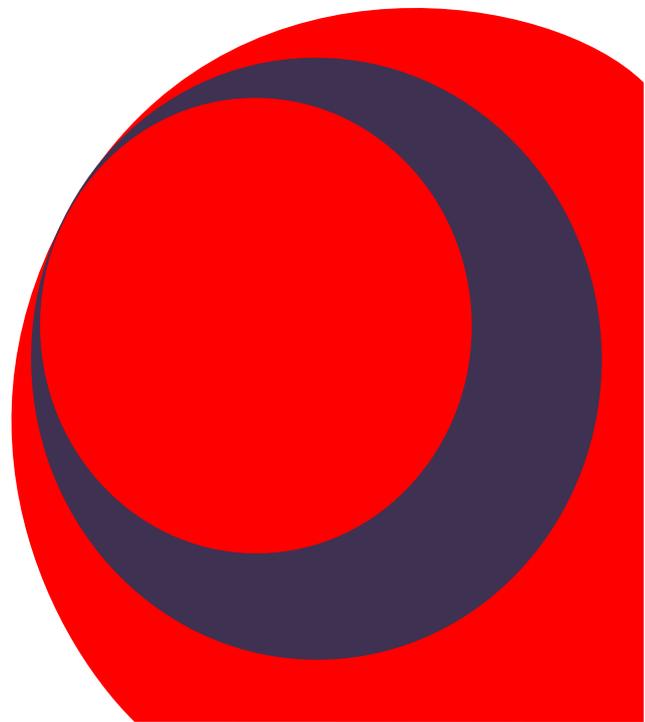


The Right to Education

**Submission for the NGO
Consultation on the UN Draft
Guiding Principles on Extreme
Poverty and Human Rights: the
rights of the poor**

Geneva, 18-19 January 2010

Angela Melchiorre



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**NGO Consultation on the UN Draft Guiding Principles
on Extreme Poverty and Human Rights:
the rights of the poor**

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The Right to Education

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Summary

Promotion, protection and fulfilment of the right to education lie at the very heart of the fight against extreme poverty. Education is the principal means through which poor and marginalised individuals can break the vicious cycle of poverty and participate in society. However, education is not only an instrumental tool for economic growth; it is a fundamental human right (therefore a legal entitlement) and it should be recognised as such even in the most deprived situations. This paper is a contribution to the revision process of the Draft Guiding Principles on Extreme Poverty and Human Rights (DGPs). Its objective is to provide participants in the consultation between Non-governmental Organisations (NGOs) and the UN Independent Expert on Human Rights and Extreme Poverty with an analysis of the feasibility and relevance of the tripartite typology of responsibilities (for the state, the international community, and non-state actors) as applied to the right to education. Starting with a brief overview of the features and content of the right to education, the paper then focuses on some of the obstacles that hinder its realisation for those who are living in extreme poverty. It follows with illustrations of obligations for the three identified actors and some suggestions for operational strategies. The paper concludes that there certainly is scope for applying the suggested typology to the right to education for persons living in extreme poverty, especially if combined with the application of the 4A framework (availability, accessibility, acceptability and adaptability). In this view, the annex offers some recommendations for language to be used in the drafting of a specific section on the right to education in the DGPs. References to provisions relating to the right to education in the main international human rights instruments can be found in the appendix.

PART ONE – GENERAL FRAMEWORK

The right to education is a highly powerful concept: where it is effectively guaranteed and implemented, the enjoyment of all human rights and freedoms is enhanced; where it is denied or violated, the enjoyment of other rights and freedoms is curtailed. This shows why safeguards are necessary to prevent its abuses and why guidance is needed to fulfil its scope. International human rights law provides both those safeguards and that guidance. Moreover, it provides a conceptual legal framework within which it is possible to identify obligations, duty-bearers and rights-holders; recognise obstacles, denials and violations; and articulate strategies that respond to universal obligations while providing for specialist interventions where the right to education is more at risk.

The right to education: content, aims, key features and obligations

All the main international human rights instruments contain provisions on the right to education: some of these clauses are very direct; others – such as those referring to the right to non-discrimination, the right to work, or the cultural rights of minorities and indigenous people – are more indirect but still very relevant (see appendix). Moreover, compared to other economic, social and cultural rights, the right to education is relatively more precise in terms of content and includes both freedoms and entitlements, with correlated obligations.

Freedoms:

- freedom of parents to choose schools for their children;
- freedom of parents to ensure religious and moral education in conformity with their own convictions;
- freedom of individuals and bodies to establish and direct educational institutions (according to minimum standards);
- academic freedom of teachers and students (although indirectly, through interpretation);
- freedom of the state to define education, its scope and outcomes in accordance with international standards

Entitlements:

- universal access to free and compulsory primary education;
- universal availability and accessibility of secondary education (including technical and vocational training), in particular through the progressive introduction of free education;
- equal access to higher education on the basis of capacity, in particular through the progressive introduction of free education;
- fundamental education for those who have not received or completed primary education;
- a system of schools developed at all levels;
- adequate fellowship systems;
- improved material conditions of teachers;
- good quality education aimed at enabling all persons to participate effectively in a free society, in a spirit of tolerance and respect for human rights, the natural environment and the development of children's personality and abilities to their full potential.

The key features of the right to education have thus been identified as follows:¹

Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State Party. [...]

Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party. Accessibility has three overlapping dimensions:

- *Non-discrimination* - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds [...]
- *Physical accessibility* - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location ... or via modern technology [...]
- *Economic accessibility* - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education [...]

Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate case, parents. [...]

Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. [...]

Obligations – In accordance with the generally recognized typology of obligations for all human rights, these 4As are to be *respected*, *protected* and *fulfilled* (i.e. both facilitated and provided) by the state, as the prime duty-bearer. Indeed, the Committee on Economic, Social and Cultural Rights (CESCR) has recognized that “article 13 regards States as having principal responsibility for the direct provision of education in most circumstances”², although the extent of the obligation to fulfil (provide) education is not the same at all levels of education. Moreover, states have the obligation to take steps “individually and through international assistance and cooperation, especially economic and technical”³ towards the full realisation of the right to education. The state is therefore bound at different levels:

- in its domestic sphere;
- at the international level, especially in multilateral activities where it participates as a member of intergovernmental organisations, including in international standard setting organisations and international financial institutions.

In any case, and depending on the conditions and internal economic situation, the state has either the obligation to assist or the obligation to seek assistance, as confirmed by CESCR: “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States”.⁴ The Committee has also specified that this obligation “is particularly incumbent upon those States which are in a position to assist

¹ The concept of these 4As was developed by the former UN Special Rapporteur on the Right to Education, Katarina Tomaševski, and adopted by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 13, paragraph 6.

² CESCR, General Comment No. 13, paragraph 48.

³ ICESCR, article 2 (1).

⁴ CESCR, General Comment No. 3, paragraph 14.

others in this regard”.⁵

Individual entitlements and state obligations regarding the right to education are to some extent similar to those related to other economic, social and cultural rights. However, given the emphasis on educational freedom, additional actors other than the state play an important role in the full realization of the right to education. These include, for instance:

- private individuals or businesses;
- legal entities or bodies;
- communities and faith-based organisations;

all entitled to establish and direct educational institutions at all levels and bound by the obligation to ensure that these educational institutions conform with minimum standards and respect the principles of non-discrimination, equal opportunity and effective participation for all in society.

More in general, additional non-state actors with obligations on the right to education also include the following:

- the child and his or her parents as the bearers of the duty to comply with compulsory-education requirements;
- the child’s parents as ‘first educators’ with the obligation under the Convention on the Rights of the Child (CRC) to provide guidance in the exercise of rights in accordance with the child’s evolving capacities and having the best interests of the child as a primary consideration;
- teachers as professional educators with the duty to respect the dignity and human rights of students as well as the academic freedom of others.

Among the above-mentioned entitlements and obligations, some are defined as *core elements*, i.e. embodying the intrinsic value of the right to education without which the right would lose its meaning:

- ensure access to education on a non-discriminatory basis;
- provide free and compulsory primary education for all;
- take steps to adopt and implement strategies which include provisions for secondary, higher and fundamental education;
- provide and maintain quality education at all levels, i.e. education that is available, accessible, acceptable and adaptable to the needs of the learners (including education in conformity with its internationally recognised objectives and aims)
- ensure free choice of education.

This core content is universal in nature and can be operationalized in different ways at the local, national or regional level. However, complying with a core obligation should not depend on the availability of resources, the needs of people or the local context. Rather, core obligations are non-derogable, as indicated by the CESCR’s remark that “in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.⁶

⁵ *Ibid.*

⁶ CESCR, General Comment No. 3, paragraph 10.

PART TWO – RELEVANCE TO EXTREME POVERTY

Promotion, protection and fulfilment of the right to education lie at the very heart of the fight against extreme poverty. Education has both a *constitutive* and *instrumental*⁷ relevance to extreme poverty: the first is evident when lack of income plays an important role in causing illiteracy, low enrolment rates and drop-outs among the poorest, reinforcing the vicious cycle of poverty; the second is obvious when considering that the full enjoyment of the right to education is instrumental to the full enjoyment of other rights, such as the right to health or work or freedom of expression, that are so important in the fight against poverty. As indicated by CESCR, education is “the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities”.⁸

However, education is also a fundamental human right (therefore a legal entitlement) and should be recognised as such even in the most deprived situations. In fact, measures for its realisation should be actively intensified in such cases, not only as a consequence of the above-mentioned 4As and related obligations, but also as derived from art. 13(d) of ICESCR: “fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education”. In 2008, the Human Rights Council expressed its deep concern at the fact that “some 72 million children, 57 per cent of whom are girls...are out of school” and that “774 million adults, 64 per cent of whom are women, still lack basic literacy skills”.⁹ The majority of these children and adults belong to the most deprived and marginalised groups, often trapped in the spiral of extreme poverty. For them, accessibility and availability of education, let alone acceptability and adaptability, are simply non-existent.

It becomes therefore clear that enhanced implementation measures to ensure fundamental education for those individuals should be a priority in any strategy directed to both fight extreme poverty and fully realise the right to education. This point has also been highlighted by CESCR when stating that “even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes”.¹⁰ Moreover, when looking at programmes and policies designed to promote adjustment, the Committee recommended that “the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment”.¹¹

⁷ For a definition of the two terms, please refer to OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, HR/PUB/06/12, paragraph 7.

⁸ CESCR, General Comment No. 13, paragraph 1.

⁹ HRC, The right to education, Resolution 8/4, 18 June 2008, preambular paragraph 5.

¹⁰ CESCR, General Comment No. 3, paragraph 12.

¹¹ CESCR, General Comment No. 2, paragraph 9.

Obstacles to the realisation of the right to education for those living in extreme poverty

Despite all the above-mentioned provisions and clarifications, education for those living in extreme poverty is still far from being an option, let alone a fully implemented and enforceable right. A number of obstacles contribute to and aggravate this situation.

Firstly, poverty itself is defined as an obstacle to education and, on top of it, one with a precise gendered profile. When parents do not have the basic means to a dignified life, they rely on the support of anyone in the family, including their own children, to provide and help in the struggle for survival. Instead of being sent to school, children are sent to work or help with household chores. Aggravating circumstances also have a role to play: adults themselves might have been denied education when they were children or opportunities for vocational and technical training when they were older; educational institutions might not even exist in or nearby the area where they live. In all this, girls and women are even more penalised as they usually lack prospects for economic employability, which could help them break the cycle of poverty. Denied the right to education because of their sex or their economic and social status, they are led into domestic work, early marriage and child bearing, which in turn result in increased impoverishment, not only for them but for the whole society.

Secondly, other obstacles to the full realisation of the right to education for persons living in extreme poverty include the following:

Direct, indirect and hidden costs – Free and compulsory education as a way out of poverty is at odds with the existence of fees or indirect and hidden costs, for both the child and his/her parents. For instance, fees are traditionally levied for enrolment or exams, but also for tuition or the use of educational facilities and materials. Indirect costs, on the other hand, include expenditures for textbooks, supplies and equipment, transportation, meals or school uniforms. In addition, and especially for persons living in extreme poverty, some hidden costs impinge on the capacity to access education, the most obvious being the loss of family income following from the child's enrolment in school (instead of having him/her employed in paid work to support the family). In the case of extreme poverty, parents' inability to afford sending their children to school deprives those children of education. This, in turn, perpetuates the vicious cycle of poverty, deepening the gap between the haves and the have-nots: children and parents cannot afford to pay the costs of education, children cannot enrol in or are forced to drop out of school, they do not have access to the labour market (or if they do, they do so at a young age, precisely when they are supposed to be at school), they are not entitled to social security, and so on. Again, it is worth noting that this type of exclusion affects girls much more than boys: if obliged to pay fees, parents tend to give preference to boys rather than girls. Having to pay fees for education blocks the pathway out of poverty for those who cannot afford them. This is why an immediate global commitment to the abolition of all fees is necessary.

Existence of discriminatory laws and policies – The exclusion from, refusal of or unequal access to the same quality of education as others can derive from pervasive discrimination against, stigmatisation of and negative stereotyping of persons living in extreme poverty.

The existence of laws that allow different types of schools according to different social classes/status, for instance, is in clear contravention of the generally accepted human rights principle of non-discrimination and adds exclusion to discrimination. The requirement that children need a birth certificate to enrol in school is equally discriminatory towards those living in extreme poverty as in most cases they do not have either the means or the opportunity to request and obtain birth registration, let alone comply with the school's requirement. The dispatch of less qualified, para-teachers to areas of extreme poverty entails a lower quality level of education and therefore is also in breach of all the 4As.

Inconsistent spending policies and financial investments – Sharp disparities in budgetary allocations may result in differing quality of education for persons residing in different geographical locations (rural *versus* urban settlements) with the consequence of impacting more negatively on those who live at the margins of society due to extreme poverty. Moreover, the process of decentralization may affect the capacity of local communities to afford and cover the costs of education, deepening their unequal enjoyment of the right. Appropriate funding allocation is one of the conditions to break the cycle of poverty. This proves to be true at both the national and the international level: states, individually and collectively through international cooperation and in international financial organizations, are required to prioritize and equalize funding for education at all levels.

Lack of job opportunities or educational/vocational prospects after primary education, especially for girls – The focus of international strategies to ensure universal access to education for all at the primary level neglects the consequences that this might have on the future employability of students and therefore on the capacity of the system to fight extreme poverty through education. When secondary and higher education do not receive adequate and appropriate attention and funding, it becomes problematic for students to make use of what they learnt in primary school. Moreover, even when education is designed with a view to encourage enrolment in further secondary and higher education, it can become an obstacle if these educational levels are out of reach or unaffordable for those living in extreme poverty.

Multifaceted typology of obligations on the right to education in the context of extreme poverty

Human rights law is mainly about state obligations. As indicated above, all states which are parties to human rights instruments are duty-bound to *respect, protect* and *fulfil* (i.e. facilitate and provide) those rights. More recently, financial institutions, investors, donors and businesses have been recognised as being duty-bound to at least respect human rights. In some cases, and depending on their role and activities, they are also required to protect and fulfil human rights. The CESCR, for instance, has provided several concluding observations to state parties that are also members of the World Bank, the IMF or WTO, to “ensure that the policies and decisions of those organisations are in conformity with the obligations of state parties under the Covenant”.¹² The international community (including multilateral intergovernmental agencies) has also a very important role to play in terms of

¹² See, for example, CESCR Concluding Observations to UK (UN Doc. E/C.12/1/Add.79, paragraph 26); Italy (UN Doc. E/C.12/1/Add.43, paragraph 20) and Japan (UN Doc. E/C.12/1/Add.67, paragraph 37)

technical and financial assistance, as indicated by the provisions of the main human rights treaties and the interpretations of the various Treaty Bodies. Last, but not least, civil society and other non-state actors have some core obligations too. These are most often channelled through the obligation of the state to protect against harmful activities or violations carried out by non-state actors. Nonetheless, at least the obligation to respect human rights for non-state actors can be derived from the preamble of the Universal Declaration of Human Rights (UDHR) where “every individual and every organ of society... shall strive... to promote respect for these rights and ... to secure their universal and effective recognition and observance” as well as its art. 29 providing that everyone “has duties to the community”. A similar “responsibility to strive for the promotion and observance of the rights” is recognised in the preambles of both the ICESCR and the International Covenant on Civil and Political Rights (ICCPR).

A matrix could therefore be created whereby the tripartite typology of obligations (respect, protect and fulfil) is examined and applied, whenever possible, to the tripartite typology of actors (states, international community, non-state actors). Ideally, and more with a reference to the right to education, it would be useful to also input the 4 As, although acknowledging some gaps or overlaps.

The framework below has been designed and tailored to the case of extreme poverty as much as possible and is derived from the main provisions on the right to education in international human rights law as well as the interpretation of relevant UN Treaty Bodies and Special Procedures. It is meant to offer illustrative but non-exhaustive examples of obligations.

A MULTIPLE SYSTEM OF OBLIGATIONS ON THE RIGHT TO EDUCATION

		State	International Community	Non-state actors
Respect	Availability	- Respect freedom of parents and bodies to establish and direct educational institutions in accordance with minimum standards and the best interests of the child (i.e. by not closing private schools)	- Abstain from interfering in the realisation of the right to education	- Abstain from interfering in the realisation of the right to education
	Accessibility	- Respect the right of all individuals not to be discriminated against in accessing education (i.e. by avoiding restricting access of persons living in extreme poverty to existing public educational institutions) - Respect the right to enjoy education in a safe environment free from attacks on schools, students and teachers	- Avoid funding projects that impose fees for primary education - Respect the right to enjoy education in a safe environment free from attacks on schools, students and teachers	- Parents must respect the obligation to send children of compulsory school age to school - Ensure that private education does not discriminate against any group on any of the prohibited grounds - Respect the right to enjoy education in a safe environment free from attacks on schools and teachers
	Acceptability	- Respect freedom of parents to ensure education in conformity with their moral and religious convictions	(For those in a position to assist) - Ensure that development cooperation, lending policies and structural adjustment programmes are designed so to respect and fully take into account the fundamental principles and aims of education	- Ensure that private education conforms to minimum standards - Parents must respect the right of the child to education in accordance with his or her evolving capacities and best interests - Teachers must respect the rights, dignity and academic freedom of students and colleagues
	Adaptability	- Respect the establishment of formal and informal initiatives that promote adult education for those living in extreme poverty	- Respect other states' prioritization in budget allocations for inclusive education	- Respect the rights of learners to receive education that is adapted to their needs and respectful of their dignity, beliefs, culture...

		State	International Community	Non-state actors
Protect	Availability	<ul style="list-style-type: none"> - Ensure that the educational freedoms set out in art. 13 of ICESCR “do not lead to extreme disparities of educational opportunities for some groups in society” 	<ul style="list-style-type: none"> - Prevent third parties under a state’s control to interfere with the right to education - Ensure that international agreements do not adversely impact upon the right to education 	
	Accessibility	<ul style="list-style-type: none"> - Ensure that nobody, including parents, can stop a child from attending primary education - Ensure that communities and families are not dependent on child labour - Prohibit discrimination in admission to private educational institutions 	<ul style="list-style-type: none"> - Cooperate to create peace and solve conflicts and mitigate (natural) disasters which endanger the enjoyment of the right to education and leave more people in poverty 	
	Acceptability	<ul style="list-style-type: none"> - Ensure that curricula, textbooks and teaching methods do not perpetuate or encourage discrimination and stereotyping towards the most marginalised groups living in extreme poverty - Protect against the use of corporal punishment in schools 	<ul style="list-style-type: none"> - Cooperate to eradicate discrimination and prejudices 	<ul style="list-style-type: none"> - Protect against the use of corporal punishment in schools
	Adaptability			

		State	International Community	Non-state actors
Fulfil	Availability	<ul style="list-style-type: none"> - Provide, either directly or through public-private partnerships, a sufficient number of public schools offering free and compulsory education for all children in extreme poverty (within a determined age range and up to the minimum age for employment and marriage) - If not possible yet, adopt and implement detailed plan of action for the progressive implementation of free and compulsory education for all - Provide school infrastructures (buildings, adequate services and facilities, water, electricity and sanitation, etc.) for low-income settlements - Hire the required number of qualified teachers paid at domestically competitive salaries to reach also the most deprived areas/groups - Ensure that resource allocation prioritizes compulsory education and is based on equitable distribution among geographical areas, groups and cultures - Take steps to provide progressive availability of secondary education (including technical and vocational training) - Take steps towards the realisation of fundamental education for all 	<p>(for those states with limited available resources)</p> <ul style="list-style-type: none"> - Seek financial and technical assistance for the full realisation of the right to education <p>(for those – states and international agencies – in a position to assist)</p> <ul style="list-style-type: none"> - Assist states in developing a detailed plan of action for the progressive implementation of free and compulsory education for all <p>(for states in a position to assist)</p> <ul style="list-style-type: none"> - Review budget allocations with a view to increase ODA and meet internationally agreed upon targets (including the UN target for international development assistance of 0.7 per cent of GDP), ensuring that assistance reaches the most affected groups living in extreme poverty 	<ul style="list-style-type: none"> - Ensure that educational infrastructures in private schools or institutions set up in low-income areas conform with minimum standards - Ensure that teachers in private schools in areas of extreme poverty are adequately trained and paid

		State	International Community	Non-state actors
Fulfil	Accessibility	<ul style="list-style-type: none"> - Provide free compulsory education without discrimination, within safe reach and without direct or indirect costs (for children and parents), in particular for those groups whose access is significantly difficult such as girls and children living in the street, in remote areas, in slums or working children - Take steps to provide progressive accessibility to secondary and higher education - Facilitate access by disadvantaged groups thorough the establishment of an adequate fellowship system, transport to school, adequate textbooks, school meals and other services free of charge 	<p>(for those in a position to assist)</p> <ul style="list-style-type: none"> - Support the establishment of an adequate fellowship system or the introduction of incentives such as free transport, textbooks, meals, etc. 	<ul style="list-style-type: none"> - Ensure that private education facilitates access to education by disadvantaged groups through scholarships, transport, textbooks, school meals, etc.
	Acceptability	<ul style="list-style-type: none"> - Set minimum standards for education, including the medium of instruction, contents and methods of teaching, and ensure their observance in all educational institutions - Provide education of good quality that is child-centred, child-friendly and empowering and that conforms to the aims and objectives laid down in international human rights law 	<p>(for both)</p> <ul style="list-style-type: none"> -Establish participatory, accountable and transparent partnerships between state and donors to make sure that programmes are in conformity with the principles and aims of education 	

		State	International Community	Non-state actors
Fulfil	Acceptability	<ul style="list-style-type: none"> - Ensure that education is relevant for persons living in extreme poverty (i.e. providing skills and knowledge that will enable them to enter the labour market and break the cycle of poverty) - Provide pre- and in-service training for teachers to allow them to work within the required standards also with marginalised groups - Establish monitoring and complaint mechanisms for implementation and enforceability of the right to education 		
	Adaptability	<ul style="list-style-type: none"> - Adapt education to the best interests of children living in extreme poverty - Design and implement education for children precluded from formal schooling (for example working children) - Intensify the establishment of free educational institutions and programmes (including technical and vocational training) for adults living in extreme poverty who have not completed their primary education - Designing and providing resources for curricula which can adapt to the needs of those living in extreme poverty - Design human rights education programmes focussed on those mechanism that lead to extreme poverty 	<ul style="list-style-type: none"> - Develop norms, standards, best-practices, model curricula, etc that focus on the links between education and poverty and illustrate how adaptability may be carried out 	

Suggestions for strategies

From the above it is clear that any approach to the link between the right to education and the fight against extreme poverty requires multifaceted strategies that include, among other things: the identification of obstacles and denials/violations of the right to education; legal reforms and effective enforcement; additional funding from national and international actors; and appropriate fiscal allocations and investments from the national to the global level and for all forms of education. This approach should prioritize the following areas: non-discrimination, direct and indirect costs, quality education, and consistency with other laws. Below is an indicative, non-exhaustive list of suggestions:

- “States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice”... This “will frequently require devoting greater resources to traditionally neglected groups”.¹³
- Fiscal allocations need to prioritize and equalize funding for education at all levels, from local to global, and take into account local communities and situations when financing education is carried out in a decentralized system.
- States, the international community and non-state actors should commit to the elimination of all direct and indirect costs of education.
- Everyone is entitled to quality education offering prospective opportunities for work and social security. Education should allow students to acquire “knowledge and skills which contribute to their personal development, self-reliance and employability and enhances the productivity of their families and communities”.¹⁴ Opportunities for secondary (including vocational and technical training) and higher education should be made available and supported by an adequate system of fellowships enhancing “equality of educational access for individuals from disadvantaged groups”¹⁵ as well as “flexible curricula and varied delivery systems”¹⁶ that are relevant and acceptable to all, especially girls.
- States should establish a determined length of compulsory education consistent with legislation in other relevant areas, for example up to the minimum ages for employment and marriage.
- States, the international community and non-state actors should monitor educational policies, programmes, budgetary allocations and other practices in order to assess implementation of the right to education and identify and redress violations thereto, especially with regard to persons living in extreme poverty. Such monitoring should make use of right-based indicators and benchmarks fully disaggregated on the basis of all the prohibited grounds of discrimination and, possibly, matched against the 4A framework.

¹³ CESCR, General comment No. 20, paragraph 39.

¹⁴ CESCR, General Comment No. 13, paragraph 16 (a).

¹⁵ Ibid., paragraphs 26 and 53.

¹⁶ Ibid., paragraphs 12 and 18.

ANNEX

Suggested language for a section on the right to education

We would recommend creating two separate sections on the right to education and the right to take part in cultural life. For the section on the right to education, we would suggest something along the lines discussed above, although with a more limited focus, as follows:

Everyone has the right to education (UDHR, art.26). This right includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and all its levels (CESCR, GC 13, § 8, 11, 17, 21). States have obligations to respect, protect and fulfil each of these essential features (CESCR, GC 13, § 50).

Education is the primary vehicle by which economically and socially marginalized children and adults can lift themselves out of poverty and obtain the means to participate fully in their communities (CESCR, GC 13, § 1). In situations of extreme poverty, this right is hindered by a number of obstacles including, but not limited to, the following: direct and indirect costs of education; discriminatory laws and policies; inconsistent spending policies and financial investments; lack of job opportunities or educational/vocational prospects after primary education, especially for girls.

Any human rights-based, pro-poor education policy should include the following actions:

1) for States:

- a. to ensure that the most vulnerable and marginalized groups in society have access, free of any charge, to the most fundamental types of education, such as primary education, vocational training, literacy programmes and other forms of basic adult education. As a priority, states should ensure access to primary education for groups whose access to education is particularly difficult, such as girls, children with disabilities, minority and refugee children, those affected by environmental degradation and those living in remote areas and slums.*
- b. to ensure that persons living in extreme poverty are not discriminated against before and when receiving education and that their drop-out rates are not significantly higher than those for other groups in society. Special support programmes should enable the poor to have access also to secondary and higher education. For example, children living in extreme poverty should be supported financially by scholarships and provided with transport to school, adequate textbooks, school meals and other services free of charge.*
(Both a and b adapted from OHCHR, Principles and Guidelines..., paragraphs 190-193)
- c. to review and reform legislation in the areas of education, employment and marriage so that the school-leaving age for compulsory education is the same as the minimum age for employment and marriage.*
- d. to closely monitor education – including all relevant policies, institutions, programmes, spending patterns and other practices – so as to identify and take measures to redress any de facto discrimination against those living in*

extreme poverty. National strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of all the prohibited grounds of discrimination (adapted from CESCR, GC 13, § 37 and GC 20, § 41)

2) for the International Community:

- a. to ensure, as individual states or collectively as members of intergovernmental organizations, including international financial institutions, that budget allocations and financial investments for the education of those living in extreme poverty are prioritized and equalized at all levels and in all areas. In appropriate cases, a fellowship system would be an especially appropriate target for international assistance and cooperation. (last sentence from CESCR, GC 13, § 53, footnote 26)*
- b. to ensure that international agreements, lending policies, structural adjustment programmes and development cooperation do not adversely impact on the right to education of those living in extreme poverty but respect and take into account the aims and principles of the right to education. (adapted from CESCR, GC 13, § 56 and CRC GC1, §28)*

3) for non-state actors:

- a. to ensure that private education does not exclude or discriminate against persons living in extreme poverty*
- b. to ensure that the quality of education offered by private actors to persons living in extreme poverty is in conformity with minimum standards and of the same level as that offered by the state.*

APPENDIX

The right to education in the main international human rights instruments

Article 55, Charter of the United Nations

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

1. higher standards of living, full employment, and conditions of economic and social progress and development;
2. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56, Charter of the United Nations

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Article 2, Universal Declaration of Human Rights (UDHR)

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...

Article 26, Universal Declaration of Human Rights (UDHR)

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 5, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (e) Economic, social and cultural rights, in particular:
- (v) The right to education and training;

Article 2, International Covenant on Civil and Political Rights (ICCPR)

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 18, International Covenant on Civil and Political Rights (ICCPR)

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 26, International Covenant on Civil and Political Rights (ICCPR)

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 2, International Covenant on Economic, Social and Cultural Rights (ICESCR)

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 4, International Covenant on Economic, Social and Cultural Rights (ICESCR)

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 7, International Covenant on Economic, Social and Cultural Rights (ICESCR)

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8, International Covenant on Economic, Social and Cultural Rights (ICESCR)

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 13, International Covenant on Economic, Social and Cultural Rights (ICESCR)

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14, International Covenant on Economic, Social and Cultural Rights (ICESCR)

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 23, International Covenant on Economic, Social and Cultural Rights (ICESCR)

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 10, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

States Parties shall 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 in 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 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 organization 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 to ensure the health and well-being of families, including information and advice on family planning.

Article 2, Convention on the Rights of the Child (CRC)

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 4, Convention on the Rights of the Child (CRC)

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 28, Convention on the Rights of the Child (CRC)

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29, Convention on the Rights of the Child (CRC)

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30, Convention on the Rights of the Child (CRC)

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 30, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

Article 24, Convention on the Rights of Persons with Disabilities (CRPD)

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- (c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

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First established by the late Katarina Tomaševski (former UN Special Rapporteur on the Right to Education) and re-launched in 2008, the Right to Education Project is now an unprecedented collaborative initiative between ActionAid, Amnesty International and the Global Campaign for Education. Its rationale is based on the premise that education is a legal right with corresponding obligations for duty-bearers. Its main objective, therefore, is to promote advocacy, research, mobilisation and activism to demand compliance with human rights law. The Project pursues this goal by linking conceptual understandings of education with a hands-on approach to rights and by building bridges between different constituencies including human rights lawyers, education campaigners, academics and grassroots practitioners. These activities are carried out through four core strands: a comprehensive website, a high level international advisory panel, strategic research, and targeted support for legal action and social mobilisation.