



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2002/60/Add.1
17 January 2002

Original: ENGLISH
ENGLISH AND SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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**Mission to the United States of America
24 September-10 October 2001**

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Executive summary

The Special Rapporteur on the right to education visited the United States of America from 24 September to 10 October 2001. Her mission gained new significance in the wake of the attacks of 11 September. Increased recognition of the need for “federalization” of and allocations for the protection of public security signal an important paradigm shift, whose impact on translating numerous commitments to provide excellent education to all children into a reality is, as yet, not known.

Key issues included progressive realization of the right to education, with attention to its enjoyment without discrimination, experiences with its legal enforcement, and the linkage between domestic and foreign policy. In Washington D.C., Mississippi, Kansas and New York, the Special Rapporteur met with a large number of actors in the fields of education and human rights, and her mission also included visits to schools.

The origins of public schooling lie in the common school model of the nineteenth century, a concept initiated as a practical exercise in all-inclusive schooling and a promising means of promoting economic self-sufficiency. The degree to which “common schooling” was successfully provided to all children was not matched, however, by all-inclusiveness, both were later addressed by the civil rights movement of the 1960s. Addressing the inter-generational transmission of privilege and disadvantage remains a challenge, evidenced in inequalities in education, economic exclusion and disparities in funding. The Special Rapporteur’s visits to schools in Mississippi and New York were a reminder that child poverty remains a serious problem in the United States. The importance of the human rights approach is further underscored by a visible racial and gender profile of economic exclusion.

As domestic policy shapes the fate of education at home, the prominent role of the United States in international policy-making has transposed many local issues to the global level. The very problems which dominate the global agenda are also found in the United States. These range from the necessity to address the import and importance of gender, to the fiscal ramifications of the right to education, as well as the distinction between education as a free public service and a freely traded service.

The interplay of local autonomy over and disparate financing for education, lack of equal rights guarantees in the form of human rights correctives, and the fate of public education at the discretion of political processes and subsequent budgetary commitments sets a difficult stage for the full realization of the right to education. Moreover, the lack of recognition of the rights of the child prevents children from being treated as the subject of the right to education.

The revival of the common-school ideal seems particularly pertinent in the aftermath of 11 September. With the economic recession aggravated by the war effort, historical parallels are pertinent, especially the strong support of the United States for economic, social and cultural rights in the Universal Declaration of Human Rights, following the Great Depression and the Second World War.

Introduction

1. The events of 11 September profoundly affected the Special Rapporteur's visit to the United States from 24 September to 10 October 2001. Her view that human rights work should not be postponed until circumstances improve was widely shared and the mission proceeded as planned, although its import was altered. In New York City, she visited Styvesant High School on 10 October, the first day it had re-opened after 11 September, to meet the Chancellor of the New York City Board of Education, Harold Levy. Ground zero, a mass grave in the midst of the financial district, is nearby and many students and their teachers had watched the carnage of 11 September as it unfolded. To resume teaching and learning in a wounded country required teachers throughout the United States to try to explain what had happened and then to cope with the children's proverbial question, "why?". How does a teacher respond to a sobbing child asking: "Why do they hate us so much? Why?" In Washington D.C. thousands of people, mainly students, held a peace march and rally on 29 September, a week before the bombing of Afghanistan started, under the slogan "War is not the answer".

2. The mission was coloured by the traumatic and transforming events in the United States and these gave it a sharper human rights focus. The Special Rapporteur's request of 2 May 2000 for an invitation to visit the United States had singled out as key issues the enjoyment of the right to education without any discrimination, experiences with its legal enforcement, and the linkage between domestic and foreign policy. These provided the framework for the mission, whose preparation was, even before 11 September, an immensely difficult logistical exercise owing to the fragmented responsibilities for scheduling various parts of the mission. The Office of the High Commissioner for Human Rights in New York organized meetings in Kansas and Mississippi and the Special Rapporteur is deeply appreciative of its helpfulness and efficiency. New York City was coping with its human loss with a determination to resume normalcy without hiding pain and grief. Under virtually impossible circumstances, all arrangements were made by the Centre for Economic and Social Rights and the New York University Institute for Education and Social Policy. The Special Rapporteur acknowledges her debt of gratitude for all their help.

3. The mission began in Washington D.C. with meetings at the State Department, USAID, the Departments of Education, Justice, Labour and the Treasury as well as the Office of the United States Trade Representative, from 24 to 30 September. The United Nations Information Centre should have organized meetings at Congress and the Supreme Court but failed to do so. On 1 October, the Special Rapporteur met with members of the State Board of Education and the Commissioner for Education in Topeka, Kansas. From 3 to 5 October she was in Mississippi, meeting in Jackson with members of the Senate and House Committees on Education and the Superintendent for Education. Then she travelled to the Mississippi delta, to visit schools in Benoit and Leland districts. She is grateful to the Department of Education for the excellent organization of her visit to Mississippi. Her mission ended in New York City, where she met with the Chancellor and Executive Secretary of the Board of Education and had a unique opportunity to discuss the potential of the right to education with those who are directly affected - schoolchildren and youth activists, teachers and mothers, organizations vindicating the right to education before courts, scholars and campaigners who are exposing and opposing its denial and violation.

4. The Special Rapporteur sent her draft report to the Government of the United States on 17 October 2001, with an agreement that comments would be sent her by 6 November 2001 so that she could finalize her report. She received the comments on 4 December 2001 in the form of an interim reply, which enabled her to finalize her report. As the interim reply has raised questions that necessitate additional correspondence, her view that a mission report should constitute the beginning of a process rather than a self-contained activity (E/CN.4/2000/6, para. 3) has been validated and she is looking forward to continued dialogue.

I. THE CONTEXT: AFTERMATH OF 11 SEPTEMBER

5. The United States had not suffered casualties from an external attack on the mainland since 1812. War was something that happened elsewhere. Then, 11 September changed everything. The term “homeland defence” entered the vocabulary. Flags and banners hung from overpasses, houses and balconies. Agonizing debates about the horrendous cost of having privatized security for airports and airlines brought into focus governmental human rights responsibilities. Calls for the replacement of underpaid and undertrained private security personnel with public service personnel ensued. As with education, *federalization*, the expansion of federal legislation, was seen as the key to “the increased protection of individual rights and freedoms”.¹ The rationale for increased governmental spending to guarantee public safety was not only clearly understood but also fully accepted. Previous assertions that human rights could be protected without cost lost their appeal.

6. Public education events were being planned from the White House, aimed at “educating a new generation of Americans on what war is all about”.² That adults need to consider the impact of their reactions on children is well known as an abstract postulate, but it is rare that children are asked how they understand specific events or statements. Rather, it is a task routinely allocated to their teachers. In the aftermath of 11 September, teachers’ tasks became even more challenging than usual.

7. Individuals as well as countries tend to remember the pain they have suffered, not the pain they have inflicted on others, making the self-perception of victimization one-sided. History textbooks epitomize what David Tyack calls “the pedagogy of patriotism”,³ rarely describing abuses committed by one’s own government against populations of other countries or the people in one’s own country, although history abounds with such examples. An early United States Supreme Court case, which affirmed parental rights in education,⁴ revolved around the prohibition of teaching any subject in a language other than English. The background involved a ban on teaching in German, triggered by anti-German hysteria after the First World War. For many, the victimization of Arab Americans, Muslim Americans and Sikh Americans after 11 September evoked memories of the internment of 120,000 Japanese Americans (then referred to as “people of Japanese ancestry”) following the attack on Pearl Harbour. The country’s self-perception of victimization had led to the collective victimization of its citizens of Japanese ancestry. The United States Government apologized five decades later, providing compensation to the victims.⁵

8. Xenophobia may seem paradoxical in a population the vast majority of which consists of immigrants, but complex and often irrational human reality reminds us that shock, fear and anger easily lead to scapegoating. The human rights safeguards developed during the past six decades

forbid collective as well as individual victimization on the grounds of ethnicity, origin and/or religion. Moreover, governmental human rights obligations also include the prevention of scapegoating. Indeed, less than one year ago, Congress adopted the Wartime Violation of Italian American Civil Liberties Act, emphasizing the need to “discourage the occurrence of similar injustices and violations of civil liberties in the future”.⁶ Resort to the language of war in the aftermath of 11 September raised fears that violations of civil liberties would ensue. Inquiries about foreign students, especially those “of Middle Eastern origin”, targeted colleges and universities. As proposals to broaden the student tracking system ensued, so did concerns about tightened migration controls and the fate of hundreds of non-citizens detained for migration offences. The uncertainty as to which human rights protections were applicable was amplified by assertions that the United States was at war without legally required notification of derogations from its international human rights obligations.⁷ The Special Rapporteur is following up on developments subsequent to the end of her mission through correspondence with the Government of the United States.

II. HISTORICAL BACKGROUND AND CURRENT INITIATIVES

9. History gives us perspective on the present. Many facets of education in the United States today would be incomprehensible without a knowledge of its history. There is a long history of free public education in the United States, by far predating the emergence of human rights. The separate development of education and human rights contributed to their treatment as unrelated. The use of the term “right to education”⁸ is rare, although the United States was instrumental in securing the affirmation of economic and social rights in the Universal Declaration of Human Rights. Eleanor Roosevelt symbolized the link between the Great Depression and the subsequent commitment of the Government of the United States to economic and social rights. That aspect of United States heritage is worth recalling at a time of economic recession and a major war effort in 2001.

A. The heritage of free public education

10. Nineteenth century initiatives aimed at institutionalizing education were driven by the common school ideal, aimed at forging a nation out of a variety of immigrants. The popular image of the United States as the melting pot vividly illustrates what the common school was expected to accomplish. It was to be all-inclusive and combine two distinct purposes, economic self-sufficiency and religious instruction.

11. It was deemed cheaper to educate and train people for economic self-support than to guard them in perpetual pauperism. The State of Virginia introduced compulsory apprenticeship in 1643 for “orphans, poor children, illegitimate children, and mulattoes born of white mothers”.⁹ Its rationale was depicted in 1676 by Virginia’s Governor, who lamented difficulties in governing a population which was “poore, endebted, discontented and armed”.¹⁰ The State of Massachusetts enacted the first law mandating compulsory education in 1647, slanting it towards religious instruction so as to counter “one chiefe project of that ould deluder, Satan, to keepe men from the knowledge of the Scriptures”.¹¹ Public schools were financed by local taxes and education was provided free of charge to all school-age children. These two defining features - local financing and local control of education - have continued ever since.

12. Free public schooling did not encompass evenly the whole population. Black and Indian children were excluded. Nor did it embrace the whole country. The north led in the nineteenth century and the south followed in the twentieth century. In the aftermath of the 1954 *Brown v. Board of Education* judgement, some southern states allowed white parents to withdraw their children from racially mixed schools, moving away from the common school ideal.

13. Although school districts and individual states have foremost decision-making powers and corresponding responsibilities in education, the Federal Government plays an important role when it chooses to do so. Federal funding encourages and facilitates change in the chosen direction,¹² and federal enforcement powers keep education within the law-and-policy framework. The Federal Government provides funding for education through hundreds of federal programmes involving 39 federal agencies.¹³ The Department of Education, created as late as 1979 and threatened by abolition in the 1980s,¹⁴ is seen by many as a grant-giving agency. The relations between federal and states' authorities have been analogized to relations between donor and recipient, with Gary Orfield noting that federal funding "just becomes general aid and part of local politics of distributing resources and jobs".¹⁵

B. Changing Administrations, changing priorities

14. In the 1960s, the principal targets were inequalities in education. The movement towards racial desegregation highlighted race. Knowledge about intergenerational transmission of privilege and disadvantage added poverty because the pattern was not colour-blind. The United States Supreme Court, by its historic *Brown v. Board of Education of Topeka* judgement, triggered the pursuit of racially integrated schooling but refrained from tackling poverty. Race was addressed by civil rights litigation and law reform. Poverty was tackled by federal subsidies. The 1964 Civil Rights Act prioritized education, as did the 1965 Elementary and Secondary Education Act. The latter reinforced civil rights guarantees by mandating federal aid to children from poor families and conditioning it on desegregation.

15. These efforts floundered because race and poverty were two sides of the same coin and could not be disentangled. Efforts to amplify racially inclusive schooling at the bottom of the educational pyramid included "bussing", whereby children were transported from one school into another to implement desegregation. Forty years later, the Civil Rights Division of the Department of Justice is still involved in more than 200 desegregation cases, as well as monitoring desegregation orders in 500 school districts.¹⁶ The rationale behind desegregation was to replace racially segregated schools by all-inclusive ones. All learners would be together and the additional costs of compensating the previous marginalization of non-white learners (and their parents and grandparents) would be spread throughout the education system. Mandatory desegregation was not accompanied by additional resources, however, resulting in what became known as "the white flight". White-and-wealthy families abandoned cities for suburbs, leaving poor non-white children in poor inner-city schools. Economic exclusion replicated previous racial exclusion.

16. Schools in inner-city ghettos exhibit a panoply of problems that a well-designed and well-funded education system could solve. Race and poverty are interlinked with early childbearing and the consequent difficulties in making ends meet for single mothers and their

children. Single motherhood and feminization of the teaching profession make it difficult to deal with boys and necessitate a double conceptual shift: from sex to gender,¹⁷ and from suppressing violence to also tackling its causes.¹⁸

17. Schools might have been enabled to tackle rather than merely reflect all these problems were it not for the switch of attention from equality to excellence in the 1980s. Excellence has remained prioritized ever since. What was termed “the public school monopoly” over education was perceived as an obstacle to the international competitiveness of the United States. The previous common school ideal - free, public and all-inclusive education - was replaced by an emphasis on improving the performance of individual schools and students, on finding alternatives to public schools rather than improving them. The goal of inclusiveness was displaced by selection and segregation.

18. The confluence of recurrent economic crises in the period 1973-1983 and concerns about the decline of economic wellbeing within the United States altered priorities for education. In 1983 the National Commission on Excellence in Education conveyed an alarmist message of doom-and-gloom,¹⁹ which became the harbinger of change. Half a million copies were distributed, commentaries emerged in 700 articles in 45 newspapers.²⁰ Education was blamed for under-performing, thereby hindering United States competitiveness. Improved educational performance was to be hastened by testing, rewarding success and penalizing failure. The 1960s were forgotten and the educational performance of individual students, schools and school districts was de-linked from parental education and income. An implicit message was that those who failed to measure up to rising in-school criteria had only themselves to blame.

19. The contrast between high and low educational attainment within the United States is striking. A counterpoise to high numbers of patents and scientific publications are the results of the OECD 1995 *Adult Literacy Survey*. It revealed that 20.3 per cent of employed youth aged 16-24 could barely add two numbers together, while in Germany this was the case with merely 2.3 per cent.²¹ The absence of all-encompassing good quality schooling in the United States is reflected in such embarrassing statistics. The 2001 OECD survey of the outcomes of learning prompted the Secretary of Education, Rod Paige, to note: “we have more kids scoring at the highest level ... but we also see that we have more kids at the lowest level”.²²

C. The first initiatives of the new Administration

20. On 23 January 2001, just three days after his inauguration, President Bush sent to Congress his initial proposal for education reform, emphasizing education as his first priority and naming his initiative “No child left behind”. Negotiations for education reform began immediately. The House and Senate adopted different blueprints²³ and proceeded to meetings of Senate-House conferees to reach a common draft, which was interrupted on 11 September. The domestic legislative resumed two weeks later. Public opinion revealed opposition by 63 per cent to postponing education reform due to the “war on terrorism”²⁴ but the education bill had not been adopted by the time the present report was finalized, on 10 December 2001.

21. The House version of the education reform bill promised tripling federal funding for education, but the President’s proposal diminished this to an increase of less than 10 per cent.²⁵ The budget surplus which would have facilitated increased spending turned out to have

been spent. The Tax Relief and Economic Recovery Act of 2001, with its widely publicized \$1.350 billion tax cut over the coming decade, committed the Government to diminished revenue, which inevitably clashes with plans to increase allocations for education. Economic recession and revenue losses generated by tax cuts triggered announcements of spending cuts by individual states even before 11 September. States' education budgets were cut in its aftermath by an estimated \$11.3 billion.²⁶ Nevertheless, President Bush announced that "Congress doesn't need to spend any more money. What they need to do is cut taxes."²⁷

22. As a result, one key lever for reforming education - significantly increased federal funding - does not seem to be imminent. Another lever, enforcement of constitutional and legal human rights guarantees, does not seem to constitute a priority. An emphasis on freedom from federal controls in the current education reform raises concerns about the fate of this lever insofar as federal controls embody human rights safeguards.

III. INTERFACE BETWEEN FOREIGN AND DOMESTIC POLICY

23. International human rights law defines neither the aims and purposes nor the governance and contents of education in the United States.²⁸ The key factors shaping both education and human rights are domestic. The prominent role of the United States in international policy-making on both education and human rights transposes key domestic controversies to the global level. Numerous domestic laws and policies have been created to respond to problems in other countries and these can be used as a surrogate yardstick for assessing United States performance. Similar problems exist whether one is dealing with federal funding for individual states within the United States or with United States aid to other countries. Conditioning aid by particular purposes and standards raises problems regarding states' rights within the United States and States' sovereignty internationally, as does setting high standards without contributing funding sufficient to attain them.

24. Although civil and political rather than economic and social rights are encompassed by the prevalent United States definition of human rights, women's rights, trade union freedoms and minority rights form part of United States foreign policy. As the right to education pertains both to civil and political, and to economic, social and cultural rights, quite a few of its components form part of international legal obligations of the United States. Resource allocation, key to economic and social rights, can be examined by focusing on governance. Defined as the exercise of political power and/or "the relationship between the ruler and the ruled",²⁹ this notion corresponds to the Special Rapporteur's definition of human rights as safeguards against abuse of power and enables the examination of fiscal allocations for education. Both internationally and domestically, resource allocation is governed by political decision-making, thus necessitating an inquiry into optimal human rights correctives for this process. There are numerous obstacles to be overcome, ranging from the variety and complexity of separate policies within *foreign policy*, to constant questioning of the role of the Government with inevitable consequences for governmental human rights obligations, to dissociation of human rights and education, or uncertain affiliation between human rights and democracy.

25. United States human rights policies have changed in the past three decades³⁰ and have been supplemented by separate policies on democracy and associated assistance.³¹ Links between human rights (or democracy) and economic development have not been elaborated,

however. This was not so earlier. In 1992, the Security Council highlighted “the non-military sources of instability in the economic, social, humanitarian and ecological fields”.³² The initial rationale for United States aid did so even more forcefully. The Marshall Plan, which has become a household word, prioritized the elimination of hunger, poverty, desperation and chaos “to permit the emergence of political and social conditions in which free institutions can exist”.³³ The rationale whereby hunger, poverty, desperation and chaos have to be eliminated *before* free political institutions could be established subsequently disappeared from United States policy.

26. USAID notes that it is “spending less than one-half of 1 per cent of the federal budget”³⁴ and the State Department has added that foreign assistance programmes “have ultimately put more dollars into the pockets of American taxpayers than they have ever taken out”.³⁵ This trend is likely to be reinforced by moulding aid to create “better markets for U.S. exports” abroad and/or to “better respond to U.S. national interests”.³⁶

27. An optimal model for education encourages private as well as public schooling, localized schooling systems and diversified sponsorship of schools, closely resembling the domestic model as is typical in aid. The domestic priority for testing is reflected in the attention to student-level outcomes in USAID policy. The human rights rationale necessitates asking what education is *for* and moulding it to facilitate economic self-sustainability, which is key to poverty eradication. For girls in rural areas, incentives for enrolment in school and its completion are strongly influenced by their subsequent ability to own land and obtain bank loans. These can be hindered by social and cultural norms which can be changed through education. Voluminous research-based literature has demonstrated the risk of boys and men being driven towards soldiering because education failed them, rather than offering a pathway for securing their livelihoods. Such considerations have obtained additional importance in the immediate aftermath of 11 September. The orientation and contents of education have been brought into focus with evolving plans for a “global crusade against terrorism”, promising to overcome the previous neglect of abusing education to promote hatred, violence, warfare or genocide (E/CN.4/2001/52, paras. 46-47).

28. The annual State Department report on human rights encompasses all countries in the world except the United States. In the past 24 years, it has provided a changing inventory of human rights violations. Although the listing of rights does not include the right to education, reviews of countries’ human rights performance *do* highlight its important facets. The 2001 report has emphasized denials of access to education to girls and to children who are too poor to afford school fees.³⁷ The USAID inventory of categories deprived of access to education alternates between vulnerable, disadvantaged and marginalized groups, the poor, girls and women.³⁸ Vulnerability and poverty are identified as factors contributing to trafficking in people, which is defined as an abuse of human rights, necessitating educational and economic opportunities as key preventative measures.³⁹ Such links between reported abuses and measures for their prevention underpin global initiatives to mainstream human rights in international cooperation.

A. The import and importance of gender

29. The congressionally mandated attention to gender in United States aid seems to be interpreted as if it said “women” rather than “gender”.⁴⁰ Increased access to education for girls

is prioritized but when gender disparity is reversed, unequal access to education for boys is not addressed.⁴¹ This resembles domestic policies which also prioritize access to education for girls and women in spite of the fact that female students outnumber men graduating from high school and continuing to college and university. The shift from sex to gender necessitates addressing both sexes as well as designing policies that equalize their opportunities and treatment.

30. Both domestically and globally, two facets of the gender landscape require urgent attention. The first one, girls outnumbering and outperforming boys in school, is a global exception. The second one is the rule, involving foreclosed educational opportunities for many girls and young women, who bear children much too young and have to raise them alone. The problem of children bearing children cuts across gender, religion, race and poverty and is difficult even to address, let alone solve, because the chain of causation requires tackling a range of unpopular issues. Preventing early pregnancy requires providing young people with the information, means and motivation. It routinely meets fierce opposition. Traditionally ascribed gender roles keep teenage pregnancy and single motherhood as a woman's problem and fail to solve it by directing laws and policies towards girls and women alone.

31. Premature sexuality is an issue that no society can address comfortably and confidently. Few countries have secured the best interests of the child - both female and male - in coping with it. The right of the child to information about sexuality has created endless controversies in countries where it has been conquered, always against opposition and after lengthy litigation. Internationally, the United States has been curtailing foreign aid lest it facilitate access to abortion and, domestically, advocating abstinence rather than sex education. That such advocacy hurts rather than helps is shown by the large numbers of new HIV infections and high rates of child pregnancy since "one half of adolescents in the United States are already sexually active" and consequently at risk of HIV infection and unintended pregnancy.⁴²

B. Fiscal ramifications of equal rights for children with disabilities

32. The entry of disability into human rights law necessitated revising the concept of non-discrimination. People with disabilities have disadvantages resulting from their impairment. Promises of equal rights are meaningless, if not hypocritical, unless these disadvantages are eliminated. In education, this translates into higher costs of schooling resulting from teaching aids or higher pupil-teacher ratios. While the average annual cost of educating a child can be set, for example, at \$4,814, for a disabled child this easily exceeds \$30,000.⁴³ Such a five-fold increase in the cost of education is a bone of contention in the United States because funding is perceived as a zero-sum game in which additional funding for children with disabilities translates into a loss for other children.

33. The legal guarantee of free and appropriate education for children with disabilities defines governmental human rights obligations. In the United States, these tend to be seen as protections *against* rather than *by* the Government although President Harry Truman, speaking in June 1947 before the National Association for the Advancement of Colored People (NAACP), emphasized protection *by* the Government.⁴⁴ As with racial discrimination, to which President Truman was referring, the elimination of discrimination against people with disabilities requires comprehensive, costly and sustained action by the Government.

34. The role of education in the socialization of children prioritizes inclusiveness over segregation. In the famous words of the United States Supreme Court, “separate educational facilities are inherently unequal”.⁴⁵ Racial segregation is difficult to eliminate, but segregation of children with disabilities is difficult even to tackle. The cost of redressing disadvantage and disability encounters continued opposition, domestically and internationally.

35. Equal rights necessitate spreading the costs of compensatory measures as broadly as possible, rather than confining them to the affected individuals or their families, individual schools or states. The “No Child Left Behind” initiative promised to increase funds under the Individuals with Disabilities Education Act (IDEA) “in order to reduce the burden that states and local districts bear in meeting the special needs of disabled students”.⁴⁶ The National Education Association (NEA) noted that budgetary decisions of May 2001 marginally increased federal funding (from 15 per cent to 16.5 per cent), which remained at less than half of the promised 40 per cent federal contribution.⁴⁷

C. Whither education: free public service or freely traded service?

36. Education can be regulated either as a service provided in the exercise of governmental authority or as a service which is sold and purchased against a price. When it is traded, education is regulated by commercial law and is sometimes referred to as a “property right”. The Special Rapporteur has noted the confusion created by resorting to the term “rights” for commercial transactions (E/CN.4/2000/6 of 1 February 2000, paragraph 66). The core of human rights is jeopardized by transposing the language of rights to the sale and purchase of education. Human rights are entitlements inherent in human beings and are regulated by public rather than private law. Blurred vocabulary camouflages this legal duality, with a risk of obfuscating the boundaries between trade law and human rights law. Both domestically and internationally, concerns about the future of education as a free public service have heightened the need to reaffirm and reinforce education as a human right (E/CN.4/2001/52 of 11 January 2001, paragraphs 55-59).

37. Domestically, the dichotomy between public and private, free and for-fee schools has always been part of the educational landscape. Private education for children of compulsory school age can cost an annual \$34,000, while college fees can amount to \$34,000 just for tuition.⁴⁸ (For the sake of comparison, the minimum wage of \$5.15 per hour amounts to an annual income of just below \$11,000.) Fears about the fate of public education have been heightened by the introduction of school vouchers. They replace the right to free, good and inclusive public education by an entitlement to a subsidy, thus transforming governmental obligations to ensure availability, accessibility, acceptability and adaptability of public education for all children into an entitlement to a voucher, which represents a part of the cost of education.

38. Internationally, the United States is a key advocate and beneficiary of international trade in education services. In the 2000/2001 academic year, 547,867 foreign students contributed more than \$11 billion,⁴⁹ slightly more than total annual aid from the United States (\$9.6 billion in 2000⁵⁰) and a hundred times more than USAID provides for children’s basic education (\$103 million⁵¹). There is no information as yet about the dollar value of United States educational services in more than a hundred countries where these are already being provided. The United States proposal for liberalizing international trade in education services focuses on post-

compulsory education, pledging that private education and training will supplement rather than displace public education.⁵² However, USAID benchmarks for building human capacity through education include reducing “dependence of higher education on public funding”.⁵³ Further reductions of the already insufficient funding for public education may well jeopardize the very survival of post-compulsory education as a free public service.

39. The word *public* is key to defining education as a public good or a public responsibility, or a public service. The alternate - private - is slanted towards education as a “property right”, seldom differentiating between non-profit and profit-making educational institutions. Defining education in accordance with trade rules substitutes educational provision on a commercial basis for the realization of the right to education. Education statistics then portray access to education but not its cost. For children of compulsory school age, statistics depict access to school without denoting the quality of schooling, which may be so poor as to prevent children from learning. For post-compulsory education, statistics feature enrolments, seldom adding the cost for the individual and/or family and even more rarely the learners’ inability to continue in the face of excessive costs.

IV. FISCAL ALLOCATIONS FOR PUBLIC EDUCATION

A. Legal enforcement versus democratic decision-making

40. The judiciary is often seen as the custodian of human rights and the image of the United States as a country of laws and lawyers enhances its importance. The interplay between three branches - legislative, executive and judicial - in resource allocation creates endless controversy. Courts are supposed to interpret law, but they also create it. Legislatures have the power of the purse but court decisions often challenge resource allocation. The executive exerts a great deal of power in implementing the law because funding formulas - exemplified by terms such as ADM (district’s average daily membership), RWADA (resident weighted average daily attendance) or TWPU (total weighted pupil units) - are likely to be understood only by those who developed them.

41. The friction between equal rights guarantees and budgetary allocations, which should but often do not translate into effective entitlements, is a worldwide problem. USAID has pointed out that, in the absence of public funding, children’s access to education depends on their parents’ income and wealth. Hence, public funding is necessary to ensure access to education for poor children and break the intergenerational transmission of poverty.⁵⁴ Ensuring that public funding is slanted towards poverty eradication requires human rights correctives for decision-making, which is proverbially tilted in the opposite direction. Human rights guarantees are meant to impede contrary fiscal allocations and enable courts to enforce their judgements against recalcitrant legislatures.

42. An optimal constitutional guarantee of the right to education would exempt the necessary funding from political processes by making fiscal allocations for education mandatory. In practice, funding for education is discretionary. The ends specified in the form of legal guarantees cannot be met if the means made available through political processes are inadequate. A court can find the fiscal formula adopted by a legislature in breach of the Constitution but the legislature may fail to remedy that breach and the court lacks the power to enforce compliance.

Justice Douglas of the Supreme Court of Ohio, in September 2001, received a suggestion as to how the judiciary should deal with a recalcitrant legislature thus: "Find them in contempt and put them in jail".⁵⁵ A scenario where a judiciary finds a legislature in contempt of court and imprisons parliamentarians illustrates the need to address the unwillingness of key political actors to translate the right to education into fiscal allocations. The road still to be travelled towards bridging the abyss between human rights law and political decision-making is long and uphill.

43. In January 2001, a judgement by the Supreme Court of the State of New York⁵⁶ has revived hopes that the right to education may be progressing in spirit. The obligation of the State to secure for all children access to education worthy of its name has been at issue. Justice Leland De Grasse diagnosed the problem thus: only 15.5 per cent of public school pupils were white, one in eleven was a recent immigrant and unfamiliar with English, almost three quarters were eligible for free-meal programmes, that is, were categorized as poor, and 84 per cent were classified as "minority students".⁵⁷

44. The equal right to education in New York's public schools is hampered by a funding gap: an annual \$40,000 is available in suburban schools but only \$4,000 in inner-city ghetto schools.⁵⁸ Inner-city schools thus cannot cope with the racial, ethnic, linguistic, religious and migration-created diversity in conditions of poverty. The initial demand to fund all school districts equally was rejected and the case has subsequently revolved around "adequacy". This term was defined to require that "the State must ensure an education to public school students that satisfies some basic minimum requirements".⁵⁹ The judgement faulted the funding formula for education which has failed to halt, let alone redress, the combined disadvantages which students and their teachers cope with. That children can be deprived of education because they are too young to vote and are easily bypassed in political decision-making highlights the rationale for children's rights, aimed at rectifying their non-existent political voice.

45. The United States Supreme Court has, however, declared taxation as well as economic and social policy as beyond its purview. It has held that raising and disbursing tax constitutes a legislative function beyond the remit of courts, and it has rationalized local control over education as "freedom to devote more money to the education of one's children", faulting other models for financing education as leading to a "comparable lessening of desired local autonomy".⁶⁰ Reconciling local autonomy and equal access to good education for all children remains a colossal challenge. Local autonomy enables parents to finance education of *their* children while refusing to finance the education of other people's children. The consequent abyss between excellent and inadequate schools pits the *localization* prevailing in the United States against *globalization*, a phenomenon also commonly associated with the United States.

B. Localization versus globalization

46. The abyss between knowledge-based and education-deprived communities is likely to increase between and within countries. Globally, the right to education is recognized and judicially enforced in many, but not all States.⁶¹ Within the United States, the right to education is also not recognized and enforceable in all states. Local control over education and the uneven revenue base broaden and deepen disparities. Funds for public schools originate from three

levels - local, state and federal. At the local level, public schools are regularly funded out of local property taxes, making available funding dependent on the value of property in the school district. Differences in the tax base between rich and poor districts result in unequally funded schools. Individual states provide funds to each school district, generally more than half of the total. Federal funding is relatively small (about one tenth) and conditioned by specific purposes for which it is provided.

47. This localized financing of public education generates the largest budgets in the richest school districts, while the poorest districts have the smallest budgets. Available funds are thus in inverse proportion to the requirement of equal opportunity. The parents' income is closely correlated with their level of education, their race and/or ethnicity and the language spoken at home. Most children live in neighbourhoods and attend schools that reflect their parents' income and wealth status. Education is hence a mechanism for intergenerational status transfer. This conflicts with the self-perception of the United States as meritocracy, evidenced in cheerful recitals of rags-to-riches tales. There is no doubt that there are individuals whose upward mobility has broken the pattern of intergenerational status transfer. They remain the anchors of continued belief in upward mobility.

48. *Localization* rather than *federalization* produces an immense variety of schools, excellent schools alongside those in which children cannot master the three Rs (reading, 'riting and 'rithmetic)⁶² and need remedial classes if they manage to enrol in college. There is an abyss between "kids bound for Yale and kids bound for jail".⁶³ Because orientation and contents of schooling is determined locally, there is an endless variety in what is being taught and how. *Globalization* has deepened and broadened problems created through *localization*. The "new economy", of which information technology (IT) and financial services were supposed to be the harbinger, lost appeal in April 2000. Thousands of newly unemployed followed the burst Internet bubble and bankruptcies of dot.coms. The model had fit extremely well with the United States self-image of meritocracy, its glorification of youth culture and its belief in instant self-made millionaires. The young had led the Internet revolution, with the ability to learn and innovate - as well as a propensity towards risk-taking - inversely correlated with age. The few instant millionaires entered rags-to-riches tales, others returned to school if they could afford it.

49. The vertical division of powers impedes forging an integrated and comprehensive strategy for the public funding of public education. Because free and all-encompassing public education was introduced by individual states, their constitutions rather than the United States Constitution deal with education. Constitutional formulations vary. Some explicitly define the obligation to provide a uniform system of free and "thorough and efficient" public education, while others speak only about "adequate education". The United States Supreme Court disallowed the denial of education, pointing out that its cost would be unacceptably high. "A subclass of illiterates" would be created, with the associated costs of unemployment, welfare and crime, but the Court stressed that only a denial of "a minimally adequate education" could be challenged.⁶⁴ Litigation thus moved down one level to individual states. Many have been targeted by demands to alter budgetary allocations so as to provide education of equal, or at least minimal, quality for all children.

V. RACIAL AND GENDER PROFILE OF ECONOMIC EXCLUSION

50. The ambivalence which race engenders is evident in two co-existing phenomena. "Racial profiling" is deemed unacceptable when used by the police to transpose racial stereotypes to the likelihood of offending, like stopping people for "driving while black". Racial classifications are, nevertheless, part of official statistics. The results of the 1950 census portrayed the country as 89 per cent white and 10 per cent black. The 2000 census revealed that 12 per cent were people of South American origin, who had been statistically invisible in 1950.⁶⁵ Changing proportions of the two major categories referred to as "minorities" in popular parlance are due to have a considerable impact on the equal-rights discourse. Latin Americans are becoming more numerous than African Americans and there is a novel mixed-race category. The racial classification of Latin Americans is avoided.⁶⁶ The terms used to refer to them alter between "Latino", "Hispanic", and "Chicano", whereas "Latin American" is rarely used. The term "American" without a preceding capitalized adjective may well be reserved for WASPs (White Anglo-Saxon Protestants), a term coined by the sociologist Digby Baltzell in 1964.

51. Equalizing access to education constitutes a key human rights requirement, and attention is slanted towards enhancing access to education for previously excluded categories, such as victims of racial and gender discrimination. Legalized exclusion from education on the grounds of race or ethnicity was successfully challenged in the 1950s, but a move in the opposite direction is noticeable. For example, in 1950 the United States Supreme Court faulted the University of Texas Law School for discriminatory denial of access to non-white students,⁶⁷ only to challenge in 1996, in another case involving the same institution, its affirmative action programme, aimed at redressing the consequences of previous discriminatory exclusions.⁶⁸ The underlying law and judicial interpretations of affirmative action strive to reconcile two realms - equal rights for all individuals and structural preferences. Outcomes have changed with a changing political climate in the United States. While the thrust of jurisprudence legitimized affirmative action in the 1960s, this was reversed in the 1970s and took a further slant against affirmative action in the 1990s.

52. The contradiction between individualism and racial and/or ethnic classification illustrates how easily conflicting approaches can be pursued when people are socialized to accept them. One is likely to hear that it is un-American to treat people as members of a group rather than individuals and that affirmative action is uniquely American. Cherishing individuality is perceived to be as much American as is self-classification by collective ascription, such as African American, and the corresponding urge for differentiated treatment.

53. The language used for equalizing educational opportunities is varied and changing. "Equitable" is preferred to "equal" because "equal" tends to be interpreted to mean that everybody gets the same share. The very system of financing education impedes defining "equal" to mean additional funding for children who need to overcome disadvantages or disabilities so as to enjoy the equal right to education. A scheme of "affirmative financial action" to equalize educational opportunities would require acknowledging victims of discrimination. The preferred term for victims of racial discrimination is, however, "minorities". In New York City schools, 35 per cent of children are black, 38 per cent are Latino and 11 per cent are Asian,⁶⁹ and yet this numerical majority is referred to as "minority students". Although the previous Administration acknowledged "continued racial and ethnic discrimination

in education”,⁷⁰ the new Administration focuses on disparities in learning accomplishments.⁷¹ Different from “victims of discrimination”, terms such as “minority” or “disparity” do not have a defined meaning in law, which impedes enforcement of equal-rights safeguards. Such terms also subterfuge the message of Jonathan Kozol’s 1991 classic on education in the United States, entitled *Savage Inequalities*.

54. Access to school may be secured for all children but this does not mean that schools are good, and those schools that are good may not be affordable. Opting out of public schools is possible for those parents who can afford private and/or religious education. Parental choice amongst public schools is determined by their ability to afford living in a neighbourhood where schools are good. The varying quality of schools is exemplified by advertisements for the sale of family houses, which include testing scores of neighbourhood schools as an important marketing item. This process of economic exclusion flouts the common school ideal.

A. Coping with poverty: Mississippi

55. Education as a universal human right requires elevating corresponding human rights obligations to the highest possible level in order to rectify inequalities, which cumulate in time and space. Those who have had the least access to education tend to leave this heritage to the next generation. Making individual families and local communities responsible for funding education broadens the gap between haves and have-nots. Breaking this vicious circle requires governments to prioritize and equalize funding for education, to increase funding for teachers and students who are coping with poverty so as to redress disadvantages they need to overcome. Instead, seeking “high-poverty, high-performing schools”⁷² makes it possible to focus on isolated cases of success against all odds.

56. Child poverty is a serious problem in the United States, as demonstrated by state-by-state estimates by the United States Census Bureau of 6 August 2001.⁷³ These have pointed out that one in every six children lives below the poverty line, with the highest proportion living in poverty - 26 per cent - in Mississippi.⁷⁴ There are no educational statistics on poverty. The proxy indicator is the percentage of children entitled to a free meal, 55 per cent in Mississippi and 94 per cent in Benoit, in the Mississippi delta. Racial composition is presented separately, 51 per cent black in Mississippi and up to 98 per cent in Benoit. The percentage of children entitled to free meals corresponds to the percentage of black children. The percentage of special-education children also tends to be elevated in districts where most children are poor and black (12 per cent in Mississippi, 25 per cent in Benoit).⁷⁵ The percentage of school children in single-parent families is not included in the statistics at all. The neutral term “single parent” disguises the fact that all are mothers. Schoolteachers (83 per cent of whom are women⁷⁶) manage as they can. Attracting male or even black teachers is arduous because of low salaries and the excessive challenges that teaching in these circumstances entail.

57. Large white-owned farms are supposed to generate funding for public schools through property tax, but white children go to private, not public schools. That public schools are underfunded and tax payers none too keen to increase funding for them is a foregone conclusion. Hopes that the political decision-making process, which bestows power upon adult, white, propertied men would favour young, poor, black children and their young mothers clash with

reality. Altering funding for public education would require profound changes. Questions about options for change routinely encounter one answer: "This is how it has always been in Mississippi."

58. Endless cotton fields in the Mississippi delta are a beautiful sight for people who drive through them but also a symbol of an unaltered past and foreclosed options for the future. Children of black sharecroppers and farm labourers have few employment opportunities in mechanized agriculture. A young black girl will have "a pretty baby" while at school and become a grandmother in her thirties; incentives and opportunities to alter the intergenerational transmission of this pattern are few and it takes a great deal of courage to break the mould.

B. The cost of denying the right to education: New York City

59. Single motherhood engenders two distinct responses, whether in Mississippi or New York City. The first is condemnatory, based on the breach of the prohibition of pre-marital sex, while the second highlights single motherhood as a major determinant of child poverty. Both are punitive. If single mothers have had their children young, their level of education will be low and they will be confined to low-skilled and low-paid jobs, having to bear all the cost of raising children without another wage earner. With their mothers earning too little to afford good childcare and pre-school education, children begin formal schooling at a disadvantage. Official statistics show that 70 per cent of 3 to 5 year old children are read to aloud when their mothers have a college education, but this diminishes to 38 per cent if the mothers have not completed high school.⁷⁷ Disadvantages multiply if the mother has not completed high school, is single and Hispanic, while advantages multiply for "white children from two-parent households with family incomes above the poverty threshold and with mothers who spoke English at home".⁷⁸

60. Different from Mississippi, much of New York City's population are migrants and are not socialized into a pattern of behaviour set a century or two ago. Mothers are in the frontline of movements for change. One explained how her organization, *Madres en Movimiento*, emerged and grew, apologizing with a shy smile for swallowing tears while speaking about efforts to tackle a multitude of problems all at once - garbage and rats and heavy truck traffic, substandard schools and uncertified teachers. Another detailed obstacles faced by New Settlements Parent Action Committee in the south west Bronx: 41 per cent of teachers are not certified, 83 per cent of school children have not learned to read in school, and the number of children referred to special education has trebled. A third one, representing Queensbridge Community in Action, has pointed out that referrals of African American children to special education exceed threefold referrals of white children, and half of black children are placed in the most restrictive setting. Twenty-eight per cent of those segregated into special education drop out, while less than 8 per cent finish school.⁷⁹

61. The pledge of the Chancellor and the Board of Education to establish clear lines of authority to make the school system fully accountable for the performance of all children⁸⁰ has not yet been fulfilled. It is immensely difficult to discern which particular body should process what type of complaint, and even more to ascertain the amount and flow of funding through the labyrinth of educational administration. Worse, the spending cuts announced in the immediate aftermath of 11 September will aggravate solving problems for which funding is indispensable.

62. Exposure to violence belongs among the problems which do not depend on funding, but may have been aggravated in response to 11 September. In New York, school children are continuously reminded of the pervasiveness of violence as they pass through metal detectors at the school gates, have their lockers searched for guns, and hear sirens and alarms. The first person at the doorway of each public school which the Special Rapporteur visited in New York was a uniformed police officer. The *2000 Indicators of School Crime and Safety* noted that in school year 1996/97 one in 10 schools reported at least one serious violent crime and that almost one in 10 students carried a weapon to school.⁸¹ If education is defined in the broadest sense of this term, as the sum-total of what children learn from their parents and peers, from the mass media as well as from the hugely developed advertising and entertainment industry - much of which is specifically targeted at children - in-school and out-of-school messages often conflict. Studies into violence have revealed that “youth who observe adults accepting violence as a solution to problems are apt to emulate that violence”.⁸²

63. Violence is a favourite topic of video games and films. The two frames of reference - reality and virtual reality - made many schoolchildren unable to differentiate between television news on 11 September and Hollywood films in which burning skyscrapers and screaming people fleeing death and destruction were created to, supposedly, entertain the audience. It is adults who help children separate fact from fiction, and children take emotional cues from their reactions.

VI. CONTROL OVER EDUCATION

64. Locally elected school boards determine education policy and the curricula of public schools, the selection of school textbooks and books for school libraries, and even plays which students can use in drama classes. The powers of school boards are routinely challenged by parents, who invoke *their* right to control the education of their children. Children have no recognized right to articulate and defend their own vision of what their education should be, while teachers acquire the protection of academic freedom only when their students are at least at the secondary level. Non-recognition of the rights of the child and constraints upon the teachers' role situate decision-making within electoral politics. Results influence, and often determine, whether children should be instructed in *what* they should think or educated as to *how* to think.

65. Reconciling decisions of school boards with parental rights generates an endless stream of court cases. In one, a mother argued that “she did not want her children to make critical judgements and exercise choices in areas where the Bible provides the answer”.⁸³ Similar cases have highlighted extreme positions about the purpose of education. On the one hand, the United States prides itself on scientific discoveries and technological breakthroughs. On the other hand, opposition to adapting education to further development of science and technology remains fierce. The ambition of the new Administration to strengthen the quality of science instruction in elementary and secondary schools and remedy the situation where United States pupils are trailing behind other developed nations in science⁸⁴ may be thwarted by domestic politics.

A. Freedom of religion

66. Religion constitutes an immensely important issue in the United States because, differently from most Western and/or Northern countries, the majority in the United States declare themselves to be religious. The turbulent history of conflicts between different religious communities in public schooling led to the separation between Church and State in the United States Constitution. This had initially been interpreted to require that public education be secular, an interpretation subsequently reversed and further change is likely to ensue.

67. On 29 January 2001, the White House Office of Faith-Based and Community Initiatives was set up and an executive order issued, including to the Department of Education, to facilitate the provision of services by faith-based organizations. The premise is apparently that religious organizations could provide better services because they are religious, hence the Federal Government should support them financially. Another interpretation of this innovation is electoral politics: those who go to church more than once a week voted two-to-one for President Bush.⁸⁵

68. Faith-based services are anticipated in after-school programmes for low-income children. Federal funding for educational services provided by religious organizations has been deemed by many as a departure from the constitutionally mandated separation between Church and State. The justification is that previous Administrations wrongly slanted their approach, acting “as if the law banishes religious providers and mandates rigid secularism”.⁸⁶

69. The text of the United States Constitution provides a deceptively simple recipe: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The United States Supreme Court had initially interpreted this as a separation between religion and public schooling, positing “the ideal of secular instruction and political neutrality”.⁸⁷ After religion was defined to include secularism,⁸⁸ it became impossible to advocate freedom *from* religion as a counterpart to freedom *of* religion. The focus gradually shifted from the initial commitment to secularism to the equal status of religion and secularism, and to “discrimination against religion”. The United States Supreme Court ruled in 1990 that students’ religious groups could meet in high schools if secular groups were also meeting, adding in 1993 that church-sponsored evening meetings could be held in school if non-religious meetings were also held, and in 2001 holding that church-run student clubs could use school facilities in extended-day programmes if others were allowed to do so. Moreover, freedom-of-speech safeguards legitimized a “religious perspective” as an alternative to a “secular perspective”.⁸⁹ This has facilitated the entry of religion into school activities, programmes and curricula.

70. In a much-quoted statement, the United States Supreme Court declared that “no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion”.⁹⁰ Its subsequent jurisprudence, however, gradually endorsed a view whereby public *schools* should influence their students to adopt particular beliefs. Local control over public education facilitates intergenerational transmission of “community values” or “cultural values”.⁹¹ There is rarely a consensus on what these values may be, hence the particular values that are chosen, defined and espoused by local education officials are often challenged by parents or teachers.

71. The worlds of science and religion are far apart. Science thirsts for empirically based knowledge, moral and/or religious beliefs involve decisions about right and wrong. Such beliefs are often used to challenge empirically based knowledge. Disentangling the two was mandated by the United States Supreme Court when it posited that the Government should avoid entanglement with religion. This recipe has not been heeded.

B. Deciding what children should learn: Kansas

72. International comparisons of learning accomplishments have started with mathematics because it is taught similarly world-wide. Learners' knowledge can be easily compared regardless of the country in which they go to school. The trend towards creating knowledge-based societies has heightened interest for such comparisons. It could be easily anticipated that geology or biology could be examined according to globally accepted definitions of what constitutes knowledge and how well it is transmitted to the young. Both would create problems for United States participants because boundaries between knowledge and belief have been blurred. Hence, evolution could become a subjective, contestable matter of opinion.⁹² This is exemplified in the on-going tug of war between "creationism" and "evolutionism" in school curricula.

73. Darwin's *The Origin of Species* created a stir by demonstrating how natural selection occurs. This prompted opposition from many religious communities whose belief in design by the Creator had been shattered by Darwin's theory of evolution. United States courts became involved in 1927, when a teacher was dismissed for teaching evolution, an anti-religious doctrine positing that human beings evolved from other species.⁹³ (The trial was dubbed "the monkey trial".) The United States Supreme Court revisited the issue in the 1960s and a law banning the teaching of evolution was declared unconstitutional with a judicial finding that "creationism" represented a religious dogma which hampered scientific education.⁹⁴ The issue was not settled and the United States Supreme Court had to rule whether school curricula should include the theory of evolution or the biblical account of human creation, or both. The Court has upheld evolution, emphasizing the need for effective teaching of science.⁹⁵

74. The Supreme Court's judgements are delivered far away from school boards which make decisions by majority vote; these decisions are seen as political choices. The autonomy of universities prevents such political choices from moulding the curriculum, as does respect of academic freedom, but students enter university after 12 years of schooling which was governed through such political choices and influenced by the associated advertising.⁹⁶

75. Kansas was a target of world-wide attention when the School Board opted for "creationism" in 1999. The results of the elections for the Kansas School Board in 2000 altered its composition, making reversal of that decision possible. Decision-making involved consultations with the public, encompassing actors with opposite viewpoints, such as Kansas Citizens for Science, the Intelligent Design Network, the University of Kansas and the Creation Science Association of Mid-America. The Board appointed a Kansas Science Education Standards Writing Committee, which suggested restoring evolution in the curriculum and the majority of the Board voted in favour.⁹⁷ The fate of the school curricula may thus have been decided until the next round of elections for the School Board.

VII. CONCLUSIONS AND RECOMMENDATIONS

76. Education involves much more than the transmission of knowledge and skills. The values which education espouses might be openly endorsed or cloaked behind an apparently neutral curriculum. Nevertheless, they are part and parcel of any and all schooling, which may be slanted towards instructing children *what* to think or teaching them how to think. The powers exercised by those who decide on the values, contents and methods of education therefore ought to be subject to human rights safeguards, lest these powers be abused.

77. There have been many documented instances of abuse of schooling in various parts of the world, where “education” has promoted genocide or spawned beliefs that killing people is not only acceptable but heroic. The horror of seeing the results of such “education” on 11 September reminds us that we desist from tackling it at our own peril. Understanding that the planning of that carnage entailed setting the value of human life at naught, both for the perpetrators and for the victims, requires addressing values in the narrowest sense of this word.

78. Raising the priority of education has been promised time and again, including by the new Administration, but the long-term benefits of education are always ousted from the apex of fiscal allocations by short-term priorities. It is no coincidence that countries in which the right to education is fully guaranteed have low levels of violence, nor is it coincidental that institutionalized education began in the United States in order to make people economically self-sustaining. Both facets of education gain tremendous importance in coping with economic recession while at the same time waging a war. The human rights perspective makes it possible to connect issues that are treated in isolation within a comprehensive legal framework that applies both domestically and internationally.

79. Human rights problems are rarely confined to a single region or country. The universality of problems underpins the universality of human rights standards. The pattern of problems and their optimal solutions resonate world-wide. The very problems which dominate the global agenda are also found in the United States, such as the role of education in eliminating child pregnancy or the cost of securing the equal right to education for children with disabilities.

80. The language of rights is omnipresent in the United States. Passengers’ bills of rights are routinely displayed in taxis, health insurance companies are regulated by a law which bears “patients’ rights” in its title. There is a desperate need for human rights education, as this term tends to be used only with reference to other countries. Domestic vocabulary abounds with terms whose meaning is unclear (such as “minority”) or changeable (such as “discrimination”) or as yet undeveloped (such as “gender”). Many grievances are couched in the language of rights but there is little knowledge of the human right to education, human rights in education or enhancing human rights through education. When the language of rights is used in education, varying meanings are attributed to the term “rights”. In 1995, the California Civil Rights Initiative invoked the language of the 1964 Civil Rights Act, reversing its previous meaning to advocate the abolition of affirmative action. This was illustrative of the path travelled thus far. California, a pioneer in the battle for racial equality in education in the 1960s, led in the opposite direction in the 1990s. This shift in the meaning attributed to “civil rights” demonstrates the risk of converting the term “rights” into a weasel word, which can accommodate almost any contents.

81. The frequent definition of human rights as protections *against* the Government, rather than also *by* the Government, is belied by governmental obligations towards children with disabilities. This clearly demonstrates that human rights cannot be cost-free. The Government cannot implement its human rights obligations without committing and sustaining public funding. Similarly, efforts to eliminate racial discrimination have demonstrated that dissociating race from poverty has not led to desired outcomes. Because economic exclusion has a visible racial and gender profile, revisiting the core concepts of equal and unequal rights seems timely. The aftermath of 11 September has revived calls for protection of people *by* the Government. It has also elevated respect for public services, which was undermined during previous decades. This provides an excellent opportunity for translating numerous commitments to provide excellent education to all children into a reality.

82. Many denials and violations of the right to education are being exposed and opposed, even if the language of rights is seldom used. Court cases entail a decade or two of litigation, not to mention large financial resources. Rapid and free-of-charge remedies in the form of human rights commissions, or *defensores del pueblo*, or ombudsmen, could translate the current emphasis on accountability in education into practice. This would also ensure that remedies are available to all those who cannot afford lengthy and expensive court cases.

83. The lack of recognition of the child's right *to* education, rights *in* education and rights *through* education prevent children from being treated as the subjects of rights. The exclusive focus on parental rights is a major impediment to recognition of the rights of the child. Parents make choices with or without consulting children, at their discretion. Adults vote in elections conveying or not the best interests of children, also at their discretion. Parentless children and those with irresponsible parents suffer in consequence. All children suffer the consequences of their lack of political voice. Furthermore, the abuse of children by their own parents is a world-wide phenomenon from which the United States is not exempt. This is a grim reminder of the need for human rights safeguards to prevent abuses of power by adults - even parents - over children.

84. The vertical and horizontal fragmentation of decision-making in education has created an immensely complex educational bureaucracy, with non-teachers in the public school system outnumbering teachers, and teachers typically having the lowest salaries. Accountability for students' performance would require simplifying and streamlining the system, as well as channelling inputs towards teaching and learning. Moreover, public schools are held accountable for outputs but the intake and inputs are beyond their influence. Their ability to control their intake is limited. Inputs into education are determined by political processes in which neither educational considerations nor legally recognized rights necessarily prevail. The rule of inverse proportion reigns, and schools and teachers facing the greatest challenge are provided with the least support.

85. The revival of the common-school ideal, aimed at creating an informed and self-governing citizenry by educating all children together, seems particularly pertinent in the aftermath of 11 September. Everybody hopes that the Great Depression will never be repeated, but the current economic recession is likely to be aggravated by the war effort. The Universal Declaration of Human Rights emerged, with the unstinting support of the United States, as a

pledge to remedy the previous absence of human rights safeguards - civil, political, economic, social and cultural. In the famous words of Maya Angelou, history cannot be un-lived but, if faced with courage, need not be lived again.

Notes

¹ International human rights instruments, Core document forming part of the reports of States parties: United States of America, HRI/CORE/1/Add.49 of 17 August 1994, para. 90.

² “Selling a long and slow war: Interview with White House aides Karl Rove and Karen Huges”, *Time* magazine, 8 October 2001.

³ Mondale, S. and Patton, S.B. (eds.) - *School: The Story of American Public Education*, Beacon Press, Boston, 2001, p. 5.

⁴ United States Supreme Court - *Meyer v. Nebraska*, 262 U.S. 390 (1923).

⁵ Information at www.usdoj.gov/crt/ora/main.html.

⁶ Information at www.usdoj.gov/crt/wviaccla.htm.

⁷ The International Covenant on Civil and Political Rights, which has been in force for the United States since 1992, allows temporary derogations during a public emergency (CCPR/C/21/Rev.1/Add.11 of 31 August 2001). On 14 September, President Bush proclaimed a national emergency as of 11 September (www.whitehouse.gov/news/releases/2001/09/20010914-4), which was followed by deprivations of liberty, suspensions of attorney-client privilege and the establishment of military tribunals, but a notification to the Secretary-General of the United Nations required by the Covenant did not ensue.

⁸ Throughout her mission, the Special Rapporteur was asked what the right to education meant and she provided explanations of what it entailed. These are summarized in her reports, which define the right to education through the corresponding governmental obligations to make education available, accessible, acceptable and adaptable (E/CN.4/1999/49, paras. 51-74; E/CN.3/2000/6, paras. 30-65; and E/CN.4/2001/52, paras. 70-77).

⁹ Act 34 and Act 27, *Laws of Virginia, 1642-43 and 1646*.

¹⁰ Morgan, E.S., “Slavery and freedom: the American paradox”, in Schreiber, J. and Elliott, R.C. (eds.), *In Search of the American Dream*, 1974, p. 179.

¹¹ The Massachusetts Compulsory School Act of 1647, *Records of the Governor and Company of Massachusetts, 1647*.

¹² Making a change is difficult as the varying funding criteria result in what Kenneth Wong has labelled “institutional conflict and policy incoherence” and described as follows: “federal

programmes often take into consideration the special-needs population without regard for the district's overall fiscal capacity. Consequently, federal funds are channelled to affluent districts even when their local taxes can provide supplemental services for the disadvantaged. At the same time, state aid to poor districts may overlook the needs of the disadvantaged, as it is allocated according to the tax burden of the property owners". Wong, K.K., *Funding Public Schools: Politics and Policies*, University Press of Kansas, 1999, p. 16.

¹³ Text at www.ed.gov/inits/nclb/part2.html.

¹⁴ Vinkovskis, M.A. - *The Road to Charlottesville: The 1989 Education Summit*, National Education Goals Panel, Washington D.C., September 1999, pp. 4 and 7.

¹⁵ Orfield, G., "Policy and equity: lessons of a third of a century of educational reforms in the United States", 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, Cambridge/London, 2000, p. 422.

¹⁶ United States Department of Justice, Overview by the Educational Opportunities Section of the Civil Rights Division, September 2001 (www.usdoj.gov/crt/edo/overview).

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¹⁸ Gilbert, R. and Gilbert, P., *Masculinity Goes to School*, Routledge, London, 1998, p. 226.

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²⁰ United States Department of Education, *The Nation Responds: Recent Efforts to Improve Education*, U.S. Government Printing Office, Washington D.C., 1984.

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²² "U.S. students average among international peers", press release, United States Department of Education, 4 December 2001 (www.ed.gov).

²³ On 23 May 2001 the House passed the *No Child Left Behind Act* (H.R. 1), and on 14 June 2001 Senate passed S.1 bill, entitled *Elementary and Secondary Reauthorization Act: The Better Education for Students and Teachers Act*.

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²⁵ "A blueprint for new beginnings", 1 September 2001 (www.whitehouse.gov).

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²⁷ “President wants tax cuts equal to spending package”, *New York Times*, 6 October 2001.

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²⁹ DAC/OECD, *Participatory Development and Good Governance*, Development Co-operation Guidelines Series, Paris, 1995, Part III, paragraph 31.

³⁰ Tomaševski, K., *Development Aid and Human Rights*, Pinter Publishers, London, 1989 pp. 50-53; Tomaševski, K., *Development Aid and Human Rights Revisited*, Pinter Publishers, London, 1993, pp. 84-86; Tomaševski, K., *Between Sanctions and Elections: Aid Donors and their Human Rights Performance*, Pinter/Cassell, London, 1997, pp. 19-21.

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³² Note by the President of the Security Council, S/23500 of 31 January 1992, page 3.

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- ⁴² “The Surgeon General’s call to action to promote sexual health and responsible sexual behavior”, 9 July 2001, www.surgeongeneral.gov/library/sexualhealth.
- ⁴³ *DeRolph v. State*, 93 Ohio St. 3d (2001) (www.sconet.state.oh.us).
- ⁴⁴ Patterson, J. T., *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*, Oxford University Press, 2001, p. 1.
- ⁴⁵ United States Supreme Court, *Brown v. Board of Education of Topeka*, 347 U.S. 294, 17 May 1954.
- ⁴⁶ “No child left behind” (www.ed.gov/inits/nclb/partx2.html).
- ⁴⁷ Public education funding update, May 2001 (www.nea.org/lac/funding).
- ⁴⁸ *Petersons College Guide*, www.petersons.com, September 2001.
- ⁴⁹ *Open Doors 2001*, Institute of International Education, Washington D.C., November 2001, (summary at www.iienetwork.org).
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- ⁵² World Trade Organization, “Higher (tertiary) education, adult education, and training: communication from the United States”, document S/CSS/W/23 of 18 December 2000.
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⁵⁴ Policy paper, “Program focus within basic education”, USAID, last revised on 20 September 2000 (www.usaid.gov).

⁵⁵ *DeRolph v. State*, 93 Ohio St. 3d (2001), concurring opinion of Justice Douglas (www.sconet.state.oh.us).

⁵⁶ The structure of the judiciary in the State of New York is different from the rest of the country and the Supreme Court is not the highest judicial body. That judgement was appealed to the Appellate Division of the Supreme Court of the State of New York; hearings began on 24 October 2001 (www.cfequity.org).

⁵⁷ The Government of the United States holds that the concept of “minority” does not apply in the United States Organization for Security and Co-operation in Europe (OSCE)/High Commissioner on National Minorities, *Report on the Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area*, Annex: Replies from OSCE Participating States, 1997) while the 1997 Strategic Plan of USAID stated that “the rights of minorities reflect the fundamental values of the American people” (www.info.usaid.gov/pubs/strat_plan).

⁵⁸ Department of Education, *Digest of Education Statistics*, 2000 edition (www.doe.gov).

⁵⁹ *Campaign for Fiscal Equity v. State*, full text of the judgment is available at www.edlaw.fplc.edu/Text/Library/case-campaign.equity.html.

⁶⁰ United States Supreme Court, *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973).

⁶¹ The Special Rapporteur’s global review of constitutional guarantees has demonstrated that the right to education, at least at the minimal level of free and compulsory education for all children, is guaranteed in 142 countries while 44 have no such guarantee. (E/CN.4/2001/52, paras. 66-67).

⁶² The Third International Mathematics and Science Study, which compared the performance of 13-year-olds, placed the United States below Singapore, Japan, the Czech Republic, Switzerland, France and Russia, and just above Latvia, Spain, Greece and Romania. Tomaševski, K., *Human Rights in Education as Prerequisite for Human Rights Education*, Right to Education Primers No. 4, Gothenburg, 2001, pp. 21-24.

⁶³ Maran, M., *Class Dismissed. A Year in the Life of an American High School, a Glimpse into the Heart of a Nation*, St. Martin’s Press, New York, 2000, p. xiv.

⁶⁴ United States Supreme Court, *Plyer v. Doe*, 457 U.S. 202, (1982) and *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

⁶⁵ Information is available at www.census.gov.

⁶⁶ The population is divided into two ethnic categories, Hispanic or Latino and Not Hispanic or Latino. The classification of “Latin American Americans” by ethnicity entails their opting for one of the available racial categories. Official figures are not available but estimates indicate that about half identified themselves as white while the other half selected “some other race” or “mixed”.

⁶⁷ United States Supreme Court *Sweatt v. Painter*, 339 U.S. 629 (1950).

⁶⁸ *Texas v. Hopwood*, 78 F.3d 932 (5th Cir.) cert. denied, 518 U.S. 1033 (1996).

⁶⁹ Snapshots of the achievement gap in New York City Public Schools, Institute for Education and Social Policy, New York University, 10 October 2001.

⁷⁰ Initial report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, September 2000, (www.state.gov).

⁷¹ *No Child Left Behind* ([www.ed.gov/inits/nclb_part3 and partx2](http://www.ed.gov/inits/nclb_part3_and_partx2)).

⁷² Back-to-school address by United States Secretary of Education Rod Paige, National Press Club, Washington D.C., 4 September 2001, text at www.ed.gov/Speeches/09-2001/010904.html.

⁷³ The Census 2000 Supplementary Survey is available at www.census.gov.

⁷⁴ Children’s Defense Fund, “Census 2000 Supplementary Survey: Poverty status during previous 12 months by age”, www.childrensdefense.org/release010806.htm.

⁷⁵ Mississippi Report Card, *2000 Report on Mississippi’s Public School Districts, School year 1998-1999*, Mississippi Department of Education, Jackson, 2000.

⁷⁶ Quality teachers, “every child’s birthright”. Final report of the Educator Pipeline Part II: Attrition and retention task force, Public Education Forum of Mississippi, Jackson, November 1998.

⁷⁷ Federal Interagency Forum on Child and Family Statistics, “America’s children: key national indicators of well-being, 2000” (childstats.gov).

⁷⁸ *The Condition of Education, 2001*, National Center for Education Statistics, May 2001 (nces.ed.gov).

⁷⁹ *The Class of 2000: Four-year Longitudinal Report and 1999-2000 Drop-out Rates*, New York City Board of Education, New York, 2001.

⁸⁰ *The 1998 Board of Education of the City of New York Annual Report*, p. 3.

⁸¹ Full text at nces.ed.gov and www.ojp.usdoj.gov/bjs.

⁸² Crawford, D.K. and Bodine, R.J., “Conflict resolution education: preparing youth for the future”, *Juvenile Justice*, vol. 8, No. 1, June 2001, p. 21.

⁸³ *Mozert v. Hawkins County Board of Education* (Mozert V) 827 F.2d 1058, 1069 (6th Cir. 1987), cert. denied, 484 U.S. 1066 (1988).

⁸⁴ Text at www.ed.gov/PressReleases/05-2001/05312001.html.

⁸⁵ Exit polls showed that 63 per cent of non-religious people voted for Gore and 30 per cent for Bush, while 63 per cent of those who attended a religious service more than once every week voted for Bush and 36 per cent for Gore. Those who self-identity as “white religious right” voted 80 per cent for Bush and 18 per cent for Gore. (Data available at www4.cnn.com/ELECTION/2000/results/national.html).

⁸⁶ Rallying the armies of compassion, Foreword by President George W. Bush, text available at www.whitehouse.gov/news/reports/faithbased, June 2001

⁸⁷ United States Supreme Court, *Barnette*, 319 U.S. 637.

⁸⁸ Religion includes “secular humanism” (*Torcaso v. Watkins*, 367 U.S. 488 (1961)) or else a “religion of secularism” (*Abington School District v. Schempp*, 374 U.S. 203 (1963)).

⁸⁹ *Lamb’s Chapel v. Center Moriches Union Free School District*, 113 S. Ct. 2141 (1993).

⁹⁰ United States Supreme Court, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

⁹¹ United States Supreme Court, *Board of Education v. Pico*, 457 U.S. 853, 869 (1982) and *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

⁹² An illustration of this is a warning in schoolbooks which says that evolution is a controversial theory, adding: “No one was present when life first appeared on Earth. Therefore, any statement about life’s origins should be considered as theory, not fact.”

⁹³ Supreme Court of Tennessee, *Scopes v. State*, 154 Tenn. 105, 289 S.W. (1927).

⁹⁴ United States Supreme Court, *Epperson v. Arkansas*, 393 U.S. 97 (1968).

⁹⁵ United States Supreme Court, *Edwards v. Aguillard*, 482 U.S. 578, 19 June 1987.

⁹⁶ Fliers distributed around shopping malls include texts such as this: “The theory of evolution is just a theory, yet our public school’s texts do not mention the significant amount of scientific evidence against it. Why the censorship?”

⁹⁷ The science standards as recommended by the Kansas Science Education Standards Writing Committee (albeit after numerous alterations) were adopted by a vote of 7 to 3, overriding arguments by members who were “personally not ready to accept the idea that nature was solely responsible for the origin of life”. The Kansas State Board of Education Meeting Minutes, 13 February 2001 (www.ksde.org/commiss/bdmin/feb01mins.html).