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# Written Submission On the General Recommendation on Girls’/Women’s Right to Education

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## **WRITTEN SUBMISSION ON THE GENERAL RECOMMENDATION ON GIRLS'/ WOMEN'S RIGHT TO EDUCATION**

The International Women's Rights Action Watch (IWRAP) Asia Pacific welcomes the initiative by the CEDAW Committee to draft a General Recommendation on Girls'/ Women's Right to Education. General Recommendations by the CEDAW Committee have consistently enabled articulation of state obligations under CEDAW and women's access to human rights on the basis of non-discrimination and equality.

Right to education is an integral element of women's empowerment and holistic enjoyment of all rights under CEDAW. The initiation of a General Recommendation addressing the right reaffirms the need for addressing existing and emerging forms of social, cultural, economic and political barriers to gender equality in its entirety and those that specifically obstruct women's right to education.

### **CONTEXT AND RECOGNITION OF WOMEN'S RIGHT TO EDUCATION**

Despite the progress made in achieving the Millennium Development Goal targets and goals,<sup>1</sup> 100 million children, at least 60% of them girls, do not have access to primary education. 960 million adults in the world are illiterate, and more than two-thirds of them are women. Women and girls continue to face discrimination at all levels of education, most importantly in access to primary schooling, which impedes the full realisation of their potential, impedes their economic, political, cultural and social opportunities, and obstructs social and economic development in society as a whole. Ensuring equal access to education and all its associated opportunities to women and girls is a key component of states parties obligations to ensure de facto and de jure respect, protection and fulfilment of the right to equality for women and girls. However, in order to ensure the effective realisation of the equal right to education for girls in developing countries in the Asia Pacific, state parties obligations involve guaranteeing substantive equality.

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<sup>1</sup> Target 2.A, Goal 2 which is Achieve Universal Primary Education, and target 3.A of Goal 3 :Eliminate gender disparity in primary and secondary education preferably by 2005, and in all levels of education no later than 2015.

The obligation to ensure substantive equality under CEDAW requires states parties to take steps to address both direct and indirect discrimination against girls and women. Direct discrimination occurs when laws or policies discriminate on the basis of race, gender, sex, disability, sexual orientation, ethnic origin, nationality and other arbitrary grounds by denying access to education or restricting its benefits. A key example would be religious schools that do not admit girls, or school curricula that entrench gender stereotyping and making it compulsory for boys to take subjects like technical drawing and woodwork while girls are restricted to home economics and typing as in the case of Fiji<sup>2</sup>.

The full and effective realisation of the right to equality and non-discrimination in education for girls and women entrenched in article 10 of CEDAW, requires States Parties to address the structural and systemic causes of exclusion from education. It requires addressing the endemic cycles of poverty, displacement, environmental degradation, land dispossession, urbanisation and forced, lack of decent work and lack of access to economic opportunities that results in exploitation of girls and denial of their rights to equal education. It requires ensuring women play a key role in leadership positions in society, the family, and in the economic, social and political life of their communities and countries. It requires addressing the legal and institutional discrimination entrenched in laws, policies, institutions and social structures. It requires reviewing global neoliberal economic policies that prioritise market driven investment and the production of consumer goods above the basic needs and human rights of communities. It requires addressing macroeconomic policies which promote displacement of rural and indigenous communities to allow land to be sold to foreign extractive industries. It requires a comprehensive approach to realising the right to equality in education that places education goals, targets and indicators at the centre of a sustainable development agenda for 2015 and beyond.

The right to education for girls and women assumes greater significance for them because their exclusion from education has a disproportionate effect on them and also has a far reaching effect on the realisation of other fundamental human rights. Girls denied the right to education are rendered more vulnerable to poverty and marginalisation, abuse and exploitation for prostitution, trafficking, child marriage and child labour and vice versa<sup>3</sup>,

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<sup>2</sup> <http://www2.ohchr.org/english/bodies/cedaw/docs/co/FIJICO26.pdf>

<sup>3</sup> Preventing and eliminating child, early and forced marriage, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/26/22, 2 April 2014

studies show that early marriage, poverty and prevalent child labour practices are critical barriers to girls' right to education. Non-discrimination and equal access to all levels of education is crucial to empower them to become full and equal participants in society and to realise the fullest extent of their human capabilities. Educating girls is has been demonstrated to result in improvements in health, nutrition, and physical and psychological well-being of women, their families and communities. Equal participation in the family as a result of education overcomes stereotypes about gender roles. Education is key to enabling women and girls to exercise freedom of expression, conscience, religion and belief, to participate in academic, social and cultural lives. In other words, education is an interrelated and interdependent right, a fulcrum on which the exercise of all other fundamental human rights turns.

CEDAW reinforces that education is a universal human right, and is indivisible and interrelated to other fundamental human rights. In addition, the right to education, freely and fully exercised, is a condition precedent for the exercise of all other rights and freedoms guaranteed in the Universal Declaration of Human Rights. This right also spans the divide between political and civil rights entrenched in the ICCPR, economic, social and cultural rights entrenched in ICESCR and the full spectrum of women's human rights entrenched in CEDAW. It is a trite principle that equality and non-discrimination in education, encompassing as the concept note does, rights *to*, *within* and *through* education, is under threat in the current global political climate. Religious fundamentalism and extremism, as manifested in the abduction of Nigerian schoolgirls in a blatant attempt to deny their rights to education, and in the well documented experiences of Malala Yousafzai, represent an increasing threat to the rights of girls to receive an education. States impunity in this regard, as reflected upon in numerous Concluding Observations issued by the CEDAW Committee and due diligence needs to be addressed. The principle of non-retrogression also applies and requires that existing rights cannot be impugned.

The right to education, and in particular to free and compulsory primary education, has been acknowledged as a universal and fundamental human right which is indivisible from and necessary to effectively realise interrelated human rights. Global commitments to this effect have been reflected in numerous international instruments, some of which are set out below:

*"... Education is a fundamental right for all people, women and men, of all ages, throughout the world.... Every person -- child, youth and adult -- shall be able to benefit from educational opportunities designed to meet their basic learning needs.... to be able to survive, to develop their full capacities, to live and work in dignity.... to improve the quality of their lives, to make informed decisions.... Basic education should be provided to all children, youth and adults.... The most urgent priority is to ensure access to, and improve the quality of, education for girls and women, and to remove every obstacle that hampers their active participation. All gender stereotyping in education should be eliminated."*

**--World Declaration on Education for All, Preamble and Articles 1 and 3**

*"Education is empowerment. It is the key to establishing and reinforcing democracy, to development which is both sustainable and humane and to peace founded upon mutual respect and social justice. Indeed, in a world in which creativity and knowledge play an ever greater role, the right to education is nothing less than the right to participate in the life of the modern world.... The priority of priorities must ... be the education of women and girls.... There can be no enduring success in basic education until the gender gap is closed."*

**--Amman Affirmation, 1996**

*"We are determined to ... Promote people-centred development ... through the provision of basic education, lifelong education, literacy and training ... for girls and women.... Ensure equal access to and equal treatment of women and men in education ... and enhance women's sexual and reproductive health as well as education."*

**-- Beijing Declaration, paras. 27 and 30**

*"Education is a human right and an essential tool for achieving the goals of equality, development and peace.... Actions...: ... Advance the goal of equal access to education by taking measures to eliminate discrimination in education at all levels on the basis of gender, race, ... or any other form of discrimination .... [C]lose the gender gap in primary and secondary school education by the year 2005; provide universal primary education in all countries before the year 2015.... Reduce the female illiteracy rate.... [Ensure] that women have equal access to career development, training.... Improve ... quality of education and ... equal ... access ... to ensure that women of all ages can acquire the knowledge, capacities, ... skills ... needed to develop and to participate fully ... in the process of ... development...."*

**--Beijing Platform for Action, paras. 69, 80, 81, and 82**

*"Education ... should be recognized as a process by which human beings and societies can reach their fullest potential.... Governments should take active steps to ... eliminate illiteracy ... and to expand the enrolment of women ... in educational institutions, to promote the goal of universal access to primary and secondary education...."*

**--Agenda 21, Chapter 36, para. 3; Chapter 3, para. 2; Chapter 24, para. 3**

*"We will ... Establish policies ... that enhance the equality of status, welfare and opportunity of the girl child, especially in regard to ... literacy and education.... We commit ourselves to ... universal and equitable access to quality education ... making particular efforts to rectify inequalities relating to social conditions and without distinction as to race, ... gender.... We will: Formulate ... strategies for the eradication of illiteracy and universalization of ... early childhood education, primary education and education for the illiterate...; Emphasize lifelong learning by seeking to improve the quality of education to ensure that people of all ages are provided with useful knowledge, ... skills ... required to develop their full capacities in health and dignity...."*

**-- Copenhagen Declaration, Commitments 5 and 6**

*"We ... commit ourselves to ... universal and equal access to quality education,... making particular efforts to rectify inequalities relating to social and economic conditions ... without distinction as to race ... gender.... Quality education for all [is] fundamental to ensuring that people of all ages are able to develop their full capacities.... We ... commit ourselves to ... Promoting ... appropriate facilities for ... education, combating ... discriminatory and ... exclusionary ... practices, and ... respecting the rights of all, especially of women, children...."*

**-- Habitat Agenda, paras. 2.36 and 3.43**

*"Everyone has the right to education. [Elementary] education shall be free... compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.... Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights.... "*

**-- Universal Declaration of Human Rights, Article 26**

*In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:*

*(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;*

*(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;*

*(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries ;*

*(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;*

*(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.*

*4. The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:*

*(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;*

*(b) To ensure that the standards of education are equivalent in all public educational*

*institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;*

*(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;*

*(d) To provide training for the teaching profession without discrimination.*

**--UNESCO Convention Against Discrimination in Education, 1960: Articles 3 and 4**

*Education is a fundamental human right. It is the key to sustainable development and peace and stability within and among countries, and thus an indispensable means for effective participation in the societies and economies of the twenty-first century, which are affected by rapid globalization. Achieving EFA goals should be postponed no longer. The basic learning needs of all can and must be met as a matter of urgency.*

**- The Dakar Framework for Action, adopted at the World Education Forum in Dakar 2000**

## **ELEMENTS OF STATE OBLIGATION IN RELATION TO RIGHT TO EDUCATION**

### **1. Standards established under CEDAW**

Article 10 of CEDAW places an obligation on states parties to take **all appropriate measures** to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women :

(a) The same conditions for career and vocational guidance, for access to studies, and for the achievement of diplomas in educational establishments of all categories in rural as well as urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;



(b) Access to the same curricula, the same examinations, teaching staff with the qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning.

- **The obligation to “take all appropriate measures”**

The requirement to “**take all appropriate measures**” is an obligation of result rather than an obligation of means or conduct. It has been established that this requirement “should not be read as permission for States parties to exercise complete discretion as to what is appropriate, but as an indication that they must determine what needs to be done, in what order, based on their legal and political systems. While lack of resources may impede complete fulfilment of the obligation in all areas, it goes to the question of priorities and pace but does not excuse lack of action. The obligation is to “undertake” changes, not to

pick and choose changes.”<sup>4</sup> The phrase “all appropriate measures” means that States are required to identify the existing situation and on that basis determine “appropriate” measures to deal with the situation. This means that although States parties have a certain margin of appreciation in determining an appropriate policy, they are nevertheless obligated to assess areas in which discrimination persists and draw up measures for elimination.

- **Temporary Special Measures**

Achieving substantive equality requires states parties to implement temporary special measures to ensure that benefits for education and education outcomes are equitable and equal for girls and women. Addressing the systemic and structural economic, social, cultural and political disadvantage experienced by women and girls, and which impacts on their equitable and equal access to education, requires special measures to facilitate their access to education. This can be achieved through partnerships with the private sector in which women and girls receive preference in scholarships and bursaries enabling them to access tertiary education and training in areas from which they are traditionally excluded such as scientific research, information and communications technology. Temporary special measures could also address the disproportionate access to and use of information technology by women. The gender gap in internet use is an indicator of lack of equal and equitable access to information technology. Globally 37 %of women are online compared with 41% of men<sup>5</sup>. This gap is more pronounced in developing countries where 29% of women use the internet compared to 33% of men. Women are also on average 29% less likely than men to own a mobile phone. Education and temporary special measures are key to closing these gaps.

The Special Rapporteur on Cultural Rights has emphasised the importance of ensuring that culture of easily accessible information and communication technologies, including the Internet, are especially important to empower women and girls. It provides them with the tools and capacity to access information, connect with their counterparts in other societies,

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<sup>4</sup> [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/documentation\\_the\\_optional\\_protocol\\_to\\_cedaw.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/documentation_the_optional_protocol_to_cedaw.pdf)

<sup>5</sup> Report of the Secretary – General “Challenges and achievements in the implementation of the Millennium Development Goals for women and girls,” E/CN.6/2014/3, paragraph 51

and to express themselves and develop their knowledge and ideas<sup>6</sup>. Access to information technology for girls and women is critical for the expression of other rights such as freedom of movement, freedom of opinion and expression, religion or belief, and freedom of association, and freedom to participate in social, economic and political life.

## **2. Standards established under UN International Covenant on Economic, Social and Cultural Rights currently**

States that have ratified the UN ICESCR currently have to fulfil their obligations to make education for girls and women available, accessible, acceptable and adaptable<sup>7</sup>. These 4 principles have been articulated as below:

- **Availability**

Availability is defined in CESCR GC 13 as ensuring that “functioning education institutions and programmes within the jurisdiction of the state party are available in sufficient quantity and with adequate infrastructure and facilities including safe drinking water, sanitation for both sexes, trained teachers receiving “domestically competitive salaries”<sup>8</sup> and teaching materials. Properly or adequately functioning institutions are a minimum requirement whereas developed countries would have schools with libraries, computer facilities and telecommunications, and physical science laboratories. In addition, for undocumented migrants, displaced people and other vulnerable groups, “sufficiency” of education facilities has been posited as a test depending on states parties available resources. This is problematic as it may perpetuate further marginalisation of vulnerable communities.

Available education means ensuring free and compulsory education for all children irrespective of gender. Free education ensures that inability to pay fees is not a constraint, and does not result in boys being given preference in families required to make financial choices based on gender. The abolition of school fees has been shown to increase

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<sup>6</sup> Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, A/HRC/20/26

<sup>7</sup> See CESCR General Comment 13.

<sup>8</sup> UNESCO – ILO Recommendation Concerning the Status of Teachers (1996) and UNESCO Recommendation Concerning the Status of Higher –Education Teaching Personnel (1997) – refers to state obligations to report on measures they are taking to ensure that all teaching staff enjoy the conditions and status commensurate with their role.

enrolment of girls in primary school in many African states, including Uganda, Tanzania and Kenya. States have an obligation to progressively realise this right. Poverty is a major impediment to ensuring the availability of education, and states have an obligation to address this through adequate allocations in national budgets as well as through partnerships with the private sector.

Providing for co-educational schools as well as separate educational systems for girls and boys is not a *per se* breach of this obligation, although the quality of education and outcomes are a better determinant of the impact on advancing gender equality.

- Accessibility

The most basic component of the right to education is the right of access to education – states have an obligation to ensure that the right to access is ensured through implementing legal, institutional, social, political, environmental and cultural mechanisms and infrastructure to ensure that unimpeded, safe and free access is guaranteed. This would prevent girls being kept out of schools because of fears for their safety, or access to schooling being impeded by violence on the journey to school or at school, lack of safe transport, lack of adequate sanitation facilities at school, and other related factors. This requires taking proactive, preventative and punitive measures to enforce this right. Legislation should entrench compulsory primary education and awareness raising should be undertaken in communities where cultural and religious reasons or gender stereotypes prevent girls exercising their rights to free, safe and unimpeded access to education. Realising the right of access as a component of the right to education requires addressing the underlying structural and systemic causes of poverty and discrimination. Global neoliberal economic policy drives economic growth at the expense of human rights and the macroeconomic policies of developing countries focus on market driven investment and production of commodities for the global market instead of investment in services. This has resulted in widespread displacement of communities from land sold to extractive industries, ethnic and communal conflict, rapid urbanisation, increasingly vulnerable and precarious employment, and migration and trafficking with its obvious economic and social ramifications in the Asia Pacific region.

This obligation on states parties applies to and can be enforced by all women and girls<sup>9</sup> and all disadvantaged and marginalised groups including out-of-school youth, unemployed youth, children of migrant workers (including undocumented migrants) and refugees, and children with disabilities.<sup>10</sup> Accessibility requires the elimination of all forms of discrimination in access. The Dakar framework emphasises this as well as prioritising access for vulnerable, marginalised and disadvantaged groups. It requires preventing, through legislative and institutional measures, women and girls living with HIV/AIDs, or with disabilities, or who are LGBT from being denied access to education. It accordingly requires institutions that can be accessed equally by all people, irrespective of race, gender, sex, disability, sexual orientation or gender identity, HIV status, ethnic origin, indigenous status, rural status, nationality or citizenship, migrant status, pregnancy, marital status, religion, culture, place of birth, and other arbitrary grounds.

Accessibility also requires quality education into which human rights are mainstreamed and diversity and equality are embraced. Quality education should not promote gender discrimination or gender stereotypes of any form, should as far as possible be gender neutral. Courses should be available to both boys and girls and there should be no compulsory streaming or segregation, and content should not reflect religious or cultural norms that reinforce gender stereotypes.

The right of access is a right to access and participate in education and to benefit from gender-sensitive and gender-responsive educational environments and to obtain meaningful outcomes that ensure education benefits translate into greater participation in social, economic, environmental, cultural and political development of communities and societies. Thus it is critical that states parties to CEDAW report not only on access to primary education, but also completion and long-term educational attainment. The distinction between gender parity and gender equality should also be made.<sup>11</sup>

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<sup>9</sup> CRC Article 2 and UNESCO Convention Against Discrimination in Education article 3 (e) confirms that the principle of non-discrimination extends to all persons of schooling age residing in the territory of the State party, including non-nationals and irrespective of their legal status.

<sup>10</sup> See para 35 GC NO. 5 of CESCR which addresses the rights of persons with disabilities in the context of the right to education.

<sup>11</sup> See the discussion on gender parity and gender equality in education in Takyi-Amoako, E (2008) "Poverty reduction and gender parity in education: An alternative approach" in S.Fennel and M.Arnot (eds.) *Gender Education and equality in a Global Context: Conceptual Framework and Policy Perspectives*. London:Routledge, pp 196-210.

This right of access should not be limited to primary education but also applies to secondary, tertiary, academic, as well as technical and vocational education<sup>12</sup>. Pre-school facilities and nursery schools or day care for women in rural areas is also critical as it has the potential to free women to engage in productive work in the community and family instead of being confined to the burden of unpaid care work.

- **Acceptability**

Acceptability refers to the content and quality of education. Human rights should be mainstreamed into education curricula in order to build schools which are based on equal respect for girls and women. The values and norms which prevail in schools are strong indicators of the values and norms that adolescents adopt. Entrenching respect for the human rights and fundamental freedoms of all irrespective of race, gender, disability, sexual orientation, gender identity, cultural or ethnic group or origin, and other grounds is critical to developing a broader culture of respect, peace, safety and dignity.

- **Adaptability**

Adaptability is referred to in General Comment 13 as responding to the changing needs of society and responding to the needs of students within their diverse social and cultural communities. However, materials should not reflect retrogressive cultural and social norms or those that prevent women's enjoyment of their right to equality, even where this is reflective of an emerging culture.

### **3. Standards Established under the UN Convention on the Rights of the Child**

*States Parties recognize the right of the child to education, and ... shall ... make primary education compulsory and available free to all; ... make [secondary education] available and accessible to every child...; make higher education accessible to all on the basis of capacity...; make educational and vocational information and guidance available and accessible to all children; take measures to encourage regular attendance at schools and the reduction of drop-out rates.... States Parties agree that the education of the child shall be*

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<sup>12</sup> See Article 1 (2) of the Convention against Discrimination in Education which defines 'education' as a reference to "all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given".

*directed to: ... the development of the child's personality, talents and mental and physical abilities to their fullest potential...."*

**-- Convention on the Rights of the Child, Articles 28 and 29**

Governments that have ratified the UN CRC have obligations to create conditions that support parents to give effect to the equal right of girls to access and benefit from education. Parental duties, rights and responsibilities in relation to education of their children should be effectively enforced through legislation, courts and institutions, even though the UN CRC acknowledges parental decision making in the nature and form of education for their children. Ultimately however, the state is the guardian of the child in most common law systems, and where a parental decision denies a child the fundamental right to education, e.g. in preferring a girl child to be home schooled so as to perform care work, laws governing compulsory education should trump laws guaranteeing parental decision-making. Education is critical to eliminate poverty, child labour and child marriage and in this regard states parties obligations under ILO Conventions on the Minimum Age for Employment and the Convention on Intolerable forms of Child Labour should be enforced<sup>13</sup>.

## **THE LINKS BETWEEN EDUCATION RIGHTS FOR GIRLS AND WOMEN AND SUSTAINABLE DEVELOPMENT GOALS**

The Millennium Development Goals and the proposed agenda for 2015 Sustainable Development Goals have drawn particular attention to the persistence of legal, structural, systemic inequality that continues to define the experience of women and girls. Gender equality, women's human rights and economic empowerment of women were agreed as a stand-alone goal in the 58<sup>th</sup> Commission on the Status of Women, emphasising the need to accelerate progress in this area. Education is a vital to achieving sustainable development as it enables addressing the structural drivers of gender inequality. This ensures the realisation of the full human capabilities of every woman and girl, which will result in achieving societies where structural inequality is no longer entrenched in laws, policies, institutions and social norms. Educating girls and women will result in long term equality, sustainability, peace, development and justice.

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<sup>13</sup>C 138 ILO Conventions on the Minimum Age for Employment and C 182 ILO Worst Forms of Child Labour Convention, 1999 (No. 182)

## STATE OBLIGATION TO PROVIDE QUALITY EDUCATION IN THE CONTEXT OF WOMEN'S HUMAN RIGHTS

Quality education is education that has at its core the promotion of non-discrimination, equality and human rights for all. In the context of gender equality, it requires education curricula that do not perpetuate discriminatory stereotypes but instead reinforce women and girls as equal participants in the family, economy and society. Quality education can only result in human rights for all people being realised if it endorses these human rights and promotes respect for a culture of equality, fairness and justice for all, including women and girls.

In this context it is imperative that states parties be required to remove reservations to CEDAW based on culture and religion, and that they should be held accountable for removing cultural and religious norms that prevent the education of girls and women. Changing norms and beliefs that undermine the rights of women and girls to education requires a change in cultural paradigms. In this regard the fourth thematic report on Cultural rights and gender the Special Rapporteur on Cultural Rights<sup>14</sup> stresses, inter alia, that “the struggle for women’s human rights is not against religion, culture, or tradition”... The task at hand is to identify how human rights in general, and equal cultural rights in particular, can enable women “to find paths through which we may view tradition with new eyes, in such a way that it will not violate our rights and restore dignity to ... women ... [and] change those traditions which diminish our dignity”<sup>15</sup>. The Special Rapporteur defines cultural rights to encompass a broad range of issues, including self-expression and creation; information and communication; language; identity and simultaneous belonging to multiple, diverse and changing communities; the pursuit of specific ways of life; education and training; taking part in cultural life, and the conduct of cultural practices. Education is therefore necessary to transform culture to reflect progressive social norms on gender

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<sup>14</sup> See A/67/287 paragraph 4.

<sup>15</sup> She cites Marsha Freeman, “Article 16 CEDAW and the Right to Practice One’s Beliefs”, in *Women’s Human Rights and Culture/Religion/Tradition: International Standards as Guidelines for the Discussion?*, Netherlands Institute of Human Rights (SIM) Special No. 32, Rikki Holtmaat and Ineke Boerefijn, eds. (Utrecht, 2010), pp. 63-64. See also Christine Chinkin, Marsha Freeman and Beate Rudolf, eds., *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford, Oxford University Press, 2012).



equality, and is also conversely a product of a progressive culture that respects gender equality.

- **Education that opens up opportunities and choices**

Among the principal aims of education is to support children to develop their intellectual and social skills and to blossom in their own sense of self and autonomy.

Principle of indivisibility means that education must be assessed on its contribution to the realisation of the full spectrum of other human rights and as foundational to the exercising of other rights – this is another component of quality education. Human rights must be mainstreamed into education. It is not an end in itself but a means to effectively realise the elimination of inequality and discrimination, as well as to redress disadvantage and in so doing facilitate the realisation of other human rights.

The focus of global strategies has been on the means of education, and this has been simplified to mean that all girls should start and finish primary school. Since education is a means and enabling factor to provide girls with choices in life, primary schooling may not be enough.

As noted by the Special Rapporteur on Education<sup>16</sup> the wrong kind of education is “...Worse, [because] it can in fact obliterate choice if a girl is taught that her destiny is to be a submissive wife and mother”.

- **Academic freedom**

The right to education must be exercised with due regard for freedom to express contrary views without repercussions. Access to information/communication must be guaranteed.

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<sup>16</sup> Girls’ education through a human rights lens: What can be done differently, what can be made better, K Tomasevski 2005

- **Comprehensive sexuality education**

GR 28 article 21 already reflects state parties obligations to pay attention to the needs of adolescent girls, who are particularly vulnerable to violence and other rights violations, by providing education on sexual and reproductive health and by carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy. The need for comprehensive sexuality education as requirement of school curricula has been reinforced post the Cairo Declaration through various international and regional for a based on the results of the recent Global Survey, especially in the current discussions on ICPD beyond 2014<sup>17</sup>.

Comprehensive sexuality education, linked to comprehensive and integrated sexual and reproductive health services for all young people, particularly adolescent girls, both in and out of school, is key to preventing unwanted pregnancy, HIV and other STIs, and enables adolescents to make relevant choices for themselves. It should be understood as age-appropriate education about human rights, human sexuality, gender equality, relationships and sexual and reproductive health and rights through the provision of scientifically-accurate, non-judgmental information. Comprehensive sexuality education is essential for young people to promote values of tolerance, mutual respect and non-violence in relationships, and to plan their lives.

- **The principle of progressive realisation**

State obligations regarding primary education is compulsory but secondary education requires “progressive realisation”, and being made available and accessible by “all appropriate means”. Article 2 of CEDAW requires that states take measures to ensure the elimination of discrimination “without delay”, and this is primarily an obligation of immediacy. Article 2(2) of ICESCR applies “fully and immediately” to all aspects of education and encompasses all internationally prohibited grounds of discrimination. CESCR committee records in article 31 of GC 13 that it interprets Articles 2(2) and 2(3) in the light of UNESCO Convention Against Discrimination in Education, CEDAW, CERD, CRC, and ILO Indigenous and Tribal People’s Convention 1989 (Convention No. 169).

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<sup>17</sup> Report of the Sixth Asian and Pacific Population Conference, Bangkok, 16-20 September 2013 E/ESCAP/APPC(6)/3,

- **Justiciability of the right to education**

Although the primary mechanism for enforcement of state obligations is through the CEDAW Committee periodic reviews and concluding observations, the right to education is subject to judicial and quasi-judicial determination and it is imperative that clear standards for its enforcement by girls and women exist. The development of a comprehensive jurisprudence reinforcing the nature and extent of rights in education as well as the obligations of states is critical. Legislation should delineate the content of state obligations in order to ensure that violations can be enforced.

Special Rapporteur on Right to Education refers to Supreme Court of Colombia decision upholding right of a pregnant girl to education and nullifying school regulations that deny such a right<sup>18</sup>, as well as Botswana Court of Appeals decision.

For the right to education to be a justiciable right state parties must set in place mechanisms and legislations to hold both private and public state institutions accountable. An example of efforts in this direction can be witnessed in India where Amendments to Article 21 of the Constitution now guarantees free and compulsory education to all children of age 6 yrs to 14 yrs<sup>19</sup> and a subsequent legislation titled The Right of Children to Free and Compulsory Education (RTE) Act, 2009. In 2012 as well as in 2014 the latter passed the test of constitutional validity through judgements of the Supreme Court of India which reaffirmed the application of the said law and its requirement of reserving 25% seats for under-privileged children to private educational institutions as well, although it exempted unaided and aided educational institutions run by minority communities within the country.

Lastly, it must be acknowledged that improving legal literacy in adult education as well as in secondary schooling is also key to promoting access to justice as it enhances awareness of rights amongst women.

- **Employment and occupation**

In addition to quality education which meets acceptable standards for competing in the job market and entering non-traditional jobs and occupations, which the concept note refers to, a balanced and mutual relationship with the private sector should be encouraged so that

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<sup>18</sup> See para 58 of SR's report, A/HRC/23/35

<sup>19</sup> The Constitution (Eighty –Sixth Amendment) Act , 2002

corporate social investment can be channelled into addressing occupations and jobs where women are not equitably represented, for instance scientific research. It also requires addressing the labour standards applicable to the teaching profession, which is dominated by women teachers in most countries and is still generally considered a low paid and low status occupation. Requires ensuring that school curricula are designed to address market needs and adapting to ensure that education translates into increased capacity to fully realise human potential through accessing employment.

Education of girls should not be geared towards roles in the formal economy but should be a process of empowerment. It should encourage entrepreneurship and encourage interest in the sciences for girls. Girls should be prepared for jobs and occupations that span the entire spectrum of available opportunities, including IT, medicine, science, engineering etc. They should not be trained for employment in jobs in traditional female industries such as nursing and other forms of care work.

- **Cultural and Social Barriers to girl's right to education**

Many expert studies including those of the Special Rapporteur on Education have identified that the majority of problems for girls' education lie outside of education and its system of implementation. While internal barriers remain challenging, the true factors of exclusion restriction and forces which nullify the right of young girls to quality education which empowers and supports their autonomy is in social, cultural and political spheres of influence.

The General Recommendation needs to clearly address these cultural and social factors, e.g., the interaction between marriage and education and the link between the minimum age for completion of compulsory education and the minimum age for marriage which has been established in many studies<sup>20</sup>. To effectively protect girls right to education, State

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<sup>20</sup> UNICEF, Early Marriage: Child Spouses, Innocenti Digest No. 7 (Florence: Innocenti Research Centre, 2001); Office of the United Nations High Commissioner for Human Rights, Harmful Traditional Practices Affecting the Health of Women and Children, Fact Sheet No.23 (Geneva: OHCHR); S. Mathur, M. Greene, A. Malhotra, Too Young to Wed: The Lives, Rights, and Health of Young Married Girls (Washington: International Center for Research on Women, 2003); International Planned Parenthood Federation, Ending Child Marriage: A Guide for Global Policy Action (London: International Planned Parenthood Federation, 2006); A. Bunting, 'Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue', *Social and Legal Studies* 14(1): 17-38, 2005

Parties must also protect girls from practices which remove them from the educational stream.

Other cultural practices that deny girls the right to education and have seen girls being harassed and abused merely for attending school such should be challenged by the state through awareness raising with communities, and legislation which clearly protect girls right to education and criminalise the actions of third parties/non state actors who prevent, restrict, limit or diminish these rights, as well as to prioritise resources and securitisation of schools and affected communities to effect these measures.

- **Targets, goals and indicators in implementation of State Obligation**

Measuring education content, the admissions process and outcomes is critical to ensuring that exercising the right to education is advancing gender equality. In this context various targets, goals and indicators have already been developed and are currently being discussed by the Open Working Group on Sustainable Development goals. In order to align CEDAW obligations with this process it is useful to consider context specific indicators to monitor the requirements as mentioned under General Comment 13 of UN ICESCR in girls and women's rights to education. In this regard the following indicators are suggested:

- Is there a constitutional right to equality and non-discrimination based on gender, sex and other arbitrary grounds?
- Does domestic legislation provide for compulsory primary schooling and does it prohibit discrimination in education on the grounds of sex, gender and other arbitrary criteria?
- Is there legislation on elimination of cultural and social barriers that deny and/or limit right to quality education for girl's such as early marriage?
- Does education legislation provide for quality education including school curricula that reflect human rights norms and values, respect for equality and diversity and equality and diversity in school governance bodies? Is it free from discriminatory beliefs and stereotypes which entrench gender inequality? Are the curricula and texts open and tolerant towards a range of different (religious, political, etc.) belief systems?
- Is primary schooling free and if not is there a national education policy which provides for the progressive realisation of free primary schooling, amongst other requirements for access and availability of equal education for girls?

- Are there temporary special measures to facilitate access to education and to specific areas of education for women and girls? Does the private sector provide funding to facilitate this?
- Are education systems pluralistic and inclusive? Are there choices for different types of schools and educations?
- Are there minimum standards for education (numbers of text books, methods of instruction, etc.), which are monitored and enforced by the government (in both the private and public school systems)?
- Is the school safe? Is gender based violence and other forms of violence condemned? Are minimum health standards in place?
- Are there sufficient teachers? Are they trained to an appropriate standard? Are they properly supported and supervised?



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