

UN Committee on the Rights of the Child
General Day of Discussion on

The Right of the Child to Education in Emergency Situations

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Submission by ad hoc working group on “Education in
Emergencies: The African Context; An African Perspective”

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COMMENTARY TO RECOMMENDATION NO. 1:¹

THE NEED FOR A CLEAR DEFINITION OF “FREE” PRIMARY EDUCATION

1. Education is a catalyst for human development and it improves one's quality of life. It is also vital for economic development, political stability and democracy. Katarina Tomasevski, the former UN Special Rapporteur on the Right to Education, argues that “the rationale of the right to education is that it functions as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated”.² It has been regarded as essential to what renowned Nobel Laureate, Amartya Sen, has called “human capability”, and hence an important precursor to effective citizenship, and with it, good governance. It has been shown to have a direct correlation with key health indicators. Education is also vital to improving knowledge of HIV/Aids and safety issues (e.g. about landmines). It helps households manage health and nutrition better, and serves as a powerful preventive measure in relation to child labour and trafficking of children. Ensuring education for all children is a governmental responsibility because it is informed by a sound rationale. Needless to say, education is vital for economic development, and nowhere on the globe is this more evident than in economically underdeveloped Africa.

2. Much literature now exists detailing the extraordinary explosion of access to primary education that has begun to occur across Africa, more especially since the turn of the millennium. This is, of course, a welcome contribution towards the achievement of the Millennium Development Goals (MDGs), albeit that significant challenges in achieving these targets remain. Also, some disquiet has been expressed regarding the effects of this increased demand for educational services upon the quality of education being provided, and upon class sizes. ‘Access shock’ is the phrase coined to describe the overnight implementation of free primary education (FPE). Retention of children in overburdened classrooms has been highlighted as a problem, as has the transition to secondary schooling where this has not yet been made free. These concerns should provide absolutely no reason to turn back the clock, however, nor to shy away from the tremendous material and human resources support to the educational endeavour required to turn this promising start into an African fit for children, children who are soon to be our adults and participants in the economic life of the continent.

3. The child's right to education in emergency situations must first and foremost be situated within a general concept of children's rights to education, as enshrined principally in article 28 of the Convention on the Rights of the Child (CRC),³ an article whose precise meaning has not been fully elaborated by the UN Committee on the Rights of the Child (CRC Committee) (which has commented only on the Aims of Education in General Comment No. 1, although the Committee on Economic Social and Cultural Rights has done so in General Comments Nos. 11 and 13). The principal features of the child's rights to education (relevant to the topic under discussion) that article 28 enshrines can be summarised as follows:-

- State parties shall, in particular, make primary education compulsory and available free to all
- State parties must take appropriate measures to encourage further education such as the introduction of free education at secondary level, and offering financial assistance in case of need

¹ This document is submitted for discussion under “Working Group 1: Continuation and/or reconstruction of the educational system”. Some material in this submission is drawn from a 2007 report “Free education is a right for me: A report on free and compulsory primary education” prepared by J Sloth-Nielsen and B Mezmur, for Save the Children, Sweden Southern Sudan office, for the Ministry of Education, Southern Sudan.

² K Tomasevski *Human rights obligations in education: The 4A scheme* 2006 (Wolf Legal Publishers: The Netherlands) 7.

³ This is not to discount the importance of the 4 “pillars”, namely articles 2, 3, 6, and 12, which are not elaborated in detail due to space limitations.

- The right must be achieved “on the basis of equal opportunity”, reflecting the fact that vast numbers of children suffer discrimination in access to education (particularly children in rural areas, girls and disabled children)
- State parties must take measures to encourage regular attendance at schools and the reduction of drop-out rates
- State parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods
- State parties must make educational and vocational information and guidance available and accessible to all children

The core positive obligation that article 28 of CRC imposes on governments is to develop and maintain an education system. However, the Convention on Economic Social and Cultural Rights (CESCR) provides an even stronger obligation than the CRC: Verheyde⁴ states that “at a primary level, the states have under article 13(2)(a) of the ICESCR a clear and unconditional obligation to immediately ensure free and compulsory education”. Article 28(1)(a) of the CRC only obliges states to realise this right in a progressive manner. Access to education in a non-discriminatory way is, in this sense, an immediate obligation and one not subject to progressive realisation. It can hence be argued that, read with the non-discrimination principle of the CRC, the progressive realisation of the right to primary education falls short of the required standard, and this right must, in the context of the CRC too, now be regarded as being capable of immediate implementation.

4. **Providing for the right to education appears so frequently in Conventions that it has been considered to be customary international law:** children’s right to have access to education during emergencies should hence be considered axiomatic.

5. Nowhere has the implementation of post MDG policies of free and compulsory basic education been so dramatic as on the African Continent. For instance, FPE, introduced in Kenya in 2003, has enabled 1.3 million poor children to benefit from primary education for the first time through the abolishment of fees and levies for tuition.⁵ The gross enrolment rate in primary education jumped from 86.8% in 2002 to 101.5% in 2004.⁶ In South Africa, a recent report put enrolment in primary education at close to 97%,⁷ but the barriers posed by the levying of school fees remain, despite the recent promulgation of a certain proportion of schools as so- called “fee free schools”, a policy which has been heavily criticised as masking enormous *de facto* inequality in access to quality education.

6. Nevertheless, **a major disjuncture exists in policies and practice concerning the meaning of “free” primary education.** The various costs arising out of compulsory primary education must be described. Generally, three types of cost are distinguished. Direct costs are the first group. These costs are directly caused by the educational service, such as teacher’s salaries,⁸ the administration of the national curriculum, provision of schools and their maintenance, classroom refurbishment and the management of the education system. Further direct costs without which education services cannot be delivered, also include texts and other books, learning materials, essential education equipment, and activity and examination fees. The second are indirect costs, which are expenditures indirectly caused by the educational service but which are indispensable for school attendance, such as

⁴ M Verheyde *Article 28: The right to education* in A. Alen, J vande Lannotte, E Verhellen, F Ang, E Berghmann and M Verheyde (eds) *A commentary on the United Nations Convention on the Rights of the Child* (2006) 10.

⁵ See Save the Children Sweden “Children’s Rights in Kenya – An Analysis Based on the CRC Reports” (2005) 27.

⁶ As above.

⁷ South Africa’s Country Report to the Human Rights Council’s Universal Periodic Review Mechanism (15 April 2008) 12.

⁸ It is to be noted that there are situations whereby children are subject to pressure by teachers to register and attend private tutoring lessons (offered by the teachers) for fees as a result of low teachers’ salaries.

uniform costs, sporting equipment, transport, school meals, and further educational equipment. Finally, there are opportunity costs, the result of the choice of going to school instead of – for example – performing tasks at home, made up by the loss of benefit a child could have achieved by contribution to household income through work.⁹ This CRC Committee, too, has pointed out that the obligation to provide for cost-free primary education also entails an obligation of assistance to purchase uniforms and school books, at least for children of poor families.¹⁰ Katarina Tomasevski's 2006 Global Report illustrates graphically how, **in so many countries in the world, hidden costs have resulted in exclusion and denial of access.**¹¹

7. In many African countries, free education has only meant the abolition of school fees (user fees), although where this has been accompanied by other “access enhancing” measures, even more positive results have been recorded. As an example, apart from the scrapping of school fees/levies in the 18,000 public primary schools in Kenya in 2003, the Government introduced some limited form of financial grant to cater for the purchase of books and other learning necessities based on the student population in each and every public primary school in the country. Provision of instructional materials including textbooks is one of the major achievements of the FPE programme, particularly through reducing the cost burden of education on parents and thus leading to an influx of pupils to school.

8. Concerns persist, however, that **the true costs of education are not well understood**, and their role in serving as a barrier to access. Correspondence undertaken in 2007 confirms that the CRC Committee does not yet have an articulated stance on most of the specific issues thrown up by the notion of “free education”, including the issues of school uniforms, school meals,¹² voluntary contributions by parents, responsibility for building maintenance, liability for transport costs, costs of books and supplies, and extra curricular activities, and unofficial supplementation of teacher salaries.

9. As regards education during emergencies, Inter-Agency Network for Education in Emergencies (INEE) recognises that the most important building block is the existence of a scaled up, sound education system in the first place.¹³ Indeed, **a well developed, well staffed, universal, and a genuinely free and compulsory education system will be better placed to respond to emergencies and crises** when they occur.

Recommendation No 1: It is therefore recommended that as a prelude to meaningful elaboration of the right of children to education in emergency situations, the CRC Committee should first elaborate in a detailed manner its understanding of the meaning of “free” education, to guide states parties (and other role players in the education and relief sectors) to understand more fully the normative content of that right.

⁹ R Avenstrup et. al. “Reducing Poverty, Sustaining Growth: What Works, What Doesn't, and Why: A Global Exchange for Scaling Up Success Scaling Up Poverty Reduction: A Global Learning Process and Conference Shanghai, May 25-27, 2004: Kenya, Lesotho, Malawi and Uganda: Universal Primary Education and Poverty Reduction” (2004) 2.

¹⁰ See, for instance, CRC Committee, Concluding Observations, Sierra Leone (UN Doc. CRC/C/94, 2000), paras. 180-181. The Central African Republic (UN Doc. CRC/C/100, 2000), para. 468; Cameroon (UN Doc. CRC/C/111, 2001), para. 380; Guinea-Bissau (UN Doc CRC/C/118, 2002), para.75; and Mozambique (UN Doc. CRC/C/114, 2002), para. 306.

¹¹ See, generally, K Tomasevski “Global Report 2006: The State of the Right to Education Worldwide: Free or Fee” (2006).

¹² The provision of one healthy school meal is internationally a good practice and contributes to the realisation of both the right to education and the right to health.

¹³ INEE Prospectus (2007)

<http://ineesite.org/uploads/documents/store/doc_1_77_INEE_draft_prospectus_2007__FINAL_for_WEBSITE_.pdf> (accessed 03 May 2007).

**COMMENTARY TO RECOMMENDATION NO. 2:
RIGHT TO EDUCATION AND AFRICA'S DEVELOPMENT IN THE GLOBALISED WORLD**

10. Although much has been learned about the development process over the past five decades, gaps in understanding still remain. One of these concerns the interactions between educational achievement, output performance, improved national income and development.

11. Logically speaking, it is safe to suggest that African education can assist countries with a number of factors such as technological catch-up and thus improve the potential for faster growth. And research suggests that public education and investments in education, as well as the requisite years of schooling, have a direct bearing in the formation of human capital and in the wealth of nations.¹⁴ If African countries manage to develop sound policies in education and implement them, their quest for faster growth, deeper poverty reduction and lasting improvements in the daily lives of their citizens can be a reality.¹⁵ This leads to the conclusion that advances in education are critical to Africa's development and systemic education reform is crucial if Africa's children are to compete successfully in today's world.

12. At the present, knowledge-based competition within a globalising economy is prompting a fresh consideration of the role of primary, secondary and higher education in development and growth. Now, even higher education (previously considered as expensive and a "luxury") is understood to make a necessary contribution, in concert with other factors, to the success of national efforts to boost productivity, competitiveness and economic growth. Viewed through this lens, higher education should not be seen only in competition with primary and secondary education for policy attention. Instead, all become an essential complement to educational efforts at other levels as well as to national initiatives to boost innovation and performance across economic sectors.¹⁶

13. Education enhances the future of children, as they prepare to participate in society and the economy. Beyond its impact on individual development, education plays a crucial and multifaceted role in poverty reduction, democratic governance and development. A number of studies highlight the specific role that education—particularly primary education—plays in the economic and social *development* of poor countries. These include:

- Faster economic growth because education builds human capital, which is fundamental to economic growth;
- In countries with growth-friendly policies and institutions, investments in education contribute to growth by producing a steadily increasing supply of skilled workers.
- Educated workers are economically flexible and productive, and countries with a better educated, more trainable workforce find it easier to attract foreign investment.
- Reduced poverty is guaranteed as growth that provides widespread opportunities for men and women with basic skills typically leads to significant reductions in poverty, as witnessed in the "Asian miracles."
- Improved income distribution is also possible as expanding access to basic education powerfully influences the way in which the benefits of growth are distributed within a society, allowing a greater share of the population to take advantage of opportunities created through economic growth.¹⁷

¹⁴ J C Córdoba and M Ripoll "The role of education in development" (First Version, February 2007) available at <<http://www.pitt.edu/~ripoll/files/hc-demog.pdf>> (accessed 28 May 2008).

¹⁵ D Bloom, D Canning, and K Chan "Higher education and economic development in Africa" (2006) available at <http://siteresources.worldbank.org/INTAFRREGTOPTEIA/Resources/Higher_Education_Econ_Dev.pdf> (accessed 10 June 2008).

¹⁶ As above.

¹⁷ As above.

14. In addition, of particular importance for the theme of this year's General Day of Discussion is the fact that education, particularly, primary education, helps to nurture democracy and assist in crisis prevention. Education is a powerful tool to enhance support for democracy and civil liberties. As a result, countries that invest in equitable education reduce their own vulnerability to crises and civil unrest. Conversely, discrepancies in educational opportunity can contribute to crises, particularly in countries where the economy is stagnant and economic hardships coincide with regional, ethnic, and religious cleavages.¹⁸

15. These points as a backdrop, it becomes clear that achieving development without education is more of the exception than the rule. And, while African governments are increasingly putting children's and youth concerns (including education) at the heart of the development agenda, a lot more remains to be done.

16. **As a continent, Africa faces serious environment and development challenges on several fronts.** These include poverty, disease, land degradation, water security, climate change, conflicts, deforestation, natural disasters, and urbanization, many of which can be classified as emergency situations. In the context of sustainable development, UNESCO has proposed that the vision of education for sustainable development is a world where everyone has the opportunity to benefit from quality education and learn the values, behavior and lifestyles required for a sustainable future and for positive societal transformation.¹⁹ Therefore, **the need to redesign our educational structures to provide answers to the environmental and developmental challenges confronting the continent is also apposite.** These include education for poverty alleviation, human rights, gender equality, cultural diversity, international understanding, peace and many more.

17. Even during emergencies, "[e]ffective emergency relief can help build the foundations for sustainable development and reduced vulnerability, and effective development assistance can reduce the need for emergency relief".²⁰ Therefore, in order to achieve sustainable development for the future, making education an integral part of all stages of development – during the humanitarian phase, throughout the transition period from emergency to reconstruction, and during the process of long-term development" is crucial.²¹ In this regard, in the context of Africa, **programmes such as the New Partnership for Africa's Development (NEPAD) need to embrace this approach.**

Recommendation No 2: It is therefore recommended that the CRC Committee should urge state parties as well as development partners (through state parties and other channels) to make education, in particular, primary education, an integral part of all development (and humanitarian assistance) programmes, which is based on a human rights approach.

**COMMENTARY TO RECOMMENDATION NO. 3:
THE WORLD BANK AND OTHER FINANCIAL INSTITUTIONS: THE NEED TO ADOPT A HUMAN RIGHTS APPROACH TO EDUCATION**

18. Emergency situations present a peculiar scenario whereby children miss out on an education. It is reported that "[d]espite accounting for half of the world's out-of-school children, CAFS (Conflict Affected and Fragile States) receive only a fifth of global education

¹⁸ USAID "Education strategy: Improving lives through learning" (2005) available at <http://pdf.usaid.gov/pdf_docs/PDACD232.pdf> (accessed 10 June 2008).

¹⁹ For more information, visit the UNESCO website on Education for sustainable development <www.unesco.org/education/desd/>.

²⁰ Save the Children "Last in line, last in school: How donors are failing children in conflict affected fragile states" (2007) 3.

²¹ As above.

aid. When aid is provided to CAFS, education is not prioritised, neither in development nor humanitarian contexts”.²²

19. More than half of the well over 104 million children without primary education live in war-torn regions, where armed conflict is or was until recently a fact of life.²³ According to the Dutch Ministry of Foreign Affairs, these children “... are much more likely than their peers to miss out on further education, be recruited in the army, become a victim of sexual violence, be forced into marriage at a young age, become infected with sexually transmitted diseases or HIV/AIDS, become a child laborer, or have to support old or infirm family members”.²⁴ In these cases, the need for international co-operation and development assistance for education is dire.

20. Reportedly, “**the World Bank says of itself that ‘it remains today the world’s single largest provider of external funding for education’**”.²⁵ This is self-testimony of the fact that the World Bank is a major player in the education sector particularly in developing countries.²⁶ In most parts of the world, World Bank and country investments have led to significantly improved access to primary education through the construction of new schools and the reduction of other physical, financial, and social barriers.²⁷

21. However, **the bank’s position on free primary education, particularly user fees, is a cause for concern** especially in emergency situations. One of the Bank’s infamous arguments that fees and other contributions paid by non-poor beneficiaries could free up public resources for targeting the poor²⁸ would be difficult to sustain in the context of African countries who are in emergencies. **It is to be noted that the World Bank’s role and position on free primary education has been heavily criticized by the former Special Rapporteur on Education**, most recently in the 2006 Global Education Report.²⁹ The bank’s intervention (or otherwise) in areas of development assistance, debt relief and the like have a crucial role to play in making primary and secondary education available, accessible, acceptable and adaptable³⁰.

22. In these and other similar scenarios, indeed, the importance of adopting a human rights approach in the context of multilateral development co-operation activities focusing on education, and the basis on which intergovernmental organizations may be held to be legally bound to adopt this approach are very crucial issues for African countries.

²² Save the Children (note 20 above) 7.

²³ Dutch Ministry of Foreign Affairs “Development co-operation: Education in emergency situations” available at <<http://www.minbuza.nl/en/developmentcooperation/Themes/Development,education/education-in-emergency-situations>> (accessed 06 June 2008).

²⁴ As above.

²⁵ K D Beiter *The protection of the right to education by international law* (2006) (Martinus Nijhoff Publishers: Boston) 615, citing The World Bank, education, World Bank issue brief (September 2004), <www.worldbank.org>.

²⁶ As 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. See Tomasevski (note 11 above) 17.

²⁷ World Bank “From schooling access to learning outcomes: An unfinished agenda” (2006) <<http://www.worldbank.org/ieg/education/download.html>> (accessed 15 February 2007).

²⁸ See generally the World Bank “Education sector strategy” (1999) (Washington D.C: The World Bank).

²⁹ The Special Rapporteur writes of the conflict within the World Bank with one part advocating the abolition of school fees in primary education in order to combat poverty and another tolerating, if not encouraging them, so as to decrease governmental budgetary allocations and fiscal deficits, through cost-sharing.

³⁰ Making education adaptable in the context of education in emergencies, for instance, could involve providing mobile learning classes. In addition, alternatives to formal education especially for poor communities (as a result of an emergency or otherwise) could be another worthy way of making education adaptable.

23. Fortunately, there is a legal basis for accountability of such organizations under the CRC, albeit needing further elaboration. In fact, article 28(3) on education has its own additional provision on international co-operation. Article 28 (3) reads in full:

States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Verheyde describes this provision as "...the most comprehensive call in a binding human rights instrument addressed to the States Parties to co-operate internationally in educational matters".³¹ In support of this provision are previous positions by the CRC Committee where it urged that **"when states ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international co-operation, to global implementation"**.³² This provision is additional to what is already generally provided for under articles 4 and 45 of the CRC on international co-operation. This is proof of the CRC drafters' intention and recognition of the **superior role** that international co-operation can and should play in the context of education.

24. The term "international co-operation" not only refers to bi-lateral co-operation but also to co-operation by states as members of intergovernmental organizations. In this context, it is argued that in particular the role of **international financial institutions** (the World Bank, International Monetary Fund-IMF, and the regional development banks) is stressed in the sense that they **should have a human rights oriented approach to Structural Adjustment Programmes, giving loans, debt relief initiatives etc.**³³ This position garners support from General Comment No 13 of the ICESCR which observes that "States parties have an obligation to ensure that their actions as members of international organizations, including international financial institutions, take due account of the right to education".³⁴

25. Therefore, in emergency situations, aid, loan and debt relief are critical issues to ensure that countries in emergencies achieve the MDGs of all children being able to complete a full course of primary schooling by 2015. More and more aid efforts should be focused on making education available and accessible as soon as possible, since education offers people prospects and contributes to the stability of the community. In their promotion of international co-operation and technical assistance, the World Bank Group, the IMF and other role players should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the CRC.³⁵

Recommendation No 3: It is therefore recommended that the CRC Committee should engage in dialogue directly with World Bank and major donor agencies to understand the impact of World Bank and other policies on the "education roll out" in Africa, both policies which facilitate and, more importantly, those which impede greater access to free and compulsory primary education. These institutions should be urged to ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention's right to education provisions especially taking particular account of developing countries in emergency situations.

³¹ Verheyde (note 4 above) 65.

³² CRC Committee, General Comment No 5 *General measures of implementation of the Convention on the Rights of the Child* (2003) para. 7.

³³ General Comment No. 5 (note 32 above) para. 60

³⁴ CESCR Committee General Comment No. 13 *The right to education* (1999) para. 56.

³⁵ General Comment No. 5 (note 32 above) para. 64.

ANNEXURE: RECOMMENDATIONS

1. THE NEED FOR A CLEAR DEFINITION OF “FREE” PRIMARY EDUCATION

(a) The child’s right to education in emergency situations must first and foremost be situated within a general concept of children’s rights to education, as enshrined principally in article 28 of the CRC. Indeed, a well developed, well staffed, universal and a genuinely free and compulsory education system (with primary obligation on government but supported by other role players such as civil society, private sector etc) will be better placed to respond to emergencies and crises when they occur.

(b) It is therefore recommended that as a prelude to meaningful elaboration of the right of children to education in emergency situations, the CRC Committee should first elaborate in a detailed manner its understanding of the meaning of “free” education, to guide states parties (and other role players in the education and relief sectors) to understand more fully the normative content of that right.

2. THE RIGHT TO EDUCATION AND AFRICA’S DEVELOPMENT IN THE GLOBALISED WORLD

(a) Even during emergencies, effective emergency relief can help build the foundations for sustainable development and reduced vulnerability, and effective development assistance can reduce the need for emergency relief. Therefore, in order to achieve sustainable development for the future, making education an integral part of all stages of development – during the humanitarian phase, throughout the transition period from emergency to reconstruction, and during the process of long-term development” is crucial.

(b) It is therefore recommended that the CRC Committee should urge state parties as well as development partners (through state parties and other channels) to make education, in particular, primary education, an integral part of all development programmes, which is based on a human rights approach.

3. THE WORLD BANK AND OTHER FINANCIAL INSTITUTIONS: THE NEED TO ADOPT A HUMAN RIGHTS APPROACH TO EDUCATION

(a) It is recommended that the CRC Committee should engage in dialogue directly with World Bank and major donor agencies to understand the impact of World Bank and other policies on the “education roll out” in Africa, both policies which facilitate and, more importantly, those which impede greater access to free and compulsory primary education.

(b) These institutions should be urged to ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the CRC’s right to education provisions especially taking particular account of developing countries in emergency situations.