

## **A Longer Walk to Freedom**

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## Inspiration

The title for this Policy Brief is inspired by Nelson Mandela’s autobiography – because the educational transformation advocated for has parallels to the struggle to dismantle apartheid, indeed has parallels to all human rights’ movements – abolishment of slavery, suffragism, feminism, the civil rights movement, and various independence movements.

## Historical Context

The first international recognition of Education as a Right dates to the Universal Declaration of Human Rights (UDHR) in 1948, which suggests that the Rights vs Investment debate could not have begun before that. Furthermore, Boisvert<sup>1</sup> (2022) dates the beginning of the discourse of education for Human Capital development, which is now the dominant narrative in “education as an investment”, to the 1960s.

However, while we now consider public-funded education to be a hallmark of a democracy, this was not how such systems originated – they were institutions of indoctrination, with origins in the late 18<sup>th</sup> century (Paglayan<sup>2</sup>, 2022). Many of the practices that we currently identify as supporting the Right to Education, such as compulsory schooling<sup>3</sup>, pre-defined curricula<sup>4</sup>, and certified teachers<sup>5</sup> who are responsible for the provision of education, date back to this origin.

## The UN Convention on the Rights of the Child (CRC, 1989) – Impact, and lack thereof

Under this treaty, for the first time in history, children were recognized as rights’ holders, as the subjects, and not merely the objects, of rights.

That children were previously the object of rights is evident from the wording of the UDHR, § 26 2. “Education shall be directed to” – this is education “done to” the recipient – where the recipient has no say in the matter. This same language is used in the two binding treaties that established Education as a Right: the Convention Against Discrimination in Education (CADE, 1960, § 5 1. (a)) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966 § 13 1.).

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<sup>1</sup> [“Education for what? Human capital, human rights, and protection discourses in the COVID-19 response”](#), Boisvert K., 2022

<sup>2</sup> [“Education or Indoctrination? The Violent Origins of Public School Systems in an Era of State-Building”](#), Paglayan A., 2022

<sup>3</sup> In Rights Treaties, it is education that is compulsory (i.e. the state is obliged to make available educational resources) and not schooling; nevertheless, these two are largely considered to be equivalent, and many countries’ laws on compulsory education (including Sri Lanka) are actually worded as compulsory schooling. This was [brought to the attention of the UN Committee on the Rights of the Child](#) by several human rights defenders, including the author, on November 20<sup>th</sup> 2023 but no response has been received to date.

<sup>4</sup> There are numerous documents in the rights discourse referring to what “good curricula” should include, there are none that argue for education without a predefined curriculum.

<sup>5</sup> ditto

Moreover, the UDHR (§ 26 3.) grants Parents the right to choose the education for their children, and this was extended to include legal guardians in CADE § 5 1. (b) and ICESCR § 13 3., but nowhere does the child have a say in their own education.

The CRC, in recognizing children as the subjects of their own rights, articulated that children have a Right to be Heard (§ 12) with the assurance for the child the right to express his/her views freely in all matters affecting the child, and for those views to be given due weight.

It also did not repeat the clause of parents or legal guardians choosing the education for their children, and instead provided for them (and extended family or community as provided by custom) the responsibility, right and duty to provide appropriate direction and guidance to in the exercise by the child of the rights in the convention – i.e. not arbitrary direction and guidance towards outcomes decided by the adult (which would not necessarily recognize the child as the subject of rights), but for exercising their rights.

However, it unfortunately shot the Right to be Heard in the foot by including a gaslighting qualification requiring that child be “capable of forming his or her own views”. Who is assessing the capability of the child to form their view? Clearly not the child, because from their perspective, the presence of a view is evidence that they are capable of forming a view. This is, then, a license for adults to disregard the views of the child.

Furthermore, in § 29 1. it repeated the phrase “directed to”.

It was only twenty years later, in 2009, in General Comment 12<sup>6</sup>, that this was rectified, with § 20 asserting that “States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.”

The General Comment also included 10 articles (§ 105 – 114) on the Child’s Right to be Heard in Education. Nevertheless, it took a further 13 years to actually<sup>7</sup> hear what children and young people wanted from education – the Youth Declaration<sup>8</sup> at the Transforming Education Summit in 2022.

Why did it take 74 years, counting from the year the right to education was recognized, for the world to hear what young people wanted from education?

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<sup>6</sup> [General Comment 12 \(Right to be Heard\) of the CRC](#)

<sup>7</sup> It is possible that there were attempts made by member states to follow these recommendations

<sup>8</sup> [Youth Declaration at the TES 2022](#)

## **Children as Chattel, as Cherubs, and Assets**

Historically, children were chattel. Fathers could sell their children, much like chattel slaves were traded. And in the early years of the United States, a father had the right to sue a physician who treated his son or daughter perfectly properly but without the father's permission because such an intervention contravened the father's right to control the child (Holder<sup>9</sup>, 2009). The original coercive model of public funded education treated children as chattel – they had no human rights at all. They did not have to consent to work, they could be forcibly shipped out to the colonies where there was demand for child labour, and of course their consent was not sought when they were subjected to coercive education.

The likes of Rousseau, Locke, Froebel, and Vygotsky, advocated for a different perspective: to see children as vulnerable and innocent cherubs, worthy of nurturing and protection, and not to be exploited. This has replaced children as chattel<sup>10</sup> as the dominant narrative.

This is the perspective underpinning Progressive Education and gave rise to educational paternalism, where children have rights, but these rights are not inalienable – they can be restricted by beneficent adults for the best interests of the child.

Education as we know it today, inherited pedagogical practices from both of these perspectives. Kohn<sup>11</sup>, a leading contemporary advocate for Progressive education, argues that a school can be ranked on how progressive it is based on several factors. On the other hand, Matusov<sup>12</sup> (2021) argues that Progressive Education is what makes conventional education bearable.

In the meantime, the economic value of children has shifted from being chattel to assets to be developed by education for more gainful employment in the future, the Human Capital theory advocated by actors such as the World Bank and the OECD. Even the Rights discourse (in its unwavering focus on the elimination of illiteracy – even as recently as the SDGs) is influenced by Human Capital theory.

It is in this mish-mash of perspectives that the UN CRC was formulated. While it makes great advances in the recognition of a child as the subject of rights, even its authors fell victim to prevailing norms about childhood when they permitted children to be gaslit.

## **Comparisons with other liberation struggles**

In any system of oppression, the beneficiaries of the oppression resist the liberation struggles of the oppressed. That is why Mandela had a long walk to freedom. That is why the struggle to end chattel slavery did not end with the emancipation of slaves, nor with the Civil Rights

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<sup>9</sup> ["From Chattel to Consenter: Adolescents and Informed Consent"](#), Holder A., 2009

<sup>10</sup> Nevertheless, children are still trafficked as chattel and notions of children as economic assets still remain.

<sup>11</sup> ["Progressive Education. Why It's Hard to Beat, But Also Hard to Find"](#), Kohn A.

<sup>12</sup> ["Progressive Education is the Opium of the Educators"](#), Matusov E., 2021,

movement, but still continues today. Suffragism may have won equal voting rights for women, but they still struggle for equal representation and for equal rights. The struggle for children to be treated with dignity as full human beings is much younger than all of those examples.

Who are the beneficiaries of the oppression of children by not recognizing that they are the subject of rights?

Primarily, Educators. The entire premise for the discipline of education (as it is currently understood) is that children cannot learn without being educated by well-meaning, qualified, adults. Children must be projected as incapable of autonomy (much like chattel slaves and women were considered as incapable of autonomy, and are still considered inferior by those who still benefit from the oppression) to justify the industries of teaching (by paternalistic teacher-saviours<sup>13</sup>), curriculum development, text book publishing, and assessments.

Of course, it is not only educators who benefit:

Employers also benefit – because they don't want “nuisance” employees who are aware of, and are ready to fight for, their rights, as it makes it harder to exploit them economically. This is perhaps why none of the educational programs that “prepare people for future work” include labour rights?

Politicians also benefit: They don't want “nuisance” citizens who are aware of, and are ready to fight for, their rights, as it makes it harder to exploit them politically. Perhaps this is why there is little or no education on Human Rights in education?

### **Policy Recommendations**

Given that the struggle to fully recognize children as the subject of rights is still in its infancy, effecting policy change is a Herculean task. Nevertheless, some recommendations are as follows:

#### **In Sri Lanka:**

1. Legislate the CRC, to make child rights justiciable, and to signal to society that Child Rights deserve to be taken seriously.
2. Amend the Penal code to remove clauses enabling corporal punishment, primarily because children have a right to be free from violence, but also because it threatens the exercise of their Freedom of Expression and their Right to be Heard.
3. Elevate the Right to Education to a fundamental right in the constitution, and give legislative<sup>14</sup> protection to the Aims of Education set out in the CRC
4. Implement the recommendations in the General Comment on the Child's Right to be Heard, especially on education. It must be understood that until societal attitudes shift,

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<sup>13</sup> Analogous with White Saviourism, where the empire did not exist for the benefit of the colonizers, but to civilize primitive peoples who were incapable of self-governance.

<sup>14</sup> This is called for in § 17 of [General Comment 1 \(Aims of Education\) of the CRC](#).

there will be a tendency for children to respond with what they think adults want to hear – but this is where it must begin.

5. Introduce non-coercive Human Rights education (and especially Child Rights education, as it is an obligation under the CRC § 42) to
  - a. children via schools (while it seems counter productive to advocate for Rights by utilizing systems of coercive education, it is hard to see how this can be avoided as part of a transformational justice journey. The Human Rights Commission of Sri Lanka is already working on this) and informal methods
  - b. adults with professional contact with children (teachers, law enforcement, health care professionals, social services, etc.) via professional training and informal methods
  - c. parents and care givers by informal methods
6. Make provisions for Restorative Justice / Transformational Justice based approaches for people who have had their Child Rights violated (due to lack of recognition of those rights prior to Sri Lanka ratifying the CRC in 1991, or lack of adequate protection for the rights since ratification)
7. Encourage Human Rights Defenders to take the lead in creating spaces for children's voices to be heard, and to amplify those voices without speaking over them.

**Globally:**

1. Establish, as recommended<sup>15</sup> by the UN General Assembly, “a rights-based quality assurance system (including school self-evaluation and development planning, school inspection, etc.) for education in general and create specific quality assurance mechanisms for human rights education and Involve learners and educators directly in carrying out monitoring and evaluation processes so as to promote empowerment and self-reflection”.

Note that this recommendation includes the aim of “developing a culture of human rights, where human rights are practiced and lived within the school community and through interaction with the wider surrounding community.”

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<sup>15</sup> [Revised draft plan of action for the first phase \(2005-2007\) of the World Programme for Human Rights Education](#)