



**58th Session of the Committee on the Elimination of
All Forms of Discrimination against Women**

Elaboration of a General Recommendation on Women and Girls' Right to Education

Day of General Discussion

organized by the Office of the High Commissioner for Human Rights,
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Key Note Speech

by

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Madam Vice- Chair of the CEDAW Committee,
Distinguished members of the CEDAW Committee,
Ladies and Gentlemen,

I consider it a privilege to participate in today's general discussion devoted to elaboration of a General Recommendation on girls' and women's right to education as established in article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The right to education is an internationally recognized right, and everyone is entitled to it – boys and girls alike. UNESCO's Convention against Discrimination in Education (1960) is the first instrument which provides for the right to education comprehensively. It establishes the fundamental principles of universal access to education and equality of educational opportunities. Similarly, Article 13 of the International Covenant on Economic, Social and Cultural Rights, drafted at the suggestion of UNESCO's Director-General, comprehensively covers the right to education.¹ Other human rights conventions develop the right to education in its various dimensions. The right of every child to education on the basis of equal opportunity is established by the Convention on the Rights of the Child. The Convention on the Elimination of All Forms of Racial Discrimination protects the right to education and training for everyone without discrimination. The United Nations Convention on the Rights of Persons with Disabilities establishes elaborately the right to education of the persons with disability. The right to education of the children of migrant workers is protected by the International Convention on the Rights of All Migrant Workers and Members of their Families.

Free and compulsory primary education is an inalienable right of every child and constitutes a *core* obligation of States under international human rights treaties. Beyond primary education, the girls' and women's right to education also extends to secondary education, as well as the progression towards higher education. If the girls' and women's right to education has to be truly 'empowering', the quality imperatives should receive foremost consideration in entire spectrum of education.

The right to education as an *entitlement* in terms of universal access to education is inextricably linked with the right to education as *empowerment* in terms of acquisition of knowledge, values, competencies and skills. As I stated in my report (2012) to the Human Rights Council, CEDAW establishes girls and women's right to education, both as entitlement and as empowerment. State parties to CEDAW thus have an obligation to ensure, on the basis of equality of men and women, access to education at all levels and in all its forms."²

State Obligations and Foundations of the Right to Education in National Legal Systems

By adhering to the international human rights conventions, the State Parties assume international obligations. The right to education, like all human rights, imposes three levels of

¹As regards the nature and scope of the right to education, see General Comment 13 on the right to education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. E/C.12/1999/10.

²Normative Action and Quality Education - Report by the Special Rapporteur on the Right to Education to the Human Rights Council (A/HRC/20/21, 2 May 2012).

obligations on States parties: the obligations to respect, protect and fulfil.³ In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The State obligation remains even in case of the privatisation of education.

The CEDAW establishes the obligation of the States parties to “take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education.” Article 10 of the CEDAW contains detailed provisions in this respect. It carries reporting obligation for the States parties: to submit to the Secretary-General a report on the legislative, judicial, administrative or other measures that they have adopted to implement it. States parties to the CEDAW have the international obligation to undertake necessary measures accordingly.

Promoting and protecting the right to education, equality and non-discrimination are clearly interrelated duties of governments in accordance with human rights norms. Moreover, the political commitments made by governments such as for the Education for All agenda to *eliminate gender disparities and achieve gender equality in education*, while “ensuring girls’ full and equal access to and achievement in basic education of good quality,”⁴ or those under the international development agenda – present or future – must be linked to State obligations for the right to education so as to reinforce the responsibility of Governments.

In order to implement the right to education, the States obligations under the international instruments must be incorporated into their domestic legal order. Protection and promotion are two pillars of the human rights system on which national legal systems should be edified. Effective implementation of the right to education at national level requires that the foundations of the right to education in national legal systems be strengthened. The enforcement of the right to education is dependent upon how the State obligations under existing instruments are incorporated into the national legal system, and on how remedies are available in case of their non-fulfilment.

I would suggest that the proposed General Recommendation should urge State parties to the CEDAW to incorporate their international obligations into their domestic legal order, especially by developing national legislation on girls’ and woman’s right to education within the framework of the CEDAW. This is also reflected in the *Ministerial Declaration at the 2010 High-Level Segment of the ECOSOC*, which underlines the need for strategies, *inter alia*, to “Enact and strengthen comprehensive legal frameworks that promote gender equality and the empowerment of women” (...) and to “ensure the full and effective enforcement and monitoring of those comprehensive frameworks, as well as take appropriate measures to ensure equal access to justice.”⁵

Right to Education and Equal Opportunities for Men and Women

The principles of non-discrimination and equality of opportunity in education are common to almost all human rights conventions. They enjoin upon States Parties to these treaties international obligations of a permanent nature for promoting and protecting the right to education, without discrimination or exclusion, in a way that it is fully respectful of equality of opportunity in education. The CEDAW builds upon the general principle of equality of opportunity in education established by UNESCO’s Convention against Discrimination in

³ General Comments 13 on the right to education (Article 13 of the Covenant), opt. cit. (para. 50).

⁴ Paragraph 7 of the Dakar Framework for Action, adopted at the World Education Forum (2000).

⁵ The *Ministerial Declaration at the 2010 High-Level Segment of the ECOSOC*: Implementing the internationally agreed goals and commitments in regard to gender equality and empowerment of women, July 2010.

Education, and elaborates specifically to the right to education of girls and women in its multiple dimensions. It defines discrimination against women as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the *recognition, enjoyment or exercise* by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” *Recognition, enjoyment or exercise are key concepts*. It is the responsibility of Governments to develop and implement education policies and plans aimed at enabling all those women and girls who remain deprived of education so as to fulfil their right to quality education on an equitable basis.

Such measures are necessary as girls and women constitute a majority of those who remain deprived of education. Women represent two thirds of world’s illiterate adults, while girls account for similar proportion of the world’s out-of-school children. Even in countries where educational opportunities are in general widely available, inequalities remain in the ability of all social groups to fully avail themselves of such opportunities. Despite significant progress to improve access of girls to primary schooling, less efforts have been made in relation to higher levels of education. Girl with meager resources have limited prospects to progress to secondary education and beyond. States have the responsibility to alleviate this financial burden and ensure their access to secondary education, and also to make higher education available, with preferential treatment.

Social and cultural barriers and unequal opportunities manifested in access to quality education remain one of the most serious difficulties of national educational policies. Poverty is the greatest obstacle to realizing the right to basic education. Women and girls suffer disproportionately the effects of poverty. The eradication of poverty is the foremost concern of the international community as is shown by discussions on Post-2015 Development Agenda. Moreover, inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with wealth or economic status becoming the most important criterion to access a quality education.

In face of all these challenges, States must be reminded of their *core* obligation that ensuring the right to education without discrimination or exclusion is fully respected and fulfilled. They must abide by the fundamental principles of non-discrimination and equality of opportunity for all in education in an endeavor to mitigate prevailing inequities. Inclusive education is a key to building inclusive societies. The adoption of positive measures such as affirmative action and social protection schemes, targeting disadvantaged and vulnerable women and girls to ensure their access to education, provides leverage in eliminating barriers which hinder achieving equality of opportunity in education. Such affirmative action and promotional measures in the form of grants and bursaries have normative basis in the CEDAW which establishes the right to gender parity and “the same opportunities to benefit from scholarships and other study grants.”

The provisions on the girls’ and women’s right to education, established under CEDAW, centre around the fundamental principles of non-discrimination and of equality of opportunity in education. Equality of educational opportunities is an entitlement and overriding attribute of the right to education.⁶ It constitutes a *core obligation of states* for protecting and

⁶ It is important to bear in mind UNESCO’s Convention against Discrimination in Education, which provides that “the establishment or maintenance of separate educational systems or institutions for pupils of the two sexes”, when permitted is not discriminatory, “if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study.” (article 2 § a).

promoting girls' and women's right to education. "*Non-discriminatory education benefits both girls and boys*, and thus ultimately contributes to more equal relationships between men and women. Equality of access to and attainment of educational qualifications is necessary if more women are to become agents of change [...]"⁷ Thus, it is important to mainstream a gender perspective in policies and programmes for women's empowerment.

The CEDAW Committee has already specified that temporary special measures are necessary, not as an exception to the prohibition of discrimination, but as a central part of a strategy to achieve substantive or de facto equality between women and men.⁸ The Committee has also specifically referred to the equal rights of girls in the area of basic education in its General Recommendation on the Core Obligations of States Parties.⁹ The proposed General Recommendation on girls' and women's right to education should be conceived in its nexus with the existing General Recommendations, elaborated by CEDAW. The proposed General Recommendation will thus reflect the links between Article 10 on the Right to Education and other Articles, drawing upon the General Recommendations of the CEDAW as appropriate.

Application of the fundamental principles of non-discrimination and of equality of opportunity in education calls for greater emphasis upon the fulfillment of State obligations. Taking into **consideration** the continuing challenges in bringing about equality of opportunity in education *both in law and in fact*, normative action at national level needs to be intensified. Governments should recognize the key importance of adequate legal frameworks on equality of opportunity in education in line with international standards. A strong regulatory framework for public and private education systems grounded in the principle of equality of opportunity provides the essential basis for the establishment of an entire range of programmes and policies aiming at ensuring equality of opportunity. Besides, the concerns relating to equality of opportunity in education should be understood as relating both to guaranteeing equal opportunities in access to different levels of education as established by human rights norms as well as equal opportunities for boys and girls to **evolve within education** systems.

Rights-based approach

I have been advocating the need and the importance of girls' and women's right to education from a human rights based approach. Human rights standards are an important tool for ensuring that development is pursued in an equitable, just and sustainable manner which does not exclude half of a country's population. Human rights instruments provide the foundation that is essential to ensure that girls and women are participatory in and beneficiary of development equitably. "The human rights framework is pivotal in the struggle against multiple forms of discrimination from which women and girls in vulnerable and marginalized situations suffer. Educating women and girls should, a priori, be viewed as a human rights imperative, rather than undertaken solely because of the potential benefits to one's children or to society."¹⁰

The proposed General Recommendation on the right to education of girls and women should be premised upon a concept, driven by a rights-based approach. "Greater equity, including

⁷ Declaration and Platform of Action adopted at the fourth World Conference on Women: Action for Equality, Development and Peace, (Beijing, September 1995) A/Conf.177/20 and ADD.I.

⁸ CEDAW General Recommendation 25 (2004).

⁹ General Recommendation No. 28 (2010).

¹⁰ Promotion of Equality of Opportunity in Education - Report by the Special Rapporteur on the Right to Education to the Human Rights Council, A/HRC/17/29, 24 March, 2011.

between men and women and among other groups, is not only essential in itself, but also important for promoting human development. One of the most powerful instruments for this purpose is education.”¹¹

It is commendable that the CEDAW Committee has already called on the States parties “to denounce and punish such acts of violence and to continue to take all necessary action, including the dismantling of patriarchal barriers and entrenched gender stereotypes, to guarantee and to ensure that girls are able to enjoy their basic human right to education in every region of the world.”¹² Women have historically been victims of social injustice and educational deprivation. In some case, they are prevented from attending schools by parents who see no value in educating daughters, or by religious extremists threatening them. Violence against women and girls is an impediment to the exercise of their right to education. Governments should be urged to foster school environment which is protective of girls’ and women’s right to education and promotes human rights and mutual respect.

The proposed General Recommendation on girls’ and women’s right to education should specifically provide for review of text books and curriculum contents to ensure that the stereotyped concept of the roles of men and women is eliminated. Necessary standards in conformity with the State responsibility under the provisions of CEDAW must be elaborated with an emphasis on the **safety of girls** in the school, and on protecting them in all instances of violence directed against them. Necessary policies and programmes should be devised and regularly evaluated to monitor whether women and girls' rights within education are being safeguarded.

Linking Literacy to Skill Development

Today, there is widespread concern with skills development as part of quality imperatives. In several countries I visited, I found that girls remain disadvantaged in the pursuit of higher education, and there is lack of gender parity in technical; and vocational schools. The right to education should provide incentives to girls and women to bring forth their talents and creative potential. Imparting skills to women and girls through technical and vocational education is essential to empowering them. Provisions in the CEDAW on the importance of imparting basic skills to women and girls provide basis for national action with a view to their *empowerment* through skills development, with diversification of educational programmes in collaboration with industry and enterprises.

The provisions in article 10 of the CEDAW: “*same opportunities for access to programmes of continuing education, including adult and functional literacy programmes*” deserve specific consideration. Women and girls constitute a vast majority among today’s illiterates, and achieving their right to literacy is a daunting challenge. Literate women can transform themselves, their families, develop their communities, and contribute to social development. There is still a long way to go in “creating literate environments and societies.”¹³ While placing literacy for all at the heart of basic education, governments must devise policies and strategies, linking efforts for literacy to ‘skill development’ so as to ensure that literacy programmes become transformative. My report (2013) on the Right to Education and Post-

¹¹ Human Development Report 2013: The Rise of the South: Human Progress in a Diverse World. UNDP, New York 2013, p. 5.

¹² CEDAW Statement, Protection of Girls’ Right to Education, p. 1.

¹³ See the United Nations Resolution 56/116 of 19 December 2001, by which the General Assembly proclaimed the “United Nations Literacy Decade: education for all”, (operational para. 7).

2015 Development Agenda¹⁴ for the United Nations General Assembly lays emphasis on skills development and literacy as part of life-long learning.

Accountability of Governments and Justiciability of the Right to Education

The right to education is not an ideal or aspiration, but a legally enforceable as an entitlement. It is often least available to those who need it most – notably girls from disadvantaged groups, minorities and poor households.

I would like to mention about the responsibility of governments in developing indicators, for measuring progress in the implementation of girls' and women's right to education. Human rights indicators, and qualitative and quantitative information about education systems can support claims regarding violations of the right to education.¹⁵ For claims based on systemic or collective discrimination, indicators can show the inequality among groups, for example, drop-out rates between girls and boys indicating gender discrimination in education. A recent publication by the Office of High Commissioner for Human Rights has pointed out that courts do use statistical information in adjudicating cases of rights violations.¹⁶ Structural, process as well as outcome indicators are useful to determine what type of violation has occurred, and can enhance the justiciability of the right to education by providing evidence to judicial and quasi-judicial bodies of instances where States have violated their obligations in respect of education rights.

The concept of 'right-holders' and 'duty-bearers,' along with accountability of governments, is premised upon the nature of the right to education as an entitlement, and the fulfilment of connected State obligations. Accordingly, the right to education must be justiciable in the national legal systems, recognizing that the State obligations for its fulfilment are all founded in international law. Independent complaints procedures and judicial system which are accessible, and provided with the required legal assistance, are necessary for effective remedies to redress the breach or violations of the right to education. It is important to emphasize the need for concrete ways in which the right to education can be made enforceable more effectively. These include promoting public interest litigation, providing legal aid, engaging with parliamentarians, educating the public on their rights, and promoting research with academic institutions.

The proposed General Recommendation should focus on an effective implementation strategy, as well as monitoring mechanisms and accountability measures which are vital in addressing the gap between commitments and reality in the implementation of the right to education. It should be premised upon inter-linkages between monitoring mechanisms, accountability and enforcement as a *continuum*.

Access to justice is of foremost importance for getting the rights enforced. This is acknowledged in the United Nations Declaration on the Rule of Law, adopted in December 2012 (A/RES/67/1.) In case of its violation or breach, the right to education must be safeguarded, with full protection. The right-holders should have the ability to claim their

¹⁴ "The Right to Education and Post-2015 Development Agenda", Report by the United Special Rapporteur on the Right to Education, (A/68/294), 9 August 2013.

¹⁵ For a detailed analysis, see Sital Kalantry, et. al., "Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR," 32 Human Rights Quarterly 253-310 (2010).

¹⁶ Human Rights Indicators, A Guide to Measurement and Implementation, 2012, p. 3, available at <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>.

entitlements and challenge governments to meet their obligations, and live up to their international commitment when these are not being respected and fulfilled. This is especially important in case of girls' and women's right to education. All providers of education - public or private - remain accountable for respecting the right to education in its various dimensions. It would be commendable if the General Recommendation were to urge States to improve access to justice for girls and women whose right to education is not fully protected and respected.

Jurisprudence and available case law is helpful in promoting the justiciability of girls' and women's right to education.¹⁷ Courts have declared discriminatory treatment on the basis of sex with direct and indirect forms of discrimination unlawful, acknowledging that this is in direct conflict with the directives of CEDAW.¹⁸ The denial of subsidized University education on the basis of sex has also been declared unlawful by courts.¹⁹ Moreover, the courts have ruled that gender-based classifications must be subject to heightened judicial scrutiny, as this affects fundamental rights of women.²⁰ Thus, the judicial systems can play an essential role in protecting and enforcing the right to education as an entitlement. It is incumbent upon governments to ensure that girls' and women's right to education is enforced through proper national mechanisms - judicial and quasi-judicial. They must take necessary measures as a follow up to the Resolution on the Right to Education, adopted by the Human Rights Council in June 2013 by which the Council urged all countries to adopt legislation on the right to education, to create independent institutions and mechanisms to enforce such rights, and to ensure that lawyers, judges and administrators are adequately trained on how such rights are to be enforced.²¹

Accordingly, the proposed General Recommendation should encourage States to take necessary measures with a view to empowering the national human rights institutions, tribunals, ombudsmen or other institutions to monitor, investigate and address complaints of

¹⁷ For instance, the Supreme Court of Colombia has upheld the pregnant girl's right to education, nullifying any contrary regulation by school Case No. T-77814, *Crisanto Arcangel Martinez Martinez y Maria Eglina Suarez Robayo v. Colegio Ciudad de Cali*, 11 November 1998; *See also*; Fons Coomans, "Justiciability of the Right to Education" p. 437; "Rhetoric or Rights?: When Culture and Religion Bar Girls' Right to Education", *Virginia Journal of International Law*

¹⁸ In *Equal Opportunities Commission v. Director of Education* (22 June 2001), as female students often scored higher than male students, the Director of Education by an Ordinance for the transfer of students from primary to secondary school introduced a scaling system whereby boys and girls were ranked separately, thus 'skewing' the results, leading to unequal treatment. The High Court of Hong Kong ruled that discriminatory treatment on the basis of sex with direct and indirect forms of discrimination, was unlawful, and constituted gender discrimination. The Court acknowledged that the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW') was extended to Hong Kong in 1996 and "Article 10 of the Convention makes it plain that stereotyped concepts of both men and women are in themselves, if not discriminatory, at least the wellspring from which discrimination flows." <http://www.escri-net.org/EngGeneral/CaseLawSearchResult.asp>

¹⁹ In *Dow v. Attorney-General of Botswana* (1992), the denial of subsidized University education on the basis of sex under the Botswana Citizenship Act of 1984 was discriminatory when the Constitution did not prohibit such discrimination. The High Court held that although Botswana had not yet ratified CEDAW, the Constitution should be interpreted to prohibit discrimination on the basis of sex. When Botswana ratified CEDAW in 1995, it amended the Citizenship Act to give equal rights to men and women with respect to the citizenship of their children. http://www.wunrn.com/news/2007/10_07/10_15_07/101507_cedaw.htm

²⁰ In *United States v. Virginia et al* (26 June 1996), involving gender-based classification at the Virginia Military Institute (VMI) - a public institution of higher learning - denying admission to females, the Supreme court of United States of America ruled that while recognizing that gender-based classifications are not categorically proscribed, they must be subject to heightened judicial scrutiny, with the yardstick of the deferential «rational basis» test and the «strict scrutiny» applied to classifications based on race or national origin or which affect fundamental rights of women under the Equal Protection Clause of the United States Constitution. <http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm>

²¹ Resolution A/HRC/23/4 on the Right to Education, adopted by the Human Rights Council on 19 June 2013.

violations of girls' and women's right to education. It is important to strengthen the system of the rule of law to ensure an independent judiciary and well trained legal profession to effectively enforce national laws and standards.

The right to education is primarily a responsibility of governments. It is also a social responsibility. Greater advocacy involving all stakeholders and human rights activists is required for promoting and protecting girls' and women's right to education, both as an *entitlement* and as *empowerment*. It will be important to encourage the intellectual community and the civil society organizations to publicize the right to education of girls and women, and to raise debate on issues of critical importance for enhancing knowledge about the CEDAW and girls and women's right to education, when the General Recommendation is adopted finally.

In this, special consideration should be given to basic education as the entry point in understanding one's human rights and the corresponding State responsibility. Education enables its beneficiaries to become knowledgeable of procedures available under domestic law for their enforcement. Such awareness is an essential prerequisite to claiming human rights in the case of their violation.

Concluding Observations

Before concluding my speech, I would like to mention that the elaboration of a General Recommendation on girls' and women's right to education is opportune when the international community is discussing the Post-2015 Development Agenda. The right to education is of paramount importance in national and international development agendas, in public policies, and the right to education of girls and women deserves special consideration. We must recognize that the right to education is not only a right in itself but also essential for the exercise of all other rights. Its enforcement imparts added value to the enforcement and enjoyment of other human rights. The resolution A/HRC/23/4 on the Right to Education adopted in June 2013 underlines "the need to ensure that the right to education is central in the context of the post-2015 agenda."

I hope that our discussion today for elaborating the General Recommendation on girls' and women's right to education will be followed by further enriching reflections, and generate ideas around which the process of such elaboration can be nurtured, and culminates in the creation of a General Recommendation which will be valuable in protecting and promoting the universal right to quality education of all girls and women around the world.

Thank you for your attention.