

THE WORLD BANK, CAPABILITIES, AND HUMAN RIGHTS: A NEW VISION FOR GIRLS' EDUCATION BEYOND 2015

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INTRODUCTION

In April 2014 over 200 schoolgirls in Nigeria were kidnapped by the Boko Haram terrorist organization while attending school for their exams. Their captors have reportedly sold them into marriage.¹ Boko Haram translates into “Western Education is Forbidden,” and the group is known to attack schools.² The inability of the Nigerian government to find the girls sparked outrage and a social media campaign.³ In 2012 the Taliban shot Malala Yousafzai as she travelled to school. Her recovery from that shooting and defiance of the Taliban made her a symbol of female power around the world. She is now a spokeswoman for girls’ education.⁴ These are extreme examples, but they reflect the political and social minefield of girls’ education.

In 1990 the Education for All (EFA) initiative was launched. Its goal is to bring the benefits of education to “every citizen in every society.”⁵ This initiative brought together a wide-range of governments, civil society groups, and development organizations to achieve six specific education goals by 2015.⁶ These are part of the Millennium Development Goals (MDGs). The international community reaffirmed this commitment in 2000 in Dakar, Senegal. This recommitment is known as the Dakar Framework. In 2002 the World Bank, along with development

1. Kashmira Gander, Kidnapped Nigerian School Girls Forced to Marry Captors, INDEPENDENT, Apr. 30, 2014, available at <http://www.independent.co.uk/news/world/africa/kidnapped-nigerian-school-girls-forced-to-marry-captors-9308958.html>.

2. *Hundreds March over Nigeria Schoolgirl Kidnappings*, GUARDIAN, Apr. 30, 2014, available at <http://www.theguardian.com/world/2014/apr/30/hundreds-march-nigeria-chibok-schoolgirl-kidnappings-boko-haram>.

3. *Id.*

4. Malala Yousafzai Biography, <http://www.biography.com/people/malala-yousafzai-21362253>.

5. *Education for All*, The World Bank (Aug. 4, 2014), <http://www.worldbank.org/en/topic/education/brief/education-for-all>.

6. (1) expand and improve comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children; (2) Ensure that by 2015 all children, particularly girls, those in difficult circumstances, and those belonging to ethnic minorities, have access to and complete, free, and compulsory primary education of good quality; (3) Ensure that the learning needs of all young people and adults are met through equitable access to appropriate learning and life-skills programs; (4) Achieve a 50% improvement in adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults; (5) Eliminate gender disparities in primary and secondary education by 2005, and achieve gender equality in education by 2015, with a focus on ensuring girls’ full and equal access to and achievement in basic education of good quality; and (6) Improve all aspects of the quality of education and ensure the excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills. *Id.*

partners, launched the Global Partnership for Education (GPE) to help low-income countries meet the EFA and Millennium Development Goals.

As the MDGs were being implemented, some scholars suggested another approach called the “human capability” approach. The two biggest proponents are Martha Nussbaum and Amartya Sen, who define women’s empowerment as a woman realizing her full human potential and see education a means to that end. Furthermore, education is also a fundamental human right as declared in the Universal Declaration of Human Rights.⁷ It has also been reaffirmed in several other human rights instruments, including the International Convention on Economic, Social and Cultural Rights (ICESCR); the Convention on All Forms of Discrimination Against Women (CEDAW); and the Convention on the Rights of the Child (CRC); as well as several regional instruments. The right to education is also found in domestic law in 90% of the constitutions in the world.⁸

Despite the legal basis for education and the commitment by the World Bank and others, women’s education is still contested ground. While the denial of education seldom reaches the extremes of the Nigerian girls or Malala, there are several cultural, political, and economic factors at play. No one approach to girls’ education has proven adequate. The EFA goal of ensuring gender equality in education by 2015 will not be met. Because of this it is time to rethink exactly what we are trying to achieve and why. In this Article I propose a solution of how to achieve gender equality in education by 2030. I propose that the World Bank use its funding to enforce the human right to education found in the major human rights treaties. Part I of this Article looks at the justiciability of human rights and domestic law and how to fund compliance with law. Part II looks at human rights and capabilities, Part III looks at primary education, Part IV looks at secondary education, and Part V looks at cultural barriers to education.

BACKGROUND

Since 1990 amazing achievements have been made in girls’ education. Educated mothers are more likely to have educated children. UNESCO estimates that between 1990 and 2009 the lives of 2.1 million children

7. Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810 at 76 (Dec. 10, 1948) [hereinafter G.A. Res. 217A(III)].

8. Special Rapporteur on the Right to Education, *Justiciability of the Right to Education*, Human Rights Council, U.N. Doc. A/HRC/23/35 (May 10, 2013) (by Kishore Singh) [hereinafter Singh].

under 5 have been saved because their mothers received an education.⁹ Other benefits from education are (1) the empowerment of mothers to tackle malnutrition, a leading cause of child deaths; (2) increased likelihood that educated women know about better hygiene practices; and (3) more power for women to ensure that household resources are allocated to the children.¹⁰ Education also narrows the gender gaps in work opportunities and pay,¹¹ leads to more educated women who are more likely to vote and participate in politics, and helps overcome biases in political behavior.¹² Keeping girls in school is also one of the best ways to prevent child marriage.¹³

At the same time, not all is well. There are still many girls who do not finish primary school and even fewer go on to secondary school. Considering that significant economic and social benefits accrue at the secondary school level and beyond, this education attainment level is crucial for girls. According to the World Bank in 2011, 71% of girls were enrolled in secondary school.¹⁴ This statistic does not indicate a completion rate and significant regional disparities exist.

The Universal Declaration of Human Rights declares education a fundamental human right. This was reaffirmed by the 1990 EFA initiative and its follow-up, the Dakar Framework of 2000.¹⁵ However, education has been framed by the development community as a development goal rather than as a legal right.¹⁶ As such there has been little progress in asserting a human right to education. Furthermore, the right to education is an economic and social right and has traditionally been seen as non-justiciable.¹⁷ Economic and social rights are also subject to the resources argument.¹⁸ A State simply says they do not have the money to provide for economic and social rights such as the right to education.

This is why the “human capital” approach taken by the World Bank and most other development agencies is so important and has been so

9. EFA GLOBAL MONITORING REPORT, TEACHING AND LEARNING: ACHIEVING QUALITY FOR ALL 15 (UNESCO Publishing 2014) [hereinafter UNESCO], available at <http://unesdoc.unesco.org/images/0022/002256/25660e.pdf>.

10. *Id.* at 16.

11. *Id.* at 14.

12. *Id.* at 17.

13. *Id.*

14. The World Bank, School Enrollment Data, <http://data.worldbank.org/indicator/SE.SEC.ENRR/countries/1W?display=graph> (last visited Feb. 18, 2015).

15. Angela Wanak, *Educating Girls in Africa: A Case Study of a Non Profit Organization Working to Ensure The International Human Right to Education*, 16 WILLAMETTE J. INT'L L. & DISP. RESOL. 106, 107 (2008).

16. Kristen Anderson, *How Can a Rights-Based Approach to Development Programming Help to Achieve Quality Education?*, 7 ASIA-PAC. J. HUM. RTS. & L. 75, 76 (2006).

17. Eric Christiansen, *Adjudicating Non-Justiciable Rights: Socio-Economic Rights and the South African Constitutional Court*, 38 COLUM. HUM. RTS. L. REV. 321, 321 (2007).

18. *Id.* at 322.

successful. The World Bank has the ability to enforce compliance with its goals through money and economic incentives. The criticism of this approach from Martha Nussbaum, Amartya Sen and others is that it treats women as economic commodities and sees their worth based on their ability to contribute to the formal economy.¹⁹ Others have criticized the World Bank for having a top-down one size fits all approach. Another criticism of the World Bank is that their goals have not been in line with human rights.

The “human capability” approach to development advocated by Martha Nussbaum and Amartya Sen addresses these criticisms. They challenge the development community to measure the quality of life and not simply the worth of life. They see the need to educate a woman so that she has agency and dignity; for them, education helps a woman achieve her full human potential and for that reason alone she should have an education. The obvious limitations to this approach are that there is no way to quantify it and no incentive to comply. The Development world is also starting to embrace the capabilities approach.²⁰ Yet despite this growing awareness, development and human rights are still viewed as separate fields even though they are trying to achieve the same goals. Both have gone as far as they can individually, and it is now time for development and human rights to work together to achieve their goals.

I. THE JUSTICIABILITY OF THE RIGHT TO EDUCATION AND FINANCING EDUCATION POST 2015

The biggest challenges to realizing the human right to education is the justiciability of human rights instruments and financing the cost of providing education for all. The World Bank is beginning to look at how to fund education after 2015 and civil society is reminding the funders that education is a human right.²¹

A. Justiciability of the Right to Education

The right to education is one of the most universally recognized rights in the national constitutions of the world.²² The right to education can be

19. *See generally* DAVID CLARK, THE CAPABILITY APPROACH: ITS DEVELOPMENT, CRITIQUES, AND RECENT ADVANCES (Global Poverty Res. Grp. 2005).

20. *See* JOHN HAMMOCK ET AL., DESK STUDY ON THE HUMAN DEVELOPMENT APPROACH AND ITS POTENTIAL APPLICABILITY TO USAID (USAID 2012).

21. *See generally* GLOBAL CAMPAIGN FOR EDUCATION ET AL., CIVIL SOCIETY JOINT STATEMENT: THE HUMAN RIGHT TO EDUCATION IN THE POST 2015 DEVELOPMENT AGENDA (2013) [hereinafter CIVIL SOCIETY JOINT STATEMENT].

22. Singh, *supra* note 8.

enforced through judicial and quasi-judicial mechanisms.²³ Alleged violations of the right to education are normally litigated in national courts. Once these national remedies have been exhausted recourse is then found in international courts.²⁴ “Quasi-judicial bodies, such as ombudpersons, and national human rights institutions play an important role in protecting the right to education by monitoring implementation at the national level.”²⁵ Though their findings are not legally binding, these decisions are still important because they place political and legal pressure on authorities and institutions.²⁶ Their decisions may also be used as the basis for initiating procedures in national courts.²⁷

At the international level the Optional Protocol to the International Covenant on Social and Cultural Rights, which entered into force on May 5, 2013, entitles individuals and groups of individuals to lodge complaints against States that have ratified the Optional Protocol concerning the violation of rights in the Covenant, including the right to education.²⁸ In addition children can now assert their human rights under the Optional Protocol to the Convention on the Rights of the Child, which came into force in April 2014.²⁹

Even though these rights exist, there are barriers to enforcement. It is difficult for disadvantaged groups to address claims of non-discrimination because they lack knowledge and financial resources.³⁰ When States have failed to include a right to education in their national constitutions it can be difficult to find a lawyer who is conversant in the regional and international legal options and State Obligations.³¹ People from disadvantaged groups may also be reluctant to take violations of their rights to courts or quasi-judicial bodies due to poor language skills, fear of reprisals or, particularly for women cultural constraints that prevent women from representing themselves.³²

While controversial, the World Bank could play a role in helping those who are disadvantaged fund a legal or quasi-judicial challenge to education. Development professionals have talked about the need for anti-discrimination laws and even gave examples of how the development community has assisted local NGOs and governments in

23. *Id.* at 9.

24. *Id.* at 10.

25. *Id.* at 11.

26. *Id.*

27. *Id.*

28. *Id.* at 12.

29. U.N. Office of the High Commissioner for Human Rights, Children can now Lodge Complaints with the U.N. About Violations of Their Rights (Apr. 14, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14503&LangID=E>.

30. Singh, *supra* note 8, at 19.

31. *Id.*

32. *Id.*

initiating laws and regulations.³³ The World Bank has refused to take on this role, but if they did they could achieve the MDGs within ten years.

B. Realizing the Right to Education Through Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW does not provide specifically for a right to education. Rather it deals with the factors that prevent women and girls from getting educated. This includes the same conditions for access to studies and obtaining of diplomas, access to the same curriculum, and the elimination of stereotypes.³⁴ Right now, States ignore CEDAW and other human rights treaties, but what if World Bank funding were tied to compliance with CEDAW? While not putting it in legal terms, development professionals are calling for this type of action.³⁵ The U.N. Girls' Education Initiative (UNGEI) calls for creating a safe, non-discriminatory environment for girls to learn.³⁶ Maureen A. Lewis and Marlane E. Lockheed make the same suggestions.³⁷ The U.K. Department for International Development calls for multi-dimensional educational investments for girls to include gender responsive teaching that challenges gender stereotypes and traditional education hierarchies.³⁸

The World Bank, in their gender equality report, also talks about the need to fund "targeted programs to address the specific constraints of certain demographics."³⁹ The report also mentions the need to recruit and train female teachers.⁴⁰ It also says that the Bank aims to help countries analyze gender gaps in education.⁴¹ UNESCO says that goals after 2015 should be guided by seeing education as a right.⁴² Population Council also calls for more "girl-friendly" schools, which includes recruiting female

33. MAUREEN A LEWIS & MARLAINE E. LOCKHEED, *INEXCUSABLE ABSENCE: WHY 60 MILLION GIRLS STILL AREN'T IN SCHOOL AND WHAT TO DO ABOUT IT* 113, 121 (Ctr. For Global Dev. 2006). Their example is the Open Society Institute providing extensive assistance to local NGOS and governments to initiate laws and regulations that protect the Roma and make school safe for Roma children.

34. Article 10(a-c).

35. See generally LEWIS & LOCKHEED, *supra* note 33; UNGEI, *infra* note 36; Lloyd, *infra* note 38.

36. UNGEI, *ACCELERATING SECONDARY EDUCATION FOR GIRLS: FOCUSING ON ACCESS AND RETENTION* 3 (Apr. 2014).

37. LEWIS & LOCKHEED, *supra* note 33, at 122–23.

38. Cynthia B. Lloyd, *Education for Girls: Alternative Pathways to Girls' Empowerment*, DFID & GIRL HUB 1, 10 (Feb. 2013).

39. WORLD BANK, *GETTING TO EQUAL PROMOTING GENDER EQUALITY THROUGH HUMAN DEVELOPMENT* 1, 3 (2011) [hereinafter *THE WORLD BANK, GETTING TO EQUAL*].

40. *Id.* at 3.

41. *Id.*

42. UNESCO, *supra* note 9, at 14.

teachers, mentoring, and providing girls only toilets.⁴³ One of the most important features of CEDAW is that it already binds the principle of non-discrimination with substantive equality and state obligation.⁴⁴ CEDAW provides that women and men have equal access to trained teachers.⁴⁵ CEDAW also provides for the reduction of student dropout rates and for programs for girls who have prematurely dropped out.⁴⁶ This is also something that development professionals have called for as a way of increasing gender parity in secondary education.⁴⁷ The World Bank can fund these programs without changing their operational status quo.

The equal right to schooling is one of the obligations undertaken by States Parties to CEDAW.⁴⁸ Gender equality in education is also a Millennium Development Goal.⁴⁹ Education as a means to gender equality influences the EFA goals, the targets set by the MDGs, the Dakar Framework and numerous other international commitments over the past two decades.⁵⁰ The reality, though, is that there has been a dearth of discussion as to how the current global education movement will achieve that goal. This is where pairing the World Bank process with human rights can finally answer that question.

In addition, the Optional Protocol to CEDAW provides for a right to file suit for violation of a right under CEDAW.⁵¹ This option is only available in States that have ratified the Optional Protocol.⁵² Since 2000 there have only been eight decisions under the Optional Protocol and none have dealt with the right to education.⁵³ The CEDAW Committee has not participated in discussions and policy on access to formal education.⁵⁴ However, the Committee does raise concerns and makes

43. CYNTHIA LLOYD, PRIORITIES FOR ADOLESCENT GIRLS' EDUCATION 6–8 (Population Council 2012).

44. Maria Herminia Graterol & Anurag Gupta, *Girls Learn Everything: Realizing the Right to Education Through CEDAW*, 16 NEW ENG. J. INT'L & COMP L. 49, 50 (2010).

45. CEDAW, *infra* note 54, art. 10(b).

46. *Id.* art. 10(f).

47. *See generally* UNGEI, EFA Global Monitoring Report 2013/14; The World Bank, World Development Report 2012, Gender Equality and Development, ch. 3; The World Bank, Learning for All, Investing in People's Knowledge and Skills to Promote Development, World Bank Education Strategy 2020, Executive Summary (2011).

48. Graterol & Gupta, *supra* note 44, at 50.

49. Millennium Development Goal 3, *infra* note 119; *see also* Graterol & Gupta, *supra* note 44.

50. *Id.* at 50.

51. Optional Protocol to the Elimination of All Forms of Discrimination Against Woman, at <http://www.un.org/womenwatch/daw/cedaw/protocol/>, art. 2.

52. *Id.* art. 1.

53. Convention on the Elimination of All Forms of Discrimination Against Women, Decisions/Views [hereinafter CEDAW], <http://www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm>.

54. Graterol & Gupta, *supra* note 44, at 52.

specific recommendations relating to the right to education.⁵⁵ In 2008 the Committee encouraged Myanmar “to enhance its compliance with Article 10 of the Convention and ensure that ‘education for all’ is realized.”⁵⁶ The CEDAW committee is using language from development.

In 2012 the Committee issued a statement after the shooting of Malala Yousufzai calling for

State[s] parties to denounce and punish such acts of violence and to continue to take all necessary action, including dismantling of patriarchal barriers and entrenched gender stereotypes, to guarantee and to ensure the girls are able to enjoy their basic human right to education in every region of the world.⁵⁷

World Bank researchers do not have a good answer to how to get countries such as Pakistan to change their cultural practices.⁵⁸ The answer lies in human rights. The World Bank needs to start funding education that complies with States’ human rights obligations and withhold funding from States that do not comply.

While there is wide ranging consensus on what needs to be done there is no suggestion on how to do so. The only suggestion made is to change where money is spent and to increase funding.⁵⁹ This is the same solution that has been proposed since the MDGs were developed in 1990. Millions have been spent and amazing outcomes achieved, but simply throwing money at a problem has its limitations. The solution to girl’s education has gone as far as money can take it. It is now time to come up with a new solution. This solution is to take the ideas proposed by these development agencies, root them in human rights and make funding conditioned on complying with the language of CEDAW.

C. The World Bank as a Funder of Education

When the human rights standards were adopted there was full global consensus behind them. Enrollments rapidly expanded in the early decades only to halt because of economic crises and diminished public

55. *Id.* at 78.

56. *Id.* at 79.

57. CEDAW Statement Protection of Girls’ Right to Education, *adopted* Oct. 19, 2012 during the 53d sess.

58. Aslam Monazza et al., *Is Female Education a Pathway to Gender Equality in the Labor Market? Some Evidence from Pakistan* [hereinafter Monazza et al.], in *GIRLS’ EDUCATION IN THE 21ST CENTURY: GENDER EQUALITY, EMPOWERMENT, AND ECONOMIC GROWTH* 67 (Mercy Tembon & Lucia Fort eds., World Bank 2008) [hereinafter *GIRLS’ EDUCATION IN THE 21ST CENTURY*].

59. UNESCO, *supra* note 9, at 18. “It is necessary not only to increase domestic resources for education, but to redistribute these resources.” *Id.*

funding. Observers of the World Bank have expressed concern that the Bank uses its financial influence to promote a neo-liberal policy agenda.⁶⁰ The Bank's funding is given directly to central government and education ministries and not funneled through local NGOs.⁶¹ The 1980s marked diminished public funding for education, accompanied by the introduction of user fees in primary education, especially in Africa.⁶² International finance organizations, led by the World Bank, required countries to charge fees for compulsory schooling as a condition of development finance, thereby contradicting the human rights obligations that at least primary education should be free.⁶³ While this system has done great things in getting girls into school, to achieve the MDGs by 2030, the World Bank needs to rethink how they are funding education and should condition receipt of funds for education on ratification of these human rights instruments if not already done and on compliance with human rights. Government obligations to ensure the right to education can be facilitated or hampered through international cooperation.⁶⁴

The World Bank claims that the Learning for All strategy helps countries to improve the capacity of their education systems and raise school attendance. In 2010, the Bank pledged \$750 million through 2015 to assist countries in meeting the MDG goals of universal access and gender parity.⁶⁵ This is a huge amount of money and yet the goal will not be achieved by 2015. Instead of throwing another \$750 million at the problem and pushing this goal out another 5 or 10 years, the Bank needs to apply the knowledge they and their partners gained on how to achieve gender parity and pair it with the States' obligations under domestic, regional, and international human rights instruments. The Bank should set goals using the language of these instruments and fund completion of these goals. This has the effect of giving teeth to human rights obligations as well as providing a roadmap for how to achieve the MDGs. It also means that these goals cease to be a moving target that the Bank throws money at without progress. Market based policies have done all they can and have worked well to achieve gender parity for primary education. Secondary education has proved much more elusive and absent a new way of looking at this issue, the World Bank and others will be wringing

60. Jane Arnold Lincove, *Are Markets Good for Girls? The World Bank and Neoliberal Education Reforms in Developing Countries*, 10 WHITEHEAD J. DIPL. & INT'L REL. 59, 61 (2009).

61. *Id.* at 61.

62. Katarina Tomasevski, *Globalizing What: Education as a Human Right or as a Traded Service?*, 12 IND. J. GLOBAL LEGAL STUD. 1, 17 (2005).

63. *Id.* at 17.

64. *Id.* at 28.

65. WORLD BANK, GETTING TO EQUAL PROMOTING GENDER EQUALITY THROUGH HUMAN DEVELOPMENT 4 (2011).

their hands and issuing reports for the foreseeable future.

The biggest criticism of the World Bank is that it has turned education into a traded commodity. While human rights provide for a right to primary education, the World Bank conditions this right on the ability to pay.⁶⁶ The World Bank does not see itself as bound by traditional human rights nor does it see education as a human right.⁶⁷ As such, millions of children do not have the means to access primary education even though it is their human right to do so. Other development professionals, in addressing the issue of how to get marginalized children in school, still do not use the language of human rights. The only legal suggestion made is the passage of anti-discrimination laws and the use of affirmative action.⁶⁸ Other suggestions include expanding options for schooling by increasing school supply, improving education quality, involving parents, and cash transfers and scholarships.⁶⁹ The UNESCO EFA report makes similar suggestions and is mainly focused on improving educational quality.⁷⁰ Population Council says the same in their report.⁷¹ Yet none of these organizations acknowledge education as a basic human right.

The World Bank, as the premier financier of education, can play an important role in the human rights field if they so choose. The understanding that education is a basic human right combined with the purchasing and funding power of the World Bank to ensure that primary education is truly free can achieve amazing outcomes for both the right to education and human rights in general. Martha Nussbaum calls for literacy for women for the reasons that it creates more job opportunities and gives women choices. Women also have more bargaining power for resources such as food and medical care, access to credit and property rights, the ability to move outside the home and stand on one's own outside the home, access to political process and legal system, greater demand for education of daughters, the ability to form social relationships as an equal with others, and controlling population growth and fertility.⁷² These are important reasons for educating women whether or not they ever seek paid employment outside the home. All these factors add up to living with dignity. These are also the reasons the development community uses for funding education. They are using similar words and now it is time to bring these fields together.

66. Tomasevski, *supra* note 62, at 24–25.

67. *Id.* at 6.

68. LEWIS & LOCKHEED, *supra* note 33, at 114–16.

69. *Id.* at 114–40.

70. UNESCO, *supra* note 9.

71. LLOYD, *supra* note 43.

72. Martha C. Nussbaum, *Women's Education: A Global Challenge*, 29 SIGNS J. WOMEN IN CULTURE AND SOC'Y 325, 332–35 (2003).

D. *Financing of Education Post 2015*

State responsibility includes the provision of the necessary financial resources for the realization of the right to education as well as putting in place legal frameworks to ensure domestic financing.⁷³ Human rights in general oblige States to provide resources to give effect to them.⁷⁴ Education is a public good and therefore the public interest in education requires that an individual should be able to claim the right on behalf of those who are victims of non-fulfillment of State obligations.⁷⁵ Because education is a public good, financing should come from domestic sources, allowing policy and practice to be subject to democratic accountability that reflects national priorities.⁷⁶ The World Bank has an important role to play here if it so chooses. They already acknowledge that post 2015 developing countries need to take the lead in mobilizing the financing necessary for their development.⁷⁷ They recognize that increasing domestic revenue remains a challenge and suggest improving tax capacity by broadening the tax base, improving tax administration, and closing loopholes.⁷⁸ Other suggestions include harnessing sustainable streams of natural resource revenue, improving expenditure efficiency, subsidy reform, procurement, and curbing illicit financial flows.⁷⁹ This is another crucial role the World Bank can play in assisting States to realize their human rights obligations with regard to education. By helping States to raise money the Bank is providing them the means to give effect to their obligations under international human rights law and the World Bank itself does not have to get involved in enforcement of human rights.

II. HUMAN RIGHTS AND CAPABILITIES APPROACH TO EDUCATION

A human rights and capabilities approach gives legitimacy to the idea of education as a basic human right. Education is the key to many other problems in women's lives.⁸⁰ A woman who has basic literacy is in a better position to bargain for basic resources such as food and healthcare for herself and her children.⁸¹ Literacy also allows women to move outside the home, to connect with other women, and to assert basic rights. Women's education, employment, and ownership rights play a

73. CIVIL SOCIETY JOINT STATEMENT, *supra* note 21, at 3.

74. Singh, *supra* note 8, at 16.

75. *Id.* at 17.

76. CIVIL SOCIETY JOINT STATEMENT, *supra* note 21, at 4.

77. THE WORLD BANK GROUP, FINANCING FOR DEVELOPMENT POST 2015, at 8 (Oct. 2013).

78. *Id.* at 8.

79. *Id.* at 8–12.

80. Nussbaum, *supra* note 72, at 327.

81. *Id.* at 332.

significant role in the evolution of family systems and conventions of intra family division.⁸² Education and employment outside the home also contributes to the reduction of women's deprivation because she has more of a voice and can contribute to the family's prosperity.⁸³

Furthermore, as Amartya Sen points out, development is a "process of expanding the real freedoms that people enjoy."⁸⁴ Political freedom, economic facilities, social opportunities, transparency guarantees, and protective security are all instrumental freedoms that contribute to the capability of a person to live more freely.⁸⁵ He says, "I see capability as a kind of freedom-freedom in the sense of opportunity."⁸⁶ Development itself must shift from the well-being of women to women's agency. In this way, women go from being seen as recipients of welfare programs to being agents in charge of their own well-being.⁸⁷ This approach criticizes the World Bank for seeing women as recipients of welfare programs rather than agents of change. The biggest argument for focusing on women's agency is the role agency plays in removing the inequities that depress the well-being of women.⁸⁸ This is also the role human rights play. Human rights already see people as agents in their own lives.

There is also language in the various human rights instruments that call for right to education beyond just participation in the formal economy. The Universal Declaration says, "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."⁸⁹ The International Covenant on Economic, Social and Cultural Rights (ICESCR) has similar language, stating, "Education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms."⁹⁰ The Convention on the Rights of the Child requires that education of a child shall be directed to, "The development of the child's personality, talents and mental and physical abilities to the fullest potential."⁹¹ The African Charter under the right to education says that, "Every individual may freely take part in the cultural life of his

82. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 189, 193 (1999).

83. *Id.* at 193.

84. *Id.* at 36.

85. *Id.* at 38.

86. AMARTYA SEN, *HUMAN RIGHTS AND THE CAPABILITIES APPROACH: AN INTERDISCIPLINARY DIALOGUE* (Diane Elson et al. eds., 2012).

87. SEN, *supra* note 82, at 187.

88. *Id.* at 193.

89. GA Res. 217A(III), *supra* note 7, art. 26, ¶ 2.

90. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, U.N. Doc. A/6316, at 49 (Dec. 16, 1966) art. 13(1).

91. Convention on the Rights of the Child, GA Res. 44/25, Annex, 44 U.N. GAOR Supp. No. 49, U.N. Doc. A/44/49, at 167 (Nov. 20, 1989) art. 29(1)(a).

community.”⁹² The American Declaration of the Rights and Duties of Man provides that, “every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living and to be a useful member of society.”⁹³ All of this is to show that the right to education is beyond just that which is needed for participating in the formal economy.

By funding education initiatives that aim to assist developing countries to educate all their population to achieve their highest potential whether or not they participate in the formal economy, the World Bank can change the conversation on education overnight. Rather than education for girls being at the whims of cultural beliefs and practices this approach legitimizes education for women and also means that education will not be neglected for the single goal of promoting economic growth. This viewpoint means that suddenly educating women simply to take care of their children is just as relevant as education for participation in the formal economy. Looking at education from a human rights and capability lens also allows for a right to secondary education, and perhaps even tertiary, if that is what is required for women to achieve their full potential.

III. PRIMARY EDUCATION

A. *The Importance of Primary Education*

Primary education is the key on which the right to education is premised. Being able to read and write allows a woman to make an income if needed and to care adequately for her children. Primary education is so important that the right to free and compulsory primary education is enshrined in the major human rights instruments.⁹⁴ It is also MDG goal number 2.⁹⁵ However, having this right enshrined in human

92. *Id.* art. 17(2).

93. *Id.* art. 7.

94. Universal Declaration of Human Rights, art. 26(1) (“Everyone has a right to education. Education shall be free, at least in the elementary and fundamental stages.”); International Covenant on Economic and Social Rights, art. 13(2)(a) (“Primary education shall be compulsory and available free to all.”); Convention on the Rights of the Child, *supra* note 91, art. 28(1)(a) (“make primary education compulsory and available free to all.”); African Charter on the Rights and Welfare of the Child art. 11(3)(a) (“States Parties shall take all appropriate measures with a view to achieving this right and shall in particular (a) provide free and compulsory basic education”); American Convention on the Rights and Duties of Man, ch. 1, art. 12 (“Every person has the right to receive, free, at least a primary education.”).

95. “Ensure that by 2015 all children, particularly girls, those in difficult circumstances, and those belonging to ethnic minorities, have access to complete, free, and compulsory primary education of good quality.” World Bank Brief, Education for All (Aug. 4, 2014), <http://www.worldbank.org/en/topic/education/brief/education-for-all>.

rights treaties, or as a MDG, does not mean girls still get a primary education. The language of the human rights treaties and the MDG are the same, both call for free and compulsory primary education. States must guarantee, respect, protect and fulfill the right to free and compulsory primary education.⁹⁶ The State has a positive obligation to make primary education immediately available and accessible.⁹⁷ This right is compulsory; no one can prevent a child from getting an education.⁹⁸ Despite this obligation the right to education especially for girls has still not been realized. Martha Nussbaum writes, “Women’s education is both crucial and contested. A key to the amelioration of many distinct problems in women’s lives, it is spreading, but it is also under threat, both from custom and traditional hierarchies of power and from the sheer inability of states and nations to take effective action.”⁹⁹

The way the World Bank funds primary education does not account for cultural issues. The World Bank is the largest multilateral source of funding for education, as well as one of the key players in forging global education and debt relief strategies.¹⁰⁰ However law does not bind the Bank, nor do they acknowledge that education is a human right.¹⁰¹ Despite this lack of acknowledgment for human rights, the World Bank has made impressive strides in realizing gender parity in girls’ education because they are able to force states to educate girls as a precondition of getting money. Yet even they have not fully achieved the goals they set out.

The World Bank made gender equality a key objective, especially in the areas of education, health, social protection and labor.¹⁰² They invest in both knowledge and operations to eliminate persistent gender barriers to accessing quality social services, entering the job market, and building resistance to shocks and volatility. While the MDGs have accomplished much with regards to girls’ education, one of their major limitations is that the targets keep getting missed. There is no incentive on the part of the States to achieve the targets by the date set and no form of retribution for failure to meet targets they simply get pushed out further.

Over the past twenty years there has been a sustained effort to close the global gender education gap at all levels. Two-thirds of the Bank’s partner countries have reached gender parity in primary education and girls outnumber boys in secondary education in over one-third of those countries. There are significant social benefits associated with schooling,

96. Graterol & Gupta, *supra* note 44, at 63.

97. *Id.*

98. *Id.* at 63–64.

99. Nussbaum, *supra* note 72, at 327.

100. Tomasevski, *supra* note 62, at 5.

101. *Id.* at 6.

102. WORLD BANK, GETTING TO EQUAL, *supra* note 39, at 2.

particularly with primary schooling.¹⁰³ In developing countries the rates of return in education are highest in primary education.¹⁰⁴ This is important because rates of return of education determine whether families send their daughters to school.

The World Bank has now come to the conclusion that it is not enough to simply get girls in school if they do not learn anything. Gender gaps in education now depend on whether girls and boys actually learn anything in school. It is what students learn, not the number of years spent in school that makes the difference. The Bank's focus is now on helping countries improve the capacity of their education systems and not just raise school attendance.¹⁰⁵ As such, they developed the Education Sector Strategy 2020: Learning for All (Strategy 2020) to explicitly address gender equality.¹⁰⁶ The purpose of Strategy 2020 is to help countries improve the capacity of their education programs rather than just focusing on school attendance.¹⁰⁷ This is yet another new program with a new deadline. This is the development Achilles heel, goals are not met and deadlines keep getting push out. The Development community keeps trying the same thing over and over and getting the same results. A new approach is needed and this is to use human rights treaties as a way to ensure compliance with development goals.

The Strategy 2020 is a reflection of the Bank's success in achieving gender parity in education, and also a reflection of their limitations. While the money the Bank funneled into developing countries did succeed in getting girls to school, it did not succeed in ensuring that they learn anything when they arrived. One of the other major issues is the importance of educational quality versus just school attainment. Part of the problem with using school attainment as a measure of economic growth is that it assumes that a year of school in one country is the same as another.¹⁰⁸ An increase in cognitive skills is directly related to distribution of earnings so therefore erecting schools without concern for educational quality does not meet the human capital objectives of governments. Basic equity and their economic well-being are the reasons to ensure that girls actually learn in school and why the measure should change to reflect cognitive learning rather than school attainment.

Impressive strides have been made in bringing girls into primary

103. Harry Anthony Patrinos, *Returns to Education: The Gender Perspective*, in GIRLS' EDUCATION IN THE 21ST CENTURY, *supra* note 58.

104. *Id.* at 55.

105. WORLD BANK, *GETTING TO EQUAL*, *supra* note 39, at 2–3.

106. *Id.* at 3.

107. *Id.*

108. Eric A. Hanushek, *Schooling, Gender Equity, and Economic Outcomes*, in GIRLS' EDUCATION IN THE 21ST CENTURY, *supra* note 58.

school education over the past 25 years.¹⁰⁹ While many countries have achieved near universal primary education and gender parity, disparity still exists within and across countries. These differences stem from the lagging involvement of excluded groups such as rural tribes in Pakistan, lower castes in India, Roma in Europe, and indigenous people in Latin America.¹¹⁰ Of the 60 million girls not in primary school, almost 70% are from excluded groups. Language and ethnicity is a bar to education for both boys and girls. Children living in remote areas face structural barriers due to distance and these barriers are most pronounced for girls.¹¹¹ Girls living in difficult circumstances and ethnic minorities are a specific focus of MDG 2.¹¹²

These are the types of girls that the one-size fits all approach taken by the World Bank miss. One of the problems with the capital approach is that it does not include everyone. Some people are always left out of the market. The World Bank and the capital approach are okay with this, human rights are not. Rights include everyone, not just those who can access resources. One of the reasons the MDG goals keep getting missed is because the free market can only do so much. Human rights bridge this gap. Some of the ideas put forward for reaching universal schooling include altering education policies and addressing discrimination by changing law and administrative rules, expanding options for out of school children, improving the quality and relevance of schools by ensuring that excluded girls receive a basic education, supporting compensatory preschool and in school programs that retain excluded children, providing incentives for households to overcome their reluctance to send girls to school.¹¹³ A rights based approach tackles all of these suggestions. Because there is a human right to primary education then human rights instruments can be used to expand schooling options, improve quality, and ensure girls receive a basic education. These initiatives cost money and this is where the World Bank has a role to play. By funding the human right to education the countries can no longer say that they do not have the resources and the World Bank has measurable outcomes that they can show to donors.

B. Rights Based Approach to Primary Education—The Indian Example

Anti-discrimination laws are important and useful. They at the very least set a precedent that discrimination will not be tolerated. These laws however have made a huge difference in the United States, Canada, and

109. LEWIS & LOCKHEED, *supra* note 33, at 1.

110. *Id.* at 1.

111. *Id.* at 2.

112. World Bank Brief, *supra* note 95.

113. LEWIS & LOCKHEED, *supra* note 33, at 113–14.

New Zealand.¹¹⁴ However the issue with many laws is access and enforcement. India has passed anti-discrimination laws against the Dalits and the European Union has robust laws regarding discrimination against the Roma. Nevertheless these two groups are still regularly discriminated against. While having these types of laws on the books is important, discrimination laws alone are not enough. The right to primary education is enshrined in every major human rights instrument. The World Bank should start to fund those countries that bring themselves in compliance with human rights obligations and deny funding to those who do not. This approach of the foundation of the legal precedent of human rights combined with the stick of education funding together will ensure that everyone truly experiences universal primary education.

India took a rights based approach to primary education and succeeding in drastically reducing the number of children out of school. The 2001 Indian Census showed that of the nearly 50 million children ages 7-14 not enrolled in school in India, 55% are girls.¹¹⁵ Ten years later in April 2011, 8 million children were still out of school.¹¹⁶ While this is a lot of children it is a significant improvement. In 10 years India had dropped the numbers of children not in school from 50 million to 8 million. This is a drastic improvement. While India has long been a recipient of World Bank funding, they also took a rights based approach by passing a law declaring that children have a right to education. In 2002 India amended their constitution to insert Article 21-A. This article provided a right to free and compulsory education to children ages 6-14 in a manner that the State may determine.¹¹⁷

In 2009, India passed the Right of Children to Free and Compulsory Education Act (RTE). Both Article 21-A and RTE came into effect in April 2010. The RTE in Section II clarifies that “compulsory” means providing free education and ensuring attendance and completion. It defines “Free” to mean that no child shall be liable to pay any type of fees, charges, or expense, which would prevent him from completing education. This is an important law. Not only does it provide that children have a right to education, but it also provides that they have a right to truly free education. By passing this law India drastically improved their school attendance numbers.

114. *Id.* at 116.

115. World Bank, Children Out of School, Primary, Female (giving table showing number of out-of-school female children of primary school age by country), <http://data.worldbank.org/indicator/SE.PRM.UNER.FE/countries>.

116. Aarti Dhar, *Eight Million Children Still Out of School*, HINDU (Apr. 1, 2011), <http://www.thehindu.com/features/education/8-million-children-still-out-of-school/article1591845.ece>.

117. Ministry of Human Resource Development, Government of India, Elementary Education, Right to Education, <http://mhrd.gov.in/rte> (last visited Apr. 14, 2014).

C. Education Discrimination in Africa

Article 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa directly addresses discrimination in education. It requires States Parties to take appropriate measures to eliminate discrimination and guarantee equal access to education and training and to eliminate stereotypes that perpetuate such discrimination.¹¹⁸ Africa is one area of the world that consistently lags behind in achieving the MDG targets. In 2011 only 93 girls were enrolled in primary school for every 100 boys.¹¹⁹ The numbers are even lower at the secondary level where only 66 girls are enrolled for every 100 boys.¹²⁰

The 15 countries in West Africa are among those with the worst adult literacy rates globally, below 35%.¹²¹ Poverty and discrimination are the main causes of the education disparity. Article 17 of the African Charter states simply "Everyone shall have the right to education."¹²² The Women's Charter goes further into detail providing in Article 12(2) that State parties shall take specific steps to promote literacy among women, to promote education and training for women at all levels, and to promote the enrollment and retention of girls in schools and other training institutions.¹²³ The Protocol makes no suggestion for how this will be done.¹²⁴ Only 28 African states have signed and ratified the Women's Protocol.¹²⁵ The African Charter fares better in that every state but one has signed and ratified.¹²⁶ In addition a number of countries have constitutional guarantees that reflect international human rights standards that primary education should be free, compulsory, and available to all.¹²⁷

Yet despite this fact Africa still lags behind on providing education to all its citizens especially its girls.¹²⁸ The Protocol and Charter are

118. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 12(1)(a-b), at <http://wgd.au.int/en/content/protocol-african-charter-human-and-peoples-rights-rights-women-africa>.

119. U.N. Millennium Development Goals Fact Sheet (Sept. 2013) [hereinafter Millennium Development Goal 3], http://www.un.org/millenniumgoals/pdf/Goal_3_fs.pdf.

120. *Id.*

121. UNESCO, *supra* note 9, at 18.

122. African Charter on Human and Peoples Rights, art. 17, Oct. 21, 1986, 1520 U.N.T.S. 217.

123. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 12(2)(a-c), July 2003, 1 AFR. HUM. RTS. L.J. 40 [hereinafter Maputo Protocol] ¶ 112(1) *Id.*

124. *Id.*

125. *Id.*

126. African Commission on Human and Peoples' Rights, Ratification Table: Charter on Human and Peoples' Rights [hereinafter *African Commission on Human and Peoples' Rights*], <http://www.achpr.org/instruments/achpr/ratification/> (last visited Feb. 12, 2015).

127. Tomasevski, *supra* note 62, at 3.

128. UNESCO, *supra* note 9, at 18.

hampered by the usual enforcement problems with human rights.¹²⁹ States sign because it looks good to do so, but either cannot or will not uphold their obligations. This is where the World Bank and other development organizations come into play. They already know that poverty and discrimination are barriers to education for girls.¹³⁰ The African Women's Protocol, CEDAW, and CRC all provide for a right to education that is free of discrimination and place obligations on states to assist with the cost.¹³¹

IV. SECONDARY EDUCATION

While primary education is important, secondary education is where the largest gains are to be made for girls.¹³² It is also where they face the most discrimination and, as a result, is the hardest to attain.¹³³ The right to secondary education exists in human rights, but is at the whim of state resources.¹³⁴ Gender parity in primary and secondary education is Millennium Development Goal Number 3.¹³⁵ This goal will not be met by 2015.¹³⁶ Similarly to primary education the language of rights will be used to overcome discrimination in secondary education. Completion of secondary education brings the most positive benefits for girls such a drastically increased earnings to dramatic decreases in fertility and mortality.¹³⁷

129. See Maputo Protocol, *supra* note 123, see also *African Commission on Human and Peoples' Rights*, *supra* note 126.

130. World Bank, *Guinea Beyond Poverty: How Supply Factors Influence Girls' Education in Guinea* (Mar. 29, 1996), <http://documents.worldbank.org/curated/en/1996/03/696672/guinea-beyond-poverty-supply-factors-influence-girls-education-guinea>.

131. See Maputo Protocol, *supra* note 123; Convention on the Rights of the Child, *supra* note 91; CEDAW, *supra* note 53.

132. UNGEI, *supra* note 36 at 2.

133. *Id.* at 3.

134. International Covenant on Economic, Social and Cultural Rights art. 13(1)(b), Dec. 16, 1966, The Core International Human Rights Treaties (2006) ("Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means . . ."); Universal Declaration of Human Rights art. 26(1), Dec. 10, 1948, United Nations, <http://www.un.org/en/documents/udhr/> (last visited Feb. 15, 2015) ("Technical and professional education shall be made generally available"); Convention on the Rights of the Child, *supra* note 91, art. 28(b); African Charter on Human and Peoples Rights art. 3(b), Oct. 21, 1986, 1520 U.N.T.S. 217, "Encourage the development of secondary education and make it free and accessible to all."). The American Declaration does not say anything about secondary education.

135. *Supra* note 118.

136. "Promote gender equality and Empower women: Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015." *Id.*

137. UNGEI, *supra* note 36, at 2.

There are also economic advantages of secondary schooling over primary schooling.¹³⁸ While boys will reap economic benefits from even primary schooling, girls do not start to reap economic benefit until they reach secondary school.¹³⁹ The gender parity achieved by girls in primary school has not translated to secondary school enrollment.¹⁴⁰ There are specific factors that affect a girl's ability to continue on to secondary school.¹⁴¹ The main five are ensuring a reasonable distance to school, availability of private, safe latrines, ensuring a safe and secure school environment, ensuring the presence of female teachers in school, and relevance of the curriculum to life skills and the labor market.¹⁴² Each of these presents their own unique challenges.

A. Distance as a Barrier to Education

For girls having a village school can mean the difference between being school or not.¹⁴³ Cultural and religious norms prevent parents from sending a girl to school if she has to travel long distances.¹⁴⁴ There are also legitimate concerns about sexual violence. Traveling long distances for school makes girls vulnerable to sexual abuse.¹⁴⁵ Additionally if a girl must board with another family, assuming this is even allowed, it is an additional cost the family must provide.¹⁴⁶

Increasing the distance to school by only half a kilometer reduces a girl's chance of continuing in school by 20%.¹⁴⁷ The absence of a school close to home also affects a parent's decision about whether to send a girl.¹⁴⁸ It impacts poor families, as they are unlikely to afford the increased fees for the girl to travel.¹⁴⁹ Because returns for girls are mainly seen at the secondary level, parents may feel that the girl did not gain anything from her primary education and will therefore be less likely to send her to secondary school.¹⁵⁰ Additionally the parents may have concerns about the girl's safety and also may not want to lose the time

138. *Id.*

139. *Id.* at 2–3.

140. *Id.* at 2.

141. *Id.*

142. *Id.*; see also LLOYD, *supra* note 43; see also generally Lloyd, *supra* note 38 (describing the alternative pathways to receiving female education); LEWIS & LOCKHEED, *supra* note 33.

143. UNGEI, *supra* note 36, at 3.

144. Graterol & Gupta, *supra* note 44, at 78.

145. May Rihani, *Keeping the Promise: 5 Benefits of Girls' Secondary Education*, http://siteresources.worldbank.org/EDUCATION/Resources/Summary_Book_Girls_Education_MayRIHANI.pdf (last visited Feb. 16, 2015).

146. *Id.*

147. UNGEI, *supra* note 36, at 3.

148. *Id.*

149. *Id.*

150. *Id.* at 2–3.

she spends going back and forth to school because that is time spent doing chores.¹⁵¹ Early marriage may also prevent a girl from going to secondary school.¹⁵² A village or community school helps to eliminate many of these barriers.¹⁵³ In addition a community school is based on the decision making of the community and has the input from parents.¹⁵⁴ This is a perfect example of how to combine the capital approach of the World Bank with a rights-based approach.

Both the International Covenant and the Universal Declaration of Human Rights talk about how secondary education should be “generally available to all.”¹⁵⁵ The broad based language gives a lot of leeway, but this also means that it is easy to comply.¹⁵⁶ By funding the building of village schools the World Bank is providing a means for girls to attend school while also helping States to comply with their human rights obligations. The Convention on the Rights of the Child goes even further and says, “Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.”¹⁵⁷ The Convention is also written in an open ended enough fashion for the World Bank to fund various forms of secondary education and also help states comply with their human rights obligations.¹⁵⁸

Another way that a rights based approach to education operates to help girls is that it looks at some of the peripheral reasons why a girl is not in school. Looking at girl’s education from a capital perspective means building more schools, and while this is good and needed only looking at this problem from that perspective means that cultural factors are being missed. Building the school should be the first step and not the only step. If the school is built but the girl does not have access to latrines, or the school environment is not safe, then she will not attend.¹⁵⁹ The rights based approach looks at all these factors.

B. Incentives

When a girl is in school, she is not at home helping her family with

151. *Id.* at 3.

152. *Id.*

153. *Id.*

154. LEWIS & LOCKHEED, *supra* note 33, at 12.

155. See International Covenant on Economic, Social and Cultural Rights, *supra* note 90; see also G.A. Res. 217A(III), *supra* note 7.

156. *Id.*

157. Convention on the Rights of the Child, *supra* note 91, art. 28(b).

158. LEWIS & LOCKHEED, *supra* note 33, at 16.

159. UNGEI, *supra* note 36, at 2.

chores. To overcome cultural beliefs that after a certain age a girl should be married or at home helping her family, development agencies have used cash incentives to keep girls in school.¹⁶⁰ These programs have been successful because they give a cash incentive to send girls to school.¹⁶¹ They have proven effective in Brazil, Ecuador, Bangladesh, Honduras, Mexico, Nicaragua, and Chile.¹⁶² These programs usually work by providing cash transfers to mothers if children maintain 85% attendance.¹⁶³ The cash incentives essentially treat going to school as a job and pay families for sending their daughters to school thereby placing value on a daughter's education.

Another way of keeping girls in school is through the provision of scholarships.¹⁶⁴ There is a human rights basis for this as well. The Convention on the Rights of the Child provides that states should provide financial assistance to assist children in going to secondary school.¹⁶⁵ It does not specify scholarships, so this could be a scholarship or a cash incentive.¹⁶⁶ Furthermore the CRC requires that states take measures to prevent dropout rates and encourage regular attendance.¹⁶⁷ The cash transfers are conditioned on regular attendance in school. CEDAW also requires that girls have an equal opportunity to compete with boys for scholarships and that states reduce dropout rates and encourage girls who dropped out of school to return.¹⁶⁸ The development community is already using cash incentives to keep girls in school.¹⁶⁹ There is also a human rights basis for doing so. This is another way that development and human rights intersect and where the development community can use international human rights instruments as a foundation for their programs. By funding secondary education as required by human rights, the development community also gives effect to human rights treaties that have long been lacking any type of enforcement mechanism.

V. CULTURAL BARRIERS TO EDUCATION

Cultural factors play a role in girl's education.¹⁷⁰ Teachers and male

160. LEWIS & LOCKHEED, *supra* note 33, at 16.

161. *Id.*

162. *Id.* at 141–42.

163. *Id.*

164. Convention on the Rights of the Child, *supra* note 91, art. 28(b).

165. *Id.*

166. *Id.* art. 28(b)

167. *Id.* art. 28(e).

168. CEDAW, *supra* note 53, art. 10(c)–(f).

169. UNGEI, *supra* note 36, at 5.

170. Graterol & Gupta, *supra* note 44, at 55. *See generally* GLOBAL PARTNERSHIP FOR EDUCATION, ACCELERATING TRANSITION OF GIRLS TO SECONDARY EDUCATION: A CALL FOR

students interact with girls through the gendered lens of their culture.¹⁷¹ Because of this girls and boy are treated differently in school. The perception of girls abilities compared with boys affects their schooling and ability to learn.¹⁷² Having properly trained female teachers in the classroom may mitigate some of these gendered stereotypes.¹⁷³ In addition parents in traditional societies are more likely to send girls to school if the school is single sex or if there are female teachers.¹⁷⁴ Girl's schools have proven effective to attracting and retaining students especially in cultures where women are isolated.¹⁷⁵

The language of the major human rights instruments also provides for this right. Making secondary education "generally available" to all means considering the secondary factors that keep girls from school. In addition the Convention the Rights of the Child includes language requiring that States encourage school attendance and reduce dropout rates.¹⁷⁶ Article 29 goes even further and requires that education be directed toward development of the child's personality, talents and mental and physical abilities to their fullest potential.¹⁷⁷ This is language directly from Nussbaum and Sen, education is important because it allows a girl to achieve her full potential.¹⁷⁸

A. Employment Discrimination as a Barrier to Education

Whether it is Bangladesh, India, Pakistan, or Africa the common denominators that still bar girls from education are cultural beliefs that a girl will only marry and so education will not do her any good, and the economic reality that due to employment discrimination a boy is likely to have more job prospects and earn more when he is employed.¹⁷⁹ When resources only allow for educating one child the family chooses to educate the boy because he is more likely to support them in old age.¹⁸⁰ School curricula and instructional techniques reinforce women's domestic role and inferiority to men.¹⁸¹ At the same time schooling

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171. Graterol & Gupta, *supra* note 44, at 56; UNGEI *supra* note 36, at 5.

172. UNGEI, *supra* note 36, at 5.

173. *Id.* at 6.

174. *Id.*

175. LEWIS & LOCKHEED, *supra* note 33, at 125.

176. Convention on the Rights of the Child, *supra* note 91, art. 28(e).

177. *Id.* art. 29(1)(a).

178. *See generally* Nussbaum, *supra* note 72; SEN, *supra* note 82.

179. *See generally* Wanak, *supra* note 15; Anderson, *supra* note 16; Graterol & Gupta, *supra* note 44.

180. Wanak, *supra* note 15, at 112.

181. Jane Arnold Lincove, *Growth, Girls' Education, and Female Labor Participation: A Longitudinal Analysis*, 41 J. DEVELOPING AREAS 45, 48 (2008).

promotes literacy, analytical thinking, knowledge of hygiene and other basic skills that increase home productivity.¹⁸² Schooling alone is not enough to ensure women's agency.¹⁸³ It also does not guarantee that they will be able to participate in the labor market.¹⁸⁴ Though they come from different regions the cultural attitudes are the same and are a barrier to education that the World Bank and others have not been able to overcome.¹⁸⁵

Investment in education benefits development in terms of both home productivity and workforce development.¹⁸⁶ The division of these benefits depends on variables such as religion, social norms, family structure, and attitudes toward women's work.¹⁸⁷ Despite high levels of schooling gender segregation and wage discrimination limit opportunities, in some countries educated women still do not join the formal labor economy.¹⁸⁸ In other countries home production rather than labor market participation is the focus of female education.¹⁸⁹ Labor discrimination keeps women out of certain fields.¹⁹⁰ Women also require more education to get certain jobs that men can get with less education.¹⁹¹ All of this translates into difficulty in justifying education for women.

A good example of this issue is with Pakistan. They have a conservative culture and have long been an outlier in girl's education. Girls lag behind boys in educational access, in the quality of schooling available, and in outcomes of education.¹⁹² Low education levels trigger a cycle where poorly educated women cannot get well-paying jobs and this decreases incentives for parents to invest in girls schooling.¹⁹³ Women with up to ten years of education have a high chance of not working.¹⁹⁴ As education increases beyond ten years women begin to join the labor force in larger numbers.¹⁹⁵ Barely 19% of women are fortunate enough to have beyond ten years of education.¹⁹⁶ This staggering difference between men and women is related to Pakistan's conservative

182. *Id.*

183. *Id.*

184. *Id.* at 45.

185. *Id.*

186. Lincove, *supra* note 181, at 64.

187. *Id.*

188. *Id.*

189. *Id.* at 45.

190. Monazza et al., *supra* note 58, in *GIRLS' EDUCATION IN THE 21ST CENTURY*, *supra* note 58.

191. *Id.*

192. *Id.* at 67.

193. *Id.* at 68.

194. *Id.*

195. *Id.* at 73.

196. *Id.* at 74.

culture.¹⁹⁷ Only wage employment is acceptable work for women and even then only a small percentage of women have acquired enough schooling to take these jobs.¹⁹⁸

The Pakistan example is exactly the reason why capabilities and rights are important. Education presented from a human capital perspective and measured only by labor force participation is likely to never pan out as promised. In the Pakistan example even though returns to education and cognitive skills are substantially larger for women than men, women still have lower levels of education than men.¹⁹⁹ The researchers who are writing for the World Bank are puzzled by why this is the case and speculate that perhaps it is because parents allocate less education to daughters than sons even though the labor market rewards women's education because the returns accruing to the parents are lower from a daughter's education than from a son's.²⁰⁰ The other reason they hypothesize is that women's total labor market return from employment is much lower than for men because women earn much less.²⁰¹ They do know for certain because they do not have the language to account for cultural variables that do not fit into neat economic theories. They conclude by saying that Pakistan must change its culture regarding the conservatism of women and men in the labor force, but provide no solutions as to how to achieve this change.²⁰² Looking at this issue from a human rights perspective provides the answers and the methods to overcome these cultural barriers.

Furthermore because women may never join the formal economy or move back and forth between the formal and informal economy, economic growth alone is not a sufficient way to promote women's education. Development theories that focus solely on economic growth are likely to shortchange female education.²⁰³ If discrimination and cultural beliefs keep women out of the formal economy then these returns never manifest and the society never sees the benefit of educating women. However if education leads to an increase in home production then education benefits women and society whether or not the woman ever participates in the formal economy. Nussbaum too is also critical of measuring the success of schooling by economic attainment and quality of life is measured by only looking at GDP.²⁰⁴ This approach is inadequate for analyzing the problems women face in the developing

197. *Id.*

198. *Id.* at 76.

199. *Id.* at 84.

200. *Id.* at 84–85.

201. *Id.* at 86.

202. *Id.* at 88.

203. Nussbaum, *supra* note 72, at 327.

204. *Id.*

world.²⁰⁵ The statistics of decreased child and maternal mortality are impressive for funding purposes, but are also important to justify the need for education for women.

B. Marriage Expectations

In India once a girl marries she is expected to fulfill child-rearing and domestic roles, while men are expected to undertake paid work outside the home.²⁰⁶ Furthermore in many countries it is the norm for a woman to settle with her husband's family. Therefore the husband's family gains the benefits of the woman's education and not the woman's family. Because of this many families see educating a boy as insurance for their future. The only way to combat this is for governments to provide social security protection to the elderly thereby ending the requirement that protection from poverty in old age is dependent on the birth of a son.²⁰⁷ In Africa some also consider education to be a waste of time since marriage and child rearing should be the limit of a girl's ambitions.²⁰⁸

The issue with secondary school enrollment for girls is that it happens at the age that some cultures believe a girl should marry. Because the returns on secondary education are not as great for girls as they are for boys, parents do not see the point in sending a girl to secondary school. Enrollment in secondary education will only increase when parents see a benefit for their daughter in lieu of marriage. Interestingly researchers in Bangladesh found an example of secondary education being tied directly to marriage outcomes.²⁰⁹ Parents invested in their daughters schooling because it helped her to make a good marriage.²¹⁰ The girl was not allowed to continue in school beyond marriage age unless no offers were forthcoming.²¹¹ There was also a cultural bias against girls being more educated than their grooms so parents had to find a groom with more education.²¹² Therefore girls were only allowed to complete enough schooling to make themselves attractive to marry and no more.²¹³ Education is desirable because it helps girls compete in the marriage market.²¹⁴ Young women expressed the idea that if they were educated

205. *Id.* at 328.

206. Anderson, *supra* note 16, at 82.

207. *Id.*

208. Wanak, *supra* note 15, at 112.

209. See generally Mary Arends-Kunming & Sajeda Amin, *Women's Capabilities and the Right to Education in Bangladesh*, 15 INT'L J. POL., CULTURE & SOC'Y 125 (2000).

210. *Id.* at 131.

211. *Id.*

212. *Id.* at 130.

213. *Id.* at 131.

214. *Id.*

they could teach their children.²¹⁵ Young men interviewed expressed a preference for educated wives.²¹⁶

This is why new language and a new way of measuring outcomes are imperative. From a World Bank perspective, this looks like a successful program. Girls are in school and they are learning. However looking at it from a capabilities and rights perspective, the outcome is a lot less promising. Only measuring school attainment and arguing that school attainment is a good investment because educated women make better mothers does nothing to challenge cultural norms and the status quo.²¹⁷ It assumes that marriage and motherhood are all a woman should strive for and allows discrimination that keeps women in those roles to continue. Using the language of rights a woman can find her right to education in CEDAW, the CRC, and other human rights instruments. In addition the Bangladesh constitution guarantees the eight years of primary education completely free and according to the government ten years of schooling are offered to girls to encourage them to enroll.²¹⁸ Applying a capabilities approach encourages women to see a role for themselves beyond that of just wife and mother and encourages her to see education as a means to that end. The reason why capabilities must be paired with human rights and capital is because capabilities alone are not enough. If schooling emphasized only a daughter's empowerment and nothing else parents may be unlikely to send their daughters to school, unless there was an economic incentive for doing so.²¹⁹ This is where the World Bank and human rights work together effectively.

When researchers returned in 2000 there was an increase in women's employment, and a theme emerged about education as a means to provide a safety net for girls who are physically unattractive and not likely to marry.²²⁰ Women who have experienced these losses recognize that education plays an important role in reducing women's vulnerability and lack of agency.²²¹ People also began to see education as a way to generate an income.²²² However no one talks about how education empowers women or changes the balance of power within the household. Also the norm was still marriage and education to attract a good husband.²²³ While there was an acknowledgment that education would provide an alternative should the marriage offer not materialize, there was no

215. *Id.*

216. *Id.* at 130.

217. *Id.* at 127.

218. Tomasevski, *supra* note 62, at 48.

219. Arends-Keunig & Amin, *supra* note 209, at 128.

220. *Id.* at 134.

221. *Id.*

222. *Id.* at 133.

223. *Id.* at 135.

thought about forgoing marriage. This study showed that education alone does not improve women's status or challenge patriarchal norms. Women who are educated may be more empowered than those who are not, but their choices are still constrained by patriarchal norms. This shows that is not sufficient just to educate women. It is the content of the education that matters too. In these villages marriage is still the only acceptable path for girls and they have little say in the matter. While this is an old study it very well illustrates the tensions between the capability and rights based approach to education versus the human capital approach taken by the development community.

CONCLUSION

Given the time and money spent on the Millennium Development Goals, the World Bank has an economic as well as moral obligation to see these goals through to completion. The Bank has made impressive strides in assisting countries to provide education for girls. However they are at the limits of what can be done using only a market based approach. Even they acknowledge that spending more is not enough to improve students learning outcomes.

Additionally market based responses cannot overcome social and cultural barriers. This is where human rights play an important role. The right to education has long been enshrined in human rights. Though there are enforcement mechanisms in the Optional Protocol of some human rights treaties, most suffer from an inability to enforce the rights contained in the treaty. The Bank has funded education divorced from human rights. In order to accomplish the MDG goals by 2030 the development community must take a rights based approach to development and fund countries and organizations that are approaching education through the lens of human rights and capabilities otherwise they will continue to miss targets. Human rights also gain an enforcement mechanism through the stick of aid funding to countries that comply with their human rights obligations. To achieve the goal of using funding human rights to achieve the MDG goals both sides are going to have to change. The World Bank is going to have to acknowledge human rights and stop looking at the world through the narrow lens of economics and the human rights world is going to have to get over its abhorrence of paying countries to comply with human rights norms. Both fields have the same goals and both can assist each other in achieving their outcomes.

