

# Frameworks for education rights



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## The question

What would be a good conceptual framework to help focus research on the real-life impact of education rights from a child's point of view?



**“Essentially all models are wrong, but  
some are useful”**

*(George Box, 1979)*

## **This presentation has four sections:**

1. Education rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).
  2. The idea of a “Core content” of these rights.
  3. Three models\* of human rights (or children’s rights) in general.
  4. Three models of education rights.
- ...and a conclusion.

\* *“Analytical tools”*

# 1. Education rights in international law

1948

Universal Declaration of Human Rights (UDHR), article 26



1966

International Covenant on Economic Social and Cultural Rights (ICESCR), articles 13 and 14



1989

Convention on the Rights of the Child (CRC), articles 28 and 29

*(There's discussion on the differences and similarities in the wording of the relevant articles in the written paper, and a complete side-by-side comparison table in the appendix, but no time for that now...)*

The important difference is not in the wording, but in the context and purpose of the two treaties:

- ❑ The ICESCR deals with economic, social and cultural rights of all people, not specifically children, and in general it does not deal with civil and political rights or freedoms. Commentators have tended to focus in detail on article 13.
- ❑ The CRC deals specifically with children's rights, covering all categories including civil and political rights. To understand education rights as conceived in the CRC requires reading the Convention as a whole, not just the two specifically education-focused articles.

The UN Committee on the Rights of the Child says:

*“[Article 29] draws upon, reinforces, integrates and complements a variety of other provisions and cannot be properly understood in isolation from them. In addition to the general principles of the Convention — non-discrimination (art.2), the best interest of the child (art. 3), the right to life, survival and development (art. 6) and the right to express views and have them taken into account (art. 12) — many other provisions may be mentioned, such as but not limited to the rights and responsibilities of parents (arts. 5 and 18), freedom of expression (art. 13), freedom of thought (art. 14), the right to information (art. 17), the rights of children with disabilities (art. 23), the right to education for health (art. 24), the right to education (art. 28), and the linguistic and cultural rights of children belonging to minority groups (art. 30).”*

(Committee on the Rights of the Child General Comment No. 1, 2001, para 6)

I would also emphasise the right to play (art 31) and the right to protection from work that may interfere with the right to education (art. 32).

## Participation rights in education

The principle of the child's right to be heard in all decisions that affect them (Article 12) has far-reaching implications in education. To comply fully with Article 12, the Committee on the Rights of the Child has called on States Parties to:

1. Promote active, participatory learning in schools.
2. Take children's and parents' views into account in curriculum planning.
3. Practise respect for human rights in schools, ensuring children's views are given due weight.
4. Promote class councils, student councils and student representation on school boards where children can freely express their views on the development and implementation of school policies and codes of behaviour (these practices to be enshrined in law, not left to the goodwill of heads and school authorities).
5. Consult children at local and national levels on all aspects of education policy (including strengthening the child-friendly character of the educational system).
6. Support the development of independent student organizations.

*(Committee on the Rights of the Child, General Comment No. 12, 2009, paras. 107-112).*



The comparison with the ICESRC is interesting: The ICESRC is a product of its time (formulated in the early 1960s) and in general does not perceive children as active agents, or as having the right to be consulted on decisions that affect them. Children's "participation rights" as such were introduced to international law by the CRC in 1989, and at the time were considered novel and radical.

## 2. Is there a “Core Content” of education rights?

*Idea associated with Phillip Alston, first Rapporteur, and later Chair of the UN Committee for Economic, Social and Cultural Rights*



*“Each right must ... give rise to an absolute minimum entitlement, in the absence of which a state party is to be considered to be in violation of its obligations”*

(Alston 1987).

Espoused by Committee on Economic, Social and Cultural Rights:

*“The Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent on every State Party”*

Committee on Economic Social and Cultural Rights, General Comment No. 3, 1990, para. 10.

A “core and periphery”  
view of a human right



In the education rights field, Fons Coomans suggests the following are “core elements”:

1. Access to education on a non-discriminatory basis.
2. The right to enjoy free and compulsory primary education.
3. Special facilities for persons with an educational backlog.
4. Quality education
5. Free choice of education.

Coomans says:

*“These core elements undoubtedly constitute the very essence of the right to education as a human right. Violation of one or more of these elements by the state would mean that the right would lose its material and intrinsic value as a human right”.*



## ***Critique of the “core content” idea:***

- ❑ The division of human rights into a core, which must be fulfilled now, and a periphery, which may be addressed later, seems at odds with the doctrine of indivisibility and the “no hierarchy of rights” principle.

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”

*UN “Vienna Declaration” 1993, para 5.*

- ❑ There is also disagreement in the literature over whether the minimum core is the same in all countries or different for rich and poor (*Young 2008*).
- ❑ Who should get to determine the core content (*Mutua 2002*).

### 3. Three models of human rights (or children's rights) in general.



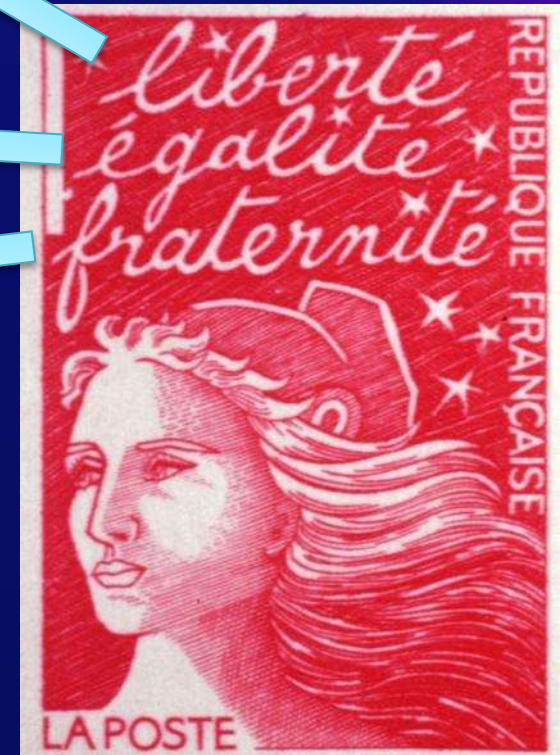
# Three generations of rights

*Attributed to Karel Vašák, former director of the International Institute of Human Rights in Strasbourg (Vašák 1977).*

First generation: Civil and Political rights (also described as civil liberties). Mainly require non-interference on the part of the state.

Second generation: Economic, social and cultural rights. Often require positive intervention by the state.

Third generation: Rights of peoples, such as self-determination, peace and sustainable development. Requires coordinated action by a number of states. (“Solidarity rights”)



*Vašák saw the three generations as corresponding to the ideals of the French revolution:*

Nowak (1995) says “The right to education is probably the only right that reveals aspects falling under all three generations”.

- ❑ The state’s obligation to provide education makes it a second generation (social and cultural) right.
- ❑ The obligation to ensure nobody is denied access to education can be seen as a first generation civil right, along with protection of the freedom to choose and to run independent schools.
- ❑ The third generation element can be seen in States Parties’ obligation to “promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world”. (*CRC article 28.3*)

# The 3 'P's: Protection, Provision and Participation

*Don't know who first came up with this one.  
Thomas Hammarberg in 1990 was the earliest reference I found.*



Sometimes referred to as the “Three Pillars of the Convention”  
(Habashi and others, 2010).

As with the three generations, Education Rights involve all three pillars.

- ☐ Education can be seen as provision.
- ☐ States have an obligation to ensure the protection of children while engaging in education.
- ☐ Children have rights to participate actively in educational settings.

# The three (or maybe four) types of states' obligations

*Attributed to Asbjørn Eide (1987), former UN special rapporteur for the fight to food.*



States have obligations to:

1. Respect rights
2. Protect rights
3. Fulfil rights

The Committee on Economic, Social and Cultural Rights has subdivided the **obligation to fulfil** into two parts:



**Fulfil by facilitation**

**Fulfil by provision**

So, applying this to education rights:

- ❑ The obligation to **respect** rights requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education.
- ❑ The obligation to **protect** rights requires States parties to take measures to prevent third parties from interfering with the enjoyment of the right to education.
- ❑ The obligation to **fulfil by facilitation** requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education (for example maintaining quality control in private schools).
- ❑ The obligation to **fulfil by provision** means States parties must provide the necessary services (public schools etc.) to fulfil the right to education.

*(Committee on Economic, Social and Cultural Rights, General Comment 3, 1999, para 47).*

## 4. Three models of education rights

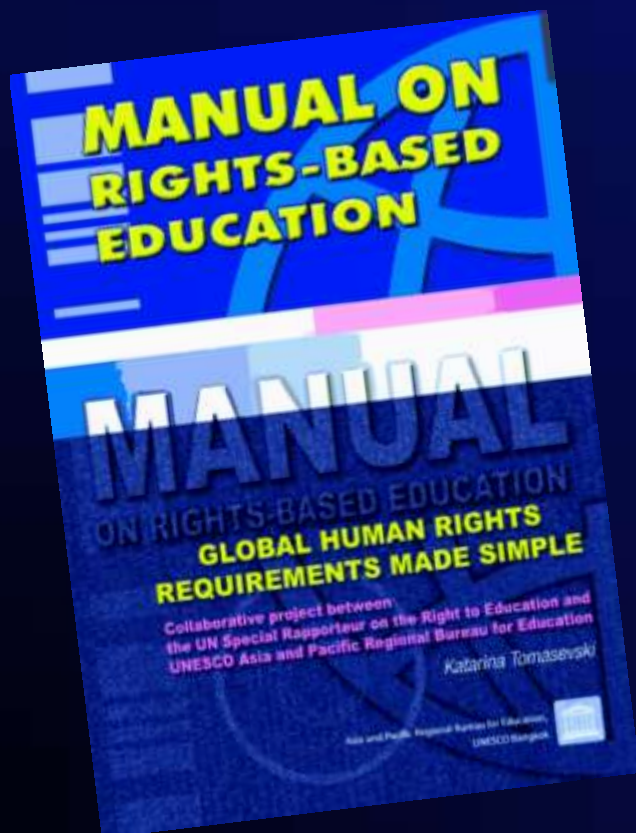


# The four 'A's

*Developed by Katarina Tomaševski, former UN Special Rapporteur for the Right to Education*



The four 'A's are **Availability**, **Accessibility**, **Acceptability** and **Adaptability**.



These have been widely used by UNESCO, NGOs and governments. They are the basic model of the global *Right to Education Project* founded by Tomaševski\*.

\* [www.right-to-education.org](http://www.right-to-education.org)

There have been a number of refinements or elaborations of the basic 4 'A's.  
For example, in the Committee on Economic, Social and Cultural Rights' General Comment No.13 (para 6):

**“Accessibility”** is further sub-divided into

- ☐ Non-discrimination,
- ☐ Physical accessibility and
- ☐ Economic accessibility.

**“Acceptability”** requires education to be

- ☐ Relevant,
- ☐ Culturally appropriate
- ☐ Of good quality.

# Rights To, In and Through Education

*Associated with Eugeen Verhellen, director of the Centre for Children's Rights at Gent University, Belgium.*



The right **to** education: Making education available and accessible to all children everywhere.

Rights **in** education: Ensuring that children's rights in general are respected and complied with within education systems.

Rights **through** education:

Has two meanings, depending on who you read:

- (a) Human rights education (Verhellen). This implies more than just informing children that they have rights. It also needs to develop children's self-concept as rights-holders and the skills and confidence they require to claim and defend rights and call failing duty-bearers to account.
- (b) Education as an "empowerment right" and as such as a foundation for the enjoyment of many other rights throughout one's lifetime ...

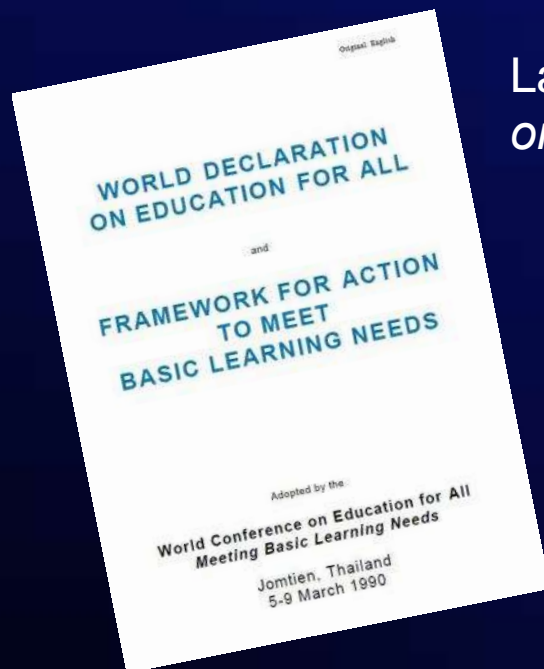
“Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. 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.”

*Committee on Economic, Social and Cultural Rights, opening paragraph of General Comment 13*

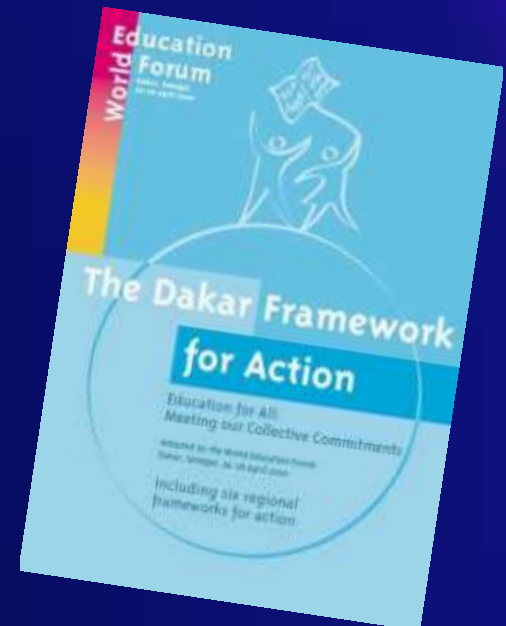
# A human-rights-based approach to education for all

*Developed by UNESCO and UNICEF*

“Education for All” (EFA) is an ongoing global process led by UNESCO in partnership with other UN agencies.

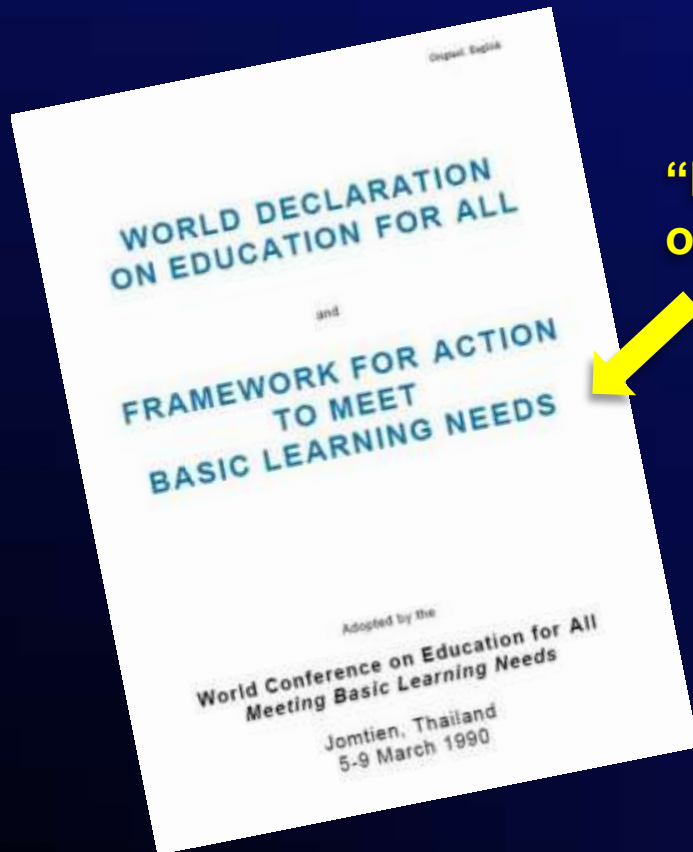


Launched in Jomtien, Thailand, 1990: “*World Declaration on Education for All*” (UNESCO 1990).



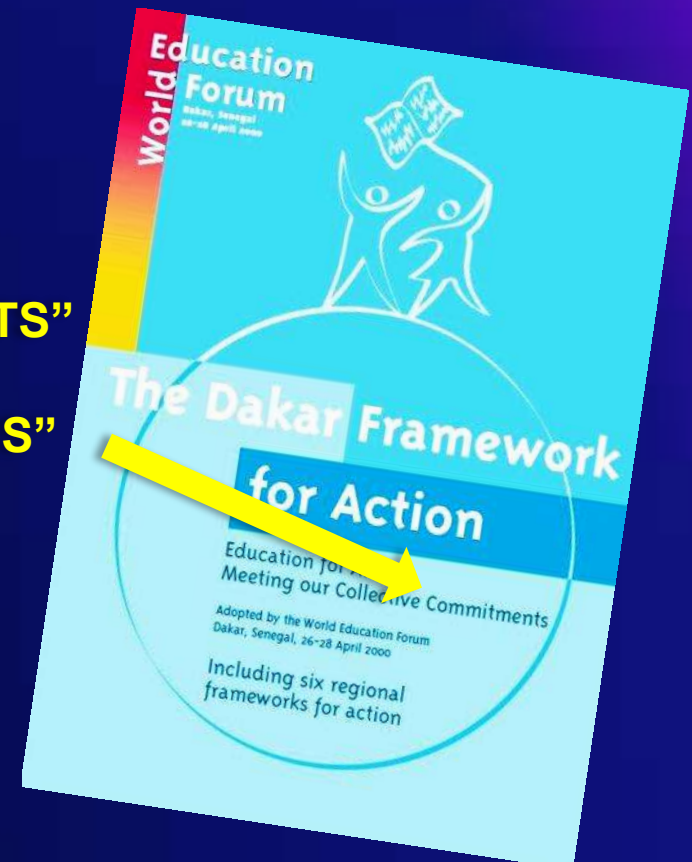
Revamped in Dakar, Senegal, 2000: “*The Dakar Framework for Action*” (UNESCO 2000).

Human rights advocates (notably including Katarina Tomaševski) complained that the EFA process was taking the global education campaign away from its human rights base and regressing to needs-based thinking ...



**“NEEDS” instead  
of “RIGHTS”**

**“COMMITMENTS”  
instead of  
“OBLIGATIONS”**



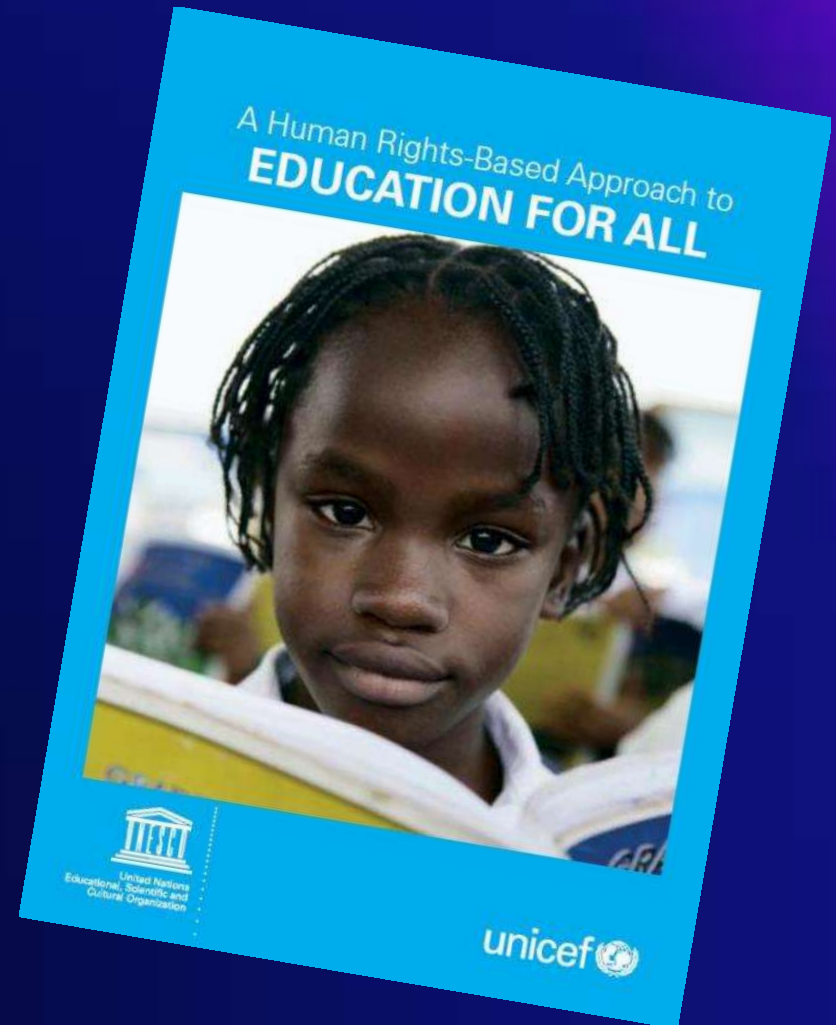
UNESCO and UNICEF decided to rethink “Education for All” in the light of newer human-rights-based approaches in the education sector.

Joint framework document (2007):

***“A human rights-based approach to Education for All”.***



*Written by Gerison Lansdown*



# **A human rights-based approach to education for all**

## **– the nine-point plan**

### **1. The right of access to education:**

- Education throughout all stages of childhood and beyond;
- Availability and accessibility of education;
- Equality of opportunity.

### **2. The right to quality education:**

- A broad, relevant and inclusive curriculum;
- Rights-based learning and assessment;
- A child-friendly, safe and healthy environment.

### **3. The right to respect in the learning environment:**

- Respect for identity;
- Respect for participation rights;
- Respect for integrity.

*NB The three-point formula for quality education is less satisfactory than previous more explicit formulations produced by both UNESCO (2000) and UNICEF (2000).*

# Conclusion

The models we have looked at so far...



Remember George Box...

“Essentially all models are  
wrong, but some are useful”

# Conclusion

1. “Education rights” are a substantial bundle (the often-heard expression “*The right to education*”, doesn’t tell half the story).
2. There are many ways the contents of this large bundle can be separated and sorted out into a number of smaller bundles.
3. But, the UN says human rights are “indivisible, interdependent and interrelated”.
  - ⇒ Why so much intellectual effort devoted to dividing the indivisible?
  - ⇒ And comparatively little effort to understanding the interdependence and interrelatedness?
  - ⇒ None of the models reviewed here make visible or adequately describe the complex interconnections and the dynamic interplay between the elements of education rights.



See, for example, Shier's work on education rights in Nicaragua :

*“The right **to** education requires education to be available and accessible to all. However, in the case of poor working children like those in northern Nicaragua, if school is not safe, if the curriculum not relevant, if the students are not treated with respect, if the teaching is unprofessional and the resources inadequate; in other words if children's rights **in** education are not fulfilled, then the decision will be made to stay away, either by parents or by young people themselves, and so the right **to** education is also violated. And as Tomaševski (2001) explained, rights **to** and **in** education are both essential as prerequisites for the eventual enjoyment of rights **through** education, thus completing the linkage or interdependence of all three elements.”*

(Shier 2013 forthcoming)

The conceptual framework for the research has still not been identified. It may be one of those discussed here or, more likely, a synthesis of more than one.



But, rather than focusing on how to divide up the big bundle of education rights into smaller bundles, the real challenge will be to find ways of making visible and describing the tensions and interconnectedness that exist between the different elements of the bundle.

**Thanks for listening!**