The UN Convention on the Rights of the Child, article 29: The purpose of education in relation to indigenous peoples

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Conclusions

Indigenous children in many countries have been targets of cruel assimilation policies. School systems were used as weapons in governmental wars against indigenous cultures. For many indigenous peoples education is associated with humiliating and bad experiences. However now a new time has come and many governments have acknowledged the cruelties of the past and pleaded for forgiveness. How should the school system now be used in a positive way for indigenous peoples and what are the international human rights standards on this issue? The Convention on the Rights of the Child (CRC) is the most widely ratified human rights treaty in the world. 192 states have ratified the convention. Only USA and Somalia have not completed their ratifications. The CRC is the only one of the core UN human rights treaties that specifically includes indigenous peoples.

What should determine the substance of education and its purpose? This question is ultimately linked to some fundamental questions. What is a good human being? How should a human being live his or her life? And what should our children grow up to become? In a world that is increasingly globalizing, in accelerating speed, educational decision makers are in dire need for crosscutting global values. The CRC, with its record of ratifications, codifies some of the most global values there are. This makes the convention immensely important for indigenous peoples, especially with regards to education. I will in this paper concentrate mainly on article 29 on the purpose of education. Article 29 is formulated not so much as a right, but as a standard of achievement for the substance of education. In this paper I will present a small taste of this standard. I will not deal with the question of the right to language so much, which would be more a right under article 30 rather than article 29. Article 29 provides minimum standards for the education of all children (indigenous and non-indigenous). Thus the main part of this paper is not about education for indigenous children as such, but on the purpose and aim of the education for all children.

Article 29

1. States Parties agree that the education of the child shall be directed to:
(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;

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2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

CRC Article 29 (1) is essentially about the fundamental purpose and aims of education. It is not formulated as a right or freedom, but codifies the consensus of world opinion on the basic principles of the purpose of education that the governments should protect, respect and facilitate. The whole article is relevant for indigenous children, but paragraphs (c) and (d) are of special significance. This article was subject for the first general comment by the Committee on the Rights of the Child.1 No less than 11 paragraphs of this general comment have a direct relevance for indigenous children (paragraphs 4, 6, 9, 10, 11, 13, 15, 18, 19, 21 and 24) (Committee on the Rights of the Child 2001). Given the holistic nature of the CRC there are several other articles that must be viewed in relation to article 29 (1) on the purpose of education for indigenous children.2 Also there are several regional and global human rights instruments that are relevant.3

1 From now I will refer to the Committee on the Rights of the Child only as "the Committee".
2 In addition to article 28 (on the right to education), article 29 can be seen in relation to article 2 (on non-discrimination), article 3 (the principle of the best interest of the child), article 6 (on the right to development), article 8 (on the right to identity), article 12 (respect for the views of the child), article 13 (freedom of expression), article 14 (freedom of thought, conscience and religion), article 17 (on the right to appropriate information and the media), article 19 (protection from all forms of violence), article 23 (disabled children's right to education), article 24 (2) (e) (health education), article 30 (indigenous right to culture, language and religion) and article 42 (obligation to make the CRC widely known).
Human Rights Education

CRC article 29 (1) states that education of the child shall be directed to "the development of respect for human rights and fundamental freedoms" and "the preparation of the child for responsible life in a free 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". These aims form part of one of the most fundamental and earliest principles of the United Nations on the purpose of education; namely the principle of human rights education. When the UN adopted the Universal Declaration on Human Rights (UDHR) it was the very first attempt to define the concept of human rights in the UN Charter. Today it is the cornerstone of international human rights. It has become a powerful document that codifies an important part of international customary law (Alfredson and Eide 1999: xxv, xxx). The purpose of education is defined and codified as one of the fundamental principles of human rights by the UDHR. Article 26 (2) proclaims that:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

These principles were later repeated by the Covenant on Economic, Social and Cultural Rights (CESCR) article 13 (1). CESCR also added that all persons should be thought "understanding, tolerance and friendship" towards "ethnic" groups too. The CRC article 29 (1) have added "persons of indigenous origin" and the preparation of the child for responsible life in a free society, in the spirit of "equality of sexes". The focus of respect for indigenous peoples has since been established as part of the definition of the purpose of education and the concept of human rights education. When the UN adopted the Plan of Action for the United Nations Decade for Human Rights Education (1995-2004) they needed to define the concept "human rights education". In that definition "indigenous peoples" is included without any wavering. One might say that the concept of human rights education is vague and illusive, but nevertheless it is one of the most fundamental principles of human rights that specifically include indigenous peoples. Vernor Muñoz Villalobos (2004) points out that human rights education is a fundamental prerequisite for the quality of education. He eloquently explains that "Quality [of education] cannot be reduced to a matter of quantifiable efficiency; rather, it encompasses the depth of human commitment to the present and future generations" (Villalobos 2004: paragraph 108).

Non-discrimination

One of the most important principles of human rights for indigenous children is non-discrimination. This is a fundamental overarching principle of human rights law. When the UN Charter was adopted in 1945 non-discrimination clauses became an important part of written and recognized international law. Today the Charter has a unique position because it plays a constitution like role in the international community of states (Abrahamson 2008: 5-6). Keeping the atrocities of the World War II in mind it is hardly surprising that non-discrimination became one of the most important principles of the new world order. Non-discrimination is in fact the only specification of the content of human rights in the UN Charter. The principle of non-discrimination is based on the principle of dignity and equality of all human beings as expressed in UDHR article 1 that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

Freedom from discrimination

The Committee strongly emphasise the importance of non-discrimination. On the purpose of education, based on article 29 (1), the Committee elaborates two main state obligations: 1) education free from discrimination, 2) education for combating discrimination and prejudices. First of all the school system itself should not be discriminatory towards indigenous children. This obligation must be seen in relation to article 2 of the CRC which specifically codifies non-discrimination as an overarching principle for the interpretation of the whole convention. The Committee states that:

Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect (Committee on the Rights of the Child 2001: paragraph 10).

8 Be the UN Charter articles 3 (3), 13 (1b), 55 (c) and 76 (c) and (d), Also Skogly 1999: 76-77.
Thus one cannot separate the content, quality and purpose of education from the right to access. Discrimination of indigenous children within the school system can be compared to the denial of access to education. The curriculum and the teaching methods should not be discriminatory towards indigenous children. Further, the educational environment should be friendly and safe. ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries article 27 also elaborates on this issue and obliges governments to develop educational programs in co-operation with indigenous peoples.

**Combating discrimination**

The second state obligation has implications beyond the school gates and the indigenous children themselves. The Committee strongly emphasises that a fundamental purpose of education should be to combat racism and discrimination in the wider society. In accordance with the obligations of article 29 (1) to prepare all children for a responsible life in the spirit of understanding, tolerance and friendship among all peoples and persons of indigenous origin, the Committee explains that:

Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena (Committee on the Rights of the Child 2001: paragraph 11).

Education should thus be accorded one the highest priorities in all campaigns against the evils of racism. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) also elaborates on this. Article 7 urges the state to adopt "immediate and effective measures" particularly within the field of education "with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups". Important to note is that we are talking about combating discrimination according to the standards of the UDHR, the CERD and the CRC. Thus for example affirmative action and land rights for indigenous peoples cannot be regarded as discrimination against the majority (see Committee on the Rights of the Child 2003: paragraph 12, Committee on the Elimination of Racial Discrimination 1997: paragraphs 4a and 5; Human Rights Committee 1994: paragraphs 6.2). Also the adoption of temporary special measures intended to bring about de facto equality for indigenous peoples is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved (Committee on Economic Social and Cultural Rights 1999: paragraph 32). The special rapporteur on education, Vernon Muñoz Villalobos, emphasises the importance of including indigenous peoples in the development of educational policies. Further he points out that pursuant to article 29 (1) (d), article 36 of the CRC and the ILO Convention 169 governments are obliged to work for the empowerment indigenous peoples and extend "public education efforts among social groups that practise discrimination, in such a way that neither rights nor responsibilities are watered down" (Villalobos 2004: paragraph 97).

**Word of caution**

The objective of eliminating prejudice through education is not an easy task. If done in the wrong way one might just increase prejudices. Katarina Tomaševski (2001: paragraph 36) points out that:

The words of caution about educational programmes merit repeating: "Forcing a prejudiced person to read or hear exhortations on tolerance may only increase his prejudice. Overenthusiastic appraisal of the contributions of a minority may create a reaction of distaste for members of that minority; and programmes improperly presented, even with the best intentions, may create an awareness of group difference that did not previously exist."

There are numerous models of education that seek to achieve the objective of combating prejudices. Local and Global Citizenship Education in Northern Ireland was such a project. It was a single subject grounded on human rights principles as its value reference. However it was implemented in a segregated school system and the methods of teaching seemed more important than the actual content of the curriculum (Lle 2001: 61-63). Also a problem faced by them was "group polarization", which is a well-documented phenomenon in social psychology. It describes a process by which persons within a group with similar opinions tend to become more extreme in their views. When members of a homogenous group share their views a person will get more arguments supporting their own view – arguments they had not thought about before – making them surer of their initial opinion (Moscovici and Zavalloni 1969: 125-135). Other models of education seek to focus more on the content of the curriculum. However some of these models are based on one mans views or one religion. Sometimes the values are not expressed explicitly making it virtually impossible to justify in a multi-religious class. It is my view that the values underpinning any substance of a curriculum aimed at changing hearts and minds must be grounded on a multi-religious platform. Human rights could be such a platform. Another concept worth mentioning is the Virtues Project. It is a concept based on 52 virtues which are common to all the major religious and sacred texts. It is one the few education models focused on the content of the curriculum and designed to change behaviour in accordance with humanities greatest virtues (The Virtues Project). It might also be possible to

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8 The reference she quotes is from the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities 1949: paragraphs 17 (c) and 177.
design a model similar to the Virtues Project based on 52 human rights principles?

Teaching of history

The teaching of history is singled out as a subject of special importance by the Committee. And not just history in general, but the teaching of racism as it has been practised historically. The Committee writes that:

Emphasis must also be placed upon the importance of teaching about racism as it has been practised historically and particularly as it manifests or has manifested itself within particular communities. Racist behaviour is not something engaged in only by "others". It is therefore important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance (Committee on the Rights of the Child 2001: paragraph 11).

Thus the teaching of the history of racism against indigenous peoples should be an important part of the aim of education in all of the 192 countries that have ratified the CRC. Please note how the Committee emphasise the importance of focusing on the children's own communities adding that racist behaviour is not something engaged in only by "others". The focus on history as a key subject is strengthened by the ILO Convention 169 article 31 which provides that "efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples". In addition to the ILO Convention 169 the teaching of history as a key subject is also emphasised by several other human rights instruments.¹

Diversity

Article 29 (1) (c) provides that education of the child shall be directed to "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". Thus indigenous children should learn respect for their own culture, language and values. In addition they should learn about the other national values and other civilizations. One may also argue that non-indigenous children should learn about the values of the indigenous peoples in their countries. Many indigenous peoples regard themselves as nations. The children should thus learn to respect all the national values of the country.

¹ See the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Programme of Action: paragraph 129, UN Declaration on the Rights of Persons Belonging to National, Religious and Linguistic Minorities: article 4 (4), European Framework Convention for the Protection of National Minorities: article 10 (1), European Charter for Regional or Minority Languages: article 8 (1) (g).

own, which should include indigenous civilizations. The Committee emphasise the importance of need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference (Committee on the Rights of the Child 2001: paragraph 4).

While knowledge of one's own culture and language constitute crucial contributions to personal evaluations of identity, the lives of others are assumed to have equal value. Individuals shape their identity in relation to others (Taylour 1991). According to Vernor Muñoz Villalobos (2004: paragraphs 70, 72) education is a cornerstone of education. Monocultural and monolingual approaches to education are perceived through the corpus of international standards as having questionable merit, even as questions continue to be asked (Thornberry 2007: 362). Diversity of education applies also to institutions run by indigenous peoples. Asbjørn Elde (1998) points out that it is important to distinguish between multicultural and intercultural education. Multicultural education involves the educational policies and practices which meet the separate educational needs of indigenous peoples and other cultures, while intercultural education involves educational policies and practices by which members of different cultures, whether in a majority or minority position learn to interact constructively with each other. As a minimum, it requires that majorities learn about the minorities, their culture and tradition, and similarly that minorities learn about other minorities in the same society and majorities. Intercultural education requires more however; it requires the development of respect, mutual tolerance and cooperation (Elde 1998: 61).

The importance of teacher-training

However carefully planned the curriculum designs and the school programs might be in the interest of human rights education and promotion of respect for indigenous peoples, it will have little impact in the hands of teachers who lack the necessary knowledge, attitude, motivation and training to carry it out. It is therefore essential that the education policies designed to combat discrimination and prejudices against indigenous peoples, in accordance with the obligations of article 29 (1), starts with the teachers. The Committee explains that:

Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are thus essential for teachers, educational administrators and others involved in child education. It is also important that the teaching methods used in schools reflect the spirit and educational philosophy of the Convention on the Rights of the Child and the aims of education laid down in article 29 (1) (Committee on the Rights of the Child 2001: paragraph 16).

Any thinking about action to promote education for human rights should logically begin with teacher training.⁶ Nancy Flowers and David A. Shiman (1997) profess that human rights should belong to every teacher’s...
professional education, explaining that: "They must know the UDHR and the CRC. This convention [CRC], in particular, is the raison d'être for any professional teacher preparation program" (Flowers and Shimah 1997: 162).

Non-theoretical education

The Committee emphasise the importance of "walking the talk" (Committee on the Rights of the Child 2001: paragraph 18). There is a hidden curriculum in the message transmitted by the way pupils and teachers behave. Children cannot be taught respect for rights unless members of the school community practice what is preached. It should be noted that the word "respect" implies more than just tolerance and understanding. It means acknowledging the equal worth peoples of all cultures, without condescension (Hodgkin and Newell 2002: 441-443). Again one might distinguish between the obligation not to discriminate and the obligation to teach non-discrimination.

Subtle discrimination

There are a myriad of subtle ways a teacher can discriminate children without even doing it intentionally. The concept of self-fulfilling prophesies is a well documented phenomenon. In a social psychology experiment by Rosenthal and Jacobson (1993) a group of teachers were informed, by expert psychologists, that some of their pupils (a random selection) would most probably experience a significant intellectual growth and that these pupils had a great potential. Not surprisingly, the concluding results showed that the pupils that were expected to grow intellectually did in fact experience a significant intellectual growth. The teachers also tended to regard them as more social, mentally alert and healthier than the others. In addition these chosen ones were also regarded more positively when they experienced growth. However, according to Rosenthal and Jacobson (1993):

Not so, however, for the children who were not expected to show any particular growth in intellectual functioning. The trend, in fact, was for these children to be regarded less favourably the more they gained intellectually. That finding suggests the hypothesis that there may be hazards to unexpected intellectual growth (Rosenthal and Jacobson 1993: 498).

The study shows in fact that children who perform well are punished for doing so if the teacher expects them to perform poorly. A fairly normal prejudice against many indigenous children is that they are not as intellectually equipped as the non-indigenous children. Given the conclusions of Rosenthal and Jacobson (1993) one can imagine the consequences for indigenous children that have a teacher with such a mindset. Also one should not overlook the fact that discrimination breeds prejudices. According to Katrinia Tomaševski; "Children learn through observation and imitation. They are likely to start perpetuating discriminatory practices long before they learn the word discrimination" (Tomasevska 2003: 42).

The school environment

In addition to the education and training of teachers the Committee is greatly concerned with the broader school environment. The school environment itself must reflect the spirit of understanding, peace, tolerance, and friendship towards persons of indigenous origin called for in article 29 (1) (b) and (d). The Committee specifically points out that: "A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1)" (Committee on the Rights of the Child 2001: paragraph 19).

The broader community

The schools should be a focal point for human rights education. However the rest of society cannot remain indifferent to the values enshrined in article 29. The Committee explains that:

The term "human rights education" is too often used in a way which greatly oversimplifies its connotations. What is needed, in addition to formal human rights education, is the promotion of values and policies conducive to human rights not only within schools and universities but also within the broader community (Committee on the Rights of the Child 2001: paragraph 19).

This obligation should also be viewed in relation to article 42 which obliges the states to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike". One must also take into account article 17, which provides that state parties shall "encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29". The Committee points out that it is important for the state to ensure that the activities of the media does not undermine the efforts of other institutions (including educational institutions) to promote the objectives of article 28 (Committee on the Rights of the Child 2001: paragraph 21). According to article 17 (a) governments are obliged to "encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29". Thus the states have an obligation to do what it can to encourage the media to promote respect for indigenous peoples and stop the distribution of harmful and prejudice information. The Committee explains that:

[... In the interests of healing and trust-building within the country and in the spirit of article 17 of the Convention, that the State-controlled mass media should play an active role in the efforts to secure tolerance and understanding between different ethnic groups, and that the broadcasting of programmes which would run counter to this objective come to an end (Committee on the Rights of the Child 1996: paragraph 20).]
However the specific obligations of the states set out in article 17 might appear to be rather weak in nature, considering the use of the term "encourage". The Committee has shed little light on how this obligation should be implemented (Dettrick 1999: 288).

Separate indigenous institutions

The right to opt out of state education is an important one, especially for indigenous peoples. According to Hodgkin and Newell (2002: 448) this right is important "not only to protect individual freedoms, but also, particularly because there is no blueprint for "good education", and education systems should allow for diversity and flexibility". If one were to single out one thing that indigenous peoples have in common one might mention distrust towards their governments. Historically educational institutions have been used by governments to eradicate indigenous cultures, languages and religions. Paragraph 2 of the CRC article 29 explicitly establishes that nothing in the first paragraph of article 29 shall "interfere with the liberty of individuals and bodies to establish and direct educational institutions". Article 29 (2) more or less repeats word for word CEDSR article 13 (4). More specifically referring to indigenous peoples the UN Declaration on the Rights of Indigenous Peoples article 14 (1) states that: "Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning". Thus the right of indigenous peoples to establish their own educational institutions has been explicitly recognised. Also the ILO Convention 169, article 27 (2) and (3) urges the member states to "recognise the right of these peoples to establish their own educational institutions and facilities". ILO Convention 169 establishes that management and control should be gradually transferred to the indigenous peoples, if they so desire, so that in the end they are the ones with full responsibility for their educational programmes and systems. To make this possible, the concerned government also needs to provide the necessary financial assistance and resources (Rasmussen and Roy 2003: 66). The special rapporteur on the right to education also emphasise the right of indigenous peoples to establish their own institutions (Villalobos 2004: paragraph 96).

The institutions of indigenous peoples must however meet the minimum requirements of CRC article 29 (1) and CEDSR article 13 (1). This means, as mentioned above, that respect for diversity and other cultures and religions must be an important part of the aim and purpose of education. The Committee explains that the school environment itself must reflect the aims of article 29 (1) in practise, not just in theory (Committee on the Rights of the Child 2001: paragraph 19). It is my understanding that indigenous educational institutions therefore must include children from a diversity of cultural and religious backgrounds. Within these standards indigenous institutions are free to develop their own curriculum, to apply specific admissibility criteria's (even if these would be considered discriminatory in public schools)\(^9\) and teaching methods (Nowak 2001: 264).

\(^9\) One might require that the children attending the school should speak an indigenous language or that they at least should be willing to learn it.

Summary

The Convention on the Rights of the Child (CRC) has introduced and included indigenous peoples explicitly in the core UN principle on the aim and purpose of education. This principle is firmly grounded in numerous weighty international human rights law documents like the Universal Declaration on Human Rights (UDHR) and the Covenant on Economic, Social and Cultural Rights (CESCR). It is a principle that obliges governments to educate all children to respect and understand indigenous peoples cultures and history. They are obliged to eradicate all forms of discrimination against indigenous children within the school system. Further they are obliged to design educational programs to eradicate discrimination and prejudices against indigenous peoples in the wider society. The teaching about racism as it has been practised historically against indigenous peoples should be regarded as one of the highest priorities according to the Committee on the Rights of the Child. The Committee points out that racist behaviour is not something engaged in only by "others". Governments are thus obliged to tell all their children about the atrocities committed in their own country against their indigenous peoples. Diversity is a cornerstone of education. It also applies to indigenous educational institutions. Indigenous children should learn about their own culture, language and religion, but also about other people's culture and the national language and values of the country they live in.

The objective of eradicating prejudices is not an easy task. If done wrong one might increase the problem. As a principle the foundation of the curriculum should be based on a value system that includes many faiths and religions. But however fancy and carefully planned the curriculum is it will have little impact in hands of teachers who lack the necessary knowledge, attitude, motivation and training to carry it out. Pre-service and in-service training of teachers is thus essential. The teachers must first of all learn not to discriminate themselves and rid themselves of all prejudices against indigenous children. Further they must learn to walk the talk and create a school environment that reflects the principles and aims of article 29 (1) and the concept of human rights education. The CRC also obliges governments to regard the aims of education as a responsibility for the broader community. The mass media is especially mentioned in article 17 as having an important role to promote the values of article 29 (1).

Indigenous peoples have a right to establish their own educational institutions. According to ILO-Convention 169 government also has an obligation to fund such institutions. However these institutions are just as bound by the obligations of article 29 (1) as other educational institutions. Thus the teaching of respect for diversity must not be ignored. According to the special rapporteur on the right to education the quality of the education systems can only be measured by the "depth of human commitment to the present and future generations".

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