

UP:***26/09/2014-12:35:27*** WM:***26/09/2014-12:35:28*** M:LM900-7-FY A:13a1 R:1301686 C:A2D6F4F664C408C32D0F2B572CCF3B4598D84F89

UNIVERSITY OF ESSEX

SCHOOL OF LAW

LL.M in (International Human Rights Law)

2013/2014

Supervisor: Paul Hunt

DISSERTATION

Critical Analysis of Girls' Education in Iran - the paradox between patriarchal attitudes
towards girls and modern education

Name: Hasret Cetinkaya

Registration Number: 1301686

Number of Words: 18049

Date Submitted: 26 September 2014

"One child, one teacher, one book, one pen can change the world," she said.

Malala Yousafzai

Contents

1.1 Research Question.....	3
1.2 Introduction	3
1.3 Delimitations	7
1.4 Education and other rights.....	8
1.4.1 The Right to Work.....	8
1.4.2 The Right to Health	9
1.5 Elaboration of the Content of this Dissertation.....	10
2. Chapter.....	11
2.1 International Human Rights Law on Education.....	11
2.2 Education as a Human Right.....	11
2.3 Definition of Education and its Minimum Standards	13
2.4 4-A Scheme	15
2.4.1 Availability	15
2.4.2 Accessibility	15
2.4.3 Acceptability.....	17
2.4.4 Adaptability	18
2.5 Non-discrimination.....	18
2.6 Objective of education	21
2.7 Obligation of States and Measurement of Obligations	23
3. Chapter.....	27
3.1 The Concept of Culture in Iranian Perspective	27
3.2 The Right to Education in Islam	28
3.3 Domestic Iranian Law on Education.....	29
3.4 Barriers on Girls' Education in Iran.....	31
3.5 Obstacles to Education from a Development Perspective	32
3.6 Direct barriers at Primary and Secondary Education	34
3.6.1 Access and Availability of Education	34
3.6.2 Marriage Contract.....	37
3.6.3 Gender stereotyping in Curriculum	38
3.7 Direct Barriers at Higher Education: Gender-based segregation and gender based courses.....	40

3.8 Indirect barriers: Primary and Secondary Education	42
3.8.1 Child Marriages	42
3.8.2 Child Labour.....	43
3.8.3 Culture	44
3.8.4 Indirect barriers: Higher Education	44
4. Final Consideration.....	47
5. Bibliography	52
5.1 Books.....	52
5.2 Cases.....	53
5.3 Conventions/Declarations/General Comments/ Iranian Domestic Law	54
5.4 Journals/Reports/Articles	56

1. Chapter

1.1 Research Question

The aim of this dissertation is to present a critical analysis of girls' right to education in a society that is based on traditional practices, that lacks empowering girls, protecting women's autonomy and self-determination. Iran will be used as a case study and Iranian domestic law and practice will be compared and contrasted against the State's international human rights obligations. It will be determined whether the right to education for girls' is achieved in Iran, *i.e.* to what extent the right to education for girls and women is incorporated in the normative framework and to what degree practice, in reality, reflects the international legal commitments to realize the full enjoyment of the right to education.

1.2 Introduction

Throughout history women have had an inferior position, have been discriminated against and have been seen as the property of men. In hierarchical and patriarchal societies, girls and women still represent the 'dignity' and 'honour' of the family. This, consequently, implies protection and suppression of any female to a degree that restricts their enjoyment of rights as human beings. Iran is a country that can be characterized as having such a structure; girls and women are systematically discriminated against, undermined and considered as second-class citizens.

Universally, the 20th and 21st century have brought about new rules of engagement. It is, thus, universally accepted that self-determination is a right of women and they are granted the right to vote. Rights of women constitute an inalienable, integral and indivisible part of universal human rights.¹ However, the reality is another, since very few States have achieved equality for women and the concept of empowerment is far from reached in many parts of the world. As an example many girls cannot benefit from the right to education, when an estimated 57 millions of children – the majority being girls – are kept out of the education system, or are driven out of it before they gained literacy and numeracy skills.²

Around the world recent incidents have witnessed the lack of enjoyment in girls' right to education; in 2012, Malala was shot at in an assassination attempt by Taliban for her

¹ Frostell, Katarina and Scheinin Martin: "Women", in Eide, Asbjorn., Krause, Catarina and Rosas, Allan (eds), *The Right to Education in Economic, Social and Cultural Rights*, Martinus Nijhof Publishers, 2001, p. 331

² EFA Global Monitoring Report 2013/4: *Teaching and Learning: Achieving Quality For All*, UNESCO, 2014, p. 55

advocacy of girls' education³ and in April 2014, Boko Haram abducted 230 schoolgirls due to their opposition of girls being educated.⁴ Neither Taliban nor Boko Haram represents the majority of Pakistan or Nigeria, nor do they assume official roles, but the actions of those groups reinforce the restrictive attitude towards education – it is regarded as a pathway to gain power and freedom, for that reason it must be limited for girls. Education for girls is therefore still not self-evident around the world and is subject to resistance among various groups and nations.

Inequality in education is due to different reasons. There are, however, some common features as poverty, child labour, restrictions on girls' freedom of movement, dangerous school environment, together with patriarchal impact in curriculums and parents being unwilling to invest in their girls' education. One of the main reasons for inequality is stereotypes and prejudices, which limits girls' access to education. Education is seen as a threat to the normative structures in societies.

In patriarchal countries girls and women are taught that their destiny is to be mothers and wives, and that their education is unnecessary. They are not meant to be economically independent, and this lessens their enjoyment of the right to education. Consequently, women are not aware of their rights and become vulnerable to manipulation and exploitation, since the lack of knowledge makes them powerless against those who are educated. Hence, women are prevented from seeking justice and breaking social patterns.⁵

The other types of discrimination that girls might be facing further aggravate discrimination on basis of sex and gender. These can be disabilities, ethnic or geographical origin, sexual preferences, and religious beliefs, making women subject to multiple discrimination.⁶

Inequality in education in patriarchal societies is caused by widespread and systematic gender-based discrimination. To combat such systems, education is a central tool, as it can

³ Husain, Mishal: *Malala: The girl who shot for going to school*, BBC News, 07 October 2013, available at <http://www.bbc.co.uk/news/magazine-24379018>

⁴ Duthiers, Valdimir, Karimi, Faith and Botelho, Greg: *Boko Haram: Why terror group kidnaps schoolgirls, and what happens next*, CNN, 02 May 2014, available at: <http://edition.cnn.com/2014/04/24/world/africa/nigeria-kidnapping-answers/>

⁵ Tomasevski, Katarina: *Human Rights Obligations in Education – The 4-A Scheme*, Willem-Jan van der Wolf, 2006, p. 2 and 63

⁶ Villalobos, Mr. V. Munoz: *Girls' right to education*, report by the Special Rapporteur on the right to education, E/CN.4/2006/45, 8 February 2006, para. 57 and 64

ensure cultural changes and create equality. Yet, education can also be misused and lead to the opposite result, perpetuating injustice and discrimination towards women.⁷ Therefore, education must meet some minimum standards to be in compliance with international human rights obligations and in order to liberate children and women.

The right to education is vital to achieve equality for girls and women, because it is an empowerment right, which implies that a girl and a woman become capable of controlling their own destinies.⁸ By providing education and basic skills that meet human rights minimum standards at the primary level and skills for life-long learning as well as preparation of vocational and technical training at the secondary level, the educational system will strengthen girls' power and enable them to live the life that they desire and in the direction they want.⁹ In order to empower women, they must have the agency to make their own choices; to choose and have equal capabilities (e.g. education) and have the choice and equal access to opportunities (e.g. employment).¹⁰

The pathway to freedom for many girls and women is education, since it gives them tools to support themselves, knowledge to escape restrictive institutions and, thereby, become more independent and in control of their own life. Furthermore, education of girls result in economic outcomes, increasing labour participation, positive health outcomes for girls and women and their families, including the choice to decide the number of children. Women will transmit their knowledge to the next generation, because women are the primary caregivers.¹¹

Education is seen as a fundamental pillar of human rights to achieve democracy, sustainable development and peace.¹² The significance of education lies in its function as being a

⁷ Villalobos, Mr. V. Munoz: Sexual education, report by the Special Rapporteur on the right to education, A/65/162, 23 July 2010, para. 8

⁸ United Nations Committee on Economic, Social and Cultural Rights (hereinafter CESCR), General Comment 13 (hereinafter GC): The right to education, E/C.12/1999/10, 1999, para. 1, and Grown, Caren. Gupta, Geeta Rao and Kes, Aslihan: *Taking Action: achieving gender equality and empowering women*, UN Millennium Project Task Force on Education and Gender Equality 2005, Earthscan London, 2005, p. 6

⁹ CESCR GC 13, para. 9 and 12

¹⁰ Grown, Caren. Gupta, Geeta Rao and Kes, Aslihan: *Taking Action: achieving gender equality and empowering women*, UN Millennium Project Task Force on Education and Gender Equality 2005, Earthscan London, 2005, p. 6

¹¹ Eric Hanushek: "Schooling, Gender Equity and Economic Outcomes", in Tembon, Mercy and Fort, Lucia: *Girls' Education in the 21st Century: Gender Equality, Empowerment and Economic Growth*, The World Bank, 2008, p. 24

¹² World Declaration on Higher Education for the Twenty-First Century: Vision And Action, adopted 9 October 1998 by World Conference on Higher Education, Preamble

precondition for the exercise of human rights, since several other rights can only be exercised, when a certain level of education has been met for the individual, such as literacy and numeracy. In General Comment (hereinafter GC) by the United Nations Committee on Economic, Social and Cultural Rights (hereinafter CESCR), which serves the important function of defining and clarifying the right to education in the International Covenant on Economic, Social and Cultural Rights, (hereinafter ICESCR) it is expressed that: “education is both a human right in itself and an indispensable means of realizing other human rights..”¹³ Furthermore, the first United Nations Special Rapporteur on the Right to Education (hereinafter Special Rapporteur on the Right to Education), Katarina Tomasevski, noted in her initial report that education is an end in itself rather than merely the means for achieving other ends.¹⁴

The right to education embraces all rights, it relates to civil and political rights; for example, the freedom of expression, assembly, association and information, the right to vote and the right to equal access to public services. With regards to economic, social and cultural rights, education is linked to the right to choose work, right to receive equal pay, right to form trade unions, right to participate in cultural life and benefit from scientific progress.¹⁵ Hence, the right to education is both a civil and political right and an economic, social and cultural right.¹⁶

To realize the above-mentioned rights, States must take positive actions, *i.e.* education can be classified as a ‘second generation right’, but it is also falls within the ambit of ‘first-generation rights’, since it requires institutional guarantees to be carried out. Furthermore, it has links to ‘third-generation rights’, also known as solidarity rights, by imposing upon the international community the duty to promote and encourage international cooperation in

¹³CESCR GC 13, para. 1, and

Kalantry, Sital, Getgen, Jocelyn E. and Koh, Steven Arrigg: “Enchanting Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR in Economic, Social and Cultural Rights”, in Ssenyonjo, Manisuli (ed), *Economic, Social and Cultural Rights*, ASHGATE, 2011, p. 225

¹⁴ Tomasevski, Katarina: Preliminary Report of the Special Rapporteur on the Right to Education, E/CN.4/1999/49, 13 January 1999, para. 13

¹⁵ Nowak, Manfred: “The Right to Education”, in Eide, Asbjørn. Krause, Catarina and Rosas, Allan (eds), *The Right to Education in Economic, Social and Cultural Rights*, Martinus Nijhof Publishers, 2001, p. 245

¹⁶ Tomasevski, Katarina: Annual Report of the Special Rapporteur on the right to education, E/CN.4/2001/52, 11 January 2001, para. 6

matters relating to education, as laid down in ICESCR article 15 (2) and the International Convention of the Rights of the Child¹⁷ (hereinafter CRC) article 28 (3).¹⁸

1.3 Delimitations

This dissertation will solely examine the right to education of Iran in relation to its international legal obligations in treaties, *i.e.* the obligation to respect, protect and fulfil the right to education. Therefore, the commitment to development goals, such as the Millennium Development Goals and Education for All Goals, is precluded¹⁹.

Furthermore, strategies by the international community are constantly oriented towards eradication of poverty, as it is seen as one of the main obstacles for the realization of the right to education. The interrelation between poverty and its impact on education cannot be neglected for the full realization of the right to education. Yet, this aspect will not be elaborated in this report.

The right and enjoyment of education will briefly be analysed against other rights, as “all human rights are universal, indivisible and interdependent and interrelated” and undermining or preferring one category of rights could have an effect on the other. In this dissertation, the right to work and the right to health will be incorporated. Furthermore, focus will be on certain elements of the right to education, which are relevant to understand the ambit of the right and to analyse the situation in Iran.

In order to understand the context of Iran, the right to education in Islam will be discussed briefly since it is a non-secular country with Islam as its State religion.²⁰ The relationship between international human rights law and Shari’a, however, will not be discussed.

It must also be born in mind that the diversity of Islam and of its scholarly and legal interpretation means that there is no unitary concept of Islamic Law, and many governments take a moral-political interpretation of Shari’a, such as Iran.

¹⁷ International Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990

¹⁸ Nowak, Manfred, *supra* n. 15, p. 253-255

¹⁹ Millennium Development Goals cf. the United Nations Millennium Declaration, A/RES/55/2, 18 September 2000 and,

Education for All Goals cf. The Dakar Framework for Action, Education for All: Meeting our Collective Commitments, adopted by the World Education Forum, 26-28 April 2000

²⁰ Constitution of the Islamic Republic of Iran, adopted 24 October 1979, effective 03 December 1979, article 1

1.4 Education and other rights

Being a prerequisite to the realization of other rights, education is essential to achieve the rights to, *inter alia*, health and work. Education enables skills and knowledge to girls and women, preventing them from harassment, violence, discrimination, creating awareness of adequate health and decent working conditions.

1.4.1 The Right to Work

The following section will elaborate on the right to work and education from a global aspect.

The right to work is protected by ICESCR in articles 6 and 7 and includes equality in the workplace and the right to freely choose an occupation. Education helps individuals out of poverty; it creates more jobs and growth.²¹ Furthermore, the right to work will be realized to a higher degree, when education is provided for women. Education of girls and women leads to a stronger economy of the country and the household, and it also promotes equal participation in the labour force and helps eradicate gender-based discrimination. This is so since having an employment and supporting oneself financially, would lead to more independence and, therefore, becomes a *de facto* measure that diminishes the values of the male breadwinner model. However, education is not enough; States must ensure that there is a prospect of employment opportunities subsequent to education.

The latest Education for All Global Report from UNESCO indicates that workingwomen with good literacy skills earned 95% more than women with weak literacy skills in Pakistan.²² An analysis of households also illustrated that mothers' education for each additional year leads to the child attaining 0.32 years – a benefit which is larger for girls.²³

The link between education and the right to work in traditional cultures has been noticed by the CESCR. Hence, States must be aware of the link between the fact that women often have less access to education than men and that certain traditional cultures compromise the opportunities for the employment and advancement of women.²⁴ States have an obligation to combat gender-based discrimination and ensure equal opportunities in relation to the right work.²⁵

²¹ EFA Global Monitoring Report, *Supra* n. 2, p. 13

²² *Ibid.* p. 14

²³ *Ibid.* p. 14

²⁴ CESCR GC no. 18: The Right to Work, E/C.12/GC/18, 2006, para. 13

²⁵ *Ibid.* para. 13

1.4.2 The Right to Health

The right to health and its interrelation with the right to education will be exposed from a universal perspective.

Education improves health status, since it leads to awareness of diseases and therefore how women can take measures to prevent these to a larger extent. For example, the rate of infant mortality is estimated to fall by 15 % if all women finish primary school. Numbers shows that 2.1 million children under 5 years were saved between 1990-2009 due to improved education of women in their reproductive age.²⁶ In addition, education will decrease the number of maternal deaths and women will have sustainable fertility rates and increased birth spacing.

Besides this, HIV/AIDS would be reduced, because of the awareness of prevention methods obtained through sexual education, which is important in particular for girls, as girls are at risk and in more vulnerable positions. Therefore, information about safer sex practices is necessary.²⁷ Education, including sexual education provides the tools for women and girls to decide their own sexuality and body and to improve their health conditions.²⁸

Furthermore, education leads to knowledge of hygiene, preservation of food and nutrition for mothers. This can prevent and decrease malnutrition and stunting of children as the primary caregivers.²⁹

As a conclusion, the right to health, protected by ICESCR article 12 and CRC article 24, is more likely to be realized if girls and women receive an education.

²⁶ EFA Global Monitoring Report, Supra n. 2, p. 15

²⁷ Villalobos, Mr. V. Munoz: Sexual education, Supra n. 7, para. 14

²⁸ Ibid. 17

²⁹ EFA Global Monitoring Report, Supra n. 2, p. 16

1.5 Elaboration of the Content of this Dissertation

This dissertation constitutes of two main chapters, chapter 2 and 3. Chapter 2 describes the right to education in international human rights law. This chapter includes an illustration of international human rights guidelines to elaborate on the minimum standards of education. It also analyses the objective of education, the 4-A Scheme, including non-discrimination and equality, and lastly, the obligations of States to realize the enjoyment of the right to education.

Chapter 3 use an analytical approach to assess the legal framework and practice of Iran against its international human rights obligations on education. This part will start with a section about the right to education in Islam, including the concept of culture, as this can help to give a holistic picture of the context.

Furthermore, the direct and indirect barriers to education in Iran will be explained and analysed, and the reasons for elaborating on the indirect barriers will be elucidated with the concept of freedom, as laid down by development economist Amartya Sen.

The emphasis in this dissertation will be on whether girls in Iran have access to education; if they have an equal access to education, and if the quality of teaching meets the minimum standards that international human rights treaties lay down. Lastly, some final consideration will be given on the measures that can be taken to strengthen girls' education in Iran. These includes *inter alia* adoption of anti-discriminatory legislation as well as using a rights-based approach to education together with campaigning for parents on the importance of girls' education by using Islam and religious arguments.

2. Chapter

2.1 International Human Rights Law on Education

This chapter seeks to examine international law on the right to education. Education as a right and concept includes several facets and only certain aspects will be discussed. Certain elements of education are selected in this chapter in order to make a further analysis of education for girls in Iran in chapter 3.

This section analysis various human rights treaties in which articles on the right to education are found into account. Their normative framework will be analysed in order to expose what education entails and have as its objective. The obligations upon States for promoting and facilitating the right to education will also be laid down.

2.2 Education as a Human Right

The right to education was laid down in the Universal Declaration of Human Rights (hereinafter UDHR) and declares in article 26 (1) that “everyone has the right to education,” representing a common, but non-binding, understanding of nations at the time of its adoption in 1948.³⁰

After the adoption of UDHR, the UNESCO Convention against Discrimination in Education (hereinafter UNESCO CADE) was the first instrument on education. Being a Convention solely on education it addresses *inter alia* equality, free primary education (article 4) and rights of minorities (article 5).³¹

The most comprehensive and wide-ranging article on education is found in ICESCR article 13³², and the Covenants article 14 further addresses the issue of primary education in an explicit manner. Also, the International Covenant on Civil and Political Rights (hereinafter ICCPR) invokes the right to education, but only in the context of freedom of thought,

³⁰ Universal Declaration of Human Rights, adopted 10 December 1948

³¹ UNESCO Convention against Discrimination in Education, adopted 18 December 1979, entered into force 3 September 1981,

³² CESCR GC 13, para. 2

conscience and religion, as laid down in article 18 (4). This article ensures that legal guardians of children have the right to give them moral and religious education.³³

The most rapidly and widely ratified international human rights treaty, CRC, refers to education in articles 28 and 29.³⁴ According to Katarina Tomasevski, the full scope of education is laid down within those articles.³⁵ The universal adoption of CRC clearly establishes the high value that is given to children’s protection, including their education.

Also, the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter CERD) in article 5 (v) and 7 together with the International Convention on the Elimination of Discrimination against Women (hereinafter CEDAW) in article 10 and the International Convention on the Rights of Persons with Disabilities (hereinafter CRPD) within article 24 recognizes the right to education.³⁶

In addition, several other instruments address this right, including at the regional level, such as

- First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, article 2,³⁷
- The African Charter on Human and Peoples’ Rights, article 11 and 17,³⁸
- The American Declaration of the Rights and Duties of Man, article 12,³⁹
- The American Convention on Human Rights “Pact of San Jose, Costa Rica”, article 12 (4) and 26,⁴⁰
- The Protocol of San Salvador, article 13,⁴¹
- The International Labour Organization Convention no. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, article 26 and 27,⁴²
- Arab Charter on Human Rights, article 41,⁴³

³³ International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976

³⁴ CRC, Supra n. 17

³⁵ Tomasevski, Katarina: Preliminary Report, 13 January 1999, Supra n. 14 para. 43

³⁶ Convention on the Rights of Persons with Disabilities, adopted 13 December 2006, entered into force 3 May 2008

³⁷ First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 20 March 1952

³⁸ African Charter on Human and Peoples’ Rights, adopted 27 June 1981, entered into force 21 October 1986

³⁹ American Declaration of the Rights and Duties of Man, adopted April 1948

⁴⁰ American Convention on Human Rights “Pact of San Jose, Costa Rica”, adopted 22 November 1969, entered into force 18 July 1978

⁴¹ Protocol of San Salvador, adopted 17 November 1988, entered into force 16 November 1999

⁴² The International Labour Organization Convention no. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, adopted 27 June 1989, entered into force 05 September 1991

- Cairo Declaration on Human Rights in Islam in article 7 and 9,⁴⁴

From the above listed provisions in various instruments, it appears clearly that the educational provisions laid down in UDHR in 1948 have unquestionably been reaffirmed, extended and made detailed by other legally binding instruments, including ICESCR and CRC. The wide regulation of the right to education demonstrates a consensus in the international community on the universal character of this right and acknowledges the importance of education as a core human right.

Additionally, case law demonstrates the possibility of legal recourse and the justiciability of the right. In a case before the Supreme Court of India it was declared that the right to education is implicit in the right to life.⁴⁵ Also, the significance of education was subject to discussion in the case of *D. v. Refugee Appeals Tribunal* before the High Court of Ireland regarding an asylum seeker of Roma origin from Serbia in which the court ruled that if the applicant was denied “a basic education he will effectively be excluded from any meaningful participation in Serbian society and... he will carry the brand of inferiority and stigma with him for the rest of his life. In that respect, it is far more serious than the isolated taunting and bullying...”⁴⁶ In this case “denial of basic education was found to amount to persecution.”⁴⁷ Hence, an understanding of education being essential and fundamental for the livelihood of children is prevalent at the domestic as well as international level. .

2.3 Definition of Education and its Minimum Standards

Education is not defined in any instruments, although its elements and objectives are laid down in those. In the *Belgian Linguistic Case*, the European Court of Human Rights (hereinafter ECtHR) defined education as a right of access to educational institutions “existing at a given time” and the right to draw benefit from the education received, which means the right to obtain official recognition of the completed studies.⁴⁸ Katarina Tomasevski defines education “in terms of access to free-of-charge schooling at all levels – from nursery

⁴³ Arab Charter on Human Rights, adopted May 22 2004, entered into force March 15 2008

⁴⁴ Cairo Declaration on Human Rights in Islam, adopted 5 August 1990

⁴⁵ Unni Krishnan, J.P & Ors. V. State of Andhra Pradesh & Ors, Supreme Court of India, 04 February 1993, para. 650-655

⁴⁶ *D. v. Refugee Appeals Tribunal*, High Court of Ireland, November 10, 2011, IEHC 431, para 24

⁴⁷ *Ibid.* para. 25

⁴⁸ Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium (merits), ECtHR, 23 July 1968, para. 7

to post-graduate studies.”⁴⁹ In view of this, the right to education is defined as access to free schooling, resulting in official recognized transcripts.

The global minimum of the right to education according to Katarina Tomasevski, involves that 1) governments ensure the enjoyment of the right, 2) that children are subjects of the right and bearer of the duty, since primary education is compulsory, 3) that parents are the preliminary educators and 4) professional educators are involved.⁵⁰

The minimum core level of the right to education entails five obligations according to CESCR. These includes the duty of States to ensure; 1) access to public institutions in a non-discriminatory manner, 2) objective of education as laid down in article 13 (1), 3) free and compulsory primary school, 4) a national education strategy and 5) free choice of education cf. article 13 (3) and 4.⁵¹ In GC 13 education is understood broadly, including primary, secondary, higher education as well as technical and vocational training and fundamental education. In line with CESCR, professor Fons Coomans establishes three essential elements of the right to education.⁵² However, differently from CESCR Fons Coomans emphasizes the language of education as an essential element.

With regards to girls, international human rights law places three criteria on education, which States have to meet: that girls have an equal right to education (access and participation), equal rights in education (gender-sensitive environments, processes and outcomes) and that their equal rights are promoted through education (quality education).⁵³

Furthermore, the right to education have been structured into a 4-A scheme to clarify the feature of education at all levels. This scheme is adopted by the CESCR, which refers to the scheme in GC 13, stating, “education in all its forms and at all levels shall exhibit the following interrelated and essential features.”⁵⁴

⁴⁹ Tomasevski, Katarina: *Human rights obligations: making education available, accessible, acceptable and adaptable*, Right to Education Primers no. 3, 2001, p. 17

⁵⁰ Tomasevski, Katarina: *Human Rights Obligations in Education*, Supra n. 5, p. 18

⁵¹ Kalantry, Sital, Getgen, Jocelyn E. and Koh, Steven Arrigg: “Enchanting Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR in Economic, Social and Cultural Rights”, Supra n. 13, p. 230

⁵² Coomans, Fons “Identifying the Key Elements of the Right to Education: A Focus on its Core Content”, paper submitted to the Day of General Discussion of the UN Committee on the Rights of the Child on Article 4 of the Convention, p. 3-7, available at www.crin.org

⁵³ Tomasevski, Katarina: *Human Rights Obligations in Education*, Supra n. 5, p. 63

⁵⁴ CESCR GC 13, para. 6

2.4 4-A Scheme

In the preliminary report of the first Special Rapporteur on Education, Katarina Tomasevski, the elements of education were put in an analytical scheme regarding primary education. However, according to CESCR this scheme applies to secondary and higher education as well.⁵⁵ The 4-A scheme entails availability, accessibility, acceptability and finally adaptability of education.

2.4.1 Availability

The first obligation upon a State is the availability of institutions and schools in **sufficient quantity** and with **adequate facilities**, such as electricity, sanitation and safe drinking water. In a case before the Indian Supreme Court, it was found that “ill-equipped and ill-housed institutions and sub-standards are counter-productive and detrimental to inculcating spirit of inquiry and excellence in the students”.⁵⁶

Cases from regional courts reaffirm the educational requirement, such as the case *Cyprus v. Turkey*. In this case, ECtHR declared that closure of Greek-medium secondary schools amounted to a denial of the right to education.⁵⁷ Similarly, the African Commission on Human and Peoples’ Rights found that a two yearlong closure of universities and secondary schools in Zaire was a violation of the right to education.⁵⁸

Consequently, availability is composed of three features; 1) education as a civil and political right, which implies permit to establish schools that respects freedom of and in education, 2) education as a social and economic right entailing availability of free and compulsory education to all and 3) education as a cultural right requiring respect for diversity.⁵⁹

2.4.2 Accessibility

This second obligation, accessibility, has different elements, one being the **physical access**; whereby everyone must be able to attend schools, regardless of whether they live in rural areas or having special needs due to their vulnerability. States must take measures to ensure

⁵⁵ Ibid. para. 8, 11 and 17

⁵⁶ State of Maharashtra v. Vikas Sahebrao Roundale and Others, Supreme Court of India, 11 August 1992, para. 2-3 and 12.4

⁵⁷ Cyprus v. Turkey, 10 May 2001, ECtHR, application no. 25781/94, para. 280

⁵⁸ Free Legal Assistance Group and Others v. Zaire, African Commission on Human and Peoples' Rights, Comm. No. 25/89, 47/90, 56/91, 100/93, October 1 1995, para. 81

⁵⁹ Tomasevski, Katarina: *Manual on Rights-Based Education - Global Human Rights Requirements Made Simple*, Asia and Pacific Regional Bureau for Education, UNESCO Bangkok, 2004, p. 7

“regular attendance and the reduction of drop-out rates” cf. CRC article 28 (1) (e). Consequently, girls must have access to education, irrespective of the additional protection they might require within the institutions of education due to their gender, which might put them in risk of being exposed to abuse and attack.

In regards to disabled children there must be facilities as classrooms and buildings designed in a way that makes it possible for them to take part.

The physical reach implies that schools are reachable for anyone by either placing schools in convenient geographic locations or via modern technology and distance learning.⁶⁰ This also applies to children deprived of liberty, as laid down in the case of *Bellamy v. McMickens*.⁶¹

Another element, **economic access**, entails that schools are affordable to all, regardless of their parents’ income. However, only primary education must be free to all according to article 13 (2) of ICESCR, whereas secondary and higher education is subject to progressively realization in order to become free.⁶²

The third element, **non-discrimination**, entails that education is accessible to everyone. The CESCR highlights the importance of education to most vulnerable groups, whereby States are obliged to eliminate discrimination de jure (formal discrimination) as well as de facto (substantial discrimination).⁶³ The latter implies that groups, such as women, who have historically been subject to discrimination, are subject to special measures.⁶⁴

The principle of non-discrimination is a core norm of fundamental value in international human rights law, it is incorporated in several treaties and is essential to meet in order for all individuals to exercise and enjoy their human rights.

In regards to non-discrimination, a distinction must be made in regards of accessibility in education, since some cannot reach education due to e.g. poverty (unreached), whereas others are prevented from participation (excluded).⁶⁵

⁶⁰ CESCR GC 13, para. 6 (b)

⁶¹ *Bellamy v. McMickens*, US District Court of the Southern District of New York, 15 July 1988

⁶² CESCR GC 13, para. 6 (b)

⁶³ *Ibid.* para. 6 (c) and

Tomasevski, Katarina: Preliminary Report, 13 January 1999, *Supra* n. 14, para. 61

⁶⁴ CESCR, GC 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2009, para. 9

⁶⁵ Tomasevski, Katarina: Preliminary Report, 13 January 1999, *Supra* n. 14, para. 58

2.4.3 Acceptability

The third feature of education, acceptability, addresses the **substance and quality of education**, which must be culturally appropriate towards students and their parents.⁶⁶ What is acceptable is an education based upon human dignity according to ICECR article 13 (1), whereby teaching and curricula must be non-discriminatory towards other gender, race, religion, ethnic or national backgrounds and be suitable to the cultural, linguistic and social background of the child.⁶⁷

The role of the State is not only to provide education, but also to set and enforce educational standards. The state sets the minimum standards according to article 13 (3) and (4) of ICESCR, as it is the provider and the regulator, but it is required to accept the parental freedom as well. The State can only set the minimal standards for teachers, students, building facilities and curricula⁶⁸.

The ideal school must be child-friendly by creating an environment that allows children to ask questions, disagree, make mistakes, be spontaneous, and be recognized and respected.⁶⁹ With regards to teachers, who have a superior position with much power in contrast to young people, whom are vulnerable to propaganda and brainwashing, it is required that teachers are qualified. In *Fiscal Equity, Inc. v. State of New York* education in the Constitution was found to include high quality education, *i.e.* the Government had to provide ‘sound basic education’ and a ‘meaningful high school education’. Teaching quality was inadequate and large class sizes were found as having a negative effect on the realization of education.⁷⁰ Hence, quality of teachers is a justiciable facet of the right to education.

Another element of acceptability is the **language** of teaching. In the case of *Belgian Linguistics v. Belgium* case that dealt with whether children could attend French classes in the Dutch speaking areas of Belgium, the European Court of Human Rights found that there was no breach of article 2 of Protocol 1 to the Convention regarding the right to Education. This right does not guarantee that parent’s linguistic preferences are respected, but that the right

⁶⁶ CESCR GC 13, para. 6 (c) and

Tomasevski, Katarina: Preliminary Report, 13 January 1999, Supra n. 14, para. 62

⁶⁷ Kalantry, Sital, Getgen, Jocelyn E. and Koh, Steven Arrigg: “Enchanting Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR in Economic, Social and Cultural Rights”, Supra n. 13, p. 236

⁶⁸ Ibid. p. 237

⁶⁹ Tomasevski, Katarina: Preliminary Report, 13 January 1999, Supra n. 4, para. 67

⁷⁰ Campaign for Fiscal Equity, Inc. v. State of New York, Courts of Appeal New York, June 26 2003

implied education in the national language.⁷¹ The teaching language could be that of the region, without providing teaching in the minority language, as long as it was not arbitrary or discriminatory, and the aim was based on objective criteria.⁷² As a result education does not have to be in a certain language, but minority groups are free to establish schools in their own languages.

2.4.4 Adaptability

The fourth element is to ensure that education meets the changing needs of the society by continuously taking the ‘best interest of the child’, one of the overriding principles within CRC, into consideration⁷³. Adaptability has a significant importance, particularly on girls’ education, as it obliges States to customize their education infrastructure and material, *i.e.* that curricula and textbooks must be revised in order to remove the prejudicial portrayal of women as well as minorities.⁷⁴ Also, the United Nations Committee on the Rights of The Child (hereinafter Committee on CRC) has urged States to change gender stereotyping in textbooks.⁷⁵ Education has changed from educating girls and women to become good housewives to an education free from cultural expectations and an opportunity to develop freely.⁷⁶ Adaptability implies that education must be flexible, has to be reviewed and renewed to meet the needs of the dynamics of the society, while ensuring that the best interest of the child is considered.

2.5 Non-discrimination

The importance of non-discrimination is inestimable in education. The starting point in operationalising human rights is the principle of non-discrimination, which applies to all rights and which must be applied immediately, regardless of whether the substantial right itself is subject to the principle of progressive realisation.

⁷¹ Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium, Supra n. 48, para. 13

⁷² Ibid. para. 13

⁷³ Tomasevski, Katarina: Preliminary Report, 13 January 1999, Supra n. 14 para. 70, and CESCR GC 13, para. 6 (d)

CRC is underpinned by four overriding principles: non-discrimination (article 2), the best interest of the child (article 3), the right to life, survival and development (article 6), and the right to be heard (article 12) cf. UNGA’s 2006 Resolution on the Rights of the Child, A/RES/60/231, 11 January 2006, para I.1

⁷⁴ Tomasevski, Katarina: Preliminary Report, 13 January 1999, Supra n. 4, para. 72

⁷⁵ United Nations Committee on the Rights of the Child: Report on the eighth session, CRC/C/389-27, January 1995, General debate on the girl child, 21 January 1995, Annex V, para. 3 (a), p. 72.

⁷⁶ Tomasevski, Katarina: Preliminary Report, Supra n. 4, para. 73

Also, non-discrimination and development are connected, since development aims at assisting the disadvantaged. The objective of non-discrimination is to ensure everyone equal opportunities, *i.e.* in order to ensure development the practice of non-discrimination must be eradicated and operationalised.⁷⁷

Non-discrimination is not subject to progressive realization, but has to be secured immediately and to full extent⁷⁸. Furthermore, it constitutes an important component of the 4-A Scheme within the ‘accessibility’ facet.

The enforcement of the principle of non-discrimination in education is vital, as education can be misused as a mean to systematically discriminate against groups of individuals by either providing them with education of a lower standard or by limiting access to education, whereby such groups are deprived of the opportunity to participate in the political, social, economic and cultural life of their societies and countries.

UDHR article 2, ICESCR article 2 (2), ICCPR article 2, CRC article 2 (2), CEDAW article 1 all declare the principle of non-discrimination, primarily stating that States have the obligation to ensure that the rights within the respectable treaties are exercised without “distinction/discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷⁹ The scope of ‘sex’ includes both the physiological characteristics as well as the social construction of gender stereotypes and expected roles.⁸⁰

The inclusion of ‘other status’ illustrates that the list of grounds of discrimination is not exhaustive and that other grounds might be included over time, e.g. when groups of people who share similar conditions are being subject to discriminatory treatment.⁸¹ The CESCR have found “other status” as including among others disability, marital and family status, sexual orientation and gender identity and health status.⁸²

⁷⁷ Tomasevski, Katarina : “Indicators”, in Eide, Asbjørn. Krause, Catarina and Rosas, Allan (eds), *The Right to Education in Economic, Social and Cultural Rights*, Martinus Nijhof Publishers, 2001, p. 533

⁷⁸ Tomasevski, Katarina: Preliminary Report, 13 January 1999, *Supra* n. 14, para. 57

CESCR GC 13, para. 31

⁷⁹ UDHR article 2 (1), ICESCR article 2 (2), ICCPR article 2 (1), CRC article 2 (1), CEDAW article 1

⁸⁰ CESCR, GC 20, para. 20

⁸¹ *Ibid.*, para. 15

⁸² *Ibid.* para. 28 and 31- 33

In regards to education, UDHR, ICESCR and CRC do not address the right explicitly towards girls or women. These are gender-neutral provisions, which apply to all – children, adults, groups, women and men. It must be noted that article 3 of ICESCR and ICCPR ensures the equal enjoyment of rights within the Covenants, recognizing equality between sexes. In ensuring equal rights of men and women under the ICESCR article 3, CEDAW and the work of the Committee on CEDAW must be taken into account cf. the Limburg Principles.⁸³

Furthermore, State parties are obliged to ensure the enjoyment of rights without discrimination in accordance with ICCPR 26, which also protects economic, social and cultural rights, as was laid down by the Human Rights Committee in the case of *Broeks v. The Netherlands* about social security. This article is an independent guarantee of equal and effective protection before and of the law.⁸⁴ The Human Rights Committee expressed in this case that article 26 “does not require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with article 26 of the Covenant”, *i.e.* equality and non-discrimination must be uphold to any right to give an equal protection of the law.⁸⁵ This implies that countries that are parties to ICCPR have to ensure non-discrimination and equal protection of the law in any area, including education, irrespective of whether they have ratified ICESCR and CRC.

CEDAW article 1 describes discrimination against women in specific terms and its ambit is wide, as any distinctions, which have the effect of impairing, or nullifying the enjoyment of the rights, falls within. Article 10 of CEDAW imposes a number of actions upon States to eliminate discrimination in the area of education; the same conditions for career and access to studies, same curricula and examinations, elimination of any stereotyped content of the roles of men and women, revision of textbooks, adaptation of teaching methods and reduction of the gap in education between men and women. In addition, affirmative action to eliminate cultural practices of stereotyping roles and ideas of superiority and inferiority between men and women, are found in article 4 (1) of CEDAW. Such special measures are found to be legitimate, when used to redress de facto discrimination.⁸⁶

⁸³ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Document E/CN.4/1987/17, para. 45

⁸⁴ CESCR GC 20, para. 5

⁸⁵ S. W. M. Broeks v. The Netherlands, Human Rights Committee, 09 April 1987, para. 12.4

⁸⁶ CESCR GC 20, para. 9

Within the sphere of education, discrimination is explicitly addressed in UNESCO CADE in article 1, as including any distinction, exclusion, limitation or preference and affecting the a) access to education, b) limitation to education of inferior standard, c) separate educational systems or d) inflicting conditions incompatible with the dignity of man.

The right to non-discrimination and gender equality in access to education is found in numerous treaties and has arguably reached the level of customary law, since state practice and opinion juris confirm this.⁸⁷ However, States have not shown the same commitment to gender equality through education.

Equality through education among race was touched upon in the case of *Brown v. Board of Education* about segregation of white and coloured children, which was found to have a “detrimental effect upon coloured children” and as giving them a “sense of inferiority that affects their motivation to learn.”⁸⁸ Segregation was thus found inconsistent within public education.

2.6 Objective of education

The aim of education is reaching a consensus in international human rights law; education is understood as a process that would make individuals, particularly children, able to develop their personality and participate in a free society. The objective is thus respect, dignity and participation.⁸⁹

The process is seen as a public concern that carries messages by the language of instruction, the teaching material in terms of books and the teachers.⁹⁰ It includes various actors; providers of education (teachers), receivers of education (children) and those regally responsible for receivers (parents).⁹¹

The UDHR declares in article 26 (2) that education “shall be directed to the full development of the human personality and to the strengthening of respect for human rights and

⁸⁷ Vega, Connie de la: *The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?*, Harvard Blackletter Journal Vol. 11, 1994, p. 40, 44 and 48

⁸⁸ *Brown v. Board of Education*, Supreme Court of the United States, 17 May 1954, opinion section

⁸⁹ Kalantry, Sital, Getgen, Jocelyn E. and Koh, Steven Arrigg: “Enchanting Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR in Economic, Social and Cultural Rights”, *Supra* n. 13, p. 220

⁸⁹ Nowak, Manfred, *supra* n. 15, 2001, p. 251

⁹⁰ Tomasevski, Katarina: *Education Denied – Costs and Remedies*, Zed Books, 2003, p. 170

⁹¹ Nowak, Manfred, *supra* n. 15, p. 246

fundamental freedoms”.⁹² Also, the aim of education is to promote understanding, tolerance and friendship among States and individuals together with promoting the activities of the United Nations and the maintenance of peace according to article 26 (2) of UDHR. The reference to the work of the United Nations and hereby the Charter of the United Nations (hereinafter UN Charter), implicitly indicate that education must aim at securing international peace, security, and justice in accordance with article 1 (3) of the UN Charter.⁹³ In addition, article 55 of the UN Charter further entails that stability as well as friendly relations shall be promoted by educational cooperation in article 55.b and non-discrimination in article 55.c, indicating the understanding that peace, stability and justice is closely combined to education, since education would furtherance those principles.

UDHR article 26 (2) is restated in the UNESCO CADE article 5 (1) (a), and repeated in ICESCR article 13 (1). CESCR have held that article 13 (1) reflects the principles of article 1 and 2 of the United Nations Charter.⁹⁴

ICESCR article 13 (1) differs and adds to the substantial content of UDHR, as it also declares that education must “enable all persons to participate effectively in a free society”. It further adds in two other aspects, since it mentions that education must be directed to the human personality’s “sense of dignity” and that it must promote understanding among “ethnic” groups, whereas UDHR only mentions nations, racial or religious groups.⁹⁵

In CEDAW article 10 the aim of education is to eliminate stereotypes of gender and discrimination by encouraging coeducation and ensuring equal access for men and women.

The most comprehensive article on the objectives of education is in article 29 (1) of CRC, which includes some elements particularly important for girls. The article itself lists from a-what education must be directed towards; e.g. “(a) the development of the child’s personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) the preparation of the child for responsible life in a free

⁹² UDHR, article 26

⁹³ Charter of the United Nations, signed 26 June 1945, effective from 24 October 1945

⁹⁴ CESCR GC 13, para. 4

⁹⁵ Ibid. para. 4

society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) the development of respect for the natural environment.“ The added value of CRC is in the respect for different civilizations, for indigenous cultures and for the natural environment.⁹⁶

Empowering the child and ensuring its development includes that children get basic skills as literacy and numeracy together with skills to make decisions, solve conflicts non-violently, develop a healthy lifestyle and critical thinking.⁹⁷ ‘Basic skills’, which within the terminology of the ICESCR is called ‘fundamental education’ is laid down in article ICESCR article 13 (2) (d) and is a right for anyone that have not received such ‘basic learning needs’.⁹⁸ The aims of education on the primary level is to ensure basic learning needs, and at the secondary to complete these basic needs and strengthen the needs for life-long learning and development together with preparation of education at the higher level.⁹⁹

In order for individuals to demand and expect human rights, education must be a mean of constructing knowledge about human rights.¹⁰⁰ “Respect for human rights is a precondition for development of the personality, and implies the formation of knowledge, abilities, skills and values enabling individuals to advance peacefully towards the realization of universal human rights.”¹⁰¹

2.7 Obligation of States and Measurement of Obligations

States are obliged to realize the right to education within all its facets, which was demonstrated in the above-mentioned sections. The right to education imposes general, special and core obligations upon States. These are of a negative character by being obligations of non-interference as well as of positive character, which means that the State must respect and promote education and at the same time it is restricted in its promotion by the limitations put down in the provisions. Furthermore, some of these are obligations of conduct, *i.e.* an active or passive action, as an example the obligation of a plan to realize

⁹⁶ Nowak, Manfred, *supra* n. 15, 2001, p. 251

⁹⁷ Committee on CRC, GC 1: The Aims of Education, CRC/GC/2001/1, 2001, para. 9

World Declaration on Education for All, UNESCO, Jomtien, 1990, article 1

⁹⁸ ICESCR GC 13, para. 22: fundamental education corresponds to basic education

⁹⁹ *Ibid.*, para. 9 and 12

¹⁰⁰ Alfredsson, Gudmunder: “The Right to Human Rights Education”, in Eide, Asbjorn. Krause, Catarina and Rosas, Allan (eds), *The Right to Education in Economic, Social and Cultural Rights*, Martinus Nijhof Publishers, 2001, p. 273

¹⁰¹ Villabos, Mr. Vernor Munoz: The right to education, report submitted by the Special Rapporteur on the right to education, E/CN.4/2005/50, 17 December 2004, para. 16

compulsory free education within article 14 of ICESCR, whereas others are obligations of result, e.g. to achieve a certain objective, as free and compulsory for all primary education.¹⁰²

The right to education has a vertical effect, *i.e.* States have to ensure the right.¹⁰³ This must be done by measures that guarantee equal enjoyment of the right to education, non-discrimination in enjoyment of that right and concrete measure to eliminate direct and indirect discrimination *de jure* and *de facto*.¹⁰⁴ State parties are obliged to closely monitor education policies in order to take and adopt measures that address all kinds of discrimination and to provide for mechanisms that address harm caused by discrimination.¹⁰⁵ Within CEDAW article 2 (b) it is declared that States must take appropriate legislative and other measures, including sanctions and legislation on customs and practices that constitute discrimination against women (article 2f), to prohibit discrimination against women, and that such measures applies against any person as organization or enterprise (article 2e).

The general obligation on States implies the notion of respect, protect and fulfil, *i.e.* States cannot take measures that will limit the enjoyment of the right to education (respect); they have an obligation to ensure the right from third parties inference (protect) and a duty to take positive measures to promote the right to education (fulfil). These obligations, however, are not uniform for primary, secondary and tertiary education.¹⁰⁶

The obligation to fulfil implies in practice that States must take positive measures in regards of vulnerable groups, when they are unable to realize their own rights. Consequently, girls' education must be realised by the initiative of the State, since girls' are vulnerable and cannot realize this right by themselves by which an indirect horizontal effect appears.¹⁰⁷ States must take steps, which are deliberate, concrete and targeted towards the full realization of the right to education in a non-discriminatory manner¹⁰⁸.

The Specific obligations upon States impose among others that a curriculum in accordance with article 13 (1), and establishment of a transparent and effective system to monitor this, is

¹⁰² Nowak, Manfred, *supra* n. 15, 2001, p. 256

¹⁰³ Tomasevski, Katarina: Human rights obligations: *Supra* n. 49, 2001, p. 17

¹⁰⁴ Alfredsson, Gudmunder: "The Right to Human Rights Education, *Supra* n. 100, p. 282

¹⁰⁵ CESCR GC 13, para. 37 and 40, and CESCR GC 20, para. 8

¹⁰⁶ CESCR GC 13, para. 47

¹⁰⁷ *Ibid.* para. 46-47

¹⁰⁸ *Ibid.* para. 43

ensured.¹⁰⁹ States must furthermore provide primary and compulsory education as laid down in article 13 and 14 of ICESCR, and this constitutes an immediate duty of States. Whether primary education is subject to progressive realisation is questionable. According to ICESCR article 13 and 14 and CRC article 28 (1) as well as ICESCR GC 13 and GC 11 it appears that an immediate action must be taken, that the right must be implemented within reasonable number of years. Nevertheless, free and compulsory education can be subject to progressive realisation, when the resources of the State are insufficient.

With regard to secondary and tertiary education, States must take immediate steps to the maximum available resources in order to achieve the realization progressively in accordance with article 2 (1) of ICESCR. This means that there is a duty to move expeditiously and effectively as possible towards the full realization of available and accessible secondary and higher education with the progressive introduction of free secondary education and free higher education upon capacity.¹¹⁰

Furthermore, States have to respect, protect and fulfil the essential features of education: availability, acceptability and adaptability of the right to education.¹¹¹

The minimum core obligation of States is composed of the duty to *inter alia* ensure the right of access to public educational institutions and programmes on a non-discriminatory basis. It also has to ensure that education conforms to the objectives set out in article 13 (1) and to ensure free choice of education without interference from the State or third parties cf. article 13 (3) and 13 (4).¹¹²

A violation of ICESCR article 13 occurs, when the act or omission of States is not addressing de facto educational discrimination. Likewise, a violation is constituted, when the use of curricula is inconsistent with the educational objectives and when the State fails to take ‘deliberate, concrete and targeted’ measures towards the progressive realization of secondary, higher and fundamental education.¹¹³

¹⁰⁹ Ibid. para. 49

¹¹⁰ Ibid. para. 51 and 53, and

CESCR GC 3: The nature of States parties’ obligations, E/1991/23, 1990, para. 9

¹¹¹ CESCR GC 13, para. 50

¹¹² Ibid. para. 57

¹¹³ Ibid. para. 59

The question hereafter is how to measure that the State achieves the realisation of the right to education. The use of indicators, including disaggregated data, and benchmarks, is mentioned as part of the strategy within the national policy that must monitor progress.¹¹⁴ It is further suggested using structure, process and outcome to the 4A-scheme. Paul Hunt initially suggested this in regards of the right to health.¹¹⁵

Structure indicators entail legal instruments and existence of basic institutional mechanism, process indicators the extent to which the laws and policies of the State are effectively designed to implement the realization of the right to education. Lastly outcome indicators that measure the results on the ground, *i.e.* to what extent the State are implementing the right in question.¹¹⁶

¹¹⁴ Ibid. para. 52 and

¹¹⁵ Kalantry, Sital, Getgen, Jocelyn E. and Koh, Steven Arrigg: “Enchanting Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR in Economic, Social and Cultural Rights”, *Supra* n. 13, p. 239

¹¹⁶ Ibid. p. 239-241

3. Chapter

3.1 The Concept of Culture in Iranian Perspective

Iran follows Islam as its State religion, as established in its constitution, and while this dissertation will not elaborate on whether girls' education is hampered by Islamic law (Shari'a), it should be remembered that religion is a living experience. Therefore, a strict removal of culture and religion from this analysis will give an insufficient picture of the situation in Iran, where religion is used as a justification in all legal aspects, including education.

Culture is defined as a "set of shared meanings, norms and practices that form a comprehensive world view that serves to unite a group and contribute to the identity of its members." It is subject to change and includes elements as history, religion, identity and traditions.¹¹⁷

Islam is not only seen as a religion, but as a complete way of living, which is the reason why Shari'a, or merely the interpretation of Shari'a, influences large parts of civil, penal, and family matters in many Muslim countries.¹¹⁸ Iran is one of the few Muslim States to apply an interpretation of Shari'a across all areas of national law, which article 4 of the Iranian Constitution illustrates by emphasizing that "all civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria".¹¹⁹

Underlying questions in this aspect is whether the right to education can be justified for all peoples regardless of differences in culture, religion and political and economic circumstances, and whether the concept of education is applicable to all cultures.

According to Joel Spring this requires two conditions: 1) a justification of the protection of education for all people, notwithstanding differences in culture, language, and religion, and 2) that there is a definition of education that is appropriate to all cultures, languages and

¹¹⁷ Reidel, Laura: "What are Cultural Rights? Protecting Groups With Individual Rights in Economic, Social and Cultural Rights", in Ssenyonjo Manisuli (ed), *Economic, Social and Cultural Rights*, ASHGATE, 2011 p.414

¹¹⁸ Wadud, Amina: *Inside the Gender Jihad - Women's Reform in Islam*, 2006, Oneworld Publications, p. 127

¹¹⁹ Constitution of the Islamic Republic of Iran, Supra n. 20

religions.¹²⁰ While Joel Spring did not find any of these conditions met in UDHR article 26, the subsequent comprehensive nature of provisions that are regulating education in international instruments gives an affirmative answer on education being applicable to all cultures; there is an universal adoption of the right to education in various instruments, particularly the CRC, expressing the acceptance of States of the right to education in any culture.

Additionally, the adoption of the Vienna Declaration and Programme of Action (VDPA) in 1993 by 171 countries once again confirmed the universality of States obligation to ensure access to education, free and compulsory primary education and equal access to education at all levels.¹²¹ Education in itself must be comprehensive by being directed to all kinds of values around the world while creating an atmosphere of dialogue and respect for diversity.¹²²

3.2 The Right to Education in Islam

In the following, a brief summary will be given of what Islam entails in regards to the right to education. This understanding is necessary to understand the cultural basis on education in Iran.

The right to education is advocated for in the Quran (primary source of Shari'a) and Sunnah (secondary source: religious practice established by the Prophet) for men and women equally. Education is seen as a right in Islam, as verse 96:1-5 of the Quran encourages everyone to read, which indicates that reading, writing and pursuit of knowledge has a central position in the Muslim faith.¹²³

The Cairo Declaration on Human Rights in Islam affirms that seeking knowledge is an obligation for everyone, that this is a duty of the society and the State, which have to ensure the availability and means to acquire education to “guarantee its diversity in the interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind” cf. article 9 (a).¹²⁴ The objective in the

¹²⁰ Spring, Joel: *The Universal Right to Education – Justification, Definition, and Guidelines*, Lawrence Erlbaum Associates, 2000, p. 7

¹²¹ Vienna Declaration and Programme of Action, A/CONF.157/23, adopted 25 June 1993, Vienna, para. 24, 28 and 41

¹²² Committee on CRC GC 1, para. 4

¹²³ Kamali, Mohammad Hashim: *The Right to Education, Work and Welfare in Islam*, The Islamic Texts Society, 2010, p. 57

¹²⁴ Cairo Declaration on Human Rights in Islam, Supra n. 44

Cairo Declaration appears to be gaining knowledge about Islam rather than aiming at development for the individual’s personality or respect for human rights.

Seeking knowledge is considered as a religious duty in Islam and everyone is encouraged to acquire knowledge. However, the status of women has declined nowadays and the reality today is that traditions, which have nothing to do with Islam, deteriorate and deprive girls and women of their education in Muslim countries.¹²⁵ Education has been seen as secondary to keeping the home and the family as well as a threat to the traditional customs.¹²⁶

The differences between male and female education have been caused by family attitudes, and according to Haifaa A. Jawad it is caused merely by the historical interpretation of the jurists, which is a clear deviation from genuine Islamic principles, since the interpretation has a strong opposition to female education. As a consequence such an interpretation influences government policies on education for women in some Muslim countries.¹²⁷

3.3 Domestic Iranian Law on Education

The right to education in Iran is laid down in article 30 of the Iranian Constitution, which states that the “government must provide all citizens with free-education up to secondary school, and must expand free higher education to the extent required by the country for attaining self-sufficiency”. This establishes a duty for the government to direct all its resources towards free education, as laid down in article 3 (3) of the Constitution. The protection of education in the Constitution illustrates *per se* a strong safeguard.

Non-discrimination is protected by article 19 of the Constitution, protecting all people regardless of ethnic group, race or colour equal rights. It must be noted that sex is not mentioned within article 19 of the Iranian Constitution.

Article 3 (14) of the Constitution secure the rights of all citizens, including equality before the law, which is also stated in article 20, that further explicitly declares equality between men and women. Article 20 also provides protection of the economic, social and cultural rights in conformity with Islamic criteria. The notion of Islamic criteria have been commented by the Committee on the Rights of the Child (hereinafter Committee on CRC),

¹²⁵ Jawad, Haifaa A.: *The Rights of Women in Islam – An Authentic Approach*, Macmillan Press LTD, 1998, p. 20 and 58

¹²⁶ Ibid. p. 25

¹²⁷ Ibid. p. 26-27

which have observed that the narrow interpretations of Islamic texts by State authorities of Iran are impeding the enjoyment of some human rights protected under the CRC.¹²⁸

Education of children is laid down in the Iranian Civil Code within article 1178, which holds that "parents are bound to take measures as circumstances and their means to allow for the education of their children."¹²⁹ Iran is the provider and regulator of education by its constitution, *i.e.*, it must regulate education to ensure it is consistent with the child's human dignity and in conformity with the principles of CRC cf. article 28 (2). Parental choice and freedom does not in any circumstances legitimize that children do not receive education, but the idea behind this freedom is to ensure that the State does not have monopoly over education and that any abuse of education, such as indoctrination, can be prevented by parental freedom.¹³⁰ While article 1178 of the Iranian Civil Code seems *per se* to acknowledge parents' choice of educating their children by their own "religious, moral or philosophical" beliefs¹³¹, parental freedom seems restricted as the Constitution indicates that such teachings must be in accordance with Islamic criteria.

Women's right to education is protected by the Charter of Rights and Responsibilities of Women in the Islamic Republic of Iran within paragraph 76-84. It enshrines women's rights to, *inter alia*, public literacy, training facilities, higher education and the right and responsibility to enjoy a worthy status in harmony with their role, dignity and status in educational texts. Besides this, the right to "recognize, support, and benefit from the capabilities of women with outstanding talents and their responsibility to help meet the country's needs" is also laid down.¹³² This establishes the right of educated women to take an active part in the labour market and be recognized on it.

For the purposes of further analysis, when referring to Iran's international obligations, *i.e.* the treaties that Iran is a party to and bound by, it will be only to those contained in ICESCR and CRC. The obligations of CEDAW would be relevant for the analysis, however, while the

¹²⁸ Committee on CRC, Concluding Observations on Iran, CRC/C/15/Add.123, 28 June 2000, para. 33

¹²⁹ Civil Code of the Islamic Republic of Iran, 23 May 1928, available at: <http://www.refworld.org/docid/49997adb27.html>

¹³⁰ Tomasevski, Katarina: *Manual on Rights-Based Education - Global Human Rights Requirements Made Simple*, Supra n. 59, p. 9

¹³¹ Tomasevski, Katarina: Preliminary Report, 13 January 1999, Supra n. 14, para. 62-63

¹³² Charter of Women's Rights and Responsibilities in the Islamic Republic of Iran, 21 September 2004, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_205795.pdf

treaty was ratified by the Iranian parliament in 2003, it was then vetoed by the Guardian Council of Iran and the matter is still awaiting consideration from the Expediency Council.¹³³

3.4 Barriers on Girls' Education in Iran

In Iran, children are not seen as an active subject of human rights, but through a paternalistic lens, *i.e.*, they are subjected to protection by parents; they receive their rights through their parents and are not right-holders in and by themselves.¹³⁴ This comes to bear particularly heavily upon girls due to the stereotypical and prejudicial attitudes towards them.

The approach taken by Iranian authorities is in conflict with human rights of the child, including the right to education, since it is a right linked to the dignity and development of the child, as well as the identity of the child. The child is no longer solely an object of the right to education; it is by itself a bearer and subject-holder of rights, who must have equal access to education and equal access through education.¹³⁵ As education must be about development of the child's needs, a strong protection must be ensured to the child against abuse within the educational framework.

Iran has had progress in realizing the right to education, as acknowledged by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (hereinafter Special Rapporteur on Iran). Yet, recent developments threaten the achievement in education, such as attempts to reinforce polygamy and reduce work hours for women¹³⁶. In addition, several underlying problems are occurring in Iran, such as discrimination against and control of religious and linguistic minorities, restrictions on academic freedom for university students, as well as shaping particular identities and limited opportunities for girls. The latter is enforced by a strictly controlled curriculum.

The current situation of education for girls in Iran can be seen in the following table, demonstrating some of the direct and indirect barriers at different levels of education.

¹³³ Mayer, Ann Elizabeth: "The reformulation of Islamic thought on gender rights and roles", in Akbarzadeh, Shahram and MacQueen, Benjamin (eds), *Islam and Human Rights in Practice: Perspectives Across the Ummah*, Routledge, 2008, p. 15

¹³⁴ Committee on CRC, Concluding Observations, Supra n. 128, para. 2

¹³⁵ Tomasevski, Katarina: *Human Rights Obligations in Education*, Supra n. 5, p. 103

¹³⁶ Shaheed, Ahmed: Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, A/HRC/22/56, 28 February 2013, para. 39

	Direct barriers	Indirect barriers
Primary and Secondary Education	<p>Access and availability</p> <p>The marriage contract</p> <p>Gender stereotyping in curriculum</p>	<p>Early marriage</p> <p>Economic (child labour)</p> <p>Culture (rural culture, guardianship)</p>
Higher Education	<p>Gender-based segregation</p> <p>Lack of access (gender-based courses)</p> <p>The marriage contract</p>	<p>Cultural issues (lack of participation in the labour market)</p>

Table 1: Direct and indirect barriers in girls’ education in Iran

Some of the issues indicated in this scheme do not have any link to education in itself. However, there is a causal link, as they are influencing the freedom, accessibility and availability of schools for girls. This will be further elaborated in the following section.

3.5 Obstacles to Education from a Development Perspective

According to modern development theories, both the right to education and the right to development aim at one ultimate goal: the full respect for and protection of all human rights. The aim of education must be to develop and empower the child by a child-centred and child-friendly education by which children can obtain their own personality, talent and ability to live a life that satisfies them in their society.¹³⁷ However, being a girl in Iran automatically implies that certain expectations or roles are imposed on you, *i.e.*, personal freedom is being restricted and the full achievement of human development limited.

¹³⁷ Committee on CRC GC 1, para. 1-2

In order to understand the implication of education, factors given in the table must be included in the further analysis of the current situation, as these directly or indirectly creates obstacles for girls in education, girls' development and girls' freedom.

Amartya Sen has expressed freedom as the primary end and the principal means of development, since development expands the freedoms that people enjoy. Thus, overcoming the neglect of the agency of women is a central part of development according to the Capability Approach.

The Capability Approach determines the quality of life on the basis of concepts as 'functioning' and 'capability'. Capability refers to two parts; 1) the functionings a person have access to, these being things a person may value and have reason to value or being, and 2) the freedom the person has to do this or be that.¹³⁸ According to Martha Nussbaum this approach perceives humans as being capable to achieve functions with the right education and material support.¹³⁹ This is an important notion for the understanding of freedom together with education.

According to Amartya Sen individual freedom has two aspects; 1) an opportunity aspect, whereby individuals have the real opportunity to valued functions (capability) *i.e.* the ability to shape their destiny and to accomplish what is valued, and 2) a process aspect related to 'personal process concerns' that refers to autonomy and immunity, *i.e.* being able to choose, and a 'systematic process concerns' referring to the processes of the society.

Agency is defined by "someone who acts and brings about change, and whose achievements can be judged in terms of own values and objectives, whether or not we assess them in terms of some external criteria as well"¹⁴⁰, which means it is the ability to act on what the individual values. Agency freedom is freedom to achieve, what the individual aims to achieve. If it is understood that capabilities, which is an important aspect of Amartya Sen's concept of freedom, can be achieved by education, then this would equally increases agency. Also, an increased agency would similarly be reflected in increased empowerment.¹⁴¹

¹³⁸ Sen, Amartya: *Idea of Justice*, The Belknap Press of Harvard University Press, 2009, p. 232

¹³⁹ Nussbaum, Martha: *Women's Capabilities and Social Justice*, Journal of Human Development, Vol. 1 No. 2, 2000, p. 233

¹⁴⁰ Sen, Amartya: *Development as Freedom*, Oxford University Press, 1999, p. 19

¹⁴¹ Alkire, Sabina: *Subjectiv Quantitative Studies on Human Agency*, Social Indicators Research, 2005, available at: <http://www.ophi.org.uk/wp-content/uploads/Alkire-Subjective-Agency.pdf>, sections: Human Agency, Empowerment and Subjective Agency Measures, and

Education is a tool to inform and strengthen human capabilities; it can lead to an increase in agency freedom. However, obstacles to education have as a consequence that girls have no access to require basic skills, *i.e.* ‘capabilities’, needed to realize ‘the good life’ that entails freedom.

3.6 Direct barriers at Primary and Secondary Education

3.6.1 Access and Availability of Education

The current data on Iran shows that Iran’s primary school enrolment rates for girls are 99 % and that gender disparity is nearly non-existent in primary and secondary education.¹⁴² The **access** to education between girls and boys appears to be equal and achieved in accordance with ICESCR, article 13 (1) and CRC, article 28 (1) (a). However, in rural Iran, particularly the region of Sistan and Baluchistan, it appears that the primary school enrolment is still bad or low, partially due to poverty, drought and low employment. Consequently, education is seen as luxury and attitudes in the culture leads to boys being favoured to be educated, whereas girls must take care of household chores and look after younger siblings.¹⁴³

The Committee on CRC has expressed concern over access to education in Iran due to the high drop-out of girls in rural schools upon reaching puberty (non-discrimination), long distances between homes and schools, which keeps girls at home (physical access), and the lack of access due to birth registration and registration fee (economic access).¹⁴⁴ Drop-out is influenced by a number of factors, including lack of trained teachers, particularly female teachers in remote areas, lack of appropriate content and quality of education for girls, cultural limitations and the need for young people to contribute to household income.¹⁴⁵ Iran is obliged to take policy and administrative measures that would allow girls to attend schools and the drop-out rates, cf. CRC, article 28 (1) (e).

Alkire, Sabina: *Measuring the freedom aspects of capabilities*, 2005, section: Opportunity and Process Freedoms, Global Equity Initiative, Harvard University, available at:

https://www.aeaweb.org/assa/2005/0107_1430_0104.pdf

¹⁴² Shaheed, Ahmed: Report of the Special Rapporteur on Iran, 28 February 2013, *Supra* n. 136

UNICEF Statistics: Iran, Islamic Republic of, available at:

http://www.unicef.org/infobycountry/iran_statistics.html

¹⁴³ UNICEF, Opening up education to girls in Iran’s poorest province, UNICEF, 25 May 2012

¹⁴⁴ Committee on CRC: Concluding Observations: The Islamic Republic of Iran, 31 March 2005, CRC/C/15/Add.25431, para. 37-38 and 59-60

¹⁴⁵ Girls’ Education in the Islamic Republic of Iran, UNICEF Iran Information Series, 2006, UNICEF, available at: http://www.unicef.org/iran/resources_1609.html, p. 2, and

CESCR: Concluding Observations on the Islamic Republic of Iran, 10 June 2013, E/C.12/IRN/CO/2, para. 27

Girls are discriminated against in Iran; they are in fact excluded and prevented from participation in education. Girls' right to education is a matter within the private sphere; parents choose their children's education and whether they want to send their girls to school. However, discrimination within the private sphere and among private actors is still a concern for the State, which means that Iran has a duty to adopt the necessary measures to protect the right to education, which will ensure that private actors (parents) cannot discriminate on prohibited grounds (sex).¹⁴⁶

Iran is failing to ensure girls' access to education in rural areas, irrespective of the additional protection they require, which put them in risk of being exposed to abuse and attack. One of the issues children in rural areas face is that they are still not registered at birth.¹⁴⁷ Birth registration is linked to the receipt of an identity card under Civil Code 999, which is required, for example, to enrol in schools.¹⁴⁸ Therefore, these children are denied access to education in contravention of the principle of the best interest of the child, the objective of education and the obligation to ensure free and compulsory primary education. This has been supported by international tribunals such as the Inter-American Court of Human Rights, which remarked in the case of *Bosico Children v. the Dominican Republic*, on the illegality of denial of education upon birth registration, as it increases the vulnerability of the child and uncertainty for the family.¹⁴⁹

Iran also discriminates against Afghan children which have a further limited access to all levels of education due to mandatory registration fees. This measure is aimed at securing repatriation of Afghans, even when it is inconsistent with free primary education within ICESCR article 13 (1) and education during all phases of displacement.¹⁵⁰

¹⁴⁶ CESCR GC 20, para. 11

¹⁴⁷ Committee on CRC: Concluding Observations, 31 March 2005, Supra n. 144, para. 37, and CESCR: Concluding Observations, 10 June 2013, Supra n. 145, para. 28

¹⁴⁸ Civil Code of Iran, Supra n. 129, article 999

¹⁴⁹ *The Yean and Bosico Children v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R., (Ser. C) No. 130 (2005), para 185.

¹⁵⁰ Committee on CRC, GC 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 2005, para. 41

Sayami, Omar: *Iran: an Afghan Free Zone?!*, Justice for Iran, June 2012, p. 6, available at: <http://justiceforiran.org/wp-content/uploads/2012/06/Iran-anAfghanFreeZone-layout-Final.pdf>

Birth registration applies to all children, and the registration fee also applies to Afghan girls and boys children, but the reality is that in an impoverished family, the boy would often be prioritized to continue schooling, while the girl would have to stop education.¹⁵¹ Girls cannot reach education due to poverty, *i.e.* they are being unreached. However, they are also excluded from education. In the choice between sending a girl or boy child to school, priority is given to the boy.

Furthermore, the Committee on CRC has noticed that the decision to expand compulsory education beyond the five years of primary school has been delayed for many years.¹⁵² The responsibility to guarantee the availability of free and compulsory primary education and put together a plan to ensure this is laid down in ICESCR, article 14 and GC 11.¹⁵³ Expanding free and compulsory primary education results in “successful prolongation of girls’ schooling and delays marriage and childbearing.”¹⁵⁴

Another aspect of education, which Iran is not achieving, is the **availability of schools** in rural and least developed areas of the country, which have less teachers and material equipment than in the urban and the most developed provinces. Consequently, there are unequal educational opportunities between children in rural and urban areas. Iran is failing in its obligation to realize education in poor and rural areas.

Furthermore, lack of teachers in the rural areas, which is considered as one of the necessary elements in order to fulfil the educational infrastructure, makes the schools unavailable *de facto* and not just *de jure*.¹⁵⁵ It is also important to note that there are few female teachers in rural areas, and that the few that exist have low teaching skills.¹⁵⁶ This means that the quality of education is insufficient and inconsistent with the ‘**acceptability**’ element of the right to education, not only because of the low teaching skills they have, but also because the existence of female teachers in itself is necessary for achieving gender equality.

The CESCR notes in its GC that availability depends on the development context, indicating that obligations upon a high income country are different from those upon a low income

¹⁵¹ Ibid. p. 10

¹⁵² Committee on CRC: Concluding Observations, 31 March 2005, *Supra* n. 144, para. 60

¹⁵³ CESCR GC 11: Plans of action for primary education, U.N.Doc/E/C.12/1999/4, 1999, para. 3

¹⁵⁴ Tomasevski, Katarina: Annual Report, 11 January 2001, *Supra* n. 16, para. 7

¹⁵⁵ Tomasevski, Katarina: Preliminary Report, 13 January 1999, *Supra* n. 14 para. 43, para. 51-52

¹⁵⁶ UNICEF, Girls’ Education in the Islamic Republic of Iran, Unicef Iran Information Series, 2006, available at: http://www.unicef.org/iran/resources_1609.html, p. 2

country, since different ‘maximum available resources’ are available.¹⁵⁷ However, the acknowledgement of the ‘context’ does not justify that schools are unavailable to girls in Iran, since available schools also discriminate against girls - the issue is not on whether there is capacity enough for schooling, but rather that the available schools have a condescending attitude towards girls. The requirement of availability imposes upon States that all schools have the capacity to have girl-children attending to them.¹⁵⁸ More schools lead to more girls attending them, *i.e.* gender equality upon enrolment increases with availability of schools.¹⁵⁹

Lastly, education in Iran must meet the changing needs of the society by always taking the best interest of the child into consideration, being flexible, reviewed and renewed. Yet, education in Iran is still influenced by the patriarchal attitude towards women, which restricts girls’ participation in the school system and indirectly influences girls’ and women’s participation in the public sphere. The education infrastructure is consequently not **adaptable**.

3.6.2 Marriage Contract

In relation to girls’ access to education, early marriage constitutes the main reason for girls not accessing and finishing their primary education. The prevalence of this obstacle applies at all levels of education in Iran. As a result, men can ban their wives from education according to the marriage contract during primary, secondary and higher education.

This contract lays down certain rights and duties for both parties. Upon marriage, the husband is the head of the family¹⁶⁰ and the wife has a duty of sexual submission and obedience (concept of tamkin).¹⁶¹ If the wife resists, this gives ground for refusal to pay maintenance of food, clothing and housing, violating the right to an adequate standard of living, as well as making education more difficult to obtain.¹⁶²

¹⁵⁷ CESCR GC 13, para. 6 (a)

¹⁵⁸ Tomasevski, Katarina: Preliminary Report, 13 January 1999, Supra n. 14, para. 53

¹⁵⁹ Ibid. para. 55

¹⁶⁰ Civil Code of Iran, Supra n. 129, article 1105: “In relations between husband and wife; the position of the head of the family is the exclusive right of the husband.”

¹⁶¹ Nayyeri, Mohammad Hossein: *Gender Inequality and Discrimination: The Case of Iranian Women*, Iran Human Rights Documentation Center, March 2013, chapter 2.4.1

¹⁶² Civil Code of Iran, Supra n. 129, article 1108: “If the wife refuses to fulfil duties of a wife without legitimate excuse, she will not be entitled to the cost of maintenance.”

The marriage contract is affecting children significantly, as child marriages are prevalent in Iran. As an example the Special Rapporteur on Iran reported that “statistics indicated that in June and July 2012 more than 75 girls under 10 were forced to marry much older men”.¹⁶³

The direct barrier of ‘contract of marriage’ is, however, not the only obstacle; girls’ education is impeded by the legality of early marriages, which indirectly prevent girls from education. Marriage imposes family responsibilities and pregnant hood, which bears upon the ability to go to school for girls. Consequently, this practice results in a spouse being treated not as an individual, but as a commodity, given that her consent to the marriage is not required.¹⁶⁴ Discriminatory attitudes within the family are reinforced in the community and throughout the girl’s life.

This section is further elaborated under the section of indirect barriers and child marriages.

3.6.3 Gender stereotyping in Curriculum

Education can be given by different methods and by various pedagogical approaches; it can be used as well as abused. It can be used to liberate children and create new attitudes together with eliminating prejudicial portrayals, or abused to indoctrinate national, cultural and religious values.¹⁶⁵

In many parts of the world there is a view of girls being inherently less intelligent than boys and girls have fewer expectations of themselves in and out of school; they think that their future consists primarily of being wives and mothers. Textbooks, curriculum and assessment material, in which no female figures appear, reinforce girls’ low expectations of themselves¹⁶⁶. The curriculum in Iranian schools illustrates that the education system does not eliminate gender stereotyping; it threatens girls’ emotional security and provides curricula that are insensitive to gender issues.¹⁶⁷

¹⁶³ Shaheed, Ahmed: Report of the Special Rapporteur on Iran, A/67/369, 13 September 2012, para. 73

¹⁶⁴ Shahinian, Gulnara: Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, A/HRC/21/41, 10 July 2012, para. 16-17

¹⁶⁵ Nowak, Manfred, *supra* n. 15, p. 262-263

¹⁶⁶ Villalobos, Mr. V. Munoz: Girls’ right to education, 8 February 2006, *Supra* n. 6, para. 104

¹⁶⁷ *Ibid.* para. 98

Gender equality is not separate from the quality of education, since girls' education is the promotion of social justice and democracy.¹⁶⁸ Furthermore, the Vienna Declaration and Programme of Action demands 'human rights, democracy and the rule of law' to be subjects in curricula in order to reduce the gap between theory and practice and create a universal human rights culture.¹⁶⁹ Yet, this is not the case within the Iranian educational infrastructure in which human rights and democracy have no vital importance.

In Iran, the curriculum is based on religious education and purification within the Shi'a traditions and practices. Islamic religious schools are acceptable according to international human rights standards, as long as the education is consistent with the child's human dignity and respects the parents' choice of educating their children by their own "religious, moral or philosophical" beliefs.¹⁷⁰ This is, however, not the case in Iran.

Within the Iranian framework, a specific behavioural model for men and women is laid down in the teaching material. The message given is that men and women are unequal and this is justified with religious reasons. In a textbook from grade 8 it is explained that "these differences do not mean that one is intrinsically better than the other, but they exist so that men and women perform their complementary roles in family and society, on the basis of their biological and psychological characteristics and appropriate utilization of their different capabilities."¹⁷¹

Through the entire curriculum men are represented as the supervisor sex and both sexes are given different roles, women deal with matters inside the family, whereas men are concerned with matters outside the family. In a grade 4 textbook it is expressed that "usually, the father works outside the home. He has the duty to provide food, clothing, and other necessities for his wife and children. In some families the mother works outside the home, as well."¹⁷² Men are given the traditional role as breadwinners and the heads of the house. Women, on the other hand, are systematically discriminated against, they do not appear in the images to the same extent as men, indicating a male culture that reinforces traditional models.¹⁷³

¹⁶⁸ Ibid. para. 99

¹⁶⁹ Vienna Declaration and Programme of Action, adopted 25 June 1993, *Supra* n. 121, para. 72

¹⁷⁰ Tomasevski, Katarina: Preliminary Report, 13 January 1999, *Supra* n. 14, para. 62-63

¹⁷¹ Paivandi, Saeed: Discrimination and Intolerance in Iran's Textbooks, Freedom House, 2008, chapter 2.1 Men and Women

¹⁷² Ibid., chapter 2.3 Gender Differences in the Work Place

¹⁷³ Ibid., chapter 2.2 Men and Women in the Images

Furthermore, the Ministry of Education in Iran announced in 2012 that it would publish separate textbooks for boys and girls, creating gender segregation to textbooks and not only in textbooks.¹⁷⁴

The aim of education must be to develop and empower the child with a child-centred and child-friendly education by which children can obtain their own personality, talent and ability to live a life that satisfies them in their society.¹⁷⁵ Yet, children in Iran are not taught to develop freely according to their own perception of what a good life is; they are barred from developing a healthy lifestyle and critical thinking by the lack of quality education and discrimination through education, which reinforces prejudices and stereotypes inconsistent with various international instruments. Equality of sexes is not promoted, the full development of the child and respect for human rights as well as development of the autonomy and self-determination of the girls is not respected, whereby girls' are precluded from participation in society, they are not liberated and thereby unable to resist oppression.

All such discriminatory practices are in direct contradiction with the requirements in CRC, article 29 (1) (a); UDHR, article 26 and ICESCR, article 13 (1). Education in Iran is used as social control inconsistent with human rights education.¹⁷⁶

3.7 Direct Barriers at Higher Education: Gender-based segregation and gender based courses

Besides the marriage contract, which influences girls and women's access to education at all level, problems at the higher education are connected to women's equal access to all aspects of university education. Iran has showed progress in literacy and enrolment of female student at higher education, since more than half of all university students are women.¹⁷⁷ Yet, as urged by the CESCR to Iran, there are restrictions on the access to universities, limited quotas

¹⁷⁴ Bezhan, Frud: *Iran To Extend Gender Segregation to School Textbooks*, Radio Free Europe, Radio Liberty, 18 January 2012, available at:

http://www.rferl.org/content/iran_gender_segregation_school_textbooks/24455032.html, and Paivandi, Saaed: A discriminatory educational discourse, in Danesh, Taririh and Kashefi, Roya (eds), *Iran Human Rights Review: Youth*, The Foreign Policy Centre, 2012, p. 20, available at: <http://fpc.org.uk/fsblob/1482.pdf>

¹⁷⁵ CRC GC 1, para. 1-2

¹⁷⁶ CRC GC 1, para. 15, and

Tomasevski, Katarina: *Human Rights Obligations in Education – The 4-A Scheme*, Supra n. 5, p. 4

¹⁷⁷ Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, A/HRC/22/48, 07 May 2013, para. 47

for women in certain fields, and gender segregation in classrooms, in violation of article 2 and 13 of ICESCR.¹⁷⁸

This indicates that coeducation and inclusion rather than segregation is within the ambit of article 13 of ICESCR. However, separate educational institutions are permitted if and when girls have equal access to the same curricula, same examinations, teachers and equipment.¹⁷⁹

The UNESCO CADE equally declares that separation is discrimination, but permits separation of boys and girls in education for religious or linguistic reasons according to article 2 (1) (b) of the Convention.¹⁸⁰

Iran's education policies restrict women's admission at universities in certain fields, 77 out of 100 fields in the academic year 2012/2013 at 36 universities are banned for women to enrol in. Also, women studies at universities is replaced by curricula with courses on "women's right in Islam", since women studies around the world is conflicting with Islam.¹⁸¹ Curricula for men and women differ, violating the non-discrimination principle in all international instruments.

Single-gendered education is part of the Islamization program that is put in place in Iran, *i.e.* some majors are banned for women at some universities in Iran. The Iranian Higher Education Minister has declared that the reason for single-sex courses are due to the need of creating balance, since some fields are unsuitable for women.¹⁸²

Women are restricted access to mathematics and technical sciences major fields of study including engineering, social sciences, traditional sciences, arts/humanities, and foreign languages. Single gendering applies to men as well, e.g. men are prohibited enrolment in studies in history, linguistics, theology, applied chemistry, Arabic/Persian language and literature, sociology, and philosophy at Esfahan University.¹⁸³

¹⁷⁸ CESCR: Concluding Observations, 10 June 2013, Supra n. 145, para. 9

¹⁷⁹ Tomasevski, Katarina: *Human Rights Obligations in Education*, Supra n. 5, p. 65, note 167

¹⁸⁰ UNESCO Convention against Discrimination in Education, Supra n. 31

¹⁸¹ Shaheed, Ahmad: Special Rapporteur on Iran, A/68/503, 4 October 2013, para. 34

¹⁸² Ibid. para. 43

¹⁸³ Human Rights Watch, Iran: Ensure Equal Access to Higher Education – Scrap Policies that Ban Students From Studies on Basis of Gender, Human Rights Watch News, September 22, 2012, available at: <http://www.hrw.org/news/2012/09/22/iran-ensure-equal-access-higher-education>

Schoolgirls grow up knowing that their opportunities for higher education are limited, which results in demotivation to study and make an effort for girls. Iran's policy at higher level undermines the capacity of women and it deprives them of educational opportunities. By limiting access to postgraduate studies, the policy is targeting the academic qualified student from entering 'masculine' and 'high-income fields', such measures point to a coordinated effort to keep women's at home. Iran does not fulfil and realize its minimum core obligations and its policy is clearly not designed to eliminate gender segregation and inequality.

3.8 Indirect barriers: Primary and Secondary Education

3.8.1 Child Marriages

Marriage in Iran is authorized for any girl that has reached 13 lunar years and any boy at the age of 15 lunar years.¹⁸⁴ CESCR has expressed concern to this, since this minimum age is "inconsistent with the requirement under the Covenant that marriage be entered into only with the free consent of the intending spouses" within ICESCR article 10 (1).¹⁸⁵

Girls' education is often disrupted and discontinued by marriage, violating the right to health (CRC article 24, ICESCR article 12) by children getting pregnant without their bodies being prepared, and often conflicting with the protection from torture, cruel, inhuman and degrading treatment (CRC Article 37, ICCPR 7), as the marriage can function as a child servitude, abuse or trafficking. While conservative cultural norms have a role to play in the practice of child marriages, this does not obviate the fact that Iran has a due diligence obligation to protect and ensure the right of children's right to education, to ensure the development of children and ensure that everyone has the free and full consent to get married with whoever they wants.

Children in an age of 13 or 15 cannot be expected to give a free and full consent due to their cognitive abilities. In addition the difference between men and women in the minimum age prevents women from freely making a choice, besides the fact that a guardian has the ability

¹⁸⁴ Nayyeri, Mohammad Hossein: *Gender Inequality and Discrimination: The Case of Iranian Women*, March 2013, Supra. 16, p. 21

¹⁸⁵ CESCR: Concluding Observations, 10 June 2013, Supra n. 145, para. 18

to give consent to marriage on behalf of the girl.¹⁸⁶ Hence, child marriages create huge obstacles for girls' and their opportunities to become empowered.

3.8.2 Child Labour

In Iran, a high number of children are living and working in the street, in particular in Tehran, Isfahan, Mashhad and Shiraz. These children have limited access to health services and education.¹⁸⁷

Education is indirectly harmed for these children due to lack of resources and poverty, these children lack the comfort of a family that can afford education and instead they are forced to work illegally and under conditions that lack safety (violation of CRC article 32 and ICESCR article 6 and 7).¹⁸⁸ The Committee on CRC in its Concluding Observations from 2005, and CESCR's Concluding Observations from 2013, have expressed their concern over the large number of children below the age of 15, particularly in rural areas, who are involved in child labour, especially in the informal sector, including carpet weaving and other traditional family businesses.

In relation to poor families, work and school have to be adapted to a schedule that allows both. Parents must be given reasons that will convince them that educating their girls would be economically beneficial (efficient).¹⁸⁹ Registration, uniforms, food, textbooks and teaching materials that families must defray affect girls more unfavourably".¹⁹⁰

The age of labour in Iran is very low, e.g. 15 years in the Labour Code and 12 years in the Agricultural Code.¹⁹¹ This increases the possibility of children workers, since parents are not conducting any illegal acts, when wanting to get their children contribute to the household of the family instead of enrolling them in schools.

¹⁸⁶ UN Human Rights Committee, General Comment 28, Equality of Rights Between Men and Women, CCPR/C/21/Rev.1/Add.10, 2000, para. 23

¹⁸⁷ CESCR: Concluding Observations, 10 June 2013, Supra n. 145, para. 19

¹⁸⁸ Chahreman, Sasan: *Laws Are Not Enough: An Interview with Mehrangiz Kar on Children's Rights*, Payvan Iran News, 10 May 2007

¹⁸⁹ CESCR GC 13, para. 6 (c), and Tomasevski, Katarina: Preliminary Report, 13 January 1999, Supra n. 14, para. 60-61

¹⁹⁰ Villalobos, Mr. V. Munoz: Girls' right to education, 8 February 2006, Supra n. 6, para. 66

¹⁹¹ Committee on CRC: Concluding Observations, 31 March 2005, Supra n. 141, para. 68
CESCR: Concluding Observations, 10 June 2013, Supra n. 145, para. 20

3.8.3 Culture

Iranian culture can be classified as a patriarchal system, which involves a system of supremacy of men over women and strict gender roles. This has a significant influence on the realization of girls' right to education, as it merely excludes them due to practices such as early or unwanted marriages, pregnancies and motherhood.¹⁹² Such practices are more prevalent in rural areas of Iran. Therefore, education of women from rural and small towns has been more influential, since it has given them the chance to leave their small communities and get independence.¹⁹³

Furthermore, the focus of Iranian laws is the protection of the family, not of the child. This includes the principle of guardianship, which is influential upon children. The father is most often the lawful guardian of the child, which in fact means that the child's view is not taken into account in judicial decisions, e.g. divorce, family and through their education. The child's view is represented through its father, paternal father or guardian. This affects girl children negatively in relation to the minimum ages of majority, criminal responsibility and marriage.

Furthermore, within article 21 of the Iranian Constitution women are perceived as individuals that must be protected by their guardians or the government. Children are not only subject to decisions by their guardians; women and girl children are also individuals, who must be protected. This creates an imbalance between men and women.

It must be assessed that cultural barriers in Iran have a significant impact on the attitude towards girls'. It must be noted that the purpose of girls' education is also to "facilitate those changes by building in all persons the capacity to respect and exercise human rights..."¹⁹⁴, whereby patriarchalism can be eradicated.

3.8.4 Indirect barriers: Higher Education

The right to work is protected by article 28 of the Constitution of Iran stating that: "every person is entitled to choose the employment he wishes, so long as it is not contrary to Islam

¹⁹² Villalobos, Mr. V. Munoz: Girls' right to education, 8 February 2006, Supra n. 6, para. 15-17 and 71

¹⁹³ Rezai-Rashti, Goli M.: *The Future of Iran: Educational Reform – Women and Education in the Islamic Republic of Iran: Repressive Policies, Unexpected Outcomes*, Legatum Institute, 2012, p. 9

¹⁹⁴ CESCR: Concluding Observations, 10 June 2013, Supra n. 145, para. 22

or the public interest or the rights of others...” Yet, women at the labour market in Iran generally receive jobs with lower pay rates and poor working conditions, since there is no legislation in Iran to prohibit gender-based discrimination in the field of labour and employment and to promote equal participation in the labour force in accordance with ICESCR article 6 and 7.

Women are largely represented at higher education despite the discrimination that they are facing.¹⁹⁵ However, this educational attainment does not appear to be reflected in the labour market, as women only constitute a small percentage of positions. The Special Rapporteur on Iran has reported that “compared to the global labour force, 52%, only 32% of Iranian women are actively engaged in the labour market, compared to 73% of men”.¹⁹⁶ The same conditions for careers are not applicable in Iran.

The CESCR has expressed its concern due to the low number of women in decision-making positions in the public sector, e.g. being a judge in court. What is further deteriorating the condition of women is that women can be prevented by their spouses to engage in the labour market upon a receipt of a court order, cf. the Family Protection Law article 3.¹⁹⁷

Additionally, there is a law under consideration by the Parliament of Iran, the Comprehensive Population and Family Excellence Plan, which places further restrictions on women’s employment and educational opportunities by affording relatively advantageous employment-related benefits for encouraging women to leave the workplace in order to concentrate on their traditional maternity and caregiving roles at home.¹⁹⁸

Overall, graduated women from universities around Iran are impeded in entering, participating and advancing in economic activity due to their family responsibilities as wives and mothers. The attitude towards women in Iran influences the enjoyment of equal access to employment, as it perpetuates stereotypical notions of masculinity and femininity in national employment strategies and policies inconsistent with principles of gender equality and non-discrimination.

¹⁹⁵ Rezai-Rashti, Goli M.: *The Future of Iran: Educational Reform*, Supra n. 193, p. 8

¹⁹⁶ Shaheed, Ahmed: Report of the Special Rapporteur on Iran, 28 February 2013, Supra n. 136, para. 44

¹⁹⁷ CESCR: Concluding Observations, 10 June 2013, Supra n. 145, para. 10

¹⁹⁸ Justice for Iran: *Using Rights to Do Wrong: Women’s Reproductive and Domestic Labour at the Service of Nation-Building*, Submission to the United Nations Commission on the Status of Women, Justice for Iran, January 2014, p. 17

Growing up as a girl in Iran and knowing that access to employment is constrained and that the possibility of obtaining a meaningful career development is restricted, has a tangible impact on the self-esteem and sense of dignity of girls. This is an indirect barrier; the prospect of lack of occupation does not encourage girls to study – on the contrary, it makes it seem as a useless endeavour.

4. Final Consideration

This section includes a conclusion on the human rights situation of girls' education in Iran and also deals with initiatives that Iran could implement, including an adoption of a human rights-based approach.

The education of females in Iran is not meeting the **minimum core level** of the right to education; the access to education is discriminatory towards girls and women favouring boys, regardless of this being a core obligation of the State to eradicate non-discriminatory access. Furthermore, education in Iran strives to make a difference between men and women through the curriculum, legitimized and justified on religious basis, creating a sense of inferiority that affects girls' motivation to learn. The specific legal obligation of access to free primary education is not met and there is a lack of a national education strategy to eradicate gender equality at all levels of education, which is also constitute a specific legal obligation.

Iran's policy at higher level undermines the capacity of women and it deprives them of their educational and career opportunities.

Iran is not taking any deliberate, concrete and targeted steps to promote and fulfil the right to education of girls, as *de jure* and *de facto* educational discrimination is not addressed. The lack of realization of the right to education is not due to incapacity, but rather unwillingness and lack of political will to implement and enforce Iran's legal commitments in national and international law.

Using the structure, process and outcome category, the legal framework in Iran, meets the structural indicators, as there are legal instruments that can facilitate the realization of the right to education.¹⁹⁹ Yet, the government's strategies are targeted with an intention to preserve the traditional role models, where girls and women remain in the private sphere. The strategies are clearly not designed to eliminate gender segregation and inequality.

The consequences of lack of education of girls are numerous, as it leads to a spiral of denied rights, resulting in early marriage and childbearing. The fact that women gets access to school does not make them sustaining themselves or helping their parents, especially when women have no access to employment, have no choice whether to marry and bear children and have

¹⁹⁹ Kalantry, Sital, Getgen, Jocelyn E. and Koh, Steven Arrigg: "Enchanting Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR in Economic, Social and Cultural Rights", *Supra* n. 13, p. 239

no opportunities in political representation. Thus, getting an education is unattractive for girls' parents and girls.²⁰⁰

In regards of child marriages, girls that get married transmit their fate into the next generation. Also, this practice makes girl children more vulnerable and the different minimum age between boys and girls in Iran clearly discriminates on the basis of sex. Not only does the practice of child marriages violate several rights in international instruments, it is also limits the development of the child.

In order to stop discrimination towards girls in and through education, a formal prohibition of discrimination must be followed with steps to redress the “the heritage of such denials.”²⁰¹

Iran must adopt **anti-discrimination legislation** to prohibit any policy and tradition that directly or indirectly nullify the enjoyment of the right to education for girls, *i.e.* that Iran must take legislative and other measures, including sanctions and legislation on customs and practices that constitute discrimination, and apply such measures against any person as organization or enterprise.

In addition, Iran must take initiatives to ensure that families do not give preferential treatment to boys by information and awareness-raising campaigns. Such campaigns must be directed to the whole society in general. People need to understand the importance of girl being able to go to school, that there is no gap between preserving your culture and letting girls attend school – these are not incompatible features. Also, Iranian parents and children must become aware of the right to an education, their opportunities within education and the mechanisms to claim the right.

Katarina Tomasevski suggests a **rights-based approach on education**, which would include “human rights education that empowers children and transform society towards a rights-respecting society.”²⁰² The rights-based approach is based on principles as participation, accountability, non-discrimination and equality, empowerment and legality.²⁰³ Rights-based education implies that the process of education, *i.e.* teaching and learning is in conformity

²⁰⁰ Tomasevski, Katarina : Annual report of the Special Rapporteur on Education, E/CN.4/2002/60, 7 January 2002, para.40 and 60

²⁰¹ Tomasevski, Katarina: The Right to Education, Report Submitted by the Special Rapporteur on Education, E/CN.4/2004/45, para. 55

²⁰² UNICEF: *A Human Rights-Based Approach to Education for All*, UNICEF, 2007, p. 12

²⁰³ OHCHR: *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, OHCHR, 2006, p. 12

with human rights standards. It will ensure the same criteria applies for boys and girls at all levels of education and in the curricula to promote equality and non-discrimination, while always taking the best interest of the child into account. This would lead to children being treated with dignity and respect, which will overcome discrimination and build capacity. Hence, human rights would be respected in education; access to education as well as its quality would be addressed, as this is necessary for a rights-based approach in which these two aspects are interdependent and interlinked.²⁰⁴

In order to be successful, a human rights-based approach to education must be supported by general public policies that also take a human rights approach in order to address indirect barriers, including traditions and practices. This, in Iran, tend to undermine and restrict girls and women's human rights, self-determination and autonomy, significantly. Multiple barriers are impeding girl children's right to education. Therefore, laws must eliminate child marriages, eradicate child-labour and increase employment opportunities for women to ensure that a right-based approach to education is realized.

Furthermore, the context of Iran as a Muslim country with Islam as its State religion cannot be neglected in the pursuing of the right to education to girls. The Iranian government uses Islam as a political tool, and this can be challenged. **Islamic sources** can be used to protect women and their rights. As an example, in Afghanistan religious leaders were tapped saying messages, which spread knowledge about rights of women in Islamic Law, as people are more willing to accept instructions based on religion.²⁰⁵

There is an equal right to education within Islamic sources and this information can be used to raise awareness to parents as well as the various State actors to improve the position of girls' and women in education, as the approach taken by the Iranian authorities is a deviation from genuine Islamic principles.

In regards of the **4-A scheme**, schools in Iran must be improved and made **available**. More teachers, in particular female teachers, must be offered in rural areas of Iran. Furthermore,

²⁰⁴ UNICEF: *A Human Rights-Based Approach to Education for All*, UNICEF, 2007, p. 27

²⁰⁵ The project is supported by UNDP cf.

UNDP: In Afghanistan, mullahs use Islam to protect women and their rights,
<http://www.undp.org/content/undp/en/home/ourwork/womenempowerment/successstories/in-afghanistan--mullahs-use-islam-to-protect-women-and-their-rig/>

women teachers will encourage girls' attendance. Teacher needs to understand the importance of girls' education and to treat girls' equally.

Children access the public sphere when they enrol in the educational system. The treatment of children will have a long lasting impact on them. Therefore it is necessary that teachers in Iran be trained with a sense of gender perspective in order to use their superior position to improve the conditions of girls and the attitude of students towards gender equality.²⁰⁶ Teaching must be controlled, not to brainwash and promote strict policy of gender inequality, but in order to monitor whether a rights-based education is carried out.

Iran must take positive measures to ensure enrolment of girls in the whole country, that the registration fee and birth registration is not a requirement to **access** to education, and that alternative solutions are found for impoverished families, e.g. programmes that offer economic compensation for poor families so that their daughters can be sent to school.²⁰⁷

Iran's education must include human rights teaching, its principles must be applied throughout the system and traditions must be identified and eradicated to ensure non-discrimination and equality to meet the **acceptability** obligation. Iranian curriculum must be reviewed to eliminate male bias and insensitivity to women and girls. Iran must review and renew their curricula in schools cf. the **adaptability** requirement, to eliminate gender stereotyping, which it threatens girls' emotional security and provides a curriculum that is insensitive to gender issues²⁰⁸. A rights-based approach will contest this, it would remove the expectations given of girls and women in textbooks, curricula and more female figures would appear in these.

Overall, the systematic and widespread discrimination of girls and women in Iran both *de jure* and *de facto*, mostly due to a patriarchal attitude towards the gender stereotyping, must be challenged by providing educational institutions, which meet the minimum core obligations of the right to education. The authorities in Iran have to adopt anti-discriminatory legislation. Furthermore, a rights-based approach must be in education policies, as this will ensure a sustainable development, empower girls and lead to a discourse change away from

²⁰⁶ Villalobos, Mr. V. Munoz: Girls' right to education, 8 February 2006, Supra n. 6, para. 128-134

²⁰⁷ Ibid. para. 148-152

²⁰⁸ Ibid. para. 98

discrimination. The requirements in education, which are structured in the 4-A Scheme, must be improved. Also, Islam can be used as a tool to improve girls' right to education.

5. Bibliography

5.1 Books

Alfredsson, Gudmundur and Tomasevski, Katarina: *A Thematic Guide on Documents on the Human Rights of Women*, Martinus Nijhoff Publishers, 1995

Alfredsson, Gudmunder: “The Right to Human Rights Education”, in Eide, Asbjorn. Krause, Catarina and Rosas, Allan (eds), *The Right to Education in Economic, Social and Cultural Rights*, Martinus Nijhof Publishers, 2001

Eric Hanushek: “Schooling, Gender Equity and Economic Outcomes”, in Tembon, Mercy and Fort, Lucia: *Girls’ Education in the 21st Century: Gender Equality, Empowerment and Economic Growth*, The World Bank, 2008

Fennel, Shallaja and Amot, Madeleine: *Gender Education and Equality in a Global Context – Conceptual Frameworks and Policy Perspectives*, Routledge, 2008

Frostell, Katarina and Scheinin Martin: “Women”, in Eide, Asbjorn. ,Krause, Catarina and Rosas, Allan (eds), *The Right to Education in Economic, Social and Cultural Rights*, Martinus Nijhof Publishers, 2001

Jawad, Haifaa A.: *The Rights of Women in Islam – An Authentic Approach*, Macmillan Press LTD, 1998

Kalantry, Sital, Getgen, Jocelyn E. and Koh, Steven Arrigg: “Enchanting Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR in Economic, Social and Cultural Rights”, in Ssenyonjo, Manisuli (ed), *Economic, Social and Cultural Rights*, ASHGATE, 2011

Kamali, Mohammad Hashim: *The Right to Education, Work and Welfare in Islam*, Islamic Text Society, 2010

Mayer, Ann Elizabeth: “The reformulation of Islamic thought on gender rights and roles”, in Akbarzadeh, Shahram and MacQueen, Benjamin (eds), *Islam and Human Rights in Practice: Perspectives Across the Ummah*, Routledge, 2008,

Nowak, Manfred: “The Right to Education”, in Eide, Asbjorn. Krause, Catarina and Rosas, Allan (eds), *The Right to Education in Economic, Social and Cultural Rights*, Martinus Nijhof Publishers, 2001

Reidel, Laura: “What are Cultural Rights? Protecting Groups With Individual Rights in Economic, Social and Cultural Rights”, in Ssenyonjo Manisuli (ed), *Economic, Social and Cultural Rights*, ASHGATE, 2011

Sen, Amartya: *Idea of Justice*, The Belknap Press of Harvard University Press, 2009

Sen, Amartya: *Development as Freedom*, Oxford University Press, 1999

Sporre, Karin and Mannberg, Jan: *Values, Religion and Education in Changing Societies*, Springer, 2010

Spring, Joel: *The Universal Right to Education – Justification, Definition and Guidelines*, Lawrence Erlbaum Associates, 2000

Tomasevski, Katarina: *Education Denied – Cost and Remedies*, Zed Books, 2003

Tomasevski, Katarina: *Human Rights Obligations in Education – The 4-A Scheme*, Willem-Jan van der Wolf, 2006

Tomasevski, Katarina : “Indicators”, in Eide, Asbjørn. Krause, Catarina and Rosas, Allan (eds), *The Right to Education in Economic, Social and Cultural Rights*, Martinus Nijhoff Publishers, 2001,

Tomasevski, Katarina: *Women and Human Rights*, Zed Books, 1993

Wadud, Amina: *Inside the Gender Jihad - Women’s Reform in Islam*, Oneworld Publications, 2006

5.2 Cases

Brown v. Board of Education, Supreme Court of the United States, 17 May 1954

Bellamy v. McMickens, US District Court of the Southern District of New York, 15 July 1988

Campaign for Fiscal Equity, Inc. v. State of New York, Courts of Appeal New York, June 26 2003

Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium (merits), ECtHR, 23 July 1968

Cyprus v. Turkey, ECtHR, 10 May 2001,

Free Legal Assistance Group and Others v. Zaire, African Commission on Human and Peoples' Rights, Comm. No. 25/89, 47/90, 56/91, 100/93, October 1995

State of Maharashtra v. Vikas Sahebrao Roundale and Others, Supreme Court of India, 11 August 1992

The Yean and Bosico Children v. Dominican Republic, Inter-Am Ct. H.R., (Ser. C) No. 130, 8 2005

Unni Krishnan, J.P & Ors. V. State of Andhra Pradesh & Ors, Supreme Court of India, 04 February 1993

5.3 Conventions/Declarations/General Comments/ Iranian Domestic Law

African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October, 1986

American Convention on Human Rights "Pact of San Jose, Costa Rica", adopted 22 November 1969, entered into force 18 July, 1978

American Declaration of the Rights and Duties of Man, adopted April 1948

Arab Charter on Human Rights, adopted May 22 2004, entered into force March 15, 2008

Cairo Declaration on Human Rights in Islam, adopted 5 August 1990

Charter of Women's Rights and Responsibilities in the Islamic Republic of Iran, 21 September 2004, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_205795.pdf

Civil Code of the Islamic Republic of Iran, 23 May, 1928 available at: <http://www.refworld.org/docid/49997adb27.html>

Constitution of the Islamic Republic of Iran, adopted 24 October 1979, effective 03 December 1979

Charter of the United Nations, signed 26 June 1945, effective from 24 October 1945

The Dakar Framework for Action, Education for All: Meeting our Collective Commitments, adopted by the World Education Forum, 26-28 April 2000

First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 20 March 1952

International Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 December 1979, entered into force 03 September 1981

International Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990

International Convention on the Rights of Persons with Disabilities, adopted 13 December 2006, entered into force 3 May 2008

International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, entered into force 3 January 1976

International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Document E/CN.4/1987/17

Protocol of San Salvador, adopted 17 November 1988, entered into force 16 November 1999

The International Labour Organization Convention no. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, adopted 27 June 1989, entered into force 05 September 1991

UN Committee of the Right of the Child (CRC), General Comment 1: The Aims of Education, CRC/GC/2001/1, 2001

UN Committee of the Right of the Child (CRC), General Comment 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 2005

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 3: The nature of States parties' obligations, E/1991/23, 1990

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 11: Plans of Action for Primary Education, E/1992/23, 1999

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 13: The right to education, E/C.12/1999/10, 1999

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 14: The Highest Attainable Standard of Health, E/C.12/2000/4, 2000

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights, E/C.12/2005/4, 2005

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 18: The Right to Work, E/C.12/GC/18, 2005

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2009

UNESCO Convention against Discrimination in Education (adopted 18 December 1979, entered into force 3 September 1981) UNGA Res 34/180

UNGA's 2006 Resolution on the Rights of the Child, A/RES/60/231, 11 January 2006

UN Human Rights Committee, General Comment 28, Equality of Rights between Men and Women, CCPR/C/21/Rev.1/Add.10, 2000

UN Millennium Declaration, A/RES/55/2, 18 September 2000

Universal Declaration of Human Rights, adopted 10 December 1948

Vienna Declaration and Programme of Action, adopted 25 June 1993

World Declaration on Higher Education for the Twenty-First Century: Vision and Action, adopted 9 October 1998 by World Conference on Higher Education

World Declaration on Education for All, UNESCO, Jomtien, 1990

5.4 Journals/Reports/Articles

Alkire, Sabina: *Measuring the freedom aspects of capabilities*, 2005, section: Opportunity and Process Freedoms, Global Equity Initiative, Harvard University, available at: https://www.aeaweb.org/assa/2005/0107_1430_0104.pdf

Alkire, Sabina: *Subjectiv Quantitative Studies on Human Agency*, Social Indicators Research, 2005, available at: <http://www.ophi.org.uk/wp-content/uploads/Alkire-Subjective-Agency.pdf>, sections: Human Agency, Empowerment and Subjective Agency Measures

Bezhan, Frud: *Iran To Extend Gender Segregation to School Textbooks*, Radio Free Europe, Radio Liberty, 18 January 2012, available at: http://www.rferl.org/content/iran_gender_segregation_school_textbooks/24455032.html, and

Chahreman, Sasan: *Laws Are Not Enough: An Interview with Mehrangiz Kar on Children's Rights*, Payvan Iran News, 10 May 2007

Committee on the Rights of the Child: Report on the eighth session, CRC/C/389-27, January 1995, General debate on the girl child, 21 January 1995, Annex V

Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Iran, Islamic Republic of, CRC/C/15/Add.123, 24th Session, 2000

Committee on the Rights of the Child, Concluding Observations: The Islamic Republic of Iran, 31 March 2005, CRC/C/15/Add.25431

Committee on Economic, Social and Cultural Rights: Concluding Observations on the Islamic Republic of Iran, 10 June 2013, E/C.12/IRN/CO/2

Coomans, A.P.M., “*Identifying the Key Elements of the Right to Education: A Focus on its Core Content*”, paper submitted to the Day of General Discussion of the UN Committee on the Rights of the Child on Article 4 of the Convention, available at www.crin.org

Duthiers, Valdimir, Karimi, Faith and Botelho, Greg: *Boko Haram: Why terror group kidnaps schoolgirls, and what happens next*, CNN, 02 May 2014, available at: <http://edition.cnn.com/2014/04/24/world/africa/nigeria-kidnapping-answers/>

EFA Global Monitoring Report 2013/4: *Teaching and Learning: Achieving Quality For All*, UNESCO, 2014

Grown, Caren. Gupta, Geeta Rao and Kes, Aslihan: *Taking Action: achieving gender equality and empowering women*, UN Millennium Project Task Force on Education and Gender Equality 2005, Earthscan London, 2005

Human Rights Watch: *Iran: Ensure Equal Access to Higher Education – Scrap Policies that Ban Students From Studies on Basis of Gender*, Human Rights Watch News, September 22, 2012, available at: <http://www.hrw.org/news/2012/09/22/iran-ensure-equal-access-higher-education>

Husain, Mishal: *Malala: The girl who shot for going to school*, BBC News, 07 October 2013, available at <http://www.bbc.co.uk/news/magazine-24379018>

Justice for Iran: *Using Rights to Do Wrong: Women’s Reproductive and Domestic Labour at the Service of Nation-Building, Submission to the United Nations Commission on the Status of Women*, Justice for Iran, January 2014

Nayyeri, Mohammad Hossein: *Gender Inequality and Discrimination: The Case of Iranian Women*, Iran Human Rights Documentation Center, March 2013

Nussbaum, Martha: *Women’s Capabilities and Social Justice*, Journal of Human Development, Vol. 1 No. 2, 2000

OHCHR: *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, OHCHR, 2006

Paivandi, Saaeed: *A discriminatory educational discourse*, in Danesh, Taririh and Kashefi, Roya (eds), *Iran Human Rights Review: Youth*, The Foreign Policy Centre, 2012, available at: <http://fpc.org.uk/fsblob/1482.pdf>

Paivandi, Saeed: *Discrimination and Intolerance in Iran’s Textbooks*, Freedom House, 2008

Rezai-Rashti, Goli M.: *The Future of Iran: Educational Reform – Women and Education in the Islamic Republic of Iran: Repressive Policies, Unexpected Outcomes*, Legatum Institute, 2012

Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, A/HRC/22/48, 07 May 2013

Sayami, Omar: *Iran: an Afghan Free Zone?!*, Justice for Iran, June 2012, p. 6, available at: <http://justiceforiran.org/wp-content/uploads/2012/06/Iran-anAfghanFreeZone-layout-Final.pdf>

Shaheed, Ahmed: Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, A/67/369, 13 September 2012

Shaheed, Ahmed: Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, A/HRC/22/56, 28 February 2013

Shaheed, Ahmad: Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, A/68/503, 4 October 2013

Shahinian, Gulnara: Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, A/HRC/21/41, 10 July 2012, para. 16-17

Tomasevski, Katarina: Annual Report of the Special Rapporteur on the Right to Education, E/CN.4/2001/52, 11 January 2001

Tomasevski, Katarina: Annual report of the Special Rapporteur on the right to education, E/CN.4/2002/60, 7 January 2002

Tomasevski, Katarina: *Human rights obligations: making education available, accessible, acceptable and adaptable*, Right to Education Primers no. 3

Tomasevski, Katarina: *Manual on Rights-Based Education - Global Human Rights Requirements Made Simple*, Asia and Pacific Regional Bureau for Education, UNESCO Bangkok, 2004

Tomasevski, Katarina: Preliminary Report of the Special Rapporteur on the Right to Education, E/CN.4/1999/49, 13 January 1999

Tomasevski, Katarina: The Right to Education, Report Submitted by the Special Rapporteur on the Right to Education, E/CN.4/2004/45

UNDP: *In Afghanistan, mullahs use Islam to protect women and their rights*, available at: <http://www.undp.org/content/undp/en/home/ourwork/womenempowerment/successstories/in-afghanistan--mullahs-use-islam-to-protect-women-and-their-rig/>

UNICEF: *A Human Rights-Based Approach to Education for All*, UNICEF, 2007

UNICEF: *Girls' Education in the Islamic Republic of Iran*, UNICEF Iran Information Series, 2006, UNICEF: available at: http://www.unicef.org/iran/resources_1609.html,

UNICEF: *Opening up education to girls in Iran's poorest province*, UNICEF, 25 May 201

UNICEF Statistics: Iran, Islamic Republic of, available at: http://www.unicef.org/infobycountry/iran_statistics.html

Vega, Connie de la: *The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?*, Harvard Blackletter Journal Vol. 11, 1994

Villalobos, Mr. V. Munoz: *Girls' right to education*, report by the Special Rapporteur on the Right to Education, E/CN.4/2006/45, 8 February 2006

Villabos, Mr. Vernor Munoz: *The right to education*, report submitted by the Special Rapporteur on the Right to Education, E/CN.4/2005/50, 17 December 2004

Villalobos, Mr. V. Munoz: *Sexual education*, report by the Special Rapporteur on the Right to Education, A/65/162, 23 July 2010