



Free Education is a Right for Me

A Report on Free and Compulsory Primary Education

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Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of All Form of Discrimination against Women
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
ECD	Early Childhood Development
EFA	Education For All
FPE	Free Primary Education
HIPC	Heavily Indebted Poor Countries
INEE	Inter-Agency Network for Education in Emergencies
ICESCR	International Covenant on Economic, Social and Cultural Rights
CESCR	Committee on Economic Social and Cultural Rights
MDGs	Millennium Development Goals
MDTF	Multi-Donor Trust Fund
MoEST	Ministry of Education, Science and Technology
OHCHR	Office of the High Commissioner for Human Rights
PTA	Parents & Teachers Association
SAPs	Structural Adjustment Programmes
UDHR	Universal Declaration on Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPE	Universal Primary Education
USAID	United States Agency for International Development
SPLM/A	Sudan People's Liberation Movement/Army

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Preface

Quality education for all children is a world wide commitment. This is evident by the large numbers of education and international laws and policies governing free and compulsory education that have been agreed upon by governments. Save the Children has seen the commitment in many places, not least with governments, parents and children but also with other actors in southern Sudan. However, drawing from a general experience, most actors move from a commitment for children's rights to education into practical implementation, without necessarily keeping the rights perspective in mind when moving into implementation. We asked Prof. Julia Sloth-Nielsen and Mr Benyam D. Mezmur from the University of the Western Cape in South Africa to write this report.

This report was conducted in order to facilitate a discussion among decision and policy makers on how they can keep a child rights perspective and goal of education access to all children in mind. On the same vein, we ensure that not only the goal but also the road towards the goal is based on the rights of girls and boys. This becomes even more important considering that many countries in the world do not have enough resources to ensure full access to quality education for all children within their countries immediately. With this report we hope that governments as well as those providing international assistance will fulfill their obligations to allocate the maximum extent of its resources for the implementation of the rights of children in general and to education in specific, as stipulated in the UN Convention on the Rights of the Child. We also hope that the trade offs between visions of the right to education for all children and an economic reality in many countries, will be based on an informed discussion on how the decisions would impact upon the fulfilment of the rights of girls and boys. Some decisions can clearly be guided by international law. Whereas others would require a more in-depth discussion as the international laws are not necessarily clear on all aspects: Should parents be involved in school constructions from a rights perspective? How do we avoid the possible discrimination caused by school uniforms?

Save the Children hopes that this report will stimulate a discussion about the rights perspective in education and through this also increase the access to quality education. We have the pleasure of working with the Ministry of Education, Science and Technology in southern Sudan but we also believe that this discussion is applicable in many other countries. Free education is Right for all children.

Anna Lindenfors
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Executive summary

This paper proceeds from the point of view that the right to education functions as a multiplier – it enhances the fulfilment of all other rights and freedoms when it is guaranteed. Equally, though, it jeopardizes them all when it is violated. Ensuring free and compulsory primary education for all children has been governmental responsibility in many countries for a long time because it is informed by this rationale. There is an endless array of policies and statements on what could be done to promote children’s education. A human rights approach spells out what *should* be done, using as the yardstick global minimum standards. It is the human rights dimensions of the right to free and compulsory primary education that this paper emphasizes. Accordingly, the paper devotes one section to an elaboration of the relevant human rights principles, taken from treaties, declarations, and the work of UN committees such as the Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights. Some attention is paid to the writing of Katarina Tomasevski, until recently UN Special Rapporteur on the Right to Education, and who during her term of office significantly developed the human rights law dimensions of the right to free and compulsory education.

In the discussion of human rights principles and the right to free and compulsory education, attention is paid to the following: -

- School uniforms
- Teacher salaries
- Teaching material for teachers
- Books/exercise books for children
- Food while in school
- Extra curricular activities
- Building and maintenance of schools

Thereafter, the positions of some role players in the education sector on what constitutes “free” primary education are dealt with in some detail. The seemingly contradictory stance of the World Bank, which on the one hand advocates the abolition of school fees in primary education in order to combat poverty and yet, (on the other) tolerates, if not encourages, the levying of user fees in education to reduce fiscal deficits, is criticized. The overall conclusion that emerges from this discussion is that the requirement upon governments to make primary education free implies that governments should eliminate every obvious and less obvious financial obstacle in order to enable all children – no matter how poor – to complete primary schooling. Direct charges in primary education, under whatever name, impose upon parents some obligation to bear the costs of financing the education of their children. User charges can come under different names and categories, such as school fees, registration fees, and school maintenance or development levies, but whatever name they bear, their effect is to put at risk the explicit requirement of international human rights law that at least primary

education must be free, because the chance exists that some children's parents may not be able to afford those costs.

International experience shows that indirect charges inevitably lead to the exclusion of poor children. However, the extremely challenging context for development in southern Sudan does need to be born in mind.

A significant part of this discussion paper focuses on studies of countries who have recently (in the main) taken steps to implement free and compulsory primary education. The countries were selected because they are all in Africa, and thus can usefully serve as comparisons. Also, their experiences are mostly very recent; however, the downside is that accurate evaluations and solid reports of good and less positive policies and practices that emerge from these countries' attempts to grapple with the practical aspects of introducing free and compulsory primary education are difficult to find. However, documented sources do illustrate that the adoption of complementary policies such as doing away with compulsory uniforms, prohibiting corporal punishment, revitalising parent-teacher associations, introducing curriculum changes, and decentralising to the district level, have been shown to assist in increasing access to the education system in some countries, beyond the mere abolition of user fees. School feeding schemes can prove to be vital in keeping children in school. Where pre-school programmes are strengthened by increasing the participation of children aged 3 to 6, this in turn frees older girls from child care duties, so that they can attend school. Complementary basic education, intended to absorb the out-of-school, over-age children unable to be accommodated within the gradualist approach (meaning stepped levels of tuition divided by age), has been implemented in some countries and should be facilitated. Providing evening schools and mobile schools as complementary opportunities for primary education could also be encouraged, as the case studies show. To fill teacher shortages which have arisen with a sudden influx of children seeking access to their right to education, measures such as bringing back retired teachers and extending the retirement age, and providing for a shorter period of teacher training have been put in place. The advantages and disadvantages of phasing in free and primary education must of course take into account local realities. Reducing walking distance to school helps more children to have access to learning. The Ethiopian experience seems to suggest that, where possible, central government control of budgets may be preferable to decentralised control. However, other examples suggest a preference for decentralisation.

The case studies are used to analyse and pose questions about the main tenets of the right to free and compulsory primary education, and to link these to policy developments in southern Sudan. A brief discussion and recommendations are also provided.

1. Introduction

1. Education is a catalyst for human development and it improves one's quality of life. It is also vital for economic development, political stability and democracy. Katarina Tomasevski, the former UN Special Rapporteur on the Right to Education, argues that "the rationale of the right to education is that it functions as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated."¹ It has been regarded as essential to what renowned Nobel Laureate, Amartya Sen, has called "human capability", and hence an important precursor to effective citizenship, and with it, good governance. It has been shown to have a direct correlation with key health indicators – babies born to mothers without education are twice as likely to die as those born to mothers with three years of education. Education is also vital to improving knowledge of HIV/Aids and safety issues (e.g. about landmines). It helps households manage health and nutrition better, and serves as a powerful preventive measure in relation to child labour and trafficking of children. Ensuring education for all children has been a governmental responsibility in many countries for a long time because it is informed by a sound rationale.²

Education improves one's quality of life	Education is vital for economic development
-Education enhances the ability of households to manage health problems, improve nutrition and childcare, and plan for the future.	- An adult with a primary education earns twice as much as an adult without any schooling.
- Education helps to prevent the labour, trafficking and sexual exploitation of children, and their use as soldiers.	- In Niger, the incidence of poverty is 70 per cent in households headed by adults with no education, compared to 56 per cent for households headed by adults who have been to primary school. (OXFAM)
- It is one of the most effective weapons against HIV/AIDS and other diseases, and raises awareness of living conditions and environmental protection.	- In Uganda, four years of primary education raise a farmer's output by 7 per cent.
- Life expectancy rises by as much as 2 years for every 1 per cent increase in literacy.	- Farming practices can be improved through basic education.

Source UNESCO³

2. Education is an economic, social, and cultural right⁴ – a group of rights which includes the right to health services, the right to social security and the right to work. In many respects, the right to education is also a civil and political right since people cannot fully realise their freedoms without education⁵ partly because claiming one's rights could require some degree of awareness about the right in question. The right to education is also sometimes described as an empowerment right, as it has an enormous liberating potential and makes it possible for the individual to take charge of his life.⁶ Governments are required to provide education to their citizens because of the obligations they have undertaken through signing international treaties. Providing for the right to education appears so frequently in treaties and Conventions that it has been considered to be customary international law – i.e. law which is binding on all states even when they are not parties to the specific treaties which provide expressly for it.

3. Many questions stem from the interface between education and human rights. However, **the general purpose of this paper** is to investigate the human rights obligations of governments, particularly the Government of southern Sudan, in connection with the right to free and compulsory primary education. The paper attempts to clarify what government should do and ought to avoid in implementing its obligation to ensure free and compulsory education for children. It presents an overview of how “free” education is conceptualised in international human rights law, and the “pros” and “cons” of specific matters referred to in the brief¹ are discussed, with reference to the role and responsibilities that different stakeholders⁷ have in contributing to education. Practical experiences gained in other countries are of value in finding ways forward and are therefore discussed. The study is foremost intending to analyse these issues from a rights perspective, so that decisions taken while developing education in southern Sudan will have a direction and a more detailed understanding of the implication of decisions from a rights perspective.

¹ Here, it should be mentioned that the paper has benefited from a clear terms of reference prepared by the Save the Children Sweden office. However, the paper has its own limitations. Because the practice of providing free and compulsory education is a recent development, there is not a great deal of literature available for consultation. A detailed practice of states in providing free and compulsory education is difficult to come by, and more especially where states have recently emerged from conflict. Consistent data is also in short supply and disparities prevail from one source to the other (for instance between UN sources and government sources.) An attempt by the authors to undertake a case study in the context of Lesotho, which is believed to offer a number of good practices, has not succeeded for lack of sufficient information. Subsequent to the preparation of the first draft of this paper, the Global Education Report (2006) of the late Katarina Tomasevski was released, and this has proved invaluable (this is available from her website: <www.right-to-education.org>). A special word of thanks is due to Rose Wahome, education advisor for Save the Child Sweden, southern Sudan Programme, for her invaluable assistance.

4. Here, in order to put things in context and achieve the purpose of this paper as outlined above, it is imperative to provide a brief background to the situation of education at the moment in southern Sudan. Until 2005, Sudan has been in a state of civil war for all but 12 years since it gained independence from the United Kingdom in 1956. The 21 years of civil war contributed to serious collapse of education infrastructure and this led to a breakdown of the entire system. Therefore, the current status of education can not be isolated from a long history of political vulnerability and exclusion that has been experienced by the people of southern Sudan and largely explains the recurrence of civil wars in Sudan.

5. In January 2005, following more than 12 years of peace talks, the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) signed the Comprehensive Peace Agreement (CPA). According to the CPA, a "one country, two system" model is established where the north and south will share power, resources and wealth—including vast oil wealth, much of which is located in the disputed or transitional areas of Abyei, Blue Nile State and the Nuba Mountains.⁸

6. The vast majority of children and youth from southern Sudan have not received any formal schooling, and the education indicators in southern Sudan today are among the worst in the world.⁹ The education services offered during the time of war also had poor indicators and were mainly a collection of *ad hoc* education programmes implemented by communities, NGOs and faith-based organisations. The southern Sudan Ministry of Education Science and Technology (MoEST) which was upgraded after the CPA (from the secretariat of education which was run by volunteers for a very long time) is still developing and is under resourced both in terms of financial and human resources. As a result, the education system to date is still characterised by lack of comprehensive policy guidelines; a national curriculum which is yet to be tested or implemented; gaps in national examinations and certification at the grade eight and other levels; very few trained teachers and insufficient learning and teaching materials; and long distances to the only functional schools. Thus, although there has been progress, it is apparent that the education situation is generally adverse when considering issues of access, quality and protection. A recent report by Save the Children UK highlights that:

Education in Southern Sudan is almost non-existent following two decades of war. More than 1.5 million people have been killed and 4 million people have been forced to flee their homes. The education system has been totally destroyed with only ad-hoc programmes in place run by local communities and NGOs. The children of Southern Sudan have the lowest access to primary education in the world. While around 20 per cent of children enroll in school, just 2 per cent complete their primary education.¹⁰

7. Although it is true that three generations of southern Sudanese have lacked proper education as a result of the civil war, girls have suffered the most. UNICEF reports that in southern Sudan, "a teenage girl is far more likely to be a wife than a student.

Out of a population of over 7 million people, only about 500 girls complete primary school each year. By contrast, one in five adolescent girls is already a mother.¹¹ Three times more boys than girls attend school and dropout rates are the highest in the world.¹² It is also reported that a Rapid Assessment of Learning Spaces (RALS) conducted by the MoEST and UNICEF in 2006 found that

...only 2,163 primary schools existed to serve a region with a population of approximately 7.5 million. School fees, charged by many schools to fund teacher salaries and other costs, also present a financial barrier to children. In addition, these fees can lead to further risks for children who may engage in dangerous or exploitative activities to procure the money needed to attend school... In addition more than one-third of primary school children attend classes in the open air, and less than 20 percent of all schools are housed in permanent structures.¹³

8. The lack of trained, qualified teachers poses one of the most significant obstacles for education in the region.¹⁴ With an adult literacy rate of less than 25 %, many teachers have not completed primary school themselves.¹⁵ In 2005, it was reported that “fewer than ten percent of southern Sudan’s teachers are formally trained, with another 40 or 50 % having attended an occasional workshop.”¹⁶ In addition, as late as 2005, it was reported that “most teachers—indeed, most principals, county supervisors and Secretariat of Education personnel—receive no pay.”¹⁷ However, after the formation of the MoEST, efforts have been made to pay all the education personnel including teachers, and an attempt to come up with a payroll is underway. This exercise has been very difficult as some of the personnel doubled up as soldiers or other volunteers. As a result, it has been very challenging for the MoEST to determine who exactly qualifies as a teacher considering the fact that on the one hand the majority are not trained and have no documents and on the other, they have been volunteers for a very long time and hence, it would be unfair to lock them out. Although UNICEF has funded a verification exercise to establish the numbers of teachers and their levels of qualifications, if any, the results are not yet out.

9. The lack of proper administrative support to sustain education is also an area very acute in southern Sudan. The number of qualified personnel to run the different departments in the MoEST is in short supply as each department is mainly staffed with a director and one other staff member. It is reported that

... one of the key issues for southern Sudan is the lack of people not only to directly provide basic education but also to form the necessary support and governance mechanisms to ensure sustainability and a systematic approach. Quality education requires well-trained teaching staffs that deals with the key issues of peace building, environmental education, entrepreneurship, education for sustainable development, and information about HIV/AIDS.¹⁸

Overall, the government is still forming, which causes personnel changes from time to time, exacerbating the challenge.

10. In previous years, it was reported that few teachers have teacher's guides, and even fewer students have textbooks or copybooks.¹⁹ In addition, although chalk and some sort of chalkboard were said to be present in many schools, but pencils, paper and pens were found to be rare.²⁰ Further, it was highlighted that a lack of textbooks has hampered efforts in all parts of southern Sudan to give children a quality basic education.²¹ It was indicated that schools should have at least one set of textbooks for every two children in each of the first five grades.²² Currently, there has been some progress made in addressing these issues. For instance, MoEST, with the support from UNICEF, has tried to address this situation by supplying schools in southern Sudan with basic supplies, including student kits, resource materials for teachers and recreation kits. More than 4 million P1 – P4 textbooks were delivered in 2006. However, 4 million textbooks for southern Sudan are not sufficient and sometimes, due to transportation difficulties, not all children get to access these supplies. On the other hand, there is still a gap in P5 – P8 grades and the Government is trying to supply the required materials with funding from the multi-donor trust fund (MDTF).

11. The Constitution of 2005 of southern Sudan provides that "Education is a right for every citizen"²³ and that "[p]rimary education is compulsory and the State shall provide it free".²⁴ Note should be taken that after decades of war, southern Sudan's Government (supported by UNICEF) has launched the "Go To School" initiative that aims to have 1.6 million school-aged children in school by the end of 2007. Official figures indicate that some 850,000 children are enrolled in school today in southern Sudan – a major increase from an estimated 343,000 during the war.²⁵ Many of these students have joined school in the single year since a campaign to significantly increase primary- school enrolment was launched on 1 April 2006.²⁶

12. In financing education, the Government of southern Sudan will for a long time have limited capacity to absorb funds and deliver services.²⁷ Therefore, for some time, as the Government structures develop their roles as duty-bearers to ensure that the basic right to education is met, there will still need to be a strong partnership with NGOs and the international donor community.²⁸ A MDTF for southern Sudan was designed to support essential basic services: water and sanitation, health and education. In the area of education, a recent report by Save the Children UK indicates that

It was intended that education sector funding be centralised, shifting the management of resources from NGOs to the government of Southern Sudan, thereby strengthening the emerging capacity of the MoEST to undertake policy development and education system management. A multi-donor proposal to improve access to an enhanced quality of education was developed by the MoEST and stakeholders and approved by the MDTF oversight committee in

early 2006.... The Southern Sudan MDTF had received pledges totaling US\$345m, but just US\$185m has been paid to date and the disbursement of these funds has been considerably delayed.²⁹

13. With this as background, after introducing the theme of discussion, the paper provides for conceptual clarifications that should underlie the following sections of the work. It then turns to unpacking the elements of free and compulsory education. Since the core topic of this work is the “free” aspect of the right to education, the various elements of the “compulsory” aspect of free and compulsory education is given only limited attention. However, international law is clear that the concepts are linked: “the principle of compulsory education is shared by several human rights treaties and is based on the belief that, in the best interest of the child, education cannot be refused below a certain level....the principles of free and compulsory education are interrelated.”³⁰ The Committee on the Rights of the Child (CRC Committee) therefore puts much weight on the fact that primary education has to be made compulsory, often in connection with the cost-free aspect.³¹ After highlighting positions taken by major development and aid agencies in regard to the right to free and compulsory primary education, five case studies which illustrate experiences from other African countries follow, offering some practical examples to explain debates. A concluding section debates the advantages and disadvantages of different options and courses of action in relation to the issues identified in the brief, namely school uniforms, books and exercise books for children, teachers salaries, teaching material, food while in school, extra curricular activities and building and maintenance of schools.

14. The human rights approach adopted towards education in this paper is a useful one.³² One rationale for a human rights approach to education is so as to capture obstacles and barriers beyond – not only within – the actual educational setting, such as cultural attitudes which limit access to education.³³ There is an endless stream of policies and statements on what ought to be done to ensure children’s education. Human rights spell out what *should* be done, highlighting global minimum standards which most states in the world have accepted. A human rights approach to the provision of education also complements and strengthens development priorities.³⁴

2. Conceptual clarifications

2.1 Definition of the term “education”

15. Article 1(a) of UNESCO’s Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms of 1974 states that “education implies 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”. This could be taken as the wider definition of the term “education”. In a narrower sense, however, it is provided that education means “instruction imparted within a national, provincial or local education system, whether public or private”.³⁵ It is also to be noted that UNESCO’s Convention against Discrimination in Education of 1960 defines education in article 1(2) as “all types and levels of education, including access to education, the standard and quality of education, and the conditions under which it is given”. As protected in international human rights instruments and as dealt with in this study, the right to education refers primarily to education in its narrower sense.

2.2 Education vs school

16. As the CRC Committee has outlined, "education" is more than formal schooling involving skills related to literacy and numeracy. Rather it should “embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society”.³⁶ The Committee also stresses that fulfilling the right to education is not only a matter of access, but also of content.³⁷

17. It should perhaps be noted that it is not necessary to make attendance at school compulsory in order to fulfill the obligation concerning the right to education under the Convention on the Rights of the Child (CRC). In other words “[e]ducation and school are not synonymous – children can be educated without schools, though this is unusual, and, sadly, attendance at school does not necessarily mean the child is being educated.”³⁸ However, analysts believe that the provisions of article 28(1)(e), which impose an obligation upon State Parties to increase school attendance, reflect an underlying belief of the drafters of the CRC that schools in general are the best place for children to receive education.³⁹

2.3 Right to education vs benefits to meet learning needs

18. There has been a change in the world’s perception of the right to education over the past few decades. Whereas the UDHR proclaims that “[e]veryone has the right to education”, that elementary and fundamental education shall be “free” and that “[e]lementary education shall be compulsory”, the Declaration adopted by the World Conference on Education for All (EFA) (1990) proclaims that “[e]very person – child, youth and adult – shall be able to benefit from educational opportunities

designed to meet their basic learning needs”. The UDHR does not mention “learners” or “learning needs”. The two notions of “elementary and fundamental education” have been overtaken by the concept of “basic education”, while at the same time there has been a shift of emphasis from “education” to “learning”: from what society should supply, so to speak, i.e. education that is “free”, “compulsory” and “directed towards”, to what members of society are said to demand or need (“educational opportunities designed to meet their basic learning needs”).⁴⁰ The shifts in thinking about education have recently been confirmed in the latest text dealing with education and disability, contained in article 24 of the UN Convention on the Rights of Persons with Disabilities, 2006, with the article requiring that education and learning be 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.”⁴¹

2.4 Basic education vs primary education

19. The first stage of formal schooling is named differently: primary, basic, fundamental or elementary education.⁴² Even if these terms are sometimes used as synonyms in the literature, a differentiation between “basic” and “primary,” as pointed out by UNICEF,⁴³ seems correct. According to the World Declaration on Education for All, basic education covers the basic learning needs, which are provided, first, by the family, but later, mainly through the primary education.⁴⁴ In other words, basic education is considered as the teaching of those skills that are necessary to function (economically, socially, etc.) in society.⁴⁵ Sida defines “basic education” as education that includes all age groups, and goes beyond conventional curricula and delivery systems, for example, pre-school, adult literacy, non-formal skills training for youth, compensatory post-primary programmes for school leavers.⁴⁶ Primary education could be defined as the formal basic education given to children in primary schools by primary teachers. It stands in contrast with secondary and tertiary level education, as well as nursery schools or kindergarten. The CRC Committee recommends that States Parties ensure that all children complete 8 years of free primary compulsory education.⁴⁷ Provision of at least one year of pre-school education is also regarded as being highly desirable. However, basic education, as used in this report, unless otherwise expressly provided, is understood in its wider sense, which includes primary education. Where reference is made to primary education, this is intended to entail formal schooling for the minimum period agreed (which the CRC Committee has recently commented to be 8 years)⁴⁸ in an education policy.

2.5 Direct and indirect costs of primary education

20. The various costs arising out of compulsory primary education must be described. Generally, three types of cost are distinguished. Direct costs are the first group. These costs are directly caused by the educational service, such as teacher’s salaries, the administration of the national curriculum, provision of schools and their maintenance, classroom refurbishment and the management of the education system.⁴⁹ Direct (undertaking) costs, without which education services cannot be

delivered, also include texts and other books, learning materials, equipment which is essential to the educational undertaking, and activity and examination fees.

21. The second group consists of the indirect costs, which are expenditures indirectly caused by the educational service. They cover nothing of the educational service but still are indispensable for school attendance, such as uniform costs, sporting equipment, transport, school meals, and further educational equipment.

22. Finally, there are opportunity costs. Those costs are a result of the choice of going to school instead of – for example – performing tasks at home, and constitute the loss of benefit a child could have achieved by contribution to household income through work.⁵⁰

The table below gives examples of the different types of costs.

No	Direct costs	Indirect costs	Opportunity cost
1	human resources - teacher salaries - national curriculum, supervision - top-ups / payment for private lessons (private tuition charges)	feeding (school meals)	home work / domestic assistance/other forms of work
2	Construction - costs for school construction and maintenance - classrooms and furniture (desks, chairs, benches, black board, etc.) - sanitary facilities - water, electricity	Transportation(eg school bus)	
3	undertaking costs - teaching books - textbooks for pupils/learning books - basic school equipment (school stationery like exercise books, pens, pencils, rubbers, rulers, etc.) - activity fees (sporting and cultural activities) - examination fees	school uniform sport equipment (and further school equipment.)	

Adapted from CRADLE⁵¹

2.6 Non-discrimination in education

23. Although the CRC does not contain a comprehensive definition of discrimination, the CRC Committee has leaned towards the definition of discrimination which disallows differential treatment in similar cases without an objective and reasonable justification.⁵² So the general principle of non-discrimination in the CRC prohibits differences in treatment on grounds that are arbitrary and objectively unjustifiable.⁵³ This, in the context of education means, for instance, discriminating against minority children, disabled children, refugee children, and the girl child, where the classification is founded on an unreasonable basis.

24. The UNESCO Convention against Discrimination in Education also refers to the prohibition against discrimination in education, (art 1(2)). Discrimination in education is, according to article 1(1) of the UNESCO Convention, “any distinction, exclusion, limitation or preference on prohibited grounds that has the purpose or effect of nullifying or impairing equality of treatment in education”. However, not all unequal treatment under the Convention constitutes discrimination. Distinctions are prohibited as discriminatory only when they are not supported by reasonable and objective criteria. The International Covenant on Economic Social and Cultural Rights (CESCR) Committee also supports the idea that affirmative actions could sometimes be legitimate.⁵⁴ This distinction recognises that formal equality (everyone is treated exactly the same) can entrench discrimination where people are not, in reality, of equal status for one reason or another.

25. In general, the principle of non-discrimination and equality under article 2 and article 28 of the CRC also implies that special attention may be given to specific groups as long as the grounds for differentiation and preferential treatment are supported by reasonable and objective criteria. Where subsidies are to be provided, a preferential choice could be made between those who are very poor and those who are “not poor enough” as long as the criteria is reasonable and justifiable. For instance, if government can only provide (because of severe financial constraints) subsidies for families who earn less than 10USD a month in the form of a transportation allowance so that they send their children to school and does not provide the same benefit for those whose monthly income is more than 10USD, as long as the criteria is reasonable and justifiable, it might not tantamount to discrimination, but might be viewed as justifiable preferential treatment to promote access (and substantive equality amongst all citizens, poor and not so poor). If the classification is founded on a reasonable basis, and it is truly relevant to the purpose it is meant to serve, classification and differentiation for purposes of law may well fall within a definition of equal treatment. So where there is a need to treat some children differently, even if it in effect meant discriminating against others, it may fit within the concept of fair discrimination (affirmative action) and be valid.

2.7 Progressive realisation

26. The obligations under article 28 of the CRC may be fulfilled by States Parties “progressively”⁵⁵ and “to the maximum extent of their available resources.”⁵⁶ Therefore, States can fulfil their obligations in a progressive manner. This is in recognition of the fact that full realisation of the second generation rights which includes the right to health, the right to education and the right to social security will generally not be achieved in a short period of time because of lack of resources. But States will still have to realise the rights eventually in the end. But the concept of progressive realisation does not entail doing nothing, or moving forward sluggishly. States are required to take the required steps within a reasonably short time after the CRC enters into force for them. Progressive realisation also implies continuous progress forward. If measures taken in relation to education are “retrogressive” in nature, the CESCR Committee presumes that they are impermissible.⁵⁷

27. Therefore, generally, the gradual approach in implementing the right to education entails a constant positive, and rational progress towards eventual goal, with no retrogressive steps along the way. This should be done whilst guarding continually against “anomalies”, such as discriminatory practices creeping in unintentionally.

3. Education and international law and policy

3.1 General overview

28. A significant number of the international law documents relating to the right to education are connected to the UN and become the responsibility of all signatory States to enforce. The right to education originated as an aspiration in the UDHR. Adopted in 1948, the UDHR provided the first international recognition of the right to education and stated, "[e]veryone has the right to education." The right of every human being to education is, of all the rights affirmed by the UDHR of 1948, one of the least contested. Yet there are still numerous countries which have not yet implemented article 26 of the UDHR, which states that elementary education should be free and compulsory.

29. Following the UDHR, the UNESCO Convention against Discrimination of 1960 first included the right to education in a binding treaty (Sudan is not a State Party). The CESC of 1966 set forth detailed formulations cataloging the right,⁵⁸ requiring parties to provide education "without discrimination of any kind..."⁵⁹; the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) further expanded, explained, and developed the right.⁶⁰ Sudan ratified the CESC on 18 March 1986, and is also a party to the CRC. It has not yet ratified the ACRWC, and this is recommended.

30. It is also to be noted that the right to education is an integral part of the rights, duties and freedoms enshrined in the African Charter on Human and Peoples' Rights, which Sudan ratified in 18 February 1986. In its article 17, the Charter provides that "[e]very individual shall have the right to education". In addition "[t]he promotion and protection of moral and traditional values recognised by the community shall be the duty of the State". Similarly, article 11 of the ACRWC, adopted in 1990, provides for the educational rights of the child comprehensively (but to which Sudan is not yet a party). It recognizes that "every child shall have the right to an education." Article 11 (3) provides that "States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular: (a) provide free and compulsory education [...]". The CRC and the ACRWC reiterate many of the components of the right to education previously enunciated in other treaties; however, arguably and through interpretation, they also require that State Parties supply all children with the same conditions for career and vocational guidance, curricula, exams, teachers, and equipment. Additionally, States must "[t]ake measures to encourage regular attendance at schools" and reduce female

dropout² rates.⁶¹ CEDAW also contains detailed provisions on the development of educational programs for female dropouts.⁶²

31. The *World Conference on Education for All*, held in Jomtien in 1990, identified six dimensions to ensuring that every person – child, youth and adult – should be able to meet their basic learning needs. These go beyond primary education to include early childhood care and development, adult literacy, and basic skills training. But Universal Primary Education remains at the core of attempts to achieve Education for All, and although primary school enrolments have increased since 1990 by an average of 10 million children each year, the goal of universal access still eludes many developing countries. The *World Education Forum* held in Dakar, Senegal, in April 2000, reaffirmed the vision of Jomtien but called for a new level of commitment, designed to achieve targets that have been stated regularly, but rarely delivered. The commitments were endorsed by more than 180 countries in the *Dakar Framework for Action*. Government reports that Sudan “has committed itself to a number of educational commitments including those under the Jomtien Conference and the Dakar Framework for Action”.⁶³

32. The UN Millennium Development Goals (MDGs) lists the target to ensure that all boys and girls complete a full course of primary schooling as one of its goals. MDG 2 aims at achieving universal primary education by 2015, whilst MDG 3 aims to eliminate gender disparities in primary and secondary education (this target was supposed to have been achieved by 2005, but was not met). Considerable momentum has built up in support of the commitments expressed by the MDG’s, and “for developing countries there is pressure to develop good quality plans and transparent means of achieving EFA.”⁶⁴

33. Some noteworthy initiatives that impact on the right to free and compulsory primary education exist. The Highly Indebted Poor Countries (HIPC) initiative established in 1996 by the World Bank and the International Monetary Fund which aims to reduce the excessive debt burdens of the poorest countries serves as a blueprint for the allocation of funds released through debt relief to development, including education. The EFA Fast-Track Initiative (FTI), established in 2002 and led by the World Bank, is a global arrangement designed to accelerate progress towards the achievement of universal primary school completion by 2015. In addition, at the G8 Summit in 2005, world leaders “committed to providing an extra US\$50 billion in aid per year by 2010” which would contribute to achieve the MDG which states that *all* children are able to complete a full course of primary schooling by 2015.⁶⁵ Although the goal is achievable and the resources have been promised, it is lamented that “[i]n 2007 it is time for the international community to stop talking and to deliver on their promises”.⁶⁶

²The authors believe that the term “dropout” is labelling. However, the international literature consulted uses this term consistently and an attempt to replace it with another word was therefore deferred.

3.2 The concluding observations of the CESCR and the CESCR General Comments elaborating the right to education

34. In 1999, the CESCR Committee published two General Comments explaining the nature of state's obligations concerning the right to education. Although General Comments are not binding upon states, they provide a useful addition to the understanding of the right in international human rights law, and are generally regarded as constituting "soft law". The first General Comment, General Comment No. 11, is titled "Plans of action for primary education".⁶⁷ Pointing out that ratifying State Parties who have not been able to secure compulsory primary education free of charge are obliged under article 14 of the Covenant to work out and adopt within two years a plan of action for progressive implementation of this within a reasonable number of years, General Comment No. 11 explains that that cost-free education does not only mean that access to education should be free of charge and that governments thus should abstain from imposing registration fees. It states in relation to the right to primary education, which is supposed to be "free of charge" that:

The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. Their elimination is a matter which must be addressed by the required plan of action. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category.⁶⁸

35. General Comment No. 11 notes that "other indirect costs may be permissible, but subject to the Committee's examination on a case-by case- basis."⁶⁹ Coomans adds to the list of indirect costs to be avoided as contained in the General Comment the following: expenses for textbooks and supplies, the costs of extra lessons, expenses for meals and school canteens, school transport, and medical expenses.⁷⁰ The General Comment states that a State Party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available.

36. General Comment No. 13 of the CESCR is headed "The right to education (article 13 of the Covenant)," and this General Comment entrenches the "4-A scheme" first developed by Katarina Tomasevski. This scheme analyses the right to education in terms of the following essential features:

- Availability
- Accessibility (which includes physical accessibility, economic accessibility, and non-discrimination)
- Acceptability, and
- Adaptability

The 4-A Scheme (What government should do)			
1	Availability	- Schools and teachers	<ul style="list-style-type: none"> – fiscal allocations matching human rights obligations – schools matching school-aged children (number, diversity) – teachers (education & training, recruitment, labour rights, trade union freedoms)
2	Accessibility	- Compulsory and postcompulsory	<ul style="list-style-type: none"> – elimination of legal and administrative barriers – elimination of financial obstacles – identification and elimination of discriminatory denials of access – elimination of obstacles to compulsory schooling (fees, distance, schedule)
3	Acceptability	- Regulation and supervision	<ul style="list-style-type: none"> – parental choice of education for their children (with human rights correctives) – enforcement of minimal standards (quality, safety, environmental health) – language of instruction – freedom from censorship – recognition of children as subjects of rights
4	Adaptability	- Special needs and out of school children	<ul style="list-style-type: none"> – minority children – indigenous children – working children – children with disabilities – child migrants, travelers – concordance of age-determined rights – elimination of child marriage – elimination of child labour – prevention of child soldiering

Adapted from K Tomasevski⁷¹

37. Noting further that primary education is not synonymous with basic education, the CESCR agrees, in paragraph 9 of the General Comment No. 13, with the UNICEF position that primary education is the most important component of basic education.

38. General Comment No. 13 does not provide any details concerning the specific issues referred to in the brief to this paper. However, material conditions of teaching staff are addressed in paragraph 27, with the CESCR Committee noting that the general working conditions of teachers in many State Parties have deteriorated and reached unacceptably low levels, and that this is a major obstacle to the realisation of the right to education. State Parties are required to report on measures they are taking to “ensure that all teaching staff enjoy the conditions and status commensurate with their role”.

39. General Comment No. 13 also confirms the accepted position in international law that parents or guardians have the right to choose facilities other than public schools for their children, affirmed by the provisions of article 13(4) of the CESCR which provides for the “liberty of individuals and bodies to establish and direct educational institutions”.

3.3 The CRC and the position of the CRC Committee on “free” and “compulsory” primary education

3.3.1 General

40. The key provision on “free” and “compulsory” education under the CRC, article 28(1)(a), provides that “States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, **make primary education compulsory and available free to all**”. Therefore, article 28(1)(a) states the core minimum: that “free” and “compulsory” education at the primary stage is a measure that States Parties are obliged to secure for all children, not just low-income children or other categories of children.⁷² Article 28 also stresses the right must be achieved “on the basis of equal opportunity,” reflecting the fact that vast numbers of children suffer discrimination in access to education (particularly children in rural areas, girls and disabled children). It is interesting to note that the cost-free aspect of primary education nevertheless was a point of discussion during the drafting of the CRC. Several States Parties attempted to reduce the protection of this right, as guaranteed in the CESCR. Proposals were made to only impose an obligation to organize cost-free primary education “as early as the circumstances permit”, “as early as permitted by national resources available” or “as early as possible”. These restrictions were omitted thanks to the protest by other States.⁷³

Article 28 of CRC

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

41. The core positive obligation that article 28 of CRC imposes on governments is to develop and maintain an education system. However, the CESCR provides an even stronger obligation than the CRC: Verheyde states that “at a primary level, the States have under article 13(2)(a) of the ICESCR a clear and unconditional obligation to immediately ensure free and compulsory education. Article 28(1)(a) only obliges States to realise this right in a progressive manner.”⁷⁴ Access to education in a non-discriminatory way is, however, said to be an immediate obligation and one not subject to progressive realisation. The CESCR Committee has stated, though, that in some circumstances, separate educational systems or institutions for groups shall be deemed not to constitute a breach of the ICESCR⁷⁵ (and presumably, this could permit separate institutions for the disabled or different gender groups).

3.3.2 “Free” primary education

42. The right to compulsory free primary education is so clearly stated in the CRC that any failure to meet this standard is a major source of concern to the CRC Committee which monitors State reports on the CRC. In its concluding observations, the CRC Committee expresses deep concern about countries that have not made primary education free.⁷⁶ The CRC Committee has also registered concern at the affordability of education, even if it is nominally “free”; the *Guidelines for Periodic Reports*, for example, requests information regarding “the real cost to the family of the

child's education" and "incentives provided to encourage school entrance, regular school attendance and school retention."⁷⁷ **The Committee points out that the obligation to provide for cost-free primary education also entails an obligation of assistance to purchase uniforms and school books, at least for children of poor families.**⁷⁸ The one main reason why governments should make primary education free – of charges and/or fees - is to avoid exclusion.

43. Although the CRC does not put an obligation of conduct on governments to draw up a national action plan for progressively implementing the right to free primary education, as is required under article 14 of the CESCR, the CRC Committee has, however, recommended the elaboration of such an "action plan" or "detailed study" on a number of occasions.⁷⁹

44. The CRC Committee has paid particular attention to the right of the girl child to education, including through its concluding observations. It has stressed the need to ensure **effective** access for girl children, and the need for States Parties to take steps to prevent girls dropping out of school, for instance due to pregnancy or abuse.⁸⁰

45. The CRC Committee has also remarked on informal education. Countries must also note that it is their obligation to undertake efforts to ensure access to informal education to vulnerable groups. These include street children, orphans, children with disabilities, child domestic workers and children in conflict areas and camps, *inter alia*, by eliminating the direct costs of school education.⁸¹

46. Correspondence undertaken for this study with members of the CRC Committee³ confirms that the Committee does not yet have an articulated stance on most of the specific issues referred to in the brief. The members have, however, supplied recollections of discussions which have formed the basis of concluding observations over the past years. A summary of some of their views is provided here.

- Transportation: For parents who cannot afford the costs of transportation to enable children to attend school, the obligation in international law rests upon the education system to subsidize transportation costs.
- Voluntary contributions by parents: The CRC Committee members note their repeated concerns that voluntary contributions end up being "hidden fees".⁸² The issue of contributions to teachers' salaries is also perceived as being a hidden cost, which ends up further marginalizing the poor who cannot pay a contribution. It often results in discrimination against children

³ *The CRC Committee members who took part in the correspondence are the outgoing Chairperson of the CRC Committee Professor Jaap Doek, Mr. Lothar Friedrich Krappmann, and Ms. Yanghee Lee. The correspondence was undertaken between 6th - 12th April 2007. (Copy of correspondence is on file with authors).*

whose parents cannot or do not contribute, violating the principle of non-discrimination in education. **At the general level**, the concept of voluntary (particularly **financial**) contributions is completely mistrusted in international human rights law and by UN monitoring bodies and structures. However, other ways and means of contributing to the education sector, for instance, through participation in the development of a curriculum and running of the school by parents and communities in order to nurture a sense of ownership cannot be ruled out, and should be encouraged.

- Books and supplies remain the responsibility of the education provider, and again, have been discussed by the CRC Committee in the context of “hidden fees” where children (i.e. their parents) have had to pay user charges. The Committee has commended State Parties which have established book lending schemes, and this position relates to basic learning materials as well.
- School meals: Although this has not been comprehensively dealt with by the CRC Committee, the members who responded to the request were of the view that providing food in school is one element of an effective health and poverty reduction strategy. Furthermore, insofar as it relates to the right to health, the Committee has in the past taken up the issue of nutrition and the elimination of “junk food” in respect of wealthy countries, illustrating that school based nutrition is a concern of the CRC Committee. It is noted that one school meal for all is a main tenet of poverty reduction as well as educational promotion in Bangladesh.
- School buildings and maintenance: Here the basic premise is that the CRC Committee has never proceeded from the assumption that parents have to pay for building of schools or their maintenance. This is the responsibility of the state, and where parents have been called upon to renovate or upgrade school buildings, playgrounds and so forth, children of parents who do not participate may be marginalised. However, one member who responded to the question posed conceded that, in the context of southern Sudan, where all forms of support need to be harnessed to expand access to education, voluntary assistance of parents could be contemplated. “The Convention does not restrict the voluntary assistance of parents. The Convention, however, puts parents’ support in the context of the State Party’s responsibility....The State Party has to provide the necessary resources to the maximum extent of its available resources....”⁸³ Parental assistance is part and parcel of the “available resources”. The danger, though, is that gradually a system is generated that relies on substantial parental support, and that in this way the social inequality of society is transferred into the school system. This is in contrast to the intention of the CRC, which is to keep inequality outside the educational system.⁸⁴
- Uniforms: The issue of school uniforms needs to be weighed up from the view point of the implications (either positive or negative) for access to

education when they are either introduced or not introduced. The CRC Committee members appear to support the introduction of uniforms, as they promote equality and eliminate the possibility of discrimination (for instance, it eliminates competition about clothes between children). The CESCR Committee has explicitly states that uniforms must not be “expensive” and the issue clearly revolves around uniformity, not style or fashion. Certainly, the CRC Committee has not rejected uniforms, and the CRC Committee has noted that in the context of southern Sudan, uniforms could address the situation of children who might not have any adequate clothing, and for whom this factor may be a barrier to school attendance. Therefore, uniforms relate to section 28(1) (e) which requires states to take measure to encourage regular attendance at schools and to reduce drop out rates. However, the CRC Committee members remain very concerned about possible exclusion of children whose parents cannot afford to pay for uniforms, if these are part of the schools regulations. In other words, **if uniforms are to be introduced**, means must be sought to ensure that uniforms are not a barrier to school attendance in any way, whether through subsidies or other forms of support, to ensure that additional costs of school attendance are met. In any event, uniforms should not be compulsory, and children who do not wear the set clothing to school cannot be excluded in any way.

- Extra-curricular activities: This, it appears, has not enjoyed the attention of the CRC Committee before. However, a question that arises is whether the activities are linked to the school curriculum (visits to museums, excursions, cultural activities etc) and whether they take place during the official school day. In these instances, whether through subsidies or otherwise, care has to be taken to ensure that no child is excluded due to the inability to pay. Where expensive sports or other activities unlinked to the curriculum are offered, it seems that user charges would be in order, provided again that all children have the chance to participate in some or another interesting extra-mural activity. Katarina Tomasevski reports that in the Seychelles, one of only three countries in Africa where education is truly free to all students and is compulsory for all children up to the age of 16 and has been made universal, Government policy is to ensure full enrolment and thereby also equal access to school for all school age children. This has necessitated a broad definition of *free* education to reach beyond the compulsory curriculum to extra-curricular activities which poor children might not be able to afford. The Ministry of Education ensures that school activities which are undertaken during the school day are provided free of charge and that resources are made available to subsidize those children who cannot afford to undertake out-of-school activities, for example music and dance.⁸⁵

47. From the above, it is clear that the concern in relation to any user fees relating to the education system whatsoever raises the spectre of possible discrimination, coupled with exclusion and denial of access. Katarina Tomasevski's 2006 Global Report illustrates graphically how, in so many countries in the world, hidden costs

have resulted in exactly that occurrence. Country entries show that the overall costs of primary school may be more than 30% of the annual family budget and five times more than budgeted by the respective ministry of education. However, it must be conceded that in extremely poverty stricken contexts, it seems foolhardy to ignore parental and community contributions where these are voluntary. They are, after all, part of the “available resources” of the State (which includes its citizens). But voluntary contributions cannot mean that the State is freed of the obligation to make primary education genuinely free, nor can it result in practice in any form of discrimination.

48. It is also important to highlight that, among others, the availability or otherwise of proper books and supplies, school buildings, and the like can potentially impact on the quality of education provided to children at the primary level. From a rights based perspective, General Comment No 1 of the CRC Committee on the Aims of Education provides that article 29 (1) of the CRC 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.⁸⁶ Therefore, the child’s right to education is not only a matter of access (art. 28) but also of content.⁸⁷ This position is also supported by the 4-A scheme under the CDESCR, particularly through the elements of “availability” and “adaptability”.

3.3.3 General observations on hidden costs

49. It is worth mentioning that international human rights law does not exempt the parents and the broader community of bearing the costs of education in general. Parents and the community may finance children’s education through general taxation. It is then the obligation of the State to prioritize primary education in resource allocation.⁸⁸ While the State is not the only investor, international human rights law obliges it to be the investor of last resort.⁸⁹ The “hidden costs” of sending children to school remain high in most countries. As the former Special Rapporteur has noted, making education cheaper does not make it free.

50. Efforts to regulate or abolish “unofficial” charges levied by school committees and head teachers have achieved mixed results. In Tanzania, a new block grant to schools was introduced in 2002 to reduce the risk of schools imposing additional charges to compensate for lost income from official fees. However, ensuring that these grants actually reach the schools is difficult.⁹⁰ Examples of hidden expenses, amidst claims of free education, abound. For example, the Egyptian government’s claim that “all children are entitled to education during the first, compulsory, stage, that education is provided free of charge” is countered in nongovernmental sources, which demonstrate that education is *not* provided free of charge. Human Rights Watch found in 2005 that “**parents of children in public schools pay registration and health insurance fees, school uniforms and supplies, and often are pressured by underpaid teachers to pay for private tutoring so that their children succeed in school exams**”.⁹¹ The desired policy position on these kinds of costs is debated more fully in the concluding section of this discussion paper.

Research on user fees concludes that:

- fees, in the sense of direct household payments, represent perhaps 20 percent of all education spending, and as much as 30 percent in Africa and even 40 percent in the former CIS and East Asian socialist countries
- fee abolition alone is not enough. It must be part of a broad government commitment to achieving universal primary enrolment, with many complementary measures and strong political leadership from the highest levels
- indirect costs can be an even greater obstacle than fees
- fees cannot simply be abolished without consideration of whether, and how, they should be replaced by an alternative source of income
- four principal sources of such replacement revenues include: move spending from other sectors or increase revenues; improve the efficiency of education spending; use Heavily Indebted Poor Countries (HIPC) debt relief funds on a temporary basis to close the financing gap; use funds from the Fast Track Initiative (FTI) Catalytic Fund.

User fees in primary education, The World Bank, 2004

3.3.4 “Compulsory” primary education

51. The second limb of the obligation, making primary education compulsory, is not well developed as to its content and implementation. However, it is also an obligation under the CRC and the ACRWC and constitutes a fundamental tenet of international human rights law.⁹² The term “compulsory” really means “a protection of the rights of the child, who may claim certain rights that nobody, neither the State nor even the parents, may deny”.⁹³ For instance, parental choice may be exercised to the detriment of girls and this requires governments to act so as to alter parental choices. In this context, and in the context of other related issues, making education compulsory becomes crucial. So as much as the efforts to increase primary school enrolment for girls have included subsidizing direct, indirect, and opportunity costs (namely, the loss of the value of the girls’ work) for their parents and/or families, making it compulsory should be part of the equation in solving the problem.⁹⁴ The capacity of governments to implement their laws on compulsory education varies, as do enforcement measures. Many target parents by fines for their failure to secure enrollment or school attendance by their children. Some target children, however, although this runs counter to a human rights based approach. The CRC goes no further than obligating States to encourage school attendance; enforcement is not mentioned.⁹⁵

52. Verheyde records the specific measures that States should take to implement the right to compulsory education. First, she cites legislative measures to impose compulsory education to a specific age.⁹⁶ Second, and next to abolishing registration

fees, alternative strategies for ensuring school attendance, such as the provision of transport and nutrition have been shown to facilitate progressive implementation of the right to compulsory education.⁹⁷ The CRC Committee has also recommended the provision of health counseling services in this regard. Third, although compulsory education is a requirement, it is (under the CRC) subject to progressive realisation.⁹⁸ The international human rights commitment stresses international and donor assistance towards the fulfillment of free and compulsory primary education in a range of relevant documents. A further aspect of the right to compulsory obligation lies in the negative aspect of the obligation. This entails that if an education facility exists, a child who wants to be educated cannot be refused access to the school.

53. A point worth of note is that nobody can be required to do the impossible and thus parents cannot be obliged to ensure that their children attend school if they cannot afford the cost of schooling. Making education compulsory in international law was (and is) thus contingent on making it free.⁹⁹

3.4 Conclusion

54. The above sections have elaborated the major international human rights legal sources concerning the right to free and compulsory education. In conclusion, it could be said that

...human rights law shares with global poverty reduction strategies the experience that poverty is a key barrier to universalizing education. In primary education, the key governmental obligation is that of result. Where direct, indirect and opportunity costs preclude access to education, the government has to ensure that they are gradually eliminated. The prerequisite is to identify these costs and, then, develop a strategy for their elimination. Making education free necessitates acceptance of governmental powers to raise revenue through taxation and to prioritize the right to education in its budgetary allocations.¹⁰⁰

Where the investment in education is supported by international donor agencies, the same obligation could be said to rest upon them in implementing a rights based approach. An analysis of the implications of the above for southern Sudan is undertaken in the concluding section of this paper.

4. Positions taken by major aid and development agencies

55. The positions taken by major aid and development agencies, particularly on “free” primary education calls for discussion here. These were chosen as representative of the main players in regard to the right to education, in particular as identified by the former Special Rapporteur, Katarina Tomasevski’s publications.¹⁰¹ **UNICEF** has organized a campaign to eliminate all primary education user fees and costs in Africa. UNICEF’s work, which is based on the **CRC**, is clear – that the right to free primary education be upheld.¹⁰² **UNESCO** supports the same position, based on the rationale of making education free so that it can become all-encompassing, and then made compulsory for all children, and states that this is the benchmark for the review of African countries which follows. In the recently released Global Education Report 2006, all country entries reveal the same problem: because education has not been made free, it has not been universalized.¹⁰³ This discussion paper applies the yardstick stemming from international human rights law, i.e. governments are obliged to make education compulsory and should be held accountable for failing to do so. As mentioned above, this accountability extends to international donors and organisations as well.

56. **USAID**’s position is that it will not support the introduction of fees at primary level. Where fees are already in place, USAID believes that: “to the extent possible, public funding for basic education should replace user fees – including tuition as well as school uniforms, textbooks, and educational materials. Where user fees for basic education are in place, governments should be encouraged to take deliberate steps to replace them with adequate public funding, by shifting current public spending away from lower-priority uses, developing appropriate new revenue sources, or a combination of both. In the meantime, government should not be encouraged simply to drop school fees before securing adequate sources of public funding to replace them.”¹⁰⁴

57. The Department for International Development (**DFID**), which is the British Government department responsible for promoting development and the reduction of poverty, generally supports the position that general taxation and other forms of government revenue are more effective, efficient and equitable methods of financing basic social services than are cost sharing mechanisms.¹⁰⁵ In addition, “[w]here costs have to be incurred by parents and guardians there is scope for measures which lessen the burden on poor people. These include reducing and/or staggering the direct costs of education, nondiscretionary exemption schemes and flexibility in the provision of schooling to mitigate seasonal demands on child labor and the requirements of the daily household economy.”¹⁰⁶

58. By echoing the CRC Committee, the Swedish International Development Cooperation Agency (**Sida**) reckons that high direct costs and indirect costs (or what

economists call “opportunity costs”) are among the major obstacles to education for all as they act to hamper expansion and the quality of education systems in developing countries.¹⁰⁷ The organization also takes the stance that “primary education must be affordable for all”.¹⁰⁸ In addition, Sida’s dialogue and contribution to capacity development, shall, whenever appropriate, be guided by a number of priority concerns which includes “making basic education compulsory and truly free of charge for all children...”¹⁰⁹ Because “in reality, many countries are far from the realization of the right to basic education free of charge...Sida’s position is that non-governmental sources can supplement, but not replace the state financing of basic education.”¹¹⁰

59. The Inter-Agency Network for Education in Emergencies (**INEE**)⁴ which works to ensure the right to education in emergencies and post-crisis reconstruction has as its overarching vision a call for collaboration with members to ensure that “all children and youth have access to relevant education opportunities without discrimination”, that “Education is included in all humanitarian responses” and that “Governments have the capacity and resources to assume responsibility for the provision of education.”¹¹¹ Conceived in 2000 during the World Education Forum’s Strategy Session on Education in Emergencies in Dakar, the INEE is based on the principles of the CRC,¹¹² which provides the basis for its support for free and compulsory primary education.

60. The **World Bank** is a major player in the education sector particularly in developing countries,¹¹³ and its position on free primary education, particularly *user fees*, calls for a detailed discussion. Universal primary completion is said to be a top World Bank priority, expressed in the Bank’s commitment to the MDGs. The Bank also endorsed the MDG calling for universal completion of primary education by 2015 and subsequently co-sponsored the Fast-Track Initiative¹¹⁴ as a means of accelerating progress toward that goal. In recent times, World Bank EFA financing, mostly focused on primary education, has become increasingly progressive—targeting the most disadvantaged countries, and often the disadvantaged within countries. In most parts of the world, World Bank and country investments have led to significantly improved access to primary education through the construction of new schools and the reduction of other physical, financial, and social barriers.¹¹⁵ The Bank’s 2005 *Education Sector Strategy Update* commits the Bank to maintaining momentum on EFA and the MDGs, while at the same time strengthening “education for the knowledge economy” (secondary, higher, and lifelong education). Its strategy emphasizes increased focus on results, system wide approaches, and closer collaboration with other donors.

⁴ *INEE is an open network a global of non-governmental organizations, UN agencies, donors, practitioners, researchers and individuals from affected populations working together within a humanitarian and development framework to ensure the right to education in emergencies and post-crisis reconstruction. For further details see <<http://www.ineesite.org>>.*

61. The Bank has made abundantly clear in its policy statements that it **does not support user fees for tuition** in primary education and has in recent years actively supported fee abolition in countries,¹¹⁶ mainly in Africa, in which fees appear to represent an obstacle to enrollment. According to the Bank important lessons have been learned from these fee abolition efforts, of which the most important is that, in cases where fees are an effective contribution to school access or quality, there is a need to ensure replacement of fees with revenues of equal effectiveness and size, if fees are reduced or abolished.¹¹⁷

62. However, the World Bank's contradictory policies are evident from the fact that whilst it does not support tuition fees, it has **supported various other types of fees in primary education**, such as textbook fees. Hence, the interventions by the World Bank to alleviate the costs of user fees are not always successful, thereby compromising the "right to free" primary education. One study indicates that

One area where a systematic review has been conducted is textbook charges – sales and rentals. None of the textbook sales schemes in Africa supported by the Bank seems to have been successful in reaching the poor. Even with a subsidy on the price, for instance, most rural primary students in Togo could not afford books (a full set of which represented more than twice average annual family spending on education). In addition, with the exception of Lesotho, none of the textbook rental schemes have been successful, either because the poor could not pay the rental fees (Burkina Faso and Swaziland) or because the schemes were not financially sustainable (The Gambia).¹¹⁸

63. The World Bank's role and position on free primary education has been heavily criticized by the former Special Rapporteur on Education, most recently in the 2006 Global Education Report.¹¹⁹ Also **Save the Children UK** argues that "the World Bank only supports primary education in 21 of the 47 countries in sub-Saharan Africa". Save the Children UK's research shows that among these 21 countries:

- in four countries fees are charged for tuition and **in two of these the World Bank project is designed to see fees abolished**
- in 12 more countries other fees or charges are in place and **in nine of these the World Bank project is working to reduce these charges but sometimes only by providing free textbooks**
- in three countries (Chad, Mozambique and Senegal) **school-related charges comprise a part of the project design.**¹²⁰

From this it is clear that World Bank policies are not consistent. Commenting on World Bank's position on free primary education, Lyn Davies asks "how we ever let a bank decide educational policy will be a puzzle for educational anthropologists of the future".¹²¹ Tomasevski laments "while it is a novel role for the World Bank to publicly support reducing private costs of education which it previously increased, its

commitment to making education free is yet to be seen”.¹²² The reason for this statement is that governments are battling to provide free primary education while being exposed to counter-pressures. Although international human rights law demands ensuring free primary education, debt relief strategies, such as the one promoted by the World Bank and the IMF, demand fiscal sustainability.¹²³

64. In a recent policy briefing *Time for Change*, **Save the Children UK** calls on the World Bank and the International Monetary Fund (IMF) to change their policies to enable African countries to abolish fees for primary education. The briefing details the problems caused by fees and explains how the World Bank and IMF policies and programmes help keep fees in place.¹²⁴

Reducing cost barriers in Zambia and the World Bank

An example is Zambia, where “reducing cost barriers for the ultra-poor” through bursaries has been emphasized as a method for coping with school fees in primary education. Alongside the absence of a commitment to making primary education free, and uncertainties as to which children will be classified as poor (or ultra-poor) to merit bursaries, this model also raises concerns about the administrative costs of collecting school fees (necessarily minuscule in poor rural Zambia) and administering the bursaries (also minuscule). It provides, in the Special Rapporteur’s view, excellent evidence as to why primary education was designed to be free.”

E/CN.4/2001/52, para. 35 as cited in UNICEF Implementation Handbook (2002) 417.

65. Based on a human rights based approach, and the provisions of the CRC, **Save the Children UK**’s own position is that that **free primary education includes**: free registration, tuition, textbooks, school maintenance and supplies, as well as not having any additional charges or contributions, such as for Parent Teacher Associations and non-compulsory uniforms.¹²⁵ Particularly in the context of children out of school because of conflict, **Save the Children** argues that governments should

- **make basic education free of fees and charges** for all children
- **improve the quality of education**, including training and retaining more properly qualified teachers, reforming teacher development systems and upgrading teacher pay and conditions of service
- protect children and teachers from violence by government forces and/or armed militia
- get children, particularly girls, into education by promoting the right to and the value of education among parents, children and the wider community
- educate for peace and reconciliation by teaching children human rights, social justice and teamwork

- design school curricula that help children to protect themselves from dangers associated with conflict, such as increased risk of landmines and HIV and AIDS.¹²⁶


66. In addition, the **Agreed Alliance Principle on Basic Education** of the **International Save the Children Alliance** provides that “increased reliance on private funding or cost-sharing measures, in already financially stressed populations, leads to inequity and has a marked effect on enrolment levels.”¹²⁷ Save the Children also opposes “global solutions” to education problems as it believes that international support to education should be offered in a way that is based on an understanding of the local context, values local perspectives, strengthens local educational capacity, and does not create dependence.¹²⁸

5. Case studies

67. The following case studies are provided to highlight some of the practicalities involved and experiences learned in making primary education free in 5 African countries. These are countries that have recently undergone experiences related to abolishing tuition fees, and expanding access to primary education, and are Ethiopia, Kenya, Malawi, Tanzania, and Uganda FPE was viewed as a step toward achieving universal basic education and as part of scaling up poverty reduction. The five countries represent different stages of the process over time, using different scales, and different approaches under different political, social, and economical contexts. They are not necessarily representative of 'best practice', but were selected to ground this discussion in real experiences from the African continent. Their progress and setbacks may offer valuable insights for southern Sudan.

5.1 Kenya

5.1.1 Introduction

	<p>Kenya</p>
<p>Total population (thousands), 2005</p>	<p>34,256</p>
<p>GNI per Capital Income</p>	<p>US\$530</p>
<p>Annual number of births (thousands), 2005</p>	<p>1361</p>
<p>Net primary school enrolment/attendance (%) 2000-2005</p>	<p>76</p>

68. Kenya had a longstanding policy that education should be provided by the government, and the 2001 Children's Act stated that the government should provide free and compulsory education. Only in 2002, however, when the newly elected government adopted FPE as its core tenet was such a program possible. It became reality in 2003. This entailed the abolition of tuition fees, a part of the increasing costs of education to parents which had accounted largely for the decreasing primary and secondary school enrolments in the 1990s. In Kenya, enrollment and completion rates rose in the late 1980s but declined in the 1990s. A stakeholder forum was created, which set up a task force and reported to the government on the implementation of FPE.

69. Education and training in Kenya is governed by the Education Act Cap 211 and other related Acts of Parliament, including the Teachers Service Commission (TSC) Act, Kenya National Examinations Council (KNEC) Act, Adult Education Act and various Acts and Charters governing Universities. Currently, the Education Act is under review in

order to harmonize all related Acts and to address emerging and reform issues such as FPE, HIV/AIDS, food and nutrition, and drug abuse.¹²⁹ The Children Act, Cap 586 provides that every child shall be entitled to education, the provision of which shall be the responsibility of the Government and parents, while Section 7(2), entitles every child to free basic education, which shall be compulsory in accordance with Article 28 of the CRC.¹³⁰ The right to education starts with access to pre-school. There are 28,176 preschools, which charge a minimal fee.¹³¹

5.1.2 Practical steps

70. FPE, introduced in Kenya in 2003, **has enabled 1.3 million poor children to benefit from primary education** for the first time through the abolishment of fees and levies for tuition.¹³² The gross enrolment rate in primary education jumped from 86.8% in 2002 to 101.5% in 2004.¹³³ The gross enrollment rate rose from 50% in 1963 to 115% in 1987 before dropping to 85 percent in 1995.¹³⁴

71. Apart from the scrapping of school fees/levies in the 18,000 public primary schools in the country, **the government has introduced some limited form of financial grant to cater for the purchase of books** and other learning necessities based on the student population in each and every public primary school in the country. Provision of instructional materials including textbooks is one of the major achievements of the FPE programme, particularly through reducing the cost burden of education on parents and thus leading to an influx of pupils to school.

72. Measures have already been taken to reduce obstacles to access, such as reducing the number of subjects, increasing the pupil-teacher ratio from 32:1 to 40:1,⁵ **empowering districts to select teachers, and the introduction of multi-grade and shift teaching in some schools.** Attempts are also being made to reach the **“excluded”** section of the child population. In the Dadaab refugee camps in Kenya, for instance, special classes are held in selected schools, for deaf students and blind children and adults.¹³⁵ Two teachers per camp were trained for teaching of mentally handicapped children and three teachers were trained to integrate blind, deaf and physically handicapped adults into the adult literacy programme.¹³⁶ The need to accommodate the learning needs of disabled children is an important element of a good primary education.⁶

⁵ *The trend of increasing the pupil - teacher ratio may be considered as a negative one as it will increase obstacles to access rather than the other way around. In such circumstances, the possibility of the quality of education deteriorating is also real.*

⁶ *Here, the need to take the right of disabled children in account in the context of Southern Sudan should be highlighted. This is because it is reported that “though the education curriculum is under development, issues concerning the promotion of education for children with disability is not included. The teaching style and methodology are not favourable e.g. for blind, deaf children.” See Save the Children Sweden Southern Sudan Program “Mapping of primary education in Southern Sudan: Rights to, in and through Education from a situation analysis perspective” (2006), 7.*

73. It has been provided that “total education spending before the introduction of FPE amounted to 29% of Kenya’s recurrent expenditure, of which about 55% was on primary education. However, as 93% of this has gone on salaries, there has been little left for capital or development expenditure. Over the past three years, a DFID-supported project which matched government funding of textbooks led to average annual increases in non-salary expenditure to 25%. Overall, the real challenge will be the reallocation of resources within the education sector as Kenya already spends 6% of GDP and 36% of recurrent expenditure on education.”¹³⁷

74. It is reported that “in rural areas of Kenya, early marriage accounts for 12 % of dropouts (17 % in urban areas), ‘school being uninteresting’ accounts for 12% (4 % in urban areas), and examination failure accounts for 10% (5% in rural areas).”¹³⁸ Before the introduction of FPE, “costs were a major constraint throughout the country, accounting for 30% of dropouts in rural areas and 34% in urban areas.”¹³⁹

75. It is also necessary to point out that FPE has had an impact on other areas of education, including early childhood development (ECD). Studies¹⁴⁰ have been conducted to assess the effects of FPE on ECD Centers.¹⁴¹ The main reason for this phenomenon is that since the implementation of FPE, **poor parents are choosing to withdraw their children from ECD Centers and/or keep them at home until they reach the age of primary school entry.** They refuse to pay the fees for ECD on the grounds that ECD, like primary education, should be free. Decreased enrolments have meant reduced salaries for ECD teachers. In Kenya, ECD teachers’ salaries are in most cases covered by parental fees, unlike their counterparts in primary schools who are paid by the government according to an official teacher salary scale.¹⁴² FPE has also had unintended consequences for ECD in terms of resource allocation. ECD classrooms set up on the premises of public primary schools¹⁴³ have been shut down in order to accommodate the surge of enrolment in primary education sparked by FPE.

76. There is a need to define the extent of state financial assistance beyond the support grants to schools - to support poor families in school-related expenditure such as the purchase of school uniforms and remedy the lack of necessities including food, the lack of which still hampers the primary school enrolment and completion rates.¹⁴⁴ Efforts to support girl-children who are more affected and a significant number of whom were forced to drop out of school because of a lack of sanitary facilities is needed.¹⁴⁵

77. Before the introduction of FPE in 2003, the entrenched nature of cost-sharing in Kenyan schools had cast doubts on the extent to which the child’s right to education under the Children Act would be realized in practice.¹⁴⁶ Although these doubts have partly been addressed by the ongoing FPE programme, it remains evident that the

full realisation of the potential of FPE programme is uncertain, in light of the continued effects brought about by the Structural Adjustment Programmes (SAPs). In Kenya, the effects of SAPs are further exacerbated by the country's onerous debt repayment obligations.¹⁴⁷

78. In February 2004, UNESCO carried out an assessment study on FPE in 162 primary schools in Kenya.¹⁴⁸ The study established that "after an initial increase in enrolment, public schools were beginning to experience a decline in enrolment due to dropouts and to a lesser degree, transfer to private schools. A number of factors explain this situation, including unfriendly learning environments, poverty, child labor and HIV/AIDS. According to the study, the bulk of the pupils are in classes that are not appropriate to their age."¹⁴⁹

79. There were mixed views about the impact of FPE. The UNESCO report indicates that "on the one hand, there was consensus that education quality had improved because of the provision of learning and teaching materials and because of the fact pupils were no longer missing lessons due to lack of fees. On the other hand, it was reported that quality had gone down due to large numbers of pupils in classes that made it difficult for the teachers to provide attention to all learners. Teacher shortage and enrolment of overage learners were cited as other factors that had affected the quality of education. Teachers no longer gave adequate assignments to the pupils because they can not cope with the marking and teaching workload."¹⁵⁰

80. The FPE programme faces several challenges as clearly articulated by all the respondents in the UNESCO report. Increased student population; shortage of teachers; lack of clear guidelines on admission and, hence, the entry of overage children; lack of consultation with key stakeholders such as teachers and parents; delay in disbursement of funds; and expanded roles for head teachers were cited as some of the major challenges facing FPE. It was particularly noted that the implementation of the programme without prior consultation or preparation of teachers and lack of regular communication to sensitize the various stakeholders on their roles were highlighted as hampering the smooth implementation of the FPE programme. There was general **misconception about the meaning of "free" education, with parents** taking the view that they were no longer required to participate in school activities. Matters were made worse by the political leaders, who were sending conflicting signals about parents' and communities' participation in FPE. They have given an indication that voluntary contributions were not acceptable.¹⁵¹

81. It is also reported that "in the area of secondary school education, which is not free, there are bursaries for needy children to make it accessible to all. The awarding process needs to be streamlined and coordinated. Enrolment in secondary schools has been steadily increasing, for example in 2002 enrolment went up by 5% from 804,510 in 2001 to 847,287 with girls comprising 47.2% of total enrolment."¹⁵² In addition, "the provision of early childhood education remains a challenge as fees and levies are charged in ECD centres."¹⁵³


5.1.3 Comments from the CRC Committee and the Special Rapporteur

82. In 2007, the CRC Committee, after considering the State Party report of Kenya gave a number of recommendations in its concluding observations. These recommendations include that the State Party ensure that all children complete 8 years of free primary compulsory education,¹⁵⁴ undertake measures to provide secondary education free of cost,¹⁵⁵ increase public expenditure in education, in particular in pre-primary, primary and secondary education¹⁵⁶ and increase enrolment in primary and secondary education, reducing social-economic, gender, ethnic and regional disparities in the access and full enjoyment of the right to education.¹⁵⁷ The Special Rapporteur also argues that indirect costs have not been eliminated and education has not been made free in Kenya. “Rather, only school fees were abolished, i.e. the charges for enrolment and tuition were replaced by governmental subsidies. The prices of textbooks and uniforms have remained prohibitively high while the capitation grant given each school was set below the actual cost of schooling.”¹⁵⁸

83. Despite existing bottlenecks, the implementation of the programme is a commendable example of political will to realize child rights. The fact that it has expanded access to primary schools by many children hitherto denied such access is illustrative in this regard.¹⁵⁹ Although the success of the programme still calls for much more financial investment from the government, it is demonstrative of how international development partners, including UN agencies such as UNICEF and donors, may be mobilized to support the domestic implementation of children’s developmental rights.¹⁶⁰

5.2 Ethiopia

5.2.1 Introduction

	<p>Ethiopia</p>
<p>Total population (thousands), 2005</p>	<p>77431</p>
<p>GNI per Capital Income</p>	<p>US\$160</p>
<p>Annual number of births (thousands), 2005</p>	<p>3104</p>
<p>Net primary school enrolment/attendance (%) 2000-2005</p>	<p>31</p>

84. Unfortunately, the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) does not exclusively and exhaustively provide for the right to free and compulsory primary education. Rather the Constitution provides that every child has the right “neither to be required nor permitted to perform work which may be hazardous to his or her education”.¹⁶¹ Although there is provision for free primary education, it is not compulsory.¹⁶²

85. The Ethiopian Government has been trying to provide primary education to all while expanding the reach of secondary education in various forms.¹⁶³ Arrangements have been made to assist the poorest segments of society in covering the costs of schooling.¹⁶⁴ Since the right of the child to

education falls within the context of the Education Sector Development Plan (ESDP) of the nation, a recapitulation of the content and objectives of the ESDP will provide background to the review.

86. The Government introduced a new Education and Training Policy (ETP), along with the Education Sector Strategy (ESS) in 1994.¹⁶⁵ The major objective of the ESS is to provide good quality primary education with an ultimate aim of achieving universal primary education over a period of 20 years.¹⁶⁶ To translate the policy and its strategy into action, an Education Sector Development Program (ESDP) was produced and launched in 1997/98. ESDP-II, covering the period 2002/2003-2004/05 was launched in July 2002.¹⁶⁷ The two major goals of ESDP II are:

- (a) To produce good citizens who understand, respect and defend the Constitution; students who respect democratic values and human rights;
- (b) To expand access and coverage of primary education along with equity and improved quality;

5.2.2 Practical steps

87. Ethiopia's formal education system has an eight-year cycle for primary education and a four-year cycle for secondary education. Primary education is further divided into two cycles, of which the first four years aim at the attainment of a basic education while the second four years aim at the attainment of a general primary education. The first cycle of primary education, 1-4, requires teachers with the minimum qualification of a teacher training institute certificate, while in the second cycle, 5-8, a teacher training college diploma is compulsory.¹⁶⁸

88. In order to improve girl's education, UNICEF's "25 by 2005" was launched as major initiative to intensify efforts in 25 countries to maximize the number of girls in school by 2005. The lessons learned during this period will be applied to accelerating girls' education in other countries until all the world's children enjoy their right to a quality education. The initiative runs tutorial programmes for some 16,000 girls in grades 4 through 8 in Ethiopia.¹⁶⁹ Creating educational access for girls close to their places of residence forms one important strategy for increasing the schooling of female children. To this end, a non-formal approach to education has made a significant contribution towards increasing the participation of girls. **The reduction of travel time to and from schools, as well as the minimization of risks associated with distance, has had a positive effect on girls' education.**¹⁷⁰ Moreover it is reported that "parents have expressed satisfaction at having the centre nearby because **educational plans were prepared having in mind the activities schedule of the households.** This meant, for instance, if children were to be required to fetch water (usually in the mornings), the morning classes could start a little bit later than usual. This allowed the household to make use of their children's labor for domestic chores".¹⁷¹

Strategies for girls education

In Ethiopia, owing to several socio-cultural factors the proportion of girls enrolled in primary schools is still lower than that of boys. However, several strategies have been initiated by the Ministry of Education to promote the education of girls, to increase enrolment at lower levels, and to decrease the drop-out rate among girls. Such measures include sensitization campaigns through the mass media, provision of counselling services, adapting the school calendar to peak periods of demand for child labour in rural areas, introduction of labour-saving technologies such as grinding mills close to the schools, construction of separate toilet facilities for boys and girls in schools and sensitization campaigns at the community level on the importance of sending girls to school.

CRC COMMITTEE, Ethiopia's Second Periodic Report, (2001), para. 60.

89. In Gambella Refugee Camp in Western Ethiopia, the establishment by Save the Children Sweden of a largely female committee to begin a pre-school, the intensive **training** of pre-school teachers, and successful operation of the programme changed

attitudes: “Not only has the community accepted now that women can obtain the necessary qualifications to become teachers but they have also observed that girls can perform well in schools”. The **creation of Parent-Teacher Associations (PTAs)** has assisted in this. Two pre-schools were already moving towards self-management by the community and the PTA. **An estimated 90% of all children in the area aged 3 to 6 participate in the pre-school programme. This in turn frees older girls from child care duties, so that they can attend school.**¹⁷²

90. **School feeding programmes** run by World Food Programme in some of the most remote and rural parts of Ethiopia also continue to encourage children to pursue their education.

Food keeps African Children in school

NEPAD is a strategic framework designed to address the current challenges facing the African continent. It is spearheaded by African leaders, to develop a new vision that would guarantee Africa’s renewal. So far, nine countries — Ethiopia, Ghana, Kenya, Malawi, Mali, Mozambique, Nigeria, Senegal and Zambia — are participating in the first phase of the NEPAD Home-Grown School Feeding programme initiative, which is designed to provide meals to about 674,000 students. The initiative also provides technical assistance to Ghana and Uganda. A team from Nigeria’s NEPAD office is developing plans for a Home-Grown School Feeding project in that country. In Senegal, 115,000 students in the regions of Kaolack, Fatick and Tambacounda currently receive meals. The initiative also aims to reach an additional 120,000 students in 350 schools in the southern Casamance region.

Africa Renewal, Vol.20 #4 (January 2007), 10.

91. **Complementary approaches to primary schooling** designed to reach pupils who never entered or who dropped out of school are being implemented in Ethiopia. The alternative education program was approved at the 13th National Education Conference and launched in the year 2002 at 42 stations in the Somali, Afar, Oromia and SNNP regions, becoming suitable for students in the pastoralist and agro-pastoralist areas. As a result, 12,000 children in pastoralist and agro-pastoralist areas have become beneficiaries of the alternative basic education programme.¹⁷³ The programme attempts to address low levels of implementation capacity at the regional level (mostly through training), the rigid calendar schedule of the formal school system (which does not meet the needs of school-age children in pastoralist and disadvantaged areas of Ethiopia), inadequate curricula, and the need for flexible approaches to teaching that respond to a community’s economic and cultural realities.

5.2.3 Comments from the CRC Committee and the Special Rapporteur

92. In spite the efforts exerted to implement these programmes, much remains to be done. The disparity in enrolment between genders is very wide.¹⁷⁴ Glaring differences also exist between regions in enrolment figures.¹⁷⁵ Similar realities exist in the context

of southern Sudan.⁷ In fact, in Ethiopia, contrary to what the Government touts, the Special Rapporteur writes that


Education has fared badly on that development path. By 2004, only 57 per cent of school age children enrolled in school and there is no data on how many persist and are likely to complete at least primary school to start working at the age of 12. The key reason is that education in Ethiopia is un-free in many different meanings of this word, including not being free of charge. The 1995 Constitution stipulates that ‘every Ethiopian national has the right to equal access to publicly funded social services. The choice of *access* rather than *right* to education points to an underlying decision not to recognize education as a human right.¹⁷⁶

93. In sum, it can be said attempt has been made in Ethiopian laws and policy documents, to implement the provisions of article 28 of the CRC and article 11 of the ACRWC on primary education. There are, however, serious impediments to their implementation. The implementation of the obligations such as equal opportunity to disabled children, girls, etc., mainly boils down to the amount of money that is allocated for the purpose. There is a danger that the budgetary allocation system in place may frustrate the policies discussed. The role of the central government in budget allocation is very limited, to say the least. As any federal public body, the Ministry of Education prepares its budget request and submits it to the Ministry of Finance and Economic Development. But its request does not include the budget for primary education, which is the mandate of regional education bureaus. Except for external funds that are tied to specific projects, the federal government has no say on budget allocations within regions.¹⁷⁷ The implementation of the policies such as those embodied in the ETP of Ethiopia and ESDP to a large measure, therefore, rests on the resources allocated to that level of education by the states rather than the central government. **The Ethiopian experience seems to suggest that, where possible, central government control of budget may be preferable.**

⁷ *It is reported that in Southern Sudan, the reduction and subsequent closing of the gender gaps, as stated in MDG 4, remains one of the most difficult challenges. See generally Save the Children Sweden Southern Sudan Program "Mapping of Primary Education in Southern Sudan Rights to, in and through Education from a situation analysis perspective" (2006).*

5.3 Tanzania

5.3.1 Introduction

	Tanzania
Total population (thousands), 2005	38329
GNI per Capital Income	US\$340
Annual number of births (thousands), 2005	1408
Net primary school enrolment/attendance (%) 2000-2005	73

94. In Tanzania, education is recognised as being essential for all children on the basis of equal opportunity. Thus, the Constitution of United Republic of Tanzania¹⁷⁸ provides for the right to education although this is not enforceable before a court of law like the ordinary civil and political rights.

95. FPE was announced in 2001, largely as part of the PRSP process, having been incorporated into the Education Sector Development Programme, which has provided the framework for partnerships with the international development community since its inception in early 1999.

96. The National Education Act¹⁷⁹ provides for the compulsory enrolment and attendance of pupils in primary schools. Thus,

every child who is aged 7 years but has not attained the age of 13 years must be enrolled for primary school.¹⁸⁰ Other legislation that provides for education is the Day Care Centres Act¹⁸¹ that regulates day care centres where children are received, cared for and maintained during the day. It covers children between the age of 2 and 6 years although there is no clear obligation to provide free and compulsory education to this group of children.

5.3.2 Practical steps

97. In Tanzania, a **progressive approach** was preferred in implementing FPE in 2001. Therefore, Government did not have to tackle all out-of school children at once.¹⁸² In the first year, primary education was offered free to children aged between 7 and 10 with a goal of attracting 1.5 million although this was exceeded in practice, with the general enrolment ratio rising to 100.4% and the net enrolment ratio to 80.7%.¹⁸³ The age range targeted has been extended in subsequent years.

Advantages and disadvantages of phasing in FPE

Phasing in free primary education grade by grade is easier than introducing it throughout the system simultaneously, but it still creates problems. Policymakers need to be aware of the tradeoffs between introducing free primary education one grade at a time (stepped implementation) and adopting a “big bang” approach. Stepped implementation is slower than the simultaneous approach, but it gives policymakers time to plan, budget, build schools, obtain materials, and hire teachers. The experience of Lesotho reveals the problems with the stepped approach, however. To take advantage of free education, some parents enrolled children in primary school early (since preschool is not free). Others held children back to avoid paying fees in the next grade. In addition, dropouts returned to school and adults enrolled in large numbers. These inflated enrollments caused bulges in the system in the fee free grades. The big bang approach is harder to manage than the stepped approach, but it provides quick results and does not create such a big bulge moving through the system.

R Avenstrup et. al. “Reducing Poverty...” (2004), 23.

98. Government reports that gross enrolment reached 105.3% in 2003 above the set target of 85 % compared to 77.6 % in 1990 while net enrolment rose from 58.8 % in 1990 to 88.5% in 2003.¹⁸⁴ This achievement is attributed to the abolition of school fees and other contributions, school concerted enrolment campaigns supported by all levels of government and communities, including construction of new classrooms, recruitment of additional teachers and improvement of nutritional intake through school feeding programmes.¹⁸⁵

99. In 2001/2 nearly 14,000 new classrooms were planned, and about two-thirds have been completed, as well as the construction of teachers’ houses, toilets and the supply of classroom furniture, using development grants made to school committees.¹⁸⁶ In Tanzania, development grants are grants made directly to schools for quality improvement (purchase of textbooks and materials, teacher seminars, and school maintenance) which contributes to improved learning outcomes. Other measures that were introduced included the recruitment of between 9,000 - 10,000 teachers per year and their upgrading, an improved curriculum and increased numbers of textbooks.¹⁸⁷

100. Although **uniforms are not compulsory**, such measures such as not requiring uniforms have not been implemented in practice (by parents) because of the social ostracism this would involve where children arrive at school in different clothes. Other, **substantial indirect costs have also remained**, such as for instructional materials, the provision of which has not been sufficient to date. Double-shift schooling and multi-grade teaching have been started as interim measures to deal with shortfalls.

Costs of primary schooling in Tanzania

Social charges	Amount per child (in US Dollars)	Total annual costs for four children
Tuition fees	2.85	11.4
Other (including uniform and equipment)	11.3	45.6
Games fees	1.42	5.68
School repairs	1.42	5.68
School guards	0.71	2.84
Bookkeeping	1.14	4.56
Food	1.42	5.68
Cook	0.71	2.84
Teacher Resource Centre	0.28	1.12
Examinations	2.85	11.40
Totals	24.1 approximately	96.4 approximately

Note : These data are for one family in the Kilimanjaro District of the United Republic of Tanzania, drawn from a survey conducted in 2000 – before the government announced ‘free’ primary education in 2001. There were nine members in the household, seven of whom were children, four in school. The family could afford one meal a day. Both parents valued education, the wife completing Standard 7 at school. Take note that 1 USD is approximately equivalent to 700 Tanzanian shillings.

Source Maarifa Ni Ufungo (2001).

101. External finance is likely to cover many of the shortfalls necessary for the Government to live up to its commitments. Among others, the World Bank, the EU, the Netherlands, Sida, JICA, Ireland Aid, GTZ, Finland, Norway and CIDA are all contributing to the primary education sub-sector. In 2003, it was predicted that eight of these donors are expected together to contribute 60% of the PEDP budget over the next three years, not including DFID’s budget support.¹⁸⁸

102. Although school enrolment rates have risen significantly since 2000, increased enrolment has led to a teacher shortage and less than 20% of students continue to

secondary school.¹⁸⁹ Through PEDP, 17,854 teachers have been recruited and 6,000 teachers are under alternative employment on a “part time basis” which makes a total of 23,854 teachers.¹⁹⁰ As to the implementation of the Education and Training Policy of 1995, “a total number of 7,212 Pre Primary schools (both government and private schools) have been established”.¹⁹¹ In providing quality education, the Ministry of Education and Culture (MOEC) has a target of providing teaching and learning materials to all primary schools and has the intention of having a pupil:book ratio of 1:1.¹⁹²

103. **In making education more available, many initiatives have been underway. To date 202 satellite schools have been established to reduce walking distance to school.** It is the intention of Government to create child friendly environments so as to retain children in schools, especially girls. One of the strategies of creating child friendly environment is to construct toilets so that the ratio becomes 1:40 for boys (i.e. 1 toilet for every 40 boys) and 1:25 for girls (i.e. 1 toilet for every 25 girls). Construction of such toilets is an ongoing activity.¹⁹³

104. According to the Government, further **Pilot Child Friendly Schools (CFS) have been established** in 11 districts of Kisarawe, Musoma Rural, Masasi Ngara, Mufindi, Songea, Hai, Kinondoni, Magu and Ilala. The vision of the initiative is to **make schools conducive for teaching and learning** as well as to promote child rights through child friendly schools. Child-friendly schools are ones that create an optimal learning environment for children by actively improving the school, family and community conditions in which children live, are educated and socialized. It seeks to find out why children drop-out of school, falter or fail. It also actively seeks out excluded children and gets them enrolled in classroom learning. The objective of these initiatives is to involve all social organizations to establish a prototype Child Friendly Schools, where schools collaborate with actors in other sectors and the local communities to identify the needs of children.¹⁹⁴ Although there could be infrastructural dimensions to child friendly schools, the greater emphasis is on the social aspect. **More children go to school due to reduction in walking distance. After numerous schools have been established closer to homes, the current walking distance from the furthest village to a school is now 3 kilometres.**¹⁹⁵

105. Another initiative is Access and Complementary Basic Education in Tanzania (COBET) that has been undertaken with support from UNICEF and NGOs. **Complementary basic education is intended to absorb the out-of-school,** over-age children unable to be accommodated within the gradualist approach taken thus far. The primary learning cycle of standard I to V was also decelerated from 5 to 3 years.¹⁹⁶ Although the recent Government report to the CRC Committee doesn't indicate it as a challenge, out of the tens of thousands of children who have been registered for such education, only some 11,000 were enrolled in 2002, and strategy design and implementation have yet to receive sufficient attention.¹⁹⁷ In an effort to improve education performance, the Government has also adjusted pass marks for Standard IV and VII to 45 and 61 respectively.¹⁹⁸

5.3.3 Comments from the CRC Committee and the Special Rapporteur


106. Lamenting on the situation of free and compulsory primary education in Tanzania, the Special Rapporteur has stated that

The abolition of school fees in 2001 triggered, as in other countries, a huge increase in the numbers of school children. Nevertheless, the government's plan that all children would be at school by 2005 did not materialize because numbers of entrants in primary school started decreasing in 2004. Estimates have been that 10% of 7 year olds do not even enrol. The biggest obstacle, as before was the cost; **education was made cheaper but not free.** Previously levied fees were replaced by a capitation grant of about \$10 per school child per year, 40% of which was earmarked for learning materials. That funding formula was based on the funds that were available rather than the funds that would be needed to offer children education worthy of the name.¹⁹⁹

In contrast to the more critical stance of the Special Rapporteur, the CRC Committee commended Tanzania in 2006 for the abolition of school fees for primary education in 2002 and for the introduction of the Primary Education Development Plan in 2000-2005 focusing on increasing enrolment and retention, closing gender parity, improving the quality of learning and teaching, capacitating the education systems and strengthening the institutional arrangement that supports the planning and delivery of education services.²⁰⁰

5.4 Uganda

5.4.1 Introduction

	Uganda
Total population (thousands), 2005	28816
GNI per Capital Income	US\$280
Annual number of births (thousands), 2005	1468
Net primary school enrolment/attendance (%) 2000-2005	87

107. The Constitution of Uganda guarantees the right of everyone to education; this right is guaranteed to adults and children alike.²⁰¹ There is, however, a much stronger guarantee for children; they are entitled to basic education, which is a responsibility of the state and the parents.²⁰²

5.4.2 Practical steps

108. Uganda had a “sleeping” UPE policy from 1987, but not until relative stability was achieved in 1997 was FPE implemented, following the new government’s manifesto. Uganda also used the “*big bang*” approach which is the opposite of the “*phasing in*” of primary education approach. Given the short interval before implementation, the template for universal primary education had to be developed as an emergency plan. **Tuition fees were abolished for 6-12 year-olds**, and this was intended to apply to a maximum of **four children**

per family. Here, one lesson learned from Uganda’s experience is that the free primary education policy must be linked to other policies: In 1997, Uganda made basic education available at no cost to four children per family and by this means formed **a link between the family policy and the education policy.**²⁰³ In addition, disabled and orphaned children were to be given special consideration. In practice, however, the policy was applied virtually to all children in this age group. In 2000/1, gross enrolment had reached 135.8%, indicative of the considerable number of over- and under-age pupils enrolled and UPE was said to have been achieved.²⁰⁴ **The commitment to UPE can be seen in the budget hikes given to education.**

109. By 2003 enrolment in primary schools was at more than 6.3 million children.²⁰⁵ It is reported that the 1999 high gross enrolment ratio of 116% is due to over-aged and under-aged children drawn in by the UPE programme: whereas the overall primary school net enrolment ratio in 1997 was 87% with the ratio for males and females being 92% and 83% respectively.²⁰⁶ The net intake rate in 1998 was 92% and there is no significant difference in net intake rate by gender although there are fewer females than males.²⁰⁷

110. To meet the need for additional classrooms, lending and donor agencies expedited procurement and contracting.²⁰⁸ **Government wanted communities to be more involved in school management** and saw **involvement in construction** as an opportunity for this. Without proper training of the community and local crafts people, however, the results may not be cost-effective, as the experience of Uganda shows. Mobilizing and training the community to perform skilled functions, not just manual labor, takes time and resources and yields medium- to long-term rather than immediate payoffs.²⁰⁹

111. Formal schooling is a resource-intensive mode of education that reaches some social groups more easily than others. Different types of intervention are needed to reach different categories of marginalized children. **Uganda provides evening schools and mobile schools as complementary opportunities** for primary education.

112. Some processes of institutional development were accelerated to meet the challenge of providing free primary education. For example, **an Instructional Materials Unit and a Classroom Construction Unit were established to meet demand**, and the **Inspectorate was transformed into a standards agency**.²¹⁰

The case of Uganda, committed to providing free education, is most striking. However, parents continue to pay a range of official fees as well as “unexpected costs”, such as teachers’ funerals, year-end celebrations, classroom construction and telephone connections. When asked why pupils left primary school, 48 per cent of parents responded that they couldn’t afford the expenses. After food, education was the largest household expenditure in Uganda. If primary school tuition fees had not been abolished in Uganda would parents have had to pay these charges? ask the report’s authors. “This study does not propose that tuition fees be reintroduced. But it is important for governments to recognize that the removal of tuition fees may result in schools having to insist on other charges (monetary or otherwise), with the overall result that parents end up paying the same or even more than when tuition fees were paid.”

Source UNESCO (2004)²¹¹

113. In spite of this, the Government still faces challenges of ensuring that all children benefit from this policy. Its implementation in the northern part of the country is yet to be realised because of the civil war. The rate of drop outs, especially of girls, still continues. This is because some parents and communities still consider the education of a girl as a waste of time.²¹² The drop out rate in some regions is associated with early pregnancies resulting from sexual defilement of children in schools²¹³ and the need for families to avail themselves of labour to work on the farms.²¹⁴ These practices are inconsistent with the Constitution, which expressly prohibits the deprivation of children of education by reason of religious or other beliefs.²¹⁵ **Despite FPE, costs are a factor for 55% of dropouts in Uganda.**


According to the Uganda Ministry of Education and Sports (2003), in explaining some of the reasons for dropping out include: 12% of pupils drop out because they need to work, 25% because they “had enough school,” 13% because of pregnancy or early marriage, and 10% because they failed or needed to repeat a grade.

5.4.3 Comments from the CRC Committee

114. In 2005 the CRC Committee recommended that the State Party, taking into account its General Comment No. 1 (2001) on the aims of education: increase public expenditure on education, in particular pre-primary, primary and secondary education;²¹⁶ increase enrolment in primary education;²¹⁷ undertake additional efforts to ensure access to informal education to vulnerable groups, including street children, orphans, children with disabilities, child domestic workers and children in conflict areas and camps, *inter alia*, by eliminating the indirect costs of school education;²¹⁸ strengthen vocational training, including for children who have left school before completion;²¹⁹ and provide detailed information on the implementation of the early childhood education policy in its next periodic report.²²⁰

5.5 Malawi

5.5.1 Introduction

	<p>Malawi</p>
<p>Total population (thousands), 2005</p>	<p>12884</p>
<p>GNI per Capital Income</p>	<p>US\$160</p>
<p>Annual number of births (thousands), 2005</p>	<p>555</p>
<p>Net primary school enrolment/attendance (%) 2000-2005</p>	<p>82</p>

115. In Malawi, the introduction of FPE took place in October 1994 following its announcement in June by the then newly elected Government. Just prior to that time, the Government had brought in **tuition waivers, in phases, from Standard 1, but parents still had been expected to pay book fees and to contribute to school funds.**²²¹ From 1994, however, Government was supposed to be responsible for all costs, though in practice it continued to expect communities to contribute to school construction. Given the lack of an overall policy framework and an analysis of the resource implications of embarking on this route, it is not surprising that even today, critics allege that the expansion of primary education has been at the expense of quality.²²²

5.5.2 Practical steps

116. A top-level dynamic political initiative triggered FPE implementation, leaving little time for detailed planning before start up. In some cases, there was little time even to negotiate with stakeholders. A two-day national policy symposium was held and a mass media campaign mobilized the population on FPE.

117. In the first year of FPE, **enrolments increased by over 50% from 1.9m in 1993/4 to about 3.2m in 1994/5.**²²³ Net enrolments prior to FPE had been 58% for girls, increasing to 73% by 1996, and 58% also for boys, but only increasing to 68% by 1996; whereas gross enrolments increased from 67.9% in 1990/1 to 158.1% in 1999/2000.²²⁴ Male and female gross enrolment rates were comparable in 1999/2000: at 157.9 and 158.3%, respectively.²²⁵ However, **it needs to be noted that enrolments did not rise as much as policymakers had hoped because local authorities demanded that parents contribute to special funds**, such as sports and development funds, and they insisted on making **school uniforms mandatory**. The funds collected were not always spent in an accountable way. In addition in Malawi **government-assisted schools and unassisted private schools were merged into the same category**, and the government took over all financing of both types of institutions. Free primary education meant that proprietors would lose income from parents, school committees would have a greater say in running the schools, and the government would gain more control over the system.

118. The public response to FPE was overwhelming and **created access shock**. This led to overcrowded classrooms; double and triple shifts; and shortages of teachers, textbooks, and materials. Many enrolled were over-age pupils who should have been taking adult education. None of the systems were geared up for the logistical implications of FPE.

119. Malawi (as was the case in Lesotho, Kenya, and Uganda) was in the process of revising the curriculum when FPE was introduced. Providing large numbers of additional textbooks based on the old curriculum was costly, given that new books based on the new curriculum would be needed shortly. Development of the new curriculum was problematic, too, as the process began before FPE was introduced and did not reflect the new paradigm of education for all.²²⁶

120. Some of the measures introduced to cater for such shortfalls included the creation of the Malawi Integrated In-Service Teacher Education Project (MIITEP), designed to produce 18,000 teachers at a lower cost and in a much shorter time than conventional full-time teacher training programmes, the building of associated teachers' resource centres, engaging communities in school and teachers' housing construction, and providing instructional materials.²²⁷ Ministries, supported by international agencies, **put in place distance in-service teacher and paraprofessional training** and retrained teachers for large classes and multigrade teaching in small schools. There was also implementation of crash classroom construction programs.²²⁸

121. Innovative solutions were needed to meet the challenges of providing FPE, particularly given the devastating changes wrought by HIV/AIDS. Some measures are already being taken, **such as bringing back retired teachers and extending the retirement age**. Some schools found their own solutions to problems. In Malawi, for example, some schools have established day care centres to allow girls entrusted with the care of babies to still be able to attend school.²²⁹ Providing early childhood education would reduce primary school dropout and repetition rates by freeing girls from the responsibility of caring for pre-school age children.

Teacher's training

In Malawi some teachers trained by a private distance education college in South Africa were so poorly prepared that they had to be retrained. There was insufficient shared knowledge to use different approaches for training teachers, for example, taking in low-level entry teachers and training them on the job to teach successive grades year by year, starting with grade 1, as some projects did successfully.

R Avenstrup et. al. "Reducing Poverty..." (2004) 12.

122. At the same time, the administrative and management capacities of the Ministry of Education were to be developed to cope with such undertakings. Alongside these reforms, other policies were introduced such as **allowing no uniforms, prohibiting corporal punishment, revitalising parent-teacher associations**, introducing curriculum changes and a new language policy and decentralising to the district level. During this period, it is note worthy that partly as a result of the weakening effect of the structural adjustment programs and other factors, some of the organizational structures for education (directorates for teacher education, educational management information systems) were lacking in Malawi.

123. It is reported that primary education's share of the total educational expenditure went up from 45% to 65% in the early years of FPE where 40% of the primary education budget was covered by external donors.²³⁰ The larger external financial undertaking has been reflected in a larger donor role in the policy arena as well, though this influence had been present well before the introduction of FPE.

124. In 2003, it was reported that, in Malawi, 26% of primary school dropouts leave school because of lack of money, 28% because they need to work, 43.5% because they "had enough school", 17.6% because of disability or illness, and 14% because they failed or had to repeat a grade.²³¹ Whether primary education has really been made free and compulsory has also been put into question.

5.5.3 Comments from the Special Rapporteur

125. Actually, in the context of Malawi, the Special Rapporteur maintains a similar position to the one she has provided in the case of Kenya. She writes that

Education has not been made compulsory as yet because it is neither all-encompassing nor completely free. Neither the educational infrastructure nor the budgetary allocations suffice to educate all the children. Moreover, there were not enough teachers needed to

educate huge numbers of children at school. Teachers' salaries lied beyond 'the sector' of education where the priority was not to increase the public-sector salary bill.²³²

Here, it should be mentioned that Malawi's dependence on donors has resulted in a more reactive (FPE introduction without initial preparedness negatively impacting on primary education) than pro-active policy vision, although current curriculum development efforts have been more inclusive, seeking grassroots involvement and approval. Apart from the need for a comprehensive policy on education, the Government needs to review the Education Act in order to put it in tandem with current norms of human rights.

5.6 Conclusion on case studies

126. The enrolment explosions triggered by announcements of FPE have shown how big a barrier the fees, charges and other financial contributions have been for poor children, who are the vast majority in all African countries. It is to be noted that increased reliance on private funding or cost-sharing measures, in already financially stressed populations, leads to inequity and has a marked effect on enrolment levels.

127. In the pressure to achieve universal primary education, many countries expanded provision rapidly without the resources to maintain quality, resulting in large numbers of teachers who are under trained or inappropriately trained, poorly built and severely overcrowded schools, lacking essential materials and equipment. Falling enrolment and rising dropout rates in many countries indicate that poor quality of provision is in itself a cause of reduced access.

128. Although school fees might have been abolished, other costs for text books, community contributions etc. still continue to act as a barrier for access to primary education or constitute a reason for dropping out. Tomasevski indicates that "the public frustration which was generated by declaring education to be free while this was not the case in Uganda or Tanzania exemplifies the risks inherent in rhetoric which disguises rather than describes reality."²³³

Free primary education in four of the African countries under case study

Country	Date of introduction	What does “free” mean? ⁸	Government finance	External agencies
Malawi	October 1994	Free tuition, books and stationery. Uniform not compulsory.	Education 11% of government recurrent budget (1990/01) to 24% (1997) when 65% on primary education.	40% of the primary education budget at introduction of free primary education.
Uganda	January 1997	Free tuition for 6–12 year olds. Costs remain for clothing, school food, some materials and school fund contributions.	12% of government budget in 1992 to 25% in 1998. 70% of this on primary education.	Agencies cover over 50% of education budget.
United Republic of Tanzania	October 2001	Free tuition for 7–10-year olds first, later to be extended. No mandatory cash contribution. Uniforms not officially compulsory.	Post free tuition, education receives 25% of the government budget of which 62% is for primary.	Agencies provide over 60% of the primary education budget, excluding direct budget support.
Kenya	January 2003	Free tuition and no school levies, but the costs of uniform and examinations remain.	Prior to free primary, 29% of recurrent budget on education. Now 36% of budget (6% of GDP). 55% on primary. 93% on salaries.	2003 World Bank approved US\$50 million and DFID US\$21 million. Other agencies helping to bridge immediate gaps in advance of strategic plan.

Source: Riddell (2003)²³⁴

⁸ Take note that there might be some discrepancies on what is free in terms of what is provided here, which reflects the official position rather than what is practiced on the ground in some instances.

129. Good practices in the introduction of FPE also emerge from the case studies. Policies introduced such as allowing no uniforms, prohibiting corporal punishment, revitalising parent-teacher associations, introducing curriculum changes and a new language policy and decentralising to the district level could assist in increasing access. School feeding schemes might prove to be vital in keeping children in school. Where pre-school programmes are strengthened by increasing participation of children aged 3 to 6, this in turn frees older girls from child care duties, so that they can attend school. Also, children enrolled in pre-school tend to enrol to a greater extent in primary school and to remain in school. Complementary basic education is intended to absorb the out-of-school, over-age children unable to be accommodated within the gradualist approach taken in some countries thus far and should be facilitated. Providing evening schools and mobile schools as complementary opportunities for primary education needs to be encouraged. To fill the teacher shortage measures such as bringing back retired teachers and extending the retirement age might be of assistance. The advantages and disadvantages of phasing in FPE should be considered by taking into account local realities. Reducing walking distance to school helps more children gain access. In Tanzania, for instance, after numerous schools have been established closer to homes, the current walking distance from the furthest village to a school is now 3 kilometres. The Ethiopian experience seems to suggest that, where possible, central government control of budget may be preferable. However, other experiences favour de-centralisation and greater community participation.

6. Concluding remarks and recommendations

130. The right to education - particularly the right to free and compulsory primary education - is part of international law. For instance, the CRC, article 28(1)(a), provides that “[s]tates Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available free to all”. However, a number of obstacles exist for the realisation of this right. In southern Sudan – as in a good number of other sub-Saharan African countries including the countries in the case studies- forms of user fees (both direct and indirect), distance to schools, some cultural and traditional practices, lack of teachers, inappropriate school physical environments, lack of a unified curriculum, lack of special education facilities, and high illiteracy in the community contribute to a situation where children are not able to exercise their right to education.⁹

131. The CRC Committee has registered concern at the affordability of education, even if it is nominally “free”; the *Guidelines for Periodic Reports*, for example, requests information regarding “the real cost to the family of the child’s education” and “incentives provided to encourage school entrance, regular school attendance and school retention.” The CRC Committee points out that the obligation to provide for cost-free primary education also entails an obligation of assistance to purchase uniforms and school books, at least for children of poor families. Although the CRC Committee members appear to support the introduction of uniforms, as they promote equality and eliminate the possibility of discrimination, they remain very concerned about possible exclusion of children whose parents cannot afford to pay for uniforms, if these are required as part of the schools regulations. The obligation in international law that rests upon the education system to subsidize transportation costs for those who cannot afford has also been highlighted. Books and other related supplies, according to the CRC Committee, should be the main responsibility of the education provider, and the establishment of book lending schemes and other basic learning materials by a state party has previously been commended. In the context of school meals, it is submitted that school feeding schemes help to keep children in school. It is also considered by the CRC Committee as one element of an effective

⁹ *These are some of the main challenges that were believed to be serving as an obstacle for realising free primary education in southern Sudan as expressed by participants in a workshop conducted in January 2005 at Olive Gardens Hotel, Nairobi by Save the Children Sweden staff. See Save the Children Sweden southern Sudan program “A strategy paper: Promoting education during emergency and reconstruction period of post conflict southern Sudan” (unpublished first draft) 7.*

health and poverty reduction strategy. However, the local context should be recognised, and the CRC does not restrict voluntary assistance by parents.

132. The following recommendations, based on the previous sections and the education situation in southern Sudan are therefore offered for discussion and debate:

132.1 The nature of the legal obligation

- Considering education, particularly free and compulsory primary education, from a rights perspective is not only important but also a State Parties obligation under international human rights law. As a State Party, Sudan has an obligation under the CRC, the ACRWC and the ICESCR. At the very minimum, the international human rights law **obliges the development of a concrete national** plan to map the roll out of universal primary education in a time bound framework.
- The right to education, like all human rights, imposes on Sudan as a State Party to the ICESCR and the CRC the obligation to respect, protect, promote and fulfil this right. **The obligation to respect** requires the Government to avoid measures that hinder or prevent the enjoyment of the right to free and compulsory primary education. **The obligation to protect** requires the Government to take measures that prevent third parties from interfering with the enjoyment of the right to free and compulsory primary education. **The obligation to fulfil (facilitate)** requires the Government to take positive measures that enable and assist individuals and communities to enjoy the right to free and compulsory primary education.
- The incorporation of the right to free and compulsory primary education in the Constitution of southern Sudan places an additional obligation on the Government. **The proposed Children's Bill should also incorporate the right to free and compulsory primary education.** Besides legalisation and enactment of the fundamental right to free and compulsory primary education, such right must be made justiciable so that its violation could be challenged before a court of law.
- The provision of teaching material for teachers, the setting up of an education system with sufficient teachers who are well trained, development of an overall plan for EFA, and setting up a system is a government responsibility, although within the context of international co-operation - this imposes certain obligations upon donor and international agencies as well. Where the MDTF in southern Sudan had received pledges totaling US\$345m, but just US\$185m has been paid to date and the disbursement of these funds has been considerably delayed²³⁵, the need to deliver on the part of donors should be expedited.

132.2 Interconnectedness of education rights and other rights

- In planning and implementing the right to free and compulsory primary education, **measures taken by Government should emphasise the interconnected nature of the CRC's provisions.** The right to free and compulsory primary education should draw upon, reinforce, integrate and complement a variety of other provisions (for instance the right to birth registration) and cannot be properly understood in isolation from them. **In particular the general principles of the CRC namely non-discrimination (art. 2), the best interest of the child (art. 3), the right to life, survival and development (art. 6) and the right of the child to express views and have them taken into account (art. 12) should always be considered.**

132.3 Minimum standards

- Human rights law provides some minimum standards, plus a route map with a defined end destination – universal free primary education. The means to achieve this/ get there are less clearly prescribed and there is no “fixed recipe”. However one can identify certain contraventions/**minimum standards of human rights law.** For instance,
 - any introduction of previously non-existent user fees is considered as a retrogressive measure (as opposed to a progressive realisation) and could be a violation of international human rights law.
 - in planning an education system, the “4-A scheme” as well as the 4 general principles of the CRC must be the starting point
 - planning a system which accommodates, allows for, or envisages entrenching discrimination (intentionally or not) violates human rights law: i.e. every form of discrimination should be foreseen and plans made for elimination before it becomes entrenched
 - where an educational facility exists, refusing children access could be seen as violating the negative aspect of the right to compulsory education (the obligation to respect the right)

132.4 School materials and parent contributions

- **Textbook and learning materials** should be provided free of costs, on a lending scheme basis, to learners who otherwise cannot afford to acquire their own. Capitation payments to schools at local level to enable schools to maintain a minimum number of books and materials provides another means of achieving this. This also helps achieve the aims of education (more focussed on the quality of education) which are state party obligations under article 29 of the CRC.

- **Parent's contribution to teacher's salaries**, even on a voluntary basis, seems contrary to human rights law and should be approached cautiously.

132.5 Issues to take account of in school construction

- **In school construction and planning, the need for inclusive education** as envisaged in the 2006 Convention on the Rights of People with Disabilities should be borne in mind.
- In addition, in school construction and planning, the need to **eliminate long distances and avoid transportation costs** must be taken into account (accessibility), as provision of transport or subsidies to enable access is an element of the State obligation in international law.
- In addition, the position that “**learners with special needs have to be assimilated** into the learning system **through an integrated approach**”²³⁶ could promote inclusion. In such an endeavour, once again, the 2006 Convention on the Rights of People with Disabilities should be borne in mind.
- In line with article 12 of the CRC, the possibility of **injecting child participation** in school construction and planning activities should also be considered.

132.6 Special measures to ensure the rights of the girl child

- Creating **improved conditions for access for girls** to school may necessitate taking account of their different sanitation needs, as well as developing and putting in place policies on sexual harassment in the education system.
- The recognition that, apart from building fences for schools, **the need for a protection policy** for children to be developed by the MoEST²³⁷ could go a long way in ensuring access to primary education. The protection policy should be developed by taking into account the 4 general principles of the CRC as well as article 19 relating to the protection of children from all forms of violence, and could draw guidance from the UN Secretary General's Study on Violence against Children.

Additional policy considerations

- **Voluntary parental assistance** in school building construction and maintenance does not appear to contravene human rights law. In the context of southern Sudan where financial resources and skilled manpower are very limited, it should be encouraged, not only because local skills can be

developed, but also to give a sense of community ownership and involvement in the education system.

- Bursaries to **subsidize** certain categories of poor children do not seem to be a viable option in southern Sudan, as the question immediately arises as to who qualifies and who is excluded. Bursaries could tend to promote discrimination, (unless they pass the test of “positive discrimination”) and ultimately exclusion.
- The planned “Government **scholarships** that shall be given first to talented girls”²³⁸ will help to narrow the gender gap in primary education enrolment. However, caution should be exercised that the administration of the scholarships doesn’t violate the non-discrimination principle of the CRC. The recognition of the need for pictures of females occupying positions of authority²³⁹ in textbooks could help change communities attitudes towards girl’s education.
- High **administrative costs** are also associated with screening and payouts of bursaries – as was illustrated in the context of Zambia – and they overburden the system and are not cost effective. Particularly in the context of southern Sudan, where there still is the need to strengthen the emerging capacity of the MoEST to undertake policy development and education system management, a bursary scheme would further strain on the human as well as financial resources available.
- Undertaking measures to **encourage girls to attend school** and in effect fill the wide gender gap as it exists in southern Sudan is important. Raising awareness in communities about the importance of girls' education and the harmful effects of practices such as early marriage should be given the due attention it calls for.
- Southern Sudan is well endowed with communities with diverse livelihoods patterns ranging from pure agriculturists, pure fishing communities, agro-pastoralists and pastoralists. As a result of the 4-A scheme, particularly the principle of adaptability, **the need to provide for complementary/alternative primary education**, to accommodate the needs of children in different groups of communities is high.
- The **Arabic pattern** and foreign curricula which is planned by the Government of southern Sudan to phase out gradually²⁴⁰ is in tandem with the **adaptability and acceptability** principle of the 4-A scheme.
- The issue of **school uniforms** needs to be weighed up from the view point of their impact (either positive or negative) on access to education when they are either introduced or not introduced. However, the introduction of a

uniform standard of clothing has been beneficial in other contexts to improving access to education and eliminating possible discrimination and marginalisation of poor children who lack adequate clothing and do not attend school for that reason. If this is done, the agreed dress code should be as inexpensive as possible, and be culturally appropriate. The uniform dress code should cater specifically to the needs of the girl child to promote greater access to education for girls. However, uniforms should under no circumstances be made compulsory, so that children who have their own clothes can use them too. Ideally, clothing should be provided free to parents who lack the means to pay for them.

- The **provision of one healthy school meal** is internationally a good practice and contributes to the realisation of both the right to education and the right to health. The apparent deterioration of food security situation and livelihoods in southern Sudan that resulted in high incidence of consumption poverty and poverty in general makes a compelling case for a comprehensive primary school feeding particularly in the areas most affected by the civil war. Therefore, as far as possible it is recommended that the introduction of such a school feeding scheme, and one which does not depend on user fees for the meal. Voluntary contributions of parents might be acceptable here though, as long as this does not result in exclusion or discrimination. As rightly argued by the Government of southern Sudan, the goal of school feeding programmes is to attract children to school, nourish them for learning, and support returnees in particular to go to school.²⁴¹ The policy to explore community-based solutions for the supply of food²⁴² is a laudable move as it will also help as a source of income for the surrounding communities.
- **Extra curricular activities** may not lead to exclusion where they are linked to the school curriculum and involve costs. Thus, although the issue of extra curricular activities and the cost associated with them, has not enjoyed the attention of the CRC Committee properly, care should be taken to ensure that no child is excluded due to the inability to pay especially for curricular activities which are related to the school curricula and take place during the official school day, whether this is achieved through subsidies or otherwise.
- The provision of **opportunities for teachers, school administrators and others involved in education to participate in training** seems to be crucial and would ultimately help fill the severe gap created by lack of trained teachers in southern Sudan. As a temporary measure, the proposal for the procurement of teachers from neighboring countries like Kenya and Uganda is a good idea and should be explored further. In addition the current policy to have all trained teachers serve for a period of two years as compulsory national service²⁴³ will help fill the gap created by lack of trained teachers.

133. Southern Sudan is standing at the brink of a new era and it is laudable that Government has identified education, and particularly primary education, as a priority area. Although challenges exist, there is hope for the children of southern Sudan who have been denied their right to education in the past. Continued progress in the right direction in southern Sudan will, however, require that the education sector continues to receive financial, technical, and capacity support from actors at every level.

7. End notes

¹ K Tomasevski *Human rights obligations in education: The 4A scheme 2006* (Wolf Legal Publishers: The Netherlands) 7.

² As above.

³ UNESCO <http://portal.unesco.org/education/en/ev.php-URL_ID=28703&URL_DO=DO_TOPIC&URL_SECTION=201.html> (accessed 29 January 2007).

⁴ United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights : General Comment No. 11 Plans of Action for Primary Education (Article 14 of the International Covenant on Economic, Social and Cultural Rights)*, 20th Sess., 2, U.N. Doc. E/C.12/1999/4 (1999) [hereinafter ICESCR General Comment 11].

⁵ As above.

⁶ K D Beiter *The protection of the right to education by international law* (2006) (Martinus Nijhoff Publishers: Boston), 28.

⁷ Children, parents, PTAs, community organisations, government at different levels, NGOs, sponsors/donors and so forth.

⁸ Women's Commission for Refugee Women and Children "From the ground up: Education and Livelihoods in Southern Sudan" (January 2007) 1.

⁹ Sudan Open Archive, New Sudan Center for Statistics and Evaluation in association with UNICEF. "Toward a Baseline: Best Estimates of Social Indicators for Southern Sudan" (June 2004), 3.

¹⁰ Save the Children "Last in line, last in school: How donors are failing children in conflict affected fragile states" (2007), 24.

¹¹ UNICEF "Southern Sudan: Early marriage threatens girls' education" (7 September 2005) available at <http://www.unicef.org/infobycountry/sudan_28206.html> (accessed 22 April 2007)

¹² UNICEF "UNICEF Programme Brief: Go to School Initiative in Southern Sudan. 2006" as cited in Women's Commission for Refugee Women and Children "From the ground up: Education and Livelihoods in Southern Sudan" (January 2007).

¹³ Ministry of Education, Science and Technology, Government of Southern Sudan, and UNICEF. "Rapid Assessment of Learning Spaces Draft Report" (2006), 10 and 18.

¹⁴ Women's Commission (note 8 above), 3.

¹⁵ As above.

¹⁶ International Education Systems "At a turning point: Primary education in Southern Sudan" (October 2005) <<http://ies.edc.org/news/articles.php?id=144>> (accessed 22 April 2007).

¹⁷ As above.

¹⁸ Save the Children Sweden Southern Sudan Program "Mapping of Primary Education in Southern Sudan Rights to, in and through Education from a situation analysis perspective" (2006), 16.

¹⁹ International Education Systems (note 16 above).

²⁰ As above.

²¹ Relief Web "UNICEF operations in Southern Sudan October 2003 monthly report" (6 November 2003) <<http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/6851dc69667a62dcc1256dd60052561f>> (accessed 22 April 2007).

²² As above.

²³ Article 44 (1) of Constitution.

²⁴ Article 44 (2) of Constitution.

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- ²⁵ Relief Web "School enrolment more than doubles in Southern Sudan as new academic year opens" (2 April 2007) <http://www.reliefweb.int/rw/RWB.NSF/db900SID/YSAR-6ZVRW4?OpenDocument> (accessed 22 April 2007).
- ²⁶ As above.
- ²⁷ Save the Children Sweden (note 18 above), 10.
- ²⁸ As above.
- ²⁹ Save the Children (note 10 above), 24. It is indicated that because the MDTF is run under the World Bank Guidelines, which are a very new experience for the MoEST, it has made it very difficult for the MoEST to access the funds not withstanding the fact that all the major donors are saying they have put all their resources into the MDTF.
- ³⁰ M Verheyde Article 28: The right to education in A.Alen, J vande Lannotte, E Verhellen, F Ang, E Berghmann and M Verheyde (eds) A commentary on the United Nations Convention on the Rights of the Child (Martinus Nijhoff Publishers, Leiden 2006), 10.
- ³¹ Verheyde (note 30 above), 25.
- ³² For further details on the human rights approach see CRIN Rights based programming with children: An introduction no. 18 (March 2005).
- ³³ Tomasevski (note 1 above), 63.
- ³⁴ As above.
- ³⁵ M' Bow, A, "Introduction", in: Mialaret, 1979, 11 cited in K D Beiter The protection of the right to education by international law (2006) (Martinus Nijhoff Publishers: Boston), 19.
- ³⁶ CRC Committee General Comment No. 1, Aims of Education (2001) para. 2.
- ³⁷ General Comment No. 1 (note 36 above), para. 3.
- ³⁸ UNICEF Implementation Handbook for the Convention on the Rights of the Child (2002) (Geneva and New York, fully revised edition), 417.
- ³⁹ Verheyde (note 30 above), 24.
- ⁴⁰ UNESCO World Education Report "The right to education: Towards education for all throughout life" (2000), 26.
- ⁴¹ With 80 ratifications having taken place when this Convention opened for signature in March 2007, it will enter into force in June 2007.
- ⁴² K Tomasevski "Right to education primer No. 2: Free and compulsory education for all children: The gap between promise and performance" (2001), 11-12.
- ⁴³ UNICEF "Primary education is the most important component of basic education." Advocacy Kit, Basic Education (1999) section 1, 1. See also CESCR General Comment No. 13 The right to education (1999), para. 9.
- ⁴⁴ CESCR General Comment No. 13 (note 43 above), para. 9.
- ⁴⁵ See generally <<http://www.answers.com/topic/education>> (accessed 24 march 2007).
- ⁴⁶ Swedish International Development Cooperation Agency "Education for All: a Human Right and Basic Need. Policy for Sida's Development Cooperation in the Education Sector" (April, 2001), 17.
- ⁴⁷ Concluding Observations on Kenya's Second Periodic Report, CRC/C/KEN/CO/2 (2 February 2007), para. 58(a).
- ⁴⁸ Concluding Observations on Kenya's Second Periodic Report (note 47 above), para. 58(a).
- ⁴⁹ Here it should be made clear that, sometimes arguably, it is only primary education which is required to be free under the CRC. Thus, for instance, UNICEF interprets the CRC to allow fees to be charged for private institutions, state kindergartens, secondary schools and tertiary institutions. UNICEF's interpretation has been that the Convention on the Rights of the Child 'countenances fees for private institutions, state kindergartens, secondary schools and universities.' See "A Decade of Transition", The MONEE Project CEE/CIS/Baltics (2001), 81.
- ⁵⁰ R Avenstrup et. al. "Reducing Poverty, Sustaining Growth: What Works, What Doesn't, and Why: A Global Exchange for Scaling Up Success Scaling Up Poverty Reduction: A Global Learning Process and Conference Shanghai, May 25-27, 2004: Kenya, Lesotho, Malawi and Uganda: Universal Primary Education and Poverty Reduction" (2004), 2.

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- ⁵¹ CRADLE “Free primary education: Who has to meet the costs of ‘free’? A thematic comparative study of the Law and the current practice in Kenya” (2005), 41-42.
- ⁵² W Vandenhoele *Non-discrimination and equality in the view of the UN Human Rights Treaty Bodies* (2005), 79.
- ⁵³ As above.
- ⁵⁴ General Comment No.13 (note 43 above), para 32.
- ⁵⁵ Article 28 I of CRC.
- ⁵⁶ Article 4 of the CRC.
- ⁵⁷ CESCR General Comment No 3 on the Nature of States Parties Obligations (1990).
- ⁵⁸ CESCR article 13.
- ⁵⁹ CESCR article 2(2).
- ⁶⁰ Many regional treaties and national constitutions also incorporate the right to education. The European Convention on Human Rights, concluded within the Council of Europe in 1950, imposed the obligation of governments to provide free and compulsory primary education for all children even before the signing of UNESCO Convention against Discrimination in Education’. See Tomasevski (note 42 above), 11-12. Although the Organization of American States (OAS) initially included only civil and political rights in the American Convention, it added the right to education in 1988 in the Protocol of San Salvador. The Organization of African Unity also created its own human rights treaties, and adopted the African Charter on the Rights and Welfare of the African Child in 1990. Sudan has not yet ratified the African Charter on the Rights and Welfare of the child.
- ⁶¹ CRC article 28(d) and (e).
- ⁶² CEDAW article 10(f).
- ⁶³ The Federal Ministry of Education “The Development of Education: National Report of Sudan” (August 2004) <http://www.ibe.unesco.org/International/IICE47/english/Natreps/reports/sudan_ocr.pdf> (accessed on 14 April 2007).
- ⁶⁴ Sheila Aikman and Elaine Unterhalter (eds) *Beyond Access: Transforming Policy and Practice for Gender Equality in Education* (Oxfam, 2005).
- ⁶⁵ Save the Children (note 10 above), 5.
- ⁶⁶ As above.
- ⁶⁷ CESCR General Comment No. 11 (note 4 above), para. 7.
- ⁶⁸ CESCR General Comment No. 11 (note 4 above), para. 65.
- ⁶⁹ See CESCR Committee, General Comment No. 11 (note 4 above), para. 7. The nature of such permissible “indirect costs”, and when the Committee will approve them, is not spelt out.
- ⁷⁰ F Coomans, “In search of the core content of the right to education”, 228 in A Chapman and S Russell (eds.) *Core obligations: Building a framework for economic, social and cultural rights* (Antwerp/Oxford/New York, Intersentia, 2002) as cited in Verheyde (note 30 above), 12.
- ⁷¹ K Tomasevski “Right to education premier No. 3: Human rights obligations: Making education available, accessible. and adaptable” (2002), 12 and 14.
- ⁷² UNICEF (note 38 above), 416.
- ⁷³ S Detrick *The United Nations Convention on the Rights of the Child: A guide to the “Travaux Préparatoires”* (1992), 384-385.
- ⁷⁴ Verheyde (note 30 above), 10.
- ⁷⁵ CESCR Committee, General Comment No 11 (note 4 above), para. 33.
- ⁷⁶ UNICEF (note 38 above), 416. By 2002, Côte d’Ivoire, the Democratic Republic of the Congo, Guatemala, Jordan, Paraguay, Senegal, Yugoslavia and Zimbabwe had also been singled out for failures to provide free universal primary education.

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- ⁷⁷ CRC General Guidelines regarding the form and content of initial and periodic reports to be submitted by states parties, (CRC/C/15 and CRC/C/58) (1997), paras. 106 and 107.
- ⁷⁸ Examples are CRC Committee, *Concluding Observations, Sierra Leone* (UN Doc. CRC/C/94, 2000), paras. 180-181. *The Central African Republic* (UN Doc. CRC/C/100, 2000), para. 468; *Cameroon* (UN Doc. CRC/C/111, 2001), para. 380; *Guinea-Bissau* (UN Doc. CRC/C/118, 2002), para.75; and *Mozambique* (UN Doc. CRC/C/114, 2002), para. 306.
- ⁷⁹ CRC Committee, *Concluding Observations: Vanuatu* (UN Doc. CRC/C/15 Add.111, 1999), para. 21; and *Mauritius* (UN Doc. CRC/C/15/Add.64, 1996), para 29.
- ⁸⁰ Verheyde (note 30 above), 40-41, quoting concluding observations in respect of Egypt, Pakistan, Lebanon, Saudi Arabia, Mali, Benin, Iraq, Senegal, Djibouti, Mozambique and Ethiopia.
- ⁸¹ See generally General Comment No. 1 (note 36 above). See also for instance, *Concluding Observations on Uganda's Second Periodic Report*, (UN Doc. CRC/C/UGA/CO/2, 2005), para. 60.
- ⁸² K Tomasevski "Global Report 2006: The State of the Right to Education Worldwide: Free or Fee" (2006) articulates this repeatedly, not only in relation to poor countries, but also raising concern in relation to wealthy countries such as New Zealand, where voluntary contributions introduced in the 1990's led to parents being confused and concerned that some were not 'doing their bit', as well as allegations of discrimination against those who did not contribute.
- ⁸³ Personal communication from a member of the CRC Committee, 13 April 2007, (file with authors on file).
- ⁸⁴ There is also the danger that if parents have to contribute substantially, they may end up establishing a private school system. This is obviously then to the detriment of the state education system because of the departure of parents who can give assistance from the state educational system.
- ⁸⁵ 43 U.N. Docs. CERD/C/430/Add.1 (2003), para. 359 and CERD/C/430/Add.1 (2003), paras. 374 and 377. See, too Tomasevski (note 82 above).
- ⁸⁶ General Comment No. 1 (note 36 above), para. 2.
- ⁸⁷ General Comment No. 1 (note 36 above), para. 3.
- ⁸⁸ K Tomasevski, "Preliminary report of the Special Rapporteur on the Right to Education", (UN Doc. E/CN.4/1999/49, 1998), para.35; K Tomasevski, "Progress report of the Special Rapporteur on the Right to Education 1999/25", (UN Doc.E/CN.4/2000/6,2000), paras. 49-50; and Tomasevski (note 42 above), 20.
- ⁸⁹ Tomasevski (note 42 above), 19.
- ⁹⁰ Aikman and Unterhalter (note 64 above) 46.
- ⁹¹ Human Rights Watch "Failing Our Children: Barriers to the Right to Education" (September 2005) available at <<http://hrw.org/reports/2005/education0905>> (accessed 26 March 2007).
- ⁹² Beiter (note 6 above).
- ⁹³ Beiter (note 6 above), 31.
- ⁹⁴ Tomasevski (note 42 above), 22 and 23.
- ⁹⁵ Tomasevski (note 42 above), 25.
- ⁹⁶ Verheyde (note 30 above), 24.
- ⁹⁷ As above.
- ⁹⁸ As above.
- ⁹⁹ In the drafting of the foundation for all human rights treaties, the Universal Declaration of Human Rights, there was never a question about education being made compulsory without being free.
- ¹⁰⁰ Tomasevski (note 82 above), 250.
- ¹⁰¹ UNICEF "Basic education and gender equality" <<http://www.unicef.org/girlseducation/index.php>> (accessed 16 February 2007).
- ¹⁰² As above.

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- ¹⁰³ EFA/UNESCO “Global Monitoring Report 2006: Literacy for life” (2006) <<http://unesdoc.unesco.org/images/0014/001416/141639e.pdf>> (accessed 23 February 2007).
- ¹⁰⁴ World Bank “User fees in primary education” (2004) <http://www1.worldbank.org/education/pdf/EFACase_userfees.pdf> (accessed 2 February 2007), 8- 9.
- ¹⁰⁵ See generally, DFID “The challenges of universal primary education; Strategies for achieving the international development targets” (2001) <<http://www.dfid.gov.uk/pubs/files/tspeducation.pdf>>. See also, for instance, DFID “DFID’s girls’ education strategy Girls’ education: Towards a better future for all First progress report” (2006) <<http://www.dfid.gov.uk/pubs/files/education/girls-education-progress-report.pdf>> (accessed 28 January 2007).
- ¹⁰⁶ Take note that DFID’s position is essentially an endorsement of the 1997 Addis Ababa Consensus on principles of cost sharing in education and health, adopted by ministers and senior government officials from 17 Sub-Saharan countries, at a conference attended also by NGOs, bilateral donors and multilateral agencies. See DFID “Learning Opportunities for All: A Policy Framework for Education” 1999.
- ¹⁰⁷ Sida (note 46 above), 36.
- ¹⁰⁸ Sida (note 46 above), 25.
- ¹⁰⁹ Sida (note 46 above), 25-26.
- ¹¹⁰ Sida (note 46 above), 24.
- ¹¹¹ INEE Prospectus 2007 <http://ineesite.org/uploads/documents/store/doc_1_77_INEE_draft_prospectus_2007_FINAL_for_WEBSITE_.pdf> (accessed 03 May 2007).
- ¹¹² INEE Brochure (June 2006) <http://www.ineesite.org/about/INEE_brochure_June_06.pdf> (accessed 03 May 2007); See also Humanitarian practice Network “Network paper; Standards put to the test; Implementing the INEE Minimum Standards for Education in Emergencies, Chronic Crisis and Early Reconstruction” No. 57 (December 2006).
- ¹¹³ As the largest provider of external funding for education, it pursues its own strategy, and is a gatekeeper in assessing countries’ eligibility for development finance and debt relief. There are 139 countries and territories to which the World Bank has provided loans to education in 1963-2006, and small grants have been provided to countries which qualified for debt relief; extensive documentation and literature describes the ends and means of its involvement in education. See Tomasevski (note 82 above), 17.
- ¹¹⁴ The Fast Track Initiative (FTI) Scheme was launched in 2002 as a global partnership between donor and developing countries to ensure accelerated progress towards the Millennium Development Goal of universal primary education by 2015. FTI helps to provide predictable aid through regular funding channels and better coordination between government and donors.
- ¹¹⁵ World Bank “From Schooling Access to Learning Outcomes: An Unfinished Agenda” (2006) <<http://www.worldbank.org/ieg/education/download.html>> (accessed 15 February 2007).
- ¹¹⁶ World Bank “Opening Doors: Education and the World Bank” (2003), 5 and 23.
- ¹¹⁷ World Bank “User fees in primary education” (2004) http://www1.worldbank.org/education/pdf/EFACase_userfees.pdf> (accessed 2 February 2007)⁴; World Bank Issue brief on User Fees, (2003) <www.worldbank.org> (accessed 2 February 2007).
- ¹¹⁸ S Diop “World Bank Support for Provision of Textbooks in sub-Saharan Africa” draft, (2001) as cited in World Bank “User fees in primary education” (2004) <http://www1.worldbank.org/education/pdf/EFACase_userfees.pdf> (accessed 2 February 2007), 19.
- ¹¹⁹ The Special Rapporteur writes of potential conflict within the World Bank with one part advocating the abolition of school fees in primary education in order to combat poverty and another tolerating, if not encouraging them, so as to decrease governmental budgetary allocations, and thus fiscal deficits, through cost-sharing.
- ¹²⁰ For the position of Save the Children on the issue of user fees for health, which share similar arguments with that of education, see generally Save the Children “User fees: Paying for health services at the point of use” (2005), London Save the Children; Save the Children “Too poor to be sick: the Cost of Coping with Illness in Ethiopia” (2002), (London: Save the Children UK); Save the Children “An unnecessary evil: user fees for health care in low income countries” (2005), (London: Save the Children UK).

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- ¹²¹ L Davies "Comparative education in an increasingly globalised world" *Comparative Education Bulletin* No. 7 (2004), Comparative Education Society of Hong Kong, 6.
- ¹²² Tomasevski (note 82 above), 271.
- ¹²³ Debt servicing takes precedence over human rights obligations because sanctions for non-compliance are immediate and expensive.
- ¹²⁴ Save the Children UK "Time for change: Fees for health and education" (2005) <http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/3412_IFI_Briefing.pdf> (accessed 16 February 2007). See also <<http://www.savethechildren.org.uk/scuk/jsp/resources/details.jsp?id=3605&group=resources§ion=news&fromgroup=news&newssection=newslibrary&subsection=details&pagelang=en>> (accessed 16 February 2007).
- ¹²⁵ As above.
- ¹²⁶ Save the Children "Rewrite the Future: Campaign report" (2006) <<http://www.savethechildren.org.uk/scuk/jsp/resources/details.jsp?id=4546>> (accessed 24 February 2007).
- ¹²⁷ The Agreed Alliance Principles on Basic Education of the International Save the Children Alliance (1998) para. 2.5.4 <<http://www.savethechildren.net/alliance/resources/publications.html#edu>> (accessed 20 February 2007).
- ¹²⁸ Alliance principles (note 127 above), para. 3.5.
- ¹²⁹ CRC Committee, Kenya's Second Periodic Report (UN Doc. CRC/C/KEN/2, 2006), para. 390.
- ¹³⁰ Kenya's Report (note 129 above), para. 392. It has been remarked that one problem facing the realisation of child education rights in Kenya has been the lack of sufficient political will and commitment to socio-economic rights.
- ¹³¹ Kenya's Report (note 129 above), para. 396.
- ¹³² Under FPE, parents must still cover other various costs of schooling, e.g. uniforms, meals, examination fees for standard 8, the last grade of primary education (Ministry of Education, Science and Technology (MoEST) "Free Primary Education: Every child in School", 2003).
- ¹³³ MoEST Education Statistical Booklet 1999-2004, (June 2004).
- ¹³⁴ As above.
- ¹³⁵ See UNESCO "Education in emergency situations/Achievements and challenges" <<http://www.unesco.org/education/educprog/emergency/themes/situation.htm>> (2001)
- ¹³⁶ As above.
- ¹³⁷ A Riddell "The Introduction of Free Primary Education in Sub-Saharan Africa" (16 May 2003) 4.
- ¹³⁸ Avenstrup (note 50 above) 15.
- ¹³⁹ As above.
- ¹⁴⁰ UNESCO "The Effects of Free Primary Education on the ECD Programme in Kenya, Kenya Institute of Education, 2004; Challenges of Implementing FPE in Kenya" 2005.
- ¹⁴¹ The gross enrolment rate for the age group 3+-5+ was 44.4% in 2001. See UNESCO (note 103 above).
- ¹⁴² As above.
- ¹⁴³ Most ECD Centers set up on the premises of primary schools are in rural areas.
- ¹⁴⁴ M.N Wabwire "Rights Brought Home? Human Rights in Kenya's Children Act 2001" in Bainhaim, A and Rwezaura, B (eds) (2005) *The International Survey of Family Law 2005* (Bristol: Jordan Publishing) 401.
- ¹⁴⁵ Kenyan NGO Coalition on the CRC "Alternative Report on the Implementation of the CRC" (2006), 31. However, there are doubts on the extent to which the government can fully invest in the education programme in light of the World Bank and IMF-backed cost sharing policy and structural adjustment programmes.
- ¹⁴⁶ G Odongo "The Domestication of International Standards on the Rights of the Child: A Critical and Comparative Evaluation of the Kenyan Example" (2004) 12 *The International Journal of Children's Rights* 422-423.

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- ¹⁴⁷ Editorial, "Free primary education not an end in itself" in "The Standard" 6 April 2006 noting that although Kenya's education ministry has the second largest budgetary allocation, Kshs 88 billion (approximately US \$ 1.25 billion) in the current financial year (2005-2006), it is still Kshs 40 billion (approximately US \$ 0.57 billion) "less than what has been allocated to finance the repayment of public, and most odious, debt".
- ¹⁴⁸ UNESCO "Challenges in implementing Free Primary Education in Kenya: Assessment report" (UNESCO Nairobi office, March 2005) <<http://education.nairobi-unesco.org/PDFs/IFPE/IFPE-SynthesisReport.pdf>> (accessed on 27 January 2007).
- ¹⁴⁹ As above.
- ¹⁵⁰ As above.
- ¹⁵¹ As above.
- ¹⁵² Kenya's Report (note 129 above), para. 406.
- ¹⁵³ Kenya's Report (note 129 above), para. 417.
- ¹⁵⁴ Concluding Observations on Kenya's Report (note 47 above), para. 58(a).
- ¹⁵⁵ Concluding Observations on Kenya's Report (note 47 above), para. 58(b).
- ¹⁵⁶ Concluding Observations on Kenya's Report (note 47 above), para. 58(c).
- ¹⁵⁷ Concluding Observations on Kenya's Report (note 47 above), para. 58(d).
- ¹⁵⁸ Tomasevski (note 82 above), 41.
- ¹⁵⁹ The Free Primary Education programme led to the increase in pupil enrolment ratio by 1.3 million children in 2003 and 0.2 million in 2004. See Save the Children Sweden "Children's Rights in Kenya – An Analysis Based on the CRC Reports" (2005), 27. The latest statistics reveal that as of March 2006, there were 7.6 million children in school compared to 5.9 million in 2002. Since the abolition of school fees/levies in 2003, primary school registration has shot up by 28%. See S Siringi "Primary school enrolment in steady rise" in "The Daily Nation" 6 April 2006, 11.
- ¹⁶⁰ International and UN agencies have been major partners of the government in technical support and funding of the programme. For example, at the beginning of the FPE in January 2003, UNICEF donated Kshs 193 million (approximately US \$ 2.8 Million) towards the programme.
- ¹⁶¹ Constitution of Federal Democratic Republic of Ethiopia (1994) article 36(1)(d).
- ¹⁶² CRC Committee, Third Periodic Report of Ethiopia (CRC/C/129/Add.8, 2005), para. 183.
- ¹⁶³ Ethiopia's Report (note 162 above), para. 180.
- ¹⁶⁴ As above.
- ¹⁶⁵ As above.
- ¹⁶⁶ Save the Children Sweden "A Study on Government Budget Allocation for Primary Education" (2003), 7.
- ¹⁶⁷ Ethiopia's Report (note 162 above), para. 190 and 191.
- ¹⁶⁸ In 2002, 96% of the first cycle and 25% of the second cycle teachers were at the expected standard in terms of qualification. Currently the pupil/teacher ratio is 50 for primary education. As ESDP 1 focuses on quality, extensive efforts have been made to upgrade the capacity of existing teachers to fulfil the minimum requirement for primary education. Accordingly, 21,400 teachers are currently enrolled in diploma programmes through distance education. The percentage of female teachers in primary education has increased from 27% in 1998 to 31% in 2002. See Ethiopia's Report (note 162 above), para. 190 and 191.
- ¹⁶⁹ Ethiopia's Report (note 162 above), para. 186.
- ¹⁷⁰ Ethiopia's Report (note 162 above), para. 196.
- ¹⁷¹ Ethiopia's Report (note 162 above), para. 197.
- ¹⁷² UNESCO (note 135 above).
- ¹⁷³ Ethiopia's Report (note 162 above), para. 198.

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- ¹⁷⁴ Using parity indexes, for example, the ratio of female to male enrolment indicates disparity.
- ¹⁷⁵ For instance, only 12.6% and 1311% of the children were enrolled in Afar and Somali regions respectively while almost 100% are enrolled in Addis Ababa.
- ¹⁷⁶ Tomasevski (note 82 above) 31.
- ¹⁷⁷ Save the Children (note 166 above), 9.
- ¹⁷⁸ Articles 11(2) and 11(3) respectively.
- ¹⁷⁹ G.N. No. 108 of 1982.
- ¹⁸⁰ Section 35 of the National Education Act. According to the Primary School Compulsory Enrolment and Attendance Rules, 2001 it is an offence for a parent to fail to enrol his/her child and this attracts a fine or imprisonment. It is also a criminal offence for a parent or any person who causes a child not to attend school regularly until the completion of primary education. See Government Notice No. 280 published on 28/06/2002.
- ¹⁸¹ Act No. 17 of 1981.
- ¹⁸² Riddell (note 137 above).
- ¹⁸³ Riddell (note 137 above), 5.
- ¹⁸⁴ CRC Committee, Second Periodic Report of Tanzania (CRC/C/70/Add.26, 2005), para. 210.
- ¹⁸⁵ Tanzania's Report (note 184 above), para. 210.
- ¹⁸⁶ Riddell (note 137 above), 5.
- ¹⁸⁷ Riddell (note 137 above), 5.
- ¹⁸⁸ Riddell (note 137 above), 6.
- ¹⁸⁹ UNICEF "Background" < http://www.unicef.org/infobycountry/tanzania_1254.html > (accessed on 27 January 2007).
- ¹⁹⁰ Tanzania's Report (note 184 above), para. 212.
- ¹⁹¹ Tanzania's Report (note 184 above), para. 213.
- ¹⁹² Tanzania's Report (note 184 above), para. 214.
- ¹⁹³ Tanzania's Report (note 184 above), para. 216.
- ¹⁹⁴ As above.
- ¹⁹⁵ Tanzania's Report (note 184 above), para. 222.
- ¹⁹⁶ Tanzania's Report (note 184 above), para. 239.
- ¹⁹⁷ Riddell (note 137 above), 6.
- ¹⁹⁸ Tanzania's Report (note 184 above), para. 217.
- ¹⁹⁹ Tomasevski (note 82 above), 63.
- ²⁰⁰ Concluding Observations on Tanzania's Report (CRC/C/TZA/CO/2, 2006), para. 55.
- ²⁰¹ Article 30.
- ²⁰² Article 34(2).
- ²⁰³ For further information on free primary education in Uganda see <http://www.answer.com/main/ntquery?method=4&dsid=2222&dekey=Education+in+Uganda&gwp=8&curtab=2222_1> (accessed 22 January 2007).
- ²⁰⁴ However, it is still estimated that "13-18% of 6-12 year olds in Uganda are out of school" (MoES 2002).
- ²⁰⁵ See CRC Committee, Second Periodic Report of Uganda, CRC/C/65/Add.33 (5 November 2004), para. 171.
- ²⁰⁶ Uganda's Report (note 205 above), para 171.

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- ²⁰⁷ Uganda's Report (note 205 above), para. 1.
- ²⁰⁸ The UN Special Rapporteur on Education, Katarina Tomasevski has found that Uganda's debt repayment takes precedence over its human rights obligations, thus undermining the priority required to be accorded them under international law.
- ²⁰⁹ Avenstrup (note 50 above), 12.
- ²¹⁰ Avenstrup (note 50 above), 19.
- ²¹¹ UNESCO "Education: The price of school fees" <http://portal.unesco.org/education/en/ev.php-URL_ID=32571&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html> (2004) (accessed 12 February 2007).
- ²¹² Uganda's Report (note 205 above), para. 174.
- ²¹³ See "Defilers hindering success of UPE in Buvuma – MP", *The Monitor Newspaper*, 19 June 2006.
- ²¹⁴ See "Monkeys hindering UPE progress on Islands", *The Monitor Newspaper*, 21 June 2006.
- ²¹⁵ Article 34(3).
- ²¹⁶ Concluding Observations on Uganda's Report (note 81 above), para. 60 (a).
- ²¹⁷ Concluding Observations on Uganda's Report, (note 81 above), para. 60 (b).
- ²¹⁸ Concluding Observations on Uganda's Report, (note 81 above), para. 60 (c).
- ²¹⁹ Concluding Observations on Uganda's Report, (note 81 above), para. 60 (d).
- ²²⁰ Concluding Observations on Uganda's Report, (note 81 above), para. 60 (e).
- ²²¹ Riddell (note 137 above), 2.
- ²²² E Kadzamira and P Rose "Educational Policy Choice and Policy Practice in Malawi: Dilemmas and Disjunctures", IDS Working Paper 124, (University of Sussex Institute of Development Studies, Brighton) (2001).
- ²²³ Riddell (note 137 above), 2.
- ²²⁴ Riddell (note 137 above), 2.
- ²²⁵ Riddell (note 137 above), 2.
- ²²⁶ Avenstrup (note 50 above), 13.
- ²²⁷ In Malawi the current government finds it politically awkward to support community mobilization for construction because it objected to citizens performing unpaid manual labor for the government while it was the minority party. See also Riddell (note 137 above) 2.
- ²²⁸ Avenstrup (note 50 above), 2.
- ²²⁹ Avenstrup (note 50 above), 13.
- ²³⁰ See generally Kadzamira and Rose (note 222 above).
- ²³¹ Malawi, National Statistics Office, 2003.
- ²³² Tomasevski (note 82 above) 43.
- ²³³ See generally UNESCO (note 103 above).
- ²³⁴ Riddell (note 137 above) and a variety of national documents. Figures in parentheses are not found in the administrative data used in the Statistical annex of this report as cited in the UNESCO (note 103 above).
- ²³⁵ Save the Children (note 10 above).
- ²³⁶ Report of the Government of Southern Sudan Interstate Education Ministers' and Director Generals' Consultative Meeting (21 April – 24 April 2006) (Rumbek, Lakes State), 16.
- ²³⁷ Report of the Government of Southern Sudan (note 235 above), 16.
- ²³⁸ Report of the Government of Southern Sudan (note 235 above), 8.

²³⁹ *Report of the Government of Southern Sudan (note 235 above), 16.*

²⁴⁰ *Report of the Government of Southern Sudan (note 235 above), 6.*

²⁴¹ *Report of the Government of Southern Sudan (note 235 above), 10.*

²⁴² *Report of the Government of Southern Sudan (note 235 above), 10.*

²⁴³ *Report of the Government of Southern Sudan (note 235 above), 9.*

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Save the Children Sweden started working in Eastern and Central Africa in 1965. It has offices in Addis Ababa, Ethiopia; El Fasher, North Darfur; Nairobi, Kenya; and in Juba and Khartoum, Sudan.

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