



Failing Our Children

Barriers to the Right to Education

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I. Summary and Key Recommendations

At the Millennium Summit in 2000, governments reaffirmed ambitious commitments—to ensure that by 2015, every child around the world is able to attend and complete primary school, and to ensure that by 2005, as many girls as boys would be attending school. Five years after the summit, school attendance has increased in many parts of the world, but education remains beyond the reach of many millions of the world's children, particularly girls. An estimated sixty million girls and forty million boys are still out of school.¹

The benefits of education to both children and broader society could not be more clear. Education breaks generational cycles of poverty by enabling children to gain skills and knowledge for better jobs. Education is strongly linked to concrete improvements in health and nutrition, improving children's very chances for survival. Education empowers children to be full and active participants in society, able to exercise their rights and engage in civil and political life. Education is also a powerful protection factor: children who are in school are less likely to come into conflict with the law and much less vulnerable to rampant forms of child exploitation, including child labor, trafficking, and recruitment into armed groups and forces.

Access to free and compulsory primary schooling is already guaranteed by the nearly universally ratified Convention on the Rights of the Child. However, progress in realizing this right is woefully slow. In more than thirty investigations around the world, Human Rights Watch has repeatedly found significant and systematic barriers to safe and accessible schooling that violate children's rights to an education, undermine their ability to learn, and cause them to drop out.

For many children, particularly those from poor families, school fees and related costs of schooling put education beyond their reach. Fees imposed by schools may include fees for tuition, matriculation, exams and a range of other expenses, including electricity, water, heat, teacher's bonuses, and costs of maintenance. In addition, many families must pay for uniforms, books, other school supplies and transportation. In more than a dozen countries, Human Rights Watch found that these combined costs often cause children to drop out of school, start late, or never attend at all.

¹ Global Campaign for Education, *Missing the Mark: A School Report on rich countries' contribution to Universal Primary Education by 2015*, April 2005.

The global HIV/AIDS epidemic has had a devastating impact on children's right to education, particularly for the estimated fourteen million children worldwide who have lost one or both parents to HIV. Both in sub-Saharan Africa, where the crisis is most acute, as well as countries like India and Russia, Human Rights Watch has found that children affected by HIV/AIDS may be denied access to school or mistreated by teachers because of the stigma associated with HIV/AIDS. Children, particularly girls, may be pulled out of school to care for sick family members. Others may be unable to cover the costs of education and forced to work in order to supplement their family's income when a parent falls ill or dies.

Other children suffer discrimination in gaining access to education based on their race, ethnicity, religion or other status. Human Rights Watch investigations in countries that include Colombia, Guinea, India, Israel, Mexico, Spain, South Africa, and Sri Lanka found that migrant children, children from rural areas, ethnic or religious minorities, internally displaced and refugee children, indigenous children, and Dalit or low-caste children were often denied equal access to education, or in some cases, access to any education at all. For children in detention, opportunities for education are often grossly deficient.

For many children, the biggest threat to their right to education is violence within or near their schools that undermines their ability to learn, puts their physical and psychological well-being at risk, and often causes them to drop out of school entirely. These abuses include ongoing use of corporal punishment as a disciplinary measure, violence and harassment against sexual and other minorities, widespread sexual violence against girls by their fellow students and teachers, and the risk of sexual violence against girls traveling to and from school. Fulfilling children's right to education entails not only the presence of schools and teachers, but also ensuring an environment that allows them to learn in safety.

The right to education is also inextricably linked to the phenomenon of child labor, which involves an estimated 246 million children around the globe. Our research has documented the detrimental impact of child labor on education in countries including Ecuador, El Salvador, India, Indonesia, Togo and the United States. We found that children who have no access to quality schooling often enter the workforce, particularly if they are from poor families that need additional income. Once engaged in child labor, children are often unable to return to school or continue their education. In many cases, employers actively prohibit children from attending school, while in others, the long hours demanded by employers make schooling practically impossible. The result is often generations of poverty, fueled by low-wage, unskilled work and lack of education that could provide children with more and better options for their future.

All of these barriers to education disproportionately affect girls. Traditional biases against educating girls often cause parents to give priority to their sons over the daughters for schooling, particularly when prohibitive school fees or poverty make it difficult for parents to send all of their children to school. In many heavily AIDS-affected countries, such discrimination is increasing, as girls are often pulled out of school to care for ailing relatives or replace lost income. Girls are also preferred for certain kinds of child labor, particularly domestic work, which typically involves isolation and long hours that are incompatible with schooling. Girls are also particularly vulnerable to sexual violence by classmates and teachers, and are less likely than boys to travel long or dangerous routes to get to school.

Governments cannot meet the goal of universal primary education without addressing the human rights abuses that undermine children's rights to education. Ensuring every child a basic education depends on much stronger efforts to remove the obstacles that deny children access to school, and to address the violence that threatens their safe completion of schooling.

Ensuring every child's access to quality and safe education will also demand a stronger role by the international community. Donor countries pledged to support education for all initiatives at the World Education Forum in Dakar in 2000, declaring that "no country seriously committed to Education for All will be thwarted in its achievement of universal primary school completion by 2015 due to lack of resources."² In 2002, member states of the United Nations met in Monterrey, Mexico and recognized that substantial increases in development assistance were needed to help developing countries achieve the millennium development goals. Members pledged among other things to, "make concrete efforts towards the target of 0.7 percent of gross national product (GNP) as ODA [Official Development Assistance] to developing countries."³ The Education for All-Fast Track Initiative was launched later that year as an initiative to implement the "Monterrey Consensus." Under the Fast-Track Initiative, donor governments agreed to provide coordinated and increased financial support to developing countries that prioritize universal primary education and develop sound national education plans to achieve this goal.

² Dakar Framework for Action, "Education for All: Meeting our Collective Commitments," text adopted at the World Education Forum, Dakar, Senegal, 26-28 April 2000, http://www.unesco.org/education/efa/ed_for_all/dakfram_eng.shtml

³ United Nations, *Monterrey Consensus of the International Conference on Financing for Development* (New York: United Nations Publications, 2002), A/CONF.198/11, p. 9.

However, actual financial commitments have fallen short of these pledges; the average level of ODA for donor countries stood at 0.25 percent in 2004,⁴ and the 2004 progress report for the Education for All-Fast Track Initiative reported that external support for primary education in low-income countries would need to increase from an average of just over \$1 billion to about \$3.7 billion a year in order to ensure adequate funding for universal primary education.⁵

This report is based on more than thirty investigations conducted by Human Rights Watch in over twenty countries since 1998. We interviewed hundreds of children who were out of school, faced barriers to gaining access to education, or had experienced abuses in the educational system, as well as members of their families, nongovernmental organizations and other advocates, officials, and other sources. To protect their privacy, the names of children in this report have been changed. Unless otherwise cited, all quotes are from the previous Human Rights Watch reports indicated.

Human Rights Watch considers a child to be any person under the age of eighteen, in line with the Convention on the Rights of the Child, which defines a child as “every human being under the age of eighteen unless, under the law applicable to the child, majority is obtained earlier.”⁶

Key Recommendations:

Regarding School Fees:

- Governments should ensure that all children enjoy their right to free primary education. No child should ever be denied their right to education because of school fees or related costs of education. Strategies to eliminate or reduce the costs of attending school could include lifting fees, providing stipends conditional on school attendance, provision of free uniforms or lifting of uniform requirements, provision of free textbooks, provision of transportation

⁴ Organisation for Economic Cooperation and Development, “Official Development Assistance Increases Further, but 2006 Targets Still a Challenge,” April 11, 2005, http://www.oecd.org/document/3/0,2340,en_2649_201185_34700611_1_1_1_1,00.html

⁵ World Bank Education Sector, Human Development Network, *Education for All (EFA)- Fast Track Initiative Progress Report*, March 26, 2004, report prepared for the Development Committee of the World Bank and International Monetary Fund, DC2004-002/1.

⁶ Convention on the Rights of the Child, art. 1, adopted November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990).

(for example, bicycles or bus service) or free school meals to attract poor children to school.

Regarding Funding:

- Donor governments should meet existing pledges made at the 2002 International Conference on Financing for Development (the Monterrey Consensus) to work with governments to provide long-term technical and financial support to ensure every child is in school by at least 2015; donors should prioritize increased aid to developing countries that have developed and adopted sound national education plans to achieve universal primary education as part of the Education for All-Fast-Track Initiative.

Regarding the Impact of HIV/AIDS:

- Governments should enact and enforce laws prohibiting all discrimination in education against children based on their real or perceived HIV status; provide children, families, teachers, educational officials and the broader community with factual and comprehensive information about HIV/AIDS; and take steps to strengthen the ability of extended families to care for AIDS-affected children and provide them with formal schooling.

Regarding Discrimination and Access:

- Governments should enact and enforce legislation and policies prohibiting discrimination in education against children because of their race, ethnicity, gender, social or other status, and ensure that resources are allocated to ensure that all children have equal access to schooling. Governments must develop concrete plans and mechanisms to identify and include populations of children that are underserved by the education system or face discrimination in accessing education.

Regarding Child Labor:

- Both governments and international agencies must address effectively the interrelationship of education and child labor by simultaneously providing incentives to keep children in school, expanding educational opportunities for working children, and making stronger efforts to remove children from the

worst forms of child labor and ensure their placement in appropriate educational programs.

Regarding Violence:

- Governments should implement comprehensive measures to ensure the safety of schoolchildren by taking effective measures to address physical and sexual abuse by other students, teachers, staff or principals; ensuring the safety of schoolchildren on their way to and from school; and adopting and implementing prohibitions on the use of corporal punishment.

Regarding Girls' Education:

- Governments should take steps to ensure gender equality in education by educating families and communities about the benefits of girls' education; providing incentives to enroll and retain girls in school; improving security for schoolgirls, including on their way to and from school; and investigating and prosecuting those responsible for sexual violence against girls, including by other students, teachers or principals.

II. School Fees

In many countries around the world, school fees and related education costs create formidable barriers to children's right to education. A 2000-2001 World Bank survey found fees levied in seventy-seven of seventy-nine low-income countries; most had several different types of fees.⁷ Although formal tuition fees have been abolished in many countries, particularly in Africa since 2000, the associated costs of education—books, uniforms, supplies, transportation—are still extremely common and prohibitively expensive for many families. In many countries where formal fees have been lifted without an effective reallocation of resources, local schools have imposed additional “informal” fees to make up for the lost income. In such cases, the financial burden still falls upon children and their families.

In investigations in Burma (Myanmar), China, Colombia, Ecuador, El Salvador, Egypt, India, Indonesia, Liberia, Papua New Guinea, Togo, and Zambia, Human Rights Watch found that school fees and related costs posed a significant barrier to children's

⁷ Raja Bentaouet Kattan and Nicholas Burnett, *User Fees in Primary Education* (Washington DC; World Bank, July 2004).

education, and were often linked to non-attendance, dropout, and the entry of children into child labor.

In Indonesia, a 2003 national education law guarantees the right to basic education for citizens aged seven through fifteen. However, neither primary education nor lower secondary education is free. Instead, the education law codifies funding for education as a “shared responsibility” of the national and regional governments, and the “community.”

Child domestic workers, primarily girls, interviewed in Indonesia by Human Rights Watch reported that costs associated with education forced them to drop out of school prior to completing nine years of education.⁸ Ami, who began working as a domestic worker when she was thirteen, explained that a government school turned her away because she could not pay fees:

I finished elementary school. I said to my father that I want to continue, but my father said, ‘I’m sorry, I cannot afford the cost’. . . I went to a lower secondary school for one week, but I was expected to pay a down payment. I went to school and asked if it was okay that I enroll. The teacher said okay, but you have to pay after some days. After a week, the school asked me to pay and my parents couldn’t pay the money. It was for tuition, books, [and] uniform. It was a government school. The down payment was about 100,000 rupiahs [US \$11.11] and the total was maybe 200,000 rupiahs [US \$22.22]. So I left the school. I wanted to go and when I had to leave I was so sad. I would like to go back to school.

In addition to school fees, costs associated with uniforms, shoes, books, and transportation fees are obstacles to education for children in Indonesia. Hartini told us that her family paid 20,000 rupiahs [US\$2.22] per month in school fees, but that uniforms, books, and supplies cost them an additional 200,000 rupiahs [US\$22.22] a year.

The United Nations Human Development Report 2004 on Indonesia notes that although a vast majority of children enroll in school, only about half complete nine years

⁸ See Human Rights Watch, *Always on Call: Abuse and Exploitation of Child Domestic Workers in Indonesia* (New York: Human Rights Watch, 2005).

of basic education.⁹ According to the report, around 18 percent of children drop out before completing primary school, while the rest do not enter or do not complete lower secondary school, due to poverty, incidental fees, and expenses for uniforms and books, as well as the quality of education.¹⁰ Katarina Tomaševski, Special Rapporteur on the Right to Education, concluded in her 2002 examination of the education system in Indonesia that poverty and costs are the key obstacles to children's accessibility to education.¹¹

In Papua New Guinea (PNG), school fees are very high compared with the average annual income. According to the PNG Department of Labor, caps on school fees in 2004-2005 ranged from 100 kina [US\$31.65] through grade two to 1,200 kina [US\$379.75] for day students in grades eleven through twelve. Per capita gross national income was U.S.\$510 in 2003.¹² In 2003, gross enrollment rates were 61 percent for elementary school and 18 percent for secondary school.¹³

Human Rights Watch interviewed more than fifteen boys and girls in Papua New Guinea in September 2004 who said they were forced to drop out of school or never attended at all because they or their parents could not pay the fees and related costs of schooling.¹⁴ Yoshidah explained how school fees became an insurmountable barrier for his family, even though both of his parents were working:

I stopped school last year in grade seven because I didn't pay my school fees so I had to stay at home. It cost 130 kina [US\$41.14]. The uniform I paid separately—25 kina [US\$7.91] for the shirt, 35 kina [US\$11.08] for the trousers, black shoes cost about 25 kina [US\$7.91]. Without shoes, you get sent home. If I went to school without shoes or with a torn uniform, they sent me home to fix it. . . .

⁹ United Nations Development Program, *Indonesia Human Development Report 2004* (New York: UNDP, 2004), p. 35.

¹⁰ *Ibid.*

¹¹ UN Commission on Human Rights, *The Right to Education, Report Submitted by Katarina Tomaševski, Special Rapporteur in accordance with Commission Resolution 2002/23, Addendum, Mission to Indonesia July 1-7, 2002*, U.N. Doc. E/CN.4/2003/9/Add. 1, November 2002, para 23.

¹² Canadian International Development Agency, *Papua New Guinea: Facts at a Glance*, www.acdi-cida.gc.ca (retrieved October 27, 2004).

¹³ AusAID, *PNG Education Sector Affordability Studies Services Order No. 09187/07, Paper 4, Overview of Financing the Education Sector*, September 2003, pp. 34-35. It should be noted that there is considerable disparity among sources for this data.

¹⁴ See Human Rights Watch, *"Making Their Own Rules": Police Beatings, Rape, and Torture of Children in Papua New Guinea* (New York: Human Rights Watch, 2005).

I think of going back to school.

I live with my parents. My father is working. My mother does marketing—she cooks vegetables and sells them. I have two brothers plus me, four sisters, one who died. Two sisters go to school in grades five and two, one is too small. One brother is in grade three. My parents were paying their school fees, so they couldn't afford mine. I am the oldest so the school fee is more expensive and I had to stay home. My other brother also had to stay at home because of the school fee problem.

Although some government officials told us that children were not automatically expelled from school for not paying the fee, many of the children we interviewed said that schools sent them home for that reason. Papua New Guinea's Secretary for Education told us that in his opinion, "[i]t's not a good idea to abolish school fees," and suggested that parents who fail to pay should be taken to court because they are "parasiting on the other children."

As in many other countries, school fees in Papua New Guinea not only cause many children to drop out, but may also force children into the worst forms of child labor. Rose told Human Rights Watch: "I left school because my parents stopped paying the fee. . . . I left at grade seven. I got very angry at my parents and I went with my friends and then I came out [started in sex work]. . . . The fees were 100-150 kina [US\$31.65-\$47.47] but my parents didn't pay, so I didn't go back to school. I ran away. Now I live with the owner of the [brothel]. I still have my clothes—my uniform—but I don't want to go back again." A project addressing HIV/AIDS, transport industry workers, and sex workers also found instances of girls and women selling sex for money to pay school fees and bus fares for themselves or their children.

In India, most schools charge some sort of fee, if not for matriculation then for exams. In addition, families must pay for uniforms, books, other school supplies and, if the school is not within walking distance, transportation. Human Rights Watch found that these school costs cause some children to drop out of school, start late, or never attend at all.¹⁵

¹⁵ See Human Rights Watch, *Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India* (New York: Human Rights Watch, 2004).

According to the Public Report on Basic Education in India, a comprehensive evaluation of the education system in North India, the average annual cost of sending a child to primary school in 1996 was 318 rupees (US\$6.63) for a government school and 940 rupees (US\$20) for a private school.¹⁶ The World Bank notes that the direct cost of education in India, “even for public schools and even ignoring the opportunity cost, is nearly prohibitive for a poor family.”¹⁷ For rural families, where the average annual income in some areas reaches only 2,444 rupees (US\$41), the cost of sending a child to school for one year exceeds a month’s income.

Indian children interviewed by Human Rights Watch in late 2003 reported that their total costs of education ranged from 500 to 1,500 rupees (US\$10-31) a year to attend a government school, and 5,000 rupees (US\$104) a year and up to attend a private school.

A woman caring for her niece, who had been orphaned by AIDS, told Human Rights Watch, “Textbooks cost 500 rupees (US\$10) for one and 450 rupees (US\$9.38) for the other. Notebooks cost 15 rupees (US\$0.31), and we buy as they go along. We have to pay for the textbooks—it is mandatory.” She said that she was going to send her niece to a second year of kindergarten instead of starting her in the first grade because kindergarten cost less.

Human Rights Watch found that school fees and related costs tend to have a disproportionate impact on girls, as many parents value girls’ education less and are, therefore, less willing to pay for it. One Indian woman told Human Rights Watch that her oldest daughter, age sixteen, had already dropped out of school because of cost, and that she expected her thirteen-year old daughter to drop out as well the following year: “What can I do? I cannot afford this.” However, when we asked the mother if she would continue to educate her twelve-year old son, she answered: “Yes, he is my only son. He has to go to college and learn more and become more educated.”

In El Salvador, state schools must by law provide basic education, first through ninth grade, free of charge.¹⁸ Nevertheless, many schools charge matriculation fees or “voluntary” monthly assessments. Although schooling is free in theory, in reality, the costs for families can be prohibitive. Taking into account all costs associated with education—matriculation fees, “voluntary” contributions to school events, and the cost

¹⁶ PROBE Team, *Public Report on Basic Education in India*, pp 16, 105.

¹⁷ World Bank, *India: Policies to Reduce Poverty and Accelerate Sustainable Development*, para 2.33.

¹⁸ See Human Rights Watch: *Turning a Blind Eye: Hazardous Child Labor in El Salvador’s Sugarcane Cultivation* (New York: Human Rights Watch, 2004).

of uniforms, school supplies, and transportation to and from school—ILO IPEC has estimated in 2002 that the annual cost of schooling in El Salvador was 2,405 colones (US\$274.86) per child¹⁹—or nearly four times the minimum monthly wage for an agricultural worker.

Most schools in El Salvador require students to wear uniforms, adding an additional expense for students. Pedro explained to Human Rights Watch: “The shirt costs \$3. Pants are \$6. Black shoes—it depends what one buys. On average they are 150 (\$17.14) or maybe 100 colones (\$11.43).” Some schools do not permit students to attend if they do not wear a uniform. In particular the requirement that students wear black shoes caused worry among the children we interviewed, probably because black shoes are the most expensive part of the school uniform. Ignacio, fourteen, said, “We need black shoes. I need to save money to buy them. They’ll throw me out of school because I have these,” he said, pointing to his shoes. “They’ll throw me out of school because they want black ones and I have white ones.” He said that he had been attending classes for ten days, but the principal had recently told him that he could not continue to come to school without black shoes.

In Colombia, the constitution guarantees free education but provides that this right is “without prejudice to charges for the cost of academic rights for those who can afford them.” As a result of this provision, Colombian authorities have generally taken the position that some fees are permissible.

In July and August 2004, Human Rights Watch interviewed children in Colombia who reported paying up to 100,000 pesos (US\$40) in matriculation fees.²⁰ Related costs for uniforms, books, and backpacks and other supplies often total US\$30 or more. Some schools also charge up to U.S.\$10 in administrative fees for “paperwork” or “school records”. This is a substantial sum for poor families, particularly those with several school-age children. The minimum wage in Colombia is approximately 350,000 pesos (US\$140) per month, and many wage earners make less than \$40 per month.

As in El Salvador, uniforms are a near-universal requirement for students in Colombia. At some schools, students are required to have two uniforms, one ordinary uniform and another for physical education. One woman in Cazuca who cared for her grandchildren in Altos de Cazucá, a shantytown on the edge of Bogotá, told Human Rights Watch,

¹⁹ Oscar Godoy, *El Salvador: Trabajo infantil doméstico: Una evaluación rápida* (Geneva: International Labor Organization, International Programme for the Elimination of Child Labour, 2002), p. 23.

²⁰ Human Rights Watch investigation in Bogotá and Cartagena, Colombia, July-August 2004; report forthcoming.

“Two of them [the grandchildren] have the regular uniforms.” When asked what happened if students didn’t have both uniforms, she replied, “The school doesn’t admit them. This has happened to my granddaughters. The school director talked to me about my granddaughter about fifteen days ago because she didn’t have the physical education uniform. . . . The director told me I had a few weeks to buy the uniform. But it isn’t possible—we have to buy the books, the backpacks, the uniforms.” Reviewing the purchases for one of her grandchildren to attend school, she said, “The physical education uniform costs 30,000 pesos [US\$12]. The other one is 15,000 pesos [\$6], used. Each book is 32,000 pesos [\$12.80]. The backpack is 17,000 pesos [\$6.80]. I still haven’t bought the dictionary for her.”²¹

School uniforms are commonly required by schools throughout Latin America. The need to maintain school discipline is frequently cited as a rationale for maintaining the requirement. Some governments, like Colombia, also perceive them as a way to avoid stigmatizing vulnerable groups, such as displaced children. However, even when authorities have made efforts to guarantee access to education by removing school fees, the requirement that students wear uniforms may undercut those efforts.

In Ecuador, constitutionally guaranteed “free” education is undermined by registration and book fees, which, when added to other costs such as uniforms, on average, can total between US \$200 and US \$250 per student per year.²² This sum, according to wage data gathered by Human Rights Watch during an investigation of working conditions in the banana industry, would take the average child banana worker between fifty-seven and seventy-one work days to earn, or the combined monthly wages of two working parents.

In Zambia, the government declared free education for grades one to seven in 2002 and abolished the mandatory collection of school fees. It has failed to enforce this policy and many schools, particularly in urban areas, still require fees. Human Rights Watch interviewed parents and guardians who said that their failure to pay school fees resulted in their children being turned away from school. Poor children, orphans, and children affected by AIDS are particularly affected by fees and other related costs.²³

A grandmother who was caring for several of her grandchildren and living in a poor neighborhood in the capital, Lusaka, told Human Rights Watch that her orphaned

²¹ Human Rights Watch interview, Altos de Cazucá, Cundinamarca, Colombia, July 30, 2004.

²² See Human Rights Watch, *Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador’s Banana Plantations* (New York: Human Rights Watch, 2002).

²³ Human Rights Watch investigation conducted in Zambia in June and July 2004.

granddaughter stopped attending school in 2003 because of fees. “The next January [2003], the PTA required that that students pay 16,000 kwacha (U.S. \$3.10) per term, this is not voluntary but mandatory. When the children can’t pay, they are chased from school. This is what happened to my girl, she was chased by the teacher.” Unable to adequately feed and clothe her grandchild, much less pay school fees, she sent her granddaughter to live with a neighbor. This nine-year-old girl helped with chores around her neighbor’s house in exchange for room and board and was no longer attending school.

Under the Zambian free education policy, a uniform is also no longer compulsory and no pupil is to be turned away from school for failing to wear one. Even so, in practice teachers and administrators continue to deny boys and girls access to school for not wearing a uniform. In interviews, parents and students told us that children risked being sent home from school for failing to wear a uniform or more likely, were not admitted during the first days of school without one. A 2005 report from the Ministry of Sport, Youth and Child Development confirmed these reports and found that despite the free education policy, schools continue to require pupils to wear uniforms.²⁴ PTA fees, costs for books and materials, and the uniform requirement have held down attendance rates in Zambia and deny up to one quarter of school-aged children their right to education.

In the world’s most populous nation, China, official media reports stated in 2003 that twenty-seven million children nationwide—or some 10 percent of school-aged children—were unable to attend school,²⁵ and in many areas, drop-out rates for children in junior high school exceed 30 percent.²⁶

Although the Compulsory Education Law of the People’s Republic of China (CEL) requires nine years of compulsory education, bans tuition payments, and requires the state to establish a system of “grants-in-aid” to support the school attendance of poor children,²⁷ many children are unable to afford schooling. Because local schools are

²⁴ The Ministry of Sport, Youth and Child Development, “Orphans and Vulnerable Children 2004 Situation Analysis,” Lusaka, Zambia, 2005, pp. 17-19.

²⁵ “China Struggles to Educate All Children,” Radio Free Asia, January 23, 2004, citing official Chinese media reports.

²⁶ See “China Experiences Rising School Dropout Rate,” available at http://english.peopledaily.com.cn/200503/04/print20050304_175476.html; *Education in China: A Short Introduction*, China Labour Bulletin, available at www.china-labour.org.hk/iso/article.adp?article_id=5115; *China: Many Rural Girls Left Out of School*, Women’s Information Network News (Nov. 1, 1999) at http://articles.finarticles.com/p/articles/mi_m2872/is_1_26/ai_62795146.

²⁷ Compulsory Education Law of the People’s Republic of China, adopted at the fourth session of the Sixth National People’s Congress, promulgated by Order No. 38 of the President of the People’s Republic of China on April 12, 1986, and effective as of July 1, 1986, art. 2.

prohibited from charging tuition fees, they often charge students for expenses that may include electricity, water, heat, desk and bench use, blackboards, exam reading, teachers' bonuses, writing utensils, paper, books and workbooks, construction equipment, tree planting, brooms, bicycle parking and the right to transfer. In Hunan province, one school reportedly charged 25 yuan per student to pay the electric bill for computers, even though the school did not own a single computer.²⁸

Interviews conducted by Human Rights Watch in 2004 and 2005 found that school fees and associated costs of education are a problem of particular urgency in many poor areas of rural China. A Tibetan woman from a farm family in Qinghai province complained that “[t]here is probably no one in the village who doesn’t have trouble sending their children to school because of the fees.”²⁹ She reported, as did others, that the basic semester charge rises with the grade, resulting in many families sending their younger children to school at the expense of their older siblings. Another source from an agricultural village explained, “[t]here is no one who can afford to send more than one child to school.”³⁰

Many poor parents in China, including those in ethnic nationality areas, face an impossible dilemma: they cannot afford to send their child to school because of school fees, nor can they afford the fines they may face if the child does not attend. Chinese law instructs local governments to “admonish and criticize” the parents or guardians of children who have not enrolled in school, and to adopt “effective measures” to encourage school attendance. Under this law, local authorities in many areas have imposed fines on parents whose children are not in school. One person interviewed by Human Rights Watch reported that in grades one through three, fines for non-attendance amounted to 10 yuan (approximately US\$1.20) a day.³¹ Another reported a one time fine of approximately 2,900 yuan (US\$350);³² another said he was fined 73 yuan for dropping out after 6th grade.³³

In 2004 and 2005, China’s Ministry of Education announced several educational initiatives, including an increase in financial assistance to rural families to support school attendance, the expansion of a free textbook plan, and plans to eliminate “extraneous

²⁸ Tang Qixian, “Poor Families desperately Need Help in Education,” *The World of Survey and Research* 28 (10/2002), p. 28.

²⁹ Human Rights Watch interview, July 2004 (location withheld).

³⁰ Human Rights Watch interview, December 2004 (location withheld).

³¹ Human Rights Watch interview, May 2004 (location withheld).

³² Human Rights Watch interview, November 2004 (location withheld).

³³ Human Rights Watch interview, December 2004 (location withheld).

fees charged by individual schools.”³⁴ However, Human Rights Watch has no information as to whether these initiatives have materialized.

During a 2002 investigation in Burma (Myanmar), Human Rights Watch found that families were forced to pay school fees of up to 15,000 or 20,000 kyat (US\$17.65-\$23.53) per year as well as all of the material costs of uniforms, books, and school supplies for their children.³⁵ In rural areas, they are also forced to pay the costs of building of schools and salaries for teachers. Many families pull their children out of primary school because they cannot afford the cost of the school fees and education materials, or because they need the child to work in the fields or to earn money. Although the government claims primary school enrolment rates of more than 90 percent, according to UNICEF, only 55 percent of children complete kindergarten and the first four grades.³⁶

Khin Maung Than told us:

School fees were about 20,000 kyat for the whole year. That doesn't include the uniform but it includes books. Early in the morning and in the evening after school we had to work for money. I left school when I was about nine years old, after finishing Second Standard, because my mother wasn't healthy and my father was an alcoholic. I had to take care of my mother.

When he was eleven, Khin Maung Than was forced by recruiters to join the military.

Boys who have left school in Burma are particularly vulnerable to recruitment into the national army, which Human Rights Watch estimates has one of the largest numbers of child soldiers in the world. After leaving school, many children take up jobs selling food or small goods in the streets, or they find their way to larger cities in search of paying work. All of these children are frequently alone and vulnerable and become easy targets for recruiters, who frequently recruit children as young as eleven into military service.

³⁴ See *People's Daily*, "Nation to Ensure Compulsory Education for Rural Pupils," January 27, 2004; "Government to Offer More Free Textbooks to Students in Poverty," February 27, 2004; "China to Eliminate Extra Educational Fees," January 28, 2005.

³⁵ See Human Rights Watch, *"My Gun Was As Tall As Me": Child Soldiers in Burma* (New York: Human Rights Watch, 2002).

³⁶ Data from the State Peace and Development Council (SPDC) Department of Labor and UNFPA as reported in the Handbook on Human Resources Development Indicators 2000; UNICEF information reported to Human Rights Watch by UNICEF Rangoon in July 2002.

In Togo, Human Rights Watch found that families who cannot afford to send their children to school are vulnerable to child traffickers, who may promise formal education, apprenticeships or employment to families that are eager to take a chance on better opportunities for their children.³⁷ In 2002, annual school fees in Togo ranged from 4,000 to 13,000 CFA (between US \$6 and \$20) despite a statutory guarantee of free primary education. Many poor families survive on less than \$1 a day, making schooling a significant expense, particularly for families with large numbers of children.

In Egypt, the constitution provides for free, compulsory basic education through grade nine. In practice, parents of children in public schools pay registration and health insurance fees, buy school uniforms and supplies, and often are pressured by underpaid teachers to pay for private tutoring so that their children succeed in school exams.³⁸

Egyptian children interviewed by Human Rights Watch typically cited poverty as the primary reason they had never entered school or had left before completing basic education. This was particularly true of girls. Wafa, fifteen, said, “I’ve never gone to school because we have no money. No one in my family has gone to school. We are two boys and one girl. My father sells fruit.” Fifteen-year-old Ilham said, “My father didn’t want me to go to school. He said, ‘Instead of spending money on sending you to school it is better to spend the money taking care of all of you.’ Because we are seven children.”

In Egypt, children who are not enrolled in school are subject to arrest as habitual truants or as “vulnerable to delinquency,” even if they have committed no criminal offense. Of thirty-two children arrested by police and interviewed by Human Rights Watch, nine children had never attended school; nine had dropped out by the end of third grade; and seventeen had dropped out by the end of sixth grade.

One response to school fees is to waive them for poor children who cannot afford them. The advantages of this approach are that it theoretically targets the children that are most affected, and also mitigates the shortfall of income of eliminating school fees for all children. However, some research shows that those in most need of such programs—the poorest families—are often unaware of exemption schemes and do not know that

³⁷ See Human Rights Watch, *Borderline Slavery: Child Trafficking in Togo* (New York: Human Rights Watch, 2003).

³⁸ See Human Rights Watch, *Charged With Being Children: Egyptian Police Abuse of Children in Need of Protection* (New York: Human Rights Watch, 2003).

they can apply, or how to do so.³⁹ In South Africa, where schools often waive fees for children who are unable to pay, Human Rights Watch found that some rural teachers working on farm schools were unaware that a formal waiver system even existed.⁴⁰ We also found that the ability of orphans and children lacking parental care to benefit from a waiver of school fees often depended on the presence of a community-based organization who would demand that the school allow them to enroll.⁴¹

Governments utilizing waivers for poor children must ensure that these programs are publicized widely and fully accessible to the children and families that need them most. They should take special steps to ensure that children without a parent or guardian benefit from such programs.

The UN Secretary-General, based on the findings of the UN Millennium Project, has recommended immediate action to eliminate school fees, identifying such measures as a high-impact “quick win” with the potential to generate major short-term gains and impact millions of lives.⁴² The major gains of such action have been clearly demonstrated in countries like Malawi, Uganda, Tanzania, and Kenya, where the lifting of school fees resulted in significant increases in enrollment. These initiatives have greatly expanded children’s access to education. However, governments that eliminate fees must make concrete plans to offset lost income from school fees and anticipate increased enrollment by adding additional teachers, books and classrooms, in order to ensure that schools do not impose additional informal fees to make up for the lost income and that the quality of education does not deteriorate.

Recommendations

- Governments should ensure that all children enjoy their right to free primary education. No child should ever be denied their right to education because of school fees or related costs of education. Strategies to eliminate or reduce the costs of attending school could include lifting fees, providing stipends conditional on school attendance, provision of free uniforms or lifting of uniform requirements, provision of free textbooks, provision of transportation

³⁹ See Coalition for Health and Education Rights (CHER), *User Fees: the right to education and health denied: A policy brief for the UN Special Session on Children, New York, May 2002*. This paper was based on research in Guatemala, Nepal, Somaliland, Tanzania and Uganda.

⁴⁰ Human Rights Watch interviews, Free State, South Africa, July 2005.

⁴¹ Human Rights Watch interviews, Johannesburg, South Africa, June 2005.

⁴² “In larger freedom: towards development, security and human rights for all,” Report of the Secretary-General, A/59/2005, March 21, 2005, paras 52 and Annex, para 5(h).

(for example, bicycles or bus service) or free school meals to attract poor children to school.

- Governments should promptly investigate cases of children being denied access to school or being expelled from school for inability to pay fees or for school supplies, including uniforms. Ensure that appropriate enforcement authorities sanction schools and school officials that illegally levy school fees or turn away students.
- Donor governments should provide long-term technical and financial support to governments that lift school fees in order to off-set lost revenue and ensure that education systems are prepared to meet increased demand.

III. The Impact of HIV/AIDS

The global HIV/AIDS epidemic, which has claimed over twenty million lives including 3.1 million in 2004 alone, has had a devastating impact on children's right to education. At the end of 2004, an estimated fourteen million children had lost one or both parents to HIV. The overwhelming majority of these orphans were in sub-Saharan Africa. In addition, of the estimated 39.4 million people living with AIDS worldwide in 2004, 2.2 million of them were children under the age of fifteen. Some 640,000 children were newly infected with HIV in 2004 alone.⁴³ Girls are disproportionately affected, with HIV prevalence among girls four to seven times higher than among boys in many countries of eastern and southern Africa.⁴⁴

HIV/AIDS affects children's right to education in numerous and overlapping ways. In some cases, overt discrimination against AIDS-affected children can directly impede both their access to formal schooling and the treatment they receive in the classroom. Such discrimination is often driven by ignorance on the part of parents, educators, and community members, and fueled by school systems and officials that fail to address the problem and ensure the inclusion of such children.

In India, where the government estimates that at least 5.1 million people, including hundreds of thousands of children, are living with HIV/AIDS, Human Rights Watch

⁴³ UNAIDS (Joint United Nations Programme on HIV/AIDS), AIDS Epidemic Update, December 2004.

⁴⁴ UNICEF, UNAIDS, World Health Organization (WHO) press release, "Major UN study finds alarming lack of knowledge about HIV/AIDS among young people," July 2, 2002.

found that discrimination in education is common against children affected by HIV/AIDS.⁴⁵ Teachers and principals may separate these children from other students or deny them admission entirely; parents may threaten teachers that they will keep their children at home if other children suspected of having HIV are allowed into the school. Many teachers and parents still lack accurate information about HIV and believe that the virus can be transmitted through casual contact. The loss of a family wage earner to AIDS can also leave families unable to pay their children's school fees.

Anu, a six-year old Indian girl whose parents had both died of AIDS, was sent home from kindergarten in 2003. Her teacher told her older sister to tell her "please not to come again to the school." Her grandfather told Human Rights Watch, "The teacher didn't allow her to come to school because she believes that Anu is HIV-positive. I believe that other parents were talking among themselves, so the teacher said she shouldn't come."

Even if allowed to attend school, many children affected by AIDS face discriminatory treatment. Another Indian girl, aged ten, was HIV-positive and had lost both of her parents to AIDS. She told Human Rights Watch:

When I went to school, I sat separately from the other children, in the last mat. I sat alone. The other children wanted to be with me, but the teacher would tell them not to play with me. She said, 'This disease will spread to you also, so do not play with her.'

She stopped going to school in the fourth grade.

Social stigma also fuels discrimination against children affected by HIV/AIDS in Russia, home to one of the fastest-growing and potentially massive AIDS epidemics in the world.⁴⁶ HIV-positive mothers told Human Rights Watch that one of the biggest problems they face is finding a daycare center or kindergarten that will take their child. The director may be willing to take the child, but once other parents find out that an HIV-affected child is at the school, they put pressure on the school to have the child expelled. As a result, many parents go to great lengths to hide their own or their child's diagnosis.

⁴⁵ See Human Rights Watch, *Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India* (New York: Human Rights Watch, 2004).

⁴⁶ See Human Rights Watch, *Positively Abandoned: Stigma and Discrimination Against HIV-Positive Mothers and their Children in Russia* (New York: Human Rights Watch, 2005).

In part because of intense social pressures, up to 20 percent of children born to HIV-positive women in Russia are abandoned at birth. These children are often placed in specialized orphanages for HIV-positive children or warehoused in hospital wards with no stimulation or opportunity for education. One nationally recognized expert on the care of HIV-positive children told Human Rights Watch that as many as half of all children abandoned throughout Russia by HIV-positive mothers linger in hospitals indefinitely. Many of these children lie in barren rooms; their only contact with the outside world is a nurse in a mask and rubber gloves. The resulting psychological and developmental delays may mark the child for life. Even if eventually transferred to the Russian orphanage system, the child may be diagnosed as mentally disabled, deemed “ineducable” and transferred for life to psychoneurological *internaty* with little or no opportunity for education.⁴⁷

Beyond discrimination, the combined effects of poverty and HIV/AIDS can lead many families to withdraw their children from school in order to supplement their family income. This is especially true in sub-Saharan Africa, home to the overwhelming majority of the world’s children orphaned by AIDS. In a study of heavily-AIDS affected communities in Zimbabwe, 48 percent of primary school-age orphans had dropped out of school, most often at the time of a parent’s illness or death.⁴⁸ One study in Kenya compared 5,200 children whose parents had died of AIDS with the same number of age-matched children who were orphaned by other causes. The AIDS orphans had significantly lower rates of school enrollment and retention than did other orphans.⁴⁹

Rose, age eighteen, described the combination of poverty and stigma that forced her and her siblings to withdraw from school after their mother became sick from HIV.⁵⁰ “When our mother was sick and couldn’t care for us, all of us had to drop out of school,” she said. “First we tried to stay in, but when we were irregular in attendance, we were caned [beaten by a teacher] for that.” Linda, an HIV-positive mother in Nairobi, said, “My children come home from school saying that the other children abused them because of my illness.”

⁴⁷ See Human Rights Watch, *Abandoned to the State: Cruelty and Neglect in Russian Orphanages* (New York: Human Rights Watch, 1998).

⁴⁸ UNAIDS, Report on the Global HIV/AIDS Epidemic: June 2000, pp 28-29.

⁴⁹ R. Conroy, A. Tomkins, R. Landsdown, and M. Elmore-Meegan, “AIDS Orphans, an Emerging Problem: A Study of 5,206 Orphaned Children” (January 2001).

⁵⁰ See Human Rights Watch, *In the Shadow of Death: HIV/AIDS and Children’s Rights in Kenya* (New York: Human Rights Watch, 2001).

Children who are pulled from school may be forced to work under hazardous conditions, to eke out a living in the street, or even to succumb to labor trafficking or forced military service. They may be deprived of clear and appropriate information about HIV transmission and safer sex, thus increasing their risk of HIV infection. A twenty-two-year-old Kenyan woman told Human Rights Watch that she became the head of her household at age seventeen when her mother died of AIDS:

I tried to do anything to keep us going—I made chapatis and sold them, I washed cars, and now I’m working for a woman with a small kiosk, but I don’t think it’s going to last. The government should lend money to people so they can start a business and be self-reliant. I may have to go into prostitution, and then I know I will get HIV and die. I would rather have a real business, but it’s not easy.

In Togo, some experts observed a cycle of HIV infection whereby orphaned girls left school to work abroad as domestic workers, only to return home years later HIV-positive. Many orphans were recruited by child traffickers and left abandoned in transit to their country of destination, leaving them at high risk of sexual violence and exploitation. Trafficked girls who escaped their predicament sometimes found themselves living in the street or forced to sell sex to survive.

It is perhaps not surprising, given long-standing gender imbalances and discrimination in education, that girls are often the first to be withdrawn from school when families become impoverished by HIV/AIDS. In Zambia, where an estimated 16.5 percent of the adult population is living with HIV,⁵¹ school completion rates for girls were 10 to 15 percent lower than for boys in 2000.⁵² The costs of education often preclude poor families from educating all of their children, and when forced to choose between educating a boy or a girl, the girl is often the one who must drop out. When a parent falls ill, this bias is exacerbated, and it usually falls on girls to cut short their education and take care of the ailing parent and assume responsibility for the other siblings. Girls may also be pressured to drop out in order to provide additional income for the family when ill family members can no longer work.⁵³

⁵¹ UNAIDS and the World Health Organization, “Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections – Zambia, 2004 Update,” p. 3.

⁵² National HIV/AIDS/STD/TB Council, “Strategic Framework 2001-2003,” (Lusaka: October 2000), p 9.

⁵³ See Human Rights Watch, *Suffering in Silence: The Links Between Human Rights Abuses and HIV Transmission to Girls in Zambia* (New York: Human Rights Watch, 2002), pp 45-50.

In 2001, in Kenya's heavily AIDS-affected Nyanza Province, girls made up only 6 percent of those who are promoted to grade five. In contrast, in Eastern Province, which had the lowest rate of HIV prevalence of Kenyan provinces, 42 percent of those passing into grade five during the same year were girls. Education officials attributed the disparities to the spread of HIV/AIDS and noted that twenty years previously, before the epidemic's impact was felt, the numbers of boys and girls advancing to grade five were roughly equal.⁵⁴

Traditionally, orphans in sub-Saharan Africa have turned to their extended family for assistance with their basic needs. However, HIV/AIDS has placed unprecedented strains on the traditional extended family. AIDS-affected children who live with extended family members may experience discrimination in the allocation of scarce family resources, often due to the stigma associated with HIV/AIDS. Others may be sexually exploited or forced to work in prostitution by the very family members meant to be caring for them. Particularly in countries with school fees, the cost of sending every child to school can be prohibitive, and distant relatives may be the first to be withdrawn.

Ensuring access to education for all children, especially girls, should be a central part of all countries' response to HIV/AIDS. However, access to education is not enough. Children who attend school may still face sexual abuse by their teachers, which increases their risk of HIV. Many schools fail to provide young people with age-appropriate HIV/AIDS education, often because of moral qualms about sex and HIV transmission. The expansion of U.S.-funded "abstinence until marriage" programs, which have a record of censoring information about condoms, safer sex and the risk of HIV infection within marital relationships, leaves young people throughout the developing world without the tools and information they need to protect themselves from HIV.⁵⁵

As AIDS impoverishes more families and produces new generations of orphans, its impact on children's right to education is only likely to intensify. By 2010, the number of orphans in Sub-Saharan Africa alone could reach twenty million.⁵⁶ An estimated 12 percent of all children in sub-Saharan Africa are already orphans, compared to 6.5 percent in Asia and 5 percent in Latin America and the Caribbean.⁵⁷ While piecemeal efforts exist to mitigate the worst effects of HIV/AIDS on children, these efforts are

⁵⁴ Human Rights Watch interview with W.K.K. Kimalat, permanent secretary of the Ministry of Education, Nairobi, Kenya, March 5, 2001.

⁵⁵ See Human Rights Watch, *The Less They Know, the Better: Abstinence-Only HIV/AIDS Programs in Uganda* (New York: Human Rights Watch, 2005).

⁵⁶ UNICEF, *Africa's Orphaned Generations*, (New York: UNICEF, 2003) p. 6.

⁵⁷ *Ibid.*, p. 9.

grossly incommensurate with the scale of the problem. Investing in children's right to education is an important first step that would avoid the greater long-term costs of not educating children and leaving them vulnerable to a range of human rights abuses.

Recommendations

- Governments should enact and enforce laws proscribing all forms of discrimination based on real or perceived HIV status, including discrimination in access to education. Educate and sensitize teachers and school officials about the causes of HIV transmission, the importance of maintaining confidentiality about HIV status, and the harms to AIDS-affected children of denial of education.
- Governments should take steps to strengthen the ability of extended families to care for AIDS-affected children and provide them with formal schooling. Provide targeted educational subsidies and waivers of school fees to all children at risk of not enrolling or withdrawing from school because of inability to pay. Ensure that women caring for AIDS-affected children have access to adequate resources for child care and education, including by promoting their economic empowerment and equal access to family property.
- Governments should prosecute all forms of sexual violence against children, including violence in schools. Ensure that all rape survivors have access to timely post-exposure HIV prophylaxis.
- Governments should provide factual and comprehensive information about HIV prevention, including the causes of sexually transmitted HIV and methods of prevention, to all children. Ensure that school curricula do not censor factual information about condoms and safer sex, and that school children are informed of the risk of sexual violence (including by teachers) and the risk of HIV transmission within marital relationships. Ensure that children out of school have equal access to information about HIV prevention.
- Governments should address gender inequalities that lead girls to be withdrawn from school to support families affected by AIDS. Ensure that programs to combat child labor, particularly child prostitution and child domestic labor, have a clear HIV/AIDS component. Educate families and communities about the importance of keeping girls in school as a safeguard against HIV infection.

IV. Discrimination and Lack of Access

On nearly every continent, Human Rights Watch has found that children suffer discrimination in gaining access to education, based on their race, ethnicity, religion, or other status. Our investigations in countries that include Colombia, Guinea, India, Israel, Mexico, Spain, South Africa, and Sri Lanka found that migrant children, children from rural areas, ethnic or religious minorities, internally displaced, indigenous children, and Dalit or low-caste children were often denied equal access to education, or in some cases, access to any education at all. For children in detention, opportunities for education are often grossly deficient.

As discussed throughout this document and in a separate concluding section, girls face particular challenges and are disproportionately denied their right to education.

Rural and Indigenous Children

In Mexico, Human Rights Watch found that many indigenous children have no possibility of attending school.⁵⁸ We interviewed parents and local leaders from thirteen Mixteco communities in the municipality of Metlatónoc, Guerrero, who reported that there were no primary school teachers where they lived. In most of these communities, the children have never attended school. As a result, they are illiterate and have very poor command of the Spanish language. Each of the communities reported having twenty or more primary school age children, enough under Mexican law to warrant a school. The nearest functioning school for most of them was an hour or more away.

In another twelve indigenous communities in La Montaña, Guerrero, we interviewed teachers who reported that their schools did not have enough teachers to cover the number of students enrolled. As a result, each teacher was required to handle forty or more students in half of the schools, and over thirty in the other half. In several schools, teachers were required to teach all six grades simultaneously—an arrangement which, according to both teachers and students, made meaningful academic progress extremely difficult. One girl in the community of Costa Rica, Guerrero, described her experience in a school with over sixty students and just one teacher: “We can’t learn much, since the teacher is always busy with other students.”

⁵⁸ “Mexico: Guerrero’s Indigenous Communities Report Lack of Teachers,” Human Rights Watch press release, August 25, 2004, <http://hrw.org/english/docs/2004/08/26/mexico9265.htm>.

In rural South Africa, farm schools—public schools on private property—remain the only available source of primary education for tens of thousands of children living on commercial farms.⁵⁹ These schools make up 13 percent of all state-funded schools, but are among the poorest in financial resources, physical structure and quality in South Africa. Farm children may attend schools without electricity, drinking water, sanitation, suitable buildings, or adequate learning materials.

These schools are a legacy from the apartheid era, when farm owners established the schools to keep children of workers occupied by providing a basic, limited education while their parents worked on the farm. Although the present government is committed to converting the schools to ordinary government-managed public schools with limited farm owner responsibility, Human Rights Watch found cases where landowners actively blocked access to schools or frustrated their functioning by suspending the water supply or closing off short routes to school.

One teacher in Free State Province told Human Rights Watch, “There are many problems at this school. Sometimes we can’t hold classes because the farm manager locks the main gate allowing no public access. The pupils can only attend class by entering onto the school premises through a hole in the fence.”

Lack of easy access to the schools also forces many children to travel long journeys on foot. For example, two-thirds of the children—some as young as eight—attending one of the farm schools visited by Human Rights Watch traveled up to thirty kilometers on foot each morning to school. Fatigue and exhaustion adversely affect these and many other children’s ability to learn. Children are also exposed to dangers such as sexual assault and road accidents when walking to and from school.

The consequences of the farm school system in South Africa are high drop out rates, low enrollment, and irregular attendance in the rural areas. A national report published in 2000 found that about 19 percent of children in rural areas, which include commercial farm areas and former homelands, were not in school, as opposed to 11 percent in urban areas.

⁵⁹ See Human Rights Watch, *Forgotten Schools: Right to Basic Education for Children on Farms in South Africa* (New York: Human Rights Watch, 2004).

Internally Displaced and Migrant Children

A Human Rights Watch investigation in July and August 2004 found that internally displaced children in Colombia face significant hurdles in continuing their education.⁶⁰ In many cases, there is simply no space available, despite legal provisions that require state schools to enroll displaced children who arrive in their communities.

Internally displaced children in Colombia are far more likely than children in the general population not to attend school. When the Colombian ombudsman's office analyzed Ministry of Education data for 2002, for example, it found that in twenty-one receiving areas, only 10,700 of the 122,200 displaced children of school age—or 8.8 percent—were enrolled in school. The enrollment rate for all children of school age in those communities was 92.7 percent.⁶¹ Similarly, in its survey of displaced populations in six departments, the International Organization for Migration found that 52 percent of displaced youths between the ages of twelve and eighteen were not in school. In comparison, only 25 percent of youths of the same age range in Colombia's population as a whole was out of school, according to National Administrative Statistics Department data.⁶²

The need to flee their communities has already interrupted the education of many internally displaced children. As a result of missed schooling, many have already fallen behind when they try to resume their education. However, many schools will not admit children who are in a grade lower than usual for their age. School authorities prefer to allocate limited spaces to children who are in the target age range for their grade, although Colombia's Constitutional Court clarified in 2004 that age is not a permissible factor to deny admission to school.⁶³

In Sri Lanka, two decades of civil conflict created more than 800,000 internally displaced people (IDPs), including 220,000 children displaced in the North and East. Eighty-five percent of displaced children are Tamil, an ethnic group that constitutes 18 percent of

⁶⁰ Human Rights Watch investigation in Bogotá and Cartagena, Colombia in August 2004; report forthcoming.

⁶¹ See Defensoría del Pueblo, *Evaluación de la política pública*, p. 23 (analyzing data from the Dirección de Apoyo de la Gestión Educativa Territorial, Ministerio de Educación Nacional). Children of school age are those between the ages of five and seventeen.

⁶² Organización Internacional para las Migraciones, *Diagnóstico*, p. 24.

⁶³ See Sentencia T-215 of 202 (Colom. Const. Ct.).

the Sri Lankan population and is concentrated in the North and East. An additional 16,000 Muslim children have also been displaced from the North.⁶⁴

Obstacles to education for internally displaced children in Sri Lanka include poverty, which renders school supplies and uniforms unaffordable and which forces children into the workforce; unavailability of schools in the vicinity of welfare centers; overcrowding in schools; and shortages in teaching staff and the misallocation of available teachers.⁶⁵ Although Sri Lanka boasts a primary school enrolment rate as high as 97 percent,⁶⁶ in 2003 an estimated 50,000 children were out of school in the North and East, with a drop-out rate of 15 percent — nearly four times the national average.⁶⁷ In this regard, IDP children were significantly affected, with 25 percent not in school.

In February 2002, the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) signed a ceasefire agreement. By March 2005, 383,990 IDPs had returned to their previous homes.⁶⁸ Returning home, however, has not guaranteed a proper education for former IDP children. The frequent interruptions to their education and often traumatic circumstances leading to such interruptions have caused many to fall behind. According to a former principal interviewed by Human Rights Watch, displacement and interruptions in schooling have caused many children to be “slow learners” whose teachers lack the resources, capacity and will to address their needs. Instead, these children are either held back a grade or passed on without qualification, further discouraging them from staying in school, and accounting for almost a quarter of sixth graders being illiterate.⁶⁹

The return of IDP children in Sri Lanka poses unique demands, both in the substantive care and attention they need as well as the increases in student enrolment their return entails. Unfortunately, these demands cannot be provided by existing educational

⁶⁴ Sri Lanka Project, The Refugee Council, *Sri Lanka: internally displaced persons and safe returns*, September 2003, p.23-24. http://www.refugeecouncil.org.uk/downloads/rc_reports/srilanka_idps.pdf.

⁶⁵ *Ibid.*, 25.

⁶⁶ UNESCO Background paper, “And that made all the difference: innovation and reform to improve quality of education in Sri Lanka”, April 19th, 2004, 14.

⁶⁷ The Multilateral Group, *Sri Lanka: Assessment of needs in the conflict affected areas: districts of Jaffna, Kilinochchi, Mullaitivu, Mannar, Vavuniya, Trincomalee, Batticaloa and Ampara*, May 2003 (prepared with the support of the Asian Development Bank, United Nations, and World Bank), 27.

⁶⁸ UNHCR, *Statistical Summary: Refugees and Internally Displaced Repatriation and Returns to and within Sri Lanka*, March 2005, <http://www.unhcr.lk/Information%20and%20Statistics/Stats%20March%202005.pdf>.

⁶⁹ Human Rights Watch telephone interview with a former principal, Jaffna, Sri Lanka, May 14, 2005.

facilities in the North and East, which were occupied or damaged during the conflict⁷⁰ and which have not been adequately rebuilt: at the signing of the ceasefire agreement in 2002, the North and East accounted for 54 percent of all temporarily closed schools in the country; a year later, they still accounted for more than 50 percent of non-functioning schools.⁷¹ These infrastructural inadequacies are exacerbated by the shortages of qualified teaching staff, who were displaced, transferred to other parts of the country, or who have left the profession altogether. Nationwide, with an average teacher-student ratio of 1:20, there is no teacher shortage⁷²; in the North and East, however, an immediate shortage of 4,650 Tamil medium teachers and of 240 Sinhala medium teachers has been identified, with an additional four thousand to five thousand teachers needed in the medium term to cope with increased enrolment.⁷³ These shortages have been exacerbated by poor information about student concentrations and needs, meaning that those teachers available are often mis-allocated.⁷⁴

Migrant children are also less likely to be in school than other children. In Spain, national law provides for compulsory education for children age six to sixteen, including foreign children. Yet a 2001 Human Rights Watch investigation found that the vast majority of unaccompanied migrant children in Ceuta and many children in Melilla—two Spanish cities on the North African coast—were not enrolled in school.⁷⁵ The government rarely integrated unaccompanied children into Spanish schools, relying instead on staff at residential centers for such children to provide basic education. Residential centers, however, often arbitrarily denied children even this level of education.

A fourteen-year-old boy in Ceuta told Human Rights Watch, “I wanted to go to school and learn Spanish but they wouldn’t let me. Other kids went, but not me. I went to the director to ask to go to school but it didn’t help.”

Ethnicity, Race, Caste, and Religion

⁷⁰ Approximately 15,000 classrooms in 500 schools have been damaged or destroyed; more than 40 percent of primary schools have no access to water points and approximately 63 percent of schools have no sanitation facilities. See *Sri Lanka: Assessment of needs...*, p 28.

⁷¹ Sri Lanka Ministry of Education statistics, available at www.moe.lk/statistics.

⁷² Harsha Athurupane, Senior Economist, World Bank, cited in “Forgotten Homework”, Lanka Business Online, April 24th, 2005.

⁷³ *Sri Lanka: Assessment of needs...*, 28.

⁷⁴ Human Rights Watch telephone interview, May 14, 2005.

⁷⁵ See Human Rights Watch, *Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco* (New York: Human Rights Watch, 2002).

In India, Dalit—or so-called untouchable—and low-caste children routinely face discrimination in education.⁷⁶ Most of the government schools in which Dalit students are enrolled, where they exist at all, are deficient in basic infrastructure, classrooms, teachers and teaching aids. Dalit students often sit at the back of the class and are often treated badly by upper-caste teachers and staff. A majority of Dalit students are also enrolled in vernacular schools whose students suffer serious disadvantages in the job market as compared to those who learn in English-speaking schools.

Documented discriminatory practices against Dalit children in schools in the state of Uttar Pradesh, for example, include discrimination against Dalit settlements in the location of schools; teachers avoiding physical contact with Dalit and low-caste children; children from particular castes being special targets of verbal abuse and physical punishment by the teachers; and low-caste and Dalit children frequently being beaten by high-caste classmates.⁷⁷

Discrimination combined with low returns on education, including discrimination in employment, encourages Dalit children to drop out of school; Dalit children drop out of school at a much higher rate than non-Dalits, and there is a higher rate of illiteracy among Dalits than among non-Dalits.

In Israel, nearly one quarter of all schoolchildren attend a separate and parallel public school system. The children in this parallel school system are Israeli citizens of Palestinian Arab origin. Often overcrowded and understaffed, poorly built, badly maintained, or sometimes unavailable, these schools offer fewer facilities and educational opportunities than are offered Israel's majority Jewish population.⁷⁸

The Israeli education ministry spends less per student in the Arab system than in the Jewish school system. Palestinian Arab children attend schools with larger classes and fewer teachers than do those in the Jewish school system, with some children having to travel long distances to reach the nearest school. Some Arab schools lack basic learning

⁷⁶ See Human Rights Watch, *Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India* (New York: Human Rights Watch, 2004).

⁷⁷ Jean Dréze and Haris Gazdar, "Uttar Pradesh: The Burden of Inertia," *Indian Development*, Jean Dréze and Amartya Sen, eds. (New Delhi: Oxford University Press, 1996) quoted in Nambissan, "Education for All: The Situation of Dalit Children in India," *India Education Report*, p. 81.

⁷⁸ See Human Rights Watch, *Second Class: Discrimination Against Palestinian Arab Children in Israel's Schools* (New York: Human Rights Watch, 2001) and Zama Coursen-Neff, "Discrimination Against Palestinian Arab Children in the Israeli Educational System," *NYU Journal of International Law and Politics*, /vol. 36, no. 4, Summer 2004.

facilities like libraries, computers, science laboratories, and recreation space. Palestinian Arab children with disabilities are particularly marginalized.

The consequences of this discrimination are that compared with Jewish students, Palestinian Arab students drop out of school at three times the rate of Jewish students and are less likely to pass the national matriculation examinations. Only a handful ever make it to university.

Children in Detention

Brazil's national juvenile justice law, contained in the Statute of the Child and the Adolescent, is among the most progressive in Latin America, and guarantees children in detention the right to education and vocational training, among other rights. In reality, however, opportunities for education in Brazil's detention facilities are often grossly deficient. In investigations of seventeen juvenile detention facilities in Northern Brazil in 2002, and five detention centers in Rio de Janeiro in 2003 and 2005, Human Rights Watch found that many detained children received no education whatsoever.⁷⁹

Children and their parents frequently identified education as one of the greatest needs of Rio de Janeiro's juvenile detention system. One detained youth said, "Sometimes we have classes, and sometimes we don't have them." A volunteer working in the detention centers said, "Education is a chaos." A number of children indicated that they had attended school regularly prior to their arrest, but had been unable to continue classes once detained.

In January 2005, authorities in Santo Expedito and Padre Severino suspended classes, citing security concerns related to understaffing. Schools remained closed until at least May 14, 2005.

The majority of children in detention in Brazil's northern states have only completed between one and four years of primary education. Many are illiterate. Access to schooling would be particularly beneficial for these children. But we found that in some facilities, no classes were offered, while in other centers, some children received schooling while others did not. Damião, who had been in the fourth year of primary school before he was detained, reported that "From the time I entered [the center], I

⁷⁹ See Human Rights Watch, *"Real Dungeons": Juvenile Detention in the State of Riode Janeiro* (New York: Human Rights Watch, 2004); Human Rights Watch, *Cruel Confinement: Abuses Against Detained Children in Northern Brazil* (New York: Human Rights Watch, 2003); and Human Rights Watch, *In the Dark: Hidden Abuses Against Detained Youth in Rio de Janeiro* (New York: Human Rights Watch, 2005).

haven't studied." He had been detained for two months. Lucas similarly told us, "I've spent a month in this place. I'm not studying."

In Pakistan, more than 4,500 children may be detained at any given time for being in conflict with the law.⁸⁰ The majority have not been convicted of any offense, but are awaiting the conclusion of their trials, a process that can take months or years. In visits to detention facilities in Punjab Province in 1998, Human Rights Watch found that for most, educational opportunities while in detention were severely limited.⁸¹ Religious instruction was often prioritized, while in some facilities, no secular instruction was provided at all. Under the Pakistan Prison Rules, the provision of secular education is required only for convicts, who form a very small proportion of the juvenile population. Staffing is often insufficient, teaching aids are often non-existent, and in one facility, educated adult prisoners were assigned to teach juveniles.

A report from the Pakistan Law Commission found that "in fact no proper and organized system for imparting education to [the] prisoner exists," and recommended that every jail establish facilities and provide qualified teachers and reading material for detainees.⁸²

In the United States, the majority of states have passed laws making it easier for children to be tried as adults and detained in adult facilities. In Maryland and California, Human Rights Watch found that the education provided to children in adult facilities is seriously deficient. One Maryland facility provided no schooling whatsoever, while in other jails, we found that the number of hours of classroom instruction frequently fell far short of the requirements of federal and state law.⁸³

Brian, a sixteen-year-old in a facility with no educational opportunities, told Human Rights Watch, "I'd rather get schooling in my head than just be sitting here." Michael said, "We don't have no school here. I just read every day, and we play Scrabble. We look up the words in the dictionary and read the definitions. We don't have no one who comes up here and sits down and teaches us."

⁸⁰ Amnesty International, "Pakistan's Children Let Down by Justice System," September 2003, <http://web.amnesty.org/wire/September2003/Pakistan> (accessed April 28, 2005).

⁸¹ See Human Rights Watch, *Prison Bound: The Denial of Juvenile Justice in Pakistan* (New York: Human Rights Watch, 1999).

⁸² Pakistan Law Commission, "Report on Jail Reform, 1997," p 16.

⁸³ See Human Rights Watch, *No Minor Matter: Children in Maryland's Jails* (New York: Human Rights Watch, 1999).

In Los Angeles, Human Rights Watch found in 2003 that children held at the Men's Central Jail were locked in windowless single cells for twenty-three and a half hours each day. They received no classroom instruction; instead, children saw a teacher for five to fifteen minutes each through their cell bars two to three times a week. Jail staff told Human Rights Watch that state education law required only one hour of face-to-face instruction per week, but the jail did not even meet that minimal requirement.⁸⁴

The Center on Crimes, Communities and Culture reports: "In most cases, once juveniles are incarcerated, even for a short time, their line to education is forever broken. Most juvenile offenders aged sixteen and older do not return to school upon release or graduate from high school."⁸⁵ For many children, the interruption of their schooling comes at a time when they are statistically most likely to drop out. The practice of offering detained children substandard education—or in some cases no education at all—denies children most at risk of delinquency a critical resource that can assist them to assume socially constructive and productive roles in society.

Recommendations

- Governments should enact and enforce national legislation prohibiting discrimination in education against children because of their race, ethnicity, gender, social or other status. Protections from discrimination should include mechanisms for victims and their guardians to lodge complaints and receive rapid redress; these mechanisms should be publicly communicated.
- Governments should allocate education resources to ensure that underserved populations, including particularly vulnerable children, have equal access to education. This may entail building additional schools in these areas and allocating additional teachers.
- Governments should ensure that education resources are allocated to ensure that all schools are funded on a non-discriminatory basis, and where necessary, allocate additional resources to close existing gaps, including the physical

⁸⁴ After public attention was brought to conditions at the jail, the Los Angeles Board of Supervisors agreed in July 2003 to remove children from the facility. See "Los Angeles Youths to be Moved from Adult Jail," Human Rights Watch press release, July 24, 2003, <http://hrw.org/press/2003/07/us072403.htm>.

⁸⁵ The Center on Crimes, Communities and Culture, "Education as Crime Prevention: Providing Education to Prisoners," *Research Brief*, September 1997, p. 4.

condition of school buildings, additional educational facilities or equipment, and teacher training.

- Ministries of Education should develop concrete plans and mechanisms to identify and reach out to populations of children that are underserved by the education system. Such mechanisms could include a special office or unit to focus on effective strategies for ensuring that these groups have equal access to schooling.
- Governments should ratify the 1960 Convention Against Discrimination in Education.
- Governments should ensure that every child in detention receives an education suited to his or her needs and abilities and designed to prepare him or her for return to society and entry into the work force.
- Governments should work with educational authorities to ensure that education provided in juvenile detention centers is recognized by schools outside of the detention system so that children may continue their education in regular schools once they have completed their sentences or been released.

V. Violence

For many children, the biggest threat to their right to education is not discrimination or lack of access to schools, but violence within or near their schools that undermines their ability to learn, puts their physical and psychological well-being at risk, and often causes them to drop out of school entirely. Children's right to education entails not only the presence of schools and teachers, but also an environment that allows them to learn in safety.

In Kenya, our 1999 investigation found that for most schoolchildren, violence was a regular part of the school experience.⁸⁶ Teachers used caning, slapping, and whipping to maintain classroom discipline and to punish children for poor academic performance. The infliction of corporal punishment was routine, arbitrary, and often brutal. Kenyan

⁸⁶ See Human Rights Watch, *Spare the Child: Corporal Punishment in Kenyan Schools* (New York: Human Rights Watch, 1999).

children were commonly hit with a wooden cane, though they were also subject to flogging with whips made of rubber, slapping, kicking, or pinching. Boys were commonly hit on the buttocks, while girls were hit on the palms of their hands. Children were also beaten on the back, the arms, the legs, the soles of the feet, and even the face and head.

Children received anywhere from two to twenty or more cane strokes at one time. At some schools, caning happened only once or twice a week, while in others, children reported that they and others were caned on and off throughout the day, nearly every day, routinely receiving five or more strokes each time.

At the time of our research, Kenyan education regulations allowed the use of corporal punishment for certain behavior, after a full inquiry, and in the presence of a witness, but not in the presence of other pupils. However, we found that illegal and severe forms of corporal punishment remained widespread. Of the twenty schools visited during our investigation, only one administered corporal punishment in accordance with official guidelines.

Corporal punishment was used against Kenyan students for a wide range of disciplinary infractions, some serious, others extraordinarily minor. Children received corporal punishment for coming to school late, missing school without permission (even for unanticipated illnesses), having a dirty or torn school uniform, rudeness, graffiti, fighting, stealing, drug use, and any form of disruptive classroom behavior (writing notes to other students, fidgeting, talking to another student, “noise making,” and so on).

Corporal punishment was widely used to punish unsatisfactory academic performance. In Kenyan classes, for example, it was not uncommon for teachers to strike children for giving the wrong answer to a problem. If a school did not perform well on national exams, an entire class might be caned regardless of the individual performance of each student.

Elizabeth, age twelve, reported:

In one of my classes, one girl was slapped so hard that two of her teeth came out. The teacher was very angry because some of the girls failed a test, and so the teacher gave these girls a choice: three slaps from his hand or ten strokes with the cane. This girl chose the three slaps and so he hit her on her face three times, very hard, and her mouth was bloody

and her two teeth came out. And the other girls cried out to the teacher, saying, 'Look, you have taken out her teeth!,' and then the teacher was so angry that he caned everyone again. . .

Bruises, swelling, and cuts were regular by-products of school punishment in Kenya. More serious injuries, including broken bones, temporary or permanent hearing loss, knocked-out teeth, or internal injuries were not infrequent. Some children died after severe beatings.

Many cases of violence against schoolchildren were never reported to authorities, as children and parents feared retaliation from teachers and headteachers. Human Rights Watch received numerous reports of serious retaliation against people who challenged severe corporal punishment. According to many interviewees, complaints from parents about excessive punishment could lead to more severe punishments in the future for the child, or punishment of the child's siblings or cousins.

When children were injured by corporal punishment, schools—or individual teachers—at times provided or paid for medical assistance for the child, but teachers who injured children were rarely disciplined, let alone dismissed or prosecuted. Most continued to have children in their care, and taught in the same schools where they previously abused children. In practice, children were left with little remedy against corporal punishment, and in many cases, children responded to severe punishments and injuries by transferring from abusive schools, if they were able to, or by dropping out of school altogether.

In April 2001, Kenya's Minister of Education banned corporal punishment. This legal notice repealed an earlier notice that permitted corporal punishment under the Education Act. Progress has been made in implementing the ban including several cases of teachers arrested, tried and imprisoned for inflicting corporal punishment on students. Despite these efforts, accusations of corporal punishment continuing in some schools underlies the need for more in-service training and education for teachers on the harmful effects of corporal punishment and effective alternative methods for maintaining classroom discipline.

According to the Global Initiative to End Corporal Punishment, successful initiatives have banned corporal punishment in schools and penal systems in countries on nearly every continent (for example, in recent years in Ethiopia, Korea, South Africa, Thailand, Trinidad and Tobago and Zimbabwe). However, corporal punishment in schools is still allowed by law in at least eighty-seven countries worldwide, and practiced illegally in

others.⁸⁷ In India, one child described why she dropped out of a state-run school. “I refused to go and my mother didn’t bother to make me. The teachers used to beat me. They asked me to write something, and I couldn’t do it, and they beat me, so I didn’t want to go back.”⁸⁸

Girls are particularly vulnerable to sexual violence in both the school environment from classmates and teachers, as well as from members of the community as they travel between their homes and schools. Human Rights Watch investigations in South Africa, Zambia, and Iraq documented the effect of such violence in undermining girls’ access to education. Sexual violence against girls compromises their ability to learn in a safe environment, and in some cases, drives them out of school all together.

In South Africa, schoolgirls of every race and economic group encounter sexual violence and harassment on a daily basis. A 2000 investigation conducted by Human Rights Watch in three provinces documented cases of rape, assault, and sexual harassment of girls committed by both teachers and male students.⁸⁹ Girls were raped in school toilets, in empty classrooms and hallways, and in hostels and dormitories. Girls were also fondled, subjected to aggressive sexual advances, and verbally degraded at school.

Girls reported routine sexual harassment by teachers, as well as psychological coercion to engage in “dating relationships.” In some cases, girls acquiesced to sexual demands from teachers because of fears that they would be physically punished if they refused. In other cases, teachers abused their positions of authority by promising better grades or money in exchange for sex. In the worst cases, teachers operated within a climate of seeming entitlement to sexual favors from students. A medical research study found that among those South African rape victims who specified their relationship to the perpetrator, 37.7 percent said a schoolteacher or principal had raped them.⁹⁰

Many girls interrupted their schooling or left school altogether because they felt unsafe in such a violent environment. Most girls, however, remained at school and suffered in silence, having learned a lesson that sexual violence at school was inevitable and

⁸⁷ Global Initiative to End Corporal Punishment, “Global Progress,” <http://www.endcorporalpunishment.org/pages/frame.html> (accessed May 13, 2005).

⁸⁸ See Human Rights Watch, *Small Change: Bonded Child Labor in India’s Silk Industry* (New York: Human Rights Watch, 2003).

⁸⁹ See Human Rights Watch, *Scared at School: Sexual Violence Against Girls in South African Schools* (New York: Human Rights Watch, 2001).

⁹⁰ Medical Research Council, “The South African Demographic and Health Survey of 1998,” in Hirschowitz et al., *Quantitative Research Findings on Rape in South Africa* (Pretoria: Medical Research Council, 2000), pp. 16-21.

inescapable. Interviews with girls subjected to sexual attacks, their parents, teachers, and social workers showed that many of these girls were not performing up to full potential, were losing interest in outside activities, and were failing their higher education matriculation exams.

One fifteen-year-old girl missed weeks of school after being sexually assaulted by a teacher. She said, "I didn't go back to school for one month after. . . everything reminds me of what happened. I have dreams. He is in my dreams. He is in the classroom laughing at me. I can hear him laughing at me in my dreams."

Another girl, gang-raped by classmates when she was thirteen, said:

After the school break, my mom asked me if I wanted to go back to school. I said no. I didn't want to go. All the people who I thought were my friends had turned against me. And they [the rapists] were still there. I felt disappointed. [Teachers] always told me they were glad to have students like me, that they wished they had more students like me. If they had made the boys leave, I wouldn't have felt so bad about it.

South Africa's epidemic of sexual violence contributes to higher rates of HIV infection among young women than among young men. Girls are biologically more vulnerable to sexually transmitted HIV than boys, and sexual violence increases their risk of exposure. The difficulty of obtaining timely post-exposure prophylaxis for HIV in South Africa, despite a government pledge to make this treatment universally available for rape survivors, only increases the risk that rape will lead to HIV infection.

Too often, school authorities in South Africa concealed sexual violence and delayed disciplinary action against perpetrators of violence. Schools responded with hostility and indifference to girls who complained about sexual violence and harassment. In many instances, schools actively discouraged victims of school-based sexual violence from alerting anyone outside the school or accessing the justice system, or even refused to cooperate with official investigators.

A 2002 Human Rights Watch investigation in Zambia found similar problems.⁹¹ Sexual abuse and exploitation in school environments was all too frequent. Some of the

⁹¹ See Human Rights Watch, *Suffering in Silence: The Links between Human Rights Abuses and HIV Transmission to Girls in Zambia* (New York: Human Rights Watch, 2002).

perpetrators were teachers who prey on vulnerable girls, exchanging answers to tests or higher grades for sex. Most abuses by teachers are not reported, and few teachers are penalized. A more typical outcome is that the teacher is cautioned and possibly transferred. In some cases, parents negotiate for the teacher to marry the girl. Advocates for girls' education have tried to get stiffer penalties against teachers who abuse students, and to ensure that those found responsible are dismissed. However, the onus is on the girl's parents, not the school, to report the case to the police so that criminal charges can be brought. School administrators sometimes interfere with the process by transferring the teachers elsewhere, which makes it extremely difficult for the case to proceed.

In Iraq, widespread reports of sexual violence and abduction of girls since the US-led war and occupation kept many girls out of school.⁹² Although a break-down in police record-keeping and reluctance to report violence incidents make an accurate count of such cases almost impossible to obtain, the public perception is that abduction of women and girls from the streets increased significantly following the war. In May 2003, Human Rights Watch found that throughout Baghdad, Iraqis spoke of girls being seized from public locations, particularly while walking down the street, even in broad daylight. Human Rights Watch obtained credible information on twenty-five cases of sexual violence and abduction of women and girls, including one case involving a nine-year-old girl, and another involving a girl aged fifteen.

Of the thirty or so women and girls Human Rights Watch interviewed in Baghdad, virtually every one cited fear of abduction and sexual violence as justification for not returning to or looking for work, holding children back from school, and in many cases, even preventing young women and girls from leaving the house. In late May 2003, girls were rarely seen outside in Bagdad, even during daylight hours when male shoppers and workers crowded the sidewalks and streets.

The fear of sexual violence and abduction directly affected girls' school attendance. In mid-May 2003, Save the Children UK conducted an assessment of three schools in the Baghdad area, finding attendance in the schools they surveyed at less than 50 percent. The survey found that lack of security and fear of kidnapping topped the reasons for girls' nonattendance.⁹³

⁹² See Human Rights Watch, *Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad* (New York: Human Rights Watch, 2003).

⁹³ Save the Children UK, "Assessment in Three Schools," Baghdad, May 18, 2003.

Lina attended evening classes until early May 2003, when Fatima, a young woman she knew was rumored to have been attacked while driving in Baghdad. Although Lina did not know the details of what happened to Fatima, the fear that she too would be attacked drove her inside:

I am not going to school anymore. I used to go [before I heard about my friend], I'd get together with a group and we'd go together for our safety. But after this, I prefer to stay at home studying instead of going to school. And my other classmates, they also are not going. There were fifty girls in the class. I hear that maybe eight or nine attend now. Nobody would go now. Even if they wanted to, their family would prevent them.

A teacher at Lina's school told Human Rights Watch that before the war, her class, all girls, had thirty-two students. As of June 3, 2003, only six were regularly attending.

In June 2003, school attendance increased in Baghdad, as families began arranging for their daughters to travel to and from school in groups, and as more male relatives began escorting female students to school. Still, such solutions often left women and girls dependent on the ability and willingness of others to be able to go to school.

Human Rights Watch found that many of the problems in addressing sexual violence and abduction of girls derived from the US-led coalition forces' and civilian administration's failure to provide public security in Baghdad. A public security vacuum was marked by a smaller and poorly managed police force compared to that before the war, limited police street presence, fewer resources available to the police to investigate, little if any record-keeping, and mismanagement of complaints.

Other aspects of the problem have needed to be addressed for many years. Girls live in an atmosphere where, if they are raped or even believed to have been raped, they have poor legal recourse and have well-grounded fears of social ostracism, rejection by their families, and even physical violence. Although rape and abduction are serious crimes under Iraqi law, long-standing cultural stigma and shame attached to rape often positions victims as the wrongdoer and too frequently leads to lenient treatment of perpetrators.

In the United States, only 55 percent of students say they feel safe in school.⁹⁴ Human Rights Watch found that lesbian, gay, bisexual, and transgender youth in many U.S. schools were subjected to unrelenting harassment from their peers that interfered with their right to education.⁹⁵ Despite the pervasiveness of the abuse, few school officials intervened to stop the harassment or to hold the abusive students accountable; in fact, some teachers and administrators encouraged or participated in the abuse. Over time, verbal harassment often escalated into sexual harassment and other forms of physical violence. These violations were compounded by the failure of federal, state, and local governments to enact laws that would provide students with express protection from discrimination based on their actual or perceived sexual orientation or gender identity.

Harassment against lesbian, gay, bisexual, and transgender students took many forms, including taunts, obscene notes or graffiti. Nearly every one of the 140 children we interviewed described incidents of verbal or other nonphysical harassment in school because of their own or other students' perceived sexual orientation. For many of these students, relentless verbal abuse and other forms of harassment were "all part of the normal daily routine."

When harassment went unchecked, it sometimes escalated into more serious behavior. Children interviewed by Human Rights Watch described the destruction of personal property, unwelcome sexual advances, mock rapes, and brutal physical attacks. Students described being cut with knives, dragged down a flight of stairs by their feet, being spit on and hit with thrown objects, and being kicked and beaten. Students suggested that most incidents of physical violence were not reported.

A Texas student reported:

It was small pranks at first, like thumbtacks on my chair. Or people would steal my equipment. Then things elevated. I'd hear "faggot" and people would throw things at me. They'd yell at me a lot. One time when the teacher was out of the room, they got in a group and started strangling me with a drafting line. That's about the same consistency as a fishing line. It was so bad that I started to get blood red around my neck, and it cut me.

⁹⁴ Indiana University School of Education, "High School Survey of Student Engagement 2005," August 2005, http://www.iub.edu/~nsse/hssse/pdf/hssse_2005_report.pdf.

⁹⁵ See Human Rights Watch, *Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in US Schools* (New York: Human Rights Watch, 2001).

Discrimination, harassment, and violence hampers students' ability to get an education and takes a tremendous toll on their emotional well-being. Many of the children we interviewed told us that they had skipped school because of persistent harassment or threats of violence. Some switched schools to escape harassment and violence. Others missed a semester or more of classes until they could find a school that they could attend without fearing violence or experiencing persistent harassment. Some simply dropped out of school altogether.

Discussions of antigay violence in schools often focused on the youthful perpetrators of these acts and failed to consider the responsibility of teachers and other school officials to maintain a safe learning environment for all youth. The most common response to harassment, according to the students we interviewed, was no response at all. In interviews, lesbian, gay, bisexual, and transgender youth explained how teachers and administrators turned their backs, refusing to take reports of harassment, refusing to condemn the harassment, and failing to hold accountable students who harass and abuse.

A Georgia student relayed his frustration at the refusal of his school principal to intervene. He said:

I reported it. I took a folder, wrote down dates and times every time I was harassed. I took it down to the principal. He said, 'Son, you have too much time on your hands to worry about these folks. I have more important things to do than to worry about what happened two weeks ago.' I told him, 'I wanted to give you an idea of what goes on, the day-to-day harassment.' He took the folder away from me and threw it in the trash. That was my freshman year, first semester. After that I realized [the school] wasn't going to do anything.

Recommendations

- Governments should amend national legislation as necessary to abolish the use of corporal punishment in all schools, public and private, and ensure that such policies are enforced, and widely publicized.

- Governments should support programs that educate parents, teachers, and society at large about the harm of corporal punishment and about nonviolent methods of discipline.
- Governments should establish accessible mechanisms for students to make confidential complaints regarding physical or sexual harassment or violence by other students, teachers, staff or principals. Ensure the prompt and effective investigation of such complaints, and prompt and appropriate disciplinary action against perpetrators, including counseling, suspension, termination and prosecution when necessary. Bring criminal charges where indicated. Ensure that post-exposure HIV prophylaxis is available to sexual assault survivors, and sensitize law enforcement officials and school officials to the availability and importance of this treatment.
- Governments should provide compulsory education and training for pupils, teachers, and principals on issues related to sexual violence and harassment and gender discrimination, including methods for the early identification of, and intervention to prevent, abusive behavior.
- Governments should enact legislation to protect students from harassment and discrimination on the basis of sexual orientation and gender identity. Ensure that schools review their nondiscrimination policies to ensure the inclusion of protections based on sexual orientation and gender identity.
- Governments should provide training to all teachers, administrators and other school staff on addressing the needs of lesbian, gay, bisexual, and transgender youth, and how to intervene to stop harassment and violence.
- Governments should implement measures to protect the safety of schoolchildren, particularly girls, while on their way to and from school.

VI. Child Labor

The phenomenon of child labor is inextricably linked to education. Children who have no access to quality schooling often enter the workforce, particularly if they are from poor families that need additional income. Extreme poverty brought about by

HIV/AIDS, particularly in sub-Saharan Africa, has dramatically increased children's risk of hazardous child labor as families look for new ways to supplement their income. Once engaged in child labor, children are often unable to return to school or continue their education.

In many cases, employers actively prohibit children from attending school, while in others, the long hours demanded by employers make schooling practically impossible. Some children may try to work and attend school at the same time, but find that they don't have enough time to study, are forced to miss classes, are frequently tired in class, and eventually fall behind or drop out. The result is often generations of poverty, fueled by low-wage, unskilled work and lack of education that could provide children with more and better options for their future.

According to the International Labor Organization, 246 million children between the ages of five and seventeen are engaged in child labor, including 110 million below the age of twelve. 171 million are engaged in hazardous labor.⁹⁶

To achieve universal primary education, governments must address the link between child labor and education, dramatically escalating efforts to remove children from the worst forms of child labor, ensuring other working children their right to schooling, and addressing the factors that push and pull children into child labor.

In India, millions of children are bonded child laborers. They toil as virtual slaves, unable to escape the work that will leave them impoverished, illiterate, and often crippled by the time they reach adulthood. Bound to their employers in exchange for a loan, they are unable to leave while in debt and earn so little they may never be free of it. They work in agriculture, picking rags, making bricks, polishing gemstones, rolling beedi cigarettes, packaging firecrackers, working as domestics, and weaving silk saris and carpets.⁹⁷

Child labor in India is often linked to the unavailability of schools and poor quality education. For example, a study of 450 families in Varanasi district found that 90 percent were involved in saree weaving. Although an estimated 2,000 children in the area were between ages five and fourteen, only one school was run by the local municipality. The

⁹⁶ International Labor Organization, *Every Child Counts: New Global Estimates on Child Labor* (Geneva: ILO, April 2002).

⁹⁷ See Human Rights Watch, *Small Change: Bonded Child Labor in India's Silk Industry* (New York: Human Rights Watch, 2003); Human Rights Watch, *The Small Hands of Slavery: Bonded Child Labor in India* (New York: Human Rights Watch, 1996).

school had enrolled eighty-two students and the school's only teacher expressed his inability to absorb more students.⁹⁸ In another village, there were about 1,200 to 1,300 children in the community, but the only local school was capped at fifty students—the rest of the children were working.

Many schools that do exist are of such poor quality that children choose not to go or drop out. They may be overcrowded, have only one teacher, and lack classrooms, toilets, or drinking water.

An estimated 1.2 million child laborers worldwide are also victims of trafficking.⁹⁹ In Togo, high rates of poverty coupled with school fees keep many children out of school and make them particularly vulnerable to trafficking.¹⁰⁰ Trafficked Togolese children are often lured by false promises of education, professional training or paid employment. Boys are typically trafficked into agricultural labor, while girls are used for domestic or market work.

In West Africa, children most vulnerable to trafficking into child labor come from rural families engaged in subsistence agriculture. An ILO-IPEC study in 2001 of ninety-six trafficked children found that a large majority—87 percent—came from large subsistence farming families. Seventy percent of mothers and 60 percent of fathers had never attended school, and most had more than five children, making schooling prohibitively expensive. ILO-IPEC found that of children who had attended school, more than 80 percent had already dropped out before they were recruited by traffickers.

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Finding school too expensive at home, many Togolese children and their families are eager to believe recruiters' promises of education or training. One girl, employed as a housemaid in Lomé, said that her aunt had arrived at her father's funeral. "Afterward she told my mother she would bring me to Lomé and put me in school." Another girl, in training to become a hairdresser, told Human Rights Watch she was offered a chance to finish her studies in Gabon. "A woman told me that she knew of opportunities outside

⁹⁸ Sharma, *Child Labour in Sari Units of Varanasi*, sec. IV (based on field research conducted in November 2000).

⁹⁹ International Labor Organization, *Every Child Counts: New Global Estimates on Child Labor* (Geneva, ILO, April 2002).

¹⁰⁰ See Human Rights Watch, *Borderline Slavery: Child Trafficking in Togo* (New York: Human Rights Watch, 2003).

¹⁰¹ E.M. Abalo, "Problématique du trafic des enfants au Togo: Rapport d'enquête" (Lomé: ILO-IPEC, 2000), pp. xvi-xix.

of Togo and she could take me somewhere to finish my course, and then I could set up a shop.”

In South Africa, some children living on commercial farms drop out of school and work full time in contravention of South African law. Boys and girls are engaged in picking and pruning on citrus farms and pruning trees and lifting logs on tree farms. Teachers in Mpumalanga and Free State Provinces blamed low enrollment and poor attendance in the upper primary grades on the fact that children on farms were engaged in farm work.¹⁰²

In El Salvador, where thousands of children planted and cut sugarcane until the government began to enforce its labor laws in 2004-2005, one of every three child sugarcane workers interviewed for an ILO-IPEC study was not in school. And of those who attended school, 45 percent reported having difficulties with their studies because they had missed days of class and found it hard to catch up or because they were tired after working in the cane fields in the morning.¹⁰³ Children working in sugar often did not attend school during the harvest, which runs through the first several months of the academic year, causing them to fall far behind their classmates.¹⁰⁴

Nelson, a cane worker, told Human Rights Watch, “I began school when I was seven. But then I left it. Work affects you. Work interferes a lot with education.” Ernesto told us that he left school for four years starting when he was eleven. “I needed money, and I couldn’t go to school.” In his community, he said that the school only offered classes in the morning, a time when he was normally still working in the fields.

Domestic workers face particular challenges in gaining access to education. Mostly girls, domestic workers are typically employed in private homes and may work as many as eighteen hours a day cooking, cleaning, doing laundry, shopping, caring for children, and performing other domestic tasks for the household. Many begin their day at 4:00 or 5:00 in the morning, and often work until 10:00 or 11:00 at night.

¹⁰² See Human Rights Watch, *Forgotten Schools: Right to Basic Education for Children on Farms in South Africa* (New York: Human Rights Watch, 2004).

¹⁰³ Judith E. Quesada Lino and Alfredo Vargas Aguilar, *El Salvador: Trabajo infantil en caña de azúcar. Una evaluación rápida* (Geneva: ILO IPEC, 2002).

¹⁰⁴ See Human Rights Watch, *Turning a Blind Eye: Hazardous Child Labor in El Salvador’s Sugarcane Cultivation* (New York: Human Rights Watch, 2004).

In Indonesia, nearly seven hundred thousand children, mainly girls, are believed to be engaged in domestic labor.¹⁰⁵ They typically enter domestic work between the ages of twelve and fifteen. Most girls interviewed by Human Rights Watch reported that they worked fourteen to eighteen hour days, seven days a week, with no days off. Many are prohibited by their employers from leaving the workplace, leaving them isolated from their families and the outside world.¹⁰⁶

Of forty-four current and former child domestics interviewed by Human Rights Watch in Indonesia in 2004, only one was working and attending formal school at the same time. Most child domestics were unable to pursue either formal or non-formal education because their employers would not allow it. An official with the Ministry of Education remarked, “Getting [child domestic workers] to go to school needs the understanding of the employer. . . . Employers don’t allow them to go out. They are scared of the level of awareness and empowerment, which can make child domestics more demanding. We have to show employers that education is beneficial to kids.” Indonesian law does not require employers to allow working children to attend school.

Even if employers allow child domestics to attend school, the long and demanding hours they work almost invariably interfere with scholastic performance. An ILO-IPEC official told Human Rights Watch that studies in Indonesia on the effects of work on education found that a child can combine only three hours of work per day and effectively study at the same time. For most child domestics working hours are far in excess of three hours, and getting time for any schooling at all is often simply impossible.

Child domestics in El Salvador face similar problems.¹⁰⁷ ILO-IPEC found that domestic workers in El Salvador typically drop out of school between the ages of fifteen and seventeen, most commonly because their work hours conflict with the school day or because of the related costs of schooling, including the costs of uniforms, school supplies, transport to and from school, fees, and other educational expenses. Others are able to attend night classes, but traveling to and from school at night involved increased risks to their safety.

¹⁰⁵ ILO-IPEC, *Bunga-bunga di Atas Padas: Fenomena Pekerja Rumah Tangga Anak Di Indonesia* (Flowers on the Rock: Phenomenon of Child Domestic Workers in Indonesia) (Jakarta: ILO, 2004), pp. xix, 21.

¹⁰⁶ See Human Rights Watch, *Always on Call: Abuse and Exploitation of Child Domestic Workers in Indonesia* (New York: Human Rights Watch, 2005).

¹⁰⁷ See Human Rights Watch, *No Rest: Abuses Against Child Domestics in El Salvador* (New York: Human Rights Watch, 2004).

Even those who are able to go to school report that their work sometimes interferes with their schooling when they do not have time to do their homework, fall asleep during class, or miss days of school. One former domestic worker told Human Rights Watch, “Sometimes when I had lessons I had to cook, I had things to do: cooking, washing, ironing, cleaning. Sometimes I didn’t have enough time to prepare for school.”

In Ecuador, a Human Rights Watch investigation of children engaged in work on banana plantations found that the majority quit school before the age of fifteen.¹⁰⁸ Of thirty-seven children who had begun working before age fifteen, only fourteen—approximately 38 percent—were still in school at age fourteen, working primarily during their vacations. The mother of a fourteen-year-old boy who left school at age thirteen to begin working on plantation Guabital expressed her frustration with the situation, stating, “All of my children work. Working, they’re not able to advance. I wish that my children could study, but they can’t because they have to work.” Of those still in school, several explained that they often missed school to work.

Child labor does not interfere with education for children only in developing countries. In the United States, hundreds of thousands of children work as hired workers in commercial agriculture, laboring in fields, orchards and packing sheds across the country.¹⁰⁹ Their long and grueling hours interfere with their education; only 55 percent ever graduate from high school. Reflecting this legacy of under-education, a full 80 percent of adult migrant farmworkers function at a fifth-grade literacy level or less.¹¹⁰

One of the reasons for high-drop out rates among child farmworkers is simply that they spend too much time working. Numerous studies have found that long hours of work—generally defined as twenty or more hours a week during the school year—interfere with scholastic performance.¹¹¹ Child farmworkers who spend long hours in the fields do not have time to study, are often tired during class, and are more likely to be tardy or absent.

Mark was twelve the summer he first worked in the cotton fields of central Arizona, getting up at 3:00 a.m. and finishing working at 2:00 p.m. He missed a lot of school and eventually dropped out. Nineteen when interviewed by Human Rights Watch, Mark was

¹⁰⁸ See Human Rights Watch, *Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador’s Banana Plantations* (New York: Human Rights Watch, 2002).

¹⁰⁹ See Human Rights Watch, *Fingers to the Bone: United States Failure to Protect Child Farmworkers* (New York: Human Rights Watch, 2000).

¹¹⁰ US Department of Education, “The Education of Adult Migrant Farmworkers,” volume 2., 1991.

¹¹¹ See, for example, National Research Council, *Protecting Youth at Work*, chapter five, “Work’s Effect on Children and Adolescents,” in particular pp. 115-120.

trying to catch up on his education. “A lot of my friends worked the fields, and a lot dropped out. I was supposed to graduate last year and I didn’t. . . I would tell kids just to finish school. You can’t get a good job without a diploma. . . You get more options.”

One of the most hazardous forms of child labor is the use of children as soldiers in government armies and non-state armed groups. Many children who join such forces do so because of lack of educational opportunities in their communities. Once recruited, opportunities for further schooling while serving as a soldier are extremely rare. Once a child has been released or has escaped, education gains an added element of importance as one of the few interventions that may prevent a child from being re-recruited and picking up arms again. Former girl soldiers may be least likely to receive assistance getting back into school. Although up to one-third of child soldiers in many conflicts are girls, girls are often excluded from demobilization, rehabilitation and reintegration programs, including both formal and non-formal education.

In Liberia, former child soldiers interviewed by Human Rights Watch often identified difficulty in accessing schools as a reason for joining armed forces or groups.¹¹² In the past, Liberian families have been forced to pay over US\$100 in fees per year to send a child to primary school. With 76 percent of Liberians living on less than a dollar per day,¹¹³ such fees put education out of reach of many. Between 1989 to 1997, an estimated six thousand to fifteen thousand children took up arms. In renewed fighting that began in 2000, an estimated fifteen thousand children participated, including some who had fought in the previous conflict.

Brian told us:

Young people need an education, some had their learning interrupted, others never stepped into a classroom. But where will they get the money for uniforms and school fees? Are these same young people going to be content to sit around when from their experience they can get things with fighting? If they are not given possibilities, they will fight here or go and fight in other countries.

¹¹² See Human Rights Watch, *How to Fight, How to Kill: Child Soldiers in Liberia* (New York: Human Rights Watch, 2004); Human Rights Watch, *Youth, Poverty and Blood: The Lethal Legacy of West Africa's Regional Warriors* (New York: Human Rights Watch, 2005).

¹¹³ Millennium Development Goals Report, Liberia, prepared for the United Nations Development Program (September 2003), available at <http://www.lr.undp.org/mdg.pdf>

One child rights specialist reported that in a conversation with a military commander about child soldiers in Liberia, the officer declared that children with education, those that can read and write, are more difficult to recruit and are generally more questioning of authority. This view was shared by Roland, a former child soldier, who said, “Most of our brothers, they have been fighting since 1990, so all they think about is war. But if you are educated, you can think of other things.”

The widespread participation of children in Liberia’s conflicts underlines the imperative of providing education in order to break the cycle of child recruitment. One counselor who works with former child soldiers explained:

These kids did not fall from the sky, they are Liberian children. They came from communities and they need to go back to the communities. But we need to look at factors which caused them to leave and take up arms in the first place. Beyond the warfare lies poverty, neglect and lack of opportunity. Perhaps the biggest disservice to children in Liberia is the failure of the state to provide education.

In neighboring Sierra Leone, where thousands of children participated in the civil conflict, a former fighter gave a grim assessment of the consequences of failing to provide children with education:

I know lots who would easily slip back into it. . . If there is commotion in another land, they’re too easily prepared to go back to war. They need to be educated. The future of our country is now left with our leaders. The more illiterates, the higher chance there will be another war. Another war, the higher the chance there will be atrocities committed. It’s a rare educated man who would be so vulnerable as to succumb to the influence of people like the RUF (Revolutionary United Front). But if things don’t improve, the more vulnerable we’ll all be to there being another war.

Recommendations

- Governments should ratify and implement ILO Convention No. 138 concerning the Minimum Age for Admission to Employment and ILO Convention No. 182 on the Worst Forms of Child Labor.

- Governments should enforce laws governing child labor and develop policies and programs related to the human rights of child workers. Allocate the resources needed to provide for a sufficient number of labor inspectors and ensure adequate enforcement powers to guarantee effective implementation of child labor laws.
- Governments should enforce and strengthen punishments for violators of prohibitions against child labor. These could include fines, imprisonment, forfeiture of operating licenses, seizure of equipment, and short and long-term closure of facilities.
- Governments should take steps to address the root causes of child labor, including by providing stipends conditional on school attendance to off-set lost income from child labor, guaranteeing access to free primary education, educating parents about the risks of hazardous labor, and providing basic protections to orphans and other children affected by HIV/AIDS.
- Governments should cooperate with international organizations working to abolish child labor, in particular the ILO's International Programme to Eliminate Child Labour (IPEC).
- Governments should ensure the availability of education, including informal education and vocational training, for children removed from the worst forms of child labor, including children used as soldiers.

VII. Particular Challenges for Girls

The Millennium Development Goals set in 2000 called for the elimination of gender disparities in primary and secondary education preferably by 2005 and at all levels by 2015. Yet in some parts of the world, gender disparities are growing ever wider. As illustrated throughout this document, girls face particular obstacles in gaining access to schooling, and being able to learn in a safe environment.

Traditional biases against educating girls often cause parents to give their sons priority over their daughters for schooling, particularly when school fees or poverty make it difficult for parents to send all of their children to school. Such discrimination is becoming more acute in many countries, particularly in sub-Saharan Africa, as the

HIV/AIDS pandemic worsens. When parents or other family members become sick with HIV/AIDS, it is often girls who are pulled out of school to care for them. Once removed from the school system, many never return to school. In many areas of Africa heavily affected by AIDS, rates of school completion for girls are declining when compared to boys. This contributes, in turn, to higher HIV infection rates for girls than for boys in many countries.

Girls are preferred for certain kinds of child labor, particularly domestic work, which the ILO estimates involves more girls than any other form of child labor. The demand for girls as domestic workers draws girls out of school, and once they begin working, their typically long working hours makes it difficult if not impossible for girls to continue their education. The practice of trafficking exploits and exacerbates traditional practices of sending girls into domestic labor instead of to school, as increasing numbers of girls are trafficked into domestic servitude far from their own homes.

Violence in and near schools also uniquely affects girls. Girls are particularly vulnerable to sexual violence by classmates and teachers, as seen for example in South Africa, compromising their ability to learn in a safe environment, and in some cases driving them out of school altogether. In other cases, the necessity of traveling dangerous routes to get to school keeps many girls home. As discussed above, child laborers who work during the day may be reluctant to take advantage of evening classes because of greater risks of traveling alone after dark. In Iraq, widespread reports of sexual violence and abduction of girls since the US-led war and occupation has kept many girls out of school.

To achieve gender equity in education, governments must give focused attention to the particular obstacles that deny girls their right to education, and ensure sustained efforts to address them. These include improving security, investigating and prosecuting those responsible for sexual violence against girls, educating families and communities about the benefits of girls' education, and making special efforts to retain girls in the school system and address the reasons that lead them to drop out.

Recommendations

- Governments should address security needs for girls, ensuring safe passage to and from school; promising practices may include increased police presence or provisions for girls to travel in groups or be provided with escorts.

- Governments should establish accessible mechanisms for girls to make confidential complaints regarding sexual harassment or violence by other students, teachers, staff or principals. Ensure the prompt and effective investigation of such complaints, and prompt and appropriate disciplinary action against perpetrators, including counseling, suspension, termination and prosecution when necessary. Bring criminal charges where indicated.
- Governments should provide incentives for girls to attend school; promising practices include free meals, and stipends conditional on school attendance.
- Governments should address gender inequalities that lead girls to be withdrawn from school to support families affected by AIDS. Sensitize families and communities about the importance of keeping girls in school as a safeguard against HIV infection. Ensure that programs to combat child labor, particularly child prostitution and child domestic labor, have a clear HIV/AIDS component.
- Governments should amend national laws as necessary to ensure that domestic workers receive the same rights as other workers, including a minimum wage, time off, and limits on hours of work, and that the minimum age for employment conforms to international standards and is effectively enforced.

VIII. Legal Standards

The right to education is proclaimed in the Universal Declaration of Human Rights and guaranteed in international and regional human rights treaties. Primary education must be “compulsory and available free to all.” Secondary education, including vocational education, must be “accessible and available to every child.”¹¹⁴

The right to education is a right of progressive implementation, meaning that implementation may take place over a period of time, subject to limits on available resources. A state that has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), for example, agrees both individually and through international assistance and cooperation “to take steps . . . to the maximum of its available resources” to the full realization of the right to education, including the

¹¹⁴ International Covenant on Economic, Social and Cultural Rights, art. 13. See also Convention on the Rights of the Child, art. 28.

progressive introduction of free secondary education.¹¹⁵ That is, states have a degree of flexibility in implementing the right to education, in recognition of the economic realities they face, but this flexibility does not mean that these rights are meaningless. As the Committee on Economic, Social and Cultural Rights, the U.N. body responsible for monitoring the implementation of the ICESCR, observes, “Progressive realization means that States parties have a specific and continuing obligation ‘to move as expeditiously and effectively as possible’ towards the full realization” of the right to education.¹¹⁶

In the committee’s view, the right to education includes requirements that educational institutions must be both available in sufficient quantity and physically accessible—that is, “within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g., access to a ‘distance learning’ programme).”¹¹⁷

Although the right to education is a right of progressive implementation, the prohibition on discrimination is not. The committee has stated: “The prohibition against discrimination enshrined in Article 2(2) of the [ICESCR] is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”¹¹⁸

Thus, regardless of its resources, the state must provide education “on the basis of equal opportunity, without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”¹¹⁹ In addition, the guarantees of equality before the law and the equal protection of law prevent a government from arbitrarily making distinctions among classes of persons in promulgating and enforcing its laws. A state violates the prohibition on discrimination in education both with direct action, such as introducing or failing to repeal discriminatory laws, as well as when it fails to take measures “which address de facto

¹¹⁵ International Covenant on Economic, Social and Cultural Rights, arts. 2(1), 13.

¹¹⁶ Committee on Economic, Social and Cultural Rights, *General Comment 13: The Right to Education*, ¶ 44.

¹¹⁷ *Ibid.*, ¶ 6.

¹¹⁸ *Ibid.*, ¶ 31. See also *General Comment 11, Plans of Action for Primary Education*, U.N. ESCOR Comm. on Econ., Soc. and Cultural Rts., 20th Sess., ¶ 10, U.N. Doc. E/C.12/1999/4 (1999); *General Comment 3*, ¶ 1 (stating that the obligation to guarantee the exercise of rights in the ICESCR without discrimination is “of immediate effect”).

¹¹⁹ Convention on the Rights of the Child, arts. 28(1), 2(1).

educational discrimination.”¹²⁰ States must ensure that their domestic legal systems provide “appropriate means of redress, or remedies, . . . to any aggrieved individual or groups,” including judicial remedies.¹²¹

These provisions should be read together with the Convention against Discrimination in Education, a treaty adopted in 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and ratified by ninety-one countries. The convention defines discrimination as “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 . . . [o]f limiting any person or group of persons to education of an inferior standard.”¹²² The Committee on Economic, Social and Cultural Rights has interpreted the prohibition on discrimination and the rights to education in Articles 2(2) and 13 of the ICESCR in accord with the Convention against Discrimination in Education.¹²³

The Convention against Discrimination in Education and other treaties establish that a state may not provide education in a discriminatory manner.¹²⁴ States may make distinctions among children, but only to the extent that those distinctions are based on reasonable and objective criteria. The principle of nondiscrimination means that a state may not arbitrarily deny an education to particular groups of children. Denying an education on the basis of race is, for example, unquestionably arbitrary.¹²⁵ Restricting noncitizens’ access to education is also recognized as unfairly discriminatory; the Committee on Economic, Social and Cultural Rights has specified with regard to education that “the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.”¹²⁶ It similarly follows that detention status is not a permissible basis for the denial of education to children. As reaffirmed in the U.N. Rules for the Protection of

¹²⁰ *General Comment 13*, ¶ 59.

¹²¹ *General Comment 9, The Domestic Application of the Covenant*, U.N. ESCOR Comm. on Econ., Soc. and Cultural Rts., 19th Sess., ¶¶ 2, 9, U.N. Doc. E/C.12/1998/24 (1998). See also *General Comment 3*, ¶ 5.

¹²² Convention against Discrimination in Education, art. 1.

¹²³ *General Comment 13*, ¶¶ 31, 33, 34.

¹²⁴ See, for example, ICCPR, art. 26.

¹²⁵ See Convention against Discrimination in Education, art. 1. See generally Human Rights Watch, *Second Class: Discrimination against Palestinian Arab Children in Israel's Schools* (New York: Human Rights Watch, 2001), pp. 162-64.

¹²⁶ *General Comment 13*, ¶ 34. See also Convention against Discrimination in Education, art. 3. Article 3 provides, in relevant part: “In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake . . . [t]o give foreign nationals resident within their territory the same access to education as that given to their own nationals.”

Juveniles, children do not lose their right to an education when they are confined: “Every juvenile of compulsory school age” who is deprived of his or her liberty “has the right to education suited to his or her needs and abilities,” education which should be “designed to prepare him or her for return to society.”¹²⁷ The U.N. Standard Minimum Rules for the Administration of Juvenile Justice call upon government officials to ensure that children deprived of their liberty “do not leave the institution at an educational disadvantage.”¹²⁸ International law also explicitly guarantees the right to education without discrimination for disabled children.¹²⁹

The right of children to protection from violence is another right that applies fully and immediately and is not subject to progressive realization or the availability of resources. The Convention on the Rights of the Child, a treaty that reflects almost universal consensus on children’s human rights, recognizes that children are entitled to special care and assistance and that the best interest of the child must be a primary consideration in all actions concerning children. The convention establishes that children have the right to protection from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”¹³⁰ This provision protects children from private acts of violence and harassment, including violent acts or threats of violence by students against other students, as well as such acts committed by state agents, including teachers and school administrators.¹³¹

Education is often presented as a solution to child labor. The Worst Forms of Child Labour Convention, for example, highlights “the importance of education in eliminating child labour” and calls on states to ensure access to free basic education for all children removed from the worst forms of child labor.¹³² In fact, international law linked education and child labor long before the adoption in 1999 of the Worst Forms of Child Labour Convention. Katarina Tomaševski, former U.N. special rapporteur on

¹²⁷ U.N. Rules for the Protection of Juveniles, art. 38.

¹²⁸ U.N. Standard Minimum Rules for the Administration of Juvenile Justice, art. 26.6.

¹²⁹ See Convention on the Rights of the Child, arts. 2(1), 23(3), at 167, 169; Declaration on the Rights of Disabled Persons, G.A. Res. 3447 (XXX), 30 U.N. GAOR, 30th Sess., Supp. No. 34, ¶¶ 2, 6, 10, U.N. Doc. A/10034 (1975).

¹³⁰ Convention on the Rights of the Child, art. 19.

¹³¹ See Human Rights Watch, *Hatred in the Hallways*, pp. 128-131.

¹³² Worst Forms of Child Labour Convention, art. 7(2)(c).

the right to education, has observed that the linkage “constitutes one of the oldest parts of human rights law and emerged therein because of its sound economic rationale.”¹³³

Education is also a critical mechanism for guaranteeing children their right to “seek, receive and impart information of all kinds,” including information about health.¹³⁴ Convention on the Rights of the Child requires states to “ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health.”¹³⁵ The Committee on the Rights of the Child, the U.N. body responsible for monitoring the implementation of the Convention on the Rights of the Child, states in its general comment on HIV/AIDS that children have the right to obtain adequate information related to HIV/AIDS prevention. The committee has emphasized that:

Effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that, consistent with their obligations to ensure the right to life, survival and development of the child (art. 6), States parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality.¹³⁶

Access to health information is also essential to realizing the human right to the highest attainable standard of health and, ultimately, the right to life.¹³⁷ Article 12 of the International Covenant on Economic, Social and Cultural Rights specifically obliges governments to take all necessary steps for the “prevention, treatment and control of epidemic . . . diseases,” such as HIV/AIDS.¹³⁸ The Committee on Economic, Social and Cultural Rights has interpreted article 12 as requiring “the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS.”¹³⁹

¹³³ Katarina Tomaševski, *Education Denied: Costs and Remedies* (London and New York: Zed Books, 2003), p. 24.

¹³⁴ See ICCPR, art. 19; Convention on the Rights of the Child, art. 13.

¹³⁵ Convention on the Rights of the Child, art. 24(2)(e).

¹³⁶ Committee on the Rights of the Child, *General Comment No. 3 (2003) HIV/AIDS and the rights of the child*, 32d sess. (2003), ¶ 16.

¹³⁷ Committee on Economic and Social Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, 22d sess. (2000), ¶ 12(b), note 8.

¹³⁸ ICESCR, art. 12.

¹³⁹ *General Comment 14*, ¶ 16.

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