

EUROPEAN MASTER'S DEGREE IN HUMAN RIGHTS AND  
DEMOCRATISATION

**POVERTY REDUCTION WITHIN THE PERSPECTIVE OF THE CHILD'S  
RIGHT TO EDUCATION**

AUTHOR:

Clarice da Silva e Paula

SUPERVISOR:

Kwadwo Appiagyei-Atua

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National University of Ireland, Irish Centre for Human Rights - Galway

## ***TABLE OF CONTENTS***

ACKNOWLEDGEMENTS	i
LIST OF ABBREVIATIONS	ii
ABSTRACT	iii
INTRODUCTION	01
CHAPTER I	
Historical and Legal Basis of the Rights of the Child	
I.I. Historical Background	06
I.II. General Principles of the UN Convention on the Rights of the Child	12
I.III. The CRC and its Relation to the International Covenants	21
I.IV. Children's rights as a key towards their development	22
I.V. Conclusion	24
CHAPTER II	
The Child's Right to Education	
II.I. The Child's Right to Education under International Law	26
II.I.I. Primary Education Compulsory and Available to All?	38
II.I.II. The Right to Secondary Education	41
II.I.III. The Right to Higher Education	44
II.I.IV. Other Provisions under Article 28 of the CRC	45
II.II. Goals and Aims of Education under the CRC	48
II.II.I. The development of the child's personality, talents and mental and physical abilities	50
II.II.II. The development for the respect of human rights and fundamental Freedoms and principles of the Charter of the United Nations	50
II.II.III. The development of respect for the child's parents, cultural and	

national values	53
II.II.IV. The preparation of the child for responsible life in a free society.	53
II.III. Education as a tool to eradicate poverty	54
II.IV. Conclusion	62
CHAPTER III	
Investing in Children and the Right to Education – The Bolsa-Escola Experience	
III.I Investing in Children	64
III.II.The Bolsa-Escola Programme	65
III.III Anticipated Benefits of the Bolsa-Escola Programme	67
III.IV. How the programme works	69
III.V. Assessing the Impact of Bolsa-Escola	71
III.V. Critique of the Bolsa-Escola Programme	79
CONCLUSION	83

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## ***LIST OF ABBREVIATIONS***

AIDS	Acquired Immune Deficiency Syndrome
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council of the United Nations
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICY	International Year of the Child
NGO	Non-Governmental Organisation
NPA	National Plan of Action
UN	United Nations
UNB	Universidade de Brasília
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
WHO	World Health Organization

***ABSTRACT (Master's Thesis)***

It is clear that children have the right to education under the national and international law. However, its enforcement and applicability is not as apparent. The primary aim of the present thesis is to analyze the nature of the state's obligation to fulfil the right to education, with special focus on Brazil, under the national and international law. The secondary aim of this work is to demonstrate the importance of education, not only to the mental, physical and moral development of the child, but also as an effective tool of poverty eradication, as well as present and analyze the results achieved by the Bolsa-Escola Programme. In the course of the study, it was possible to verify that the implementation of the right to education in the context of Brazil may solely rests upon the political will and commitment of the state. Further on, it was possible to perceive that education is, in the eyes of the international society a fundamental tool to promote development of the child's capacities and to promote other human rights. The analysis of the Bolsa-Escola bursary programme for poor children reiterated the importance of education, but nonetheless, served to prove that, although educating children is an important action towards development of the state, it is not the sole measure to promote economic growth.

Key words: child's right to education – national and international law - obligation of the state  
- Brazil – child development – poverty eradication.

## INTRODUCTION

### *I. Subject of Study*

Not so long ago children were considered to be mere properties under their fathers' authorities. The evolution of the concern of the welfare of the child only took place in the twentieth century. After a series of international instruments of non-legally binding character and many years of discussions and debates regarding the status of children and their need for priority care, in 1989 the protection of the child's rights was finally consolidated with adoption of the United Nations Convention on the Rights of the Child (CRC) by the United Nations General Assembly. Such a treaty has a historical relevance, for it introduced, for the first time, child-centred principles and rights under the recognition of the child as an autonomous human being with inherent human rights. In addition, the CRC, having captured the importance of education to the child's moral, physical and mental development, imposed upon the states the obligation to fulfil the child's right to education, under the basis of equality and other terms and conditions established in the treaty (article 28 of the Convention).

However, the implementation of the right to education depends on a series of socio-economic and cultural factors. Although the CRC takes into account cultural and financial diversity of the states parties to a certain extent, when referring to the realization of social and economic rights, such as the right to education, the forms of application of the norms, as well as the outcome of the state's measures, are bound to vary. The greater difference of the enforcement of the right to education rests upon the developed world and the developing countries, such as Brazil. It is necessary to take into account the available resources of the state, along with political will and commitment of the government, as well as the transposition of the international law in the domestic legal system.

In addition, the CRC presents an extensive list of the goals and aims of education. The Convention addresses the essence of developing the child's personality and talents, the promotion of human rights, respect for culture and the preparation of the child for participation in society. Nonetheless, the CRC omits to express one of the foremost important goals of education, which concerns the reduction of poverty and the promotion of economic growth in the developing world. The generational transmission of poverty has been of great concern, since it has been known to trace the direction of the lives of the children of the poor. In this sense, a child who has not been educated and has not had his or her basic needs met, is more likely to perpetuate poverty.

## ***II. The Purpose and the Problem of Study***

Many scholars have related education to the means by which individuals can empower themselves and better control their lives. Education is thought to open doors to a series of opportunities and may be the path by which one escapes from poverty. It has been stated that children are the worst victims of poverty, as fulfilment of the individual's basic human rights is crucial at early ages. It is also known that the child trapped in poverty becomes the adult-poor of tomorrow.

Hence, there are three main issues raised in this work:

- What is the nature of the state's obligation to fulfil the right to education?
- How and to what extent is education a powerful tool of poverty eradication?
- What other factors need to be taken into account to make education a functionalist tool for poverty reduction?

In answering these questions, this work aims to demonstrate that, not only is the right to education an obligation rested upon the state under national and international law, and that all individuals have the right to benefit from a good-quality education on the basis of equality and non-discrimination, but may also be a powerful and effective mechanism of the



development of the state. The present thesis aims to demonstrate that the fulfilment of the right to education of the child, not only increases his or her mental and physical capabilities, but also is an investment made by the state, as it meets the demand for a sophisticated labour market and forms a population of conscious and respectful citizens. Finally, the work will seek to establish that for the benefits of education as an effective tool for poverty reduction to be fully realized, a general ambience for democratic-welfarist approach to development should be emphasized.

### ***III. The Plan of Study***

The study rests upon dealing with the above-mentioned questions. Hence, the first chapter of this work will attempt to trace the historical formation of the rights of the child giving special emphasis on the evolution of the child's right to education and its concretization under the Convention on the Rights of the Child. The four general principles of the Convention, known to be 'the soul of the treaty', will be addressed and linked to the right to education. Special emphasis will be given on the importance of the 'child's best interest' and its implication in a multicultural context, with particular focus on Brazil. In addition, the relation between the CRC and the two International Covenants and their counterpart articles will be tackled. Finally, reference will be made to the importance of education and its implication as a means to reduce poverty and promote development of the state.

The second chapter of this thesis will firstly attempt to address the child's right to education under international law, within the perspective of a 'second generation' human right. The realization of the right to education and its 'justiciability' will be discussed in the light of the counterpart articles of the ICESCR and the General Comments provided by the Committee on Economic, Social and Cultural Rights. The implementation of the right to education will also be argued in the context of Brazil under the national and international law. In addition, the *chapeau* of the provision of the CRC, which addresses the child's right to education (Article 28) and its intrinsic elements, will be demonstrated. Importance will be raised to the principle of non-discrimination within the right to education and within the socio-economic conditions of Brazil.

Secondly, the obligation of the states parties to fulfil the right to education at all levels will be addressed, with special emphasis on the provision of Convention, which refers to free and compulsory primary education. The enforcement of such a determination will be analyzed under the socio-economic conditions of Brazil as well as under the Brazilian legislation and legal system. Furthermore, the importance of reducing drop-out rates will be addressed generally as well as in the context of Brazil, since poverty and social discrimination are among the causes of low school attendance. Additionally, the importance of international cooperation will be demonstrated as a support mechanism for the states' compliance with the obligation to fulfil the right to education.

Subsequently, the goals and aims of education under Article 29 of the CRC will be tackled, as an attempt to demonstrate the importance of providing the means for the child's enjoyment of right to education. Special focus will be given to the child's mental, physical and moral development, as well as the child's preparation for participating in a democratic society and exercising his or her citizenship.

Finally, an attempt will be made to trace a relation of cause and effect of the lack of education to poverty production. The importance of educating children as a mechanism to break the poverty cycle and provide the child with means to improve his or her living conditions will be demonstrated. In turn, the beneficial consequences of investing in child education upon the state and society will be addressed. An attempt will be made to demonstrate the importance of enforcing the right to education in the developing world as an effective tool against poverty and a mechanism to promote economic growth of the state in the long run.

The third chapter will address the Municipal Bolsa-Escola Programme, a bursary project funded by the Federal Union of Brazil, to guarantee that children from low-income families have access and are regular in schools, and not part of the labour market or subject to any form of exploitation. The foundation and structure of the programme, as well as its functioning, will be addressed. The advantageous consequences of the programme upon the beneficiary children, their families, the state and society will be demonstrated, along with the prognosis of the long-term results of the programme. Subsequently, results from an

evaluation of 5 years of the Bolsa-Escola in the Municipality of Belo Horizonte, realised by the City Hall of Belo Horizonte will be shown and discussed, along with the results acquired from the interviews realised by the author with beneficiary mothers of the programme, as well as with Alessandra Bustamante, psychologist and part of the staff of the City Hall of Belo Horizonte.

Lastly, upon the analyses of the above-mentioned chapters, the present thesis will attempt to answer the questions described in the previous sub-section of this introduction and provide with a conclusion.

## CHAPTER I

### I. HISTORICAL AND LEGAL BASIS OF THE RIGHTS OF THE CHILD

#### *I.I. Historical Background*

The process of recognizing the rights of the child took a very long route towards becoming a reality. For many years, all over the world, children were seen as mere properties under their fathers' authority, if not all invisible. The recognition of children as individual human beings only took place in the twentieth century. Records show that laws protecting animals were even passed long before children's rights were even mentioned<sup>1</sup>.

During the Roman times up to the mid-1800s, under most of the Western legal systems, the child was first and foremost seen as chattel. Children were sold, contracted for labour, trafficked, exploited, physically abused or ignored by their parents or those responsible for them. At the domestic level, early concern for the rights of the child was limited to basic care and protection. In the mid-nineteenth century such an approach involved the establishment of orphanages and schools for the protection of the orphan, blind, or deaf child. Later that century, the preoccupation shifted to the delinquent child and the protection of delinquents by securing their separation from adult prisoners. Finally, in the early 1900s, attention altered to care for the working child and the protection of children from harmful working conditions through the abolition of child labour.<sup>2</sup>

It was only in the twentieth century then, when the first real efforts at the international level were made to adopt legal standards in relation to the rights of the child<sup>3</sup>. A special committee of the League of Nations was established to deal with the issues relating to the

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<sup>1</sup> R. Rios-Kohn, *The Convention on the Rights of the Child: Progress and Challenge* in «Georgetown Journal on Fighting Poverty» vol. 5, 1998, p.140.

<sup>2</sup> C. Price Cohen, *The Developing Jurisprudence of the Rights of the Child* in «St Thomas Law Review», vol.6, 1993, p. 9.

<sup>3</sup> Due to the scope of this work, the historical background of the rights of the child will be limited to the twentieth century when serious efforts of setting legal standards for children began.

protection of the child. A number of documents consequently evolved, such as the 1921 International Convention for the Supervision of the Traffic in Women and Children and the 1926 Slavery Convention<sup>4</sup>

In 1924, the Assembly of the League of Nations, in its fifth session<sup>5</sup>, passed a resolution endorsing the Declaration of the Rights of the Child. This was a five-point document promulgated a year before by the Council of the “Save the Children International Union<sup>6</sup>”, commonly known as the “Declaration of Geneva”. It intended to guide the League’s members with its principles when dealing with issues specific to children. The provisions in this Declaration were not formed as rights of the child but rather as duties set upon and accepted by all people<sup>7</sup>. The Declaration expressed, among others, that: every child should be given the needed means for its development, materially and spiritually; the hungry child should be fed, the sick child should be taken care of, the erring child should be reclaimed, and the orphan child or the homeless child should be sheltered; every child should receive relief when in distress; every child should earn a livelihood and be protected from exploitation; and that all children should be brought to the consciousness that its best qualities are to be used.<sup>8</sup>

For the purpose of this work, it is important to analyse the first obligation enlisted above. The 1924 Declaration determined that states parties provide children with the means for their development. One could argue that the Declaration, although implicit, foresaw the importance of the child’s education, if taken into account that education itself is one of the foremost means to achieve full development. In this sense, Brems explains that “...assisting children in their development toward adulthood is in the first place a right and a duty of

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<sup>4</sup> S. Detrick, *A Commentary on the United Nations Convention on the Rights of the Child*, The Hague, Kluwer Law International, 1999, p.13. [hereinafter A Commentary on the CRC]

<sup>5</sup> See records of the Fifth Assembly, *League of Nations Official Journal*, Special Supplement No. 23, p. 177 (1924), in S. Detrick, A Commentary on the CRC, *supra* note 4, p. 13.

<sup>6</sup> The organization “Save the Children International Union” was established in 1920 in response to the violations inflicted upon the children during the First World War.

<sup>7</sup> The original wording used in the text is as follows, “...men and all women of all nations, recognizing that mankind owes to the child the best that it has to give, declare and accept it as their duty...” The document was not formulated in terms of rights of the children but stated as duties declared and accepted by all mankind. See records of the Fifth Assembly, *supra* note 5.

<sup>8</sup> Fifth Assembly, *supra* note 5.

parents and caregivers. The state has a secondary duty to provide that assistance and structural arrangement (e.g. school system) and to intervene when private caregivers fails.”<sup>9</sup>

The 1924 Declaration later was to serve as a basis for a more developed and slightly more expanded seven-point declaration, revised and adopted in 1948 by the newly constituted United Nations General Assembly. Also, in the same year, the afore-mentioned Assembly adopted and proclaimed on 10<sup>th</sup> of December the Universal Declaration of Human Rights, which, in principal, were equally applied to children and adults.

Subsequently, in 1959 the Declaration of the Rights of the Child was adopted.<sup>10</sup> It included a preamble and ten principles, which were formulated as rights of children and addressed their material and immaterial needs. Such a document was of great importance for it introduced novel principles not mentioned in previous documents such as: the child’s right to a name and nationality, the first mention of civil rights of the child<sup>11</sup> (principle 3); the child’s right to enjoy the benefits of social security, the child’s and the mother’s entitlement to special care both before and after birth, as well as the child’s right to adequate housing, nutrition, recreation and medical services (principle 4); the right of the physically, mentally or socially handicapped child to health-care and special education (principle 5); the child’s right to be brought up in a harmonious atmosphere, as to enable its full development, and the child’s right to not be separated from the mother, specially in the tender years, as well as the right of the child without a family to receive support from the public authorities (principle 6)<sup>12</sup>.

Further on, it is pertinent to emphasize that the Declaration brings out a very important thought, in principle 2. For the first time it states that the child’s best interest should be

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<sup>9</sup> E. Brems, *Children’s Rights and Universality*, in J. C. M. Willems (ed.), «Development and Autonomy Rights of Children. Empowering Children, Caregivers and Communities», Antwerp, Intersentia, 2002, p 29.

<sup>10</sup> Declaration of the Rights of the Child, proclaimed by the General Assembly resolution 1386 (XIV) of 20 of November 1959. [hereinafter 1959 Declaration]

<sup>11</sup> The right to a name and nationality was later reaffirmed in Article 24 of the International Covenant on Civil and Political Rights. International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December of 1966. [hereinafter ICCPR]

<sup>12</sup> In the latter part of principle 6 of the 1959 Declaration, it states that the payment of State and other assistance in the maintenance of the child in large families is not an obligation although is desirable.

given paramount consideration in the enactment of providing the child with opportunities and facilities for its physical, mental, social and moral development.<sup>13</sup>

Finally, in principle 7, the Declaration expressly addresses education. It determines that the child is entitled to free and compulsory education, at least in the elementary level. Its first and second part read as follows:

“The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents<sup>14</sup>.

The above principle makes an important connection between the right to education and the child’s development as a responsible and conscious member of society. Again, it determines that the best interest of the child should be taken into consideration in the process of educating and guiding the child. Although the rights contained in this principle are not legally enforceable due to nature of the document, one could say the 1959 Declaration was a significant step towards fully establishing the child’s right to education.

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<sup>13</sup> The principle of “the best interest of the child will be later analyzed in detail when addressing the general principles of the Convention on the Rights of the Child. United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 of 20 November of 1989. [hereinafter CRC]

<sup>14</sup> Extract from the 1959 Declaration.

Regardless of the fact that previous declarations had set a series of important principles, many still questioned if giving children rights signified giving the child autonomy from their parents, or if such rights were an opposition to the rights of adults. It was time to clarify these issues, albeit the international society had already made great progress in determining legal standards for the protection of the children. Unfortunately, it took them further twenty years to recognize the need for a legally binding document of the matter. The idea of drafting a convention came as a reflection of the concern of the member states for the child's need of special protection, particularly due to the ramifications of the two World Wars.

Due to the fact that previously adopted human rights treaties had already been applicable to children (implicitly or explicitly), some viewed that it was unnecessary to create a specific document on children's rights<sup>15</sup>. However, this opinion did not prevail and in the late 70's, the United Nations agreed to the idea of drafting an instrument on the rights of the child that would be legally binding on the states. During that period of time, the UN had showed intentions to impart special rights to specific population groups that had not been emphasized in the Universal Declaration of Human Rights, *i.e.* women's rights, minority rights and children's rights among others.

Taking advantage of the prevailing atmosphere, in 1978 the Polish Government<sup>16</sup> tabled a formal proposal for the convention on the rights of the child, during the thirty-fourth session of the United Nations Commission on Human rights<sup>17</sup>. Such a proposal was elaborated based on the principles that had already been agreed upon in the 1959 Declaration. It showed that Poland considered the Declaration as an instrumental document in promoting the rights of the child and, moreover, it demonstrated the country's eagerness to avoid long debates and have the convention quickly adopted. The aim was to have the

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<sup>15</sup> S. Detrick, *The United Nations Convention on the Rights of the Child - A Guide to the Travaux Préparatoires*, Dordrecht, Martinus Nijhoff Publishers, 1992, p.26. [hereinafter, the CRC]

<sup>16</sup> Poland had previously expressed its interest in the convention in 1959 when the Declaration was being discussed.

<sup>17</sup> Poland submitted a draft resolution to be recommended for adoption by the United Nations Economic and Social Council. In turn the ECOSOC recommended that the UN General Assembly adopt an international convention on the rights of the child based on the principals and provisions of the 1959 Declaration on the Rights of the Child.



document adopted the following year, since the UN General Assembly had proclaimed 1979 the International Year of the Child.

The proposal, however, after having the Secretary-General circulate it among the member states, competent specialized agencies, regional intergovernmental organisations, and non-governmental organisations for their views and observations, was rejected for various reasons. Among others, it was contended that the document was not composed in the form of a legally binding treaty and the wording was far from adequate. According to Detrick, other objections were made such as: the text did not include the whole range of rights<sup>18</sup>; made no regards to the implementation of the rights; and that no text should be adopted until taking into consideration reports, programs and initiatives that the IYC would eventually promote<sup>19</sup>.

Thus, after having resolved that the convention on the rights of the child would be consistent with concrete provisions and a practical monitoring system, the Commission on Human Rights decided to establish an informal open-ended<sup>20</sup> Working Group to immediately start working on the drafting of the document. Such a group met annually since 1980 until 1987, when by the end of the former year, the drafting had been completed<sup>21</sup>. The intention was to adopt the Convention in 1989, a tribute to ten years of the International Year of the Child.<sup>22</sup>

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<sup>18</sup>The proposal made relevance to economic, social and cultural rights, known to be what the Polish Authorities believed was necessary for their country.

<sup>19</sup> S. Detrick, *The CRC*, *supra* note 15, p.21.

<sup>20</sup> The 'opened-ended' group meant that the any of the 43 states represented on the Commission could participate whereas the other member states of the United Nations could send observers but had no right to take the floor. Intergovernmental organizations could also send observers and NGOs in consultative status with the ECOSOC could also participate, but with no right to speak. However, their requests for the floor were rarely refused.

<sup>21</sup> It is important to outline that the Working Group functioned on the basis of consensus, *i. e.*, voting did not take place at any time. The decision to operate on the basis of consensus was so that more states would eventually ratify the Convention. However, this mad the drafting process more prolonged than usual, for the issues tabled had to be fully debated until every state delegate could come to an agreement or could at least consent to a decision.

<sup>22</sup> S. Detrick, *The CRC*, *supra* note 15, p.21.

The drafting process implied that several issues were held back and not debated due to the impossibility of obtaining the support from the majority<sup>23</sup>. One could argue that, this might have occasionally made some delegations withdraw themselves from opposing to matters that might have been of relevance for their cultural context. What seemed like a good solution for the mainstream culture might not have been sufficient or compatible to a specific country with cultural particularities. In this sense, the Convention would only serve to provide and protect the children of the majority. However, according to Detrick, “This facilitated the passage of the draft CRC through the higher bodies of the UN system, namely the UN Commission on Human Rights, the ECOSOC and the UN General Assembly”.<sup>24</sup>

### ***1.II. General Principles of the UN Convention on the Rights of the Child***

The CRC contains four major principles that are considered the basis for establishing a mechanism of protection of the child. They are quite commonly referred to as the "soul of the treaty" and have been referred to as general principals by the Committee on the Rights of the Child during its first session in September-October 1991. They are located in Articles 2, 3, 6, and 12 in the treaty.

The first principle is asserted in Article 2 of the Convention, which determines that all children should be able to freely enjoy their rights without any sort of discrimination. There is an obligation upon member states to provide for equal opportunities to all children, irrespective of their colour, race, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. In this sense, the state must refrain from any action that would have a discriminatory effect on children, as well as actively protect children from all forms of discrimination or punishment, regardless of their status, activities and opinions. Furthermore, there is a state obligation to respect the beliefs of the child's parents, legal guardians or other family members.

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<sup>23</sup> *Idem.*

<sup>24</sup> S. Detrick, A Commentary on CRC, *supra* note 4, p.17.

Although Article 2 of the CRC has its great amount of importance, it is pertinent to say that it does not introduce a novel and innovated provision. The Universal Declaration of Human Rights previously set the guidelines in this respect by clearly outlawing any form of discrimination<sup>25</sup>. Needless to say, the principle of non-discrimination consistent in the UDHR is equally applicable to children and adults. Furthermore, the afore mentioned principle is guaranteed in many other international instruments, such as in the International Covenant of Civil and Political Rights and International Covenant on Economic, Social and Cultural rights, again applicable to children.<sup>26</sup>

Nonetheless, it is very important to bear in mind the principle of non-discrimination when addressing the issue of education. It is determined in the *chapeau* of Article 28 of the CRC that the state should recognize the child's right to education on a basis of equal opportunity. Therefore, all children should have equal access to primary education notwithstanding their sex, colour, physical, moral and social conditions.<sup>27</sup> But, it is important to note that in certain developing countries, such as Brazil,<sup>28</sup> such opportunities do not exist, especially for poor people, aboriginal communities and other visible minorities. Therefore, the issue of discrimination is important to feature but equal opportunity should be given a broad interpretation to mean substantive equal opportunity. This means that where resources are lacking to provide education for all children special attention should be given to children from poorer families as a way of promoting affirmative action. In Brazil, the Bolsa-Escola concept, which is treated in detail in subsequent chapters, captures this principle.

Article 3 of the Convention prescribes that the interests of the child should be taken into account in every action that involves the welfare of the child. This article is meant to give primary consideration to the child's interest when the child is concerned. It reaffirms a basic

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<sup>25</sup> See Articles 1 and 2 of the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly resolution 217 A (III) of 10 December of 1948. [hereinafter UDHR]

<sup>26</sup> See Articles 2(2), 24 and 26 of the ICCPR and Articles 2(2) and 10 of the International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December of 1966. [hereinafter ICESCR]

<sup>27</sup> Many forms of discrimination with regards to education are spread out worldwide. It is commonly known that in some societies girls do not have access to school, being the boys the ones to have access to such a right. It is also common, that disabled children are not given educational opportunities.

<sup>28</sup> The focus of this research.

value of the treaty: in every circumstance and decision affecting the child, the Convention requires that the child's best interests should be considered and given due weight.

Although this principle has many times been used in decisions regarding custody and guardianship, the Convention does not present a definition of what is the "the best interests of the child". Hence, the state has a wide margin of appreciation as to what might be the child's best interest. Since the Convention does not set the limits, what might be the child's interest in one political, social and economic context might be different in another. The state has the discretionary power to assess in which case and in which circumstances this principle should be of relevance and, therefore, applied.<sup>29</sup>

In this sense, some commentators have expressed reservation regarding the notion of 'best interests', arguing that Article 3 may undermine the principle of universality of the CRC. In a world with such cultural diversity, it is very hard to strike a balance when deciding what the child's best interest is. Brems outlines that,

When traditional practices are judged according to 'the best interests' standards, in many cases the outcome will depend on the weight attached to cultural factors. If the society in which he or she is, is organised in a certain way, it may be in the interest of the child to conform to that pattern, rather than breaking with and becoming an outcast or suffering adverse consequences in other spheres that are directly or indirectly to rejected practice.<sup>30</sup>

The problem with cultural diversity in relation to the child's best interests can be illustrated when analysing the basis for determining that primary education should be compulsory, as expressed in Article 28, 1(a) of the CRC. Such a provision may be easily enforceable in some countries but, in others, mainly in the developing world, it is sometimes not applicable. The general consensus is that it is best that children go to school. However, in some societies, as

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<sup>29</sup> R. Rios-Kohn, *supra* note 1, p. 144.

<sup>30</sup> E. Brems, *supra* note 9, pp. 38-39.

difficult as this may seem, it might be the child's best interest to work and help with the family's income. It is argued that there is no sense in sending children to school when, without the money that they raise, they will not have a place to live or food to eat. Thus, a rigid application of the concept of cultural diversity here may present difficult problems for child and render the CRC ineffective. Having said that, however, it is important to contend that cultural diversity should not represent the opinions and views of those who benefit from the woes of children. A constructive notion of cultural diversity will contend that it represents the aspirations of the poor and needy, as well as their daily-lived experiences. And, finally, the exercise of rights that emanate from a particular country's notion of cultural diversity should have the potential of leading to the attainment of positive sustainable development for them.<sup>31</sup> Thus, the present thesis will seek to examine how a more workable option can be found to make the concept of best interests of the child meaningful and relevant in the context of Brazil's cultural and socio-economic conditions, as well as the needs and aspirations of the society.

It is important to take into account that one of the main and most general critiques of the Convention on the Rights of the Child is its universalisation of the western idea of childhood. According to Pupavac, while analyzing the provisions of the Convention "...it reveals that the universal standards of the Convention are based on a Western concept of childhood and Western social policies which emphasize the role of individual causations and professional interventions and de-emphasize the influence of the wider social, economic, political and cultural circumstances."<sup>32</sup> By this, the author stresses that an international concern for children is not likely to bring an improvement in child welfare for, the experience and perceptions of childhood vary from one country to another and no model of childhood can be applicable.

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<sup>31</sup> K Appiagyei-Atua, *Akan Philosophy in the Conceptualisation of an African Notion of Rights*, in «Constitutional and International Law Journal of Southern Africa», vol. 33, 2000, p.169.

<sup>32</sup> V. Pupavac, *The Infantilization of the South and the UN Convention on the Rights of the Child*, in H Steiner and P Alston, «International Human Rights in Context- Law, Politics, Morals», Oxford, Clarendon Press, 1996 p. 518.

Another angle in which the CRC can be said to be western-oriented is the large measure of autonomy it gives to the child; and the fact that the goal of the enjoyment of the rights seems to lead the creation of an atomised and individuated child in the society. However, in the non-western society the individual is not an isolated entity. The individual derives his or her identity and solidarity within the larger community. This cultural perspective is important to lay emphasis as in the context of the present project, which relates to child education and poverty reduction. In other words, how to make the education of the child have relevance to the community in respect to poverty reduction.

Much as the CRC may have some Western biases towards the creation of an individuated person in the community, it can be argued that though the drafters of the Convention may not have been able to accommodate all the cultural diversities within the provisions, the CRC makes room for this by stating in the preamble that it takes into account “the importance of the traditions and cultural values of each people for the protection and harmonious development of the child”.<sup>33</sup>

It is trite that poverty in Brazil, as in many developing countries, has occasioned rampant abuse of child rights. Among others, they are prevented from attending school, and having access to a caring environment and community resources to promote their development and well being. While in some cases, some children make genuine independent efforts to take care of themselves, their siblings and parents in critical situations, in most instances they are exploited and forced to engage in crime, drugs, trafficking, sexual exploitation, etc.

On the other hand when the child is educated he or she will be able to acquire skills, know his or rights and make effective use of them and contribute to progress, development peace and democratic culture in his or her society. Thus, Willems rightly contends that the children’s laws of nations aims to contribute to changing and improving laws, policies, priorities and practices for all children, regardless of the country they come from, and the

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<sup>33</sup> Extract from the preamble of the CRC.

situations and conditions they are in, inside or outside the family.<sup>34</sup> In this sense, the scope of such legislation is to guarantee the interest of the child, in whichever the circumstances that may be, in order to ensure that his or her needs are met.

The needs of the child are expressed first and foremost in the fact that they have potentials that have to be developed. Achieving this goal will enable the child to enjoy their participatory rights when they begin to grow up. The exercise of these rights will in turn help the child to become a responsible adult in the society. From this perspective, one should bear in mind that it is *every* child's right to fully develop into an optimal person. In turn, society benefits from respecting and fulfilling the child's right. In Willems's view, "...a child whose needs have been met (...) will have as central theme in his or her life a deep desire to give back, to help others, to live a prosocial life".<sup>35</sup> He further explains that a child who has not had his needs met or who has been mistreated in various forms, has a chance of being destructive to themselves and or to others.

While the CRC's notion of best interests of the child is criticised as having the potential to be abused by states, other commentators seem to have alternative concerns. Thus, another issue that has been raised regarding the principle of the child's best interests is that such a principle gives a great amount of power to the child when official decisions are taken. According to Hammarberg<sup>36</sup>, many have questioned the fact that children can be strong enough to impart opinions and information, and at the same time vulnerable to an extent that special protection is needed. However, the Convention addresses this matter by stating that the child's interest is in fact important and should have primary consideration. The treaty does not affirm that the child's interest is the only one to be given relevance, nor is saying that it oversees the parents' or the states' rights. It does not guarantee that the child's interest will prevail, but determines that it should be given paramount consideration.<sup>37</sup>

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<sup>34</sup> J. Willems, *The Children's Law of Nations: the International Rights of the Child in the Trias Pedagogica*, in J.C.M. Willems (ed.), «Developmental and Autonomy Rights of Children» Antwerp, Intersentia, 2002, p. 73.

<sup>35</sup> *Idem*.

<sup>36</sup> T. Hammarberg, *Children*, in A. Eide, C. Krause, A. Rosas (eds.), «Economic, Social and Cultural Rights» The Hague, Kluwer Law International, 2001, p. 356-357.

<sup>37</sup> *Idem*.

The afore mentioned principle should be seen as a guide for the parents in raising their children, as well as a guide for the state when legislative bodies are considering laws, when courts are making assessments, and when administrative authorities are dictating policies and budgets are being allocated. It is also important to bear in mind, that due to cultural diversity, such a provision will be applied with a certain amount of flexibility.

Further on, the CRC addresses the child's right to life in its article 6. It stresses that "States parties shall ensure to the maximum extent possible the survival and development of the child."<sup>38</sup> Such an article does not solely guarantee that the child has the right not to be killed, but goes further to ensure the child the right to survival and development. The right to survival determines that preventive actions ought to be taken in the sense of guaranteeing the child their basic needs<sup>39</sup>. It can be argued further that it means the taking of pro-active measures aimed at the development of the child of which education should serve as the foundation.

As for the child's right to development, the Convention refers to the development of the physical and mental health of the child, as well as the emotional, cognitive, social and cultural growth. It can be said that the child's right to development in this article is strongly connected to the right to education in the broad sense. Hammarberg explains that "...education should aim at developing the 'child's personality, talents and mental and physical abilities to their fullest potential'".<sup>40</sup>

This article has a strong relation to the economic, social and cultural rights of the children. The Convention determines that such rights should be fulfilled to the maximum extent possible. In other words, resources should be allocated for the realization of these rights<sup>41</sup>.

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<sup>38</sup> Extract from the text of the CRC – Article 6.

<sup>39</sup> According to the World Health Organisation and UNICEF, the "survival" of the child is related to matters such as growth monitoring; oral re-hydration and disease control; breast-feeding; immunization; child spacing; food; and female literacy.

<sup>40</sup> T. Hammarberg, *supra* note 36, p. 360.

<sup>41</sup> The wording "maximum extent possible" implicates an acknowledgment that the implementation of such provisions requires resources and measures that may not be possible in poorer countries. On the other hand, the wording also implies that priority should be given to the implementation of this requirement in all countries.



The question remains: which resources should be allocated and how should they be allocated? Moreover, how can one guarantee that the state will realize these rights by allocating the existing resources, if that should be the case?

These questions are quite delicate and complicated to solve. They touch upon the legal concept of the justiciability of social and economic rights. There is a need for political will and commitment as well as the economic and social conditions to fulfil and promote social and economic rights. Furthermore, there is the state's sovereignty to take into account. Neither the international community nor a human rights treaty can determine how and when the state will make use of their national budget. In the case of Brazil, it is quite common to encounter a lack of resources to implement the right to survival and development. Although there has been international aid and cooperation, it is not always sufficient to guarantee its entire people their basic needs for their full development. Another problem the country faces is with regards to the state's discretionary power in distributing its national budget. Due to the many problems the country encounters, it is not guaranteed that the resources will be disbursed according to necessity and urgency. This is discussed in detail in subsequent chapters.

As for the economic diversity, Brems explains that the where economic and social rights are concerned, the Conventions determines that state parties should strive to fulfil the provisions progressively and to take measures to the maximum extent of their available resources. She adds that, "Progressive realization is a useful flexibility tool, which makes it possible to vary standards of human rights evaluation according to the economic and financial situation of the state".<sup>42</sup>

The last general principal of the CRC is the most innovative feature of the treaty. Article 12 establishes that the child has the right to participate in all aspects of life within the family, the school and the community, as an autonomous person. This empowers the children to claim

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<sup>42</sup> E. Brems, *supra* note 9, p 43.

for the rights the Convention describes. However, the treaty sets limits to those children who are capable of forming their views and has the ability to freely express them. The article imposes an obligation on states to adopt measures and mechanisms to guarantee that children have opportunities not only to express their views, but also to be heard in the decision-making processes affecting his or her life. Special regards should be given to the child's age and maturity.

Brems views this article as of true respect for the child's autonomy. She refers to Freeman and adds that such a provision recognises the child as a full human being, with integrity, personality and the ability to participate fully in society. On the other hand, to respect the child's autonomy, it is also necessary to set the limits of such autonomy. Hence, the weight given to the child's views according to age and maturity<sup>43</sup>.

Rios-Kohn understands that children are capable of expressing their views, and that such a right should not be denied under the fear that they might make mistakes. In her words,

“Children should have the right to offer opinions, propose change and make mistakes doing so. If the possibility that mistakes might be made is a criterion for denying anybody the right to try, adults should not be allowed to try new ideas either. There are many opportunities for children and young people to take their part in decision-making processes - opportunities which are far too often denied to them. In their family, in their neighbourhoods, in organizations and at school, children very often not only have opinions, but superior knowledge.”<sup>44</sup>

Although Rios-Kohn may have a strong case, it is not safe to say that her view is unanimous, for the capacity of the child is still undermined in certain societies. Some believe that regardless of the child's age or maturity, it is the parent or the state that can best decide on behalf of the children.<sup>45</sup>

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<sup>43</sup> *Idem*, p. 28.

<sup>44</sup> R. Rios-Kohn, *supra* note 1, p. 144.

<sup>45</sup> *Idem*.

Furthermore, in order to empower children to claim for their rights a very important measure has to be taken. The children have to be informed of their rights. They cannot claim something they do not know. It is the society's obligation to provide the children with all the information regarding their legal status and their inherent rights. Hence, the strong link between Article 12 and 17 of the CRC. Children should have access to all sources of information. They should be informed not only by the schooling system, but also through the mass media, through books and informative magazines, and, at the international level, through international cooperation and exchange. Article 28 also becomes relevant here: that part of the educational process of the child should include an enlightenment of the child regarding his or her rights.

### ***I.III. The CRC and its Relation to the International Covenants***

Many of the rights set forth in CRC are repeated from the provisions found in the ICCPR and ICESCR. Although many have argued that the repetition of such rights in the Convention may be innocuous, for the International Covenants are both applicable to children and adults, Detrick<sup>46</sup> argues that the CRC has the potential of affording a broader protection to the children. She first points out that more states have ratified the CRC<sup>47</sup> than the International Covenants and therefore, states are assuming a wider obligation in respect of the children. Secondly, she reminds us that the CRC has brought many innovative provisions, never found in previous human rights binding instruments. Also it is important to note that these rights derived from the two International Covenants are modified to fit the particular circumstances of the child.

Detrick<sup>48</sup> also addresses the issue of the possibility of derogation of the rights recognized in the ICCPR and the ICESCR and its effect on the repeated provisions in the CRC. In this sense, she states that,

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<sup>46</sup> S. Detrick, A Commentary on the CRC, *supra* note 4, p. 4.

<sup>47</sup> 191 States have ratified the CRC excluding the United States of America, Somalia, and East-Timor.

<sup>48</sup> S. Detrick, A Commentary on the CRC, *supra* note 4, p.4.

“... there remains the issue of possible derogation from certain rights recognized in the ICCPR and the ICESCR. As regards the rights recognized in the CRC which are directly taken from the International Covenants, one finds, on the one hand, provisions which are formulated along the lines of their counterparts in either the ICCPR or the ICESCR. However there are also provisions that are formulated differently, which may give rise to the question whether they provide for higher or lower standards of protection than their counterparts in the International Bill of Human Rights.”<sup>49</sup>

The last point brought up by Detrick<sup>50</sup> is that some of the rights contained in the two Covenants were omitted in the CRC. The consequence to this is that some states conclude that these omitted rights do not apply to children; otherwise the drafters of the Convention would have asserted them by placing them in the latter document. She finalizes her analysis by explaining that “The saving clause contained in Article 41 of the CRC is meant, *inter alia*, to resolve any problems which could arise due to derogation from, or omission of, human rights standards which are more conducive to the realization of the rights of the child, and which may be contained in the ‘international law in force’ for the state party concerned, including the ICCPR and the ICESCR.”<sup>51</sup>

#### ***I.IV. Children’s rights as a key towards their development***

As stated before, the United Nations Convention on the Rights of the Child is a landmark in seeking to promote the rights and well being of the child. It indicates the international society’s recognition of the child as beneficiary of human rights and its concern in improving the situation of children throughout the world. It is a standard setting document that involves the protection of the child, through the guaranteeing of necessary provisions, and includes the child’s right to participation in society as an autonomous person.

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<sup>49</sup> *Idem.*

<sup>50</sup> *Idem.*

<sup>51</sup> *Idem..*

Due to the fact that children are by nature vulnerable and dependant, a manner of assuring the child's development is by empowering his or her parents, and other members of his or her community, that play an important role in the child's life, such as teachers, doctors, dentists, school supervisors, etc. As for the poor countries, not only is this necessary but also, international cooperation is of extreme importance.

As mentioned above, education has a paramount role in transforming the child into a fully developed person. A child that is well educated and taught the basic principles of living in society, not only has a better chance in achieving higher goals, or has the choice of which aims to pursue, but has also the chance to contribute, as a person, in making his or her community a better and more developed place.

It is necessary to analyze further the relationship between education and poverty. It is a well-known fact that educated people are more likely to earn higher income and improve the quality of their lives. Individuals with at least the basic educational formation have more chances of actively participating in society and less chance of being marginalized. As mentioned above, education empowers individuals, allowing them to be more in control of their lives. Moreover, education opens a door to available options and gives the individuals means to better choose among them. In turn, education also empowers the state, since educated citizens contribute to the effectiveness of democratic institutions, satisfies the demand for sophisticated workforce and to fulfil their obligations as parents and citizens.<sup>52</sup>

The lack of education is the cause and effect of poverty. The role of education in poverty reduction is crucial. It is also an effective means to create wealth. According to UNESCO, no country has succeeded if it has not educated its people. A report realised by the Secretary-General of the United Nations corroborates that primary education is central in the combat of poverty, due to the fact that educational institutions reach the largest section of the population, with the objective of leading the individuals through a process of systematic

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<sup>52</sup> Asian Development Bank, *Education and Poverty Reduction*, in <http://www.adb.org/documents/Polocies/Education/educ0300.asp?p=policies>, Last visited: 07 May 2003.

learning<sup>53</sup>. According to the Minister of International Development of Norway, “education is part of a society’s basic infrastructure, an infrastructure that lasts and accumulates itself, an infrastructure that can never be destroyed by war. It remains in people’s head”. She adds that education is a lifelong investment with various returns, as well as well as a powerful tool in the hands of the poor.<sup>54</sup>

An education of good quality maintains children in school and helps eliminate intolerable forms of child labour, discrimination, economic exploitation and child abuse. If the education provided is of low quality, many parents may not see the value of the time and money invested and may withdraw their children from school.<sup>55</sup>

It is important to bear in mind that poverty is in itself a denial of human rights. It remains as one of the main human rights challenges throughout the world. Human rights are fundamental to well being, as “freedom from want and fear constitutes the fundamental condition to enjoy that well-being, while freedom from discrimination forms the basis for social protection and effective participation in society.”<sup>56</sup>

#### ***I.V. Conclusion***

The international society began to centre attention on children’s rights in the beginning of the twentieth century. The process of recognising children as fully-fledged human beings with inherent rights and autonomy progressively took place with the embracement of a series international instruments of non-legally binding character, such as the 1959 Declaration on the Rights of the Child, and was consolidated, although after many years of discussion and debates as well as the analyses of pre-existing human rights treaties, with the

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<sup>53</sup> United Nations Educational, Scientific and Cultural Organization, *International Workshop on Education and Poverty Eradication Kampala*, 2001, in <http://www.unesco.org/education/poverty/news.shtml>, Last visited: 07 May 2003.

<sup>54</sup> See speech *Education – a Weapon against Poverty?* by the Minister of International Development of Norway, Ms.Hilde Frafjord in <http://odin.dep.no/ud/engelsk/indez-b-n-a.html>, Last visited: 07 May 2003.

<sup>55</sup> United Nation’s Children’s Fund, *Poverty Reduction Begins with Children*, New York, 2000, p. 18. [hereinafter *Poverty Reduction*]

<sup>56</sup> *Idem*, p.3.

adoption of the United Nations Convention on the Rights of the Child. Such a document introduced novel principles regarding the rights of the child, as it focused on giving children ground and voice to claim for their rights.

Along with the evolution of acceptance of many human rights of the child, the recognition of the child's right to education was formally established over the years. The importance of providing the child the means to emotionally, physically and mentally develop and its intrinsic relation to education became a priority in the international agenda as will be demonstrated in the following chapter.

## CHAPTER II

### II. THE CHILD'S RIGHT TO EDUCATION

#### *II.1. The Child's Right to Education under International Law*

Education is considered to be essential for the full development of the individual. It is also a prerequisite for the exercise of human rights. Like medical care, food and shelter, education is part of the very minimum the individual must have in order to respect the human rights of others.<sup>57</sup>

The United States Supreme Court has recognized "...the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities. It is the very foundation of citizenship. Today it is the principal instrument for awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."<sup>58</sup>

It has also been said in the United Kingdom that education has two aims: to increase the child's knowledge, experience and imaginative understanding and, hence, his or her moral values and capacity for enjoyment; as well as it enables the child, after a formal education, to enter the world as an active and independent participant in society and a conscious contributor to it.<sup>59</sup>

The definition of education is not restricted to the instruction given by schools. The Eighteenth General Conference of United Nations Educational, Scientific and Cultural Organisation Recommendation Concerning Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms (1974) determines:

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<sup>57</sup> C. Wringle, *Liberal Individualism and Welfare Rights*, in M. Freeman and P. Veerman (eds.), «The Ideologies of Children's Rights» Dordrecht, Martinus Nijhoff Publishers, 1992, p.199.

<sup>58</sup> E. Reilly, *Symposium: Education and the Constitution, Shaping Each Other and the Next Century: Education and the Constitution: Shaping Each Other and the Next Century*, in «Akron Law Review», vol. 34, 2000, p. 1.

<sup>59</sup> J. Fortin, *Children's Rights and the Developing Law*, London, Butterworths, 1998, p. 131.



“The word ‘education’ implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge. This process is not limited to any specific activities.”<sup>60</sup> (Article 1(a))

The importance of education has been captured in many international instruments<sup>61</sup>. However, as stated by Nowak, the objectives of education will vary according to each historical, political, cultural, religious or national context.<sup>62</sup> The Universal Declaration of Human Rights states 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”.<sup>63</sup>

Although the wording used in the ICESCR is quite similar to the one inserted in the 1948 Declaration, the Covenant goes further as it outlines that the states parties have agreed that:

“...education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”<sup>64</sup>

The Committee on Economic, Social and Cultural Rights, has stated in General Comment No. 13, in reference to article 13 of the ICESCR, that education is not only a right, but also an essential tool for realising other human rights. It is a means by which socially and economically marginalized individuals can escape from poverty and participate fully in his or

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<sup>60</sup> United Nations Children’s Fund, *Implementation Handbook for the Convention on the Rights of the Child*, Geneva, Atar SA, 2002, p. 410. [hereinafter UNICEF Handbook]

<sup>61</sup> For the purpose of this work, the analysis of the international instruments will be limited to the most relevant documents of the subject.

<sup>62</sup> M. Nowak, *The Right to Education*, in A. Eide, C. Krause and A. Rosas (eds.), «Economic, Social and Cultural Rights - A Textbook», The Hague, Kluwer Law International, 2001, p. 245.

<sup>63</sup> See Article 26(2) of the UDHR.

<sup>64</sup> See Article 13(1) of the ICESCR.

her community. Education also has a role in empowering women, protecting children from economic and sexual exploitation, promoting human rights and democracy, and others.<sup>65</sup>

The drafters of the Convention on the Rights of the Child wanted to ensure that the provision regarding the child's right to education was neither weaker nor stronger than the one contained in the ICESCR.<sup>66</sup> Article 29 of the Convention carries a more extended and child-related list of the goals of education but, before addressing such a subject, it is necessary to first analyse Article 28 of the CRC.

Under Article 28 of the Convention on the Rights of the Child, the 191 states parties recognized the child's right to education, which should be realized progressively and on the basis of equal opportunity. The article goes further to determine that the states shall:

- “(a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.”<sup>67</sup>

The *chapeau* of the above-mentioned article recognises the social and financial diversity of the states parties to the document as it calls for a progressive realisation of the provisions. It

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<sup>65</sup> General Comment No. 13 (Twentieth-first session, 1999) Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/2000/22, pp.111-127, in A. Eide, C. Krause and A. Rosas (eds.), «Economic, Social and Cultural Rights», The Hague, Kluwer Law International, 2002, pp. 665- 674. [hereinafter General Comment No. 13]

<sup>66</sup> UNICEF Handbook, *supra* note 60, p. 408.

<sup>67</sup> See Article 28(1) of the CRC.

bears in mind that some developing countries lack the resources to immediately implement certain provisions of the article, such as making primary education available free to all children (article 28, 1 (a)).<sup>68</sup> The afore-mentioned article has to be analysed in conjunction with Article 4 of the CRC, which obliges states to undertake appropriate measures to realise the provisions of the Convention to the maximum extent of their available resources.<sup>69</sup>

To better understand Article 28 of the CRC, it is helpful to analyse the right to education from the perspective of a 'second generation right'. It can be classified as such if taken into consideration that the right to education has been guaranteed in ICESCR as a social, economic and cultural right. Nowak, argues that the right to education is 'second generation right' for it can only be guaranteed by a positive state action<sup>70</sup>. The right to education applies specific duties to the state. It demands the "...states to develop and maintain a system of schools and other education institutions in order to provide education to everybody, if possible, free of charge."<sup>71</sup> However, to realize such duties it is necessary to have resources, for the social, economic and cultural rights have been considered by some scholars as 'costly'.<sup>72</sup> It has been said that the political and civil rights are free, in the sense that they do not cost so much, whereas the implementation of the economic, social and cultural rights obliges the state to provide welfare to the individual<sup>73</sup>, which in turn, demands a considerable expenditure of the state's budget<sup>74</sup>.

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<sup>68</sup> As in the case of Brazil where many children still do not have access to free primary education for reasons of personal or national lack of resources.

<sup>69</sup> UNICEF Handbook, *supra* note 60, p. 410.

<sup>70</sup> Note that Nowak considers the right to education as probably the only right, which can be categorized under all three generations of rights. He believes that the right to education can fall under the first generation of human rights if taking into account that the European Convention on Human Rights does not oblige states to provide education by actively building schools and education institutions. The ECHR only guarantees equal access to previously existing educational establishments. He also addresses the issue of necessary liberty and freedom to teach and research. As for the third generation of human rights, he understands that the right to education can be classified as a solidarity right when analyzing Article 28(3) of the CRC. According to him, the afore-mentioned article obliges states to promote and encourage international co-operation in matters related to education. It is the international society's obligation to eliminate ignorance and illiteracy throughout the world and facilitate access to scientific and technological knowledge and modern methods of teaching.

<sup>71</sup> M. Nowak, *supra* note 62, p.253.

<sup>72</sup> A. Eide, *Economic, Social and Cultural Rights as Human Rights* in A. Eide, C. Krause and A. Rosas (eds.), «Economic, Social and Cultural Rights – A Textbook», The Hague, Martinus Nijhoff Publishers, 1995, p. 22. [hereinafter A. Eide 1995]

<sup>73</sup> The Economic, Social and Cultural Rights can only be considered 'costly' under the sole obligation to 'fulfil'. As for the obligation of the states to 'respect' and 'protect', the same cannot be said.

<sup>74</sup> It is important to bear in that the state has the primary obligation to respect the resources owned by the individual, to satisfy his or her needs. In this case, the state can only assist the individual in making use of their

The wording ‘progressive realization’ placed in Article 2 of the ICESCR has been often subject to misinterpretation. The Committee on Economic, Social and Cultural Rights has pointed out in the General Comment No. 3:

“The concept of progressive realization constitutes a recognition of the fact that the full realization of an economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on civil and Political Rights which embodies an immediate obligation to respect and ensure all the relevant rights. Nevertheless, the fact that the realization over time, or in other words, progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content.”<sup>75</sup>

The Committee went further to explain that the wording used in Article 2 is a flexibility device, which reflects the difficulties of certain countries to implement the economic, social and cultural rights. However, such an article still imposes an obligation upon the states to move as expeditiously and effectively as possible to realize the provisions contained in the ICESCR.<sup>76</sup>

In the light of the General Comment No. 3, one could conclude that, although limited resources can make it difficult for certain states to implement economic, social and cultural rights, such a limitation cannot be an excuse to not achieve the realisation of these rights. In this sense, the same could be said for the implementation of Article 28 CRC. All children have a right to receive education. The ratifying states of the Convention are, therefore, obliged to provide for education facilities under the conditions established by the document, either immediately, whenever possible, or progressively, in reason of financial limitation.

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own resources. Only when there is lack of personal resources should the state provide for the needs of the individual.

<sup>75</sup> General Comment No. 3 (Fifth session, 1990), Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/1991/23, pp.83-87 in A. Eide, C. Krause and A. Rosas (eds.), «Economic, Social and Cultural Rights – A Textbook», The Hague, Kluwer Law International, 2001, pp.618-621. [hereinafter General Comment No. 3]

<sup>76</sup> *Idem.*

However, it is not sufficient that international law imposes duties on the states when referring to economic, social and cultural rights. There is an assumption that civil and political rights are ‘justiciable’, *i. e.*, courts and other judicial bodies can easily apply them, whereas the economic, social and cultural have more of a political nature.<sup>77</sup> Scheinin adds that, many authors are of the opinion that social, economic and cultural rights are not justiciable due to the fact that they are not capable of being invoked in courts and applied by judges.<sup>78</sup>

Although the Committee on Economic, Social and Cultural, in General Comment No. 3 recognises that some provisions of the ICESCR do not impose an obligation upon the states of immediate effect, it clarifies that some articles of the Covenant are capable of immediate application by judicial and other bodies in many domestic legal system.<sup>79</sup> Article 13 (2)(a) of the Covenant, which determines the states parties to make primary education compulsory and available free to all, is included in the exemplifying list among other provisions<sup>80</sup>. The Committee goes further to outline in General Comment No. 9 that it is important to make a distinction between justiciability – matters which are appropriately resolved by courts- and norms which have a self-executing nature – provisions which are capable of being applied by courts without further elaboration. It adds:

“While the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimension. It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts.”<sup>81</sup>

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<sup>77</sup> *Idem.*

<sup>78</sup> M. Scheinin, *Economic and Social Rights as Legal Rights* in A. Eide, C. Krause and A. Rosas (eds.), «Economic, social and Cultural Rights – A Textbook», The Hague, Kluwer Law International, 1995, p. 41.

<sup>79</sup> General Comment No. 3, *supra* note 75, pp. 618-621.

<sup>80</sup> The Committee on Economic, Social and Cultural Rights also included articles 3; 7, paragraph (a)(i); 8; 10, paragraph 3; 13; paragraph 2(a); 13 paragraph 3; 13 paragraph 4, and 15, paragraph 3.

<sup>81</sup> General Comment No. 9 (Nineteenth session, 1998) Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/1999/22, pp.117-121), in A. Eide, C. Krause and A. Rosas (eds.), «Economic, Social and Cultural Rights – A Textbook», The Hague, Kluwer Law International, 2001, pp. 651-654.

In the case of Brazil, the Statute of Children and Adolescent<sup>82</sup> determines in Article 53(5) that every child has a right to education, as well as it guarantees all children access to a free public school near the child's residence. The Statute further ensures that it is the state's obligation to provide for compulsory and free fundamental education, as it is the child's subjective right under public law (Article 54(I), paragraph 1). It determines that the breach of the provision holds the competent authorities liable (paragraph 2). The Statute has been elaborated in the light of the 1988 Federal Constitution of Brazil, where it determines in Article 205 that every individual has the right to education and, in Article 208, it outlines the state's obligation to provide education similarly to the provisions contained in the CRC and ICESCR.<sup>83</sup>

It is necessary to outline that, although the laws described above guarantee the right to education, and moreover, holds the state responsible for its realisation, along with the obligations of the parents (which to a certain extent minimizes the state's obligation); it is possible to say that the realisation of compulsory and of free of charge primary education is still a political issue.<sup>84</sup> In order for the provisions of the Constitution regarding the right to education to be applicable, it is necessary to pass a complementary law defining the terms and conditions of applicability of the norms. In 1996, Federal Law No. 9394 was issued, establishing the directives and basis of the national education. Such a law gives individuals or groups, associations, public promoters and others, the possibility to access the Judiciary to claim for the right to education, as it states that the right to education is subjective and of public nature. However, giving individuals or groups access to 'justice' may not that easily entail the fulfilment of the right to education. It is important to notice that the Executive has the discretionary power to apply the national budget on different sectors, within the margin of appreciation established by law. In this sense, it does not seem feasible for the Judiciary to decide how the Executive should utilise the available resources. Neither does it seem logical,

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<sup>82</sup> See Law no. 8069 of 13/07/1990, Estatuto da Criança e do Adolescente.

<sup>83</sup> The Brazilian Constitution (Constituição da República Federativa do Brasil 1988) repeats that it is the state's obligation to provide for compulsory and free primary education and to universally achieve compulsory and free education at the secondary level. It further repeats that the state is held liable for the breach of the first provision.

<sup>84</sup> Note that the reference to theory of the state's responsibility under Brazilian law will be limited to the scope of this work. See decision Law No. 9.394 of 20 December 1996 (Lei de Diretrizes e Bases de Educação Nacional). See also judgement of the Tribunal de Justiça de Minas Gerais, No. 000181572-9/00(1); date of publication:04/08/2000 in <http://www.tjmg.gov>. Last visited 21 of May 2003.

in the case of lack of resources for education, to have the Executive take from the budget of another public sector, such as health for example, and reallocate it to education.<sup>85</sup>

As for the right to education under the CRC in the context of Brazil<sup>86</sup>, one could conclude that the child also holds the right to education but may not have the means to claim for it. The self-executing nature of the Convention depends on the domestic enforceability of the international norm.<sup>87</sup> If the Brazilian's legal system fails to recognise the child's right to education, due to the discretionary power of the Executive, then it is only left to rely on the Convention's monitoring system. The CRC does not contain a provision for the states parties or individuals to claim a right before an independent body against a state in breach of the document.<sup>88</sup> The Convention limits itself to solely imposing the obligation upon the states parties to report to the Committee on the Rights of the Child<sup>89</sup>. However, this mechanism can be at times considered weak, since it is based on 'good spirit' and on the need for international cooperation, solidarity, dialogue and technical assistance in developing the implementation.<sup>90</sup>

The International Covenant on Economic, Social and Cultural Rights, has foreseen the difficulty of the immediate application of Article 13(1) by some of the states. Nonetheless, it has not excluded them from their obligations. In this sense, the ICESCR has taken a step further than the CRC, since it requires the states parties which have not be able to comply with making primary education compulsory and available free to all at the time of becoming a state party to undertake, within two years, to "...work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all."<sup>91</sup>

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<sup>85</sup> The Brazilian Constitutional system establishes that the provisions that do not have a self-executing nature require a specific law, with the aim of regulating the terms and conditions of its applicability. The competence to issue this law is of the National Congress. This necessarily requires a certain political will and, above all, implies a greater liability of the State in case of non-compliance. See Articles 5 and 69 of the Law No. 9394.

<sup>86</sup> Brazil ratified the CRC on the 25 September 1990.

<sup>87</sup> A. Alen and W. Paes, *The CRC's Self-executing Character*, in E. Verhellen (ed.) «Monitoring Children's Right», The Hague, Kluwer Law International, 1996, p. 176.

<sup>88</sup> *Idem*.

<sup>89</sup> See Article 44 of the CRC.

<sup>90</sup> A. Alen and W. Pas, *supra* note 87, p.176.

<sup>91</sup> See Article 14 of the ICESCR.

The Committee on Economic, Social and Cultural Rights has outlined in the General Comment No. 11 the right to education placed in articles 13 and 14, as well as in other international instruments, such as the Convention on the Right of the Child is of vital significance and, hence, the importance of the drawing of the plan. It reiterated that such an obligation should be thoroughly observed due to the fact that in 1999<sup>92</sup> 130 million children of school age were estimated to not have access to primary education in the developing world<sup>93</sup> According to the Committee, “the plan must cover all of actions which are necessary to ensure each of the requisite component parts of the right and must be sufficiently detailed so as to ensure the comprehensive realization of the right.”<sup>94</sup>

Furthermore, the Committee on Economic, Social and Cultural Rights not only expects the fulfilment of the right to education by all states, whether immediately or progressively by demonstrating the intention of fulfilment through a plan of action, but also calls for a full review of the states financial expenditure,<sup>95</sup> as well as a review of the administration of education and the role of their education systems.<sup>96</sup> The Brazilian Federal Constitution determines that the Federal Union should never apply less than 18% of its tax budget in the maintenance and development of education, while the Federal States, Federal District and the Municipalities should apply the minimum of 25%.<sup>97</sup>

One could argue that Article 14 of the ICESCR is of vital importance in the sense that it obliges the states to fulfil their duties set out in the previous article. It also brings a higher significance to the right of education. It is unfortunate that the CRC does not contain the same provision in its text, principally if considered that the Convention has almost a global ratification. According to Detrick,

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<sup>92</sup> Note that is the date of the estimate provided in the Report of the Committee on Economic, Social and Cultural Rights – Twentieth Session.

<sup>93</sup> General Comment No. 11 (Twentieth session, 1999), Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/2000/22, pp. 99-101, in A. Eide, C. Krause and A. Rosas (eds.), «Economic, Social and Cultural Rights – A Textbook», The Hague, Kluwer Law International, 2001, pp. 656-658. [hereinafter General Comment No. 11]

<sup>94</sup> *Idem.*

<sup>95</sup> Neither the Committee on Economic, Social and Cultural Rights nor the UN Bodies have established the proportion of the national budget that should be allocated to education. Data from UNICEF show that the average percentage of the government’s expenditure was 4% for industrialized countries; 11% for developing countries; and 13% for the least developed countries.

<sup>96</sup> UNICEF Handbook, *supra* note 60, p. 411.

<sup>97</sup> See Article 212 of the 1988 Federal Constitution of Brazil.



“Commentators have expressed their concern about the lack of a provision in the CRC that is similar to Article 14 of the ICESCR. They submit that the provisions of Article 28(1)(a) are arguably weaker than their counterparts in Articles 3(2)(a) and 14 of the ICESCR because the CRC fails to specify any time frame for the progressive implementation of the principle of compulsory and free primary education.”<sup>98</sup>

Further on, Article 28 of the Convention on the Rights of the Child also determines that the right to education should be achieved on the ‘basis of equal opportunity’. Such a determination is in conformity with Article 2 of the treaty, which establishes the principle of non-discrimination.<sup>99</sup> The 1960 UNESCO Convention against Discrimination in Education provided with the definition of ‘discrimination in education’ as it states in Article 1:

“...the term ‘discrimination’ includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) Of depriving any person or group of persons of access to education of any type or at any level;
- (b) Of limiting any person or group of persons to education of an inferior standard;
- (c) Subject to provisions of section II of this Recommendation, of establishing or maintaining separate educational systems or institutions for persons or groups of persons;

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<sup>98</sup> Detrick, A Commentary on the CRC, supra note 4, p.479.

<sup>99</sup> See subparagraph I.III (*General Principles of the UN Convention on the Rights of the Child*) of the first chapter of this work.

(d) Of inflicting on any or group of persons conditions which are incompatible with the dignity of man.”<sup>100</sup>

While in some societies the principle of non-discrimination regarding education is well-founded and the repetition of its determination in Article 28 may seem innocuous, it is not uncommon to find, in many societies, especially in developing countries, girls, children from minority groups, disabled children, and others without access to school, based on various sorts of prejudice.

From the financial point of view, equality of opportunity in education becomes a problem when there is shortage in resources from the government, which obliges the state to make choices on how to expend the budget, consequently leaving part of the population out or, when the lack of resources is personal, obliging caregivers to decide which children will benefit from the right, if any may benefit at all.<sup>101</sup> As for a political viewpoint, Nowak states that some governments use the educational system as a tool to systematically discriminate against ethnic, linguistic and religious minorities, as well as women and blacks. One form of effective discrimination, in this case, is to deny the minority groups equal access to education or to provide these groups with an inferior standard of education.<sup>102</sup>

The CRC is not only clear regarding the right of all children to equal access to education, but goes further to specifically determine that the states which have children belonging to religious or linguistic minorities or children with indigenous background shall not deny their right to enjoy their culture, profess and practice their religion or language, in community with other members of their group. In other words, not only should the minority children enjoy their right to education, but should also be allowed to enjoy their own cultural particularities.<sup>103</sup>

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<sup>100</sup> See Article 1 of the 1960 UNESCO Convention against Discrimination in Education, concluded on 14 December 1960; entered into force 22 May 1992; 429 UNTS 93.

<sup>101</sup> UNICEF Handbook, *supra* note 60, p. 412.

<sup>102</sup> M. Nowak, *supra* note 62, p. 259.

<sup>103</sup> See Article 30 of the CRC.

In the 1990 World Summit for Children it was estimated that out of 100 million children without basic education, two thirds of them were girls. The 1995 World Conference on Women in Beijing explained that the discrimination against the girl-child in education was mainly due to customary attitudes, child labour, early marriages, lack of funds and schools, teenage pregnancies, and gender inequality in society, as well as in the family<sup>104</sup>. It is quite common that girls stay home to help with the house chores, while the boys are sent to school.

The UNICEF Equality, Development and Peace – Beijing + 5 Women 2000 Report states that, in many cases, there is a belief of the parents that, while the sons should be educated to later support the parents in their aging process, daughters will eventually marry and serve another family. There is also the idea that the daughter has little chance of getting a paying job, even if she is educated. Parents conclude that the expense of sending the daughter to school will not be justified, that is, there will be no financial return to the family.<sup>105</sup>

The afore-mentioned report brings alarming estimates that: of the 132 million 6- to 11 –year-old children not in school, nearly 60% are girls; by the age of 18, girls have received on average 4.4 years less education than boys; and of the world’s 875 million adults who are illiterate, nearly two thirds are women.<sup>106</sup>

In the case of Brazil, it is quite common to find girls not attending school due to the risks they might run during their walk to school or in the educational institution itself. It often occurs that the girl-child does not have a person to accompany her to school and, in a country with high rates of violence and crime, such as Brazil<sup>107</sup>, the parents fear for the child’s life. The girls, in this case, are more vulnerable than the boys and, therefore, are more potential victims of crimes, specially sexual harassment and rape.

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<sup>104</sup> Note that even in cases where girls make it to school they tend to drop out due to early pregnancy or marriage; work; devaluation of the girls compared to the boys.

<sup>105</sup> United Nations Children’s Fund, *Equality, Development and Peace Beijing + 5 Women 2000*, New York, 2001. [hereinafter UNICEF Equality]

<sup>106</sup> *Idem.*

<sup>107</sup> The cities of São Paulo and Rio de Janeiro are considered to be some of the most dangerous cities in the world.

Due to the alarming data, UNICEF has been active in reducing gender discrimination in education by, providing girls with scholarships and school supplies; promoting curricula and teaching methods free of gender bias, publicising the benefits of educating girls and other mechanisms. The 2002 Annual Report shows that positive results have been achieved. It states that in 2001, 21 countries informed the improvements of school enrolment and retention of girls.<sup>108</sup>

Rural children are also quite often subject to discrimination in education. Principally throughout the developing world where many rural children do not have access to the same level of education, as does an urban-based child. This arises from a combination of various factors: high cost of maintaining schools and difficulty of servicing remote areas, scarcity of teachers prepared to live in the countryside, farming families depending on their children's labour, and others.<sup>109</sup>

The occurrence of this form of discrimination is very often frequent within the state of Brazil. The level of development of the regions of the country differs immensely. While the south and southeast are known to be the most developed and industrialised regions, the north and northeast present the poorest rates of the country. Many families live in absolute remote areas with hardly any educational facility. It is well known that the level of the existing schools is hardly satisfactory and improvements depend on the will of the government to invest in them.

As mentioned before, other groups of children also suffer from various forms of discrimination in education, despite the fact that the international instruments have very clear provisions regarding the prohibition of this practice, specifically Article 28 of the CRC. It is up to the states to respect and to fulfil this right and the monitoring systems to force the states to comply.

### ***II.I.I. Primary Education Compulsory and Available to All?***

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<sup>108</sup> United Nations Children's Fund, *Annual Report 2002*, New York, p. 16. [hereinafter UNICEF Annual Report]

<sup>109</sup> UNICEF Handbook, *supra* note 60, p. 414.

Article 28 (1)(a) of the CRC states that states parties shall make primary education compulsory and available free to all children. The *travaux préparatoires* of the Convention show that it was some of the states' will to make the provision as to guarantee every child a cost-free education, at least, at an elementary level. However, some delegates expressed the opinion that such a provision would have a different impact on countries with lower social and economic conditions. Hence, a second proposal was made, that the states should make primary education free of cost and compulsory 'as early as permitted by national resources available'. Nonetheless, there was an opposition to the former wording chosen for two reasons: first it would make the provision stronger than the corresponding article in the ICESCR, for it would indicate a more immediate obligation upon the states;<sup>110</sup> and second, account was taken that the *chapeau* of Article 28 already placed a qualifying phrase regarding the implementation of the states obligation (the aim to achieve the right to education progressively).<sup>111</sup>

Regarding the obligation to make education free and available to all children, a Japanese delegate suggested that the word 'free' should be interpreted to mean that education *could* be made accessible to all children and not that it was the state's obligation to *make* education free. However, the provision in Article 28(1)(a) clearly determines that primary education is a right, which the states parties have the obligation to provide for all children in all categories.<sup>112</sup>

The objective of ensuring the 'free primary education' and 'compulsory education' is to guarantee that all children enjoy, at the minimum, the basic education of the formative years. In order to obtain such a goal, it is necessary for the State to provide free of charge schooling to all. The Committee on Economic, Social and Cultural Rights has explained in General Comment No. 11 that, "...fees imposed by the Government, the local authorities,

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<sup>110</sup> Note that it has been previously stated in this work that the drafters of the CRC did not wish to have neither a stronger nor a weaker provision regarding the right to education than the one contained in the ICESCR.

<sup>111</sup> S. Detrick, A Commentary on the CRC, *supra* note 4, p. 478.

<sup>112</sup> UNICEF Handbook, *supra* note 60, p. 416.

and other direct costs<sup>113</sup>, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are often highly regressive in effect.”<sup>114</sup>

As for the compulsory character of primary education, the Committee also explains that it serves to emphasise that caregivers are not entitled to undertake the decision whether the child should have primary education or not as optional.<sup>115</sup> Detrick adds, while quoting Hodgson, that, the term ‘compulsory’ should imply that “...no person or body can prevent children from receiving a basic education”, this of course, in the case, for example, of parental neglect or ignorance.<sup>116</sup>

In some national legislation compulsory education has been originally introduced as a means to prevent child labour and economic exploitation.<sup>117</sup> It is commonly known that many children throughout the world have to work to help with the family income. It is also known that, most of the time, such work interferes with the child’s education. The CRC, therefore, aims to protect the children that are found in this situation, not only by obliging the states to make education compulsory, but also by specifically determining the states to safeguard children from economic exploitation and work that interferes with the child’s education.<sup>118</sup>

Nonetheless, it is important to emphasise that, apart from the cases of parental negligence or ignorance, parents or guardians cannot be blamed for not placing their child in school if there are not, in fact, available educational facilities within the child’s surroundings, as it commonly occurs in many developing countries. The state has to first certify that schools are available to all children before making primary education compulsory and sanctioning caregivers.

The Committee on Economic, Social and Cultural Rights clarifies that primary education, as well as the forms and levels of education, shall present the following fundamental features:

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<sup>113</sup> The Committee on Economic, Social and Cultural Rights also makes reference to ‘indirect costs’ which constitutes, for example, compulsory taxes or obligation to wear an expensive school uniform.

<sup>114</sup> General Comment No. 11, *supra* note 93, pp. 656-658.

<sup>115</sup> *Idem.*

<sup>116</sup> S. Detrick, A Commentary on the CRC, *supra* note 4, p. 479.

<sup>117</sup> *Idem.*

<sup>118</sup> See Article 32 of the CRC. Note that the issue of child labour and its interference with the child’s education will be further addresses when discussing the Bolsa-Escola Programme.

availability, accessibility, acceptability and adaptability. The first element is related to the existence of sufficient quantity of educational institutions with proper facilities; the second refers to educational programmes that, include all individuals without any sort of discrimination, are safe and physically reachable, and are economically affordable; the third relates to the acceptability of the form and substance of education including curricula and teaching methods; and the former refers to the flexibility of education in order to adapt to the needs of changing societies and communities.<sup>119</sup>

Therefore, to ensure that the right to compulsory primary education is being properly achieved, it is not enough for the state to provide schools free of charge. The four features outlined above have to be realised in order to satisfy the children with their basic learning needs. These features are defined in Article 1 of the World Declaration on Education for All. It describes them as: the essential learning tools, such as literacy, oral expression, numeracy, and problem solving; and the basic learning content, such as knowledge, skills, values and attitudes.<sup>120</sup>

### ***II.I.II. The Right to Secondary Education***

During the drafting of the CRC, there were many discussions regarding the insertion of the obligation to ‘develop’ various forms of secondary education, with the perspective of introducing ‘free of charge’ secondary education. A number of delegates proposed that the states should only be obliged to ‘encourage the development of secondary education’.<sup>121</sup> The UNESCO representative was, however, opposed to this latter form since it would make the provision weaker than the standards set by the 1960 UNESCO Convention against Discrimination in Education. Nonetheless, some delegations were of the opinion that free secondary education should not be obligatory and merely optional.<sup>122</sup>

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<sup>119</sup> General Comment No. 13, *supra* note 65, pp. 665-674.

<sup>120</sup> See Article 1 of the 1990 World Declaration on Education for All, - *Dakar Framework for Action, Education for All: Meeting our Collective Commitments*, 2000, ED-2000/CONF/211.

<sup>121</sup> This proposal was made by the United States delegate and agreed by the representatives of Canada, Ireland, Japan and the Netherlands.

<sup>122</sup> S. Detrick, A Commentary on the CRC, *supra* note 4, p. 480.

All of the above opinions were taken into account until the drafters settled for obliging states parties to “encourage the development of different forms of secondary education, including general 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.”<sup>123</sup> Although the wording of the right to secondary education may seem weak compared to the provision regarding primary education, one should not conclude that it reflects a doubt towards the usefulness of the former level of education. On the contrary, its importance is also taken into account. However, the text takes into consideration that to realise free compulsory secondary education may be beyond the resources of numerous countries.<sup>124</sup>

The Committee on Economic, Social and Cultural, in referring to the relevance of the second level of education has said that, “while the content of secondary education will vary among States parties and over time, it includes completion of basic education and consolidation of the foundation for lifelong learning and human development. It prepares students for vocational and higher educational opportunities.”

It has been argued that the phrase “take appropriate measures such as the introduction of free education and offering of financial assistance in case of need”, inserted in Article 28(1)(b) of the Convention on the Rights of the Child indicates that availability and accessibility of education could imply that richer families will pay for the education while the poor children will be will be granted scholarships and attend free of charge schools.<sup>125</sup>

However, it has been stated by the Committee of Economic, Social and Cultural Rights while referring to Article 13(2)(b) of the ICESCR, that, similar to primary education, secondary education should include as well the elements of availability, accessibility, acceptability and adaptability. It further clarifies that the phrase introduced in Article 13(2)(b) ‘generally available’ means that secondary education should be distributed in a manner that it is available on equal basis to all.<sup>126</sup>

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<sup>123</sup> See Article 28(1)(b) of the CRC.

<sup>124</sup> UNICEF Handbook, *supra* note 60, p.417.

<sup>125</sup> *Idem.*

<sup>126</sup> General Comment No. 13, *supra* note 65, pp. 665-674.



Nonetheless, one could argue that is not harmful for the state to offer ‘financial assistance in case of need and cost-free education’ to those that are underprivileged. If the individual has the means to provide for his or her basic needs then the state has the subsidiary obligation to provide for those that do not have the financial capacity<sup>127</sup>. In this sense, the state should be allowed, for example, to grant families that have to withdraw their children from school because they depend on the children’s labour to provide income. The Committee on the Rights of the Child has praised this kind of projects, such as China’s “Project Hope”. The Bolsa-Escola Programmes also financially helps underprivileged families to ensure that their children will attend school.

As for the insertion of the ‘different forms secondary education’ and ‘vocational education’ in Article 28(1)(b),(d), the Convention intends to guarantee the development of the child to the fullest whichever form of education it may be. The CRC recognises that there are a variety of ways to achieve literacy and numeracy. The treaty also emphasises ‘vocational education’ due to the fact that work-related training is not only educational, but also an effective means to maintain the child in school. The Committee on the Right of the Child has encouraged ‘alternative’ forms of education.<sup>128</sup>

The 1989 UNESCO Convention on Technical and Vocational Education has determined that these forms of education consist of “all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life”<sup>129</sup>.

The Committee on Economic Social and Cultural Rights has held the view that vocational education “forms an integral element of all levels of education”.<sup>130</sup> Article 6(1) of the ICESCR determines that technical and vocational education has role in helping “...achieve steady economic, social and cultural development and full and productive employment...”<sup>131</sup>

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<sup>127</sup> See Article 27(2) of the CRC.

<sup>128</sup> UNICEF Handbook, *supra* note 60, p. 418.

<sup>129</sup> See Article 1 of the UNESCO 1989 Convention on Technical and Vocational Education, adopted by the General Conference of UNESCO in November 1989.

<sup>130</sup> General Comment No. 13, *supra* note 65, pp. 665-674.

<sup>131</sup> See Article 6 of the ICESCR regarding the right to work and technical and vocational education.

The Universal Declaration on Human Rights also welcomes this form of education by determining that the states should make it generally available.<sup>132</sup>

In the case of Brazil, it is quite common to find adolescents opting for vocational education, for various reasons. First, it is a faster and cheaper<sup>133</sup> way to be qualified for a job by the end of the programme. Secondly, many underprivileged children fear that they have less chance of getting into a good university due its high level of competition.<sup>134</sup>

### ***II.I.III. The Right to Higher Education***

The right to higher education is established in Article 28(1)(c) and it obliges the states parties to make it “accessible to all and on the basis of capacity”. Some delegations during the drafting period argued that a provision regarding higher education was not necessary since the CRC serves to protect the rights of ‘children’, that is, individuals under the age of eighteen<sup>135</sup>. Although this form of education is generally taken by individuals of the age of 18 and over, the Convention inserted this provision on the basis that it is an essential part of children’s rights<sup>136</sup>.

There was also a debate regarding the inclusion of ‘making higher education equally accessible to all on the basis of capacity by every appropriate means, in particular by the progressive introduction of free education’ such as it is determined in Article 13(2)(c) of the ICESCR. The delegate for the Netherlands expressed a certain concern toward the inclusion of making this form of education cost- free, since it was contrary to the Dutch’s policy. There was general agreement with the Netherlands’s position and, it was finally decided, that the CRC would not make any specific reference to the obligation to progressively make higher education free of charge.<sup>137</sup> If the provision in Article 28(1)(c) is compared to the

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<sup>132</sup> See Article 26(paragraph 1) of the UDHR.

<sup>133</sup> There are a number of good public schools in Brazil that offer this form of education.

<sup>134</sup> To enter most of the universities in Brazil the student is obliged to pass a *concours*, which examines all the acquired knowledge of the secondary education. It is quite often that children that went to private schools have more of chance to enter, due to the fact that, in general, public schools have lower educational quality. The public universities are highly competitive and the private ones are too expensive.

<sup>135</sup> S. Detrick, A Commentary on the CRC, *supra* note 4, p. 482.

<sup>136</sup> UNICEF Handbook, *supra* note 60, p. 420.

<sup>137</sup> S. Detrick, A Commentary to the CRC, *supra* note 4, p. 482.

similar one contained in the Covenant, one could argue that the lack of the latter obligation makes the CRC weaker.

However, the Committee on the Rights of the Child has clarified that the states should at least undertake measures to allow poor children to take entrance examinations to courses of higher education, as well as grant them scholarships on the basis of equal opportunity.<sup>138</sup> In this sense, one could say that, although there is no determination in the CRC as to progressively make higher education available free to all, it does not mean that states should not strive to benefit the underprivileged children by providing them with means to obtain this level of education.

#### ***II.I.IV. Other Provisions under Article 28 of the CRC***

The CRC, within the provision that guarantees the child's right to education, also determines the states parties to undertake measures to reduce drop-out rates and to assure school attendance. This is an important feature of Article 28, since it does not suffice merely to guarantee the child education. In order for the child to benefit from his or her right to education, it is not only necessary that the he or she has access to a certain form of education, but it is also necessary that the child is regular in school. The states have to, hence, ensure that what is taught in school and the manner, which it is taught, is attractive to the children.<sup>139</sup>

Many are the causes that make children drop-out of school throughout the world. In developing countries poverty is one of the reasons since children that come from low-income families quit school to work and raise money to help out. Other reasons, commonly found in developing countries, can be related to the quality of education, that is, some children find the curriculum too difficult or too dull, or the teaching might be poor. Furthermore, over-punitive school discipline which tend to disrespect and abuse the dignity

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<sup>138</sup> UNICEF Handbook, *supra* note 60, p. 420.

<sup>139</sup> See Article 28(1)(e) of the CRC.

and lower the self-esteem of the child, or disabilities that are not attended to can also be traced as causes of high drop-out rates.<sup>140</sup>

It is also important to emphasise that discrimination in school is another major reason why children drop out of school<sup>141</sup>. As mentioned before, girls, children with disabilities or difficulties, and children from minority groups are commonly discriminated against in school. Rural children not only drop out of school because of the prejudice they suffer but also due to the lack of schools in their surroundings or the poor quality of the nearest school. In the latter case, states should strive to encourage school attendance by providing schools within a reasonable distance from the child's home or provide adequate transportation to schools.<sup>142</sup>

It is interesting to notice that one of the factors that attract underprivileged children to schools, in Brazil, is the meal provided by them. Many of the children do not have a nutritious meal to eat at home, if they have any at all. The school lunches not only serve as an incentive to compel children to attend school, but also play an important role on the child's health. One could say that a well-fed child will likely have his or her learning abilities increased and will, in turn, boost his or her interest in school.

Another important provision contained in CRC in relation to the right of the child to education is regarding international cooperation. Article 28(3) determines the states parties to:

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

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<sup>140</sup> UNICEF Handbook, *supra* note 60, p. 420.

<sup>141</sup> See the sub-paragraph II.I (*The Right to Education*) of this chapter.

<sup>142</sup> S. Detrick, A Commentary to the CRC, *supra* note 4, p. 485

This provision is not only important for the enforcement of the child's right to education, but also for the development of countries as whole. It is in this sense that Nowak links the right to education to a 'third generation' of human rights, that is, 'solidarity' rights. In his view, the above-mentioned provision is a request for academic cooperation, particularly between the 'North' and the 'South'. He explains that,

“The gap between educational facilities in industrialized countries and those in developing countries demands an active policy of academic cooperation and solidarity with educational institutions in the South. Such cooperation and solidarity would contribute to the implementation of the overall right to development. (...) both the right to education and the right to development aim at one ultimate goal, the full respect for and protection of all human rights.”<sup>143</sup>

According to Hammarberg, while in the process of drafting the Convention, it was understood that the developing countries were to be rewarded in international relations for supporting the CRC. The rationale was to create a constructive atmosphere instead of a punitive one.<sup>144</sup> However, one could argue that, more than a matter of rewarding, it is a matter of necessity. Without international aid, it would be very difficult for many developing countries to fulfil their obligations under the Convention.

It was also established at the World Summit for Social Development, held in 1995 in Copenhagen, a mutual agreement between the industrialized and developing states to allocate resources to implement the Copenhagen Declaration on Social Development and Programme of Action. The developing and industrialized and donor countries agreed that it is a mutual responsibility to achieve universal access to basic social services. It is possible to conclude that the 'basic social services' include education, as it is an essential feature to the realisation of sustainable development.<sup>145</sup>

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<sup>143</sup> M. Nowak, *supra* note 62, p. 255.

<sup>144</sup> T. Hammarberg, *supra* note 36, p. 367.

<sup>145</sup> UNICEF Handbook, *supra* note 60, p. 80. See the Copenhagen Declaration on Social Development and Programme of Action, 1995, Twenty Fourth Special Session A/RES/S-24/2.

The Committee on Rights of the Child has encouraged many of the developing countries to seek international cooperation and assistance. As well, it has encouraged the donor countries to certify that their aid programmes are in conformity with CRC.<sup>146</sup> The development aid of the international community should be addressed to assist educational programmes. Countries world-wide ought to learn from each other on how best to educate the children and share the scientific know-how, modern methods of teaching, methods of training teachers, and so on.<sup>147</sup>

## ***II.II. Goals and Aims of Education under the CRC<sup>148</sup>***

The most extended list of the objectives of education is in the Convention on the Rights of the Child. Article 29 of the CRC outlines them as the following:

- “(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.”

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<sup>146</sup> UNICEF Handbook, *supra* note 60, p. 79.

<sup>147</sup> *Idem*, p. 426

<sup>148</sup> Note that this subparagraph will only focus on the aims of education that are intrinsically related to the scope of this work.

The *chapeau* of Article 29 of the CRC is unique as it expresses that the states parties ‘agree’ that education of the child should be directed to the aims listed above. The Convention utilized the same wording present in Article 13(1) of the ICESCR<sup>149</sup>. Detrick has pointed out that, having placed the word ‘agree’ instead of ‘shall ensure’ in the provisions could serve to indicate a simple declaration of intent by the states as regards their domestic policies. However, the Committee on the Rights of the Child holds the opinion that Article 29(1) does actually impose an obligation upon the states. The Committee requires them to insert in their periodic reports the legislative, administrative, educational and other measures adopted in their national legislations<sup>150</sup>, to assure that such measures are in conformity with the objectives contained in Article 29 of the CRC.<sup>151</sup>

The Committee on the Rights of the Child has further stated in the General Comment No.1 that Article 29(1) of the CRC is of “far-reaching importance”, as the aims set out in the afore-mentioned article, “...are all linked directly to realization of the child’s human dignity and rights, taking into account the child’s special developmental needs and diverse evolving capacities.”<sup>152</sup> It adds that,

“The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child’s capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights value. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence”.<sup>153</sup>

Hence, one could argue that, based on the General Comment No.1 of the Committee and its expressed statement of the importance of the realization of the right to education, as well as its remarks regarding the beneficial consequences that education brings to the child, the duties imposed upon the states on Article 29(1) are not only legally obligatory, due to nature

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<sup>149</sup> See Article 13(1) of the ICESCR.

<sup>150</sup> The Committee on the Rights of the Child has asked the states to specifically indicate the training provided to teachers to prepare their teaching towards the aims of Article 29(1), as well as the changes made in school policies and curricula in all levels of education to reflect the aims of education set in the Convention.

<sup>151</sup> S. Detrick, A Commentary on the CRC, *supra* note 4, p 510.

<sup>152</sup> See General Comment 1 of the Committee on the Rights of the Child, – The aims of Education (2001), in UNICEF Handbook, *supra* note 60, pp 434 - 437.

<sup>153</sup> *Idem*.

of the treaty, but are also morally mandatory, since they are indispensable to the development of the child. Also, the wording in Article 29(1) indicates that there has been an international consensus towards the aims of education which overcomes boundaries of religion, nation and cultural across the world.<sup>154</sup>

### ***II.II.I. The development of the child's personality, talents and mental and physical abilities***

The duty upon the states to aim education towards the development of the child's personality, talents, and physical abilities (Article 29(1)(a) of the CRC) has a different character, since it goes beyond the traditional responsibility of schools developing the child's mental abilities. In this sense, not only is important that the child becomes literate and numerate, it is also relevant that the child expands its creative talents for arts and crafts, and builds his or her vocational skills. The development of the child's physical capacity in sports is equally important.<sup>155</sup> One could say that it is not only a measure of preventive health, but also a mechanism by which the child broaden his or her professional options.

The task is more difficult when directing education to build the child's personality. To teach a child in school to become kind and generous, for example, could be a complex job.<sup>156</sup> One could argue that the child may acquire the above-mentioned qualities in school, but if the family of the child does not endorse them, then the effort of the teachers becomes innocuous. It is common knowledge that the child's personality many times reflects the personality of his or her parents. Children usually base themselves on their parents and frequently repeat behaviours and actions learned at home. Hence, along with the schools, families and others present in the child's surroundings have a major role on helping construct the child's personality.

### **II.II.II. The development of respect for human rights and fundamental freedoms, and for the principles of Charter of the United Nations.**

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<sup>154</sup> UNICEF Handbook, *supra* note 60, p. 438.

<sup>155</sup> *Idem*, p. 439.

<sup>156</sup> *Idem*.



The provision to develop to respect the development of the child's respect for human rights and fundamental freedoms in Article 29(1)(b) is not an exclusive of the CRC. The provision was first set in the Universal Declaration on Human Rights as it states in Article 26(2) that education should aim to "strengthen the respect for human rights and fundamental freedoms"<sup>157</sup>. This particular aim of education was repeated in Article 13(1) of the International Covenant of Economic, Social and Cultural Rights. The Convention, however, went further than the UDHR as it included 'the respect for the principles in the Charter of the United Nations', inspired by the mention that education should "further the activities of the United Nations for the maintenance of peace" in the ICESCR.<sup>158</sup> Article 1(1) of the Charter of the United Nations points out that one of the purposes of the UN is to maintain peace.

Education is considered to be an important mechanism to promote human rights. In Nowak's view, human right education is an important way to build a universal human rights culture. He adds that,

"The dissemination of information of information on the ethics and philosophical foundations of human rights against undue interference by the state, society and other human beings aimed at reducing the huge gap between theory and practice of human rights is one of the major contemporary tasks for governments, educational facilities, non-governmental and intergovernmental organizations."<sup>159</sup>

The 1993 World Conference on Human Rights held in Vienna and the 1994 Proclamation of a United Nations Decade for Human Rights Education have reaffirmed the right to human rights education and consolidated the corresponding obligations of the states<sup>160</sup>. The 1993 Vienna Declaration supports human rights education as it states in the first part, paragraph 33:

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<sup>157</sup> See Article 26(2) of the UDHR.

<sup>158</sup> See Article, 13(1) of the ICESCR.

<sup>159</sup> M. Nowak, *supra* note 62, p 246.

<sup>160</sup> G. Alfredsson, *The Right to Human Rights Education*, in A. Eide, C. Krause and A. Rosas, «Economic, Social and Cultural Rights – A Textbook», The Hague, Kluwer Law International, 2001, p. 280.

“The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at the national as well as international levels.”<sup>161</sup>

It is clear that states have under the international law the obligation to provide human rights education. States have to enact legislation and adopt appropriate measures to fulfill the right. Not only have the states undertaken the legal commitments to implement the provisions on human rights education, but teachers, researchers, scientists have and educational institutions have the moral and political obligation to enforce the right.<sup>162</sup>

It is unfortunate that neither the Brazilian Constitution, nor the Statute of Children and Adolescent have included as one of the aims of education the development of respect for human rights and fundamental freedoms. As it has been stated by Tomaševski that, “school as an institution reaches the largest number of children and young people, at their most impressionable age”<sup>163</sup>. Individuals need to know their rights, as well as they need to learn

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<sup>161</sup> See part I, paragraph of the 1993 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 of June 1992; UN doc. A/CONF.157/23.

<sup>162</sup> G. Alfredsson, *supra* note 160, p.282.

<sup>163</sup> United Nations, Economic and Social Council, Economic, Social and Cultural Rights, *Annual Report of the Special Rapporteur on the Right to Education*, K. Tomaševski, submitted pursuant to the Commission on Human Rights resolution, 2001/29 – E/CN.4/2002/60, 7 January 2002; in <http://www.right-to-education.org/context/main.html>. Last visited 07 May 2003.

how to respect the human rights of others. What better time is there to learn than during the schooling years? One could say that, children that grow up with a knowledge of the human rights has a better chance to develop into a more conscious adult and to, therefore, better contribute in society. It is fair to say that some educational institutions provide human rights education as a moral but not legal obligation.

### ***II.II.III. The development of respect for the child's parents, cultural and national values.***

The aims of education placed in Article 29(1)(c), are a novelty, for there is no other international instrument that mentions them. The first part of the provision of Article 29(1)(c) of the Convention is not only related to the fact that children have to learn to respect their parents, but also have to learn to respect others. There have been claims that the CRC does not sustain parent's rights and that incites children to be disrespectful towards them.

The second part of the provision aims to teach the children respect for their cultural values, as well as the respect for individuals of other cultures. The provision aims to ensure that equal value will be given to the ratifying state's culture and to the culture of other countries. The provision has a specific concern for immigrant school children or children that belong to a minority culture.<sup>164</sup> It has been stated before in this work that quite often children belonging to minority groups are discriminated in school.

### ***II.II.IV. The preparation of the child for responsible life in a free society.***

The first part of the provision in Article 29(1)(d) was inspired by Article 13(1) of the ICESCR as it states that education should “enable all persons to participate effectively in a free society”, and should, “promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious group.”<sup>165</sup>

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<sup>164</sup> UNICEF Handbook, *supra* note 60, p 442

<sup>165</sup> S. Detrick, A Commentary on the CRC, *supra* note 4, p. 515

The first part of the aim described in subparagraph (d) gives special emphasis of the importance of teaching other subjects less academic, such as sex education, politics, accounting, citizenship and social relations. Health education is also an important subject, especially regarding education on HIV/AIDS. The lack of information on the latter, for example, can be fatal to children if they do not learn ways of preventing themselves from contamination, or if they do not learn to take appropriate measures in the case of contamination.

This aim of education has a strong link to Article 12 of the CRC, which empowers the child to participate in society as an active and autonomous person. However, for that, it is necessary to teach the child social responsibility. Such a task can only be achieved if the child is given the opportunity to put in practice what he or she has learned. The Committee on the Rights of the Child has expressed the view that “...professionals working with children should be trained to develop participatory attitudes in children.”<sup>166</sup> In this sense, children need to be given the opportunity to learn in school about how to participate in society.

As for the latter part of the provision in subparagraph (d), one could say that it is a preventive measure against discrimination of all kind. Education should strive to promote understanding and appreciation of different values. It should also be a tool to eliminate racism, ethnic discrimination, xenophobia and other intolerances. Furthermore, education should teach children the principle of non-violence towards other children and towards other human beings.<sup>167</sup>

### ***II.III. Education as a tool to eradicate poverty.***

Poverty and income-inequality has been an impediment towards the enjoyment of the economic and social rights. The gap between the rich and poor countries have been widening since the early nineteenth century.<sup>168</sup> Such gap can be observed, not only in terms of income, but also in terms of social indicators. According to the World Health

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<sup>166</sup> UNICEF Handbook, *supra* note 60, p 444.

<sup>167</sup> *Idem*, p.447.

<sup>168</sup> Brazil is one the countries with highest inequality index. The richest 10% of Brazil's population receive 48% of the total income and the 40% have a share of only 7% of the total income.

Organisation (WHO), in developing countries the probability of poor children dying before the age of five is nearly five times higher than for groups in better socio-financial situation. Similarly, data from the Inter-American Development Bank shows that in Brazil, children from families in the top 10% have a primary school completion rate of 95%, whereas the bottom income 10% have only a completion rate of 19%.<sup>169</sup> According to Eide,

“Statistics show that a fifth of the developing world’s population goes hungry every night, a quarter lacks access to even basic necessities such as safe drinking water, and a third lives in abject poverty – at the margin of human existence. Some 500 million children do not have access to primary education, and approximately one billion adults remain illiterate.”<sup>170</sup>

Poverty is usually a combination of malnutrition, lack of education, low level of life expectancy and substandard housing. These same elements are quite often the factors that impede the individual to escape impoverishment. In this sense, a mal-nourished child that lives in a below-standard house has little chance to succeed in school, if at all available. A child that comes from a chronically poor family most likely will have deficiencies in health, education, cultural skills and social relations.<sup>171</sup>

According to UNICEF, there are many dimensions of poverty. The latter not only manifests due to low-income, poor health and missed education, but also due to gender discrimination and other forms, as well as social and political marginalization of individuals and groups.<sup>172</sup>

The World Bank believes that poverty should be perceived as a lack of health, education and income. It completes its conception of poverty by enlisting two important elements: vulnerability and powerlessness, as poverty should be seen as deprivation of fundamental capabilities along with low incomes. The World Development Report 2000-1 argues for the

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<sup>169</sup> UNICEF, *Poverty Reduction*, *supra* note 55, p. 18.

<sup>170</sup> A. Eide, *Obstacles and Goals to Be Pursued*, in A. Eide, C. Krause and A. Rosas (eds.), «Economic, Social and Cultural Rights – A Textbook», The Hague, Kluwer Law International, 2001, p. 555. [hereinafter A. Eide, *Obstacles*]

<sup>171</sup> *Idem*, p.556.

<sup>172</sup> UNICEF, *Financial Development – Investments in Children*, New York, 2002, p. 3. [hereinafter UNICEF, *Financial Development*]

efforts, "... to empower the poor people, to help them manage risks, and to expand their economic opportunities."<sup>173</sup> In a broad interpretation, one could argue that education is the foremost means by which individuals can gain power. It gives them the possibility to improve their living conditions, as well as the capability to aim for higher sources of income.

Øyen explains that the formation of poverty may vary according to culture, i. e., the extent and characteristics of poverty is intrinsically related to the "...cultural context in which poverty is formed and defined, the way people experience their poverty, and the opportunities the culture and organizational set-up allow for moving in and out of poverty." Nonetheless, he adds that the causes of poverty may also be universal, proven by the fact that poverty casts a larger burden on women across the globe, for example.<sup>174</sup> In this sense, the same could be argued in the case of children.

Rodgers and Flanagan state that, although children in the north hemisphere may not be as materially poor as the children in the counterpart, they all share a lack of access to basic services, as well as inclusion and participation in society. They add that the World Bank Development Report 1999-2000 demonstrated that the number of children living in poor conditions, whether in developing countries or not, is increasing, whereas the quality of life of many children throughout the world is decreasing.<sup>175</sup>

It is important to emphasize that children are usually the worst victims of poverty. The latter can cause irreversible damages to their bodies and minds. A poor child is not capable of leading a full and productive life. Poverty, in this sense, cripples their development. A good start in life is essential to the child, physically, intellectually and emotionally.<sup>176</sup>

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<sup>173</sup> G. Skirbekk and A. St. Clair, *A Philosophical Analysis of the World Bank's Conception of Poverty*, in <http://www.crop.org>. Last visited: 12 May 2003.

<sup>174</sup> E. Øyen, *Poverty Production: a Different Approach to Poverty Understanding*, in <http://www.crop.org>. Last visited: 12 May 2003.

<sup>175</sup> P. Rodgers and E. Flanagan, *Child Poverty and Development*, in G. McCann and S. McCloskei (eds.), «From the Local to the Global – Key Issues in Development Studies», London, Pluto Press, 2003, p. 159.

<sup>176</sup> UNICEF, *Poverty Reduction*, *supra* note 55, p. 1.

Another common consequence to impoverished children is that they have little chance to break the poverty cycle, as they are more likely to transmit poverty to the next generation.<sup>177</sup> As an example, illiterate parents are less likely to support the child's education. As a consequence, uneducated children have less chance of fully developing and escaping this vicious cycle. The social restrictions of poverty are more probable to persevere into adulthood.<sup>178</sup>

Having realized the danger of generational poverty transmission, for the children of today risk of becoming the poor of the next generation, the 1995 World Summit for Social Development alerted policy makers to prioritize the needs of children in sustainable poverty reduction actions. UNICEF believes that giving children access to social basic services of good quality, such as basic education, primary health care, adequate nutrition and safe water and sanitation, is more effective than to make the poor work for the economic growth of the state. Once that is achieved, economic growth is more likely to follow.<sup>179</sup>

According to UNICEF, more than 130 million children<sup>180</sup> worldwide are not enrolled in school and four million children have their studies taken place by exploitive and hazardous labour. Other factors such as change in the family fortune and armed conflict force children to miss days or weeks of school.<sup>181</sup>

The World Education Forum held in Dakar in April 2000, followed by the vision set in the World Declaration on Education for All (Jomtien, Thailand, 1990), called out for the need to eradicate extreme poverty, as the international society gave its commitment to achieve this goal through education. It showed a pledge of the international society, based on partnerships within countries, and supported by the cooperation of the regional and international organizations and institutions, to ensure that all children and adults benefit from an education that will meet their fundamental learning needs, and that aims at valuing

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<sup>177</sup> UNICEF, *Financial Development*, *supra* note 172, p. 3.

<sup>178</sup> P. Rodgers and E. Flanagan, *supra* note 175, pp. 160.

<sup>179</sup> UNICEF, *Poverty Reduction*, *supra* note 55, p.3 p. 3.

<sup>180</sup> The majority of these children are girls. The ones that are in fact enrolled in school have to surpass the gender discrimination they suffer by their colleagues, teachers and other in the community.

<sup>181</sup> UNICEF, *Education for All, No Excuses – With Dakar Framework*, New York, 2000, p. 6. [hereinafter UNICEF Education for All]

each individual's talents and potential, as well as developing their personalities, so they can improve their lives and modify their societies.<sup>182</sup>

The aims set in the World Education Forum within the Dakar Framework for Action and EFA were the following:

- “- Expand and improve comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged;
- Ensure that, by 2015, all children – particularly girls, children in difficult circumstances and those belonging to ethnic minorities – have to and can complete a quality primary education that is free and compulsory;
- Ensure that all young people and adults have equitable access to appropriate learning and life-skills programmes that meet their learning needs;
- Improve adult literacy rates by 50 per cent by the year 2015, especially for women, and ensure that all adults have equitable access to basic and continuing education;
- Eliminate gender disparities in primary and secondary education by 2005 and gender inequalities in all aspects of education by 2015, with a focus on ensuring that girls will have full and equal access to and achievement in basic education of good quality.”<sup>183</sup>

On the Expanded Commentary on the Dakar Framework of Action, prepared by the World Education Forum Committee, in Paris 2000, it was emphasized that, “education for all is a basic human right that is at the heart of development.” In order to achieve the basic goals enlisted above, it is necessary to implement a number of strategies (paragraph 45 of the document), which among them, there is a call for the promotion of EFA policies within a

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<sup>182</sup> See website [www.unesco.org/education/efa/index.shtml](http://www.unesco.org/education/efa/index.shtml). Last visited: 07 May 2003.

<sup>183</sup> UNICEF, Education for All, *supra* note 181, p.5.



sustainable sector of framework linked to poverty elimination and development. It states that,

“Education (...) is central to the empowerment, the elimination of poverty at household and community level, and broader social and economic development. At the same time, the reduction of poverty facilitates progress toward basic education goals. There are evident synergies between strategies for promoting education and those for reducing poverty that must be exploited both in programme planning and implementation.”<sup>184</sup>

The concern of the international society to implement and maintain the policy of education for all, with a quality that guarantees the individual's completion of the fundamental years of education is not in vain. Although according to UNICEF primary school enrolment of children in developing countries has increased, as well as the number of enrolment of children in such countries by 50 million, between the years of 1990 and 1995, implying that the proportion of children in primary school has increased from 80% to 82%, still one third of the children enrolled fail to complete four or five years of primary education.<sup>185</sup>

It has hence been recognized that, despite the fact that giving children access to education is in itself a major accomplishment, it does not fully assure their right to education. Providing children with quality education after the enrolment of the child in school is just as important as guaranteeing access to them. It is necessary that they are taught by knowledgeable teachers in a safe and healthy environment.<sup>186</sup>

It is clear that serious poverty reduction measures within education have to be taken to allow the child to escape the poverty cycle. It is important to bear in mind that 191 states are committed, under the Convention on Rights of the Child, to realizing every child's right to “a standard of living adequate for the child's physical, mental, spiritual, moral and social

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<sup>184</sup> See paragraph 45 of the Expanded Commentary on the Dakar Framework for Action, in website [www.unesco.org/education/index.shtml](http://www.unesco.org/education/index.shtml), Last visited: 07 May 2003.

<sup>185</sup> See the causes of high drop-out rates in subparagraph *III.IV (Other Provisions under Article 28 of the CRC)* of this chapter.

<sup>186</sup> UNICEF, Education for All, *supra* note 181 , p.7.

development.”<sup>187</sup> Taking into account that the CRC is a legally binding treaty, it is no longer a matter of willingness and moral obligation, but also a matter of legal responsibility.

According to Van Bueren, human right law is a powerful tool of change, as it has had in the past years a role in “shaping public agenda, framing the nature of citizen’s rights discourse, and creating an embryonic culture of children’s rights within the state.” She adds that the effective use of economic and social rights can prevent child poverty although their incorporation in international bills have met some resistance, for they determine parental obligations and legitimizes children to claim for their rights. Economic and social rights imply redistribution, a task that is considered by most courts uncomfortable. However, children’s social and economic rights are “... concrete set of responses to specific facets of child poverty.”<sup>188</sup>

The progressive implementation of economic and social rights ought to be seen as an opportunity to step forward. Although Van Bueren recognizes that international law alone cannot combat poverty, she believes that the component elements of poverty are justiciable and that international law has a great chance of reducing global child poverty. Her fear is more directed to the national laws and to the national courts. In order to combat poverty there must be an active judiciary with constructive and imaginative solutions. The courts also have to be responsive and accessible, principally in states where economic and social rights are merely directive principles and not directly enforceable.<sup>189</sup>

National Parliaments also have a fundamental role in combating child-poverty. Van Bueren argues that it is necessary to construct a framework for the implementation of children’s rights with effective participation of the public, including children. Such a framework should

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<sup>187</sup> See Article 27(1) of the CRC.

<sup>188</sup> G. Van Bueren, *Combating Child Poverty – A Human Rights Approach*, in «Human Rights Quarterly», vol. 21.3, 1999, p. 693.

<sup>189</sup> *Idem.*

be programmatic, progressive and emphasize priorities, and focus of on equality and integration of vulnerable groups. She also suggests the creation of state annual budget for children, which could be prepared and discussed in the same light as the other national budgets. They would also be helpful to the planning of the National Plan of Action (NPA) for children, recommend by the Declaration of the World Summit for Children<sup>190</sup>. She adds that, “budgeting is an indication of the state’s commitment, and it confronts ambition and hope with resources, efficiency and equity.”<sup>191</sup>

UNICEF has traced five principles of good policy derived from the experience of countries that have reduced poverty in a sustainable manner. Such countries have given priority to addressing economic and social rights, instead of placing the achievement of macroeconomic stability or economic growth in first place. Secondly, they have spent more resources on basic social services and child protection. In third place, they have better allocate funds in terms of integration, equity and efficiency. Fourth, they have maintained the level of financial support in times of severity and adjustment. Finally, they have counted on the participation of the community in delivering the social services and in the protection of the children’s needs.<sup>192</sup>

As for implementing the right of the child to education as a means to combat poverty many actions have to be observed. The starting point is to increase the number of schools to truly give every child access to education. The state has to ensure that the schools are within a reasonable distance from the child’s home, principally in rural areas, or provide proper transportation to the schools. The acceptance of the children in the schools has to be based on equality and on the principle of non-discrimination.

Secondly, it is necessary to improve the quality of the previously functioning schools, by better training teachers; introducing new methods of teaching; providing proper school material, from books to desks; providing different services within the school, such as psychologist, pedagogues and health-related professionals; introducing non-academic activities, such as sports, arts, crafts, and others; and by introducing human rights education.

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<sup>190</sup> See the guidelines for drafting NPAs in paragraph 34 of the Declaration of the World Summit for Children.

<sup>191</sup> G. Van Bueren, *supra* note 188, pp. 704-705.

<sup>192</sup> UNICEF, Poverty Reduction, *supra* note 55, p. 30.

Thirdly, the state has to enact legislation against exploitative child labour or to increase monitoring system to ensure that children are not engaged in hazardous labour, and find alternative ways to attract the children labourers to school. Financing poor children during the basic educational years and granting them scholarships should be welcomed measures to increase school enrolment and reduce child labour.

Fourth, the state has to educate the parents or the caregivers of the children on the importance of education and health so that they better participate in the child's academic life and serve as an incentive for the children to complete their educational formation. Educational programmes should also be offered to illiterate parents in order to assure that children will have better support and assistance in their study years, as well as provide special vocational courses and workshops to unemployed parents as an attempt to reduce dependency on child income.

Above all, states have to comply with their obligations under national and international law, in the conformity with the Convention on the Rights of the Child and other international instruments to fully respect and realize the child's right to education, in order to receive, in turn, well-developed, conscious, respectful and capable adults and citizens to finally join the workforce. As mentioned before, the economic growth of the state will follow.

#### ***II.IV. Conclusion***

Education has been recognized as the means by which allows the individual to develop its physical, mental, and moral capacity and talent, as well as a useful tool for exercise of the individual's citizenship and satisfaction of its basic needs. The importance of bringing education to the individual at an early age has also been acknowledged by the international society, as the CRC guarantees the right of education to all children on the basis of equality, and in the light of counterpart provisions of the International Covenant on Economic, Social and Cultural Rights

As for the enforcement of the right to education, the CRC establishes the terms and conditions of the implementation of the right to education. Although the Convention is a

legally binding document, the political nature of the right to education, as a 'second generation right', implies an obligation upon the states parties to implement the right to education in a progressive manner, in accordance to available national resources or with international aid and cooperation. The lack of resources however, does not exempt the state from its responsibility to provide all children, within their jurisdiction, with school at all levels, and if possibly, compulsory and free of charge, especially throughout the primary level, considered to be essential to the child.

In addition, the CRC brings the most extensive list of the aims of education, as it embraces not only the development of the child and his or her preparation for participating in society, but also comprehends the respect for human rights and the importance of cultural values, among others. The international society has increased the list of the objectives of education by recognizing that it also aims to modify the socio-economic conditions of the individual and, consequently bring economic growth to the state. Education has been viewed as an instrument by which individuals can empower themselves and better control their lives. It is an important poverty reduction tool as educated people are more likely to have better opportunities to improve their income and therefore living conditions. It provides the poor with a path to escape the poverty and allows children to break the generational poverty cycle.

The aim to guarantee that all individuals enjoy their right to education has become great part of the international agenda, as well as it has been included in the policies of many states. Several countries of the developing world are striving to create alternative programmes to ensure that marginalized and underprivileged groups are given equal access to education, such as the Bolsa-Escola Programme in Brazil, which will be addressed in the following chapter.

## CHAPTER III

### III. Investing in Children and the Right to Education – The Bolsa-Escola Experience

#### *III.I. Investing in Children*

It has been clearly demonstrated that states have the obligation under national and international law to adopt various measures to ensure that the child fully enjoys his or her right to education. It is established that, through education, the child could be given the opportunity to escape the inter-generational poverty trap and thereby have a greater opportunity to attain their full development through complete realization of their potentials. In spite of this state responsibility and the potential that education has for the overall development of a nation, many developing countries are still struggling to implement such a right for a variety of reasons. While there may be other factors involved, two principal factors, which this work has isolated for emphasis, are the lack of adequate national resources and the political will to design workable, practicable and cost-efficient programmes that take into account the peculiar needs of the majority poor. Therefore, much as the cry by the developing states for international cooperation and financial aid is crucial,<sup>193</sup> the ability to be committed to the education programme for children is equally critical.

Leaders and policy-makers of the developing world have to bear in mind that not only education is a right in itself, but is also a powerful tool to promote development of the state. Educated children become competent adults for the sophisticated labour market, which brings, in turn, economic growth to the country. The investment in education not only benefits the children, but also gives them an opportunity to break the poverty cycle. Providing funds to these children for the completion of their basic education is a positive way to implement the right to education on the basis that every child should be educated regardless of their social and economic status.

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<sup>193</sup> According to UNICEF, it is possible to achieve the goal of providing every child with primary education through global partnership. World leaders gathered at the Financing for Development Conference in Monterrey, Mexico, as well as at the UN Special Session for Children in New York, with the spirit of engaging themselves in the commitment of putting into practice actions on behalf of the children. See UNICEF Financial Development, *supra* note 172, pp. 21-23.

Some developing countries have taken this responsibility very seriously, and in such countries an increasing need has been felt to create alternative forms for the promotion of the right to education, where many underprivileged children still do not have access to school. Many countries have therefore adopted in their legislation innovative programmes to give access to education to poor and marginalized children. Typical example is Mexico, Argentina, and Brazil.<sup>194</sup>

In the state of Brazil, several programmes have been implemented to guarantee that underprivileged children have the means to attend school and escape from the exploitative child labour market. Special emphasis will be given in this work to the Municipal Bolsa-Escola Programmes.

### ***III.II. The Bolsa-Escola Programme***<sup>195</sup>

The idea of funding children to enable them to attend school was brought up in the late 80's by a group of professors of the "Núcleo de Estudos do Brasil Contemporâneo da Universidade de Brasília-UnB,"<sup>196</sup> while researching and discussing national problems. The first topic taken into consideration was the high rate of school evasion due to poverty.

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<sup>194</sup> Argentina has implemented the Bolsa-Escola Programme. Mexico has adopted a similar project to the Bolsa-Escola Programme sponsored by the Inter-American Bank and the World Bank. The central governments of Ecuador and Bolivia have received technical assistance of the Organisation Missão Criança to implement the Programme.

<sup>195</sup> There are two types of Bolsa-Escola. These are the Bolsa-Escola at the municipal level and the Bolsa-Escola at the federal level. However, this work will limit to address the Bolsa-Escola at the municipal level, since the latter was established previously to the Federal Bolsa-Escola Programme. The goals and objectives of both levels of programmes are the same, except that the Federal Bolsa-Escola has different pre-conditions for the beneficiary families to apply and receive the benefit, and the amount of money, which is received by the beneficiary families, is lower than the municipal programme. In the federal Bolsa-Escola the beneficiary families receive R\$15.00 Reais (approximately € 4.62 Euros) per child with the ages between 6 to 15 years, with the possibility of accumulating up to R\$ 45.00 Reais (approximately € 13.85 Euros), that is, the benefit is only granted to the maximum of 3 children per family. In addition, the federal programme determines that the family income *per capita* is determined by act of the Executive Power, and that complementary municipal law determines the necessary period of residence of the family in the municipality. Other regulations of the federal programmes may vary from one municipality to another, according to their regional legislations. See Presidential Law No. 2.140 of 13/02/2001. It is important to note that both programmes are funded by the Federal Union and beneficiaries of the municipal Bolsa-Escola can also receive the benefit from the federal programme.

<sup>196</sup> Centre of Contemporary Studies of Brazil of the University of Brasília – UnB (translation by the author).

Cristovam Buarque presented the result of the debate in 1987<sup>197</sup> in the paper entitled “A Revolução das Prioridades”<sup>198</sup>. Such a paper was widely discussed throughout Brazil and was later transformed into a book, published in 1994 with the same title. The first Bolsa-Escola programme was implemented in Brazil in 1995 by a decree of Cristovam Buarque, Governor of the Federal District at the time, and was followed by many others throughout the country.<sup>199</sup>

The Bolsa-Escola is a poverty eradication programme, which utilises education as a tool to construct a better society for present and future generations, guaranteeing that all marginalised groups are socially inserted through education. The programme parts from the idea that, if children do not attend school due to their need to work and supplement the family’s earnings, then the solution is to provide the family with a monthly income, so that these children can enjoy their right to education.<sup>200</sup> It is understood that by allowing children to escape the labour market they will dedicate more efforts to their studies and become more productive. The paid families, in turn, will give more importance to education and motivate their children to complete their studies, as well as possibly seek to acquire an education of their own.

As part of gathering material for this part of the thesis, the author conducted field research in which she interviewed 10 beneficiary mothers of the Bolsa-Escola Programme. The objective was to assess the changes the programme had caused in their lives as individuals and as a family<sup>201</sup>. It was also to offer the author the opportunity to interview some

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<sup>197</sup> The group of researchers was headed by Cristovam Buarque, professor of the university UnB at the time, and current Minister of Education.

<sup>198</sup> The Revolution of Priorities (translation by the author).

<sup>199</sup> Minas Gerais e o Programa Bolsa-Escola in [www.educacao.mg.gov.br/see/bolsa-escola.htm](http://www.educacao.mg.gov.br/see/bolsa-escola.htm), Last visited: 07 May 2003.

<sup>200</sup> Cidade Criança, Bolsa-Escola in [www.aracaju.se.gov.br/crianca.bolsa-escola](http://www.aracaju.se.gov.br/crianca.bolsa-escola), Last visited: 07 May 2003. [hereinafter Cidade Criança]

<sup>201</sup> The interview was realised by the author in 15 April 2003, in Belo Horizonte, where 10 beneficiary mothers of the Bolsa-Escola were required to answer questions concerning the impact the programme has had on them, on their children and on their families. Personal data, regarding their age and profession, civil status, number of dependents beneficiary of the programme, and family income per month were collected from them. Due to time constraints, it was not considered feasible to interview beneficiary children and the teachers involved in the programme. It was thought that since mothers were direct recipients of the benefit and the programme holds a special advantage as a means towards their empowerment, it would be more appropriate to focus on them for the interview. Another important consideration was that in the Brazilian



government representatives involved in the implementation of the programme for their perspectives and comments on the progress, prospects and challenges of the programme.<sup>202</sup>

### ***III.III. Anticipated Benefits of the Bolsa-Escola Programme.***

The programme strives to not only fight poverty, but also to improve the socio-educational condition of the population. It aims to correct inequalities of access, maintenance and success of children in schools. It also has a preventive character as it aspires to withdraw children from the streets<sup>203</sup> and avoid child delinquency, sexual and economic exploitation, and involvement of the children with drugs and other harmful substances. In turn, it avoids excessive public expenditure since preventive measures are less costly than corrective actions.<sup>204</sup>

Another important positive effect envisaged out of the Bolsa-Escola on society and on the state is that it will help reduce social cost, in terms of health. It is contended that educated and well-informed individuals are more likely to take better care of their health, due to influx of information and due to the improvement of their nutrition. This is not only supposed to reduce the cost of public medical treatments and hospitals but also unclogs the public health system. Moreover, the cost of the Bolsa-Escola programme is relatively low. In 1998 the programme served 25,680 families and 50,673 children at the cost of R\$ 136.00 Reais (approximately € 41.85 Euros) per family, resulting in a total of R\$ 3,4 millions Reais (approximately € 1,046,153.8 Euros) per month and R\$ 40,8 million Reais (approximately € 12,6 million Euros) per year. Statistics also show that, considering that there are in Brazil 4 million children out of school and submitted to child labour, and calculating a cost of R\$

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society women remain the principal caregivers and therefore more in the know about the day-to-day upkeep and well being of their children.

<sup>202</sup> The author was able to interview Alessandra Bustamante, employee of the City Hall of Belo Horizonte and psychologist of the Bolsa-Escola Programme, as well as coordinator of the research, and obtain the data that will be presented in this work as followed.

<sup>203</sup> Brazil has 50% of world's street kids. Statistics show that there are approximately 10 million children living in the streets of the country. Most of these children are involved with drugs and the majority only lives until the age of 18 years. The increasing number of children that work or live permanently on the streets in Brazil is one of the largest problems of development of the country. See <http://www.voiceforchange.org/streetkids.html> and <http://www.foundation.vonavartis.com>. Both last visited: 08 July 2003.

<sup>204</sup> Cidade Criança, *supra* note 200.

75.50 Reais (approximately € 23.23 Euros) for each child to benefit from the programme, it would be necessary to have an amount of approximately R\$ 3.6 billion Reais (approximately € 1,1 billion Euros) per year to attend to all families. This implies a total of 0.36% of the GNP and 1.2% of the public sector's budget.<sup>205</sup>

Although the Bolsa-Escola Programme requires an investment from the government, the programme generates a financial return to the government of 30% of the money spent through taxes. Apart from that, as mentioned above, the government reduces significantly its expenditure on health, security, and social assistance and on other investments in similar projects of poverty reduction. In addition, marginally increasing the budget on education and cutting or lowering costs of other sectors, such as military expenditure, for example, can pay the Bolsa-Escola.<sup>206</sup>

Furthermore, the Bolsa-Escola Programme aims to bring about economic growth among the lower class in order to afford them the opportunity to attain higher economic class status. Instead of the social illusion that the poor will produce goods and services to satisfy the needs of the rich, they will have a chance to be employed and to produce the goods and services of their own needs. It also points towards a sustainable development, as the effects of the programme are geared towards combating the causes of poverty, allowing in the long run, to break the poverty cycle. In this sense, no longer will poverty produce more poverty.<sup>207</sup>

Finally, studies predict that the impact of the programme on families, in the long run<sup>208</sup>, will include: the promotion of education to nearly all members of the family; social mobility to all children; opportunity to escape poverty; families will be more competitive in the labour market; increase in the value of family; decrease in illiteracy; improvement of standard of

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<sup>205</sup> Cidade Criança, *supra* note 200.

<sup>206</sup> *Idem.*

<sup>207</sup> *Idem.*

<sup>208</sup> Note that the impact of the Bolsa-Escola Programme in the long term is prognostic since a longitudinal study of the programme has not been realized due to the limited numbers of years of implementation.

living; promotion of the family in the community; decrease in child mortality; reduction of early child pregnancy; and others.<sup>209</sup>

As for society in general, the researchers expect the programme to, among others, strengthen the local power base of the disenfranchised and the local culture; promote democratization of public policies and of public participation; promote tolerance within the society; reduce the educational cost per student due to the reduction of school evasion and school year repetition; strengthen local and national economy; promote distribution of income; encourage continued studies; eliminate adult illiteracy; reduce social cost; eliminate racism and discrimination; endorse qualified individuals for the labour market; decrease violence; and sponsor economic growth of the base of the social pyramid.<sup>210</sup>

### ***III.IV. How the programme works***

The programme has a unique way to sponsor children to attend school<sup>211</sup>. Low-income families with children of the age of 6 to 15<sup>212</sup> have to register and fulfil certain requirements to receive the benefit. A selection is made of the most needy and underprivileged families,<sup>213</sup> which have been residing in the region for more than 5 years; possess an income *per capita* of a maximum R\$ 84.00 Reais (approximately € 25.85 Euros)<sup>214</sup>; have the children regularly enrolled in school or sign a commitment to enrol the children as soon as there is school vacancy; and guarantee that the children have an attendance rate of 85% of the classes.<sup>215</sup>

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<sup>209</sup> Cidade Criança, *supra* note 200.

<sup>210</sup> Cidade Criança, *supra* note 200.

<sup>211</sup> Note that each Municipality determines by law the goals and aims of the programme and the criteria for selecting the beneficiaries. This work will focus on the procedure adopted in the Municipality of Belo Horizonte, capital of the Federal State of Minas Gerais.

<sup>212</sup> The age range was previously determined to be from 7 to 14. However, it was detected that many children were already enrolled in the fundamental level of education by the age of six. It has hence decided to increase the age pre-requisite to 6 to 15 years of age.

<sup>213</sup> According to the Municipal Law No. 8.287 of Belo Horizonte families in the following circumstances shall be prioritized in receiving the benefit: those that are in situation of risk (vulnerable physical, moral emotional and social condition); those that present lower income *per capita*; those that have larger number of students from the age 6 to 15; and those that reside in socially critical areas.

<sup>214</sup> The minimum wage in Brazil is R\$ 240.00 Reais (approximately € 73.84 Euros).

<sup>215</sup> See Law No. 8.287 of 28 December of 2001 of the Municipality of Belo Horizonte.

The process of selecting the families is worth drawing attention to. When registering, each family is required to declare the possessed goods and demonstrate their sources of income, including other benefits they may receive from the government. Subsequently, an employee of the City Hall schedules a visit to the family's residence to verify the facts against any possible fraud. Furthermore, an analysis of the socio-economic situation of the members of the family is done, in order to detect the need of complementary services, such as medical care and psychological help, and others. This procedure is very important as it gives the government a real view of the current situation of the underprivileged families. The latter are seen as people and not just numbers in the archives. This way, their basic needs are more likely to be met.

Once the families have been registered and accepted, they are entitled to receive a monthly sum, pre-determined by law. In the case of the Municipality of Belo Horizonte, the amount of R\$ 168.00 (approximately € 51.69 Euros) is paid for a period of 12 months with possibility of renewal, if all pre-requisites are continually respected.<sup>216</sup> The benefit is provided, preferably to the mother, for various reasons. Among others, it is thought that the mother is usually in more control of the children and their school attendance, since quite often they are likely to spend more time at home. Apart from that, the programme aims to ensure that the mother has an active role in the family, as well as to promote the status of the women in society. Only in the case of absence or impediment of the mother shall the benefit be paid to the father or legal guardian.<sup>217</sup>

Regarding the requirement of school enrolment and attendance, it is relevant to note that it constitutes an important mechanism of ensuring that the child will complete his or her basic studies, and of diminishing the possibility of dropping-out. As the law determines, the child has to be previously enrolled in school or to be subsequently enrolled, in order to guarantee that the child is already or will soon be engaged in the academic life and not in the labour market. As for the attendance, the law says that if the child fails to attend 85% of the classes for unjustified reasons, he or she will have the benefit ceased. This motivates parents or legal

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<sup>216</sup> The main financial resource of the Bolsa-Escola is originated from the Federal Union's budget, since it is the state's obligation to ensure the right to education. It is each government's job to prioritize the fund to education.

<sup>217</sup> See Law No. 8287 of 28 December 2001.

guardians to ensure that their children are regularly attending school. The risk of missing more classes than the amount legally permitted is too high a price to pay.

One obvious conclusion the author came to during the interview process that the main concern of all mothers involved in the programme was fixed on the school attendance of the children in order not to miss the 85% attendance mark and thereby lose the benefit. Thus, all the interviewed mothers claimed that, after entering the programme, they started to control more the frequency of their children in school, assuring that no classes were missed due to unjustifiable reasons. In this respect, one may conclude that the programme's objective of taking children off the street and into the classroom seem to be working well.

### ***III.V. Assessing the Impact of Bolsa-Escola***

A true and fair analysis of the success or otherwise of the Bolsa-Escola Programme is beyond the competence of the current study due to the programme's recent origins and the fact that the current principal beneficiaries, the children of the poor, are yet to complete their education. However, since the project has short-, medium- and long-term goals one can assess some of the short and medium impact and use that to predict what the future holds for the success of this programme.

Research has shown that the Bolsa-Escola Programme has had many positive impacts on society, on the government, and on the beneficiary families and children. There is an indication that society has benefited from the programme as it has broadened the capacity for social inclusion and democratic participation of the beneficiary families, at least at the local level. The fact that parents are able to sit down with social workers and other staff involved in the programme and be involved in the decision-making process regarding the well being of their children is positive and encouraging. Also, the author believes that simply saying no to exploitative child labour, something that poor parents living in the slums of Belo Horizonte and other parts of Brazil did not have any control over is quite welcome. One can also mention, though in small measure, the empowerment of women who have access and control over the money that is given to supplement the family income so that the child can go to school, instead of to work. It is noted that in some cases, though the money

is given directly to the woman, it ends up in the man's pocket but this problem may be due to lack of education of the women and even the men themselves. It is said that, educated and well-informed individuals can make better and more responsible decisions contributing to create a more just society. It is for this reason that the idea of adult education concept as part of the Bolsa-Escola programme is important and need to be further developed. When women are educated, they can better assert their rights and influence in family decision-making. Educating men will also enable them to see the benefit that can accrue to the family as a whole through respect for the rights of women and children.

On the whole, one notices an increase in the quality of life of the families involved in the programme as well as of the community in general. Thus, in the short-run, the programme has helped to promote citizenship of the beneficiary families and children; and, reduce child labour as well as child-beggars on the streets.

As for the impact of the Bolsa-Escola on the families and children, results of short term have shown that, children and adolescents begin to have a daily routine of attending school; there is an increase in the quality of nutrition both in school and at home; mothers have better opportunity to take care of their children at home; the child begins to be responsible for the completion of the family's income by studying instead of working; the respect of the children towards their families increases; and reduces the number of mothers begging for food.<sup>218</sup>

In light of the modest achievements made in short-term, one can say that the medium and long-term prospects seem positive. Reduction in truancy, for example, is likely to reduce the level of illiteracy in the society. This will in turn help to promote an enlargement of local entrepreneurship and thereby reduce or stabilise migration from one region to another, and others.<sup>219</sup> Other medium terms objectives which are in the process of being realised or are likely to be realised are: the programme contributing to the almost complete elimination of child labour; increase of the self-esteem of the families; the augmentation of the level of consumption of the family; the improvement in the quality of health and living; the

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<sup>218</sup> Cidade Criança, *supra* note 200.

<sup>219</sup> *Idem*.

elimination of child delinquency and prostitution; the socialization of the child in the educational community; and others.<sup>220</sup>

It is important to outline that the achievement of the results above described is not just due to the distribution of funds. Municipal programmes usually provide a number of services to the beneficiary families and children. The programme of the City Hall of the Municipality of Belo Horizonte is of the opinion that ensuring that children are attending school is a major accomplishment although not sufficient to guarantee that children are properly developing in school and in society. Hence, the City Hall has a programme that follows the pedagogic and socio-educational development of the beneficiary child and family. This does not imply special treatment of the beneficiary children in schools. However, a close analysis of child's work in school and in the community is done to ensure that the child is properly acquiring knowledge. This is realized by periodic visits to the family<sup>221</sup>, group meetings and collective socio-educational projects, which involve children, parents, teachers, and other members of the local community.<sup>222</sup>

Apart from that, the City Hall of Belo Horizonte has a complementary project, which involves educational and vocational courses for the adult members of the beneficiary families. Special attention is given to the adult education programme for illiterate parents. The Project of Education of Adults parts from the idea of the importance of the child belonging to an educated family where information, education and culture can also be acquired. It also aims at the social inclusion of all members of the family in society as well as

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<sup>220</sup> *Idem.*

<sup>221</sup> The domestic visits have other purposes as well, such as verify the current socio-economic condition of the families, detect current problems and try to obtain solutions. A multidisciplinary staff, containing psychologists, pedagogues, social assistants and others, realizes the visits. At occasions, a simple visit serves to improve the self-esteem of the family. Many of them find it quite supportive to simply have a person to talk to about their problems, knowing that they are not alone and that there are people that care about them.

<sup>222</sup> 'Relatório do Acompanhamento Sócio-Educativo as Famílias do Programa Bolsa-Escola' (Report on the socio-educational development of the beneficiary families of the Programme of the City Hall of the Municipality of Belo Horizonte, collected by the author while visiting the City Hall of Belo Horizonte in April 2003).

it seeks to facilitate the process of employment of parents.<sup>223</sup> Hence, its importance to empowerment of women and the development of a local culture of democracy.

One could say that the success of the Bolsa-Escola Programme is due to the combination of both financial and psycho-pedagogic support. Many of the beneficiary families have a series of problems, which cannot be resolved by merely receiving money. There are families, which have been built without any supporting structure and that have been traumatized by systematic discrimination and social marginalization. Although the main focus of the programme is to ensure the development of the child through education, the former is not oblivious to all the complementary actions that are needed to achieve such a result. Families and children, which are also socially and psychologically supported, have better chance to succeed in society.

Some of the observations made during the field research are supported by statistics realized by a research conducted by the City Hall of Belo Horizonte, along with the Municipal Secretariat of Education, to assess the impact of the Bolsa-Escola Programme<sup>224</sup>. The objective was to characterize the profile of the families as a group and analyze the social promotion and situation of social risks of the first 200 beneficiary families<sup>225</sup> included in the programme in 1997, in the west region.<sup>226</sup> It also aimed to detect social mobility, insertion of beneficiary individuals in the labour market and in vocational courses, living conditions, as

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<sup>223</sup> 'Relatório do Programa Executivo Bolsa-Escola em Belo Horizonte' (Report on the Bolsa-Escola Programme, June 1999, collected by the author while visiting the City Hall of Belo Horizonte in April 2003).

<sup>224</sup> The decision to realise the research was due principally to that fact that the City Hall contained a number of information on individuals, but was lacking data on the beneficiary families as a group. They wanted to analyze the collective development of the beneficiary families within the 5 years of the implementation of the programme.

<sup>225</sup> The research was realized by applying a standard questionnaire to the first 200 beneficiary mothers in the programme (from August of 1998 to September of 2002) containing questions regarding employment, income, level of schooling; health; violence and social risk; participation in school and community; participation in the programme and futures perspectives. The conclusion was achieved based on the answers provided by 158 mothers. 'Avaliação de 5 anos de Permanência no Programa Bolsa-Escola – Versão Preliminar, 2002' (The Evaluation of 5 years of the Bolsa-Escola Programme- Preliminary Version, 2002 was collected by the author while visiting the City Hall of Belo Horizonte in April 2003). [hereinafter Evaluation of the Bolsa-Escola Programme]

<sup>226</sup> The Programme is divided by regions of the city of Belo Horizonte to better attend the demands and particularities of each sub-group since the social and economic conditions of the communities varies from one to another. The research was done in the west region, known to be one of the most precarious of the Belo Horizonte.



well as the rate of school evasion of the children within the five years of implementation of the programme.<sup>227</sup>

The subjects of the research represented the age between 18 and 50 years with a predominance of the ages of 31 to 40 years. It was detected that 69% of the mothers were single parents and held sole responsibility for the family nucleus. The evaluation showed that the level of schooling of the interviewed individuals was generally low, as 62% had 4 years of studies and 16% were illiterate. Compared to the data collected in 1997, the rate of illiteracy was 28% and 22% returned to school. The data above serves to demonstrate that most of the beneficiary children come from uneducated families. As has been mentioned before, children with uneducated parents can be uninspired to complete their studies. The Bolsa-Escola, under this perspective, strives to stimulate parents to acquire education for their own benefit, as well as to serve as an encouragement for child's studies.

Although the level of adult education of the parents is still not satisfactory, the results showed an improvement in the rate of adult education. It is possible to verify that the Bolsa-Escola has positively influenced the beneficiary mothers to acquire some sort of education, as it is the goal of the programme not only to promote child education, but also to serve as incentive for educational and professional development of other members of the family. As mentioned before, children belonging to well-educated families are more likely to have the means to increase the level of their education and escape from poverty.

Regarding employment, results showed that 40% of the mothers do not have paid jobs while 36% are inserted in the informal labour market. As for the earnings of the interviewed mothers, 47% of them have an income R\$ 60.00 Reais (approximately € 18.46 Euros) per month and under.<sup>228</sup> However, 58% of the mothers claimed to be attending vocational courses.

According to the results above, and from responses received from the interviewed women, it could be understood that they are becoming more conscious of the competitive labour

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<sup>227</sup> Evaluation of the Bolsa-Escola Programme, *supra* note 224.

<sup>228</sup> In the matter of income the research did not include the benefit received from the Bolsa-Escola.

market and their need to acquire professional skills to provide any or better sources of income. It is very common to find women denied access to the labour market due to gender discrimination, as well as the lack of skills or education of any sort. Quite often, this is caused by the poor structure from which they were brought up and by the little or non-existent educational opportunities in their early years. This could be an example of lack of education perpetuating poverty throughout generations.

However, in the research realised by the author, only two out of the ten beneficiary mothers claimed to have been engaged in a vocational course. The justification given by some of the remaining mothers was that there was little time to study, or that they were no longer young enough to learn. Others claimed it was due to the lack of time, bearing in mind that many of them worked outside the home.<sup>229</sup> And moreover, most of the household chores still rest on their shoulders, Brazil being a more patriarchal society. It is therefore important to note that for the programme to work more effectively, a gender empowerment dimension should be more consciously incorporated into the programme.

As for living conditions, in 1997, 67% of the beneficiary mothers lived in owned residence, while 13% lived in rented accommodation, and 20% resided in homes owned by others. In 2002 it was observed that 70% lived in owned homes while the rate of those who lived in ceded residences decreased to 17%. This indicates a slight social mobility of the families. The funds received from the Bolsa-Escola can, many times, serve to improve the quality of the standard of living of the beneficiary families. It is common that the Bolsa-Escola benefit, added to the family income, can serve as a reserve to improve the quality of homes by, for example, refurbishing precarious constructions, or by permitting the acquisition of properties of their own.<sup>230</sup>

Regarding the family profile, studies showed that the income *per capita* of the majority of the families was below the poverty line, that is, 46% of the interviewed families received up to

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<sup>229</sup> Information acquired in the research realised by the author. See *supra* note 201.

<sup>230</sup> According to Bustamante the research showed that many of the beneficiary families increased the number of rooms in their homes. Whereas before the programme many members of the families shared a bedroom, with the benefit received from the Bolsa-Escola, the beneficiaries were able to, not only to add more rooms to their residences, but also to buy furniture, mattresses, etc.

R\$ 25.00 Reais (approximately € 7.69 Euros) per month; 36% earned R\$ 25.00 (approximately € 7.69 Euros) to R\$ 45.00 Reais (approximately € 13.85 Euros); 16% had an income of R\$ 45.00 Reais (approximately € 13.85 Euros) to R\$ 75.00 Reais (approximately € 23.08 Euros); whereas only 1% had an income above R\$ 75.00 Reais (approximately € 23.08 Euros).<sup>231</sup> The beneficiary mothers reported that 25 children were engaged in the labour market in the age range of 6 to 18 years. This corresponds to 3.74% of the children.

Although the report does not include the number of children, which were part of the labour market in 1997, the number presented in 2002 is still alarming. One of the foremost important objectives of the programme is to eliminate child labour, especially at early age. One could only imagine what the number of working children would be with the absence of the Bolsa-Escola benefit. With little doubt one could say that such a rate would be lower, since the tendency of low-income families is to induce children to work to supplement the family income.

In the area of health, it was verified that in 16% of the families there were cases of alcoholism and the use of drugs. As for serious illness it was researchers detected that there were 25 cases of respiratory diseases, 20 cases of high-blood pressure, 16 cases of mental illness, 12 cases of cardiac diseases, 8 cases of diabetes.<sup>232</sup>

Once again, the report does not show a comparison of the data collected in the beginning of the program to the more recent results. However, the outcome of the research serves to show that low-income families are usually the high potential victims of many diseases, due to lack or unsatisfactory level of preventive medical care. It has been stated before that, well-educated individuals have better means to take care of their health due to the influx information, which is received from educational institutions; as well as better access to jobs, income and food. According to Bustamante, many of the interviewed mothers claimed to have increased the quality of the family nutrition, which, consequently, improved the health of the family members.<sup>233</sup>

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<sup>231</sup> Note that the study did not include benefits from programmes of income transfer (including the Bolsa-Escola), unemployment security and income from child labour.

<sup>232</sup> There were 28 cases of other diseases which could no be typified for the purpose of the research.

<sup>233</sup> See *supra* note 202.

The studies also showed that, among 751 children, 7.19% of children find themselves in situations of social risk. It was detected that there were 18 cases of grave illnesses; 13 cases of early pregnancy; 1 case of involvement with the drug traffic; 5 cases of chemical dependency; 4 cases of domestic violence<sup>234</sup>; and 4 cases of sexual abuse. Many of these are common causes of school drop-out rates, such as early pregnancy and drug and alcohol abuse. The research does not show improvements in this field, but reduction of the rates of the social risks is expected, since the Bolsa-Escola along with the schools, strive to educate the children on the harm of intoxicating substances, as well as provide information regarding sexual education and contraceptives measures. Furthermore, the Bolsa-Escola is part of a network of public institutions that help children in 'delicate' situations. It is the programme's job to direct these children to the institutions where their specific needs can be better attended.

Finally, regarding the participation of the families in the schools and in the communities, 85% of mothers replied that the level of the schools was good and 79% declared that their children are learning. As for social participation, 29% of the interviewed claimed to have participated in social movements; 31% in religious movements; 24% in neighbourhood associations; and 21% in the public system.

It is possible to note that, not only the satisfaction of the beneficiary mothers with the level of education offered to their children, but also with the results achieved by the work of the children along with the educators<sup>235</sup>. It is important to outline that the primary objective of the Bolsa-Escola programme is to ensure that all children are being educated and are acquiring the necessary knowledge for their full development.

According to Bustamante, the Bolsa-Escola Programme has served to motivate the children to attend school and continue their studies, as they are proud to receive payment for their

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<sup>234</sup> Studies showed that 29% of the families have been victims of urban violence. It is common to encounter among the poorest neighborhoods of Belo Horizonte the highest incidence of violence, particularly to adolescents.

<sup>235</sup> According to Bustamante, some of the beneficiary mothers have complained about the level of education in schools, the treatment received by of their children, as well as the lack of communication between parents and teachers. However, this number is insignificant when compared to the general satisfaction expressed in the programme. See *supra* note 202.

efforts<sup>236</sup>. There is a general feeling of valuation of education by the children. They are fully conscious that the grant of the benefit depends on their commitment to attend school. They are equally aware that they are responsible for many of the improvements of their households, and of the social development of their families and insertion into society. Education, in this case, not only gratifies them with mental, moral and physical development, but also is the means by which they can bring themselves and their families out of poverty.

### ***III.V. Critique of the Bolsa-Escola Programme***

In spite of the achievements reorded by the Bolsa-Escola Programme, it has not been without its shortfalls and criticisms.

Once could say that the programme has a drawback as it does not control the administration of the money by the family. Although in the periodic meetings with the parents and the Bolsa-Escola staff the importance of money and its application is constantly on the agenda, there is no guarantee that the money would be utilised wisely. The Bolsa-Escola cannot impose the way in which the money will be used and neither can the law. It can only be expected that the beneficiary families will invest the fund, firstly in whatever is necessary to guarantee that the child is receiving proper education; and, secondly, in making the necessary adjustments to improve the quality of life of the family.

Although there could be situations in which the money has not been used for honourable reasons, it is more likely to have the beneficiary families properly making use of the benefit received from the programme, especially due to the fear of being removed from the programme. In the interview realised by the author, 10 out of the 10 mothers interviewed claimed that the fund has been mainly applied to buy school material and clothing for the children and milk, bread, vegetables and other foodstuff to feed the family, as well as pay electric and water bills and make necessary improvements in their homes. It was also detected from the interview that, with the money, the mothers had occasionally bought their children gifts as rewards for their efforts in school.<sup>237</sup>

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<sup>236</sup> Information acquired in the research realised by the author. See *supra* note 201.

<sup>237</sup> *Idem*.

One could also argue that the Bolsa-Escola programme is likely to cause a prejudicial dependency of the parents on the benefit of the programme as the main source of income. The money, which is guaranteed to be received every month, for a certain liquid amount, could make the unemployed parents lose their motivation to find work. This would not only impede the social mobility of the family, due to the fact that the benefit is no longer complementary to other sources of income, but would also cause great stress to the child by perceiving that the financial support of the family is dependant on his or her performance in school.

However, it has been said that the amount of money that is received from the programmes is too little and, therefore, insufficient to cause such a dependency. It has been stated that the objective of funding these families is to guarantee that the child will be educated in place of being engaged in the labour market, due to the necessity of supplementing the family income. The secondary purpose of the benefit is not to support the family through the child's education but to provide a complementary source of income to allow the family to escape poverty.

But more difficult questions remain. An important critique of the programme is whether the government, got its priorities right in setting up the Bolsa-Escola in the first place. For it is noted that, there are lack of education facilities for children in general in Brazil. So should be priority be building more schools or supplementing the income of some poor parents to enable them to take their children simply off the streets? Are children out of school because they could not find a school to attend or because their parents are so poor they could not cater for the education of their children? Is this just a question of opportunity cost by the government? That is, simply comparing the money that the government can make or save by letting children off the hook on the streets with its attendant social, economic and political consequences or by paying to enrolling them in school?

More specifically, in relation to child education as a tool for poverty reduction, it need be noted that much as educating the child is important and necessary means to reach this goal, there are other socio-economic and political factors that need to be taken into account before the programme will work. For example, what differences will it make if the child gets

the best of education only to get out of school and come to the realization that there was no job for them in the first place? In the face of scarcity of jobs, it is the children of the privileged classes who will continue to have access to the few vacancies available and also the top jobs. The educated children of the poor and underprivileged will remain jobless or work in positions that are below their qualifications. Thus, the issue does not simply cover education but also it is political. The underprivileged and marginalized need to be given a voice and the political space to influence decisions and to make a full utilization of their acquired knowledge for their personal benefit and that of the nation as a whole.

It is believed that the Bolsa-Escola project can achieve this goal, by ensuring that the project is not simply seen as a form of paternalistic charity to bail out indigent parents who live below the poverty line. The whole programme should be seen as a rights-based approach to empowerment and as a tool to pave the way for the disenfranchised members of the community to have the opportunity to come out of their brutalized and oppressed situations and to be able to compete on their own with others. The Bolsa-Escola should therefore lead to real political empowerment.

That is the reason why the CRC embodies both economic, social and cultural rights as well as civil and political rights. The two are indivisible, interdependent and inter-related. Merely implementing the right to education will amount providing some form of economic, social and cultural rights. But as the CRC informs us, the child should be taught to ensure their personal development and to be useful citizens to the community.

A critical review of the World Bank Report, 2001 on poverty alleviation, though talking about empowerment, giving voices to the poor, etc, does not go far enough in dealing with structural inequalities. The implementation of neo-liberal market reforms, of which Brazil is noted to be a keen favourite, seems to be contradictory to the Bank's interest in promoting social equality. Also, even the mere presence of democracy does not guarantee end to poverty. Otherwise, the United States and India (the largest democracies in the world), and Brazil for that matter in Latin America, would not be have such wide disparities in wealth between the have and have-nots.

In conclusion, the Bolsa-Escola programme is a positive step towards poverty-reduction. However, it is only a first step in a process that should not end there. Political empowerment for women and children in the home is very important. Children have the right to make decisions affecting their lives, according to article 12 of the CRC. Therefore, they should be involved in decisions regarding the use of the monthly benefits given to their families. Women should also be empowered to know how to control such resources and not allow domineering husbands to misuse the resources. Husbands should be made to share in the fulfilment of household chores so as to free women to take skill training and political education to enhance their status in the society, find better paid jobs, help the children with their school assignments at home, etc. Poor people should be given the political space to enjoy other economic, social and cultural rights as a tool to empowering them to share power with the more privileged people in the country.



## CONCLUSION

The child's right to education followed along with the evolution of the child's inherent human rights. Although it took several years for the international society to capture the importance of transforming into a legally binding text the rights of the child, and therefore, the right to education among others, the consolidation of the United Nations Convention on the Rights of the Child showed the true concern towards the welfare of the child. Albeit the immense step taken towards the protection of the child's rights by the international society with the adoption of the Convention by the United Nations General Assembly in 1989, it is necessary to make some remarks concerning the character of the legal document, within the perspective of the right to education.

The work began by analyzing the Convention. It was noted that, the Convention, like several other treaties, adapts a standardized view of childhood, as well as standardized conception of the basic needs of the child. Some have claimed that the principles and provisions of the Convention are 'western-based', although it has been demonstrated that the drafters of the CRC tried to accommodate the cultural diversity of the states parties into the text, as the preamble of the CRC expresses its recognition of the different socio-economic and cultural conditions of the states parties. Nonetheless, the reality of most of the states of developing world, with special emphasis on Brazil, shows that the enforcement of all of the provisions of the CRC, principally those classified as economic, social and cultural rights, such as the right to education, are yet far from being immediately applicable. The obligation of the state to fulfil the right to education, although clearly expressed under the international and national law, depends on a number of factors, such as the available resources of the state, the political will and commitment of the governments, as well as the national legal system.

In the context of Brazil, the present work sought to establish, among others, that under the Statute of the Child and Adolescent<sup>238</sup>, the 1988 Constitution of Brazil, as well as Law No. 9394 of 20 December 1996, the state holds the duty to provide the right to education to all children, on the basis of equality and non-discrimination, with special emphasis on the right to compulsory and free of charge primary education. The Brazilian legislation holds the state

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<sup>238</sup> Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13/07/90.

liable for the non-compliance of the provision. However, in reality, the child or individual may not be granted the right to education if the Judiciary maintains the position that it is not in its power to determine how the Executive should allocate the national budget. This has created a difficulty to ensure that all children have access to school. It is left to the governments to allocate the existing resources on education and take appropriate measures to ensure that all children have access to schools.

In the light of the above arguments, the present thesis concludes that, although the domestic law determines that primary education should be made compulsory and available free to all, in reality the compliance of such an obligation is not so clear. Firstly, primary education can only be compulsory if education is in fact available to all children. In a country with such socio-economic contrasts, such as Brazil, it is not safe to say that all children truly have access to education. It is necessary for the government to build new schools, especially throughout remote areas, or increase the quality of the already-existing schools to reduce drop-out rates (among other measures that increase school attendance), to, only then, make the provision applicable. Secondly, the state has to strive to allocate the available resources to ensure that the less unfortunate children have access to free education. It is necessary for the state to take affirmative actions on behalf of the poor children, either by increasing the number of public schools or by adopting alternative school funding programmes.

It was argued further in this work that under international law, Brazil, as a ratifying state of the CRC, has the obligation to fulfil the right to education under the terms and conditions determined in article 28 of the document. The treaty calls for a progressive realization of the rights contained therein, and determines the states parties to allocate the available resources to the maximum extent to comply with its obligations. As clear as the obligation to fulfil the right to education under the CRC and in the light of the counterpart articles of the International Covenant on Economic, Social and Cultural Rights and the reports submitted by the Committee on the Economic, Social and Cultural Rights may seem, the CRC does not have a powerful enforcement mechanism of the provisions. While the ICESCR determines the states incapable of immediate realization the right to education (among others) to submit a plan of action of the progressive realization of such a right, the enforcement of the rights of the CRC is left to the monitoring system of the Committee on the Rights of the Child. Its

objective is to verify if states are fulfilling their obligations under the Convention through official reports made by the Committee and periodical reports submitted by the states parties. Furthermore, the self-executing nature of the provision of the Convention depends on the domestic enforceability of the rights. As stated above, the national legal system of Brazil does not give the right to education a character of direct applicability. Therefore, under the international law, the child has no power to claim for his or her enjoyment of the right to education.

In addition, there has been an attempt to address the goals and aims of education determined by Article 29 of the CRC, in order to demonstrate the importance of education, as it is the means by which children develop into well-educated, conscious, respectful and participative citizens. It has been shown that the fulfilment of the right to education is essential to the development of the child's personality, mental, moral and physical talents and capacities, as well as the respect for the human rights of others. Apart from the directives contained in Article 29 of the CRC, this thesis went further to demonstrate that education may also be the means by which a child can escape the poverty cycle and an effective tool on poverty reduction.

Thus, the causes and effects of poverty have been addressed and linked to the right to education. It has been demonstrated that children that come from uneducated and low-income families are more likely to remain trapped in the poverty cycle, if their basic needs are not met. It has been shown that education may lead individuals to their empowerment and control of their lives. Education is more likely to open doors to more sophisticated labour markets. It allows individuals to obtain higher sources of income and therefore gives them the capacity to provide for their own basic needs. It has been demonstrated that an educated individual is more likely to take better care of his or her health. In summary, there has been an attempt to demonstrate that education may be the path by which individuals can improve the quality of their lives and the lives of the next generations.

Furthermore, there has been an attempt to demonstrate that education is not only beneficial to the individual, but is also advantageous to the state. It has been stated that well-educated people are more likely to better produce, earn higher incomes, which in turn increases the

local economy and decreases the state's expenditure on health, social assistance and others sectors. The attempt was to demonstrate that education might be an effective poverty reduction strategy, as the economic growth comes from the bottom section of the social pyramid.

To reiterate such argument, the Bolsa-Escola Programme of the Municipality of Belo Horizonte has been addressed as an alternative mechanism found by the Federal Union of Brazil to, promote access and attendance in school of children from low-income families, reduce child labour rates, and to encourage the development of the beneficiary families, as well as the state. The procedure and structure of the programme has been addressed to better understand how funding the education of poor children can be an effective way to promote development. General results of medium and long term of the programme have been detailed in order to perceive the advantages of the programme upon the children, families and society. In regards to the child, the programme has shown that it has contributed to the school attendance of the children and reduced drop-out rates, as well as encouraged the children to complete their studies. As for the family, the complementary income provided by the Bolsa-Escola, has improved the living conditions of the family, as well as it has promoted their empowerment within their societies, and have encouraged many parents to seek an education of their own, specially those who were illiterate. Finally, in regards to the state, the results have shown a reduction of the states expenditure on public sectors, an increase in the local economy, a better functioning of the democratic society, due to the increase of public participation.

Additionally, results achieved by the evaluation of five years of the Programme, realised by the City Hall of Belo Horizonte were analyzed, along with the interview of the beneficiary mothers done by the author. The results have shown an increase in the quality of life of the beneficiary families of the Programme. There has also been an increase on the interest on education by the children as well as by the parents, as a few have been engaged in vocational or alphabetizing courses. Results have also shown that the living conditions and health of the beneficiary families has augmented, as many of the interviewed mothers claimed that part of the fund granted by the Bolsa-Escola has been used to buy food and to make improvements in their homes.

However, it was possible to conclude that the Bolsa-Escola Programme has some drawbacks as well. It is possible that it creates a dependency of the parents on the money granted by the programme, and therefore imposes an obligation upon the child to perform well in school. It was also indicated that other factors need to be put in place to make education relevant towards achieving the stated goals and objectives, and that is introduction of human rights and democracy at the grassroots level and also a welfarist approach to development.

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