

agreements into which developing countries were coerced by developed ones, or to question the ownership of seeds by one company to assist farmers in developing countries to produce more food at a lower cost.

Finally, one or more targets should have required states to hold private sector companies accountable for human rights violations and the transgression of other national laws and policies that ultimately exacerbate levels of poverty and inequality in those countries.

Conclusion

Ultimately, as in the case of the MDGs, the devil will be in the detail. Despite the numerous goals and targets and gaps therein, if strong partnerships are developed between the state, civil society and the private sector, and effective plans of action developed, valuable progress can be made in alleviating poverty and inequality. The role of independent organisations, such as Chapter Nine (C9) institutions in South Africa, will be vitally important to monitor progress in relation to the SDGs, disaggregate data by demographics like gender and disability, and ensure adherence to human rights principles.

While C9 institutions sometimes have limited room or authority to undertake extensive mandates, effective partnerships will be the key in realising all or part of the SDGs. As the Danish Institute for Human Rights states:

Many NHRIs [National Human Rights Institutes] face obstacles when it comes to promoting human rights accountability in development contexts, including narrowly drawn mandates, constraints on their independence, and limited technical capacity.

In order to unleash their potential, these barriers will have to be lifted. States and other sources of support to NHRIs should assist them in strengthening their capacity, mandate and independence, as a worthwhile investment in a very distinctive and constructive part of the SDG implementation and accountability architecture (Jensen et al. 2015: 6).

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Introduction

The development of the right to education can be tracked from the 1948 Universal Declaration of Human Rights, which mentions the terms “fundamental” and “elementary education”, to the International Covenant on Economic, Social and Cultural Rights (1966), which refer to “primary education”, to the World Declaration on Education For All and Framework for Action to Meet Basic Learning Needs (1990), which introduced the term “basic education”.

2

Exploring the link between fundamental, elementary, primary and basic education by Chiedza Simbo

This article intends to explore the link between the terms “fundamental”, “elementary”, “primary” and “basic” education, which all relate to the education of children. It is often not clear whether these terms have the same meaning. Clarifying their meaning and the links between them makes policy and law-making easier; it will also make it possible for the public to understand their entitlements as provided for in various national and international laws.

Definition of education in international law

The Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedom (Recommendation), adopted by and binding upon UNESCO, defines “education” as follows:

The word education implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge. This process is not limited to any specific activities.

This definition acknowledges that education is a process of learning and development through social interaction. It is a process which develops and benefits both individuals and communities. The definition is strikingly similar to the provisions of General Comment 1 to the Convention on the Rights of the Child (CRC) (2001) article 29(1), which states that education goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

The acknowledgement above is that education involves both formal education through schools and informal education through a series of life experiences that allow human beings to develop within their societies.

Origins of the terms elementary, fundamental and primary education in international law

Elaborating on the provision of the right to education, article 26 of the Universal Declaration of Human Rights (Universal Declaration) states that everyone has the right to education at the elementary and fundamental stages, and that education shall be free and compulsory only at elementary stages. The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), an implementing instrument of the socio-economic rights provided by the Universal Declaration, clarifies the provisions of the Universal Declaration by stating that everyone has the right to an education and primary education must be free and compulsory.

The clarifications by the ICESCR did not provide a link between elementary, fundamental and primary education. Rather, a new twist was established in international law. The Universal

Declaration provided for free education at the elementary and fundamental stages, while the ICESCR provided for free education only at primary level.

The Universal Declaration provided for compulsory education only at elementary level while the ICESCR provided for compulsory education at primary level. The link, if any, between compulsory primary education and compulsory elementary education was not explained.

Many international instruments enacted after the ICESCR adopted the term “primary education” and not “elementary” or “fundamental education”. The need to provide free and compulsory primary education and not free elementary and/or fundamental education became more pronounced in international instruments. The CRC, which is deemed the “most authoritative international legal instrument for the protection of children’s human rights, with almost universal acceptance” and “the most rapidly and widely ratified international human rights treaty in history”, alludes only to the term “primary education”, stating that it must be compulsory and free.

Following the use of the preferred term “primary education” rather than “elementary” or “fundamental” education, countries in their own ways welcomed and acknowledged the use of the term. Today, the Lesotho Constitution states that, as a matter of state principle, the government must endeavour to make education available and ensure the adoption of policies, which promote the provision of compulsory and accessible primary education.

The Iraqi Constitution also provides for the right to free and compulsory primary education. The Namibian Constitution provides free and compulsory primary education, while the Constitution of Malta states that as a matter of government directive, primary education shall be free and compulsory in all state schools. The term “elementary education”, however, has remained in use in countries such as the United States, where it is used to refer to the education of children. The link between the terms “elementary”, “fundamental” and “primary” education was later clarified, as will be explained.

The Origins of the term basic education in international law

Following the provision of free and compulsory primary education, international law coined the term “basic education”. The World Declaration on Education For All and Framework for Action to Meet Basic Learning Needs (1990) (World Declaration) became the foundational document that defined this term. It stated that basic education is the acquisition of basic learning needs. Following the provisions of the World Declaration, in 1990 African states considered with concern the critical socio-economic situation of the African child. The African Charter on the Rights and Welfare of the Child was established to promote and protect the rights and welfare of the child. It required that state parties endeavour to provide free and compulsory basic education. Since 1990, the term “basic education” has been used to refer to the education of the child.

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The link between elementary, fundamental and basic education

The Universal Declaration refers to “elementary and fundamental” education. Establishing the link between “elementary and fundamental education” and basic education, General Comment 13 to the ICESCR states that “fundamental education corresponds (resembles) to basic education as set out in the World Declaration on Education for all. Individuals who have not received or completed the whole period of their primary education have a right to fundamental education, or basic education”. By stating that persons who have not received primary education also have a right to “fundamental education or basic education”, and that “fundamental education corresponds to basic education”, General Comment 13 suggests that fundamental education is basic education.

To clarify that fundamental/basic education is not primary education, General Comment 13 goes on to state that fundamental/basic education is acquired at all stages, including but not confined to the primary school stage; it can also be offered to adults. General Comment 13 further clarifies the link between primary education and basic education. Supporting the view of UNICEF, it states that “primary education is the most important component of basic education”, indicating that primary education is not basic education; instead, there is a “close correspondence between the two”.

This “close correspondence”, which makes primary education the most important component of basic education, is described by the World Declaration, which states that “the main delivery system for the basic education of children outside the family is the primary school”.

Primary education is the stage where basic education is first introduced. In other words, if any person, or more specifically a child, wishes to acquire basic education, they go to primary school.

Although countries such as Zimbabwe and South Africa provide for the right to basic education, they do not expressly provide a link between primary education and basic education in their constitutions or legislation. However, the Namibian Education Act accepts the link provided by international law, clarifying that “basic education is the education provided for from the level of the first grade to the level of the twelfth grade and includes adult education, special education and any education declared by the minister to be basic education”.

Recognising the importance of primary education as the point at which basic education is introduced, the World Declaration reinforces the international position that primary education must be “universal to ensure that the basic learning needs of all children are satisfied”.

Commenting on the requirement to provide compulsory and free primary education as an avenue to the provision of basic education, General Comment 11 (1999) to the ICESCR notes that the ICESCR has an element of compulsion,

and emphasises that neither the state, parents nor guardians must treat the need for children, including girls, to attend primary school as optional. It further notes the importance of providing free primary school education, stating that any fee imposed upon a child and other direct education costs are disincentives that jeopardise the enjoyment of the right to basic education. In addition to direct costs, indirect costs such as levies and exorbitantly expensive uniforms can also fall in the category of school fees.

The discussion above links primary education with fundamental and basic education. The link between elementary education and primary, fundamental or basic education has not been clearly established at international level. Guidance can be sought from the provisions of General Comment 13 to the ICESCR, which states that primary education has two distinctive features: it is “compulsory” and “available free to all”. If primary education has these two distinctive features, juxtaposed with the provisions of the Universal Declaration, elementary education also has two distinctive features: that it is compulsory and free. The fact that elementary and primary education have the same distinctive features may lead to the conclusion that primary education is elementary

Although countries such as Zimbabwe and SA provide for the right to basic education, they do not expressly provide a link between primary education and basic education in their constitution or legislation.

education. Such a conclusion would mean that, in accordance with the Universal Declaration, primary education is compulsory and free while fundamental or basic education is free but not compulsory.

In summary, it can be concluded that under international law, basic education or fundamental education includes but is not limited to primary school. Basic education goes beyond primary education to include adult basic education. It can be concluded as well that under international law, particularly following the provisions of the Universal Declaration, the element of compulsion extends only to primary or elementary education, whereas the free education element extends to fundamental and basic education. Such a reading of international law contradicts the provisions of the African Charter on the Rights and Welfare of the Child, which is regional instrument and one stating that basic education must be free and compulsory. The international law provisions differ from the provisions of the African Charter in that the latter extends the element of compulsion to basic education and not only primary education.

The extension of the element of compulsion by the African Charter can be attributed to the paramount importance of acquiring basic education as it was reiterated by the World Declaration. With consideration that the World Declaration stated that basic education can be provided beyond the primary school, it became important for African states to ensure that children compulsorily acquire basic education regardless of whether or not it is offered in primary school, secondary school or neither of the two. Further, the World Declaration and the African Charter were drafted around the same time and the persuasions for every child in Africa to get basic education at any schooling stage of their life could not have been more convincing.

The approach of the African Charter was significant in that it extended the bare minimum approach (assuming the provision of primary school is the minimum) advanced by international law and puts African children in an advantaged position where they must compulsorily and freely acquire basic education beyond the primary school. The difference between the international law approach and the African Charter's approach is even more significant in a continent where the education of the girl child is often not prioritised even if it may be free. Some parents of African children particularly the girl child often see the provision of labour by children or their marriage to be more important than their education. Providing for compulsory and free basic education was a sure way to ensure that children are in school for the entire basic education years or even beyond schooling years.

Conclusion

The terms in international law regulating the provision of education for children are many and have evolved to the point where it is generally accepted that children must be provided with free primary or elementary education. The consensus for free primary education has also been extended to the provision of free fundamental or basic education by the Universal Declaration and the African Charter. The Universal Declaration, unlike the African Charter, does not, however, make basic education compulsory. This discussion aimed to provide a clear link between the terms used to regulate the provision of education for children in international law.

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1 Interview with Prof. Sandy Liebenberg

The ESR Review interviews Prof Sanda Liebenberg, who recently got appointed as a member of the UN Committee on Economic, Social and Cultural Rights.

First, we would like to congratulate you on your election as a member of the UN Committee on Economic Social Cultural and Rights. This is an honour well deserved.

Thank you.

