Equality in Education

Around the world, enrolment, attendance and completion rates in education vary substantially according to membership in disadvantaged groups, including groups of lower socio-economic status. A recent country report published by The Equal Rights Trust identified numerous patterns of inequality and discrimination in the area of education in Kenya, based on ethno-regional difference, gender, sexual orientation, disability, albinism, HIV status and other characteristics defining disadvantage in the Kenyan context.[1] Ethno-regional differences in education mirror stark differences in economic development: for example, educational participation and outcomes in North Eastern Province and the arid districts of Rift Valley and Eastern Provinces are substantially below the national average.

Stigma and prejudice against sexual minorities result in exclusion from school and other educational inequalities. In Nairobi, ERT was told: "For lesbian women, one of the worst sources of discrimination is the family: parents do not understand sexual orientation, and often withdraw support for education of their daughters once they find out that they are lesbians."[2] A significant number of persons with disabilities interviewed by ERT stated that familial prejudice about disability led their parents to prevent them from attending school. A man with a physical disability in Kisumu said he was the only one of his six siblings who did not go to school. The ERT report also identifies serious problems in access to education for children with albinism as a result of schools' failure to take steps to accommodate their visual impairments; the categorisation of these children as blind has the effect not only of condemning them to poor school performance, but also of denying them access to appropriate healthcare addressing their particular problems.

Education is an area very sensitive to all types of socially and politically constructed disadvantage – an area in which such disadvantage is reflected and amplified. Therefore, the area of education should be covered comprehensively in every country's national equality legislation, and equality considerations should underlie every piece of education law. However, most national legal systems to date fall short. States have a long way to go to comply with the relevant international and regional human rights norms: equality provisions throughout international and regional instruments, read in conjunction with articles related to the right to education. The 1961 UNESCO Convention against Discrimination in Education contains useful principles to guide law-makers, and a wealth of good (and bad) practice can be gleaned by policy makers from the work of the UN Committee on the Rights of the Child, other treaty bodies as well as the remarkable work of Gay McDougall, the former UN Independent Expert on Minority Issues, whose

mandate contributed greatly to highlighting equality in education as a right of children belonging to minorities.

This issue of *The Equal Rights Review* contains materials which look at just a few out of the dozens of complex issues around educational equality. After decades of attention to – and action on – gender inequalities in education, it continues to be a massive problem in most countries, ubiquitous though frequently coming in more subtle and paradoxical manifestations. Unterhalter's study takes a deep plunge into these challenging waters. The worst gender inequalities, of course, are those of pure denial of access to education, which is highly co-related with poverty. The Kenyan government described a reality not at all specific to Kenya alone, when it acknowledged, in a report to a UN treaty body:

> "Poverty hinders many parents from educating their daughter beyond primary school. In some cases, where resources are scarce, parents still prefer boys' education over girls' meaning that fewer women would qualify for meaningful wage employment."[3]

An article by Foster and Norton relates the British experience on Roma education – a very important and timely contribution, as Europe currently seems to be unknowingly imitating the British journey, sliding downhill from ethnically-defined positive action to ethnically-blind policy. As shown in the article, in Britain under the present coalition government, the recent closing of programmes explicitly targeting the Gypsy, Roma and Travellers and merging those under broad childhood or regional schemes is leading to deterioration in educational achievement. In the European Union, the national strategies for Roma integration submitted so far by EU member states to the European Commission spell out a backwards trend with regard to

policies to achieve educational equality for Roma. One of the basic policy principles adopted earlier on which there seemed to be a degree of consensus and which is backed by the European Commission defined the need for "explicit but not exclusive" targeting of Roma in policy-making and the allocation of resources[4]. However, in a characteristic example of an emerging trend, the Dutch, German and a number of other national strategies express a principled opposition to ethnic explicitness. Among education policy people, I am hearing a resurgence of statements of the type: "If we can properly address socio-economically disadvantaged groups, this will cover also the eligible Roma, because most are poor anyway."

We have come a full circle. This thinking reminds me of the responses of the Bulgarian, Romanian and other Eastern European governments back in the early 1990s when confronted with the charges that, when it comes to Roma, they were having a racial discrimination problem at home to deal with. Back then, the post-communist governments argued that there was no such a thing in their societies as racial or ethnic discrimination; and that all allegedly ethnic disadvantage was in fact of a socio-economic nature (and as such, best addressed by themselves as, on account of having lived in a Communist society, they knew everything about how to remove socio-economic disadvantage). Twenty years later, and more than a decade after the historic Race Equality Directive was adopted by the European Council[5], this form of denial of racism is back. Probably due to a fatigue with identity politics that may have gone too far in the past decade, the emerging fashion as demonstrated in many of the national strategies for Roma inclusion is a new denial of ethnic identity as a determinant of equality policy. This is a leap not just in the opposite direction but also backwards.

Where racism is at play, ethnic identity can't be ignored as a determining, if not exclusive, factor of eligibility for targeted educational policies. If – as the EU institutions and the individual EU governments have long been acknowledging in dozens of documents – it is the Roma ethnic identity that is one of the grounds of discrimination and inequality suffered by the Roma, then it has to be one of the grounds on which the beneficiary group of positive action is defined.

But it is exactly the approach to positive action that is the problem here. A missing angle in the large Roma education discourse at present is that of modern equality law. The lack of a clear equality perspective is particularly damaging in respect to forming a vision on how positive action benefitting Roma equality in education should look like. This is too bad, because positive action is the key to educational equality for disadvantaged groups in general and Roma in particular.

The Declaration of Principles on Equality, expressing a moral and professional consensus among experts and advocates, stated at Principle 3:

> "To be effective, the right to equality requires positive action. Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality."

The Declaration defines positive action as a necessary element of the right to equality that should be present at the policy level from the start, not as an afterthought of good will towards a vulnerable group, undertaken once formal equal treatment is achieved. The "particular groups" must

therefore be defined in equality-relevant ways: in order for equal rights in the area of education to be realised, positive action is mandatory where there is inequality linked to a particular protected characteristic and it is proportionate to take a particular measure. This understanding is one of the most important achievements of the developing frameworks and concepts of equality law in Europe and elsewhere. It can also be described as a departure from the notion of formal universal equality and a movement toward what the EC has termed "substantive equality in practice". Many of the national strategies for Roma integration, however, mark a return to the formal equality approach, even though it is most of the time masked in confusing rhetoric.

The third article in this volume's Special is about school exclusions in the UK. ERT invited Brenda Parkes to write about this issue in the aftermath of the riots that shook London and other English cities in August 2011. As a foreigner living in Britain, I have been puzzled for years by the weird phenomenon of exclusions which my British colleagues seemed to accept as a matter of course. Both the high numbers and the apparent ease with which young children can be thrown out of schools in Britain seemed to me eccentric. Then last summer we saw the riots, defined not by any political agenda but by young people breaking shop windows in order to obtain running shoes. I supposed that school exclusions were one of the mechanisms that had been manufacturing the rioters. But as I was wondering if exclusions were indeed a key factor for "the ruin of many a poor boy", Prime Minister David Cameron came on TV saying angrily that more discipline was needed in schools, and expressed regret that school exclusion decisions had been frequently overturned by Tribunals. Parkes' article in

this issue describes the recent trend in the spirit of Cameron's concerns, with exclusions being made even easier than before.

Finally, this issue contains a double interview on equality in higher education, in which David Ruebain and Marcelo Paixão touch upon some of the more controversial issues of higher education equality. The sphere of higher education remains one in which efforts to achieve equality in access, results, onward opportunities, research parameters and staff promotions have lagged behind similar efforts in the spheres of primary and secondary education. But the role which higher education plays, both in the lives of individual students and in society as a whole, means that the impact of any inequalities within this sector can be wide-reaching. The interview illustrates approaches to realising equality in higher education in two leading countries in this area, Brazil and the UK.

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1   The Equal Rights Trust, *In the Spirit of Harabmee: Addressing Inequalities and Discrimination in Kenya*, February 2012.

2   *Ibid.*, p. 122.

3   Committee on the Elimination of Discrimination against Women, *Seventh Periodic Report of State Parties: Kenya*, UN Doc. CEDAW/C/KEN/7, 2010, Para 167.

4   *Vademecum: The Ten Common Basic Principles of Roma Inclusion*, European Commission, undated, available at: http://www.coe.int/t/dg4/youth/Source/Resources/Documents/2011_10_Common_Basic_Principles_Roma_Inclusion.pdf.

5   Council Directive EC/2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 29 June 2000, OJ L180/22.