position to do so. Some parents have withheld their children from attending classes because they could not buy the required textbooks or to purchase the proper uniform. [1246]

The situation has not much improved a decade later. Primary education, encompassing children aged from 5 to 11, has not been universalized. School enrolments have reached 91% in 2002-2003 [1247] but there is no information about school attendance and completion.

[1245] U.N. Doc. E/1990/6/Add.30 (2000), paras. 274-275 and 277.
[1246] U.N. Doc. CRC/C/11/Add.10 (1996), para. 303.
[1247] EFA/UNESCO - *Education for All Global Monitoring Report 2006*, available at www.unesco.org.

THE WEALTHY WEST

Double standards

Global strategies such as the MDGs or EFA have formally divided the world into two parts. They speak to the poor and the wealthy part of the world is supposed to help the poor move towards the benchmarks which it has defined and is willing to finance. The MDGs were formally adopted by the United Nations but had been designed by the OECD four years earlier.[1248] The benchmarks and goals laid down for the poor do not apply within the OECD. The internal yardstick for educational performance is substantively different and much higher. This has globally institutionalized the notorious double standards. A low threshold has been laid down for the poor (primary education as a long-term goal) while the rich continue performing to a much higher standard (secondary education for all and lifelong learning to follow).

This bifurcation is grounded in the criterion of affordability. Public investment in education is much higher in rich than in poor countries, both in absolute and in relative figures. Poor countries can afford much less, hence their public investment in education is incomparably lower. The right to education should have globally institutionalized a minimal entitlement for all humans premised on its two characteristics: (1) that it is a human right rather than an entitlement limited to citizens, and (2) that governmental human rights obligations are universal rather than circumscribed by national borders. This has not happened and the global trend points in the opposite direction. Two general findings of the annual educational assessments by the OECD have described that trend:

- the proportion of private funding of primary and secondary education tends to be higher in countries with low levels of GDP per capita, [1249] and

- education reproduces existing patterns of privilege. [1250]

From the outside looking in, the fact that primary education is free in the OECD while charges are levied in the poor countries contradicts the ideals which inspired making education a universal human right. Within the OECD education is free and a variety of governmental subsidies reduce private costs of raising and educating children. Outside, parents shoulder a much heavier financial burden because child support is rare while the cost of children's health care and education has to be paid in full. The existing global pattern of privilege is reinforced with the OECD prolonging education from an average of 11 to 15 years of full-time education. Externally, these creditor and donor governments have committed themselves to support no more than primary school, which is five years long or less.

[1248] OECD/DAC - *Shaping the 21st Century: The Contribution of Development Cooperation*, Paris, 1996.
[1249] OECD – *Education at a Glance: OECD Indicators*, 2001 Edition, Paris, 2001, p. 88.
[1250] OECD – Education at a Glance: OECD Indicators 2002, Paris, 2002, p. 99.

The laws and policies of wealthy, mostly post-industrializing countries on free and for-fee are embedded in the conceptual linchpin between poverty and educational exclusion. The benchmark has internally been raised high with a search for "interventions [which] alleviate and will contribute to the eventual eradication of child poverty".[1251] The notion of exclusion lurks in the background because denials of access to social benefits and services form a part of its definition.[1252]

That denials of access to education on the grounds of poverty should not be tolerated is a corollary of the commitment rhetorically shared by all OECD governments to ensure that all children are well-educated. National policies vary in defining what 'well-educated' means and in operationalizing how this is best ensured but there is unanimity regarding this commitment.[1253] Its translation into practice requires keeping education free so that all children can go to school, and keeping it compulsory so as to force the three principal actors (parents, children and government) to ensure that all school age children and young people actually complete the educational cycle which is defined as compulsory. Education was made compulsory and free a century ago and ample experience has been accumulated on its advantages.

Governmental policies which need to be in place to keep education free and compulsory reach far beyond the sector of education because endless research has documented the negative impact of poverty on children's school attendance and their educational attainment. A variety of income transfers has been put in place to reduce children's material disadvantages, which then result in their lower educational performance. Universal entitlements (such as family or child allowances or housing benefits) are provided in some countries, means-tested policies (tax benefits as earning supplements or social assistance) in others, or a combination of the two. They have proved to constitute the key lever for reducing child poverty [1254] as well as for improving children's educational performance.[1255] Such governmental policies are premised on a societal and political consensus relating to sustaining high taxation, particularly visible in the Nordic countries which are the best performers in both reduction of child poverty and children's educational performance.[1256]

Governmental policies to alleviate the cost of raising and educating children do not exist in poor developing countries. Comparisons between sectors of education alone thus tell only a part of the story. Education may be nominally free in poor countries but the cost of raising children may be exorbitant because most, if not all, public services are for-fee.

[1251] Meeting of OECD Social Affairs Ministers, 2005 – Extending Opportunities: How active social policy can benefit us all – Final communiqué, 1 April 2004, available at www.oecd.org

[1252] Kahn, A.J. & Kamerman, S.B. (eds.) – *Beyond Child Poverty: The Social Exclusion of Children*, Institute for Child and Family Policy, Columbia University, New York, 2002.

[1253] Phipps, S. – *An International Comparison of Policies and Outcomes for Young Children*, Canadian Policy Research Network & Renoulf Publishers, Ottawa, 1999.

[1254] The definition of child poverty used externally is not applied within the OECD. Children are defined as poor when they live in households where disposable income is less than half of the median income in a given country. OECD – *Society at a Glance: OECD Social Indicators, 2005 Edition*, Paris, 2005, p. 56.

[1255] Kamerman, S.B. et al. – *Social Policies, Family Types and Child Outcomes in Selected OECD Countries*, OECD Social, Employment and Migration Working Papers No. 6, Doc. DELSA/ELSA/WD/SEM(2003)6, 20 May 2003, available at www.oecd.org

[1256] *A League Table of Child Poverty in Rich Nations: Report Card*, Issues No. 1, UNICEF Innocenti Centre, Florence, June 2000.

Nominally free primary school in wealthy countries may require the parents to purchase uniforms, books and supplies, but that financial burden may be alleviated through generous child-support entitlements. Where education is free of charge and parents are in addition entitled to financial support, any remaining financial barriers to children's right to education tend to be small. That model, which has been developed in the West, especially in the northern part of continental Europe, is not exported to poor developing countries.

Furthermore, the requirement that education be made compulsory has been abandoned in the MDGs or EFA. This feature has made education a service provided 'in the exercise of governmental authority' in the vocabulary of international trade law. [1257] This has made education as compulsory for the government as it is for the child and her parents, and the government is obliged to make and keep compulsory education free.

The heritage of compulsory and free education

All-encompassing and compulsory education was introduced in many of today's post-industrializing countries in the 19th century. Others followed at the beginning of the 20th century.[1258] The rationale was summarized by Richard Harker, who identified four key arguments behind the universal, state-funded education in 1877 in New Zealand. They were social control, the need for an educated electorate, investment in economic productivity, and equal individual rights.[1259] Surprisingly little has changed regarding these four arguments in more than a century. Economic productivity is mentioned much more often than social control in governmental policies but that emphasis does not necessarily drive the educational practice.

Education was gradually made free in the past two centuries because the experience had been that it would never become compulsory unless it was also free. The link between the elimination of child labour and free and compulsory education formed part of the oldest international human rights law. By the time the first international guarantees of the children's right to education emerged, there had been sufficient practice of states to base it on. That practice had evolved in the oldest industrialized countries and was then exported world-wide. That it does not fit those countries whose economies rely on subsistence agriculture or the informal sector has not altered its basic design.

Table 23 lists those countries for which are alternatively called developed, industrialized, or post-industrializing and for which the shorthand expression 'the wealthy West' is used here. They include the members of the European Union (EU) and the European Economic Area (EEA) as well as the original members of the Organization for Economic Cooperation and Development (OECD). Free and universal compulsory education has been attained in most of them quite a long time ago. The term *primary educatio*n has fallen into oblivion because the educational cycle which is legally defined as compulsory is much longer. Compulsory education in public schools is free in all 34 countries, as Table 23 shows.

[1257] Tomasevski, K. – Globalizing what: Education as a right or as a traded service*, Indiana Journal of Global Legal Studies*, vol. 12, No. 1, Winter 2005, pp. 10-15.
[1258] Tomasevski, K. – *Education Denied: Costs and Remedies*, Zed Books, London, 2003, pp. 44-48.
[1259] Coxon, I. et al. (eds.) – *The Politics of Learning and Teaching in Aotearoa – New Zealand*, Dunmore Press, Palmerston North, 1994, p. 44.

Table 23
Guarantees of free education in Western/Northern laws and policies

Country	Legal guarantee of free education		Charges levied	
	Yes	No	Yes	No
Australia	√			√
Austria	√		↘	
Belgium	√		↘	
Canada	√			√
Cyprus	√			√
Czech Republic	√			√
Denmark	√			√
Estonia	√			√
Finland	√			√
France	√			√
Germany	√			√
Greece	√			√
Hungary	√			√
Iceland	√			√
Ireland	√			√
Italy	√			√
Japan	√		↘	
Korea (South)	√		↘	
Latvia	√			√
Lithuania	√			√
Luxembourg	√			√
Malta	√			√
Netherlands	√		↘	
New Zealand	√		↘	
Norway	√			√
Poland	√		↘	
Portugal	√			√
Slovakia	√			√
Slovenia	√			√
Spain	√			√
Sweden	√			√
Switzerland	√			√
United Kingdom	√			√
USA	√			√

Sources: Australia - CRC/C/8/Add.31, 1996, para. 1178 and E/1994/104/Add.22, 1998, paras. 264 and 314; Austria - CRC/C/11/Add.14, 1997, paras. 154-155, 374 and 377; Belgium - CRC/C/83/Add.2, 2000, paras. 589-590; Canada - HRI/CORE/1/Add.91, 1998, paras.59 and 127, CCPR/C767/D/694/1966, 1999; Cyprus - CRC/C/70/Add.16, 2002, para. 115 and E/1994/104/Add.12, 1996, paras. 341-342; Czech Republic – CRC/C/83/Add.4, 2002,

paras. 261-262; Denmark - CRC/C/8/Add.8, 1993, para. 36 and E/1994/104/Add.15, 1997, paras. 323 and 325; Estonia - E/1990/5/Add.51, 2001, para. 677 and CRC/C/8/Add.45, 2002, paras. 374 and 386; Finland - E/C.12/4/Add.1, 1999, para. 437 and CRC/C/70/Add.3, 1998, para. 194; France - CRC/C/3/Add.15, 1993, para. 376 and E/1990/6/Add.27, 2000, paras. 595 and 599-600; Germany - CRC/C/11/Add.5, 1994, para. 75 and E/1994/104/Add.14, 1996, paras. 340 and 371; Greece - CRC/C/28/Add.17, 2001, para. 331 and CRC/C/114, 2002, para. 158; Hungary - CRC/C/8/Add.34, 1996, para. 66; Iceland - E/1990/104/Add.25, 2002, para. 3 and CRC/C/83/Add.5, 2002, paras. 310-311 and 313-314; Ireland - CRC/C/11/Add.12, 1996, paras. 456 and 459; Italy - CRC/C/70/Add.13, 2002, para. 451 and E/1994/104/Add.19, 1998, para. 153; Japan - CRC/C/41/Add.1, 1996, paras. 212-214 and CRC/C/104/Add.2, 2002, para. 172; Korea - CRC/C/70/Add.14, 2002, paras. 142, 146 and 149 and E/1990/6/Add.23, 1999, para. 337; Latvia - CRC/C/11/Add.22, 2000, paras. 38, 195 and 200, and CRC/C/15/Add.142, 2001, para. 43; Lithuania - CRC/C/11/Add.21, 1998, paras. 154 and 224-226 and CRC/C/15/Add.145, 2001, para. 43; Luxembourg - CRC/C/41/Add.2, 1997, paras. 577-578 and 600; Malta - CRC/C/97/Add.97, 2000, paras. 412 and 438-439; Netherlands - E/1990/6/Add.11, 1996, paras. 273-274 and E/1990/6/Add.11, 1996, para. 280; New Zealand - CRC/C/93/Add.4, 2000, paras. 681, 678 and 747, and CRC/C/28/Add.3, 1995, para. 277; Norway - CRC/C/70/Add.2, 1998, para. 286 and E/1994/104/Add.3, 1994, paras. 430 and 449; Poland - CRC/C/70/Add.12, 2002, para. 280 and E/C.12/4/Add.9, 2001, para. 324; Portugal - CRC/C/65/Add.11, 2001, paras. 42 and 382; Slovakia - CRC/C/11/Add.17, 1998, para. 217 and E/1990/5/Add.49, 2001, para. 138; Slovenia - CRC/C/8/Add.25, 1995, paras. 122 and 125; Spain - CRC/C/70/Add.9, 2001, paras. 1202-1203 and 1218; Sweden - CRC/C/65/Add.3, 1998, paras. 565 and 572 and E/1994/104/Add.1, 1994, paras. 250-251; Switzerland - CRC/C/78/Add.3, 2001, paras. 98 and 499 and E/1990/5/Add.33, 1996, para. 631; United Kingdom - E/CN.4/2000/6/Add.2, paras. 12, 16 and 27-28; United States of America - E/CN.4/2002/60/Add.1, paras. 37, 45 and 49.

The definition of *free* means that no charges are levied for enrolment and tuition but the practice of states varies beyond that minimum. In the majority, the legal definition of *free* education is broad and governmental policy is to offset all costs related to education. In a minority, charges have been introduced and explained as supplementary, or voluntary, or optional, always confirming that governmental obligation to ensure free education during the compulsory cycle remains unchanged.

In its comparative surveys of free and for-fee education, the OECD has noted that only in non-European countries, Japan and the United States, around 10% of students attend schools "predominantly financed through unsubsidized household payments".[1260] In the European countries, two-pronged public finance keeps education free: direct public financing of schools and financial support to pupils and their families. In the European Union, 89% of the overall cost of education is borne by the public purse. Charges may be levied in pre-primary education and at the university but not in compulsory education. Moreover, "family allowances exist in all European countries without exception. In general, they are awarded when children are born and paid up to the end of compulsory education".[1261]

Nevertheless, as Table 23 shows, charges in public compulsory education have been reported from Austria, Belgium and Netherlands, as well as non-European countries (Japan, New Zealand and South Korea) and these countries are addressed in the next part of this section because they are an exception to the rule. The rule is described first by highlighting the range of governmental policies which address direct and indirect costs of education.

[1260] OECD - *Education at a Glance: OECD Indicators 2001*, Paris, 2001, p. 127.
[1261] EURYDICE – *Key Data on Education in Europe 2005*, Sixth Edition, Office for Official Publications of the European Communities, July 2005, available at www.eurydice.org

When is education free?

Definitions of *free* education include a range of subsidies provided to offset the cost of enrolment, tuition, books, meals, computers, sports, to encompass transportation for children who live far from school, or extra-curricular activities. Estonia provides an example: "The State covers the expenses for teachers' salaries and the cost of buying textbooks. The Basic and Upper Secondary Schools Act establishes the right to use free of charge the school's buildings, rooms, library, learning, sports, technical or other facilities for extracurricular activities".[1262]

School meals, mostly in the form of fully subsidized canteens, are provided in a number of countries. In France, "measures have been taken to ensure that education remains free: school transport, canteens and supervised study have been introduced everywhere in order to promote school attendance. In addition, school books and supplies are made available free of charge to enable school children to attend at no cost to their families".[1263]

Transportation costs also tend to be borne by the government. In Australia, "assistance is provided to primary and secondary students who do not have reasonable daily access to a government school offering education at their level due to living in a remote area or because a child has a disability and must attend a special school some distance from the family home". [1264] In Cyprus, "in a very few villages where the pupil population does not permit the functioning of primary schools, adequate transportation is provided by the State so as to facilitate pupils attending nearby schools".[1265] Germany has reported that "all *Länder* have regulations governing the transport of pupils from home to school. Traveling costs for public transport may be reimbursed, or transport services may be established".[1266]

Sweden has described its practice as ensuring "teaching materials in compulsory school are free of charge to the individual. School meals and school transport are provided free of charge for compulsory school pupils. In most municipalities, meals and books are also free of charge to upper secondary students".[1267] In Switzerland, "the Federal Council has ruled that the principle of free education requires that the commune should bear the cost of a bus service where the bus is used to transport pupils who would otherwise have an excessively long journey. Doctrine and previous rulings indicate that school supplies and equipment, on the other hand, should not be provided free of charge. In practice, however, most cantonal legislation lays down that school supplies are to be provided free of charge".[1268]

Finland, the country that has become seen as *the* impressive performer in international ranks by learning accomplishments, also serves as an example of the generous provision of everything that is needed for the pupils to achieve such impressive results:

[1262] U.N. Doc. CRC/C/8/Add.45 (2002), para. 386.
[1263] U.N. Doc. E/1990/6/Add.27 (2000), para. 600.
[1264] U.N. Doc. E/1990/104/Add.22 (1998), para. 314.
[1265] U.N. Doc. E/1990/104/Add.12 (1996), para. 342.
[1266] U.N. Doc. E/1994/104/Add.14 (1996), para. 340.
[1267] U.N. Doc. E/1994/104/Add.1 (1994), para. 251.
[1268] U.N. Doc. E/1990/5/Add.33 (1996), para. 631.

> Municipalities are obliged to provide basic education, as well as materials and tools, free of charge to all children of compulsory education age in their area. One healthy meal is served every day free of charge to those attending school. In cases where the journey to school is longer than five kilometres or, considering the age and circumstances of the pupil, too tiring, free transport to school must be arranged. Disabled children are entitled to have an attendant and such school aids as they need to be able to attend school, without any extra cost to themselves.[1269]

Governmental responsibility to equilibrate subsidy and liberty

The European Union illustrates two facets of governmental human rights obligations, to ensure education for all children while respecting freedom *of* and *in* education. Not all EU members share the model of uniform, state-provided school. Parental freedom to educate their children in non-state schools or at home has impeded the recognition of a state's right to impose public schooling by making it compulsory in the EU's key human rights documents.[1270] Governmental obligations are to ensure that education is free by offering good quality public education to all school age children while respecting parental freedom to opt out of public schooling.

Freedom to establish educational institutions is constitutionally recognized but it may be publicly or privately financed, which necessarily broadens or limits the range of parents who can exercise such freedom. In some European countries the government is prohibited from discriminating between state and non-state schools and obliged to provide even-handed finance to all formal compulsory schooling. In others, opting out of public school also means relinquishing the right to free education. Ireland provides an illustration of the complexity of a constitutional formula designed to impede the state from imposing education while obliging it to ensure that education is provided. [1271]

[1269] U.N. Doc. E/C.12/4/Add.1 (1999), para. 437.

[1270] The European Union's Charter of Fundamental Rights has prioritized parental freedom of choice in defining the right to education. Its has not repeated the formula from international human rights treaties (free and compulsory education) which assumes the state's power to impose education. Rather, it has referred to "the possibility to receive free compulsory education". That formulation reflects the limited competence of the European Union in education as well as in human rights and the requirement to respect national differences.

[1271] Ireland's 1937 Constitution provides an immensely complex definition of the right to education, which remains unchanged and is worth quoting in full:

> "The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.
> Parents shall be free to provide education in their homes or in private schools or in schools recognized or established by the State.
> The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State or to any particular type of school designated by the State.
> The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.
> The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of the parents, especially in the matter of religious and moral formation.
> In exceptional cases, where parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child."

The preference for parental choice in European constitutional guarantees derives from the "principle of subsidiarity according to which the State filled the gaps left by private sector provision (private and church schools)".[1272] Education financed and provided by the state is fairly recent in history and the inherited mosaic of the pre-state provision of education, especially by religious communities, has greatly influenced contemporary models. Moreover, constitutional guarantees for freedom of education have impeded state monopoly over education, which was a key feature of Soviet-modelled systems and triggered explicit safeguards against this model in the Western part of Europe during the Cold war.

The guarantees of parental choice amongst diverse but publicly-funded schools aim to ensure freedom for both rich and poor. In Denmark alternative schools are subsidized lest parental freedom of choice would become meaningless: "Education in the *Folkeskole* is free of charge and textbooks and teaching aids and materials are free as well. In private, independent schools, which are attended by 11 per cent of the pupils, about 85 per cent of the expenditure is publicly subsidized".[1273] A 2000 survey of private education by EURYDICE has shown that private schooling exists as an option but more than 90% of children complete their education in public schools. Additional guarantees in Germany prohibit discrimination between pupils on the basis of their parents' financial situation.[1274] The government of Norway reported in 1994 that "education has always been regarded as the responsibility of the State. Norway has no private school tradition, and there are still few such schools compared with other countries".[1275] Sweden's model is based on the entitlement of all school-aged children to a place within the public school system while independent schools (enrolling 6% of children) are allowed to charge fees.[1276] In Ireland, the government enables parents to exercise their choice of educating their children at home, in private or public school, while subsidizing the cost of compulsory education so as to make it free.[1277] In the Netherlands, respect of freedom of education had led to a variety of 'private' schools established following religious or other convictions, while there is should be no difference in their funding:

> Private schools receive the same allocations from the public purse as the public-authority schools, provided they choose to comply with the requirements and conditions to which the public-authority schools are bound by law. [1278]

In the Netherlands, more than 70% of children would be categorized as attending a 'private' school and in Germany less than 5% but this does not alter compulsory education being both universal and free in both countries.[1279] In Iceland school attendance is compulsory but education is free in the financial sense:

> Under the Primary School Act, all children and young persons aged between 6 and 16 years are obliged to attend primary schools, and the State and the local authorities are obliged to provide schools for all children in this age

[1272] EURYDICE - *A Decade of Reforms at Compulsory Education Level in the European Union (1984-94)*, The Information Network on Education in Europe, Brussels, 1997, p. 17.
[1273] U.N. Doc. E/1994/104/Add.15 (1997), para. 325.
[1274] EURYDICE – *Private Education in the European Union: Organization, Administration and the Public Authorities' Role*, December 2000, available at www.eurydice.org
[1275] U.N. Doc. E/1990/104/Add.3 (1994), para. 457.
[1276] U.N. Doc. CRC/C/65/Add.3 (1998), paras. 565 and 572.
[1277] U.N. Doc. CRC/C/11/Add.12 (1996), paras. 41 and 459-460.
[1278] U.N. Doc. E/1990/6/Add.11 (1996), pars. 273-274.
[1279] EURYDICE - *A Decade of Reforms at Compulsory Education Level in the European Union*, Brussels, 1997, p. 32.

> group. The aim is not only that all children and young persons should have the right to education, but that they should be obliged to attend school. Compulsory education in Iceland is free, meaning that all teaching and educational materials are provided without charge, though in some cases the materials are only loaned and not given to the pupils. The Primary Schools Act contains a clearly-worded provision to the effect that pupils in compulsory education may not be charged for teaching, educational materials or other materials which they are obliged to use under the Act and which the State and local authorities are obliged to provide. Furthermore, the State and local authorities are obliged to meet the costs if the pupils have to stay in boarding school.[1280]

Such generous interpretations of the meaning of *free* are not shared amongst all Western countries. Charges have been formally introduced in some countries and they are examined next.

COUNTRIES WITH POLICY-BASED CHARGES IN COMPULSORY EDUCATION

Austria

Charges for transportation and textbooks were introduced in Austria as part of the austerity package in 1995 and the government has described them in its reports under international human rights treaties as follows:

> In order to offset the costs incurred by parents in raising and sending their children to school, the State takes over all the costs of school transport, and provides the necessary textbooks for pupils attending public or quasi-public compulsory school. Owing to enormous costs of these State services, a 10 per cent contribution to be paid by parents was introduced in the framework of the cost-cutting measures adopted by the Government in 1995 ("austerity package"). [1281]

Before that change, the government had reported that no charges were levied in compulsory education and "all pupils receive free textbooks and have a statutory entitlement to school transport".[1282]

Once introduced, such charges tend not to be withdrawn but are gradually amplified. There has been little challenge, however. Even when tuition fees were introduced in university education in 2001 (again, financial austerity was cited as the reason), there were noisy protests but no legal challenge.[1283]

[1280] U.N. Doc. CRC/C/11/Add.6 (1995), paras. 310 and 313.
[1281] U.N. Doc. CRC/C/11/Add.14, 1997, para. 377.
[1282] Council of Europe – *The Division of Responsibilities at National, Regional and Local Levels in the Education Systems of Twenty-three European Countries*, Studies and Texts No. 44, Council of Europe Publishing, Strasbourg, 1996, p. 78.
[1283] Berka, W. – The impact of the ECHR on right in and rights to education in Austria, in: De Groof, J. and Lauwers, G. (eds.) – *No Person Shall Be Denied the Right to Education: The Influence of the European*

Belgium

In 1997, charges were introduced in compulsory education in Belgium. They were authorised with a provision that Anon-payment of these expenses may not constitute a motive for refusal of registration, or of exclusion.@ [1284] These 'expenses' were defined to explicitly exclude enrolment or tuition fees because education should remain free:

> No school fees of a direct or indirect nature may be accepted or received in respect of pupils who are subject to compulsory school attendance. Imposition of a '*minerval*' is not permitted. Nonetheless, there are still some costs to me met by the parents: admission to the swimming pool, purchase of the school magazine, costs connected with excursions, services, etc. [1285]

Formally, these charges were described as optional because children should not be penalized for a parental failure to pay them. However, depriving poor children of swimming, school magazine and excursions is a form of punishment. Indeed, there was widespread opposition to these charges:

> The explanatory statement of article 24 [of the Constitution] specifies that by free access it is meant that the school cannot require that an enrolment '*minerval*' be paid. Beyond this enrolment, the school can therefore ask parents for other financial contributions. In the Flemish community, parental contribution to the school will be regulated as from 2003/2003 by decree XIII. Referring to the Constitution and to international treaties, the decree determines that money cannot be required for activities that are necessary to obtain the final diploma. According to the explanatory statement, a contribution can be required for 'activities that make learning livelier.' Immediate examples are trips to the theatre, cinema or concerts, school excursions and after-school activities.[1286]

Greece

The government of Greece self-critically reported in 2001 that budgetary allocations for education were much too low (3.3% of GDP) and private spending on education was almost equal to the governmental budgetary allocation for education.[1287] As a consequence, the Committee on the Rights of the Child criticised closures of rural schools and, in particular, the high rates of non-completion of compulsory 9-year schooling by rural children and the Roma.[1288]

Convention on Human Rights on the Right to Education and Rights in Education, Studies in Human Rights in Education, Wolf Legal Publishers, Nijmegen, 2004, p. 125-126.

[1284] U.N. Doc. CRC/C/83/Add.2, 2000, para. 590.

[1285] EURYDICE – *Private Education in the European Union: Organization, Administration and the Public Authorities' Role*, December 2000, available at www.eurydice.org.

[1286] NGO 'shadow report' under the Convention on the Rights of the Child, 2002, available at www.crin.org

[1287] U.N. Doc. CRC/C/28/Add.17 (2001), para. 331.

[1288] U.N. Doc. CRC/C/114/Add.5 (2002), para. 158.

While education should be free on all levels as the law mandates, from primary school to the university, this is not so even in compulsory education. The government has admitted that "primary and secondary public schools receive a financial contribution from the parents towards the cost of maintaining, heating and cleaning the premises".[1289]

Japan

In its reports under international human rights treaties, the government has claimed that compulsory education is free and, moreover, it has cited and quoted a special law on financial aid to those who might encounter problems with school attendance and completion: "The government helps promote the smooth implementation of compulsory education by providing necessary aid to municipalities which encourages compulsory education attendance by offering school supplies to children and students who have difficulties in attending school for financial reasons, in accordance with the Law concerning the national treasury's share to encourage school attendance of pupils with difficulties".[1290] Alternative NGO reports have pointed out, however, that education is not free:

> Though Article 26, para. 2 of the Constitution provides for compulsory education free of charge, the Government interprets the provision narrowly as prohibiting collection of tuition fees. It considers the free provision of textbooks merely as a legislative option. As a result, the parents have to bear a burden of educational expenses including fees to teaching materials, school meals and other necessities such as designated school and training uniforms. [1291]

Yoshio Sugimoto has confirmed these NGO findings by stating generally that "education in Japan is an expensive business." Also, he has pointed out that the effective definition of *free* education refers only to the nine years of compulsory schooling and, then, *free* is defined narrowly, only to preclude levying tuition fees. [1292]

The Netherlands

The government of the Netherlands has claimed in its reports under international human rights treaties that "primary education is free of charge. Some schools may require a parental contribution, but they may not refuse to admit a child whose parents cannot or will not pay".[1293] A different assessment has been provided by the EURYDICE:

> Over the last decade, some important changes in government itself have had a large impact on private and public sector schools. These changes are decentralization, cutbacks, deregulation and privatization. Decentralization, or the shift in competence and responsibilities from central to local government, led to a decrease in influence of national umbrella organizations. With cutbacks, the conditions for government funding became stricter. Schools looked for other sources of income, mainly from the market".[1294]

[1289] Council of Europe – *The Division of Responsibilities at National, Regional and Local Levels in the Education Systems of Twenty-three European Countries*, Studies and Texts No. 44, Council of Europe Publishing, Strasbourg, 1996, p. 158.
[1290] U.N. Doc. CRC/C/104/Add.2, 2002, para. 172.
[1291] NGO 'shadow' report under the Convention on the Rights of the Child, 1998, available at www.crin.org.
[1292] Sugimoto, Y. – *An Introduction to Japanese Society*, Cambridge University Press, Second edition, 2003, p. 120.
[1293] U.N. Doc. E/1990/6/Add.11, 1996, para. 280.
[1294] EURYDICE – *Private Education in the European Union: Organization, Administration and the Public Authorities' Role*, December 2000, available at www.eurydice.org.

Moreover, in the Netherlands this relatively-free primary education finishes at the age of 16 and fees ought to be paid thereafter: "The parents of pupils who are aged 16 and over and are in full time education and are attending a secondary school, a special school or a school for (senior secondary) vocational education must pay tuition fees each year. The amount of the fees is fixed annually on the basis of a statutory system of indexation".[1295]

That explicit and formal introduction of fees contrary to the wording of the International Covenant on Economic, Social and Cultural Rights led its Committee to conclude that governmental policy was "contrary to the principle of equality of opportunities between the children of rich families and children of poor families." Accordingly, it has requested the Netherlands "to alleviate or eliminate the adverse effects of the Tuition Fees Act".[1296] There has been no evidence that the government of the Netherlands has complied with that request.

New Zealand

In its 1995 report under the Convention on the Rights of the Child, the government of New Zealand confirmed that "some schools ask students to pay a specific amount as a 'school fee' to assist with the costs of the school activities and materials. Payment of this 'fee' is voluntary".[1297] In a subsequent report, in 2000, the government described the free or for-fee practice in compulsory education thus:

> State schools are not permitted to charge fees. In subjects with a practical component such as clothing and workshop technology, a board may charge for material where the end product belongs to the student and it may, if paid for, be taken home. Reasonable travel costs for field trips may also attract a fee. Schools may invite donations but these are entirely voluntary.[1298]

Differently, Edward Fiske and Helen Ladd have found that "to maintain the fiction of free public education, schools are prohibited from making fees compulsory".[1299] This linguistic dispute whether the charges levied should be referred to as fees or 'fees', as voluntary or 'voluntary', was triggered by the change of governmental policy introduced in New Zealand in 1989.

That change attracted a great deal of global attention because it introduced the free-market model in public education. The Economist referred to New Zealand at the time as "the liberalisers' darling".[1300] Individual schools were granted autonomy which comprised raising funds additional to governmental subsidies.[1301] Since the government decreased budgetary allocations to education, additional charges levied by school became necessary for many of them to operate.

[1295] U.N. Doc. CRC/C/51/Add.1, 1997, para. 266.
[1296] U.N. Doc. E/C.12/1999/22, paras. 185 and 193.
[1297] U.N. Doc. CRC/C/28/Add.3 (1995), para. 277.
[1298] U.N. Doc. CRC/C/93/Add.4 (2000), para. 678.
[1299] Fiske, E.B. and Ladd, H.F. – *When Schools Compete: A Cautionary Tale*, Brookings Institution Press, Washington D.C., 2000, p. 83.
[1300] Can the Kiwi economy fly?, *The Economist*, 2 December 2000.
[1301] *Tomorrow's Schools: The Reform of Educational Administration in New Zealand*, Wellington, 1989.

By the year 2000, governmental subsidies covered 90% of a per-pupil cost of primary education, leaving 10% to be raised through 'voluntary fees.' In secondary education, only 75% of an average cost per pupil was offset by governmental subsidies and a quarter had to be supplemented by parents.[1302]

Free enrolment and tuition were retained as entitlements of all New Zealanders between the ages of 5 and 19 but *free* education was reduced to the compulsory curriculum. Many schools introduced 'no pay no play' policies and pupils whose parents could not furnish the required payments were prevented from sports, music, excursions, school magazines, use of the library, photocopying, access to information technology, or even from getting school leaving certificates.[1303] The practice of levying charges spread to such an extent that a school principal commented in 2000 that without parental donations and fees paid by foreign pupils he would be running a third world school.[1304] A fee-free public school became a newsworthy item in 2001.[1305]

After a full century of taxpayer-funded, state-provided compulsory education introduced in 1877,[1306] the educational reform in 1989 created turmoil. The law and the accompanying ministerial circular rhetorically preserved *free* education [1307] but the incidence of charges levied upon the parents was neither monitored nor assessed for its impact on the poor. That impact was two-fold:

- The introduction of parental payments for education that remained legally free created confusion and resentment; the confusion originated in the belief that education remained free and demands for payments from schools were voluntary, hence those parents who did not wish to pay could do so without any negative consequences for their children or the schools; the resentment against such parents was based on the fact that some paid the supposedly voluntary contributions, and also subsidized the children of those parents who would not or could not pay.

- The sums in question ranged up to $500, an amount which poor parents simply could not afford, creating differentiations between children's entitlements based on the parental wealth or poverty both within and between schools. This worked in the opposite direction of the century-old commitment to free education.

[1302] The official government report on compulsory e4ducation for the school year 1999-2000 stated the average cost per pupil in primary school as $3,758 out of which government subsidy was $3,426, while the cost per secondary school pupil was $5,409, out of which the government subsidy was $4,603. (*New Zealand Schools Nga Kura o Aotearoa: A Report on the Compulsory Schools Sector in New Zealand*, Ministry of Education, Wellington, 2000, p. 91)

[1303] The education begging bowl: Why you're paying so much more for your child's schooling, *Consumer*, vol. 285, August 1990, pp. 20-22; School fees, *Consumer*, vol. 323, January-February 1994, pp. 18-19; Education school fees: Paying in a 'free' system, *Consumer*, vol. 367, January-February 1998, pp. 26-27.

[1304] *New Zealand Herald*, 28-29 April 2000, p. A13.

[1305] *The Southland Times* (New Zealand), 6 February 2001, p. 3.

[1306] Latimer, S.G. – User pays in New Zealand's free compulsory education system, unpublished masters' thesis (Master of Public Policy), Massey University, Albany (New Zealand), 2002, p. 1.

[1307] Payments by parents of students in state and state integrated schools, Education Circular 1998/25, Ministry of Education, 23 June 1998, available at www.minedu.govt.nz.

An additional change was triggered by the fees and charges for foreign pupils and students, who could gain access to education only by purchasing it. Foreign, fee-paying pupils increased in number and in importance through the financial contributions they made to school budgets. An overview of the first decade of trade in education services revealed that the number of foreign pupils grew to over 15,000. The income generated by charging foreign pupils the full cost of education has obviously benefited school budgets.[1308] The impact of that change on New Zealanders, who have nominally retained their right to free public education, is yet to be seen.

South Korea

The role of education in the transformation of South Korea from a poor to a wealthy country within two decades generated immense global interest. Its educational model was driven by the logic of investment in the country's future. The educational pyramid was built from the bottom up, with a huge investment in the universalization of basic education in the 1970s. The economic rationale behind public investment in education was not only 'trained man-power' in the language of the time, but also a demographic transition. Educating all girls delayed marriage and led to fewer children, which were then much easier to educate.[1309]

In its reports under international human rights treaties, the government has stated that compulsory education is free but "the parents are to fund the expense for the cost of food".[1310] This *free* means that enrolment and tuition are not paid while private tuition, books or transport ought to be paid by the school children's families.

Michael Seth has described the ease with which consecutive governments have reformed education in South Korea. One pillar has been their reliance on the thirst for education grounded in Confucianism. Another has been the willingness, and the increasing ability of children's parents to bear a large part of the cost of education.[1311]

[1308] Education Review Office – *Foreign Fee-Paying Students in New Zealand Schools*, Education Evaluation Report, June 2003, ERO (Education Review Office), Wellington, 2004, pp. 10 and 31.
[1309] Ministry of Education – *The Development of Education: National Report of the Republic of Korea*, Seoul, September 1996, p. 1-2.
[1310] U.N. Doc. E/1990/6/Add.23 (1999), para. 337.
[1311] Seth, M.J. – *Education Fever: Society, Politics, and the Pursuit of Schooling in South Korea*, University of Hawaii Press, Honolulu, 2002.

SUMMING UP:
THE FINDINGS AND THEIR IMPLICATIONS

Resolve and resources (*not* resources alone)

The review of policy-based charges in primary school in wealthy, post-industrializing countries in the last section of this global report has demonstrated the need to scrutinize the fate of the poor in rich countries. The operative global rule of country code lottery exempts the wealthy Western countries from monitoring which would detect economic exclusion from education within their own territory. The tyranny of statistical averages portrays these countries as having universalized education but this is often not the case.

There is no automatic association between the wealth of a country and its educational performance. The United States of America, the self-proclaimed only global superpower, has lower enrolments in primary school than Argentina. Table 24 highlights the effort which Latin American countries have made to ensure education for their young generation, especially by making it increasingly free despite many obstacles. Table 24 reproduces for the USA educational statistics from the OECD. The data gathered by UNESCO/UNICEF on the numbers of children who are out of school place the United States even lower for its failure to ensure primary education for all children. School enrolments in 2001/2002 were reported at 94%. This meant that 6% of school aged children (6-11) were out of school, some 1.3 million.[1312] This figure does not include those children who are in fact but not in law in the United States, illegal aliens and children of undocumented migrant workers, so it is certainly an underestimate.

Table 24
Educational enrolments in Nordic and Latin American countries compared with the USA

	Enrolment of children aged 5-14	Enrolment of young people aged 15-19	Enrolment of young people aged 20-29
Nordic countries:			
Denmark	99%	82%	31%
Norway	98%	85%	26%
Sweden	98%	86%	34%
United States	97%	75%	25%
Latin American countries:	104%	70%	26%
Argentina	91%	71%	23%
Brazil	98%	68%	21%
Uruguay			

Note: The net enrolment rates shown in this table may exceed 100%, as is the case in Argentina, due to mismatches between age-based classifications within the educational pyramid. In some countries children aged five start primary school, in others they are classified as too young for school.

Source: *Education at a Glance: OECD Indicators 2004*, Paris, 2004, Table C1.2, p. 278.

[1312] UNESCO/UNICEF – *Children Out of School: Measuring Exclusion from Primary Education*, UIS, Montreal, 2005, Table A.1, p. 78, available at www.uis.unesco.org.

Wealthy post-industrializing countries provide more and better education but differences between them demonstrate the impact of an effective recognition of the right to education (as in the Nordic countries) or its absence (as in the United States of America). Such differences are much more noticeable in poor parts of the world. International cooperation was envisaged to remedy the inability of poor countries with young populations to generate revenues needed to educate all the children. It was premised on governmental responsibility to ensure free and compulsory education but this is precisely a missing item on the global agenda. Movements in poor countries to roll back school fees have triggered global affirmations that education should be free. The word *compulsory* is missing. It is avoided because it would entail defining education as a public service and a public responsibility. Instead, the global vocabulary revolves around supply and demand. Excess demand routinely has to be met through popular *participation*, a euphemism denoting the transfer of the cost of education to those who have had none but want their children to be educated. This has localized and privatized financial responsibility for education contradicting the requirement of international human rights law to universalize it as corollary of the universal right to education. Also, it has institutionalized economic exclusion from education.

The global pattern of economic exclusion

The purpose of this report is to make the global pattern of poverty-based exclusion from primary school visible so that it can inform intertwined global strategies for poverty reduction, debt relief, human rights and education. It uses the absence of poverty-based exclusion from education as the benchmark. It is paradoxical that this benchmark is absent from all global strategies, even when they claim to be designed so as to reduce poverty through education. If education is priced out of the reach of the poor, as is often the case, this paradox becomes glaringly obvious.

It is then necessary to ask why this is so. Collective global action which is required to tackle poverty-based exclusion from education presumes a shared understanding of the problem. Instead, the problem was globally defined to support the preferred solution and transfer education from governmental to family budgets.

Table 25 classifies regions by the prevalence of charges in public primary school, from Sub-Saharan Africa as the most severely affected region towards Latin America, with its commitment to free secondary rather than only primary education. Africa has attracted immense international attention but there has been almost no publicity for the plight of Eastern Europe and Central Asia, which is the second most affected region. The transition from free-and-compulsory to market-based education points to the association between policy and poverty. Public policies which have impoverished public education were manifest in their extreme but many of their facets are present world-wide.

Table 25
Countries with charges in primary school by region

Sub-Saharan Africa	Eastern Europe and Central Asia	Asia	Middle East and North Africa	Latin America
Angola Benin Burkina Faso Cameroon Central African Rep. Chad Congo/Brazzaville Congo/Kinshasa Côte d'Ivoire Equatorial Guinea Eritrea Ethiopia Gabon Ghana Guinea Guinea-Bissau Mali Mauritania Mozambique Namibia Niger Senegal Togo Zimbabwe Governments rolling back charges Burundi Gambia Kenya Lesotho Liberia Madagascar Malawi Nigeria Rwanda Sierra Leone South Africa Swaziland Tanzania Uganda Zambia	Albania Armenia Azerbaijan Belarus Bulgaria Croatia Georgia Kazakhstan Kyrgyzstan Macedonia Moldova Romania Russia Serbia Tajikistan Turkmenistan Ukraine Uzbekistan Externally funded education Bosnia & Herzegovina Kosovo	Bhutan Burma/Myanmar Cambodia China Fiji Indonesia Laos Maldives Nepal Pakistan Papua New Guinea Philippines Singapore Viet Nam Externally funded education Timor-Leste Governments rolling back charges Bangladesh India Malaysia Mongolia	Djibouti Egypt Iran Israel Jordan Lebanon Qatar Sudan Syria Tunisia United Arab Emirates Yemen Externally funded education Afghanistan Iraq Palestine	Bolivia Colombia Ecuador Dominican Republic El Salvador Guatemala Honduras Nicaragua Panama Paraguay Peru The Caribbean Antigua & Barbuda Belize Grenada Guyana Haiti St Lucia St Vincent Suriname Trinidad & Tobago

Table 25 focuses on developing and 'transitioning' countries because poverty-based exclusion from education should – but does not - inform global education strategies. The World Bank has acknowledged "that the children in any country that are currently out of school are those the least able to contribute to the cost of education". [1313] Indeed, poverty-driven charges are particularly widespread in Africa and calls for their rollback have proliferated.

[1313] Bruns, B., Mingat, A. and Rakotomalala, R. (eds.) - *Achieving Universal Primary Education by 2015: A Chance for Every Child*, The World Bank, Washington DC, 2003, p. 81.

Sub-Saharan Africa

The growing number of African governments which have prioritized rolling-back charges in primary school is shown in Table 25. All use the language of *school fees* as the World Bank refers to some of them. While rhetorical commitments to abolish school fees may or may not lead to making education gradually free, experiences of countries which have started on that long and uphill road have facilitated knowledge-building to inform policy design. The process of identifying and quantifying all the charges that are levied is the necessary first step; how many there may be is shown below in Table 31. Public funding which is needed to offset these charges is proverbially the key bottleneck and most countries have moved gradually, often by investing a part of debt relief into making education freer. Such public funds have routinely exceeded all previous estimates because huge numbers of children have shown up at school once an announcement was made that education would be free. Inaccurate and outdated demographic data and the absence of all-encompassing child registration at birth accounted for large numbers of school age children who were not known to exist beforehand.

The enrolment explosions triggered by announcements of free education have shown how big a barrier the fees, charges and other financial contributions are for poor children, who are the vast majority in all African countries. Table 26 highlights increased school enrolments which have followed announcements that education would be free.

Table 26: Free education policies and increased enrolments in Africa

Country	Policy of free education		Enrolment
Angola		No	(62%)
Benin	Progressive		(71%)
Botswana	Partial		81%
Burkina Faso		No	36%
Burundi	Recent		58%
Cameroon	Recent		(73%)
Cape Verde	Yes		99%
Central African Republic		No	(55%)
Chad		No	(63%)
Côte d'Ivoire		No	(61%)
Congo/Brazzaville		No	(54%)
Congo/Kinshasa		No	(35%)
Equatorial Guinea	Progressive		85%
Eritrea		No	45%
Ethiopia		No	51%
Gabon	Progressive		78%
Gambia	Progressive		79%
Ghana		No	59%
Guinea		No	66%
Guinea-Bissau		No	(45%)
Kenya	Recent		(67%)
Lesotho	Recent		86%

Liberia	Recent		70%
Madagascar	Recent		79%
Malawi	Yes		(81%)
Mali		No	45%
Mauritania		No	68%
Mauritius	Yes		97%
Mozambique	Partial		55%
Namibia	Partial		78%
Niger		No	38%
Nigeria	Progressive		67%
Rwanda	Recent		87%
Sao Tomé & Principe	Yes		97%
Senegal	Progressive		67%
Seychelles	Yes		100%
Sierra Leone	Recent		No data
South Africa	Partial		89%
Swaziland	Recent		75%
Tanzania	Recent		77%
Togo	Progressive		91%
Uganda	Partial		(79%)
Zambia	Recent		68%
Zimbabwe	Partial		79%

Note: Countries for which no data is available, Comoros and Somalia, have not been included. The most recent available figures have been used for school enrolments and they refer to net enrolments in school year 2002-2003. Figures have been placed in brackets when they refer to an earlier year. For the sake of consistency, all data in this table originate from the EFA/UNESCO Global Monitoring Reports. Statistical tables are available at http://portal.unesco.org/education.

Uniformly low educational enrolments in countries where charges are levied and much higher enrolments in countries that have made a commitment to free education tell the most important part of the story detailed in this report. Moreover, because the 'abolition of school fees' has been a recent phenomenon in most countries, increased enrolments are not yet fully reflected in the official statistics. The term of choice, *abolition of school fees*, leads to the World Bank which has created it. While it is a novel role for the World Bank to publicly support reducing private costs of education which it previously increased, its commitment to making education free is yet to be seen. The last part of this section discusses the narrow definition which it uses to call education *free* and the absence of an evidential basis for declaring that education is or is not free. The public frustration which was generated by declaring education to be free while this was not the case in Uganda or Tanzania exemplifies the risks inherent in rhetoric which disguises rather than describes reality.

Since politics is the art of the possible, politicians tend to define problems in accordance with the solutions they have some hope of delivering. As country entries in this report have described, announcements of *free* education have increased in number. Often, the small print below the headline explains that it is only tuition that would be free while textbooks will remain prohibitively expensive. Or, the abolition of school fees is a short-term programme premised on foreign funding which may or may not materialize. The first announced policy of the new government in Burundi, in August 2005, was the abolition of school fees in primary education. Such a signpost of change, from a regime which institutionalized human rights violations to a regime commitment to invest in human rights, had been inaugurated by the new government of Malawi in 1994. It abolished the fees that the previous regime had introduced following the World Bank's advice. The new civilian government in Nigeria did likewise as soon as the transition from military to civilian government had been accomplished in 1999. Ripple effects could alter the policy-making landscape of the whole continent. After decades of treating education as an unaffordable luxury, one government after another is pledging to define education as a free public service. Government as educator is hereby delivering an essential message in human rights education: that education is each child's birthright and that it has governmental responsibility to eliminate all barriers which children may face.

Eastern Europe and Central Asia

The transition from a centrally planned to a market economy has had profound and negative effects on the previously free education in Eastern European and Central Asian countries. Disturbing official statistics portray the cost of that transition; some are reproduced in Table 27. Education had previously been all-encompassing while recent enrolment statistics exhibit an increasing proportion of children who are pushed out of school too early or cannot even enrol.

The heritage of free education has survived in legal guarantees in all countries in the region but educational policies have taken a different track. Formally or informally, education has become a privilege for those who can pay its cost. Table 27 shows that education, although it should be compulsory, is no longer all-encompassing. The key reason is that the levying of various formal and informal charges has made education much too expensive for the poor.

Table 27
For-fee policies and decreased enrolments in Eastern Europe and Central Asia

Country	Policy on free or for-fee education	Primary school enrolments (or attendance)
Albania	Free	97%
Armenia	Free	88%
Azerbaijan	Free	80%
Belarus	Free	93%
Bosnia & Herzegovina	Free	(86%)
Bulgaria	No policy	92%
Croatia	Free for citizens	95%
Georgia	Free	91%
Kazakhstan	Partially free	96%
Kyrgyzstan	For-fee	90%
Macedonia (FYROM)	Free	98%
Moldova	For-fee	82%
Romania	No policy	92%
Russia	No policy	89%
Serbia & Montenegro	Free	76%
Tajikistan	For-fee	(81%)
Turkey	No policy	88%
Turkmenistan	No policy	No data
Ukraine	No policy	90%
Uzbekistan	No policy	(80%)

Note: The data on school enrolments or attendance relate to school year 2002-2003. For the minority of countries where data on school attendance are available, they have been included instead of enrolments and placed in brackets. They better reflect children's ability to go to school rather than merely enrol but are not available for all countries.

Source: UNESCO/UNICEF – *Children Out of School: Measuring Exclusion from Primary Education*, UNESCO Institute for Statistics, Montreal, 2005, available at www.uis.unesco.org

Moreover, the impoverishment of public education has been reflected in hugely reduced teachers' salaries. Ukraine, teachers' salaries are below the officially designated poverty line while in Tajikistan they amount to a monthly $5, below the global minimum of a dollar per day necessary for mere survival. In Moldova, annual payments required by public primary schools for one child equal three average monthly salaries. Much of previously public education has been effectively privatized, formally or informally, through widespread and varied charges.

This change has distorted the very notion of *compulsory* education. Its logical consequence is that education is as compulsory for the government as it is for the children and their parents. Imposing a duty upon children with which they cannot comply cannot work in practice, while it also jeopardizes the very notion of human rights and corresponding governmental responsibilities in theory.

The impact will be seen in a decade or two as it typical for any reform of education. The human rights impact is felt already. The open contradiction between what the law mandates and what the government does undermines the rule of law. Where constitutional guarantees of free education are disregarded so easily, what is there to impede a similar fate visited upon any other law whenever one or another governmental or international institution may find it expedient to do so?

Asia and the Pacific

The variety of educational models in Asia is illustrated by the absence of free and compulsory education in Bhutan or Nepal and their unimpressive educational performance, shown in Table 28. Differently in Malaysia, the universalization of education was accomplished without guaranteeing it as a right or making it compulsory, or making it free. Thus, there is no automatic correspondence between a free education policy and high enrolments. Nevertheless, there is a visible correspondence between low educational enrolments in countries where education is not free, such as Pakistan, and those where it is, such as Sri Lanka.

Table 28: Free or for-fee policies and enrolments in Asia and the Pacific

Country	Free education policy	Enrolments in primary school
Bangladesh	Yes	90%
Bhutan	No	51%
Burma/Myanmar	No policy	82%
Cambodia	No policy	86%
China	No policy	96%
Fiji	Yes	99%
India	Yes (recent)	89%
Indonesia	Partial	96%
Laos	No	83%
Malaysia	No policy	95%
Maldives	Yes	98%
Mongolia	Yes	90%
Nepal	No	73%
Pakistan	No	61%
Papua New Guinea	No	73%
Philippines	Yes	94%
Sri Lanka	Yes	99%
Thailand	Yes	87%
Viet Nam	No policy	94%

Note: Afghanistan and Timor-Leste have not been included because there are no verifiable population and educational data as yet while education is externally financed.

Source: UNESCO/UNICEF – *Children Out of School: Measuring Exclusion from Primary Education*, UNESCO Institute for Statistics, Montreal, 2005, available at www.uis.unesco.org.

Middle East and North Africa

Two different types of governmental commitments to free education have been discussed in the country entries. The first, legally guaranteed free education, is present throughout the region with the exception of Djibouti. Table 29 demonstrates how much lower educational enrolments in Djibouti are in comparison to the rest of the region. The second type makes much more difference in practice because it assesses whether a government has translated such a legal guarantee into an effective policy or not.

Table 29: Free or for-fee policies and enrolments in the Middle East

Country	Free education policy	Enrolments in primary school
Algeria	Yes	97%
Bahrain	No	(86%)
Djibouti	No	34%
Egypt	No	(86%)
Iran	No	87%
Israel	Yes	98%
Jordan	Yes	95%
Kuwait	Yes	89%
Lebanon	No	92%
Morocco	Yes	89%
Oman	No	76%
Palestine	Yes	99%
Qatar	Yes	99%
Saudi Arabia	Yes	60%
Sudan	No	49%
Syria	Yes	97%
Tunisia	Yes	98%
United Arab Emirates	No	84%
Yemen	No	68%

Note: Afghanistan and Timor-Leste have not been included because there are no verifiable population and educational statistics as yet.

Source: UNESCO/UNICEF – *Children Out of School: Measuring Exclusion from Primary Education*, UNESCO Institute for Statistics, Montreal, 2005, available at www.uis.unesco.org.

The enrolment statistics in Table 29 show the correlation between governmental policy of free or for-fee education and the universalization of primary schooling. Sudan exhibits low enrolments because of decades of warfare and the associated neglect of education.

Educational enrolments in Yemen are also a casualty of recent conflicts in the country and, even more, in the region. Also, Bahrain, Egypt and Iran illustrate the effects of the absence of an effective as different from rhetorical free education policy since the official statistics show that education has not been universalized as yet.

Latin America

The commitment to ensuring free education is reflected in the high degree of correspondence between constitutional guarantees and governmental policies in Latin America. The only exception to the regional commitment to free primary education is Colombia, as has been described in this report. Table 30 shows that, as a consequence, primary education has not been universalized in Colombia.

Human rights correctives have been used in Latin America more than in other regions so as to make education free in all different meanings of this word. One facet is freeing education from financial obstacles; another is ensuring respect of freedom in education. Human rights challenges have tackled both facets, denials of free-of-charge education in Colombia or Dominican Republic as well as denials of freedom in education in Cuba or Venezuela.

Table 30
Free education policies and enrolments in Latin America

Country	Free education policy	Educational enrolments
Argentina	Yes	99%
Bolivia	No	91%
Brazil	Yes	95%
Chile	Yes	92%
Colombia	No	89%
Costa Rica	Yes	91%
Cuba	Yes	97%
Dominican Republic	Yes	97%
Ecuador	Yes	99%
El Salvador	No	91%
Guatemala	No	85%
Honduras	No	87%
Mexico	Yes	99%
Nicaragua	No	87%
Panama	Yes	99%
Paraguay	Yes	92%
Peru	Yes	99%
Uruguay	Yes	98%
Venezuela	Yes	94%

Source: UNESCO/UNICEF – *Children Out of School: Measuring Exclusion from Primary Education,* UNESCO Institute for Statistics, Montreal, 2005, available at www.uis.unesco.org

Governmental commitments to free education are reflected in Table 30 since educational enrolments are higher in Argentina or Cuba than in Guatemala and Honduras. Both the willingness and the ability of individual governments to translate their commitments to free education into reality on the ground vary, as Table 30 shows. This variation is small because the statistics refer only to enrolment and only for primary school and this has been largely accomplished in the region. The Latin American commitment to secondary education promises to remedy a key shortcoming of the MDGs: 'graduating' children at the age of 9 or 10 cannot be deemed to constitute successful governmental performance.

When is education not free?

All regional tables have shown that making (or keeping) education free has positive effects on children's enrolments. However, most of the available data refer to educational enrolments rather than attendance and completion, and in most countries primary education is much too short to genuinely benefit children.

Many country entries have shown that children are pushed out of school as the expenses of going to school start mounting. These are many and varied as Table 31 shows. The experience accumulated in eighty years of governmental legal obligation to make education free and compulsory teaches us that education cannot be universalized (and then made compulsory) unless it is free.

The pattern of charges is presented in Table 31. Their variety shows how many different payments may be levied upon school children. The common theme behind them all is inadequate public funding of public education.

Table 31
Typology of fees, charges, levies and other financial contributions in compulsory education

Unspecified private financing of public schools	Albania, Angola, Colombia, Congo/Kinshasa, Côte d'Ivoire, Djibouti, Equatorial Guinea, Fiji, Guinea-Bissau, Haiti, Liberia, Maldives, Nicaragua, Nigeria, Somalia, Sudan, Pakistan
Child labour at school	Burma/Myanmar, China, Turkmenistan, Uzbekistan
School fees (admission & tuition)	Benin, Botswana, Burkina Faso, Burma/Myanmar, Burundi, Cape Verde, Central Africa Republic, Chad, Colombia, Côte d'Ivoire, Ecuador, Fiji, Gambia, Ghana, Guatemala, Indonesia, Kyrgyzstan, Liberia, Moldova, Peru, South Africa, Suriname, Swaziland, Togo, Zimbabwe
Periodic charges during school attendance	Azerbaijan, Benin, Bhutan, Bolivia, Burkina Faso, Burma/Myanmar, Burundi, Cambodia, China, Ecuador, Egypt, El Salvador, Ghana, Guinea, Guyana, Indonesia, Israel, Jamaica, Kazakhstan, Kyrgyzstan, Laos, Lebanon, Liberia, Madagascar, Mali, Moldova, Mozambique, Nepal, Nicaragua, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Rwanda, Sierra Leone, Senegal, South Africa, Swaziland, Tajikistan, Togo, Viet Nam, Yemen, Zimbabwe
Parental 'participation' (PTAs, school committees)	Armenia, Botswana, Cameroon, Congo/Brazzaville, Ecuador, Israel, Kenya, Mali, Mozambique, Namibia, Peru, South Africa, Suriname, Turkey, Uganda, Ukraine, Zambia, Zimbabwe
Community 'participation'	Cameroon, Chad, El Salvador, Eritrea, Ethiopia, Guatemala, Guinea-Bissau, Honduras, Laos, Madagascar, Mali
Supplementing salaries of teaching and support staff	Burundi, Ethiopia, Fiji, Georgia, Kenya, Malawi, Moldova, Niger, Senegal, Tanzania, Tajikistan, Timor-Leste, Ukraine, Zambia
Additional and/or private tuition	Armenia, Azerbaijan, Cambodia, Egypt, Georgia, Guyana, Japan, Kenya, Kyrgyzstan, Macedonia, Moldova, Russia, South Korea
Examinations, tests, certificates	Burma/Myanmar, Cambodia, Cameroon, China, Guatemala, Indonesia, Kenya, Lesotho, Niger, Romania, Zambia
Teaching and learning materials	Textbooks may be sold on the free market or furnished by schools against payment as in: Armenia, Austria, Belarus, Bangladesh, Belize, Benin, Bosnia and Herzegovina, Burundi, Cambodia, Cameroon, Colombia, Ghana, Guatemala, Iran, Japan, Kazakhstan, Kyrgyzstan, Lesotho, Liberia, Macedonia, Mauritania, Moldova, Nepal, Philippines, Serbia, Trinidad and Tobago, Togo, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Viet Nam, Zimbabwe

Use of textbooks or libraries	Armenia, Belarus, China, Jamaica, Lesotho
School building and maintenance	Armenia, Azerbaijan, Bhutan, Colombia, Ethiopia, Fiji, Georgia, Guatemala, Kazakhstan, Kyrgyzstan, Laos, Lesotho, Mauritania, Namibia, Peru, Uzbekistan, Zambia, Yemen
School furniture and supplies	Benin, Bhutan, China, Gabon, Kazakhstan, Macedonia, Mauritania, Timor-Leste, Togo
Basic amenities (water, sanitation, heating, telephone)	Burma/Myanmar, Cambodia, Costa Rica, Georgia, Greece, Kyrgyzstan, Peru, Serbia, Tanzania
School uniforms	Uniforms may be sold on the free market or furnished by schools against payment: Belize, Bhutan, Cameroon, Colombia, Egypt, El Salvador, Ghana, Guatemala, Japan, Kenya, Lesotho, Liberia, Namibia, Nepal, Peru, Philippines, Rwanda, Tanzania, Trinidad and Tobago, Swaziland, Viet Nam, Zimbabwe
School transport	Armenia, Austria, Bhutan, Botswana, El Salvador, Gabon, Kenya, Kyrgyzstan, Macedonia, Namibia, Nepal, Peru, Serbia, St Vincent and Grenadines, Swaziland, Togo, Turkey
Boarding	Botswana, Lesotho, Mongolia
School-based health services	Cameroon, China, Egypt, Jamaica, Lesotho
School meals	Botswana, El Salvador, Grenada, Guatemala, Japan, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Macedonia, Peru, Rwanda, Serbia, South Korea, St Vincent and Grenadines, Tanzania, Turkey, Togo
Insurance of school children	Cameroon, Egypt, Kenya, Serbia
Payments for extra-curricular activities	Belgium, Burma/Myanmar, Bosnia and Herzegovina, El Salvador, Indonesia, Israel, Jamaica, Kenya, Kyrgyzstan, Lesotho, New Zealand, Serbia
Entertaining visiting dignitaries	Bangladesh
Membership in children's organizations	China, Serbia
Charges for children without birth certificate	Croatia, Dominican Republic, Honduras, Madagascar, Malaysia, Philippines, Serbia
Charges for non-residents	China, Russia
Charges for non-citizens	Antigua and Barbuda, Botswana, Bhutan, Brunei Darussalam, Central African Republic, Croatia, Dominican Republic, Jordan, New Zealand, Qatar, Singapore, Thailand

Table 31 shows that more than two dozen different charges may be imposed in primary school. One important reason is that education routinely receives less funding than is necessary for schools to function and for teachers to be able to teach. This fact is cloaked under widespread unwillingness to determine the cost of education and thereupon calculate necessary budgetary allocations. Another reason is that education is not affirmed as a human right in quite a few countries. Children without certificates of citizenship and residence are denied the schooling which is free for others.

The cost of education varies between and within countries, depending on a range of factors including the percentage of school age children in the population, its dispersion or geographical concentration as well as the diversity of the educational intake with regard to language or religion. The ability of families to contribute to the cost of education also varies. The price of school textbooks and uniforms may be less than 3% or more than 30% of the family budget. Those who are too poor to afford the cost may be exempt from charges but these exemptions are routinely too cumbersome or too humiliating to comply with, or else too expensive to administer. More importantly, the cost of education cannot be transferred to a family which is too poor to bear it. In consequence, children have to work rather than go to school. The result is their stunted childhood and denied future.

In addition to school-based charges, the cost of school textbooks increases where they are sold on the free market, which is the case on most countries today. This may be done without any subsidy and often with the addition of VAT. The situation varies because textbooks are provided free of charge in some countries, subsidized in many, but sold at a profit in others. School uniforms rarely form part of school-based charges; they are more often sold in the free market. Also, they do not form a part of the teaching and learning processes but are required for school attendance in many countries. Even where uniforms are not legally required or have been made optional, they represent a custom whose breach penalizes children.

What would it take to make education free?

The boundary between public and private education has been obliterated by conditioning access to public school by payments. This conflicts with the very notion of free and compulsory education, where education is free at the point of use because getting educated is mandatory for all children. Hence, education is an individual entitlement of each child. Access to school conditioned by the ability to pay, a defining feature of private education, has been imported into public education thereby privatizing it.

The confusing vocabulary relating to the payments imposed in public education demonstrates the novelty of this phenomenon. There is no controlled vocabulary and words to denote tuition fees or development levies do not exist in many languages. An important reason is that public primary education should be free as the law mandates in most countries, and used to be free. The World Bank's term, *user fees*, is widespread because many of these charges originated in its design of education and it has also become *the* source of official information on the incidence and prevalence of school fees.

The World Bank's contribution to the *2006 Education for All Global Monitoring Report* was entitled 'Fees still exist in a large number of countries'. The small print clarified that 'data was collected informally from World Bank task teams.' These teams obviously disagreed among themselves because Tanzania, for example, was listed as having no fees and also as charging legal fees. This was also the case with Costa Rica. [1314] The commissioned paper which should have provided clues as to what such assessments meant and what they were based on did no such thing. It listed five types of fees which the World Bank chose to ask about for whatever reason, and what various task teams had said about them.[1315]

This has enabled the World Bank to square the circle. It could publicly state that it did not promote school fees and define as *fees* only those charges that it did *not* promote, at least not at the moment.

This symptom of unwillingness to tackle the problem will not be addressed unless it is publicised, hence this report. It is inspired by the requirement of international human rights law that primary education should be free for all children.

[1314] *Literacy for Life: Education for All Global Monitoring report 2006*, available at http://portal.unesco.org/education.

[1315] Raja Bentaouett – School fees, Commissioned paper for the 2006 Global Monitoring Report, available at http://portal.unesco.org/education.

Also, it is based on generally accepted rules for research, namely that assertions about laws, policies and practices in individual countries ought to be based on verifiable sources rather than results of subjective assessments.

If the existing momentum towards making education free in many countries generates a global change towards seeking evidence-based assessments of free and for-fee models in today's world, this report will serve as a useful beginning. It is meant to act as an incentive to reconsider the ends and means of global strategies for education. As long as they are based on the refusal to see clearly the breadth and depth of poverty-based exclusion from education, they cannot even hope to remedy it.

Primary education is an investment with no immediate return and is therefore part of public law. Public investment yields economic returns with much delay, and then only in combination with other assets. Moreover, education is not only about the transmission of knowledge and skills. Education is a public good because it represents the most widespread form of institutionalized socialization of children. Children can be deprived of schooling but they learn out of school, especially about their rights-lessness.

Children cannot wait to grow, hence their prioritized right to education. The damage of denied education while they are growing up is difficult, if not impossible, to remedy retroactively. Education constitutes one of the few globally accepted duties for children because it is compulsory. Children are given the legal right to education because they lack a political voice that would enable them to secure their education through the political process. Primary education ought to be free for children because they cannot pay for themselves nor should they. This is reinforced by the corollary prohibition of child labour and the complementary principle which links school-leaving age with the minimum age for employment.

After the turn of the millennium, there has been an increasing global consensus on the need to make primary education free. Paradoxically, this has not led to identifying charges which have converted previously free education into for-fee.

The reason is that governments which are battling to provide free primary education are exposed to counter-pressures. International human rights law demands ensuring free primary education. Debt relief strategies demand fiscal sustainability. Debt servicing takes precedence over human rights obligations because sanctions for non-compliance are immediate and expensive. The World Bank has joined those who advocate the elimination of user fees [1316] but has not proceeded to apply this rhetoric where it could have made a difference, such as in debt relief. As this report has shown, there has been no attention to the cost of education in the PRSPs. On the contrary, staff assessments rarely refer to education and then unevenly.

For example, increased budgetary allocations for education in Madagascar were endorsed but so were "schools with community participation" (that is, financed by the communities) in Honduras.[1317]

[1316] *Opening Doors: Education and the World Bank*, 2003, p. 5 and 23.

[1317] IMF/IDA - Heavily Indebted Poor Countries (HIPC) Initiative: Status of Implementation, Prepared by the Staffs of the IMF and the World Bank, 20 August 2004.

Human rights law shares with global poverty reduction strategies the experience that poverty is a key barrier to universalizing education. In primary education, the key governmental obligation is that of result. Where direct, indirect and opportunity costs preclude access to education, the government has to ensure that they are gradually eliminated. The prerequisite is to identify these costs and, then, develop a strategy for their elimination.

Making education free necessitates acceptance of governmental powers to raise revenue through taxation and to prioritize the right to education in its budgetary allocations. In poor countries with young populations, domestically generated funds are often insufficient and international cooperation has been anticipated as a means to close the financing gap. Its basis is discretion of each creditor and donor. The bonds of solidarity that the universal right to education necessitates do not exist as yet. This report builds on the increasing global consensus that primary education should be free and argues that, at least, international cooperation should facilitate rather than hinder the universalization of education.

The key to a changed global design of education is an affirmation that education is a public responsibility. This report aims to facilitate such a change.