

# Education in Africa:

## Responding to a Human Rights Violation



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# The right to education in theory and practice

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Education is a fundamental human right. Half a century ago, article 26 of the Universal Declaration enshrined the right to free basic education. Subsequent commitments - the 1966 International Covenant on Economic and Social Rights, and the 1989 Convention on the Rights of the Child - have reaffirmed this right. At the regional level, the 1990 Charter on the Rights and Welfare of the African Child committed all states to the full realisation of the right to education, with a particular focus on free and compulsory basic education. Numerous other declarations, conventions, covenants and constitutions reiterate education's status as a right.

The concept of rights has become increasingly commonplace in the discourse of international development, and its use has been steadily extended to the social and economic spheres over recent decades – so much so that even the World Bank has now been encouraging an internal debate about whether it should become a rights-based organisation. Governments, donor agencies, Non-Governmental Organisations, campaign groups, and societies at large are increasingly speaking the language of rights.

Yet there is a massive gap between the language and practice of rights. This is starkly apparent in education, where the basic rights of millions of people are routinely violated. The epicentre of this education rights violation is Africa. At least 53 million African children of primary school going age – one quarter of the age cohort - are not in school (*World Bank 2002a, UNESCO 2002*). Moreover, Africa's share of the world's out of school children is set to grow sharply in the period up to 2015, the target date set

by the international community for achieving universal primary education. While other developing regions are making progress towards getting children into school, most of Africa has stagnated or gone backwards. At present, fewer than half of the world's out of school children are African. On current trends, by 2015 three out of four of the world's out of school children will live in Africa (*World Bank 2002a*).

These numbers are the statistical tip of a mountain of unmet educational need. Perhaps 50% of children in the region complete the primary education cycle, considered the minimum requirement for attaining basic literacy and numeracy skills. Household-level surveys and other studies suggest that even these data need to be treated with scepticism, and probably understate the gravity of the situation. Millions of children who do complete receive a schooling that is of such poor quality that little or no meaningful learning takes place. In Zambia, one recent survey found that three quarters of primary

school leavers were functionally illiterate (Kelly 1998). Comparative studies of learning attainment typically place African countries bottom, or near-bottom of the table (Elley 1992).

Getting children into school is only one part of realising the right to education. Rights *in* education, as well as the right to education, are widely violated. In much of Africa, schooling infringes on the rights of minorities, where language policies and curriculum content suppress or devalue local culture (e.g. Serpell 1993). Where education is used to foment inter-ethnic hatred, as in pre-genocide Rwanda, it violates the right to freedom from indoctrination, and threatens other, yet more basic rights and freedoms (Tomasevski 2001a). Realising the right of girls to education is entwined with the rights gained through education, yet too often schools are sites of some of the worst physical and sexual abuse perpetrated against girls and young women (Human Rights Watch 1999, 2001).

The extent of these rights violations leads some to question the meaning or utility of approaching education as a right, and to treat the terminology of rights as a rhetorical flourish, or vague moral appeal. Certainly it is important to be clear about what it means to describe education as a right. Two sets of implications are identified here. First, education is an entitlement that is sanctioned by states, through legislation and national constitutions - twenty-seven sub-Saharan African countries have a constitutional guarantee of free basic education for all children, and all African states bar Somalia are signatories to the Convention on the Rights of the Child – and therefore education is a justiciable right. Second, education is a right with correlate agency-specific duties and obligations. Parents have a responsibility to send their children to school, and states have a

responsibility to guarantee access to a free, quality basic education – as is clearly stated in international human rights law. The right to education is – as with all fundamental rights – of necessity absolute, and demands priority over non-rights considerations (Rawls 1971).

The absolute nature of the rights approach to education development sits uncomfortably with the policies and practices of many governments and donors, a point that will be returned to later in the paper. At one level, this reflects a tension between a liberal vision of education, based on competition and individual choice (favoured by the World Bank), and a communitarian model of equity and state responsibility (favoured in human rights law). Yet the most frequent objection to a rights approach to education is more pragmatic: if cash-strapped developing countries cannot afford to provide education for all, then education cannot be a universal right in any meaningful sense.

Yet this objection is misplaced, however real the difficulties facing developing country governments which must mobilise resources and balance spending priorities. Human rights law recognises the inability of many countries to fund universal basic education immediately from their own resources. However, states are obliged to progressively realise the right to education. This does not mean endless deferral of the target date for realising universal primary education, as has occurred at successive international education summits, from Addis Ababa in 1961 (where a target date of 1980 was set for achieving Universal Primary Education) to Dakar in 2000 (where a target date of 2015 was agreed). Rather, states are obliged to take clear iterative steps, making the maximum political and fiscal effort, to extend education access to all children.

While the primary responsibility for realising the right to education rests with national governments, there is also an international obligation at the level where governments operate collectively – through the UN system and the International Financial Institutions – since *universal* rights entail *universal* responsibilities. The Convention on the Rights of the Child is very clear on this point – the international community has an obligation to help national governments overcome resource constraints, where they are unable to fully fund universal basic education from their own resources. As with national governments, donor countries are obliged to undertake maximum efforts to ensure that the right to education is realised. These interlocking principles of maximum resource mobilisation, progressive implementation and international cooperation provide clear criteria against which to judge the performance of individual governments, and the international community on their delivery of the right to education.

There is a further, ethical rather than legal reason for approaching education as a human rights issue. Education generates significant private and social returns over the long term, and is widely regarded as a prerequisite of economic development. This is the basis on which national governments often justify education spending, and is the rationale for World Bank lending to the education sector. Yet most people do not prize education simply, or primarily because it is an economic good, and justifying it solely on these grounds is risky. For example, if rates of return analysis showed lower private and social returns to girls' schooling, or schooling for disabled

children, it is unlikely that this would be treated as a policy guide by governments and donor agencies. There is an ethical imperative to educate all children, partly because literacy, numeracy and other benefits of education are goods in their own right, that enrich the lives of individuals, communities and society at large, and partly because there are strong equity and equality considerations at stake. The human rights framework provides perhaps the most powerful and compelling case for public action to achieve education for all. Human rights law can also spur public pressure, and legal action, to hold governments to account for the accessibility, quality and efficiency of basic education.

Despite education's status as a right in human rights law, and the growing tendency to use the language of rights in talking about education, governments and donors continue to approach education as a discretionary good, rather than a binding obligation. In short, children's rights are being violated because their governments, and the international community, have made the political choice not to prioritise education. This has far-reaching implications beyond education, for the exercise of other fundamental rights and freedoms, and the development prospects of Africa.

## Education as an enabling right

Education is not only a good in itself. It is also an enabling right that permits the exercise of other fundamental rights. This is clearly demonstrated in the field of social and economic rights.

First, the right to a standard of living adequate for health and well being is heavily contingent on the right to education. Education better enables individuals to prevent and manage health problems, and a substantial body of evidence demonstrates the impact of female education on child health and mortality rates. Children of educated mothers, controlling for other factors, are likely to be better nourished, and fall ill less often and less seriously than the children of uneducated mothers (*Colclough with Lewin, 1993*). In 17 countries in sub-Saharan Africa, education has been shown to be closely correlated with lower HIV-AIDS infection rates, with educated women more likely to delay sex, and insist on using a condom (*World Bank 2002b, UNAIDS 2000*).

Second, education has a critical bearing on people's ability to exercise the right to a livelihood. Despite the weakening link between primary education and labour market returns in most African countries, education remains a necessary condition of formal sector employment. More generally, education imparts many of the skills needed to work precisely and cooperatively, allocate inputs more efficiently, select new inputs to achieve production goals and generally to respond to market signals. Education has also been shown to have a significant effect on agricultural productivity and on informal sector activities, which is especially important for most African countries, which remain predominantly rural and agrarian (*Colclough with Lewin 1993*).

The right to education enables individuals to participate in other areas of economic activity, such as the securing of land rights, and investment in, and sale of assets. Three trends in particular are increasing the importance of education in enabling people to exercise their economic rights. First, Africa is rapidly urbanising – in 1975, one in five Africans lived in an urban centre. It is projected that by 2015, 43% of Africa's population will live in cities (*UNDP 2002*). The change is significant not least because urbanisation tends to strengthen the relationship between poverty, inequality and education, since the urban economy is both more monetised and formal than the rural economy. Second, the liberalisation of African economies over the past two decades, a consequence of donor adjustment policies and technological, economic and political change, has made education an increasingly important factor in gaining access to markets. For example, land rights are being steadily codified and individualised, and increasingly based on property contract rather than customary access, often in a bid to bolster private sector investment. Being able to maintain, gain access to and understand land records, and enter into contractual agreements hinges on literacy, placing the rural poor and women at a particular disadvantage. Third, the onset of the information age, characterised by the growing role of knowledge-intensive production and trade in wealth creation, places individuals and societies with low levels of education at a fundamental economic disadvantage.

The World Bank estimates that more than half of the GDP in industrialised countries is knowledge-based. While the share of high technology goods and services in international trade has doubled over the past two decades, the share of non-mineral primary commodities has halved to just 13% (*Cairncross 1997*).

Some liberal economic commentators question the validity of these social and economic rights, while upholding a narrower set of civil and political rights (prioritising 'freedoms from' over 'freedoms to') (*Brittan 2000*). Yet the division between the two is far from clear: education has a critical bearing on our ability to exercise civil and political rights, and reduces the likelihood of their being infringed by governments. Education gives people the confidence and critical ability to make informed political choices, understand and resort to legal process, and hold decision-makers to account – benefits cited by participants in adult literacy programmes (e.g. Archer and Cottingham 1996). In Bangladesh, one survey found that women with a secondary education were three times more likely to attend a political meeting than women with no education (*Oxfam 1999*). Illiteracy is a further bar on political participation in many countries where literacy in general or in a particular language is a requirement for candidacy for election (*Tomasevski 2001a*).

Education is unique in the extent to which it is an enabling right, unlocking economic potential, driving improvements in health and nutrition, and fostering political participation and empowerment. The corollary of this is that unless the right to education is realized in Africa, the prospects for social and

economic development, and the realization of other fundamental freedoms and rights in the region are dim. Responding to education as a rights violation is the key to the success of broader strategies to realize rights, and achieve development in Africa. The right to education places legally binding obligations on governments and donors to prioritise education above non-rights objectives, and commit maximum efforts to achieving universal access to free basic education. Yet at present, this rarely happens. Education is instead treated as a discretionary good by most governments and international aid donors. By 'free' education, human rights law means that governments must remove all financial obstacles to enrolment, to enable all children to complete primary schooling. In turn, this requires the state to be willing and able to mobilise resources through general taxation. Yet in much of Africa, the state lacks either the ability or commitment necessary to raise sufficient revenues to fund universal basic education. The income tax base is small in largely rural, non-wage economies, while tax systems are often inefficient. These factors help to explain why African countries often have a low tax revenue as a proportion of GDP, typically below 15%. Low-income African countries are heavily dependent on trade taxes for revenues – on average 28% of their tax income came from this source in the mid-1990s, in contrast to under 2% in most high income countries. Yet unilateral trade and investment liberalisation, carried out through IMF and World Bank adjustment programmes, is rapidly eroding trade taxes. In many instances, these are being replaced by regressive consumption taxes that are further limiting the ability of poor households to afford to send their children to school (*Grunberg 1998*).

# Responding to a human rights violation: the implications of a rights-based approach

Education is not only a good in itself. It is also an enabling right that permits the exercise of other fundamental rights. This is clearly demonstrated in the field of social and economic rights.

The tendency to treat education as a discretionary good is perhaps best exemplified by governments of poor countries allocating money to military expenditures and prestige projects, while neglecting education. In Nigeria in 1994, the Abacha government bought 18 Vickers Mark 3 tanks as part of \$150 million deal – equivalent to over half of the total national expenditure on basic education (Watt 2000). More recently, a new national stadium in Abuja was constructed for more than the total basic education budget.<sup>1</sup> The case of Nigeria is extreme, but not untypical. In most low-income African countries, non-productive discretionary expenditures – as often as not off-budget – exceed spending on basic education. For example, Mali, Niger, Zambia, Burkina Faso and Chad – none currently engaged in a conflict – all spend more on their military forces than they do on education (Oxfam 1999).

Within the education sector, the distribution of spending rarely reflects rights-based principles. As a right, basic education holds a prior claim over public resources in a way that tertiary education does not. Yet in many cases, a tiny minority of privileged students at the apex of the education system receive disproportionate public funding at the expense of a poor majority at the bottom. For example, Zambia spends 135 times more on each university student than it does on each primary

student (Kelly 1999). This tendency is reinforced by donor programmes, which often prioritise capital intensive and heavily tied programme support to tertiary education over support for the primary level. In 2000, just one-quarter of G7 aid to education in Africa – \$270m – went to basic education, a smaller sum than the cost of holding the 2002 G8 summit in Canada (World Bank 2002a).

While there is enormous scope in many countries to reallocate spending in favour of basic education, the macroeconomic and fiscal parameters within which governments plan for education are a further barrier to achieving the right to education. For example, education is subordinated to debt service repayments demanded by the multilateral lending institutions, which have first claim on the budget envelope. In heavily indebted poor countries such as Zambia, this meant that in 2000 the discretionary budget was just 54% of Zambia's budget envelope. In terms of the overall budget envelope, Zambia's commitment to education was low, at just 14% of total spending. Yet Zambia was spending more than one-quarter of its discretionary budget on education (Watt 2001). The Heavily Indebted Poor Country (HIPC) initiative has not fundamentally altered this situation, with governments continuing to spend an average of 13% of their budget envelope on debt repayments after receiving debt relief.<sup>2</sup> Governments'

ability to treat education as a right is further restricted by deflationary adjustment policies that restrict public spending. Uganda is a case in point, where the Finance Ministry recently objected to receiving additional aid for education, on the grounds that it will undermine fiscal targets agreed with the IMF, and threaten inflationary and exchange rate benchmarks (ActionAid 2003).

In sum, the way in which governments and donors plan, tax, budget and spend is a systemic barrier to realizing the right to education in Africa. The current approach must be turned on its head, with governments and donors treating the realisation of basic rights as a starting point in planning and budgeting processes. This in turn will demand far-reaching changes in how the International Financial Institutions (IFIs) operate, and the sorts of macroeconomic and fiscal conditionalities they apply. At present, the IFIs operate apart from the wider development community. A much more inclusive approach to the Poverty Reduction and Growth Facility (PRGF) and Poverty Reduction Strategy Paper (PRSP), the adjustment instruments used by the IFIs, is urgently needed – one that involves all development actors, and brings basic rights to the fore of the planning process, rather than treats them as an afterthought.

Progress on the right to education requires urgent and intensified action at the sector level. Three areas are identified here. First, governments and donors must adopt clear, time-bound strategies to provide sufficient school places for all children – both the unreached and the deliberately excluded. Africa is the only region of the world where a lack of school places remains a major barrier to access. In

Francophone Africa especially, education systems are often explicitly geared to reaching a minority of students, and then screening that minority for progress to the secondary level. Rural areas are generally under-served, and the dominant school model conforms to urban realities – from the structure of the school day and year, curriculum and language of instruction to the management structure, which ignores the isolation and dispersal of many rural communities. For schools to become genuinely accessible, they need to be responsive to the needs of their communities, and adapt to local conditions. In turn, this requires that communities be given a greater voice in the running of their schools. Overcoming demand-side barriers to education also requires that rights within the school – 'rights in education' – are realized, alongside the right to education. This includes acting against physical and sexual violence in and around schools, providing clean water and sanitation, and providing the minimum material conditions needed for meaningful learning to take place.

Millions of children in Africa are actively excluded from education, in addition to those who are unreached. These include Internally Displaced Persons, refugees in countries which only recognise the right to education for their own nationals, disabled children for whom no provision is made, nomads and pastoralists, and children who attempt to enter the education system, but find that they are too old (Tomasevski 2001b). Unless education strategies recognise the distinctive needs of these children, and undertake legislative and policy changes, the right to education will continue to be violated.

<sup>1</sup> The Economist, 'More pain, little gain', July 28th 2001

<sup>2</sup> World Bank Heavily Indebted Poor Countries initiative issue brief, April 2003

Second, the right to education cannot be realized unless primary schooling is made genuinely free. The Convention on the Rights of the Child states that no child should be denied access to primary education as a result of cost. Yet fees and other direct and indirect costs, both official and unofficial, are a major barrier to access in most African countries. In countries where fees have been abolished, such as Tanzania, the enrolment response has been dramatic and sudden with an additional 1.5 million children entering the system, pointing to huge pent-up for education amongst the poor (*Oxfam 2001*). The corollary of the obligation to provide free education is that education must be adequately financed. Abolition of fees results both in foregone expenditure and in increased demand for education. Therefore, to have a sustainable impact on access, the introduction of free education must be accompanied by strategies to mobilise alternative sources of revenue. Otherwise, the abolition of fees can drive previously official payments underground, as schools struggle to protect their income. Adequate financing of education and other basic rights will require many African countries to increase their tax take, and their budget allocations to education and to basic education, and to undertake steps to ensure that the money is spent far more efficiently than at present. Progressive and stable taxation, a transparent and effective budget process, and strong public expenditure management lie at the heart of achieving the right to education. Even where these actions are taken, much more and better quality donor support will be needed to enable low income countries to deliver the right to education, in conjunction with the realization of other rights. Existing donor commitments to basic education, and to Africa generally, are woefully inadequate given the scale of the need – in

education annual aid flows must increase at least fivefold, according to the most optimistic World Bank estimates (*ActionAid 2003*). Donors also need to embark on tough reforms to their aid programmes, that make aid more predictable, coherent, harmonised and better targeted at poor people.

Finally, ending the human rights violation in education will demand genuine political commitment from all quarters – national governments, donor governments, international institutions and civil society. Many of the reforms discussed in this paper are technically demanding, and politically contentious. Current government and donor practices reflect political pressures and interests, and it will take a leap of imagination and ambition on the part of key advocates for education, and for human rights, to change this situation. Ultimately, the right to education is most likely to be achieved and sustained where there is a groundswell of popular pressure on governments to universalise quality basic education.

Increasingly, civil society organisations are creating national and international campaign and advocacy alliances to generate this pressure. In Kenya and Tanzania, democratically elected governments have responded to campaigns by NGOs, community groups, unions, religious groups and the private sector, by eliminating fees in primary education, and rapidly expanding access. These campaign groups coordinated their efforts with development NGOs and activists in North America and Europe, who successfully lobbied the World Bank for a change in its policy on user fees, and the US Congress to place pressure on the IFIs to end the introduction of user fees as a loan condition. In Brazil, a civil society coalition has used the federal and state constitutions

to launch a law suit against state governments, for being in breach of their obligation to provide free, universal basic education. In India, civil society campaigners, led by the national Alliance for the Fundamental Right to Education (NAFRE) have successfully secured a 93rd amendment in the federal constitution, making free and compulsory education a fundamental right. Although this action is only an expression of commitment, it is unlikely to have come about without civil society pressure. At the international level, civil society members of the Global Campaign for Education have lobbied for a new financing, planning and monitoring framework, to realize the right to education. Elements of this proposal were agreed by donor governments in April

2002, in the form of a multi-donor education Fast Track Initiative (FTI). Notwithstanding civil society criticisms of the FTI, especially that it has taken an overly prescriptive approach to education reform, it is widely recognised as an important step forward in getting donors to deliver on the commitments made at Dakar (e.g. Rose 2003). Ten low-income countries – six of them in Africa – have now embarked on a sector planning process to undertake the necessary steps to achieve universal basic education. Although it is too early to judge the full impact of these changes, it is clear that civil society actions are changing the education policy landscape, and exposing the education crisis in Africa as a human rights violation.

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This paper was initially presented at the 2003 Edinburgh University African Studies Conference, '*Remaking Law in Africa: Transnationalism, Persons and Rights*'.

Thanks are due to Kenneth King of Edinburgh University for comments on an earlier draft.