



FACULTY OF LAW

Lund University

Rutendo A Urenje

What We Know On Purpose

Understanding the “purpose” element of the right to education in International Law.

AMM04 Master Thesis

International Human Rights Law

30 higher education credits

Supervisor: Maria Green

Term: Spring 2015

Abstract:

The right to education in International Human Rights Law has found much discussion in terms of access and compulsion. This right is the only right in the Instruments that carries with it a “purpose” element, which however has been left undefined and under discussed. This study has two layers, the first being to rightly understand the “purpose” element of the right to education. The second is an examination of whether the “purpose” element of the right to education is comprehensive and how it applies on the practical level. The objective of the study is to find out what the right to education is supposed to do or what a person will be claiming when they claim their right to education. To do this, an analysis of the drafting documents of the UDHR, ICESCR, CRC, UNESCO CDE and the CRPD is imperative so as to gain a clear fundamental understanding of the “purpose” element of the right to education. An exploration of the information from a Human Rights fundamental perspective and case studies of South Sudan and a New York State case will be used to better understand the problem and move towards a solution. The core issues found in this paper are that the “purpose” element of the right to education may be the key to developing and enhancing the right to education yet at the same time could be the downfall of free thinking of individuals if either misunderstood or misinterpreted. The research shows that there is need for a better understanding of the “purpose” element of the right to education, to allow for a development of the right to education to be more holistic in giving dignity to the right holder. The discussion on the “purpose” element of the right to education should only be pursued where a proper balance of autonomisation and socialisation can be achieved because it can be a dangerous tool in the hands of the powerful as much as it can be the key to realising a fuller, holistic and equal right to education.

KEYWORDS: Right to education, Purpose Element, International Human Rights law.

Acknowledgements:

I am thankful to my Father in heaven who gave me His Son and His Spirit to teach me all things, for Maria Green's consistent, tireless inspiration and guidance, to my family and friends for support, listening ears and tolerance.

Contents:

| | |
|--|-----------|
| Understanding the “purpose” element of the right to education in International Law..... | 1 |
| Abbreviations..... | 5 |
| Introduction..... | 6 |
| 1. Aims of the research..... | 8 |
| 2. Research Question..... | 8 |
| 3. Summary of Chapters..... | 8 |
| 4. Instruments embodying the Right to Education..... | 9 |
| Methodology..... | 12 |
| Limitations and Delimitations..... | 15 |
| Chapter 1: The meaning of education in the right to education..... | 16 |
| 1. Introduction..... | 16 |
| 2. The right to education..... | 16 |
| 3. Definition of education..... | 18 |
| 4. Theories..... | 21 |
| 5. Conclusion..... | 24 |
| Chapter 2: The history and the nature of the “purpose” element of the right..... | 25 |
| 1. Introduction..... | 25 |
| 2. Drafting History of the “purpose” element in the right to education..... | 25 |
| 3. The nature of the “purpose” element of the right to education..... | 34 |
| 4. Conclusion..... | 38 |
| Chapter 3: The content of the “purpose” element of the right to education..... | 39 |
| 1. Introduction..... | 39 |
| 2. Personality Development..... | 40 |
| 3. Strengthen respect for Human Rights..... | 44 |
| 4. Further the activities of the UN for maintenance of Peace..... | 46 |
| 5. Participate effectively in a free society..... | 49 |
| 6. Conclusion..... | 51 |
| Chapter 4: Towards a better understanding of the “purpose” element of the right to education and what it adds to the realisation of the right to education..... | 53 |
| 1. Introduction..... | 53 |
| 2. New York State Case..... | 54 |
| 3. South Sudan..... | 58 |
| 4. Conclusion..... | 61 |
| Concluding Remarks..... | 63 |
| Recommendations..... | 67 |
| Bibliography..... | 68 |
| 1. Books..... | 68 |
| 2. Articles..... | 69 |
| 3. UN Documents..... | 70 |
| 4. Other Documents..... | 72 |
| 5. Table of Cases..... | 73 |

Abbreviations

| | |
|------------|---|
| UN | United Nations |
| UDHR | Universal Declaration of Human Rights |
| ICCPR | International Covenant of Civil and Political Rights |
| ICESCR | International Convention of Economic, Social and Cultural Rights |
| CESCR | Committee of Economic, Social and Cultural Rights |
| CRC | Convention on the Rights of the Child /Committee on the Rights of the Child |
| CEDAW | Convention on Elimination of Discrimination Against Women |
| CRPD | Convention on the Rights of Persons with Disabilities |
| ICERD | International Convention on the Elimination of all Forms of Racial Discrimination |
| UNESCO | United Nations Educational Scientific and Cultural Organisation |
| UNESCO CDE | United Nations Educational, Scientific, and Cultural Organisation Convention against Discrimination in Education |
| OHCHR | Office of the High Commissioner of Human Rights |

Introduction

“ Educating the mind without educating the heart is no education at all” ~ Aristotle

On the dusty streets of Mundri town, Western Equatorial South Sudan, one witnesses the plight of a generation in need. It is easy to notice that most of the population is under the age of 30, but it is also easy to notice that there is nothing for most to do. Young men sit in clusters under a tree or near a shop-like shack. School children in uniform are seen running around the market place looking for cheap food they can buy and eat before they head back to class. Young women sit under a shed, some with babies on their back, selling a few tomatoes, bananas, rice, or other necessities. Another group of young people is seen clustered around some motorbikes; these are called the *bodha-bodha* men. On enquiry as to why there are so many young people sitting around with nothing to do, one quickly comes to realise that there are no options to meet the needs of the youth. Now the easy question to ask at this point is; well, what about school, can these people read and write? The answer to this question can be a simplistic yes, most of the youth below the age of 30 in Mundri can read and write, most of them have attended school in the harshest conditions and with very few resources. The next question then is well, if they have attended school and they can read and write, then what has education done for them? What is it that the right to education is supposed to give the holder of the right? What does international law say the “purpose” of education is?

On another continent, in a different setting, New York City in the United States of America one witnesses a similar plight of a generation in need. In this country two groups of young people exist, those who go to highly funded schools, who get a high quality education and eventually qualify for college. The other group consists of those who go to low funded schools who unlike their peers, can read, write and count but can only manage to enter low income jobs because they either drop out of school or do not qualify for college. In this scenario, however this disparity is identified and the matter is taken to court. In the case of *Campaign for Fiscal Equity v The State of New York*¹ the plaintiffs argued that the New York state school-financing scheme was unfair and deprives students of a sound basic education. This was in violation of their constitutional right, a right where, “the legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” Ultimately the court in this case had to answer the question of whether the students were receiving sound basic education. To this question

¹*Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*).

the court held that, “a sound basic education conveys not merely skills, but skills fashioned to meet a practical goal: meaningful civic participation in contemporary society.”² In this case the court accepted that the high school education in the state of New York was sound basic education but also conceded that such education could not be sufficient for higher education or to guarantee one a job other than a low wage job. The court then went further to assert that there was nothing to show that low wage jobs were not important or valuable.³ The questions one raises here are; why should one group of students’ education give them fewer options? The second is; is the “purpose” element of the right to education realised by the court in holding that as long as students can read, count and write, then their right to education has been realized; in spite of the fact that the education does not give them the ability to exercise their freedom of choice?

As we shall find out in the chapters that follow, the right to education “does not only guarantee access to education but also implies that the aim of education must be achieved.”⁴ Thus in both the scenarios mentioned above, one wonders whether the “purpose” element of the right to education has been seen as part of the right to education at all during the policy making and curriculum setting periods? Secondly, one wonders whether the right to education taken holistically with its “purpose” element answers the question of whether students should be educated for a specific contextual goal? That is, should all students be taught Plato and Socrates or should students in a farming community only learn farming and those in urban societies learn how to work in McDonalds for example and who should make the decision? We see even so that there is a unanimous acceptance of the importance of education worldwide. The nature and content however differs from time to time. International law nevertheless has made sure that the right to education has been legislated as a human right and most of the human rights instruments include an article on the right to education.

In the two mentioned scenarios above, we see that the availability of educational opportunities is not the only problem, the issue at the core of the problem centres on the “purpose” of the right to education. Addressing the “purpose” element should give answers to questions such as, should the right to education mean more than what it is now and what will that mean? The right to education is not giving right holders what it purposes to give because the “purpose” element of the right is not understood. Do all students under the sun have the right to the same content of education and should it do for one student what it does for the next?

² *Ibid.*

³ *Campaign for Fiscal Equity, Inc. v. State*, 744 N.Y.S.2d 130, 138 (App. Div. 2002) (*CFE IV*).

⁴ Mieke Verheyde, *Commentary on the United Nations Convention on the Rights of the Child: Article 28: The Right to Education* (Martinus Nijhoff Publishers 2005) 1.

1. Aims of the research

The aim of this research is to rightly understand the “purpose” element of the right education in order to have a holistic view of what the right to education is and what it gives to the right holder. A correct understanding of the “purpose” element will help in coming up with policy and curriculum that is holistic and comprehensive and that not only meets the standard set by the International instruments but goes even further. We will also find that the “purpose” element is not comprehensive, and much is still desired in the “purpose” element, however, this does not limit what the “purpose” element could or should include for individuals to get a correctly building right to education.

2. Research Question

The question that will be answered in this paper is: what is the current understanding regarding the “purpose” element of the right to education in International Human Rights Law? To answer this question other questions including: firstly, what is the meaning of education in the right to education. Secondly, what is the history and the nature of the “purpose” element of the right to education. Thirdly, what is the content of the “purpose” element of the right and what does a better understanding of the “purpose” element of the right to education add to the practice of this right, will be answered.

3. Summary of Chapters

The first chapter will discuss the meaning of education in the right to education. This chapter focuses on definitions from secondary material seeing that the instruments themselves do not define what education as a matter of right means. The chapter will move from a general definition to a more specific definition. It will also evaluate the importance of a wide and/or a narrow interpretation. There was a need however to look into the different theories of education to make the research more grounded. Thus a reliance on secondary material in this regard was important, as there is no specific theory of education in the legal field. The chapter concludes by finding a meeting place of the different theories that have been used by scholars to define the right to education.

The second chapter discusses the history and the nature of the “purpose” element of the right to education. Here there is an emphasis on deciphering whether the right to education can be cleanly set in the economic and social right box or whether as some academics and practitioners have noted the right indeed transcends the boundaries that separate economic and social rights and civil and political rights. There is also an engaging discussion on how the “purpose” element of the right to education enhances the right and ensures it as an instrumental right while also allowing the right to education to be a right in and of it-self. The chapter also discusses the drafting history of the chosen instruments with an obvious over reliance on the drafting of the UDHR this is simply because there was more available material on this instrument and also because this was the first time the right to education was finding its place in International Human Rights Law.

The third chapter takes a chronological approach in discussing the content of the “purpose” element of the right to education. It takes cognisance that not all the components of the element are found in all the chosen instruments but it discusses the common elements as they are ordered. The elements that are discussed are, “personality development”, “strengthen respect for Human Rights”, “further the activities of the UN for the maintenance of peace” and “participate effectively in a free society”. What becomes obvious in this chapter is that the first few components of the “purpose” element are discussed more than the last two. However, the chapter takes into account the UN’s specialized agency UNESCO and links it with the discussion in the UNESCO CDE seeing that the purpose of UNESCO is to “build peace in the minds of men”. This is why UNESCO is discussed in relation to the component to “further the activities of the UN for maintenance of peace”. The chapter concludes by answering whether the “purpose” element of the right to education is comprehensive and what this implies.

The fourth chapter is an analysis of the preceding chapters in light of some practical examples from the *New York state*⁵ case and a South Sudan narrative. This chapter discusses what a correct understanding of the “purpose” element adds to both the scenarios.

4. Instruments embodying the Right to Education

The paper will not look at the general purposes of education but will limit itself to the international law “purpose” element of the right to education found in the Instruments. These Instruments

⁵ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*).

Include the Universal Declaration of Human Rights (UDHR)⁶, the International Covenant of Economic, Social and Cultural Rights (ICESCR)⁷, the Convention on the Rights of the Child (CRC)⁸, the UNESCO Convention against Discrimination in Education (UNESCO CDE)⁹ and the Convention on the Rights of Persons with Disabilities (CRPD)¹⁰.

The specific Instruments chosen for the purposes of this research are not the only ones that provide for the right to education. Other instruments protect the right to education for particular groups. These include Article 22 of the Convention relating to the status of Refugees¹¹, Article 5 (e)(v) of the Convention on the Elimination of all forms of discrimination¹², Principle 6 of the Declaration on the Rights of Disabled Persons¹³, Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women¹⁴, Article 30 of the International Convention on the Protection of the Rights of all Migrant Workers and Their Families¹⁵, Principles 7 of the Declaration of the Rights of the Child¹⁶, and Article 4(3) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.¹⁷

Some regional Instruments entrench the right to education too. These include Article XII of the American Declaration of the Rights and Duties of Man¹⁸, Article 2 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁹, Article 17

⁶ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁷ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

⁹ UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960.

¹⁰ UN Convention on the Human Rights of people with Disabilities Ad Hoc Committee- Daily summary of discussion at the seventh session 24 January 2006.

¹¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

¹² UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

¹³ UN General Assembly, *Declaration on the Rights of Disabled Persons*, 9 December 1975, A/RES/3447 (XXX).

¹⁴ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

¹⁵ UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158.

¹⁶ UN General Assembly, *Declaration of the Rights of the Child*, 20 November 1959, A/RES/1386(XIV).

¹⁷ UN General Assembly, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 3 February 1992, A/RES/47/135.

¹⁸ Inter-American Commission on Human Rights (IACHR), American Declaration of the Rights and Duties of Man, 2 May 1948.

¹⁹ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

of the African Charter on Human and Peoples' Rights²⁰, Article 13 of the Additional Protocol of San Salvador to the American Convention on Human rights in the Area of Economic, Social and Cultural Rights²¹, Article 11 of the African Charter on the Rights and Welfare of the Child²², Article 34 of the Arab Charter on Human rights²³, Article 17 of the European Social Charter²⁴ and European Charter on Human Rights²⁵ Article 8 of the European Charter for Regional or Minority Languages²⁶ and Article 14 of the Framework Convention for the Protection of National Minorities²⁷. This shows that the right to education is regulated in many international and regional instruments, but this research will focus on the four chosen instruments for reasons that will be laid out in the methodology.

²⁰ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

²¹ Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52.

²² Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990).

²³ League of Arab States, Arab Charter on Human Rights, 15 September 1994.

²⁴ Council of Europe, *European Social Charter*, 18 October 1961, ETS 35.

²⁵ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02.

²⁶ Council of Europe, European Charter for Regional or Minority Languages, 4 November 1992, ETS 148.

²⁷ Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157.

Methodology

This research will be limited to the right to education in the UDHR, ICESCR, CRC, CRPD, and the UNESCO Convention against Discrimination in Education (UNESCO Convention). The UDHR is used because it is a foundational instrument and gives a starting point to the discussions centering on the right to education as an international fundamental right. The ICESCR provides a general application of the right to education and has been identified as the template for the promulgation of the right in other instruments. The CRC has a general application to all children and supplies a fascinating aspect to the right to education plus it further widens the right into a civil political right, this is crucial to our discussion on the understanding of the purpose element of the right to education because it gives us an understanding of the right to education as a right that is not only economic and social but that is also civil and political. The CRPD provides a recent conceptualisation of the right to education and it is evaluated mainly because it will provide an analysis on how the understanding of the purpose element of the right to education has developed. The UNESCO Convention allows us to delve into the specialised UN agency whose objective is primarily to “build peace in the minds of man”²⁸ through education, science, culture and communication.

Some Instruments that protect the rights of minorities or disadvantaged groups will not be looked into due to the limited time span of the research period and the need to look at the purpose of education in a general sense. Regional Instruments and national Instruments will also not be looked into for the same reasons as mentioned above and because of the diversity and contextual application of these Instruments.

The first chapter relies mostly on secondary material in order to understand the definition of the right to education. Here scholars such as Klaus D Beiter, who does a comprehensive study of the right to education in International law and focuses on the ICESCR, and M’Bow, who also does an extensive study of the right to education in the CRC. These are referenced because of their well articulated work and the clarity they bring to the definition of what the right to education is. When discussing the theories and rationales for the right to education, there is an over reliance on Klaus D Beiter frankly because he is the only scholar who discusses these in such a concise and understandable manner. The use of John Rawls’s theory of justice is an attempt to draw the

²⁸ UN Educational, Scientific and Cultural Organisation (UNESCO), Constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO), 16 November 1945.

seemingly non-legal theories of education to a more legal understanding that brings the rationales together.

To a greater extent, the second chapter, in examining the history and drafting of the “purpose” element of the right to education relies on the drafting history of all the instruments and also draws from secondary material. The UDHR and the ICESCR however rely on secondary material extensively because other scholars have done a much thorough exploration and there was no reason to duplicate the process. Although an analysis of the Third Committee of the UDHR was conducted, Morsink and Roth, give a succinct description of the contents and allowed for a much refined understanding of what took place during the discussions concerning the “purpose” element in the drafting of the UDHR. Klaus D. Beiter offers a very comprehensive study of the right to education in the ICESCR and thus in discussing the history of the “purpose” element in this instrument his work was significantly relied upon. The OCHCHR conducted an exhaustive study of the legislative history of the CRC and it helped in understanding how the “purpose” element in the instrument came together. The CRPD however balanced between de Beco’s article analysis of the CRPD’s drafting history and the 3rd and 7th sessions of the Ad Hoc Committee of the CRPD. When discussing the nature of the “purpose” element the Committees were found to have more comprehensive and better-defined material.

In order to get a well rounded discussion of the content of the “purpose” element the general comments to the ICESCR and the CRC were important to gain an understanding of what the treaty bodies understood the “purpose” element to mean. The lack of a more detailed content of understanding the “purpose” element made it imperative to use Hodgkin and Newell’s analysis on the implementation of the CRC. There was almost no material discussing the content of the “purpose” element of the right to education in the UNESCO CDE and the CRPD.

The fourth chapter in bringing the preceding chapters together in an analysis focusing on case law, namely the case of *Campaign for Fiscal Equity, Inc. v. State*²⁹, and a experience which is referred to as the South Sudan narrative. The *New York State case*³⁰ study and the narrative of South Sudan are chosen because of their intent and unique focus on the “purpose” element of the right to education.

A qualitative research using the expository doctrinal methodology was used in order to answer the question at hand. Doctrinal research methodology is research that asks, “What the law is in a

²⁹ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*).

³⁰ *Ibid.*

particular area.”³¹ This kind of research “ at its best, involves rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials.”³² The aim of the research is thus to describe the law and how it applies. This means the primary sources for this research will include UN materials which include Treaty body materials which in turn consists of general comments, Concluding Observations or Recommendations and Individual Complaints mechanisms; special *rappporteur* reports and the drafting history. This is in order to understand how the UN body understands the purpose element of the right to education and to understand how the drafters of the article in different Instruments understood the “purpose” element of the right to education.

An expository method was chosen in order to understand the origins of the right to education and what the drafters of the different conventions were thinking when they conceptualised the right. A review of current scholarly material is necessary so as to compare and contrast current thought and practice to the original concept of the right and what it was meant to do, what it is doing now and seeing whether it has achieved its purpose. An analysis of Individual complaint mechanisms is always relevant in a legal research because they show how the right is perceived and how effective and viable it is.

³¹ Gabriele Griffin, Mike McConville and Wing Hong Chui, *Research Methods for Law (Research Methods for the Arts and Humanities)* (Edinburgh University Press 2007) 19.

³² CALD Statement on the Nature of Legal Research: In Terry Hutchinson and Nigel Duncan, ‘Defining And Describing What We Do: Doctrinal Legal Research’ (2001) 17 *Deakin Law Review* 83, 105.

Limitations and Delimitations

Doctrinal Legal research has been met with much scepticism because of its perceived ‘puzzle piecing’ problem solving process to come up with pragmatic answers.³³ Another criticism is that Doctrinal legal research in its first step seeks to interpret and analyse law as ‘objective reality’; the existence of such an objective reality is contestable.³⁴ It is however imperative to the nature of the legal research that this methodology is used. Due to the nature of the research, an interdisciplinary study would be needful however, time constraints and the methodology chosen require that the research centre supremely on legal Instruments and scholarship.

The limits of this research are that one relies only on information that has been documented already. One cannot go back in time nor really understand the mind of the ones who drafted the Instruments. In looking at secondary material the limitations of the writer of the secondary material used are carried over. Time constraints make it impossible to use another strategy in researching the “purpose” element of the right to education in the Instruments seeing that much time has passed since the drafting of most of them. There was a need for self-constraining in order to simply look at the text and not do any form of interviews because the research is more concerned with the “purpose” element of a particular written law. Although the history and the *zeitgeist* of the times in which the Instruments were drafted could have been evaluated, the size of the paper does not allow for such an analysis.

There is no better way of looking at the “purposes” element of a right than to look at the UN mechanisms and drafting procedures and the discussions surrounding the promulgation of the right. This is what makes this research valid. Setting aside bias has limited the research to an analysis of the Instruments instead of a personal interpretation of what the “purpose” element means. The research thus centers primarily on facts from the Instruments themselves and the UN mechanisms and the drafting history of each instrument.

³³ Terry Hutchinson and Nigel Duncan, ‘Defining And Describing What We Do: Doctrinal Legal Research’ (2001) 17 Deakin Law Review 83, 106.

³⁴ Terry Hutchinson and Nigel Duncan, ‘Defining And Describing What We Do: Doctrinal Legal Research’ (2001) 17 Deakin Law Review 83, 110.

Chapter 1: The meaning of education in the right to education

“Education is the kindling of a flame, not the filling of a vessel.” ~Socrates

1. Introduction

This chapter aims at giving a general description of the right to education in international law and defining the word education in the right to education locating it in theory. This will give a starting point to the understanding of the “purpose” element of the right to education. In order for us to understand what the “purpose” element of the right to education is, we must understand what is meant by education to begin with. After all, an ill-defined purpose of a right will inevitably make the right itself unattainable in its fullest sense. Although the justifiability of this right will not be discussed in this paper it is important to note that a right that cannot be defined or that is not defined is ambiguous and is not realisable to its fullest extent.

2. The right to education

Throughout all the international instruments, binding and non-binding the state is seen as the provider of education. This is because it is the states who are party to these instruments and thus they agree to be bound by the regulations in the instruments. The right to education as a right protected by law, and failure by state parties to adhere to these legal requirements should amount to international legal consequences. Although the State has a duty to protect, the right to education like many economic and social rights, arguably, requires positive duties to respect and fulfil. It is accepted that other private parties also offer educational facilities and thus in this instance the State’s protection from exploitative means of education is most important.

The Universal declaration of Human Rights of 1948 (UDHR)³⁵ in article 26(1) states that, “everybody has the right to education”. Article 26(2) further postulates the purpose of this education as “... to promote understanding, tolerance and friendship among all nations, racial or religious groups,” it is submitted that the aim of the UDHR in stating the aims of education as a standard for which education should achieve. This means that if the right to education is not accomplishing this purpose, it ultimately becomes redundant.

³⁵ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

Article 13 of the International Covenant on Economic, Social and Cultural Rights³⁶ 1966 (ICESCR) expands on article 26 of the UDHR. However Article 13(2) enumerates different obligational standards in order to meet the standard of education set out in the ICESCR. Article 13(2)(b) states that education should be made, “available and accessible to all by every appropriate means”. Article 13(2)(e) goes on to add that, “... an adequate fellowship system shall be established...” The accessibility postulated here thus means states must take steps to make sure that individuals have an opportunity to have their right to education realized without obstacles.

The significance of the right is not easily ascertainable from the treaties and one has to rummage into the theories that inform the existence of the right. The UDHR focuses on access and availability. The UNESCO CDE generally focuses on the standard, quality, and conditions of education and defines it as such, while the ICESCR focuses on compulsion and access. In the CRC compulsion and availability are key. Taken together the treaties embody a reasonable idea of what the right to education should provide but does not explain exactly what it is. They tell us that everyone has it, that it should be realised progressively and that it is compulsory. When searching for the “purpose” of the right nonetheless one finds that, “the aims of education... concern the content of education, i.e. the internal aspect of education,”³⁷ yet these have been under discussed and have been paid little to no attention.

The Convention on the Rights of a Child³⁸ 1989 (CRC) addresses the right to education albeit in a much weaker way than the ICESCR but never the less protects the rights of children to have access to education and expands the “purpose” element. Article 28 states that “State Parties recognise the right of the child to education... on the basis of equal opportunity, [by making primary education] compulsory and available.” However the “purpose” element in here makes up for the weak postulation of accessibility and compulsion.

The core contents of the right to education include that education must firstly be available, meaning the government ought to allow the establishment of schools and must ensure free and compulsory

³⁶ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

³⁷ Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers / Brill Academic Publi) 463.

³⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

education to all ages.³⁹ Education as a human right must also be accessible, in that the government is obliged to secure access to education for all children, however the realisation of this right is progressive.⁴⁰ It must also be acceptable, which requires a guaranteed quality of education and lastly it must be adaptable.⁴¹ This requires schools to take into account the best interest of the child, thus education must be child centred and not otherwise.

3. Definition of education

The treaties themselves do not define the word education but describe it in terms of its purpose. However, the word education can be widely defined as, “all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable that group to subsist.”⁴² This general definition encapsulate all forms of education including social media, entertainment and other forms of socialisation and acculturation. The Sub-Commission on Prevention of Discrimination and Protection of Minorities defines education as, “a vehicle for transmitting culture and hence cultural identity... it is a vehicle by which economically and socially marginalised people can lift themselves out of poverty and obtain the means to participate fully in national life.”⁴³ Here we have a definition, which brings out the instrumentality of education. As general as these two definitions sound they have a somewhat constrained transmission of knowledge and skill to the individual from the community. The problem is not that it is a general and wide definition but that it refers only to a linear transfer of knowledge.

During the drafting of the Declaration on Cultural Rights⁴⁴, the committee expanded this general definition a lot further and held that, “the word education is to be understood in the broad sense, as continuous, on-going education, taking place in a great variety of professional, social and community fields and places.”⁴⁵ This definition moves away from the notion of mere transmission of knowledge to an application process of acculturation and socialisation. This is because it makes education never ending and uninterrupted and moves from a transfer of knowledge to an acquisition of variety things.

³⁹ Katarina Tomasevski and Tomasevski, *Education Denied: Costs and Remedies* (Zed Books 2003) 51.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² M’Bow, A., “Introduction”, in G Mialaret, *The Child’s Right to Education* (Unesco 1979), 11.

⁴³ UN Sub-Commission on the Promotion and Protection of Human Rights, *THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALISATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS* The content of the right to education Working paper presented by Mr. Mustapha Mehedi, 8 July 1999, E/CN.4/Sub.2/1999/13.

⁴⁴ Fribourg Group, draft Declaration on Cultural Rights, Fribourg, 1998.

⁴⁵ *Ibid.*

The UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms of 1974 defines education as “the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge.”⁴⁶ In the same manner as the previous definitions, the UNESCO Recommendation acknowledges education as an uninterrupted process of socialising and adds a psychological component of conscious development within. The definition here includes the transference of knowledge but moves beyond and includes personality development.

These afore mentioned definitions are wide enough to include other forms of education as they locate education as a whole process of socialisation. The definitions also give education a wide reach in that it makes it into an “entire process” involving all forms and types of education, it is thus wide and general in defining the word education.

The case of *Campbell and Cosans v. United Kingdom*⁴⁷ defines education as, “the whole process whereby, in any society, adults endeavor to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development.” This definition echoes the UNESCO Recommendation concerning Education for International Understanding in defining education in the wide sense, and refers to education as a process. General comment 13 of the ICESCR defines education as, “both a human right in itself and an indispensable means of realising other human rights.”⁴⁸ Here the General Comment does not define what education is except by identifying it as a human right that is one in and of itself and that is also instrumental.

The challenge in knowing what education is, in the right to education is that “education” in the right to education has not been clearly defined in the International Instruments themselves. Notwithstanding the case of *Brown, v Board of Education of Topeka*⁴⁹ has been identified as the

⁴⁶UN Educational, Scientific and Cultural Organisation (UNESCO), Recommendation Concerning Education for International Understanding, Co-Operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, 19 November 1974’.

⁴⁷ *Campbell and Cosans v. United Kingdom*, Judgement of 25 February 1982, Publications of the European Court of Human Rights, Series A, Vol. 48, para 33.

⁴⁸UN Economic and Social Council, ‘General Comment No. 13: The Right to Education (Art. 13 of the Covenant)’ E/C.12/1999/10.

⁴⁹ 347 U.S. 483 (1954).

first to enumerate a definition of what the word “education” means in the right to education. The case held that education is, “required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and helping him to adjust normally in his environment”. It is important to pause here and take note that the court here defined education according to its outcomes and what it is supposed to achieve. The court also emphasises its importance to socialisation and acculturation, as did the Fribourg Group⁵⁰ and the UNESCO Recommendations.

The UN Committee on Economic, Social and Cultural Rights agrees with the definitions of education given above and states that: “States parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13 (1).”⁵¹ Verheyde is of the view that, it is important also to be cognisant to the fact that the International legal instruments use the term ‘education’ in the sense of “education as the development of the intellectual, spiritual, and emotional potential of the young person or in other words the broader development of his or her personality.”⁵² This resonates with the fact that the right to education ought to be holistic, that is why we want to understand what the right to education is supposed to achieve through its “purpose” element.

Further, the dictionary definition of education is, a systematic process of giving or receiving instruction.⁵³ The word systematic stands out already in that it narrows education to a method, it is not just a random right to education but it has a purpose to fulfil. It thus discriminates against all other types of education. The dictionary definition is somewhat close to the definition of education in International Human Rights Law. This is because it adds the idea of education being a method, however in defining what education is it must be noted that the International Instruments refer primarily to primary education, secondary education, higher education and basic education among other forms of education but are interpreted by UN agencies or their treaty bodies as encompassing all forms of education.

⁵⁰ Fribourg Group, draft Declaration on Cultural Rights, Fribourg, 1998.

⁵¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, para 4.

⁵² Mieke Verheyde, *Commentary on the United Nations Convention on the Rights of the Child: Article 28: The Right to Education* (Martinus Nijhoff Publishers 2005) 11.

⁵³ Maurice Waite and Catherine Soanes, *Oxford Dictionary and Thesaurus (Dictionary)* (Oxford University Press 2007).

In drawing attention to the importance of defining the right to education, Tomašvski is of the view that, “a clear definition of the nature and scope of the right to education demands an in-depth study of the experience in putting into practice requirements of the international human rights law in different regions and countries, where the realm of the possible is delineated by the minimum acceptable standards which should be sought worldwide and the full realisation of the right to education as the maximum standard.”⁵⁴ It is thus evident that a sensible or even a usable definition of what education in the right to education is cannot be provided or discussed to its fullest meaning in a small enquiry such as this. However, here we have evaluated what it is the International Instruments provide and how they have been interpreted in their meaning of education by the human rights regime. This will help in understanding what it is that the “purpose” element aims to achieve.

4. Theories

This section of the chapter seeks to understand the “purpose” element of the right to education in the Instruments by first understanding the purpose of the right to education as a whole. A proposed understanding of only a handful of theories and rationales for the right to education is offered. This is mostly taken from Beiter’s study of the right to education, which have been used to justify the purpose for the right to education and then propose an understating of the “purpose” element through the justice theory.

The social utilitarian argument emphasises the importance of education for the community as a whole. Thus the purpose of the right to education is to preserve the social system and values while making sure that the mechanisms of the system stay intact by the exercise of other rights such as the right to vote and the right to perform effectively one’s public responsibilities. According to the utilitarian argument, a well-educated citizenry is critical for the maintenance of democratic structures and ideals.⁵⁵ In the case of *Plyer v Doe*⁵⁶ the court held that “we have recognised the public schools as a most vital civic institution for the preservation of a democratic system of government, and as the primary vehicle for transmitting the values on which our society rests.” The court here succinctly expresses the social utilitarian purpose of the right to education.

⁵⁴ Katarina Tomašvski, ‘Economic, Social and Cultural Rights: The Right to Education’ (UN Doc 1999) E/CN.4/1999/49, 28.

⁵⁵ Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers / Brill Academic Publi) 26.

⁵⁶ 457 U.S. 202 (1982).

The rationale that education is a prerequisite for individual development is drawn from some of the International Instruments' reference to personality development in the "purpose" element of the right to education for example the UDHR states "education shall be directed to the full development of the human personality."⁵⁷ This rationale emphasises on the right to education's ability to enable a person to develop as a person and to exercise his or her full capacities. Taking this rationale further, it makes education an instrumental fundamental right whose function is to enable the realisation of other rights.

The individual welfare argument states that education is not a right, individuals can give themselves, and it is thus a right that should be provided for the right holder by the state. The theory is that an individual should, "be accorded claim to receive education as, otherwise, he would suffer significant and enduring disability. He should be assisted to achieve such a standard of literacy and numeracy to enable him to function effectively in his community."⁵⁸ This theory places the right holder as a receiver of education for the ability to access, enjoy, and secure other rights.

Scholars have also advanced a fundamental right argument, claiming that the right to education must be founded on man's inherent dignity. This rationale is that, "human dignity should be recognised as the basis of human rights. Education should be seen as a requirement of human dignity and should, therefore, be recognised as a human right."⁵⁹ This they base on the notion that human dignity is accepted as the moral foundation of human rights in general. Lonbay⁶⁰ is of the view that "the basis of the universal morality of the right to education can be said to lie in the fundamental idea that the individual is entitled to respect for his own sake," making the right to education a right in of it self.

It is submitted however, that it is important to locate the purpose of the right to education in general in the theory of Justice, specifically Rawls's theory of justice. The basis for this is the values of liberty, freedom, and equality that make up part of the argument of the theory, which in turn resonates with Human Rights values. Rawls submits that first; "each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others." Secondly; "social

⁵⁷ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

⁵⁸ Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers / Brill Academic Publi) 27.

⁵⁹ *Ibid.*

⁶⁰ Julian Lonbay, 'The Right to Education : An Analysis of International Law Concerning the Right to Education and Its Application in Belgium, France and Ireland' (PhD, Florence, European University Institute, 1989) 28.

and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all..."⁶¹ Based on these two positions of Rawls theory of Justice the purpose of education as a whole should be universal in that it must be applied to all similarly and should be to the advantage of all. Rawls theory of justice advances egalitarian values that have mechanisms of putting everyone at the same level, in that if one receives certain education then all must receive the same for fairness and equality. This theory then answers the question of whether all students ought be taught Plato regardless of their different context. Context itself is not an excuse for guaranteeing more of a right to a group of persons than the other unless doing so benefits both the group and society, to the extent that were everyone in the same position they would make the same choice. Applying this theory to the "purpose" element guarantees equality.

Thus according to this theory the role of education is to, "enable a person to enjoy the culture of his society and to take part in its affairs, and in this way to provide for each individual a secure sense of his own worth."⁶² Here the theory takes cognisance of the human rights values of diversity and tolerance of one's culture and the individual's choice to secure self worth. This theory thus balances the rights of the individual versus the duty to the community. Rawls further holds that, "the naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help the less fortunate as well."⁶³ Here the theory allows for a departure of fairness to the extent that it benefits the less advantaged and no further. Herein lies the weakness of the theory ; all these principles only apply in the initial position where if people knew nothing of their privileges and circumstance and all were equal they would choose what benefits all.

The theories and rationale for the right to education presented here give a perspective of why education should be a human right to begin with. The utilitarian position makes the purpose of education a societal necessity for the well-being and preservation and continuity of values. The Individual development rationale emphasises on the purpose of the right to education for the individual to receive the right as a welfare right important to one's development, while the fundamental position locates the purpose of education as a fundamental right for the preservation of man's dignity. Rawls theory of justice submitted, sees the purpose of education as an equalising

⁶¹ John Rawls, *A Theory of Justice Rev (Cloth) (Cobe)* (Belknap Press of Harvard Univ Press 1999) 60.

⁶² *Ibid* 101.

⁶³ *Ibid* 101-102.

factor, in that first it is given to all equally and then secondly it allows for diversity and tolerance allowing persons to be diverse and tolerant of others.

In looking at the purpose of education, one can use any one or all of these theories and rationales to make sense of what a specific “purpose” component in the right to education means and how it fits with the other human rights values as a whole. However in order to have a holistic understanding all the theories and rationales ought to be taken together simply because there is a danger of having a narrow understanding of the “purpose” element of the right to education. It fosters discrimination and intolerance and squashes diversity. The following chapter will attempt to highlight which theory or rationale was most significant or comes out more in the drafting history and in discussing the nature of the “purpose” element of the right to education.

5. Conclusion

The right to education has seen much discussion and development through the years with much emphasis focused on access and compulsion. This development however did not seek to define the meaning of education in the right to education. The instruments in embodying the “purpose” element have sought to define education in terms of its goals or aims, which is in terms of what education is supposed to do. This chapter has shown that in an attempt to define education in the right to education, commentaries have moved from a narrow definition of formal education to a wide definition, which includes socialisation and acculturation. The theories or rationales of the right to education give a clue in describing what education is meant to do and seem to inform the “purpose” element of the right to education. This discussion has shown that these theories taken separately are somewhat disjointed and polarised but taken together they bring together a holistic picture not only of what the right to education is but also what it is supposed to give the right holder.

Chapter 2: The history and the nature of the “purpose” element of the right

“Education without values, as useful as it is, seems rather to make man a more clever devil.”

~ C.S. Lewis

1. Introduction

This chapter will discuss the history and the nature of the right to education as a whole while also discussing and locating the developments of the “purpose” element of the right. The first part will look into the drafting of the instruments. Some of the instruments’ drafting history has been recorded with meticulous exactitude and because of this there has been a greater reliance on secondary sources especially with regard to the UDHR and the ICESCR. The second section is concerned with deciphering the nature of the “purpose” element. It seeks to answer whether the element is socio-economic or civil and political and further whether it allows the right to education as a whole to be an instrumental right and a right in and of itself. This is important seeing that although scholars have discussed the history and nature of the right to education it has never been discussed with regard to the specific “purpose” element. To answer what is the history and nature of the “purpose” element, it is important to take each chosen Instrument from the oldest to the most recent. This allows for a systematic understanding of how the element developed in each Instrument. The idea is to find or ascertain where the “purpose” element fits in the discussion of the nature of the right to education. This chapter is of particular importance because it helps to understand what the drafters of the different instruments had in mind when they conceptualised the “purpose” element of the right to education. Understanding the nature will in turn add flesh to the bone structure of articles in the instruments.

2. Drafting History of the “purpose” element in the right to education.

The oldest and first international instrument is the UDHR the Commission on Human Rights drafted it over a period of two years. The commission had 18 members from different countries. This committee decided to commission a drafting committee for the formulation of a draft of the bill of rights. After its 3rd session the Economic and Social Council considered its draft bill and thereafter decided to transmit to the General Assembly. It was eventually adopted on the 10th of December 1948. Among its 30 articles is the right to education found in article 26 which postulates the “purpose” element as follows:

“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.”

During the drafting period of the UDHR Russia was of the view that Article 26 as a whole endorsed the capitalist system but resigned to the fact that the article should not further a specific value system but should allow history to unravel which system was best and it (Russia) did not expect the other states to agree with its choice of system. In response to this assertion by Russia, Canada and other states agreed that “should the rights set forth ...be achieved the social and international order would be good, whether it came within a framework of capitalism, communism, feudalism or any other system”.⁶⁴

The second paragraph of the right to education in the UDHR is the first articulation of the “purpose” element of the right to education in an international instrument. Although the right to education in the article has 7 elements, the second paragraph is the 6th element which functions as a purpose for the first 5 elements that precede it. It was only discussed in the 2nd session of the Working Group when A. L. Easterman, (a representative of the World Jewish Congress), noted that “the article on education provided a technical framework of education but contained nothing about the spirit governing education which was an essential element. Neglect of this principle in Germany had been the main cause of two catastrophic wars.”⁶⁵ In order to remedy the situation he suggested that, “This education shall be directed to the full development of the human personality, to strengthening respect for human rights and fundamental freedoms and shall combat the spirit of intolerance and hatred against other nations or racial or religious groups everywhere.”⁶⁶ To a certain extent this was a reasonable and logical outcome of having a purpose to the right to education, however one cannot help but wonder if the “purpose” element should be a matter of law. How reasonable is it for states to guarantee an education that strengthens one’s personality? There seems to be a tension that was ignored in this comment because of the fear of what education had done in

⁶⁴ Third Committee of the General Assembly, Summary records of meeting nos. 95 to 179. *A/C.3/SR.152*, 640.

⁶⁵ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia : University of Pennsylvania Press, c1999 1999) 215.

⁶⁶ Klas Roth, ‘Article 26: A Principled Statement on Education’ (2009) 8 *Journal of Human Rights* 139, 142.

Germany and it was taken for granted that the provision of a “purpose” element would in turn safe guard a repeat of Nazi Germany.

Following this suggestion, “[during] the meeting Mr. Malik also put to the vote the second sentence of the second paragraph suggesting jointly by the delegates of Mexico and United States with the following wording: “and to the promotion of understanding, tolerance and friendship among all nations and racial and religious groups... as well as the activities of the United Nations for the maintenance of peace”⁶⁷ This was followed by a decision on whether to keep “the full development of the human personality or to replace the phrase with “full development of the physical, spiritual and moral powers of the individual”, however at the 3rd session it was decided that the former phrase was preferable given to the fact that they sought to cut all “extraneous material”.⁶⁸ In this draft we find a “purpose” element of the right to education, “none of the other drafts contain ideas on the aims and purposes of education nor on additional democratic ideals”⁶⁹ It is Important to note how, “Article 26 developed from basic ideas in the first stage, to aims and purposes in the second, and to further democratic ideals in the third”.⁷⁰ Each session thus brought with it a new layer to the “purpose” element of the right to education.

The UNESCO Convention against Discrimination in Education (UNESCO CDE)⁷¹ came after the UDHR. This treaty aims to combat discrimination in education and was adopted by UNESCO. In Article 5 it holds a succinct statement of the “purpose” element completely identical to that of the UDHR and states that:

“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;”

There was some discussion concerning matters such as the “feeling of equity” and tolerance between “ethnic, linguistic and cultural” groups and a proposal concerning the “legacies from

⁶⁷ Klas Roth, ‘Article 26: A Principled Statement on Education’ (2009) 8 Journal of Human Rights 139, 147.

⁶⁸ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia : University of Pennsylvania Press, c1999 1999) 215- 216.

⁶⁹ Klas Roth, ‘Article 26: A Principled Statement on Education’ (2009) 8 Journal of Human Rights 139, 142.

⁷⁰ *Ibid* 148.

⁷¹ UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960.

civilisations and culture”, which were eventually either rejected or withdrawn. However, “in rejecting these additions, the Committee was not prompted by any opposition to the idea expressed; it simply thought it preferable to keep to the wording of the Universal Declaration.”⁷² It is evident thus that after some amendments and discussions Article 5, paragraph 1(a) of the UNESCO CDE contains an identical copy of the “purpose” element as that found in Article 26 (2) of the UDHR.⁷³

The ICESCR⁷⁴ was adopted alongside the ICCPR⁷⁵ by the General Assembly on the 16th of December 1966 but entered into force on the 3rd of January 1976 and is monitored by the Committee on Economic, Social and Cultural Rights. It has more or less the same process as does the UDHR and was a continuation of the drafting of the International Bill of Rights. It has 31 articles and the right to education is located in Article 13. This Article’s postulation of the “purpose” element of the right to education differs slightly from that of Article 26 of the UDHR and Article 5 of the UNESCO CDE, with an addition of a clear democratic ideal. The Article holds that:

“The State Parties to the present Covenant recognise 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.”

The question of why the “purpose” element was included in the ICESCR in article 13 can be answered by the historical context of the drafting process. Bearing in mind that the ICESCR like the other instruments preceding it was drafted after World War II and the United Nations had just been founded in 1945. Dieter⁷⁶ is of the view that this was “to ensure the future maintenance of international peace and security, in order to prevent any further world war. The Commission on

⁷² Special Committee of Governmental Experts on the Preparation of Draft International Convention and a Draft Recommendation on the Various Aspects of Discrimination in Education; Paris; 1960 Publ: 1960; (23p.)*; ED/DISC/5-Rev.; WS/0760.19.

⁷³ Commentary on the Convention Against Discrimination in Education (Adopted on 14 December 1960 By the General Conference of UNESCO) 27.

⁷⁴ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁷⁵ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁷⁶ Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers / Brill Academic Publi) 463.

Human Rights, which prepared the UN human rights instruments, was fully aware of this background. When drafting article 13, it was appreciated, therefore, that an education system, premised on false education ideals, constituted a threat to the commitment of maintaining international peace and security.” Following the trauma of World War II, during the drafting process, “the Jewish side pointed to the disastrous consequences of the national socialist education system in Germany, which was well-organised, but, at the same time, corrupted by an ideology which dictates blind obedience and racial hatred. These false ideals were an important cause of the Second World War.”⁷⁷

Dieter⁷⁸ is also of the view that, it is apparent that the preparatory works of the Covenant show that the aims of the right to education in article 13 were deliberate, “It was considered that the right to education should not remain restricted to its institutional side, but that it should also bind states parties to ensure that the content of education fulfils certain standards.” It is important to note here that unlike during the UDHR drafting process, the idea of having a purpose was obvious and the content of the purpose of even more importance. Further, other dynamics to the discussion of the purpose element of the right to education, “countries such as Great Britain and France doubted the legally binding character of the aims, and argued that they were more in the nature of principles contained in a preamble.”⁷⁹

When discussing the first aim in the “purpose” element of the right to education in article 13(1) “the full development of the human personality”, Dieter⁸⁰ holds that, “it was ... envisaged that education should serve to liberate the individual and prevent his instrumentalisation by the state in its pursuit of “higher state interest”. Meaning that the right to education should not be used as a tool by the state to create instruments it can use for its purposes. Echoing once more the misuse of education system during World War II. The second and third part of the “purpose” element of , “respect for human rights and fundamental freedoms” and “understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups” were meant as an expression of criticism of all forms of racism.⁸¹ The last aim in the “purpose” element, sealed the authority of the United Nations as the body that would “ensure the future maintenance of international peace and security, in order to prevent any further world war”.

⁷⁷ Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers / Brill Academic Publi) 463.

⁷⁸ *Ibid* 469.

⁷⁹ *Ibid*.

⁸⁰ *Ibid* 464.

⁸¹ *Ibid*.

The CRC⁸² entered into force on the 2nd of September 1990, the Commission on Human Rights from a UN General Assembly unanimous Declaration of the Rights of the Child developed it. The right to education is found in Article 29 of its 52 Articles. Article 29 unlike in the UDHR, ICESCR and the UNESCO CDE has more additional requirements with regard to the “purpose” element of the right to education, which differ from the UDHR and the ICSECR. It holds that:

“States Parties agree that the education of the child shall be directed to: The development of the child's personality, talents and mental and physical abilities to their fullest potential; The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; 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 civilisations different from his or her own; 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; The development of respect for the natural environment.”

The first draft to the CRC in 1978 differed significantly to that adopted by the General Assembly in 1989. This draft enumerated that education shall be that which promotes, “general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement and his sense of moral and social responsibility, and a useful member of society”.⁸³ Greece however suggested a rewording to the effect of adding, “an education which will respect his unique individuality” at the beginning of the “purpose” sentence. Norway submitted that the purpose sentence should include the universality of education and that, “It shall promote the respect for human rights and fundamental freedoms. It shall also promote understanding, tolerance and friendship among people, and further activities of the United Nations for the maintenance of peace.”⁸⁴ Portugal on the other hand suggested for the inclusion of the words “general” and “participation” to the “purpose” element. Spain recommended a replacement of the democracy statement to, “so that he will be capable, by himself and as a result of the training he has received,

⁸²UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

⁸³Office of the United Nations High Commissioner for Human Rights, ‘Legislative History of the Convention on the Rights of the Child’, vol. ii (2007) UN Doc. HR/PUB/07/1, 653.

⁸⁴*Ibid* 656.

of coping with the necessities of life and will be a useful member of society”.⁸⁵ Spain held that the importance of changing this wording was to emphasise the instrumentality of the right to education as a whole and also to ensure the child’s exercise of free choice and participation in the community. UNESCO on the other hand was of the opinion that, “emphasising that a better knowledge of human rights would make a vital contribution to the maintenance or establishment of peace, to economic development and social progress in the world”.⁸⁶ On the other hand the International Union of judges held that suitable education is that “which is always the best means of developing children’s physical and mental capacity”.⁸⁷ It is evident that all the participants were forwarding a different rationale or theory to education with UNESCO championing the social utilitarian rationale, Spain holding fast to the Individual welfare rational and the Union of Judges advancing a fundamental right argument to having a “purpose’ element in the right to education.

After taking all the suggestions into consideration, the draft was revised which postulated the “purpose” element as, “...education of the child should promote the full development of his personality, his respect for human rights and fundamental freedoms. The child shall be prepared for an individual life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups and educated in harmony with the principles of peace proclaimed by the United Nations.”⁸⁸ The adopted text at the first reading included “the development of respect for the natural environment” and included “and for the principles of the Charter of the United Nations” a compromise to the UNESCO recommendation that the principles of the United Nations ought to have a different sentence from the one proposed in the second draft. The text, with regard to respect for the child’s own culture also included, “for the national values of the country in which the child is living, for civilisations different from his own, and for human rights and fundamental freedoms.”⁸⁹ We see here how the CRC refreshingly expanded the “purpose” element to include other elements, yet it is still not clear whether in including environmental and cultural ideals the “purpose” element here is more credible or whether it is too burdensome on state parties or perhaps should not be a matter of law.

At the second reading the text merged the “respect for human rights and fundamental freedoms” with respect for the “principles enshrined in the Charter of the United Nations”. It also included

⁸⁵ Office of the United Nations High Commissioner for Human Rights, ‘Legislative History of the Convention on the Rights of the Child’, vol. ii (2007) UN Doc. HR/PUB/07/1, 657.

⁸⁶ *Ibid* 658.

⁸⁷ *Ibid*.

⁸⁸ *Ibid* 661.

⁸⁹ *Ibid* 670.

“the development of respect for the child’s parents. On explaining the development of the article, Canada on behalf of the working group, held that, “their objective was to remain faithful to the first text as much as possible, without, however, neglecting the relevant provisions of the International Covenant on Economic, Social and Cultural Rights as well as the suggestions made in the Technical Review.”⁹⁰ Here we see how the ICESCR was used as a blue print to what the “purpose” element would look like in the subsequent instruments.

Article 29 was hereafter reworked to include “the country from which the child is living, the country from which he or she originate”, in the paragraph concerning the child’s cultural identity. The working group also added another paragraph which reads, “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 and yet again another to the effect of, “the development of respect for the natural environment.” This became the “purpose” element of the right to education in the CRC with its 5 subparagraphs.

The CRPD⁹¹ entered into force on the 3rd of May 2008 and was drafted by an *Ad Hoc* Committee established by the UN General Assembly. It is the most recent of the International Conventions, although taking a similar pattern as the other instruments; its emphasis is on different aspect seeing that it applies to a specific minority group. “The drafters of the CRPD were especially concerned with the widespread violations of the rights of persons with disabilities. The drafting committee of the CRPD noted that the main theme of the article on education was inclusiveness and that there was a great need to keep the tension between that and the options for persons with disabilities.⁹² “The purpose was therefore not to elaborate new human rights standards but rather to increase compliance with existing ones, ”⁹³ for this reason thus article 24 (1) reads as follows:

“States Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and

⁹⁰Office of the United Nations High Commissioner for Human Rights, ‘Legislative History of the Convention on the Rights of the Child’, vol. ii (2007) UN Doc. HR/PUB/07/1, 672.

⁹¹ UN General Assembly, *Convention on the Rights of Persons with Disabilities* : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.

⁹² Report of the sixth session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 1 to 12 August 2005 (A/60/266) 9.

⁹³ Gauthier de Beco, “The Right O Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions” (2014) 32/3 *Netherlands Quarterly of Human Rights* 263, 270.

life long learning directed to: 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; The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; Enabling persons with disabilities to participate effectively in a free society.”

After the World Conference on Education in 1990, the World Declaration on Education For All: Meeting Basic Learning Needs (Jomtien Declaration) declared that “[s]teps ???need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system’.”⁹⁴ Thereafter “following proposals by Australia and the European Union, a new draft Article 17 (1) stipulated that States Parties commit themselves to ‘the goal of inclusiveness of their general education systems.’”⁹⁵ Further during the third session of the Ad Hoc Committee, the EU suggested that the article on the right to education for persons with disabilities should have an aim and thus should read, “The education of persons with disabilities shall be directed to...” Costa Rica was of the opinion that the aim should address issues of disability, persons with disability and human rights in the curriculum.⁹⁶ South Africa was of the view that education should enable all persons with disabilities to participate effectively and equitably, and Mexico added that it ought to be in a free and inclusive society. With regard to the development of the personality, Costa Rica suggested that the development should be of self-identity, talent and creativity. While Russia, emphasised that this is with regard to the child’s personality. Bahrain added that the development of cultural and spiritual abilities was important while Russia was concerned with the specific reference to persons with disabilities. The EU added that these should be to their fullest or full potential. It is evident that here the CRPD was specifically focused on the person with disabilities and thus it leans more towards the fundamental right rationale to education and also the individual development rationale but the instrument taken as a whole drives towards Rawls’ idea of the initial position. In that if all persons were in the same situation as the person with disability they would chose the “purpose” element that would be to every one’s best interests.

States eventually agreed in this session that “education shall be directed to the full development of the human personality and sense of dignity and strengthen the respect for human rights and

⁹⁴ *Ibid* 272.

⁹⁵ *Ibid* 274.

⁹⁶ Report of the third session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 24 May to 4 June 2004 (A/AC.265/2004/5, Corr.1 and Corr.2)

fundamental freedoms; education shall enable all persons with disabilities to participate effectively in a free society; education shall promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups; and education shall further the activities of the United Nations for the maintenance of peace. Granting to all persons with disabilities a professional training and retraining taking their physical and psychological limitations into account.”⁹⁷

The fourth and fifth session however did not discuss article 17 of the draft Convention. The sixth session saw no fundamental changes to what had been agreed on in the third session. However the seventh Session saw the changing of the article on education from article 17 to article 24. Here the chairperson, urged the participants to remember that, “the perfect is the enemy of the good”, holding that some of the issues being raised were those of a technical nature rather than a political one.⁹⁸ The final draft holds article 24 of the right to education, as we know it today in the CRPD. From the third session to the final draft most of the changes concerned the order of the subsections and further we see that subsection 1 (a) in the third session became two sections making personality development stand-alone. The final draft also includes democratic values of societal participation, which was not the case in the draft following the third session.

3. The nature of the “purpose” element of the right to education

Two specific discussions that will be focused on here include that of the right to education being an all-encompassing right or an economic right exclusively. The second discussion includes the Instrumentality of the right and the right as being a right in and of itself. This discussion has been exhausted in the right to education sphere, however for our purposes it is important for the reasons of zeroing in on the “purpose” element in particular. This is so as to see how it is instrumental or how it is not and to evaluate whether or not it is wide enough or at all to be an all-encompassing “purpose” element to the right to education.

a. An all-encompassing element of the right to education

⁹⁷ *Ibid.*

⁹⁸ UN Convention on the Human Rights of people with Disabilities Ad Hoc Committee- Daily summary of discussion at the seventh session 24 January 2006.

The human rights regime has been known in the past to distinguish rights between civil and political right, which are those rights embodied in the ICCPR⁹⁹, and economic, social and cultural right, as those embodied in the ICESCR. The right to education however has seen much discussion concerning whether or not it neatly fits into either one of these, with the traditional view holding that the right to education is an economic, social and cultural right. This view is based on the notion that economic, social and cultural rights are positive rights which require the state to do something in order for the right to be realised.

Discourses have however shifted in recognising the right to education as both an economic, social and cultural right and a civil and political right. It is submitted that the “purpose” element of the right to education brings together economic, social and cultural aspects of the right as well as civil and political aspects of the right. This is seen by the way the “purpose” element lays out for the aims of education to include for example; personality development, which embodies both a social aspect of individual development and a political aspect for the state to refrain from impinging on personality development.

The “purpose” element also provides for effective participation in a free society, here highlighting democratic views, which give the right holder a right to be given an education that allows him to vote, for example. It also adds an economic, social and cultural aspect because participating effectively in a society means not only being able to vote but also gives rise to social responsibility. Further free participation gives rise to an education aim that fosters freedom of thought, which echoes the right to freedom of conscience and religion in the ICCPR. Additionally “CPR [rights] cannot be enjoyed if ESCR [rights] are not realised at the same time, and *vice versa*.”¹⁰⁰ This is why civil and political rights and economic and social rights are said to be inalienable. Therefore we see the “purpose” element bringing together the economic, social and cultural aspect and civil and political aspect of the right to education as a whole.

The Sub-Commission on the promotion and protection of Human rights holds that, “When we talk about the right to education, we must clearly look beyond the traditional distinction between civil rights and social rights, since it would be too restricting to consider the right to personal development as belonging to the first of those categories and the social implications of that right as

⁹⁹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

¹⁰⁰ Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (International studies in human rights; v 82, Martinus Nijhoff Publishers / Brill Academic Publi 2006).

belonging to the second.”¹⁰¹ This makes sense as life in general is not divided into civil and political experiences and economic and social experiences, everything is usually interconnected and interrelated and viewing the “purpose” element as an all encompassing element allows us to understand the far reaching consequences it has.

It must be kept in mind however that the right to education is realised socially first, the “purpose” element is that which gives it the social dimension. However “the right to education is imbued through and through by a dialectic between autonomisation and socialisation ... in the sense that it should give rise to two opposing processes of equal importance, namely, the autonomisation of the individual acquiring knowledge and learning to exercise his freedoms, and his socialisation, or apprenticeship with a view to his integration on society.”¹⁰² It is submitted that separating the civil and political and the socio-economic weakens the dialectic balance between autonomisation and socialisation and emphasises only on the one social without the individual.

The aims of education set by Article 29, “are all linked directly to the realisation of the child’s human dignity and rights, taking into account the child’s special developmental needs and diverse evolving capacities.”¹⁰³ The CRC here takes the forefront in directly linking the “purpose” element to the foundational values of human right as a whole. Showing how multifaceted the “purpose” element is and because of its grounding to human dignity it is thus a superlative key to the realisation of other human rights.

It can thus be said the “purpose” element is rightly exemplified to be all encompassing in Article 29 (1), which “not only adds to the right to education recognised in article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates.”¹⁰⁴

¹⁰¹ UN Sub-Commission on the Promotion and Protection of Human Rights, THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS The content of the right to education Working paper presented by Mr. Mustapha Mehedi, 8 July 1999, E/CN.4/Sub.2/1999/10.

¹⁰² Patrice Meyer-Bisch, ‘The Right to Education’ in Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social, and Cultural Rights: A Textbook* (M Nijhoff Publishers 2014) pg?.

¹⁰³ UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education , 17 April 2001, CRC/GC/2001/1, 2.

¹⁰⁴ *Ibid.*

b. A right in itself or an Instrumental right

The right to education has given rise to the question of whether the right is an instrumental right or a right in and of itself. It is generally accepted that the right to education is both a right in and of itself and also an instrumental right to the realisation of all other rights *in tandem*; this is because “education is a human right, important in itself and also ‘enabling’ access to other rights.”¹⁰⁵ In the same vein the Committee on Social and Economic Rights (the Committee) holds that, “education is both a human right in itself and an indispensable means of realising other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognised as one of the best financial investments States can make. But the importance of education is not just practical: a well educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.”¹⁰⁶ Here the Committee not only connects the right to education to other rights, which are economic and social but also those that are civil and political.

If the right to education “enhances both economic, social and cultural rights, such as the right to work and the right to food and civil and political rights, such as the right to vote and the right to free speech,”¹⁰⁷ It stands to reason that its aims have the same enhancing effect, not only in the way they are postulated but especially in what it means for the right holder to be able to participate effectively in a free society or become tolerant and uphold human rights values.

Where “[education] is the primary vehicle by which economically and socially marginalised people can lift themselves out of poverty and obtain the means to participate fully in national life,”¹⁰⁸ it means that the result of such education is only seen in the future. Therefore the “purpose” element of the right to education is an important factor in making sure that besides making the right to

¹⁰⁵ Margaret Sinclair, ‘Education in Emergencies’, *Commonwealth Education Partnership* (2007)52.

¹⁰⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, para 1.

¹⁰⁷ Gauthier de Beco, “‘The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions’” (2014) 32/3 *Netherlands Quarterly of Human Rights* 263, 265.

¹⁰⁸ “Violations of the right to education” E/C.12/1998/19, para 1.

education a quality, content entrenched right and a strong right, it makes the right to education goal oriented and all encompassing in terms of its outcomes.

It cannot go without saying that scholars in specialised human rights all claim that the particular right, which they specialise in is both instrumental and a right in itself. This however does not make the assertion wrong or unreliable but it makes sense that, “If human rights are indivisible, then by analogy educational objectives must also be indivisible.”¹⁰⁹ It is submitted that the “purpose” element is instrumental to the realisation of other right and a key in the hands of human rights as a whole.

4. Conclusion

The “purpose” element of the right to education has a rich history, which shows the times in which the right was fathomed. The fact that it stands as a right in of itself and an instrumental right allows the right to education to be holistic and essential to the rights regime as a whole. The way it holds the socio-economic rights and civil and political rights make it particularly significant. It can be said that it is a key in the hands of human rights and without it human rights would be difficult to disseminate.

¹⁰⁹UN Sub-Commission on the Promotion and Protection of Human Rights, THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALISATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS The content of the right to education Working paper presented by Mr. Mustapha Mehedi, 8 July 1999, E/CN.4/Sub.2/1999/13.

Chapter 3: The content of the “purpose” element of the right to education

“Intelligence plus character-that is the goal of true education.” ~ Martin Luther King Jr.

1. Introduction

As mentioned in the previous chapters the right to education has seen much discussion especially under the auspice of UNESCO. However it becomes painfully evident that although there has been much discussion on the rest of the content and even the quality of the right to education very little has been discussed on what, has been identified as, the “purpose” element of the right. The impressive standards developed of availability, accessibility, acceptability and adaptability which have been developed as indicators of whether the right is being realised have been applied and discussed and implemented and yet the “ purpose” element has been left wanting. It is therefore submitted that perhaps to combat the many issues in the right to education, and to make the standards meaningful the “purpose” element must be clearly decipherable and explained.

There has been an on going debate concerning the objectives of education, especially in the education school. The human rights regime has however also seen its days of debating and interpreting what the objectives of education ought to be or what it is in fact. What is at question here is whether understanding the “purpose” element will help to solve the problem of an unbalanced generation whose existence depends on the availability of opportunities for which it has been educated? It would not be surprising however that at the end of this chapter the answer is a flat out no, that perhaps the “purpose” element should ultimately be left alone as it may turn out to have been a mere reflection of the feelings that the milieu had created.

This chapter will focus particularly on the common components of the “purpose” element in the instruments but it is important to note that the components differ from instrument to instrument. The common components include personality development, strengthening respect for human rights and freedoms, furthering the activities of the UN for the maintenance of peace and lastly but not least, participation in a free society.

The UDHR is the first to postulate these components of what the right to education’s “purpose” is. It however does not mention the participation in a free society and we shall see this may be owing to the Russian opposition during the drafting process for upholding one value system above another. The ICESCR however comes out strongly with all four of the components to the “purpose” element

of the right to education. The UNESCO CDE only postulates the two of the components, namely personality development and the respect for human rights. Meanwhile the CRC with the four components goes further and adds; the development of respect for the child's parents, national values and the natural environment. The CRPD takes a step further and with personality development, strengthening respect for human rights, participating effectively in a free society, it adds development of human potential and sense of dignity and self worth.

It will become evident however that the drafters of the international conventions and the regulating bodies focused and continue to focus more on the development of personality in describing what it is. However, it leaves much to the imagination as to what it means that education should aim to further the activities of the UN in the maintenance of peace, participate effectively in society and strengthen respect for human rights. Thus personality development has been concentrated on in deciphering or explaining but next to nothing has been written on the other aspects of the "purpose" element.

2. Personality Development

All the Instruments that have been looked at so far include personality development as a component of what the right to education is supposed to achieve. What is striking is that the drafters of the instruments did not particularly delve into the meaning of what personality development was but restricted themselves in deciphering whether it was important enough to add as a component of what education is supposed to achieve.

Pedagogy and psychology however distinguish two ways of defining the idea of human personality development. The first is "the process as primarily a succession of consecutive development phases, in each of which a certain combination of traits appears, paving the way for the appearance of a net?? set of traits in the following phases," the second and less popular meaning, development as a process of directional changes in the student's personality, proceeding from simpler and less perfect conditions to more complicated and in some respects more perfect ones.¹¹⁰ This however differs from how the human rights regime interprets or thinks about personality development. It must be noted here hence that personality development in the human rights instruments refers particularly to personal development, the dignity of the person as opposed to one's temperament or biological traits. This is shown by how the drafters and the treaty bodies have limited themselves to the

¹¹⁰ Wincenty Okoń, 'All-Round Education and Development of the Personality' 261.

meaning of personality development in the right to education and have not devolved into the psychological or physiological meaning of this component.

Mehedi¹¹¹ is of the view that, in the human rights world the “development of a sense of moral and social responsibility” and “a critical ability and personal judgment” are objectives that can only be achieved with an educational policy based on personal dignity and aimed at the full development of the personality.” Thus moving from law to practice to the individual as opposed to focusing primarily on the individual’s development. Personality development is a matter of law where states can be held accountable for poor educational policies that are not based on the values of human dignity and do not enable persons to develop a sense of moral and social responsibility. This here is quite immense weight resting on the shoulders of state parties.

The Committee on the Rights of the Child (CRC) battles to give a definition of what personality development means but holds that the development of personality not only includes literacy and numeracy “but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.”¹¹² What is interesting here is that the CRC makes numeracy and literacy a matter of personality development and not just a skill but with these it adds personality traits. It is also clear that personality development in this sense is supposed to help the child according to the CRC, to pursue options in life, almost as though, the development of personality in this way will lead to a variety of possibilities of being and freedom of choice. Although the court in the *New York State*¹¹³ case took into consideration the fact that basic education was education that should build one’s personality it did not consider this wide application of personality development to be able to allow the right holder to have enumerable possibilities. Had the court taken this into consideration perhaps the court may have come to a different conclusion. At the same time perhaps the court’s exclusion of the investigation into what personality development really meant was given to the fact that it had no idea where to begin the investigation seeing that the definition was not easily decipherable.

¹¹¹ UN Sub-Commission on the Promotion and Protection of Human Rights, THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALISATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS The content of the right to education Working paper presented by Mr. Mustapha Mehedi, 8 July 1999, E/CN.4/Sub.2/1999/13, 14.

¹¹² UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education , 17 April 2001, CRC/GC/2001/1, para 9.

¹¹³ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*).

The Committee on Economic, Social and Cultural Rights (CESCR) links personality development and dignity holding that “the drafters of ICESCR expressly included the dignity of the human personality as one of the mandatory objectives to which all education is to be directed.”¹¹⁴ Here the CESCR like the CRC recognises the weight of personality development as one that concerns human dignity. This brings the right to education full circle in its relation with other rights and its ability to entrench the core human rights value of dignity. The CRC holds further that in emphasising the best interests of the child, Article 29 (1) emphasises child centred education. Such an education goal is “the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs.”¹¹⁵

Belgium during the drafting of the UDHR held that an error might be held by wording the article on education, “to give the impression that it was the duty of society to develop the human being’s personality;”¹¹⁶ It held that, “that principle, might, perhaps, be in harmony with the philosophy of certain countries, but it might equally well run counter to that of other people.”¹¹⁷ This was a very insightful comment as for example the philosophy of Ubuntu or Hunhu in Africa recognises that a person becomes a person because of the community. However that being said the text of the right to education still gives state parties a duty to make sure that education is geared toward the building of personality. So it transfers the responsibility from the community in other cultures and lays it on the state party. Taking the South Sudan narrative for example, the state is only 4 years old this year, it is not evident whether the transference of responsibility from the community to the state in this instance would be appropriate and here it is questionable whether the “purpose” element would be effective at all with regard to taking away personality development from the community and placing the duty on the state to provide that through basic education.

The Brazilian delegate in the Third Committee of the drafting of the UDHR stated that the right to share in the heritage of mankind formed the basis of our civilisation and could not be denied to anyone. Without education the individual could not develop his personality, which was the aim of human life and the most solid foundation of society. During the 3rd session of the drafting of the UDHR Belgium was of the view that, “While there was no doubt that society contributed to the development of the individuals’ personality, it was no less true that that development was

¹¹⁴UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, para 41.

¹¹⁵ UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education , 17 April 2001, CRC/GC/2001/1, para 9.

¹¹⁶ UN. Doc A/C.3/SR.153 pg 659.

¹¹⁷ *Ibid.*

conditioned by other factors.”¹¹⁸ Here we see that although the drafters were cognisant that education would surely develop an individual’s personality they took into account that it was not the only factor that would do so. What is lacking however in their discussion is the analysis of whether making personality development a matter of law was in fact effective in making sure that the right to education reached meaningful and justifiable goals.

Lebanon on the other hand in discussions concerning personality development in the UDHR suggested that the words “his personality” should be replaced by the words “human personality” because the new wording would avoid the danger that “the text might be interpreted as implying that the individual had duties to society only in so far as the latter secured the full development of his own personality.”¹¹⁹ However in interpreting the meaning of personality development it has been held that “to say that education should be directed to the full development of the human personality is equivalent to recognising the person’s right to discover, choose and express his or her own identity”¹²⁰ Here we see that the emphasis is on development, discovery, choice and identity. Further General Comment 1 on Article 29 of the CRC holds that, “article 29 (1) underlines the individual and subjective right to a specific quality of education.”¹²¹ Thus although Lebanon was right in locating the individual in a community and having personality development in the UDHR address the communal meaning of personality development, the later interpretations of this component seem to move away from this communal meaning to a more personal individualistic meaning of what it means for the right to education to develop one’s personality. It is submitted that the recent interpretation is much preferred as it takes into account that education should not seek to make uniform personalities as though it produced robots in a factory but ought to allow for a wide range of being an individual in a community of others with different personalities.

The question that one has at the end of such a discussion is how then does education aim to develop the personality of the individual? The CRC holds that in making sure that education is personality development oriented then, “the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs and take full account of the child's evolving capacities; teaching methods should be tailored to the different

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ UN Sub-Commission on the Promotion and Protection of Human Rights, THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALISATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS The content of the right to education Working paper presented by Mr. Mustapha Mehedi, 8 July 1999, E/CN.4/Sub.2/1999/13, 10.

¹²¹ UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education , 17 April 2001, CRC/GC/2001/1, para 9.

needs of different children. Education must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life.”¹²² With this the CRC is also of the view that one of the goals of personality development is to deal with the issue of discrimination.¹²³ It is obviously evident here that in this one component of the “purpose” element of the right to education, much has been interpreted into it to include many human rights values. What can be termed difficult here is what kind of indicators one would use to measure whether the right to education as translated into curriculum that develops one’s personality or whether the right to education has given the student enough skills to confront the challenges of life or to deal with discrimination. It is submitted that it may be a sticky situation to allow personality development to have such a wide interpretation because it is hard to measure and it reaches into the field of psychology, a field that the court is perhaps not well equipped to deal with an issue which could arise with regard to the right to education and its “purpose” element.

3. Strengthen respect for Human Rights

The drafting documents or the treaty body documents of the instruments do not spend much time defining or expanding on the meaning of “strengthen respect for human rights,” it is obvious from reading the text that it was accepted by all that this was an important element which ultimately appears in all the Instruments chosen. This component of the “purpose” element brings in more of a social dimension of what the right to education is supposed to achieve. All human rights work on system of balancing and weighing against other people’s rights thus the right to education’s “purpose” element is imbued with dialectic between autonomisation and socialisation.

The tension between the individual and the society is clearly brought forward during the drafting of the UDHR in the third session when USA felt it necessary that “Strengthen respect for Human Rights” should be followed by “and freedoms” because “individual liberty had to be balanced with the liberty of other individuals and with the reasonable demands of the community”.¹²⁴ New Zealand concurring with USA during the third session of drafting the UDHR held that individuals live in communities and thus their rights must be exercised in relation with the community’s rights and freedoms. Thus the strengthening respect for Human rights and freedoms meant the “purpose” element of the right to education would highlight the balance between the individual’s right and the

¹²² *Ibid.*

¹²³ *Ibid* para 10.

¹²⁴ UN. Doc A/C.3/SR.153 pg 643

community. The CRC does not make direct reference in its “purpose” element, to strengthen the respect of human rights and fundamental freedoms but includes that the aims of education should be to the development of respect for human rights. The Committee on the Rights of the Child here first focused on whether the CRC should form part of the curriculum and then developed the idea to a continuous rights oriented curricula which is not a “once-only dissemination”.¹²⁵

The CESCR sees the objectives of this component as laying responsibility on state parties to “examine the initiatives developed within the framework of the United Nations Decade for Human Rights Education - especially instructive is the Plan of Action for the Decade, adopted by the General Assembly in 1996, and the Guidelines for National Plans of Action for Human Rights Education, developed by the Office of the High Commissioner for Human Rights to assist States in responding to the United Nations Decade for Human Rights Education.”¹²⁶ Here the CESCR thus brings together different working tools that are developed and are at the disposal of the state parties to help them to make human rights a part of education. It is particularly interesting here that the CESCR does not come up with a way to interpret this component of the “purpose” element but directs state parties to resources that would help in deciphering the meaning of this component. This is a working way to use all available methods and bodies to inform how the “purpose” element should be understood and applied.

The CRC holds that “efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates.”¹²⁷ Here the CRC takes cognisance that the right to education is not an island but a right that exists in tension with other rights. The CRC thus goes a step further than the CESCR in that it not only includes other human rights instruments on the right to education but also crosses over to another school thought. This allows for the right to education to not be understood in a vacuum and allows the “purpose” element to transcend the scholastic boundaries seeing that it is such a right that is both instrumental and a right in of itself. It is all encompassing and supported by the theory of justice

¹²⁵ Rachel Hodgkin a and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child (UNICEF 2007) 442.

¹²⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, 13.

¹²⁷ Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8.

ought to be so egalitarian as to apply to everyone in every circumstance in doing this it marries different schools of thought for a better understanding.

It is also interesting to note that the CRC has recently interpreted “strengthening respect for human rights” to mean human rights education which is as a tool to social change.¹²⁸ Here the CRC has widened the meaning in recent years and made the “purpose” element of the right to education to include human rights education. However, it has been observed that, “the aim is not simply to teach children “human rights”; in terms of the content of human rights treaties, the aim is “the development of respect for human rights.” There is a hidden curriculum in the messages transmitted by the way teachers and pupils behave towards each other.”¹²⁹ This almost however sound slightly alarming as we compare the new interpretation of this particular component of the “purpose” element, we see that the drafters of the UDHR sought to get away from an indoctrinating form of education that advances specific values in isolation to others, the idea of an uncritical mind. It is evident that the CRC committee sees the component of strengthening respect for human rights as one that needs no justification but is intrinsically good and thus should be woven in with every fibre of education. This is particularly disturbing owing to the fact that there is no attempt to explain why there needs no justification for having this component as a part of the “purpose” element. It is unmistakable that the CRC and the CESCR have enumerated more on what this component of the “purpose” element is and what it means than the other instruments have, but have failed to justify it.

4. Further the activities of the UN for maintenance of Peace

This component of the “purpose” of the right to education is by far the least discussed by the drafters and the treaty bodies. There seems to have been a pervading sense of it being an obvious component especially seeing that the right to education would aim at strengthening respect for human rights. It somewhat stood to reason that this was the same work of the UN and thus it would make sense to make a successive aim to further the activities to the UN in the maintenance of peace. The CRC goes to great lengths to discuss this element and thus there is an over reliance on the CRC as opposed to other instruments under discussion.

The component of furthering the activities of the UN for the maintenance of Peace has been seen as a vital aim of education “in that it emphasises the importance of teaching the less “academic”

¹²⁸ Rachel Hodgkin a and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child (UNICEF 2007) 442.

¹²⁹ *Ibid.*

subjects such as health and sex education, politics, budgeting, citizenship and social relationships. Above all, students must feel that their education is not divorced from real life a sure path to disaffection, failure and high drop-out rates.”¹³⁰ Here the furthering of the UN activities has been stretched to mean the study of citizenship and social relationships including sex education. It is easy to agree on the fact that it is a vital aim if what it is, is a mere furthering of the maintenance of peace but to widen the maintenance of peace to budgeting could be too wide of a stretch. However the process of understanding this component is made much harder by the fact that there is very little that the drafting history can tell us regarding this component.

Although the CRC does not mention the component of furthering the activities of the UN it does however mention “in the spirit of peace”. At this we must recognise that the CRC emphasises on peace and not necessarily the activities of the UN although the activities of the UN are stated to include the furtherance of peace and friendly relations amongst nations. Here the CRC committee in interpreting this element of peace concludes that, “The values embodied in article 29(1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes, it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict.”¹³¹ Here we see that although the CRC does not specifically mention the component of furthering the activities of the UN for the maintenance of peace, it does include the component of peace building in its “purpose” element of the right to education.

The CRC committee here emphasises on a curriculum that is not simply and strictly academic but one that affords alternative education. This is seen in its recommendation to Benin, suggesting that, “the State Party continue to allocate adequate financial, human and technical resources in order to... design and implement a programme of activities providing alternative educational opportunities for non-enrolled children and drop-outs, include gender issues, life skills and knowledge/awareness on HIV/AIDS...”¹³² This could be viewed as an over stretch of the meaning of furthering the activities of the UN in the maintenance of peace but it must be taken into account that there is a great amount of imagination required in allowing the “purpose” element of the right to education to become

¹³⁰ *Ibid* 445.

¹³¹ Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 16.

¹³² Benin CRC/C/BEN/CO/2, para. 62.

practical. Here the CRC committee uses imaginative skills to include alternative educational opportunities. Whether this should be a matter of law however is still arguable.

The CRC committee in addressing the issue of the component of peace in education, recommended to Lithuania that, “the State Party develop a comprehensive strategy addressing the culture of violence and its correlation with high levels of bullying amongst schoolchildren ... that the State Party establish adequate programmes and activities with a view to creating an environment of tolerance, peace and understanding of cultural diversity shared by all children to prevent intolerance, bullying and discrimination in schools and society at large.”¹³³ Here the CRC gives directions on what strengthening human rights means. It stretches once more the right to education from a classroom setting of basic education and extends it to all areas of formal education. Here it relates with the wide definition of what the right to education means.

What is perhaps surprising is that the CRPD and the ICESCR do not discuss this aspect at all. The CRPD can be excused due to its infancy and must be commended for having held a day of general discussion on the 15th of April 2015. The UNESCO CDE on the other hand does not expound on this particular component of the “purpose” element of the right to education, UNESCO as a whole is a specialised agency of the UN whose purpose is to contribute to peace and security by promoting international collaboration through education, science and culture. This agency’s history stretches from the League of Nations as an International Bureau of Education, which eventually became UNESCO, as we know it today. With regard to education, UNESCO has been a champion in advocating education for peace and in this sense has stepped forward in furthering the activities of the UN for the maintenance of peace. Here however one tends to wonder if the treaty bodies can ignore this component on the basis that a specialised agency has undertaken it as its major goal? It is submitted that if that is the case should the whole “purpose” element be in a different mandate and be governed by a specific specialised agency such as UNESCO and not necessarily become a matter of law?

It cannot go without mentioning that every system needs a channel by which people can support it. Thus in setting support for the activities of the UN the right to education becomes a key in the hands of international law to further the activities of the UN. Questions that arise however are why the furthering of the activities of the UN is a matter of law under the right to education and how is it justifiable. If peace is the goal, why must the UN be the channel provided for it by law? Is that not a

¹³³ Lithuania CRC/C/LTU/CO/2, para. 57.

form of repression of other value systems? This relates to the comment made by the USSR during the drafting period of the UDHR, in that the aims of education should not be seen to further a particular value system but should be such that they allow for history to prove the better value system. This is particularly problematic because in order to justify making this component a matter of law one should have specific indicators to measure whether or not the duty holder is meeting the standard of this component. Although this component may be a good component of the “purpose” element perhaps there ought to be a way to make sure it doesn’t become a tool in the hands of the powerful to push a specific agenda. It is good to have the maintenance of peace as part of what education should do but it is vaguely uncertain as to whether it is what the right to education should do.

5. Participate effectively in a free society

The ideal of free society and an individual’s ability to participate effectively in it is clearly a democratic ideal. By including this component into the “purpose” element of the right to education we see that the drafters of the instruments had no problem asserting that the right to education ought to enable the individual to live in a democratic society. This is no surprise at all seeing that the whole framework of human rights law centres on democratic values and ideals. It is uncomfortably evident here as well that some general comments or the treaty bodies have little to nothing to say about this particular component of the “purpose” element of the right to education. However, what is striking is that reference to this component is strewn all through commentaries on other rights in the instruments.

During the drafting period of the CRPD very little was discussed on democratic ideals pertaining to the “purpose” element of the right to education. It was almost an obvious inclusion on account of the fact that the Instrument was coming after the component had sufficiently found its presence as one of the components of the “ purpose” element of the right to education in the other instruments.

It is however especially surprising that UNESCO as a specialising body dealing with the right to education has little to say about what it means for the right to education to give an individual the ability to participate effectively in a free society. In its publication on “A Human rights based

approach to education for all,”¹³⁴ UNESCO mentions the importance of participation in education at least 20 times and 2 of those times it directly quotes what the CESCR General comment 13 says about education being a means by which an individual can participate effectively in society. On the other hand UNESCO advocates for education for democracy, however it is not known whether education for democracy holds the same meaning as the right to education giving an individual the ability to participate effectively in a free society. This enquiry is beyond the scope of this paper.

UNESCO’s 1995 Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy on the other hand “sets out policies, objectives and action strategies to combat discrimination, violence and xenophobia, and to develop students’ self-esteem, stressing the last as “essential to social integration... The reduction of failure must be a priority”¹³⁵ What is important for our purposes here is the gravity of social integration when discussing the “purpose” element of the right to education. It shows that for UNESCO the right to education ought to give the right holder an ability to integrate. To some degree this is problematic because it pushes the boundaries of tolerance and diversity. It is as if there is only one ideal of what society looks like and the right to education’s goal is to make sure that the individual fits into that social construct but not only that, the individual must participate and the participation should be effective and relevant only in a democratic setting, leaving out other non-democratic contexts that are a part of the world community. This means then that the right to education and its “purpose” element apply only to democratic societies and member states that are signed to any of these instruments should either be careful to ratify these or are excluded in this matter and this is what Russia had a problem with in the drafting of the UDHR.

The CRC in commenting on adolescent health and development declares what participation effectively in a free society in the right to education means and hold that, “It is the obligation of States Parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity. In order to act adequately on the information, adolescents need to develop the skills necessary, including self-care skills, such as how to plan and prepare nutritionally

¹³⁴ UNICEF, *A Human Rights-Based Approach to Education for All: A Framework for the Realization of Children’s Right to Education and Rights Within Education* (United Nations Educational, Scientific and Cultural Organization 2007).

¹³⁵ Rachel Hodgkin a and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007) 442.

balanced meals and proper personal hygiene habits, and skills for dealing with particular social situations such as interpersonal communication, decision-making, and coping with stress and conflict.”¹³⁶ The CRC committee further comments connecting adolescent health and development with education by stating that states ought to stimulate and support the building of such skills in children through formal and informal education. Thus the CRC committee interprets the possibility of adolescent to participate in a free society as an issue of access to education such as “...sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)”¹³⁷ It further encourages that this education should be through a variety of channels and ought not to be limited to education in a school environment.

It is evident that the CRC committee interprets this component of the “purpose” element to mean that the child must be given enough and correct tools to lead a well informed, responsible and acceptable life in society along side others. However this interpretation does not do much in providing what that participation looks like or if there are options for a different kind of society besides the democratic ideal.

Participation in a free society is a democratic and capitalist value as was noted by Russia. Apart from Russia’s comment during the drafting of the UDHR, there was never any dispute to the fact that education should further democratic ideals.

6. Conclusion

This chapter has focused particularly on the common components of the “purpose” element in the Instruments but it is important to note that the components differ from Instrument to instrument. The common components include personality development, strengthening respect for human rights and freedoms, furthering the activities of the UN for the maintenance of peace and last but not least participation in a free society.

The discovery was that personality development drew much attention from the drafters of the Instruments and has been expounded widely in the recent years. However the component of strengthening the respect of human rights and freedoms was under discussed and is almost an

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

assumption that all human rights ought to strengthen the respect of human rights and freedoms. Conversely we have seen the CRC committee interpreting strengthening the respect for human rights and freedoms to mean Human Rights education. And not just as a subject or an aspect but as a pervading value system. With regard to the component of furthering the activity of the UN for the maintenance of peace it is evident that although there is little discussion, UNESCO as a specialised body of the UN whose mandate include the right to education has come up with Education for Peace. It is not evident whether education for peace and the component of furthering the activities of the UN for the maintenance of peace are the same thing however it can be inferred. The component of participation in a free society although upholding democratic ideals was almost taken for granted and has found an over stretched interpretation by the CRC who link the “ purpose” element of the right to education with article 6 and 24 of the right to life and the right to health.

The “purpose” element of education embodies some really strong democratic ideals with particular reference of the component of participating effectively in a free society. It then stands to reason that the right to education is the key to the advancement of human rights and democratic values. Thus when a right holder claims a right to education what in essence they are claiming is a right to be educated in a particular way, an education which builds their personality to become an acceptable individual in a democratic society. An education that will allow them to further the activities of the UN on the maintenance of peace, an education that will strengthen the respect for human rights and lastly an education that will allow them to participate in a specific society.

Chapter 4: Towards a better understanding of the “purpose” element of the right to education and what it adds to the realisation of the right to education

“Our ideas of education take too narrow and too low a range. There is need of a broader scope, a higher aim. True education means more than the pursual of a certain course of study. It means more than a preparation for the life that now is. It has to do with the whole being, and with the whole period of existence possible to man. It is the harmonious development of the physical, the mental, and the spiritual powers. It prepares the student for the joy of service in this world and for the higher joy of wider service in the world to come.” ~E G White

1. Introduction

The previous chapters show that there are many definitions of what the word education means within the right to education sphere. However, the instruments themselves do not explain what education is but provide for what the right to education is supposed to do. The definition of education in the instruments refers to basic education which includes primary and secondary education, however the treaty bodies have sought to expand and define the right to education to include all manner of learning, yet taken together with the dictionary, the definition supports the idea of education being a method of transmission of all sorts of knowledge for the purpose of socialisation and acculturation. In order to additionally understand what the right to education is, the drafting history while not giving a definition, expanded on what the right of education was meant to achieve. The history of the “purpose” element of the right to education mostly located in the drafting documents reveals the atmosphere in which the provision was promulgated. The UDHR being the first international human rights Instrument had a more rigorous process of discussing what the “purpose” element of the right to education should look like and it took a step by step process until in the end it had the three main goals which are repeated respectively in the other instruments chosen.

One cannot argue with the fact that education “when used by a regime that does not respect the person, provides an ideal vehicle for all forms of totalitarianism... hence educational policy should not be based on so- called “higher interest of the state” or on a primary collective or social set of values.”¹³⁸ However ignoring the tension between the individual and the community built by the

¹³⁸ UN Sub-Commission on the Promotion and Protection of Human Rights, THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALISATION OF THE RIGHT TO EDUCATION, INCLUDING

“purpose” element of the right to education, as it is today, means that we allow education to meet a certain superfluous standard that means nothing in the grander scheme of peace and security for the world. This chapter will draw on the previous chapters and analyse what the current understanding regarding the “purpose” element of the right to education in International Human Rights Law is. In doing this it will apply what we now know from the previous chapters and answer whether by understanding this the court in the *New York State case*¹³⁹ would have come to a better conclusion of the case. It will also apply what we know from the previous chapter to the narrative of South Sudan and find out if a better understanding of the “purpose” element would allow education curriculum in South Sudan to give students the same opportunities as it does elsewhere.

2. New York State Case

The Campaign for Fiscal Equity, Inc. (CFE) challenged the New York State School funding system from 1993 till 2006. In 1995 the Court of Appeals ruled that the constitution of America required that the state offer all children the same opportunities to basic education and it defined basic education as “meaningful high school education that prepares students for a competitive employment and civic participation.”¹⁴⁰ In 2001 the court found that the state’s funding system was unconstitutional but on appeal the judgement was over turned until 2003 when the Appeal court found in favour of CFE. After the state failed to comply with the ruling the Appellate division in 2006 upheld the Supreme Court’s ruling ordering the state to pay annual operating aid in capital funds and causing legislature to enact capital funding, this however did not meet the operational funding that the court had ordered.

CFE’s argument was that the New York City public school system had about 1200 schools serving about 1.1 million students. 84% of the students were racial minorities, while 80% were born out of the USA, 16 % were persons who speak little to no English. Further 73% of the student qualified for federal free food programme and 442,000 students came from families receiving aid while 135, 000 were enrolled in special education programmes.¹⁴¹ In this case the Plaintiff argued that the state had violated its obligations under the Constitutional right to education by establishing a financing system that failed to give the New York City’s public school children the opportunity that

EDUCATION IN HUMAN RIGHTS The content of the right to education Working paper presented by Mr. Mustapha Mehedi, 8 July 1999, E/CN.4/Sub.2/1999/13, 10.

¹³⁹ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*).

¹⁴⁰ *Campaign for Fiscal Equity Inc. v. State*, 86 N.Y.2d 306 (1995).

¹⁴¹ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*) pg 5.

the Constitution granted. The plaintiffs also argued that the state's funding method violated the school children's rights under United States Department of Education regulations pursuant to title VI of the Civil Rights Act of 1964.¹⁴² One of the issues raised in the appellate division concerned whether the court rightly defined a sound basic education. The court had to deal with other issues too but this is the issue that is of particular importance for our purposes. It is important because as we have found out in the first chapter, in order to understand what the right to education is supposed to achieve, we need to understand what education in the right to education means. The court was concerned with article 11, subsection 1 of the Constitution of New York, which stated, "the legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."¹⁴³

The court indicated that sound basic education was more than just skills but was skills fashioned to meet a practical goal, which was meaningful civic participation in contemporary society, this the court called the purposive orientation for schooling which has been at the core of the education article which was in question. The court went further to conclude that what it called civic participation was measured with reference to the demands of modern society and included some preparation for employment.¹⁴⁴ However what the parties to the case disputed on was the kind of employment. First court of appeal disagreed with the trial court in widening the meaning of what it meant for a person to function effectively in a society and held that this did not mean anything more than the ability of get any kind of job including low entry jobs. Secondly the court of appeal held that sound education should leave the student in a position to be capable to vote and be part of the jury. Had the court taken into consideration that the right to education in the instruments' "purpose" element includes participation that is effective in a civil society it would have reached a much stronger conclusion that would not leave the minimum standard at low entry jobs. This means voting and being a part of the jury should not be the minimum standard but ought to be part of the standard. The court's reasoning in this regard was poor in that it took too narrow a view of what it means to participate effectively in a society.

In this case the court chose to interpret education with regard to the right to education in the narrowest sense. Although it acknowledged that the right to education was more than just literacy or numeracy it did not set out to explain what the "more" part is. As we have discovered that the definition of education in the right to education has been interpreted by the Sub-Commission on

¹⁴²42 USC § 2000d.

¹⁴³ The Constitution of New York, art XI, § 1.

¹⁴⁴ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*) pg 8.

Prevention of Discrimination and Protection of Minorities is, “a vehicle for transmitting culture and hence cultural identity... it is a vehicle by which economically and socially marginalised people can lift themselves out of poverty and obtain the means to participate fully in national life.”¹⁴⁵ It is immensely wider than the definition given by the courts because it brings in the instrumentality of the right to education. It is more than mere participation in a free society, it lifts the marginalised from poverty, it impacts their economic and social wellbeing. This is of particular importance because if we do not understand what the right to education means then it impossible to guarantee the “purpose” element to the right holder.

Consequently there is an important aspect in having a wide enough definition of education in the right to education as it allows for development and reinterpretation as times and epochs change. Conversely, there is great danger in having too wide a definition that is permissive of any form of transmission of knowledge, which could turn on indoctrination as in the Nazi regime for example. It is submitted that perhaps there is a need for not only knowing the meaning of education in the right to education in the international instruments but a need to differentiate it from other forms of education, the danger in including all forms of education or leaving the right to education ill defined is that anything becomes permissible and the end result is that the “purpose” element of the right to education becomes meaningless because the right itself lacks a coherent, solid definition. If for example one draws from the court’s reasoning of what sound basic education is in the *New York State case*¹⁴⁶, one finds that the court asserted that sound basic education allows for meaningful civic participation in contemporary society. That according to the court the definition of what education is, is anything that a school system provides that which allows the student to participate meaningfully in civic society. But, what really is education that allows for meaningful participation in civic society?

The court here if it rightly understood the meaning of education in the right to education would not have concluded that essentially the New York State had done enough to ensure sound basic education because low entry jobs are just as important as any other jobs. It is submitted that the court here failed to deal with the issue directly but answered a different question, instead of answering what sound basic education was and what it was meant to do, the court with regard to this issue held that if the student could get any kind of job, then the student had received sound

¹⁴⁵ UN Sub-Commission on the Promotion and Protection of Human Rights, THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALISATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS The content of the right to education Working paper presented by Mr. Mustapha Mehedi, 8 July 1999, E/CN.4/Sub.2/1999/13.

¹⁴⁶ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*).

basic education. This, it is submitted, is not what the drafters of the articles had in mind when they envisaged the “purpose” element for what the right to education was and what it was supposed to do for the right holder. As has been shown in the second chapter the right to education and its “purpose” element is more than just social and economic right it is an instrumental right that functions as a spring board for the realization of other rights *in tandem*. If the court had understood the nature and the history of the right to education as an empowering right, it would have reached a different conclusion concerning the meaning of the right to education.

Although the Court was only dealing with the American Constitution, what is surprising is that the court only discussed one of the components of the “purpose” element of the right to education leaving out, as we have observed in the third chapter, the other 3 more discussed elements. Seeing that the court looked at the one component, which is not mentioned in the article in the constitution, it stands to reason that the court ought to have evaluated all the other components in the instruments that the state was a part of. The court however makes no reference to the individual’s personality development, the strengthening of respect for human rights or the furthering of UN activities for the maintenance of peace. It is evident here that where the court had taken these into consideration as set out in the International Instruments it would have kept a tight tension between the individual and the society. Evidently here the court focused completely on the community by making the right to education’s “purpose” that of participation in a civic society only. This is what led to its reasoning that it was good enough education if students could work in low entry jobs. By doing this, the court removed the dignity and the freedom of the individual to chose what kind of job to take or not to take but predetermined this by the way the state funded the public schools. The demographics of the schools that were under discussion were not the only factor that should have awakened a better interpretation of what the right to education sought to do. If the demographics were different the right to education ought to do what it does for one student as it does for the other, this is because it is a matter of right and human rights are universal.

The court concluded by setting a standard for what the right to education means and what it is supposed to do. It must be acknowledged that the court progressed from not giving a standard at all in the trial court to articulating a standard, which only concerned, participating effectively in a free society. The plaintiff in this case won the case and went away with a half victory because although the court in its conclusion held that the New York City schools did not deliver the opportunity for a sound basic education, it did not go further than participation in a free society. This is why it is of utmost importance to understand what the International standard of the “purpose” of the right to education means, so that it can translate to the right holder this right on a national level.

3. South Sudan

As laid out in the introduction, South Sudan faces a somewhat different plight but yet similar at the core, to the *New York State case*¹⁴⁷. Research has shown that South Sudan's education indicators are one of the worst in the world in spite of the increase in education enrolment. It has also been found that the communities in South Sudan emphasise on the need for education as the "most important peace dividend."¹⁴⁸ In the areas such as the great lakes region, youth unemployment has been identified as the main hindrance to sustainable peace processes. Putting the two together we find that the crisis in South Sudan has the potential to be curtailed by a correct understanding of what the right to education is and what it is supposed to do. This will in turn pave out a way to build peace and create sustainable employment opportunities for the youth, which in turn promotes the objectives of the UN. The issue in South Sudan much like the *New York State case* concerns the meaning of education in the right to education and what the right to education is supposed to give to the right holder.

As discussed earlier, there are four general components of the "purpose" element of the right to education, which give flesh to the right to education. If the right to education means more than just transference of knowledge then it must give more opportunities to the youth in South Sudan. It makes sense that South Sudan's infancy owes much to the lack of employment opportunities for the youth, however if the right to education claims a universal application and the "purpose" element ought to be the same here as it is in any other given society. It should not be that the majority of youth in South Sudan after secondary education still find themselves at a place where they would be if they had not attended school. The kind of education they received does not allow them to do anything else except study further. If all that education is supposed to give them is a developed personality, a strengthening of respect for human rights, further the activities of the UN and participate effectively in the society, then in South Sudan the "purpose" element of the right to education has not been realised. Even if a child has access to basic education, or if states are making the right realisable progressively, it is painstakingly obvious that what education is supposed to do, is not happening in South Sudan.

¹⁴⁷ *Ibid.*

¹⁴⁸ 'Basic Education and Gender Equality - Issue' <<http://www.unicef.org/southsudan/education.html>> accessed 27 May 2015.

Deciphering the content of the “purpose” element of the right to education is not a hard task considering that the UDHR set a standard of 3 components, which have been laid down in the other chosen instruments with the addition of democratic ideals in the ICESCR as the “purpose” element of the right to education. However deciphering the intended meaning and the interpreted meaning has been a much harder task as has been shown above. The drafters of the instruments discussed components to include as part of the “purpose” element of the right to education they did not go into much depth as to what each of the components actually meant.

With regard to personality development, the value of dignity is especially emphasised. This component turns on the development of an individual as a free moral agent who not only has literacy and numeracy skills but also is able to think critically. This component is the most discussed of all the comments of the “purpose” element of the right to education. This maybe because the drafters especially wanted to keep the tension between the community and the individual, asserting that although the right to education gives the right holder a right to education that builds his individual personality, it ought not to be forgotten that the individual exists in a community of persons who also enjoy the same right as other individuals. This particular tension between the individual’s rights and the rights of others was made quite obvious in South Sudan in that the students in South Sudan were aware of their human rights since they were able to articulate the different rights they had. This was however not surprising judging by the proliferation of human rights organisations in the country and the many human rights education programmes conducted in the communities. It became obvious that the students in class and the youth on the streets had no idea what human rights meant. To the common young person who received basic education, human rights were simply a key to entitlements. Nothing in their behaviour showed that education had strengthened the respect of human rights in them. To them, human rights were theirs to claim from the state or anyone else around them, but they had nothing to do with their corresponding duty to respect the human rights of other citizens as the drafters of the Instrument articulated.

The tension between the individual and the community is somewhat tightened by the component to strengthen respect for human rights this is because “respect for human rights is a precondition for development of the personality, and implies the formation of knowledge, abilities, skills and values enabling individuals to advance peacefully towards the realisation of universal human rights.”¹⁴⁹ In a way it is as if it feeds into the personality development component and adds a much stronger social aspect. Although this aspect was not discussed extensively, the discussions show that this

¹⁴⁹ UN Commission on Human Rights, *The right to education*, 17 December 2004, E/CN.4/2005/50.

was an over arching idea that the right to education's "purpose" element should and must strengthen respect for Human Rights because that is why it is there to begin with. Expanding on the later the component of furthering the activities of the UN for the maintenance of peace went with even less explanation and was accepted without much discussion. In the UDHR it was more of an American idea and from then on once accepted, the rest of the instruments saw it fit to include in the "purpose" element because the UN is the international body created for the maintenance of peace. The problem with this is illustrated by a an event during my second week in South Sudan, on a Saturday evening the rain had poured all night and the riverbanks in the area where I lived had flooded. On waking up on Sunday morning, we found that many families had lost their houses, many were displaced and property had been washed away. On enquiring on what could be done for the people in the community who had lost their homes and possessions, the response was to wait for the government and the UN to do something. For a community with more than half of its population below the age of 35, there was an absolute lack of capacity to find viable ways to help the government or the UN in aiding the families in need. The whole community went to the river and watched as the river rose and washed away more houses and property. At this disjuncture, it is important that the idea of aiding ought not to be confused with furthering the activities of the UN. As has been discussed in the previous chapter, there is no clear definition of what that looks like, whether it means supporting UN missions for peace, or being an active agent to aid others in need to build peace and security. It is submitted, that if furthering the activities of the UN in the maintenance of peace means that the right to education is supposed to wire human beings to agree dogmatically with the activities of the UN without critical analysis then we have a problem of programming and indoctrination. However, if the meaning is such that education allows for people to think and act in ways that maintain peace as the UN does then the component of the "purpose" element of the right to education here becomes justifiable and legitimate, because peace is the goal and not the support for UN activities. In this situation instead of young people waiting around for the state or the UN to do something about their situation, education was supposed to inform them to be active agents in finding solutions to the problems that their community faced.

The component of participating effectively in a free society is a very plain democratic idea which is accepted by many states, however Russia especially during the drafting of the UDHR found that it furthered one ideology and found it fundamentally unfair but resigned to the fact that time would tell to the efficiency of each ideology. A fitting example of the telling of ideologies is Dawa, a young lady who was my assistant during my stay in South Sudan. I realised that she was not going to school and she was in her 20s. I asked her for reasons why she was not going to school and what it was she was currently doing in her life. She informed me that she had completed her primary

school and secondary school and she had done very well but she could not find any job since there were no industries or businesses she could work in except selling tomatoes or peanuts in the market or get married. This was a disturbing feature of the fate of the youth in South Sudan, that after completing school, the young people had no skills to allow them to participate effectively in their free society. Yet they could read, write and count, but that is about all that the right to education gave them. For most of them higher education was a distant dream and so they spent their days if they were male, sitting in the market, waiting for something to happen, or if they were female, chances were they were married or raising children by themselves. Here we see a cycle of poverty. Where education does not lift one up and does not develop the status of the individual in any manner, except in that they can read, count, and write.

There ought to be no reason why young people finish secondary school and still find themselves sitting around waiting for anything to happen. This is the substance that fuels war. Most of the youth it turned out would resort to joining the national army or the rebel army, simply because they had no other choice. What is it that the right to education lacked to give these young people a meaningful existence? Evidently class attendance was not enough, the quality of education may not even be relevant in this particular context but the “purpose” element is supposed to be important because the right to education in itself builds expectations that the “purpose” element is supposed to fulfil. After everything is said and done and school has been attended, high grades achieved and knowledge has accumulated, then, the stage that is most neglected!, What Next? In some privileged communities, it is obvious that the next stage is an apprenticeship, a technical training or another form of higher education. Keeping our context in mind, it is terribly discernible that such opportunities are only available to a handful of South Sudanese people, who move to the capital city or live as refugees in neighbouring countries or abroad. The struggle nevertheless is not necessarily the lack of opportunities or lack of a next stage after education as much as it is simply the ineffectiveness or purposelessness of the education received.

4. Conclusion

The *New York State case*¹⁵⁰ and the South Sudan narrative are two examples that show the gap that exists in the realisation of the right to education for all. It has been submitted that the “purpose” element could be the clue to closing that gap and the application of the “purpose” element when

¹⁵⁰ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*).

rightly understood could be the difference between a grim future and a future filled with multiple opportunities and possibilities for the right holder.

It is further submitted that the “purpose” element is not comprehensive enough, and much is still wanting in it. However, this does not limit what the “purpose” element could or should include for individuals to get a comprehensive, quality right to education. A right that not only teaches literacy, numeracy and reading but one that allows for critical thinking and a development and culture which allows the individual not only to participate in society but to build character and innovate. Although not spelt out some of the components of the “purpose” element of the right to education could include the development of a spiritual life. It is submitted that the concentration on the mind as opposed to the whole being including the physical and the spiritual merely builds a dysfunctional human being. The mental, the physical and the spiritual make up a whole being and thus the “purpose” element should not only impact the mental and leave out the other two aspects of what makes a human being. At the same time we must be weary of giving the state obligations and duties to dictate what education should do to a person’s physical and spiritual aspect. If the state already wields that much responsibility over the mind of the individual there is no justification in leaving out the other aspects of what makes a whole human being unless we say that the right to education ought not to have a purpose altogether.

There must therefore be a very distinct emphasis on keeping the tension between the individual and the community in order to “safeguard against the often dreaded tendencies of an educational approach directed exclusively at serving a social body or in extreme cases an ideology. ...it is the historical background against which the Universal Declaration of Human Rights and all post- World War II legal instruments were drafted that explains why the whole reasoning behind human rights is imbued with the determination to avoid a mass ideology ever taking precedence again over the rights of human beings and trampling their dignity.”¹⁵¹ The *New York State case*¹⁵² and the South Sudan narrative are proof that our thinking and understanding of the meaning and the “purpose” of the right to education, will in turn allow us to guard against inequalities and uphold the dignity and freedom of the person without neglecting their reciprocal duties.

¹⁵¹ UN Sub-Commission on the Promotion and Protection of Human Rights, THE REALISATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE REALISATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS The content of the right to education Working paper presented by Mr. Mustapha Mehedi, 8 July 1999, E/CN.4/Sub.2/1999/13, 10 .

¹⁵² *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) (*CFE V*).

Concluding Remarks

This research was conducted by evaluating drafting document of the UDHR, ICESCR, CRC, UNESCO CDE and the CRPD where material was readily available. In some instances secondary material proved to be more useful in the analysis as it gave a more coherent narrative of the processes during the discussions centering the “purpose” element of the right to education. The primary sources for this research involved UN materials, which include Treaty body materials such as the Social and Economic Council. Other treaty body material used were general comments, Concluding Observations or Recommendations. Special *rapporteur* reports were found to be lacking in discussing specifics relating to what the “purpose” element means in the right to education. In some instances such as in the CRC the “purpose” element was discussed in connection with another article in the CRC and not specifically as a significant portion of the right to education. The drafting History was however more resourceful in shedding light as to what the drafters of the Instruments intended when they included the “purpose” element in the right to education.

The purpose of this study was to rightly understand the “purpose” element of the right to education in order that we may have a holistic view of what the right to education is and what it gives to the right holder. A correct understanding of the “purpose” element will help in coming up with policy and curriculum that is holistic and comprehensive and that not only meets the standard set by the International instruments but goes even further. The question that was answered in this paper is: what is the current understanding regarding the “purpose” element of the right to education in International Human Rights Law? To answer this question other questions including, what is the meaning of education in the right to education, what is the history and the nature of the “purpose” element of the right to education, what is the content of the “purpose” element of the right and what does a better understanding of the “purpose” element of the right to education add to the practice of the right to education, were answered.

In order to evaluate and look through the documents to find answers to the aforementioned questions a qualitative research through the expository doctrinal methodology was used. Thus the question, ‘what is the law in this particular area concerning the “purpose” element of the right to education?’ was asked. While looking at the drafting history and some UN treaty body documents what was sought was to understand what the “purpose” element means and how it became part of the right to education and international law. This kind of research was important so as to allow for rigorous analysis and creative synthesis and to create connections between seemingly disparate

doctrinal strands, and then further to extract general principles from the fundamental mass of primary materials. The aim of the research was thus to describe the law and how it applies in the realisation process.

To the extent of reaching this aim the meaning of education in the right to education was explored and has been shown to centre on the meaning set out in the instruments. As has been shown during the drafting period there was much discussion on what education is supposed to do and what the provision was for and the basis of the right itself is shown to have come from different theories which include the Social Utilitarian or Public Interest Perspective to education, which view education as a vehicle to transmit and transport the values of society. The second theory is one that locates education as a prerequisite to Individual Dignity. The third is education as a prerequisite to individual Development. Lastly the individual Welfare Perspective to education views education as a welfare right with the likes of the right to food and health care. All these are good theories that add to the meaning of education and give direction to the “purpose” element of the right to education. However, taken singularly these theories add very little to the “purpose” element of the right to education. It is submitted that when viewed in light of Rawls’ theory of justice, the public interest perspective, individual dignity perspective, the individual development and the welfare perspective all find their place and build a much stronger purpose to the right to education. It must be noted that, that is not to say that once these perspectives are taken together then the “purpose” element of the right to education will have arrived at its ultimate, enlightened meaning. Instead, there is a more comprehensive and coherent understanding of these perspectives in light of the justice theory, and then there will be a much clearer definition of education in the right to education and the “purpose” element of the right to education. Were the court in the *New York State case*¹⁵³ to take into consideration a more holistic approach to defining the “purpose” of the right to education, it would reach a similar conclusion but using different reasoning.

With this background it is hard to see the “purpose” element of the right to education as solely an economic, social and cultural right. It has to be both. That is if understood in light of the meaning of education in the right to education and the theories where the meaning is derived, the “purpose” element of the right to education must have civil and political and economic, social and cultural application amongst other spheres. It cannot be exclusively one thing because the definition of education and the theories do not allow for a static application. Further the “purpose” element cannot relate to the right to education only as a right in and of itself apart from being instrumental in

¹⁵³ *Ibid.*

the realisation of other rights. The “purpose” element itself is both instrumental and a right in of itself, that is, a person should be able to claim a right to education with regard to its “purpose” element. For example as brought out in the *New York State case*¹⁵⁴ the parties to the case found themselves ultimately arguing for and against the impact that state funding has on the outcomes of the right to education, that is, what education is supposed to do. Similarly this was what the drafters of the right to education were concerned with, the impact of education, its goals and outcomes.

What was evident during the drafting periods of all the instruments besides keeping in line with the “purpose” element set by the UDHR, was the need to have a goal oriented right to education. The cultural milieu at the time of drafting also added to what the “purpose” element would look like in that after the second world war the goal was peace and security and upholding human rights values and democratic principles and this is strongly reflected in the discussions and the way the “purpose” element looks like in the chosen instruments with the exception of the CRPD which is the most recent of the instruments and is specific to particular group of persons with disabilities. In the CRPD, although all four components of the “ purpose” element are reflected other factors demanded more attention than the discussion of the “purpose” element. To some extent it is a disadvantage that the CRPD as a new instrument did not take time to re-evaluate whether the “purpose” element set in the UDHR and the other instruments before it were sufficient enough to add, as is. However the fact that there is not much difference adds to the practice of law and makes it predictable. The CRC in adding other aspects in its “purpose” element however shows the different milieu under which it was drafted, for example environmental issues were coming into the lime light of discussion and thus the opportunity was taken to add to the “ purpose” element of the right to education.

The chosen instruments nevertheless all embody the four common elements of personality development, strengthen the respect of human rights, further the activities of the UN in the maintenance of peace and participate effectively in a free society. Interesting in discussing the “purpose” element, drafters, monitoring bodies and secondary material have focused more on personality development, which is interesting taking into account that it is a very complex component. On strengthening the respect of human rights there was a pervading assumption that this would be an obvious addition in all the instruments. In the drafting of the UDHR, USA was strong in making sure that the furtherance of activities of the UN in the maintenance of peace was important and when it found its place in the “purpose” element the instruments that followed simply

¹⁵⁴ *Ibid.*

included it. The CRC however did not include this component verbatim but included the importance of education being an instrument for peace. UNESCO as an organ of the UN however specialises in education for peace and can be inferred to have taken this component of the “purpose” element as its mantra. The democratic ideal of participating effectively in a free society is one that has been fascinatingly focused on in the *New York State case*¹⁵⁵, it also enjoys a very wide interpretation in the CRC which connects the “purpose” element of the right to education to the right to life and the right to health. In doing this, the CRC allows for an instrumentalist aspect of the “purpose” element of the right to education, which in turn should make it easier to realise.

In order for the right to education to enjoy the instrumental status it should not only be seen to be accomplishing its “purpose” but should do so indeed, not in terms of statics of how many people can read, write and count. It should be in terms of how many people have an enviable balanced personality and are working together with the rest of the world for peace, participating effectively in the society. Nevertheless, we must avoid a process of programming and creating robots that are dictated to by the UN system or any other system for that matter. From the drafter of the human rights instruments we learn that the right to education was drafted the way it was in order to curtail the ideals of indoctrination and to build a world of dignified people who think critically and who are free.

At this point with all this in mind it is submitted that perhaps the “purpose” element is one that is volatile and perhaps this owes to the fact that it has not been discussed or developed in its fullness over the years. The fact that the “purpose” element includes a developmental psychological aspect, democratic ideals, the UN and the regime of Human Rights, as a matter of law, that is as part of what the right to education is supposed to do is perhaps alarming. It is easy to conclude that perhaps “sleeping dogs ought to be left to lie”, however we have the “purpose” element in our law and although it is not perfect, caution should be exercised in order to attempt to develop or interpret its meaning.

¹⁵⁵ *Ibid.*

Recommendations

1. The “purpose” element is there to give the right to education an end goal, because of this it should always be considered when discussing any other aspect of the right to education. That is, for example when discussing or looking to implement more access for girls into formal education, every practitioner or policy maker should look at whether the access to education they advocate for gives the end result the “purpose” element guarantees.
2. Develop curriculum that considers all aspects of the human being and that takes a holistic approach to what the right to education really is and what it purports to achieve.
3. Give room for an interdisciplinary understanding of the different components of the “purpose” element, especially the personality development one. This will give more understanding as to what the law is giving a right to here.
4. Adopt workable indicators that would realistically measure whether the right to education is doing what it says it is supposed to do.
5. Develop a general comment on the element of the right to education to balance between the obligations of the state and the rights of the holder.

Bibliography

1. Books

Beiter KD, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (International studies in human rights; v 82, Martinus Nijhoff Publishers / Brill Academic Publi 2006)

Callan E, *Creating Citizens: Political Education and Liberal Democracy* (Oxford University Press, USA 1997)

Fisher A, 'The Content Of The Right To Education - Theoretical Foundations', *Center For Human Rights And Global Justice Working Paper Economic, Social and Cultural Rights Series Number 4* (2004)

Hodgkin a R and Newell P, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007)

Lonbay J, 'The Right to Education : An Analysis of International Law Concerning the Right to Education and Its Application in Belgium, France and Ireland' (PhD, Florence, European University Institute, 1989)

Meyer-Bisch P, 'The Right to Education' in Asbjørn Eide, Catarina Krause and Allan Rosas (eds), *Economic, Social, and Cultural Rights: A Textbook* (M Nijhoff Publishers 2014)

Mialaret G, 'What Kind of Education?' in G Mialaret (ed), *The Child's right to education* (Unesco 1979)

Morsink J, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia : University of Pennsylvania Press, c1999 1999)

Newman A, 'A DEMOCRATIC FRAMEWORK FOR EDUCATIONAL RIGHTS' (2012) 62 *Educational Theory* 7

Nowak M, 'The Right To Education', *Economic, Social, and Cultural Rights: A Textbook* (M Nijhoff Publishers 2001)

Rawls J, *A Theory of Justice Rev (Cloth) (Cobe)* (Belknap Press of Harvard University Press 1999)

Verheyde M, *Commentary on the United Nations Convention on the Rights of the Child: Article 28: The Right to Education* (Martinus Nijhoff Publishers 2005)

Waite M and Soanes C, *Oxford Dictionary and Thesaurus (Dictionary)* (Oxford University Press 2007)

2. Articles

'Basic Education and Gender Equality - Issue' <<http://www.unicef.org/southsudan/education.html>> accessed 27 May 2015

CALD Statement on the Nature of Legal Research: In Terry Hutchinson and Nigel Duncan, 'Defining And Describing What We Do: Doctrinal Legal Research' (2001) 17 Deakin Law Review 83

De Beco G, "'The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions'" (2014) 32/3 Netherlands Quarterly of Human Rights 263

Englund T, Quennerstedt A and Wahlström N, 'Education as a Human and a Citizenship Right — Parents' Rights, Children's Rights, Or...? The Necessity of Historical Contextualization' (2009) 8 Journal of Human Rights 133

Halvorsen K, 'Notes on the Realization of the Human Right to Education' (1990) 12 Human Rights Quarterly

Okoń W, 'All-Round Education and Development of the Personality' (1979) 9 Prospects: quarterly review of education 261

Roth K, 'Article 26: A Principled Statement on Education' (2009) 8 Journal of Human Rights 139

Spring J, *The Universal Right to Education: Justification, Definition, and Guidelines* (Mahwah, NJ: Lawrence Erlbaum Associates, 2000)

3. UN Documents

Commentary on the Convention Against Discrimination in Education (Adopted on 14 December 1960 By the General Conference of UNESCO) 27

Office of the United Nations High Commissioner for Human Rights, 'Legislative History of the Convention on the Rights of the Child', vol. ii (2007) UN Doc. HR/PUB/07/1, 653

OHCHR, Background paper submitted by the American Association for the Advancement of Science (AAAS):. 10/14/1988, "Violations of the right to education" E/C.12/1998/19

Report of the third session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 24 May to 4 June 2004 (A/AC.265/2004/5, Corr.1 and Corr.2)

Report of the sixth session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 1 to 12 August 2005 (A/60/266)

Special Committee of Governmental Experts on the Preparation of Draft International Convention and a Draft Recommendation on the Various Aspects of Discrimination in Education; Paris; 1960 Publ: 1960; (23p.)*; ED/DISC/5- Rev.; WS/0760.19.

Third Committee of the General Assembly, Summary record of meeting A/C.3/SR.152.

Third Committee of the General Assembly, Summary record of meeting A/C.3/SR.153.

Tomašvski K, 'Economic, Social and Cultural Rights: The Right to Education' (UN Doc 1999) E/CN.4/1999/49

UN Committee on the Rights of the Child (CRC), *General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, 1 July 2003, CRC/GC/2003/4

UN Economic and Social Council, 'General Comment No. 13: The Right to Education (Art. 13 of the Covenant)' (UN Committee on Economic, Social and Cultural Rights (CESCR) 1999) E/C.12/1999/10

UN Educational, Scientific and Cultural Organisation (UNESCO), Constitution of the United Nations Educational, Scientific and Cultural Organisation (UNESCO), 16 November 1945

UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960

'UN Educational, Scientific and Cultural Organisation (UNESCO), Recommendation Concerning Education for International Understanding, Co-Operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, 19 November 1974'

UNICEF, *A Human Rights-Based Approach to Education for All: A Framework for the Realization of Children's Right to Education and Rights Within Education* (United Nations Educational, Scientific and Cultural Organization 2007)

UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189

UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249

UN General Assembly, *Declaration on the Rights of Disabled Persons*, 9 December 1975, A/RES/3447 (XXX)

UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249

UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158

UN General Assembly, Declaration of the Rights of the Child, 20 November 1959, A/RES/1386(XIV)

UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 3 February 1992, A/RES/47/135

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

UN Convention on the Human Rights of people with Disabilities Ad Hoc Committee- Daily summary of discussion at the seventh session 24 January 2006.

UN Committee on the Rights of the Child (CRC), General comment No. 1 (2001), Article 29 (1), The aims of education , 17 April 2001, CRC/GC/2001/1, 2.

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, para 1.

UN Commission on Human Rights, *The right to education*, 17 December 2004, E/CN.4/2005/50

UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Benin*, 20 October 2006, CRC/C/BEN/CO/2

UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Lithuania*, 17 March 2006, CRC/C/LTU/CO/2

4. Other Documents

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

Council of Europe, *European Social Charter*, 18 October 1961, ETS 35

Council of Europe, European Charter for Regional or Minority Languages, 4 November 1992, ETS 148

Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, ETS 157

European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02

Fribourg Group, draft Declaration on Cultural Rights, Fribourg, 1998

Inter-American Commission on Human Rights (IACHR), American Declaration of the Rights and Duties of Man, 2 May 1948

League of Arab States, Arab Charter on Human Rights, 15 September 1994

Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990)

Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52

The Constitution of New York

5. Table of Cases

Campaign for Fiscal Equity, Inc. v. State

Campbell and Cosans v United Kingdom

Campaign for Fiscal Equity, Inc. v. State

Kjeldsen, Busk Madsen and Pedersen v Denmark

Plyer v Doe