

FROM THE OUTSIDE LOOKING IN:  
CHANGING NEW YORK CITY'S EDUCATION THROUGH  
THE HUMAN RIGHTS APPROACH

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## 1. PREFACE

This contribution forms part of the follow up to the mission to the United States I carried out as the Special Rapporteur on the right to education of the United Nations Commission on Human Rights from 24 September to 10 October 2001. The report on that mission is available in English, the original language of submission,<sup>1</sup> and translation into Spanish is forthcoming. Regrettably, budgetary cuts within the United Nations have precluded translation into other languages.

During my mission, the Centre for Economic and Social Rights and the New York University Institute for Education and Social Policy convened a meeting on 10 October 2001. It was agreed that possibilities for advancing the human rights approach should be explored, specifically for the New York City's education. The first follow-up meeting was convened on 15 April 2002, and this text is my written contribution in the preparation of that meeting.

Trying to impose a human rights framework upon an education system to which the right to education is alien is not an easy task. Individual-level data that are required by the human rights approach are absent. The common basis for comparison are statistical averages for school districts and individual states within the USA, or discrepancies between New York City and New York State. The vocabulary of education is bewilderingly divergent from the human rights language used internationally and in other parts of the world. Difficulties are exacerbated by resort to terms such as "equity" or "minority" which have a different meaning in international human rights law. Nevertheless, the size and diversity of education in New York City epitomize the rationale for the human rights approach and the necessity of its mainstreaming. A great deal of critique is routinely focussed on its shortcomings while its victims - the children who should but do not enjoy the right to education - do not have a recognized right to education, hence no right to remedy. Thus, benefits of applying the human rights approach to education in New York by far outweigh difficulties.

New York is microcosm, a mirror of the whole world in a minute space. Two parallel processes, globalization and localization, highlight the abyss between knowledge-based and education-deficit communities. Globalization of professional and academic qualifications is based on "a relatively uniform culture, set of business practices and language," all originating in the United States.<sup>2</sup> The parallel process of localization is reflected in increasing local control over education and parental choice. Parental choice is correlated with purchasing power. They can move to another community where schools are better or opt out of public schooling. Localization of the responsibility for

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<sup>1</sup> That report, as well as my previous and forthcoming reports, publications and documents are available at [www.right-to-education.org](http://www.right-to-education.org). The website of the Office of the United Nations Commissioner for Human Rights ([www.unhcr.ch](http://www.unhcr.ch)) contains all United Nations documents related to the right to education, including my reports.

<sup>2</sup> Bennell, P. and Pearce, T. - *The Internationalization of Higher Education: Exporting Education to Developing and Transitional Economies*, Institute of Development Studies, Brighton, September 1998, p. 21.

financing education necessarily perpetuates inequalities, which constitute one of the principal targets of numerous and varied critiques of education in New York. Rather than high quality schooling for all, the system combines excellent and 'sink' school side by side. Responses to poor-quality schooling vary almost as much as the quality of education varies. A multitude of reasons has been identified but few are being effectively addressed; a current initiative to alter the governance of education may offer an opportunity to broaden the agenda.<sup>3</sup> The human rights approach offers new questions and approaches. Hence, it may inspire an altered agenda.

This text summarizes key components of the human rights approach and highlights issues that have been brought to my attention as particularly susceptible to a rights-based remedy. The focus is on compulsory education, a sample of topics has been chosen to illustrate their human rights dimensions. The text is intended as "food for thought" rather than an exhaustive listing of issues or suggestions as to which ones should be prioritized.

The advantage of the human rights approach is that similar, often identical problems are encountered in different countries. Problem-defining and problem-solving thus becomes easier. By problem-defining I mean that the human rights approach often triggers asking novel questions and seeking different types of data to document underlying problems. Human rights work relies on applied research as it is aimed at broadening and strengthening human rights protections. Problem-solving benefits from five decades of human rights work all over the world. The approaches and experiences with their practical application can sometimes be replicated or adapted, sometimes one learns from mistakes made by others. The key lesson from tackling the right to education everywhere in the world is that human rights language is a powerful weapon.

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<sup>3</sup> An assessment from the other side of the Atlantic went like this: "In too many New York City schools the buildings are run-down, caretakers steal toilet paper, physical-education programmes are non-existent and qualified teachers (who earn 20% less than in the suburbs) are hard to find. These problems will not disappear if the Board of Ed is reformed. But, in the period of budget shortfalls, tinkering with the Board is one of the few cures that the city can afford." (New York City's schools: Hard to expel, *The Economist*, 2 March 2002.

## 2. INTRODUCTION

### 2.1. The purpose of human rights in a nutshell

The history of human rights can be depicted through two broadening concentric circles, the first showing a gradual extension of recognized rights and the second an incremental inclusion of those previously excluded. The rights first bestowed upon adult, propertied, white men have been gradually extended to women, then to non-white adults, and later also to non-citizens, people with disabilities and most recently to children.

From its first recognition, the right to education is gradually and haltingly advancing through four main stages. These can be described by using examples related to New York City.

- The first stage involves bestowing the right to education to some, and then all people. Even this very first stage has not yet been attained in the whole world. Non-citizens continue to be excluded, as do domestic servants or members of nomadic communities. In the United States, the right to education is not recognized by the federal government. The constitutional provision of New York State has been defined to require that “the State must ensure an education to public school students that satisfies some basic minimum requirements.”<sup>4</sup> The precise definition of key terms - *ensure* and *basic minimum requirements* - has yet to come. By human rights criteria, the obligation to ensure entails setting up a procedure whereby disputes regarding alleged failures to ensure can be independently adjudicated and victims compensated. A definition of minimum requirements is likely to elevate sub-standard education to whatever may be specified as “basic minimum requirements.” However, this may leave the constitutional guarantee below requirements of international human rights law.
- Following the initial recognition of education as a human right, the second stage regularly involves segregation, whereby girls, indigenous peoples, children with disabilities, or members of minorities, or generally the poor, are given access to education but confined to separate, routinely inferior schools. Although US Supreme Court is known worldwide for its finding that “separate is always unequal,” the many faces of educational segregation in New York City ought to be challenged. However, the recent introduction of school vouchers and charter schools represents “a departure from the common school model that has been the basis for the American system of public education for a century and a half.”<sup>5</sup> The impact of a shift to a diversified and fragmented scheme for schooling from the previous preference for educating all children together, in common school, may replace a commitment to inclusiveness by institutionalized segregation.

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<sup>4</sup> *Campaign for Fiscal Equity v. State*, full text of the judgment is available at [www.edlaw.fplc.edu/Text/Library/case-campaign.equity.html](http://www.edlaw.fplc.edu/Text/Library/case-campaign.equity.html).

<sup>5</sup> Gill, B. P. et al. - *Rhetoric versus Reality: What We know and What We Need to Know about Vouchers and Charter Schools*, RAND, Pittsburgh, MR-1118-EDU, P. 201.

- The third stage, following abandonment of segregation, requires moving towards integration, with newly admitted categories having to adapt to the available schooling, regardless of their mother tongue, religion, ability or disability. Indigenous and minority children may be 'integrated' in schools that provide instruction in alien languages and descriptions of history that deny their very existence. There are merely 0.3% American Indians aged below 18 in New York City, and their voice regarding the portrayal of their history in school textbooks may or may not be heard. As to minorities, the customary usage of this term in the United States and the demographic profile of New York City's young generation are at odds with each other. The population that used to be deemed "majority," that is, white nonhispanic, became a minority with 23.5% in 2000. There is no statistical majority in New York City. By the international legal definition of children, people of Hispanic origin constitute the largest category (34.1%), followed by African Americans (29.3%), and by white nonhispanic (23.5%).<sup>6</sup> The impact of these demographic changes on educational policy and law, the associated statistical categories, as well as the contents of curricula and textbooks, is likely to be profound.
- The fourth stage necessitates adaptation of education to the diversity of subjects of the right to education, replacing the previous requirement upon students to adapt themselves to the available schooling with the adaptation of education to everyone's equal right to education and equal rights in education. The most far-reaching assertion of rights-based education, free and appropriate, has been attained for children with disabilities. The *No Child Left Behind* initiative promised to increase funds under the Individuals with Disabilities Education Act (IDEA) "in order to reduce the burden that states and local districts bear in meeting the special needs of disabled students."<sup>7</sup> The National Education Association (NEA) found that budgetary decisions of May 2001 marginally increased federal funding (from 15% to 16.5%), less than half of the promised 40% federal contribution.<sup>8</sup> An increase of federal funding is apparently awaiting results of planned amendments to the IDEA, while the shortage of funds in individual states<sup>9</sup> is likely to jeopardize the 'appropriate' in the postulated right for children with disabilities. Vertical fragmentation of funding precludes the enforcement of apparent, but unenforceable rights.

All these four stages in progression towards the full realization of the right to education can thus be seen and experienced somewhere in New York. Education statistics inevitably show that not all children enjoy the right to education. The grounds for

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<sup>6</sup> Results of the 2000 population census ([www.nyc.gov/html/dcp/html/pop2000](http://www.nyc.gov/html/dcp/html/pop2000)).

<sup>7</sup> *No Child Left Behind* ([www.ed.gov/inits/nclb/partx2.html](http://www.ed.gov/inits/nclb/partx2.html)).

<sup>8</sup> Public education funding update, May 2001 ([www.nea.org/lac/funding](http://www.nea.org/lac/funding)).

<sup>9</sup> A study launched by Senator Edward Kennedy in November 2001 (*Education in crisis: The state budget crunch & our nation's schools*) reported for New York a shortfall of \$710 million for 2002.

exclusion may coincide with the internationally prohibited grounds of discrimination, combine several of them, but routinely revolve around poverty. The first step towards eliminating exclusion thus consists of itemizing its contemporary pattern in order to make it visible. Keeping a problem invisible facilitates inaction and impedes the key human rights strategy, which is to expose abuses as the first step towards opposing them.

The first step typically involves identifying those features which typically entail denials of the right to education and listing them as prohibited grounds of discrimination. The International Labour Organization highlighted in 1988 drawbacks of that approach, pointing out that definitions of “race and colour are of little value in the application of legislation that is intended to combat discrimination in so far as it is not the race, colour or ethnic origin of the person who is discriminated against that is really the point at issue, but rather the negative aspects that the author of the discrimination imputes to the person who is the victim of discrimination.”<sup>10</sup>

Simple and neat legal categorizations of prohibited grounds and types of discriminations do not help much unless children who are denied their right to education are identified so as to determine who they are, where they are, why they have been excluded. Otherwise, the vicious circle is self-sustaining. Children who have been excluded are not counted,<sup>11</sup> thus they do not count and cannot claim their rights.

It is relatively easy to capture denials of education by tabulating and then quantifying legal and administrative exclusions from education. This method cannot capture fear that children may feel because they cannot understand the language of instruction, or have been victims of harassment and are afraid to go to school. Fear cannot be tabulated and converted into statistics.

## 2.2. Outline of the human rights framework

The right to education involves three key actors: the government (at whatever level) as the provider and/or funder of public schooling, the child as the bearer of the right to education and of the duty to comply with compulsory-education requirements, and the child’s parents who are “the first educators”.<sup>12</sup> The guaranteed freedom and corollary responsibility of parents to choose education for their children constitutes one pillar of the right to education, another is embodied in the human rights obligations of the state. In the United States, the right to education is recognized as a civil and political right.

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<sup>10</sup> International Labour Organization - *Equality in Employment and Occupation. General Survey by the Committee of Experts on the Application of Conventions and Recommendations, 75<sup>th</sup> Session, 1988, Report III (Part 4 B), para. 33.*

<sup>11</sup> Results of the 2000 census are taken as a “fact” while estimates of the New York City’s undercount have not yet become available. In 1990, the undercount was just below half million people. (Data available at [www.nyc.gov/html/dcp/html/pop2000](http://www.nyc.gov/html/dcp/html/pop2000))

<sup>12</sup> The position of teachers regarding their role in shaping education as well as their professional and trade union rights and freedoms is not dealt with in this text due to space limitations.

This entails respect of the freedom of parents to choose education for their children, but the right to education as an economic, social and cultural right is not recognized, nor are the rights of the child.

The rationale behind parental choice is to prevent state's monopoly over education and to protect educational pluralism. US courts have affirmed the right of parents to exempt their children from public schools as well as from parts of the curriculum which the parents might find objectionable, although a right of parents to educate their children themselves, at home, remains an object of dispute and litigation.

Education as a universal human right requires elevating governmental human rights obligations to the highest possible level so as to equalize opportunities. Inequalities cumulate in time and space. Those with the least access to education tend to leave this heritage to the next generation, while making individual families and local communities responsible for funding education broadens the gap between haves and have-nots. Breaking this vicious circle requires governments, individually and collectively, to prioritize and equalize funding for education. The goal of eliminating spatial inequalities is inherent in the universality of the right to education, which should be accompanied by the universality of corresponding human rights obligations. The objective of rupturing inter-generational transmission of inequalities is reflected in the very notion of equal rights. This has been affirmed by the United States in its aid policy. USAID has pointed out that, in the absence of public funding, children's access to education depends on their parents' income and wealth. Hence, public funding is necessary to ensure access to education for poor children and break the inter-generational transmission of poverty.

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These issues are easily addressed within the 4-A scheme, which structures governmental human rights obligations into making education available, accessible, acceptable and adaptable:

- Availability embodies two different governmental obligations: the right to education as a civil and political right requires the government to permit the establishment of schools, while the right to education as a social and economic right requires the government to ensure that compulsory education is all-encompassing.
- Access is defined differently for different levels of education. The government is obliged to secure access to education for all children in the compulsory education age-range, but not for secondary and higher education. Moreover, compulsory education ought to be free of charge while post-compulsory education may entail the payment of tuition and other charges, assessed by the criterion of affordability.
- Acceptability requires guaranteed quality of education, minimum standards of

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<sup>13</sup> Policy paper: Program focus within basic education, USAID, last revised on 20 September 2000, ( [www.usaid.gov](http://www.usaid.gov)).



health and safety, professional requirements for teachers, which have to be set and enforced by the government. The scope of acceptability has been considerably broadened through the development of international human rights law. The focus on indigenous and minority rights has prioritized the language of instruction, which often makes education unacceptable if the language is foreign to young children. The prohibition of corporal punishment has transformed school discipline in many countries further broadening the notion of acceptability. The emergence of children themselves as actors vindicating their right to education and rights in education promises to endow the notion of acceptability with their vision of what their rights should be.

- Adaptability requires schools to adapt to children, following the thrust of the idea of the best interests of each child in the Convention on the Rights of the Child. This reconceptualization has implicitly faulted the heritage of forcing children to adapt to whatever schools may have been made available to them. As human rights are indivisible, adaptability calls for safeguards for all human rights within education as well as enhancing human rights through education.

### 2.3. Human rights as process: Exposing abuses, righting wrongs

An essential purpose of human rights law is to correct political decision-making by bestowing rights upon categories without political voice. School children are a case in point, children deprived of education even more so.

Human rights law has introduced two procedural innovations. The first one is the affirmation of each individual - including the child - as the subject of rights, and, the second and conceptually related innovation is broad standing for claiming and vindicating human rights, which should pertain to all. Human rights obligations pertain to all parts of the government, regardless of vertical and horizontal division of powers and responsibilities. Thus obligations which different public authorities have to perform are substantially integrated. The state is held responsible for the lack of performance by any and every one of its agencies or agents. No rights can exist without remedies hence the recognition of individual rights entails the corresponding standing to claim rights and demand remedies for their denial or violation.

The evolution of human rights laws has been accompanied by setting up domestic institutional infrastructures for providing remedies for their denials and violations, both legal and extra-legal. Courts and human rights commissions have become involved in vindicating human rights in all regions of the world. Contrary to the frequent definition of enforceable human rights as only civil and political, human rights commissions in developing countries tend to have much of their caseload dominated by complaints against violations of economic and social rights. For example, 44.5% of the cases dealt with by Indonesia's National Commission on Human Rights in the year 2000 were classified as violations of the right to welfare.<sup>14</sup>

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<sup>14</sup> The National Commission on Human Rights Indonesia - *Annual Report 2000*, Jakarta, 2001, p. 69.

The human rights approach is based on regulatory and institutional coherence as human rights are interrelated and interdependent. This often requires integration (the currently popular term is mainstreaming), necessitating legal and institutional reform so as to create a uniform and comprehensive legal framework encompassing all individual rights.

The conventional definition of human rights as safeguards against abuse of power by the state is, for the rights of the child, necessarily complemented by the responsibilities of the parents and adults in general. Their legal enforcement thus targets parents in the form of parental obligations regarding the education of their children as well as numerous prohibitions against abuse or exploitation of children. This type of enforcement, however, does not sufficiently advance the rights of the child where the governmental responsibility to secure the conditions for full realization of the rights of the child has not been translated into reality.

Since children have not yet been recognized the standing to vindicate their rights in most countries, nor would they always be in a position to effectively pursue complaints against denials and violations of their rights, a broad range of actors is involved in vindicating the rights of the child, ranging from parents and teachers, to NGOs, and to specialized institutions such as children's ombudsmen. This broadening of access to justice for children is based on three specific features of the rights of the child:

- firstly, the recognition of the rights of the child necessitates the acceptance of obligations and responsibilities by all public authorities, parents and families, as well as adults in general; the potential for abuse of power inherent in the vulnerability of children requires special public institutions to be created for children, alongside their own right to articulate and defend their rights;
- secondly, the rights of the child reach far beyond law and pertain to all public authorities since macro-economic and fiscal policies can jeopardize programmes and projects at the micro-level; anticipating the impact of particular policies on children is thus necessary as is the avoidance (or at least alleviation) of the likely harmful impact on children;
- thirdly, to compensate children's lack of knowledge, experience, time and (often) financial resources necessary to effectively use the existing legal or extra-legal mechanisms for human rights protection specialized, publicly-funded children's advocates, counsel or ombudsmen are necessary.

Children have started claiming and defending their rights themselves, but these cases are rare. In Colombia, children have been accorded legal standing to claim and defend their right to go to school in the evening, being too busy earning their livelihood in daytime. The Supreme Court of Colombia examined in 1998 a complaint by two boys who had been prevented from continuing their education by attending evening classes because of their homosexuality. The Court faulted the school for having failed to exhibit the values of tolerance and respect of diversity, adding that a public school could not preclude entry to learners by asserting that "homosexuality is sinful." Thereby, the school

violated the boys' right to education, their freedom from discrimination and the right to full development of their personality.<sup>15</sup> The High Court in Lilongwe (Malawi) dealt in 1996 with a case of a girl expelled from school for her participation in a students' protest march. As is customary in most countries, the girl herself did not have the standing to challenge her expulsion and the suit was initiated by her father. At issue was her participation in the protest march in March 1996 which had led to the closure of her school and the sending away of all learners. The court has found that the failure of the school to "give her a real opportunity to be heard" made the expulsion null and void.<sup>16</sup> Even if such cases are few, their significance is immense because they enhance the self-confidence of potential litigants and create ripple effects.

Human rights commissions and ombudsmen, including specifically for children, have been set up in many countries. They provide a bridge between legal and political processes. Such institutions provide a wealth of approaches and experiences in translating the spirit and wording of international human rights law into domestic practice. They have been particularly effective in articulating how human rights should be defined and translated into practice. National human rights institutions in many countries have created a bridge between international and domestic levels, between legal and extra-legal enforcement of governmental human rights obligations.

The objective of integrating (or mainstreaming) the rights of the child requires merging legal and fiscal, economic and societal, political and cultural approaches. The institution of children's ombudsman has been designed to respond to this need by making children's rights politically visible, which also constitutes a form of human rights education, as well as taking up individual or systemic problems with their recognition and protection.

While human rights of adults are often confined to safeguards against abuses of power by the state, for children such a narrow definition is obviously inadequate as the state itself has the obligation to protect them against abuses by private actors, including their own parents. The Portuguese Ombudsman (*Provederia de Justiça*)<sup>17</sup> has an explicit mandate to act upon any abuses of power or situations of domination, regardless of the status of the perpetrator.

The tasks of ombudsmen often include influencing policy development and law reform in all areas relevant for children as well as monitoring the impact of the existing policies and laws on children. Moreover, this institution often aims also to give a voice to children themselves. The need for children's ombudsmen has been aptly summarized by UNICEF's International Child Development Centre as follows:

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<sup>15</sup> Supreme Court of Colombia - *Pablo Enrique Torres Gutierrez and José Prieto Restrepo v. Instituto Ginebra La Salle*, T-147493, Judgment of 24 March 1998.

<sup>16</sup> High Court (Lilongwe) - *Upile Chioza (a minor) suing by Andrew Chioza as her next friend v. Board of Governors of Marymount Secondary School*, No. 254 of 1996, 19 July 1996.

<sup>17</sup> Information is available at <http://www.ombudsn.net/Ombudsmen/Portugal/Portugal.htm>.

A central function of any commissioner for children is to assert the fundamental human rights of children against a tradition of viewing children as either the property of adults or as people in the making. Because these rights are not widely accepted and because children, uniquely, lack the right of autonomy or self-determination, the task of representing their rights is profoundly different from that of representing the interests of adults. Further, because children have a low status and political profile in most countries, their interests are likely to be overlooked if they are directly competing for time and resources with the rights of adults. Children will never be given the recognition and visibility to which they are entitled without the commitment of an exclusive focus. And the structure, working methods, promotional materials, and style necessary to achieve an effective dialogue with children all differ significantly from those likely to be developed in respect of adults.<sup>18</sup>

### 3. MAKING EDUCATION AVAILABLE

#### 3.1. Congruence between intake and input

There is a vast amount of statistics available for New York's schools. It would seem odd to voice a need for additional and different statistics was it not for the fact that statistical figures are interpretations rather than facts. These interpretations follow from decisions as to which data should be compiled. In their turn, those decisions follow from the identification of factors that should - and should not - be monitored. Thus, racial classifications are abundant while information on religion is not collected. Confusingly, the term "minority" seems to be, as in Great Britain, used to denote non-white people.<sup>19</sup> Classification by disability cloaks underneath all other components of the child identity. Entitlement to free lunch is used as a proxy for the child's economic status. The human rights approach necessitates two innovations in education statistics:

- It requires complementing statistical averages by a focus on each individual child. Since each child is the subject of the right to education, the unit of measure ought to be the individual child and education tailored to the child's best interests.
- Education statistics focuses in inputs (resources devoted to education, particularly financial and human) and outputs (often measures by testing learning accomplishments). The human rights approach adds intake (striving to identify all factors that are likely to affect the child's learning) and impact (going beyond learning outcomes to assess the impact of education on the exercise all human

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<sup>18</sup> *Ombudswork for Children*, Innocenti Digest No. 1, International Child Development Centre, Florence, 1997, p. 11.

<sup>19</sup> Commission on Human Rights - Report by the Special Rapporteur on the right to education, Katarina Tomasevski: Mission to the United Kingdom (England), U.N. Doc. E/CN.4/2000/6/Add. 2, paras. 37-37.

rights.

James Coleman's *Equality of Educational Opportunity* pointed in 1966 research towards the acknowledgment of the pre-school determinants of the child's subsequent learning. Family background constitutes one of the key determinants of children's education. Research carried out for United Kingdom's Treasury (ministry of finance) has shown that educational development of 22 month old infants from the highest class is 14% superior to those in the lowest class.<sup>20</sup> This gap tends to widen into an abyss unless there is a well-designed, comprehensive, sustained and well-resourced strategy to equalize opportunities for poor children and break the inter-generational transmission of educational deprivation. As described by the United Nations in 1975, "inequality in education is the most important means by which occupational selection takes place, and hence the most important means by which advantages and disadvantages are transmitted from generation to generation."<sup>21</sup>

The purpose of collecting data is to translate the equal right to education of each child (that is, education adapted to the best interest of that child) into the necessary budgetary allocations. Schools reject those labelled "difficult-to-educate" if they cannot cater for them.<sup>22</sup> The reason is insufficient resources - space, time, teaching staff, teaching and learning aids - which budgetary stringency and increased competitiveness are making worse. However, denials of education are rarely based on cost alone.

The entry of terms such as "learners with special needs" or "exceptional learners" into educationists' vocabulary has been driven by the guilt associated with the pejorative reference to "the disabled." In the former Soviet Union, a scientific discipline was created - *defectology* - which profoundly influenced the fate of people with disabilities. Children categorized as having 'defects' early in their lives were segregated into separate institutions, never to join the mainstream, in institutions

endowed with fewer and fewer resources.<sup>23</sup> Against this heritage, reduced governmental allocations for public institutions have further diminished prospects for the equal right to education for all those who are dependant on public funding, especially when additional funding is necessary to equalize educational opportunities.

The percentage of learners provided with additional resources varies between 1% and

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<sup>20</sup> Commission on Human Rights - Report of the Special Rapporteur on the right to education, Katarina Tomasevski: Mission to the United Kingdom (England), U.N. Doc. E/CN.4/2000/6/Add.2, para. 48.

<sup>21</sup> United Nations - *The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress* by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights, Publication E.75.XIV.2, New York, 1975, para. 68.

<sup>22</sup> Hegarty, S. - *Educating Children and Young People with Disabilities. Principles and the Review of Practice*, UNESCO, Paris, [undated], p. 49.

<sup>23</sup> Mental Disability Rights International - *Children in Russia's Institutions: Human Rights and Opportunities for Reform*, Washington D.C, February 1999, p. 9

41%,<sup>24</sup> making it obvious that the term has no internationally defined meaning. Differences are striking even within Europe, with Finland reporting 18%, and Greece, Italy and Spain less than 2% of children with special educational needs.<sup>25</sup> An important reason for such incomparable figures is the blurring of difference between the three Ds - disability, difficulty, and disadvantage. Disability is commonly defined by reliance on the medical model. Learning difficulties remain difficult to define and categorize, while disadvantage often refers to immigrant or refugee children because their disadvantage routinely begins with the language of instruction.

William Fray, a demographer at the University of Michigan, has estimated that one-third of New York City's black population is foreign-born.<sup>26</sup> If coming from Senegal, they are not likely to be English-speaking, if from Nigeria, English is likely to be their second or third language. In both cases, they may be Muslim. The category African-American thus encompasses diverse people. Reaching beyond race to identify the factors that may affect a child's learning necessitates attention to language or religion, which are not being recorded. In the aftermath of September 11<sup>th</sup>, estimates about the number of Muslims in the United States have ranged between 1.5 and 7 million.<sup>27</sup>

There are two opposite images of immigrants, they are seen as a net drain or else a net gain. The first one is widespread and treats immigrants as a burden upon US education, the second one estimates the financial benefit of \$25 billion<sup>28</sup> for United States through the entry of highly-educated and qualified immigrants. This has re-actualized the phenomenon of brain drain as brain-gain for the United States. Developing-country students acquiring US degrees tend to stay on where they studied, while fully-educated professionals migrate to the United States attracted by salaries which are incomparably higher than those in their countries of origin.

Distinctions between citizens and non-citizens, and between different categories of non-citizens, are reflected in diminishing access to education in the panoply of categories ranging from citizens to illegal aliens. Entitlement to compulsory education for excludable and deportable aliens as well as access to educational assistance benefits has been judicially affirmed. How much this right is exercised is difficult to ascertain. Estimated numbers of illegal aliens vary. Every Spanish-speaking visitor to New York can easily find out that a person who is cleaning a hotel room or driving a taxi is an

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<sup>24</sup> *Education at a Glance: 2001 OECD Indicators*, Paris, 2001, p. 174.

<sup>25</sup> European Commission - *Key Data on Education in Europe 1999/2000*, Office for Official Publications of the European Communities, Luxembourg, 2000, pp. 141 and 149.

<sup>26</sup> Fears, D. - Black America transformed, *International Herald Tribune*, 25 February 2002.

<sup>27</sup> Broadway, B. - Surveys of U.S. Muslims show numbers depends on who is counting, *Guardian Weekly*, 27 December 2001 - 2 January 2002.

<sup>28</sup> Dr Stephen Moore of the Cato Institute put it thus: "It's a form of reverse foreign aid. We give less than \$20 billion in direct aid to third world nations and we get back \$30 billion in capital assets." By "assets" he means workers raised, fed and educated by poorer countries, then shipped to the US.' Palast, G. - Asylum seekers? Try 'human capital', *Guardian Weekly*, 7-13 June 2001.

illegal alien, and willing to talk about their experiences, status and prospects. While children are entitled to attend school regardless of their legal status, there is little they can legally do with their schooling.<sup>29</sup> This is associated with an often repeated observation that “New York will always have a large number of jobs available for unskilled workers.”<sup>30</sup>

### 3.2. Aligning fiscal allocations with human rights obligations

The human rights rationale for elevating the financial responsibility for compulsory schooling from the local to the national (and, optimally, global) level is to ensure that *all* children have access to good quality public school. However, the ability and willingness of individual governments to finance education is associated with taxation because education is funded out of the general tax. Distaste for taxation in the United States is palpable as evidenced in constant references to ‘the tax burden.’ Diminishing taxation decreases public funding for education and removes additional financial burden to parents. Lowering financial responsibility for education to the local and family level jeopardizes the human rights approach: people see funding destined for their own rather than other people’s children. The rationale underlying this financial construct jeopardizes the right to education for *all* children.

Diminishing tax burden is accompanied by preference for charity. Financial contributions by the rich are then a matter of their personal choice rather than seeing the duty to pay tax as a correlate of equal rights of all. Charitable donations (the preferred term is *philanthropy*) were estimated at 2% of GDP, \$203 billion in 2000,<sup>31</sup> and are expected to increase further.

The absence of international legal obligations and federal guarantees creates and sustains diversity. The right to education is recognized and judicially enforced in some states while not in others. Diversity is replicated within states because the widespread method of financing education relies on local tax, mostly property taxes and taxes on consumption. Differences in the tax base between rich and poor communities result in unequally funded schools. Taxation targeting property at the time when the economy is switching to services necessarily falls short of spending requirements. Why this has not been adjusted to changes in the economy is a question which surprises people; most automatically respond that it has always been like that. A follow-up question asking why computers are installed in schools, while this definitely has not always been so, drives

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<sup>29</sup> Jorge Ruiz-de-Velasco and Michael Fix have found that undocumented children “are barred from working after they leave school, from receiving most public benefits, and from attending at least some public postsecondary educational institutions.” Ruiz-de-Velasco, J. and Fix, M. - *Overlooked & Underserved: Immigrant Students in U.S. Secondary Schools*, The Urban Institute, December 2000, p. 11.

<sup>30</sup> Viteritti, J.P. and Kosar, K. - *State of the New York City Public Schools 2000*, Manhattan Institute, Civic Report No. 13, September 2000, p. 1.

<sup>31</sup> A survey of the new rich: The new wealth of nations, *The Economist*, 16 June 2001, p. 19.

the point home. The combined qualities of leadership, commitment and initiative are making a difference.

The fragmented and complicated system of financing education, especially the vertically divided budgetary allocations from local to federal, may require replication of tracking-the-money schemes that have been put in place in other countries. Whether budgetary allocations alone can be taken as a relevant indicator for investment in education is questioned,<sup>32</sup> while the ratio between the number of students (1.1 million) and employees (100,000) further reinforces the need to track the flow of funds.

Emanuel Ablo and Ritva Reinikka carried out a much quoted study in Uganda, looking into the fate of budgetary allocations on their way from the central government's budget to individual schools, teachers and children. They found that less than 30% of public spending nominally allocated for education actually reached schools.<sup>33</sup> The remedy was simple and effective. Notices were placed in all schools concerning the funds assigned to that school, districts had to publicise their allocations and make them available to public scrutiny, so did the central government. Such a system of tracking the flow of funds proved not only costless (as children, parents and NGOs cheerfully took part) but also cost saving as much corruption and wastage was prevented. As a public education exercise, it proved immensely beneficial.

### 3.3. Reconciling inclusiveness with parental choice

The exercise of choice, often cited in justification of diversification and privatization of education, is advocated as empowering parents. Their ability to exercise choice is extremely uneven, however, necessitating knowledge, experience, income and time, which are unevenly distributed. The emphasis on parental rights is also a major impediment for a recognition of the rights of the child. Children seem to be treated as property of their parents, who make choices for them at their discretion. Parentless children and those with irresponsible parents suffer in consequence.

Affordability circumscribes parental freedom of choice regarding compulsory education. Parental purchasing power is being further strengthened by typical statements such as: "we exercise choice when we're going to buy a car or when we're going to buy a box of cereal."<sup>34</sup>

Controversies about school vouchers have added fuel to endless debates about

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<sup>32</sup> For example, Emanuel Tobier has claimed that only 55% of spending earmarked for education supports teaching and learning. (Tobier, E. - New York City's public schools: The facts about spending and performance, The Manhattan Institute, *Civil Bulletin* No. 26, May 2001, p. 2)

<sup>33</sup> Ablo, E. and Reinikka, R. - *Do Budgets Really Matter? Evidence from Public Spending on Education and Health in Uganda*, Policy Research Working Paper No. 1926, The World Bank, Washington, D.C., 1996, p. 31.

<sup>34</sup> New York City Conference on School Choice, 13 December 2000, ([www.manhattan-institute.org/html/nyo\\_school\\_choice](http://www.manhattan-institute.org/html/nyo_school_choice)).



financing education. The introduction of vouchers raises the key question about education as entitlement - is it a right to a subsidy or a right to free-and-good public schooling? Vouchers entail a substantive change in the definition of the obligations - rather than having to ensure that *all* public schools comply with *all* requirements, school vouchers enable parents to shop around with the voucher in hand choosing a school for their children. The rationale is that schools should be rewarded for attracting learners, while those unable to do so should be deprived of funding. At a higher level of abstraction, the rationale is to enhance competitiveness and/or broaden parental freedom of choice. An additional, albeit implicit reason, has been a wish to subject public schools to competition, seeing them as having monopolized education. This approach has generated a great deal of controversy by challenging the premise accepted in many countries, namely that the government is obliged to either provide all-encompassing public education (at least within the compulsory school age) or to subsidize a variety of non-public schools, in both cases ensuring that all schools comply with all standards. This is not so in the United States. Private schools are exempt from most legal requirements<sup>35</sup> and the trend seems to be to broaden such exemptions. The emphasis on competitiveness replicates free-market principles, which require that there be winners and losers. This rationale is conceptually opposed to education as a human right.

#### 4. DEFINITION OF DISCRIMINATION AS PREREQUISITE FOR ENSURING EQUAL ACCESS TO EDUCATION FOR ALL CHILDREN

The advocacy of decentralization, generally defined as the transfer of authority from central to local government, inevitably raises concerns revolving around what is termed “equity.” This term is widely used within the United States and in its foreign policy in a sense which is close to the human-rights requirement of equalizing the conditions for the enjoyment of the right to education. There is no explicit definition of equity but the inevitable mention of disadvantaged categories (also undefined) alludes to poverty as one important feature to be tackled, especially when it is inter-twined with discrimination on the grounds of race, ethnicity, language, religion, gender or disability. Disability is not mentioned, however, while “discrimination” and “minorities” tend to be used interchangeably. USAID’s vocabulary depicting categories and individuals who tend to be deprived of access to education alternates between vulnerable, disadvantaged and marginalized groups, the poor, with frequent mention of girls and women. References are thus made to “girls, underserved and disadvantaged populations” as well as “children of urban and peri-urban slums.”<sup>36</sup>

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<sup>35</sup> The federal government possesses a legal basis for compelling private schools to conform to human rights guarantees. The Supreme Court has held that the granting of tax-exempt status to private schools bestows upon them a governmental benefit [*Bob Jones University v. United States*, 461 U.S. 574 (1983)] but the government itself does not seem to be enforcing the law. However, the standing to demand withdrawal of tax exemptions from private schools held to be practising racial discrimination has been denied to parents [*Allen v. Wright*, 468 U.S. 737 (1984)].

<sup>36</sup> USAID - Education & Training. Executive Summary (text at [www.usaid.gov/educ\\_training](http://www.usaid.gov/educ_training), as

The (previous) government affirmed that “the United States seeks to enforce the established rights of individuals to protection against discrimination based upon race, color, national origin, religion, gender, age, disability status, and citizenship status” and acknowledged “continued racial and ethnic discrimination in education.”<sup>37</sup> The new Administration has pointed to the need to diminish disparities in learning accomplishments by race and/or ethnicity, gender, English-language proficiency, disability, and poverty and/or socio-economic status.<sup>38</sup> Thus, there is a formal acknowledgment that discrimination should be eliminated, although there is a great deal of difference in approaches chosen to tackle particular forms of discrimination, and these change with changing governments.

Anti-discrimination laws have tried to outlaw different treatment for differently classified people so that individuals would be treated on their own merits, but classifications continue as do measures to remedy thus detected disparities. The language varies a great deal, alternating between redressing past discrimination and promoting diversity, identifying beneficiaries as victims of discrimination or disadvantaged or being at-risk.

Compensation for past discrimination has not attained the postulated objective of making such compensation redundant, but has been considerably constrained, in some parts of the United States abolished altogether. The more recent objective of “diversity” aims at replicating the population structure in the composition of, for example, university students but is actually a shorthand term for the preferential treatment accorded to under-represented categories. Difficulties in dissociating the structural from the individual are illustrated in vehement critiques of attempts to attribute structural obstacles to the individual lack of ability. These are not diminishing because the quality of elementary education varies so much that structural obstacles to equal educational opportunities persist and they may be actually increasing. The meaning of “equality” varies a great deal - it can mean redressing effects of racial segregation as well as facilitating upward mobility. This makes the language of equal rights immensely popular as well as incomprehensible to outsiders. Gender is a good example of the absence of the commitment to eliminate all forms of discrimination.

Early and single motherhood requires tackling a range of unpopular issues. Preventing early pregnancy requires providing young people with the information, means and motivation which is fiercely opposed. The gender dimension necessitates altering the life-style of boys and young men, and this cuts across race. The traditionally ascribed gender roles make teenage pregnancy and single motherhood a women’s rather than a gender problem, failing to solve the problem by directing all laws and policies at girls

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revised 30 March 2001) and Basic Education and Technical Training, December 1982 (text at [www.usaid.gov/pubs/ads/pps/basiced](http://www.usaid.gov/pubs/ads/pps/basiced) as revised 12 December 2000).

<sup>37</sup> Initial report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, September 2000, p. 3 and 75, the text is available at [www.state.gov/www/global/human\\_rights/cerd\\_report/cerd\\_index.html](http://www.state.gov/www/global/human_rights/cerd_report/cerd_index.html).

<sup>38</sup> *No Child Left Behind*, the text is available at [www.ed.gov/inits/nclb](http://www.ed.gov/inits/nclb), part3 and partx2.

and women alone. NGOs play a key role in altering lifestyles. Their ability to mobilize the role models that boys and young men look up to has made a great deal of change in many countries.

Single motherhood is frequently highlighted as a major determinant of child poverty and has constituted a major focus of the 1996 welfare reform, which has been placed on the agenda five years later. If single mothers have had their children young, their level of education will be low and they will be confined to low-skilled and low-paid jobs without another wage-earner, while having to bear all the cost of raising children alone. Effects of the diminished welfare benefits as of 1996,<sup>39</sup> which require single mothers to work even while their children are under one year old, will become noticeable when these children reach their teens and youth. With their mothers working, they will have missed the time and attention needed for early childhood development. With their mothers earning too little to afford good childcare and pre-school education, they are likely to begin formal schooling at a disadvantage. Recent proposals for reforming welfare from the Bush administration do not anticipate subsidized child care while increasing working hours.<sup>40</sup> Disadvantage trebles if a child's mother has not completed high school, is single, and Hispanic,<sup>41</sup> advantage accrues to "white children from two-parent households with family incomes above the poverty threshold and with mothers who spoke English at home."<sup>42</sup>

## 5. GUARANTEES FOR ACCEPTABILITY

### 5.1. Enforcement of minimum standards: The teaching profession

Localized financing of education creates two-fold differences amongst schools: the quality of education which a school is providing cannot be dissociated from the profile of its intake in terms of the parents' income. This is correlated with their level of education, and routinely also with their race and/or ethnicity. Most children live in neighbourhoods and attend schools that reflect their parent's income and/or wealth and education is thus a mechanism of inter-generational status transfer.

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<sup>39</sup> The 1996 welfare reform (Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193 §101 (1996)), replaced the previous entitlements by financially supporting States in transferring as many recipients as possible to work. As a result, the number of welfare recipients was halved from 12 million in 1996 to 6 million in 2000. Prevention of out-of-wedlock pregnancy had been proclaimed in 1996 to constitute an important goal in response to the high teen birth rate and States' measures to diminish teen as well as out-of-wedlock pregnancies ensued.

<sup>40</sup> Welfare: Will tinkering bring the building down, *The Economist*, 3 March 2002.

<sup>41</sup> Federal Interagency Forum on Child and Family Statistics - America's Children: Key National Indicators of Well-Being, 2000, Washington D.C. Text available at <http://childstats.gov>.

<sup>42</sup> *The Condition of Education, 2001*, National Center for Education Statistics, May 2001, full text available at [nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2001072](http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2001072), p. 89.

The impact of localization is an immense variety of schools. No uniformity has ever been created whereby all children would be guaranteed access to a school which conforms to country-wide criteria of a guaranteed quality. Since education is financed locally, quality depends on the wealth or poverty of the local community. As the orientation and contents of schooling is also determined locally, there is an endless variety in what is being taught and how.

The proportion of uncertified teachers is a constant theme in education statistics. The high percentage of teachers who lack a degree in their main teaching field (40% for science and 55% for history<sup>43</sup>) demonstrate that the problem is widespread, as are concerns about its effects on students' learning. This subject-matter raises questions about the certification process itself. One facet is the linkage between the substantive and/or procedural requirements and the quality of teaching which they should ensure. Another is the linkage between the process itself and the profile of the existing and needed teaching profession in New York City.

Some of the pre-requisites for teachers' certification are unusual, such as fingerprinting or good citizenship.<sup>44</sup> The requirement of citizenship in order to become a teacher was declared unjustified by the Constitutional Court of South Africa. The Court has found that "non-citizens are a minority in all countries and have little political muscle" and rejected the government's justification in terms of providing employment to its own citizens, finding that preference should be given to quality education.<sup>45</sup>

## 5.2. Medium as message: Language

Even if it is not the official language of the United States, English is exported all over the world as the language of globalization. Domestically, there is a trend towards English-only. How this promotion of unilingualism relates to the widespread commitment to multiculturalism remains unclear. It is likely that multiculturalism is associated with visible minorities, who cannot alter their colour and are thus accepted as different. English-only may be driven by increasing numbers of Spanish-speakers, who are both expected and required to master English as fast as possible so that they would not be seen as different. The 1990 census results revealed that half of non-English speakers spoke Spanish, which was trailed by considerably smaller proportions of French, German, Chinese, Italian, Tagalog, Polish, Korean and Vietnamese speakers.<sup>46</sup>

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<sup>43</sup> Data available at [www.ncpa.org/pd/gif/teach.gif](http://www.ncpa.org/pd/gif/teach.gif).

<sup>44</sup> Board of Education of the City of New York - General regulations governing licensing examinations, available at [www.nycenet.edu/dhr/orpal/genregs](http://www.nycenet.edu/dhr/orpal/genregs).

<sup>45</sup> Constitutional Court of South Africa - *Larbi-Odam v. The Member of the Executive Council for Education (North-West Province)*, SA 745 (CC), 1998.

<sup>46</sup> Initial report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, September 2000, p. 10, the text is available at [www.state.gov/www/global/human\\_rights/cerd\\_report/cerd\\_index.html](http://www.state.gov/www/global/human_rights/cerd_report/cerd_index.html).

Language has not been included among prohibited grounds of discrimination, although both court cases and legislation affirmed the need to overcome language barriers.<sup>47</sup> Although education is unilingual, multiculturalism should permeate it. Indeed, the intake in New York's schools vividly illustrates the continuing pattern of migration by the diversity of its student intake. The number of languages spoken in New York City is estimated at over one hundred. The number of languages that are taught in different programmes designed to help non-English-speakers is likely to be incomparably smaller.

Moreover, matching the linguistic diversity of students' intake with an equally diverse teaching profession seems to constitute a problem. A teacher who failed her oral test thus described the reason for having failed:

I passed both the Spanish and English written tests and the Spanish oral. I don't think I failed because of the quality of my English, it was my answers. He didn't like them. My interviewer asked me why I wanted to be a bilingual teacher and I told him I wanted to help the Spanish-speaking children in the city. He seemed unhappy with that answer and asked me what I'd do if were assigned to a school where the children were Chinese. I asked him why they would send someone who was bilingual in Spanish to a school where the children speak Chinese when there are so many children who speak Spanish. That did it, I think.<sup>48</sup>

It may well be that there was a shortage of bilingual teachers at the time, and it may well be that teachers were certified, but for a language that students did not understand. A survey by the Advocates for Children of New York has revealed that just below half (49%) of bilingual teachers spoke the same language as their

students, while 35% spoke a language that some students could understand.<sup>49</sup> It is possible that numerous controversies about the language of instruction have not yet sufficiently focused on the key prerequisite for learning - a language which both teachers and learners understand.

## 6. ADAPTING EDUCATION TO ALL HUMAN RIGHTS

Education involves much more than transmission of knowledge and skills. The values which education espouses might be openly endorsed or cloaked behind an apparent neutrality of the curriculum but they are part and parcel of any schooling. Schooling may

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<sup>47</sup> The key year was 1974, when the Supreme Court ruled that appropriate services should be provided to pupils with limited English proficiency (*Lau v. Nichols*, 414 U.S. 563) and Congress adopted the Equal Educational Opportunities Act replicating this approach by mandating state and local education authorities to overcome language barriers so as to equalize participation in education.

<sup>48</sup> Tapper, D. - Swimming upstream: The first-year experiences of teachers working in New York City Public Schools, Education Priorities Panel, May 1995 ([www.edpriorities.org/Pubs](http://www.edpriorities.org/Pubs)).

<sup>49</sup> Report from the front lines: What's needed to make New York's ESL and bilingual programs succeed, 7 February 2001 ([www.advocatedforchildren.org/pubs/ELLteachRepFINAL](http://www.advocatedforchildren.org/pubs/ELLteachRepFINAL)).

be slanted towards instructing children *what* to think or teaching them *how* to think. The powers exercised by those authorities who decide on the values, contents and methods of education therefore ought to be subjected to human rights safeguards lest this power be abused. US courts have, however, often stated that education is primarily the responsibility of parents, local education boards, state education officials, teachers while not of judges. The courts have affirmed abstract terms such as 'educational mission' or 'legitimate pedagogical concerns' which have provided ample space for disagreement about the meaning of such resonant phrases. Changing interpretations by the courts themselves have added more heat than light to endless controversies. The common-school ideal of the 19<sup>th</sup> century implied the forging of a distinct American identity as a purpose of schooling and some components have been retained ever since, such as national unity or democracy. Others, such as a commitment to secularism or to moulding public schools to create informed and self-governing citizenry, have been altered.

Compulsory education is seen as the exercise of the power of the state to impose, regulate, compel and control education and it thus not seen only - not even mainly - as a right but also as an exercise of the power of the state against which human rights safeguards are necessary. In the words of the Supreme Court, "the State exerts great authority and coercive power through mandatory attendance requirements".<sup>50</sup> Hence, the need for human rights correctives defined as parental rights. These include choice of education (public/private, secular/religious) as well as the right to challenge the orientation and contents of education to prevent state-operated schools from becoming "enclaves of totalitarianism."<sup>51</sup>

US courts have held, however, that children have the right to attend schools that promote desirability of racial segregation<sup>52</sup> while also affirming that public schools should teach values "essential to a democratic society" such as tolerance of divergent views and attention to sensibilities of other people.<sup>53</sup> Reconciling the two is difficult in theory, let alone in practice.

Methods of teaching, including what is called "classroom management" are not justiciable in the United States,<sup>54</sup> while teachers' right to resort to reasonable force to discipline a child has been apparently upheld by US courts.<sup>55</sup> Specific duties of learners are described in administrative and school regulations. These range from the

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<sup>50</sup> US Supreme Court - *Edwards v. Aguillard*, 482 U.S. 578 (1987).

<sup>51</sup> US Supreme Court - *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

<sup>52</sup> US Supreme Court - *NAACP v. Alabama*, 357 U.S. 449, 30 June 1958.

<sup>53</sup> US Supreme Court - *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 7 July 1986.

<sup>54</sup> *Bradley v. Pittsburg Board of Education*, 910 F. 2d 1171 (3<sup>rd</sup> Cir.) 1990.

<sup>55</sup> US Supreme Court - *Ingraham v. Wright*, 430 U.S. 651, 19 April 1977.

dress code (school uniforms may be a prerequisite for attending school) and deportment, to regular school attendance, and more-or-less detailed rules of behaviour. As anything else, these are subject to lively litigation. Courts have to decide whether a boy can attend school wearing a dress, high heeled shoes and a wig. They have to decide whether a school is legally responsible for self-inflicted damage by a person who broke into school grounds after hours and fell off a swing (and, if found responsible, is likely to eliminate children's playground to their detriment). They have to decide whether a single mother should be imprisoned because one of her children was a truant (thus leaving all her children alone, to fend for themselves, and probably not attend school at all). They have to decide cases brought by parents of a child who was suspended from school due to threatening the use of weapons against another child, who had informed the school authorities about that threat.

Although the United States takes a great deal of pride as the least censored country in the world, human rights safeguards have been developed to protect children from exposure to information and ideas that have been proved harmful. These are broadly accepted worldwide although less so in the United States. The constitutional prohibition against intrusions into freedom of expression has been interpreted to allow specific safeguards for children. Formal schooling is subjected to numerous restrictions, less so out-of-school learning. If education is defined in the broadest sense of this term, as the sum-total of what children learn from their parents and peers as well as from the hugely developed advertizing and entertainment industry, much of which is specifically targeted at them, educational and commercial messages often conflict. Compulsive television-viewing is a prominent feature of daily life in the United States and scholars are positing that "the most influential teachers of the next generation are Hollywood film studios and global advertizing agencies."<sup>56</sup>

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<sup>56</sup> Barnet, R. & Cavanagh, J. - Empire of the fun, *Guardian Weekly*, 12-18 July 2001.