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## Revisiting the three Rs in order to realize children's educational rights: relationships, resources, and redress

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### Abstract

Education rights are many and diverse and there is a rich body of work to date that has attempted to capture them in a series of models and conceptualisations. The major challenge in the context of education and human rights does not, however, concern understanding what they are or indeed why they are necessary. Rather, it lies in the “doing” of rights—their realization. Thus, it is not the core content of education rights which form the most difficult obstacle to realization, but the barriers that obstruct their implementation. This chapter considers the realization of education rights using a new typology based on three themes: Relationships, Resources, and Redress.

### Key words

Education Rights, Realization, Implementation, Relationships, Resources, Redress,  
Children’s Rights

## Chapter 19

# Revisiting the three ‘R’s in order to realize children’s education rights: Relationships, Resources and Redress

### <1> Introduction

Education rights are included in almost all international human rights instruments and are a core feature of those that are specific to children.<sup>1</sup> Even the earliest international statement of children’s rights was dominated by education, with the Geneva Declaration on the Rights of the Child providing the prototype for the set of rights to follow: “The child must be given the means requisite for its normal development, both materially and spiritually... the child that is backward must be helped; ... The child must be put in a position to earn a livelihood ... The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men”.<sup>2</sup>

The Universal Declaration on Human Rights (1948), International Declaration on the Rights of the Child (1959) and International Covenant on Economic, Social and Cultural Rights (1966) echoed these statements and their reformulations have, in turn, been incorporated into and expanded upon within the United Nations Convention on the Rights of the Child (“CRC”). The CRC contains not one but two articles specific to education: Article 28 focuses primarily on the right of access to education at all levels and introduces a new obligation to ensure that discipline is carried out in accordance with the child’s dignity (Art. 28 (1)(d)), and Article 29 sets out ambitious goals for education. The Committee on the

Rights of the Child (“the Committee”) has captured the latter as follows: “Education must also be aimed at ensuring that life skills are learnt by every child . . . such as the ability to make well balanced decisions, to resolve conflicts in a non violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents and other abilities which give children the tools needed to pursue their options in life”<sup>3</sup>.

Moreover, while Articles 28 and 29 are dedicated to education, education is addressed in five additional provisions; there is specific mention of health education and education about drugs as well as references to the education of children with disabilities, child workers, and those in detention.<sup>4</sup> Moreover, article 6, which includes the child’s right to development, is clearly significant both in itself and as a cross-cutting principle of the Convention. Thus, the widely-cited notion that all human rights are inter-related and inter-dependent, contestable in many instances, proves itself to be largely true in the case of education; almost every provision of the CRC is directly or indirectly relevant to and/or dependent upon a child’s education and/or development.

The rights that pertain to education are many and diverse, so much so that there is a rich body of work from both academics and practitioners that has attempted to capture them in a series of models and conceptualisations. The best known of these are Eugene Verhellen’s typology of rights in, to, and through education<sup>5</sup> and Katarina Tomasveski’s 4 “A” framework which addresses the rights-based qualities of education, namely that it should be Available, Accessible, Adaptable, and Acceptable<sup>6</sup>. More recently, UNESCO has developed a right to education framework propagating Access, Quality, and Respect<sup>7</sup>; this has been adapted by scholars in a range of ways such as adding “relations” in education in order to transcend the “rights to” and “rights in” conceptualisation of education rights which focus on access and content<sup>8</sup>, and incorporating parents’ rights which are often omitted in these

conceptualisations yet are clearly integral to any discussion of children's human rights and their education<sup>9</sup>.

While all of these are helpful to those attempting to understand the span of rights that are relevant in the context of education, we suggest that the major challenge in the context of education and human rights does not, for the most part, concern understanding what they are or indeed why they are necessary. Education rights are neither complex nor, in most instances, contentious with states parties. They have featured in international human rights instruments without exception, and the relevant provisions have been adopted by states with minimal reservations<sup>10</sup>. Moreover, diverse as they are, the remit of human rights in education can be captured and explained with relative simplicity: states should be doing all that they can to make sure that children receive the highest levels of education, develop to the best of their ability in contexts where they are safe and protected, be treated equally, are taught about human rights and respect for themselves, their families and others and that their views sought and taken seriously.

Most of this is not contentious—at least on the face of it. Yet there is no country in the world where every child is receiving education that meets this descriptor.<sup>11</sup> We suggest that the major challenge in the context of education rights does not, for the most part, lie in understanding what needs to be done (the content of education rights) but the doing of it (their realization). That is not to say that some of the human rights challenges faced by children, their parents, and educators are not problematic. Schools are often the child's (or the family's) first interface with the state, a reality that provides rich soil for dispute, for example when a family's values do not align with broader social norms or when a child's autonomy rights conflict with parental values and guidance<sup>12</sup>. However, even in the instances where rights conflict, and therefore need to be unpacked and articulated, the response and resolution

of these often resides in the implementation of the rights framework, the pathways and obstacles to the so-called “realization” of rights.

With this in mind, this chapter focuses not on the core content of education rights (although it will be discussed as it arises) but the challenges and opportunities that underpin their implementation. For this we have devised a new typology based on 3 key “R’s— Relationships, Resources and Redress. We are conscious that *the ‘3 Rs’* has been a commonly-used catch-phrase, employed by educators to categorize the traditional content of education i.e. Reading, Writing and Arithmetic. It is also used frequently when children are being educated about their rights. In this instance, the ‘R’s stand for ‘Rights, Respect and Responsibility’, with the emphasis in the latter two “Rs” on teaching children respect and responsibility. Important as these are, the 3 Rs can be problematic in practice: for example, where children’s rights are presented as contingent upon them showing respect and responsibility, excluding the fact that adults should be taught to respect children and are ultimately responsible for children’s rights—not children themselves.<sup>13</sup> So, in this chapter we propose to revisit and reclaim the 3 Rs, re-envisioning them in a way that we think may be more useful to both understanding children’s education rights and how they can be made real.

## **<1> I. Relationships**

The literature on educational relationships abounds with discussion of student-teacher relationships from the perspective of student voice and children’s right to be heard and consulted under Article 12 of the CRC which affords children the right to have their views given due weight in accordance with their age and maturity on all matters affecting them. Research on children’s rights, however, tends to be normative and to direct focus on evaluation of standards away from the lived meanings and contextualization of children.<sup>14</sup>

While this research and its ensuing discussions are vital to the accountability of rights broadly, and education rights specifically, they omit educational relationships which bear great significance when considering a child's education; namely, the relationships between and amongst children and young people, as well as individual and collective relationships with adults and the wider community. Education rights pertaining to such relationships are codified in Article 29 of the CRC, an oft overlooked and underestimated article which enhances all other rights within the CRC by setting out not only content, but the purpose and quality of education, its intrinsic value, and instrumentalist function.<sup>15</sup> Article 29 provides that a child's education must be directed to development of the personality, talent, and mental and physical abilities of the child to their fullest potential, to respect for human rights, to respect for the child's parents, cultural identity, language and values, and to the preparation of the child for responsible life in a free society, as well as respect for the natural environment.

Part of the significance of article 29, according to the Committee, lies in recognition of education which reconciles diverse values through dialogue and respect—perhaps a cornerstone for establishing the relationships necessary for realization of children's education rights. In its General Comment on the aims of education, the Committee has explicitly stated that the aims of education are to “promote, support and protect the core value of the convention: the human dignity innate in every child and his or her equal and inalienable rights” and emphasizes the need for education, in the broadest sense, to be “child-centered, child-friendly and empowering.”<sup>16</sup> Educational processes must be based upon the principles and values the Convention itself articulates, stressing that education rights are not limited to curriculum content, but include skills for life such as making well-balanced decisions, resolving conflict and developing good social relationships and responsibility<sup>17</sup>—skills that are developed in relationship with others. Thus, for the realization of children's education

rights to occur authentically, there is a need to focus on the relationships through which rights are negotiated and navigated, and the processes by which these relationships are nurtured and conducted.

The links between the enjoyment of the right to education and a child's treatment in education are well documented.<sup>18</sup> Yet for effective integration of human rights values of respect, dignity, and equality into the daily realities of children at school, it is crucial that those who teach and promote these values are themselves convinced of their import in the broader picture of relationships in education.<sup>19</sup> That would include not only teaching and learning methods, but approaches to policies such as discipline, bullying, pastoral care, and child protection,<sup>20</sup> not to mention school mission statements, regulations and codes of conduct, budgeting, and recruitment.<sup>21</sup> Of course, the reality of children's rights in schools reflects both an age and power differential; this perhaps reproduces a prevailing outlook that children must be controlled in order to maintain order and *respect for others*<sup>22</sup>—a far reaching attitude that obstructs serious consideration of the respect owed to children, and which perhaps encapsulates conceptualisations of “respect” as pseudonyms for obedience and conformity. This comes despite international human rights based approaches to inclusive education and raises the issue that implementation, or realization, of fundamental equality in the school environment may require a drastic transformation of the school institution, and above all, the nature of human relationships among and between the individuals involved: students, teachers, and parents.<sup>23</sup>

Lundy and Cook-Sather took this approach in their examination of a rights-respecting pedagogy, beginning with the foundation of a rights-based approach—respect for the worth of the individual.<sup>24</sup> This foundation is fundamental to the effective and meaningful promotion of children's participation which reflects the inherent dignity of the child.<sup>25</sup> Realization of this idea involves a profound reevaluation of the status of children in society as a whole as



well as in the classroom;<sup>26</sup> this includes the nature of child-adult relationships, peer to peer relationships, and student-teacher relationships specifically. Whilst Lundy and Cook-Sather acknowledge that there are teachers whose pedagogical philosophy is based on their inherent respect for children, a review of both children's rights in education and the literature on student voice highlights that integral to the successful implementation of both is the concept of respect for the child. This resonates with other indications that children are limited and defined by their low status in educational hierarchies, and are excluded from dialogue around discipline and school conduct.<sup>27</sup> Indeed, a study by Lundy, Orr and Marshall identified concern among young people across the world about how they were treated by their teachers and their capacity for enunciating respect for and dignity of the child.<sup>28</sup>

Given that it is the influence of families and role models, peers, schooling, and media that shapes children's understanding of rights, it is vital that school cultures work to foster children's appreciation and understanding of their rights, not that they do not have rights or that their rights are restricted;<sup>29</sup> this must include implicit (or hidden) lessons as well as explicit rights education material. This is a sentiment that is stated by the Committee in its General Comment on Article 29 aims of education:<sup>30</sup> there is a need to see rights within their social and cultural framework. Children's rights, rather than being externally prescribed, are embedded in the social fabric of communities such as schools. Their rights, therefore, are not isolated from children's relational context, but exist in the ethical framework prescribed in Article 29; children's rights in the realities of children's lives are much richer than a legal instrument and its implementation—not only about rules, but about relationships and processes.<sup>31</sup> It is perhaps apt, then, to draw a distinction in the realization of children's education rights between vertical orientation of the international treaty, whereby the treaty places duties on state to respect the human rights of individuals, and the horizontal realization of a rights culture which emerges and occurs in human relationships, that is, between private

individuals. While the rich body of work to date has invested considerable energy in capturing the vertical orientation of rights, it is the context of the horizontal relation that is often central to the realization of children's rights in education, and where educating children on their rights is so vital; perhaps this is what Eleanor Roosevelt meant when she suggested that rights must gain legitimacy at ground level as the basis for achieving acceptance.<sup>32</sup> This is all the more so when considering that schools are often a child's first interface with the state. Children who not only learn about, but *experience* their rights are those who understand not only the "what" of their basic rights, but the social responsibilities that correspond with such rights.<sup>33</sup>

In such a culture where children experience their rights at local level, as well as being educated about them, children also learn to respect others because they are taught that each human being has value (or dignity) on account of being human, and that commands not only respect, but the ability to assert this right on behalf of oneself and on behalf of others.<sup>34</sup> This practice reflects the Committee's observation that children learn about human rights by watching their implementation in practice, including at school and in the community.<sup>35</sup> Moreover, this process begins very young: the Committee has emphasized that very young children have a right to an education that respects their evolving capacities as this is "crucial for the realization of their rights, and especially significant during early childhood, because of the rapid transformations in children's physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling."<sup>36</sup>

Indeed, all children, irrespective of age, are much more likely to learn democratic behaviors and values if they are reflected in the formal curriculum and the hidden curriculum, including in mission statements, codes of conduct, and democratic classroom interactions which are rights respecting.<sup>37</sup> This aspect of education rights and relationships also captures the relationships that occur from peer to peer and provides a convincing rights basis upon

which to tackle bullying and difference—a vital issue because a child’s education rights may be just as undermined by discrimination and bullying by peers as rights infringements by adult duty bearers.<sup>38</sup>

This approach to learning about human rights by watching and experiencing their implementation in practice is perhaps especially salient because in learning about their rights by example, children critically scrutinize the implementation and realization of those rights in their own lived experiences.<sup>39</sup> This might be understood as the *process* through which education rights are promoted and to which the Committee explicitly attaches importance: efforts which promote the enjoyment of other rights must be reinforced by the values which underpin the education process, not only in curriculum content, but pedagogical method and education environment.<sup>40</sup> In other words, gate-keepers of education must “practice what they teach” by modelling values not only in curriculum content but also in implicit content and community practices.<sup>41</sup> Children must be educated in a way that respects the inherent dignity of the child and enables them to fully participate in school life; this life-long process begins with rights values in the daily lives and lived experiences of children.<sup>42</sup>

Ultimately, the core principles of both children’s rights and educational relationships call for respect and shared responsibility—a partnership—that traditional hierarchies and power imbalances structured into educational institutions do not allow or support<sup>43</sup> because the same hierarchies and power structures give adults exclusive control over time, space, activities, and even to some extent, bodies.<sup>44</sup> That is, relationships and control of these relationships is conducted vertically using the two dimensional power hierarchy. What is also required for the effective realization of children’s education rights is a horizontal implementation which accounts for the multi-dimensional nature of educational relationships, both between adults and young people, and among adults and young people separately. As recently as 2009, the Committee expressed its concern at the continuing autocratic and disrespectful practices

which characterize the realities of many of the world's classrooms and explains this partly by the longstanding practices and attitudes towards both rights, and it is contended, children themselves.<sup>45</sup> The effective realization of rights lies in many ways with the sentinels of educational relationships: teachers. The crux of the matter of implementation resides in how we treat children in global classrooms.

## **<2> Case example: children's relationships with teachers in schools.**

A 2013 Court of Appeal case in Fiji showcased the centrality of dignity to classroom relationships where a 10 year old boy was rebuked for talking in class. He was ordered to the front of the class and remove his trousers; another child was instructed to remove his boxer shorts, stripping the boy to his underwear. The court found that this was degrading treatment under article 37(1) of the CRC as it constituted an assault on the boy's dignity and physical integrity.<sup>46</sup>

## **<1> II. Resources**

Education, a right with a distinct, albeit not exclusively, socio-economic character, requires resources in order to be fully realized. These resources are often a very significant portion of every country's overall public expenditure, with most allocating between 5-8% of their budget to education.<sup>47</sup> Like all socio-economic rights in the CRC, education rights come with an overarching qualification—that it will be delivered using the “maximum extent of [the state's] available resources” (article 4). Moreover, Article 28 of the Convention incorporates some additional limits on the financial expectations placed on states parties. The only absolute obligation is to ensure that primary education is “free” and “available to all”; for

secondary and vocational and higher education, the obligations are significantly less ambitious in terms of the states' obligations in relation to the financing of education. States are required to: "Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need" (emphasis added)(Art. 28(1) CRC)

Even when a state meets its goal of providing free access to schooling across 7-12 years of a child's life, there are always some children for whom a lack of resources will present a challenge to the enjoyment of their rights, not least working children who can miss out on their education in order to contribute to their family's income. Moreover, the additional and sometimes hidden costs of schooling can place children in poorer communities at a disadvantage. The Committee has expressed its concern about additional fees and charges for materials such as books, uniforms, and even teachers' salaries.<sup>48</sup> For example, it recently expressed its concern about the indirect costs of mandatory education in Spain, including textbooks, transport, and school meals, all of which can "make it difficult for children in marginalized situations to access education."<sup>49</sup> Moreover, additional costs can also come in the guise of pressure for after school tuition, so-called "shadow education,"<sup>50</sup> which places some families in poverty and skews educational advantages.

While the child rights position entails that children should not be discriminated against, the reality is that the costs of educating children are not uniform. They will be cheapest when the child fits into a set of norms—i.e., speaks the language of tuition and learns in a typical way at a reasonable pace. In most instances, the most significantly affected group are children with disabilities, especially those who require significant adaptations or present with challenging behavior. Underfunded schools respond in various ways, often by excluding the child.<sup>51</sup> The CRC has been recognized to be weak in this respect, incorporating a series of

financial get out clauses in the text of Article 23 (on children with disabilities) and, while the UN Convention on Persons with Disabilities goes further, it still leaves states with significant leeway that allows them to factor in the resources available.<sup>52</sup>

Resources are of course not unlimited and in some countries they are very limited indeed. One response to this in some settings has been to resort to privately financed schools. While this appears to be an option of choice for many resource-challenged nations, the dangers from a human rights perspective are apparent not just in terms of equality of access but also the nature and quality of the education provided. Successive Special Rapporteurs on the Right to Education have focused on this, with Kishore Singh's final report in 2015 providing a scathing attack on what he described as the "baleful effects" of commercialisation: 'Education as a public function of States is being eroded by market-driven approaches and the rapid growth of private providers, with scant control by public authorities. Privatization negatively affects the right to education both as an entitlement and as empowerment. It breeds exclusion and marginalization, with crippling effects on the fundamental principle of equality of opportunity in education. It also entails disinvestment in public education.'<sup>53</sup>

Ensuring that all children have free places in state schools is of course, only one part of the picture. A major lesson in the wake of the Millennium Development Goals (MDGs) is that getting children into classrooms is not a guarantee of the right to education, and a key reason why the Sustainable Development Goals (SDGs) include an additional focus on both quality and equality in education.<sup>54</sup> Many children attend school in classes that are too large, in buildings that are unsafe and without the books and other materials that they need to learn. Moreover, a further crucial aspect of quality relates to teachers and the resources for their training and their salaries. For example, a 2017 report of the UN Secretary General indicates that many children are not taught by trained teachers and that, the majority of

schools in Sub-Saharan Africa, for example, do not have access to electricity or potable water.<sup>55</sup> The Committee has also consistently expressed its concern about poor levels of funding for educational resources and for teacher training and employment and conditions in particular.<sup>56</sup>

Monitoring expenditure to ensure that it is both sufficient and effective is a crucial dimension to the realization of children's rights. Children's rights in public budgeting was the focus of a recent general comment by the Committee on the Rights of the Child.<sup>57</sup> This general comment specifically calls for the visibility of spending in terms of children and their rights. One of the common challenges in this context—that it is hard to separate spending on children from spending on their parents—does not usually apply in education since education is usually in a discrete ministerial department with a separate budget, making it easy to identify overall spend on children. What is sometimes less clear is how this is then allocated to particular regions at a sub-national level and whether it is being spent efficiently and effectively. For example, in its Concluding Observations on Sri Lanka, the Committee urged it “to take measures to promote, in all autonomous communities, a comprehensive assessment of the budget needs of children with a view to redistributing the resources for the implementation of children's rights, particularly regarding increased investment in education.”<sup>58</sup>

A crucial dimension of ensuring transparency and accountability is ensuring that children are offered meaningful involvement in budget decision-making.<sup>59</sup> A study of children's views that informed General Comment No. 19 suggests that children are willing and able to contribute to these decisions and many have concerns in their own contexts about waste and corruption as well as a failure to provide equality of opportunity to all children in relation to education.<sup>60</sup> Children across the world, including very young school children, identified a range of areas that needed investment, including school buildings, teacher salaries, books,

and transport to school.<sup>61</sup> Examples of good practice exist, in participatory budgeting, albeit that they tend to focus on older children and operate at a municipal rather than national level of budgetary decision-making.<sup>62</sup>

## **<2> Case example: children’s participation in resource allocation for schools.**

In Zimbabwe, the Child Participation in School Governance project supported children in more than 159 schools to participate in school budgeting. Children participated as school council representatives on the schools’ general purpose and finance committees and were involved in local-level budget tracking, monitoring and evaluation<sup>63</sup>

## **<1> III. Redress**

Rights are important because those who hold them are able to exercise agency and make autonomous decisions, negotiate with others, and transform relationships: rights bearers can *participate*, itself a human right which enables the agent to demand rights, and secure recognition of these rights.<sup>64</sup> Where rights exist, redress is possible, but there must be mechanisms for complaint otherwise there is no legal accountability.<sup>65</sup> Rights without remedies are of symbolic importance only, yet, where there is no knowledge or awareness of rights, there cannot be remedies or redress; as such, there is a fundamental need for education *for* rights as well as education *through* rights.<sup>66</sup> Of course, we acknowledge that sustainable rights respecting practice must include education on both children’s rights issues and opportunities for children to participate in legal advocacy.<sup>67</sup> Children’s Rights International Network has highlighted the need for children to know *how* to assert their rights.<sup>68</sup>

Interestingly however, in its first General Comment on Aims of Education, the Committee



does not make reference to mechanisms of redress if and when children and young people's rights are infringed by states parties and duty holders.<sup>69</sup> Given that systems and structures for redress reflect both the reality of implementation and commitment to rights and individual dignity, this perhaps reflects the broad challenges to education rights in practice. That said, children's rights can be advanced through civic action and civil protest, not only through litigation, especially considering that the majority of countries in the world do not grant direct access to judicial remedies until the age of 18.<sup>70</sup>

Consequently, we argue that redress in this context must be distinguished from litigation: actual cases taken to court to seek a remedy for a breach of children's rights, a process that more closely aligns to the *vertical* implementation of children and young people's education rights. Education is one of the most frequently litigated areas of human rights in both national and international courts.<sup>71</sup> There have been landmark cases in constitutional courts and in international human rights courts such as the European Court of Human Rights.<sup>72</sup> It is of note that these forms of redress often challenge behaviors inimical to positive *relationships* such as corporal punishment and discriminatory treatment by teachers or challenge inadequate *resources* in education generally. Yet, important as these legal actions are for the realization of children's education rights, it remains rare for legal proceedings to be initiated by children themselves. Parents and/or public interest lawyers commence these cases and children are often not a party to the proceedings; a child rights-based approach would, on the other hand, enable children to see the challenges facing them as breaches of human rights and to seek redress themselves.

The challenge for children is that the implementation and realization of their rights frequently depends on adults for their implementation; often reified, children are treated as objects who require a series of interventions rather than legal subjects of rights: interventions that are based on meanings assigned to the construct of childhood rather than the individual

person to whom it refers.<sup>73</sup> The accountability that accompanies this status as rights holders is thus “diluted,” seemingly on the assumption that because children cannot (or, more specifically, face greater challenges to) claim their rights, their denial is thereby justified. Arguably, this challenge has emerged from a vertical orientation of realization of children’s rights and does not take account of alternative, ground level horizontal realization. While redress remains a significant omission with regard to the Committee’s comments on Article 29, they explicitly address it in relation to the right to be heard and consulted under Article 12.<sup>74</sup> As Article 12 forms one of the main pillars of the CRC, and recognizing that rights contained in the CRC are interdependent and indivisible, respect for the right of children to have their voices heard within education settings, especially when their rights are breached, is fundamental to the realization of their education rights. It is through this lens that we consider *horizontal* forms of redress below.

Legislation, policy, and the stated desire to implement rights are often insufficient to uphold children’s education rights because inadequate resources, incapacity to implement policy due to insufficient awareness and training on both rights and redress for infringement of such rights, and low levels of information often render implementation ineffective.<sup>75</sup> Furthermore, for rights to have weight and value, effective remedies must be available to redress violations, a requirement that is implicit in the CRC.<sup>76</sup> In the case of children and young people’s education rights, the status of children creates real difficulties in pursuing redress for breaches of states’ obligations. Therefore there is an expectation on the part of the Committee that states pay attention to ensuring effective procedures available to children, including complaints procedures and, where rights have been breached, appropriate reparation, recovery, and rehabilitation.<sup>77</sup>

States assume obligations to implement international law on ratifying a treaty; Article 4 of the CRC obliges states parties to take “all appropriate legislative, administrative and other

measures” to realize the rights stipulated in the Convention. While the State takes on obligations, the implementation of the CRC in the lived experience of children and young people necessitates the engagement of all sectors of society, and also of children themselves.<sup>78</sup> The realization of rights requires recognition of children’s capacities and status as holders of human rights worthy of respect, as well as their protection, provision, and participation. This is apposite to the widespread paternalism of human rights approaches which views the need for protection as synonymous with passive victims<sup>79</sup> and indeed with some educational views of children’s learning as passive acceptance of adults’ ideas and knowledge.<sup>80</sup> These paternalistic views center children’s rights on their vulnerability which of course carries the risk that children and young people become defined by their vulnerabilities;<sup>81</sup> views which permeate interactions with children and legitimate their control.<sup>82</sup> We suggest that remedies to rights infringements must take account of children’s evolving capacities and competence; this demands nurturing relationships and respect in education to effect horizontal (that is, relational) realization of a rights culture which extends to remedies and redress where young people themselves have access to tools for resolution. In line with the Committee’s emphasis on the rights of all children to be heard if they are capable of expressing a view, specific efforts should be used to ensure that young children and children with disabilities are not excluded from the opportunity to seek redress and/or be heard when decisions are being made that affect them, a process that will often require appropriate information and the support of adults who are skilled in communicating with them.<sup>83</sup>

Children’s views must not only be given due weight, but decision makers and duty bearers should also inform children of decisions which affect them, explain how decisions were reached and how children and young persons’ views were considered. One example would be the decision to exclude or isolate a child in the implementation of a school

discipline policy, or the case of other punitive measures such as detentions. A child rights approach would result in the views of children being heard and taken seriously, and would also uphold respect for children's rights to receive information and ideas under Articles 13 and 17. Providing this feedback to children may prompt young persons to make alternative proposals, or to file an appeal or complaint; part of the rights realization process. Thus, remedies and procedures for complaints must exist to address non-implementation; in fact, the Committee suggests that children should have access to a person of comparable role to an ombudsman in schools in order to voice their complaints.<sup>84</sup> Children should know who this person is, how to access them, and that using these procedures will not expose them to risk of punitive reprisals. It is important that any complaint made by a young person is addressed promptly. This requires clear and unambiguous internal complaints procedures and a robust and impartial grievance policy, a move that will also require fresh perspectives on young people's "place" in education and their capacity for pursuing redress and remedies through appropriate channels. These channels include the appointment of a designated, objective "ombudsman" to implement said policies and procedures impartially and the consultation of young people and adults in doing so.

Human rights education, then, must play a central role in the redress of rights infringements; this is the case not only in terms of the education provided to children, but education staff and other duty holders must also be provided the requisite education, in line with Article 42 of the CRC. This is particularly the case considering that it is the duty of duty bearers to build the capacity of children and young people to demand their rights.<sup>85</sup> Indeed, the Committee has emphasized the centrality of rights education, not only for children, education staff, and other duty holders living in peaceful societies, but for those "living in situations of conflict or emergency"<sup>86</sup>—all the more relevant with current events and refugee crises. Tibbits terms this aspect of education as "transformational" where individuals are

enabled not only to recognize rights violations, but to commit to their prevention or redress,<sup>87</sup> perhaps in part because children come to see beings as having worth and value simply on account of their existence and not their backgrounds, achievements or characteristics.<sup>88</sup> This is significant because, as discussed above, rights do not only exist between students and teachers, but among students and their peers and between young people and their communities. Covell *et al* point to evidence of child-initiated efforts to actively redress rights infringements of other children among children in rights-respecting schools, which demonstrates a horizontal implementation of children’s rights without time consuming and costly recourse to legal redress. With regard to adult duty bearers, education for and through rights will address the Committee’s mandate for upholding the values inherent in Article 29 by constructing a values framework for all educational practices.<sup>89</sup> This would also address both the lack of awareness around rights education and lack of knowledge of rights, and the consequent suspicion around rights as a threat to adult authority, or adult competence.<sup>90</sup>

## **<2> Case example: children demand their rights**

In 2018, student survivors of a mass shooting in Florida that killed 14 students and 3 staff,<sup>91</sup> mobilized other child survivors of other gun violence and school shootings, as well as public support from across the United States. As a direct result of these protests and the public outcry, two further actions were prompted: a school walkout for 17 minutes to honor those who died, and a march on the Florida Legislature to demand tighter gun controls.

Consequently, the state of Florida passed its first piece of legislation for gun control in 20 years.<sup>92</sup> Remarkably, a number of schools planned to penalize students for walking out of school as part of this peaceful protest and others sought to prescribe “acceptable” alternative protests such as tying ribbons to school fences or moments of silence. This is a clear example of peaceful efforts at advocacy on the part of young people being limited by adults in

authority, based largely on the fact that the protestors were children, and viewed as a threat to the control that adults hold over educational spaces.<sup>93</sup>

## <1> Conclusion

In spite of the near universal acceptance of education rights across the world, global evidence repeatedly reminds us that many children in all countries struggle to enjoy their rights to education, irrespective of how these are categorized or classified<sup>94</sup>. In this chapter, we suggest that a more fruitful focus may be on implementation of the rights and in particular on ensuring respectful *relationships*, adequate and accountable *resources*, and accessible means of *redress* when rights are breached. These, are of course, often important for the realization of all children's rights. Freeman has argued that the symbolic and theoretical politics of rights are irrelevant in the lived experiences of children and young people for whom these questions and challenges revolve around issues of distributive justice.<sup>95</sup> He suggests that there is little to be gained in creating improved legal frameworks for children's rights unless resource allocation and redress are addressed.<sup>96</sup> We agree but add "*relationships*" to the list, recognizing that all three are, of course, interconnected. Moreover, establishing and maintaining respectful relationships is easier where teachers are valued and working in clean and safe classrooms with the materials they need to offer children a quality education. Likewise, systems of redress are not resource neutral. Yet, where they do exist, they can expose where there is a lack of resources and thus enable public money to be allocated where it is needed so that all children can learn in contexts that enable them to develop to the best of their ability.

As discussed, it is the *doing*, or implementation of education rights that is problematic, and it is to this salient point that we return. Freeman argued for the *demanding* of rights

which necessitates human agency.<sup>97</sup> In particular, it is the agency of children and young people upon which rests the transformation of hierarchical relationships that have the potential to transform education across the globe. In recognition of this, and in recognition of the centrality of such relationships in providing future rights respecting societies, resources and redress must support and nurture the respect upon which such relationships exist. This includes the acceptance and recognition that children and young people possess the agency with which to make these transformations, and the trust to enable and support them to do so. That is, a horizontal understanding and implementation of respect for and recognition of young people's capacities for seeking redress. Educational relationships are a microcosm of the interaction between the child and the state, where foundational understandings of citizenship and democratic values are learned.<sup>98</sup> As such, the cornerstone of rights respecting values begin at school, and it is therefore imperative that the continuing construction of such relationships is built on a judicious and steadfast foundation.

In conclusion, the significance of education rights cannot be underestimated. While they enjoy a high profile in international human rights advocacy and practice, their significance is not always fully understood or embraced in research and scholarship. Not only are education rights the route for children to enjoy all of their other rights—a recognised passport to the realisation of children's human rights more generally—they are fundamental to the human rights project more generally. The most significant precursor of rights-respecting societies is that rights-holders not only know their rights but embrace and embody the underpinning values of equality, dignity, and respect. For most people, the first interface between the home and society, between the public and the private, is school. Ensuring children's rights in, to, and through education through a focus on the 3 Rs of relationships, resources, and redress may therefore provide a way of securing a culture of respect not just for children but global society as a whole.

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