

THE RIGHT TO EDUCATION

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The first internationally agreed definition of the right to education can be found in Article 26 of the 1948 Universal Declaration of Human Rights (UDHR) which includes the following three paragraphs:

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

While the above definition does go some way to help explain the right to education, important questions remain. For example, are the three paragraphs listed in order of importance? Should each paragraph be addressed separately, or do they each form part of a greater whole? The answers to these questions can be found in the minutes of the 15-member UN Drafting Committee, chaired by Mrs Eleanor Roosevelt, which convened in June 1947.

The initial draft of Article 26, proposed by Professor Cassin (France), only included the first two paragraphs, and immediately attracted criticism from Mr Malik (Lebanon), who stressed the need to 'exclude the possibility of situations in which dictators had the power to prevent parents from educating their children as they wished'. Further concerns at the failure of the draft text to mention the right of parents to choose, were then aired by Miss Schaefer (International Union of Catholic Women's League).

Professor Cassin disagreed and argued that the word compulsory should be interpreted to mean that 'no one (neither the State, nor the family) could prevent the child from receiving elementary education; the idea of coercion was in no way implied'. The delegate from the USSR agreed and reiterated the importance of free and compulsory education.

Mr Wilson (UK), was not convinced and instead sympathised with the representatives of India and Australia who had argued 'that it was

dangerous to include the word "compulsory" in the Draft Declaration because it could be interpreted as acceptance of the concept of State education'. While recognising that the UK had enjoyed free and compulsory education for several generations, Mr Wilson was still concerned that it was 'difficult to reconcile the statement of a right to education with the notion of the compulsory nature of that education'. Mr Chang (China) offered Mr Wilson his support and suggested that the word compulsory should be deleted from the draft text.

However Mr Lebar (UNESCO) called attention to the fact that 'the phrase "free and compulsory education" had become traditional in all countries' and so its omission would therefore constitute a 'backward step'. To help dispel any confusion surrounding the use of the word compulsory, Mr Lebar assured delegates that 'it did not mean that the state exercised a monopoly over education, nor did it infringe the rights of parents to choose the schooling facilities they wished to offer their children'. The committee was then asked to vote on a proposal to remove the word compulsory from the draft text. The proposal was rejected by eight votes to seven.

Responding to the failure to delete the word compulsory, Mr Malik (Lebanon) explained that his delegation had voted against its inclusion, 'lest it be interpreted as making it imperative for children to be sent to schools designated by the State'. A third paragraph was therefore 'all the more necessary to guarantee the right of the family to determine the education of its children, but not to prevent such education'. Paragraph 3 was later approved with an overwhelming majority.

Returning to the initial questions, the above minutes would suggest that the three paragraphs were *not* drafted or listed in any order of importance. The minutes also suggest that it was *not* the original intention of the Drafting Committee for each paragraph to be addressed separately. Instead each paragraph represents an important facet of the right to education – which can only be realised when all three paragraphs are addressed as one.

Therefore for those international agencies and NGOs interested in helping all out-of-school children in developing countries, the right to education, as defined by the UN charter, can only be realised by introducing systems of free and compulsory schooling in which parents maintain the right and power to choose: in other words, education vouchers for all!

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