

**“RIGHT TO QUALITY EDUCATION FOR MARGINALIZED
CHILDREN: MEXICO, PERU, AND THE INTERNATIONAL
HUMAN RIGHTS REGIME”**

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Executive Summary

The right to non-discrimination in education is at the bedrock for truly universal access to quality education, especially for indigenous children, girls, and children with disabilities, as it is true for Mexico and Peru. In particular, the human rights law on the right to education for children is relevant in today's human rights rhetoric, critical for the development of children, and essential for the fulfillment of universal human rights. The rights of children and education intersect at multiple areas, as it comes apparent throughout this thesis. The realization of universal education within countries and its usefulness of the international standards are intriguing topics to research, thus the United Nations Member States of Mexico and Peru, alongside said international laws, are the focus of this comparative analysis. A comparative perspective provides a unique lens in the way of comparing the countries' history, demographics, and how governments have instituted these internationally set standards for human rights.

Mexico has constitutionalized the right to free primary and secondary education for the country. Peru under their first indigenous president began to implement bilingual education for a more inclusive educational experience. Furthermore, both countries have been actively involved in conversations on women's rights and indigenous peoples' rights at the United Nations, hosting special rapporteurs and adhering to provisions that allow for individual complaints to reach this global human rights body against the State. At the same time, both have been notorious for their continuous subjugation of marginalized communities, including indigenous groups, women, and people with disabilities clearly visible in children's ability to exercise their right to education.

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“Right to Quality Education for Marginalized Children: Mexico, Peru, and the International Human Rights Regime”

Introduction

The right to non-discrimination in education is at the bedrock for truly universal access to quality education, especially for indigenous children, girls, and children with disabilities, as it is true for Mexico and Peru, two countries with a similar history and social dynamics. In particular, the human rights law on the right to education for children is relevant in today’s human rights rhetoric, critical for the development of children, and essential for the fulfillment of universal human rights. The rights of children and education intersect at multiple areas, as it comes apparent throughout this thesis. A comparative perspective provides a unique lens in the way of comparing the countries history, demographics, and how governments have instituted these internationally set standards for human rights. The realization of universal education within countries and its usefulness of the international standards are intriguing topics to research, thus the United Nations Member States of Mexico and Peru, alongside said international laws, are the focus of this comparative analysis.

Mexico and Peru are contrasted with and against each other as well as with the internationally ratified human rights norms. Their involvement at a global scale to advance human rights and freedoms vary. Mexico, on the one hand, has pioneered in Latin America for recognizing social rights within its constitution in the 20th century. Peru, on the other, has been a catalyst force in the international recognition of indigenous rights by leading the American Declaration on the Rights of Indigenous Peoples adopted by the Organization of American States July 15, 2016 after a seventeen-year-long wait. In the scope of education, a universally recognized human right beginning with the Universal Declaration of Human Rights of 1948, both Member States have

progressed in achieving continuous growth in expanding the right to education to children. Mexico has constitutionalized the right to free primary and secondary education for the country. Peru under their first indigenous president began to implement bilingual education for a more inclusive educational experience. Furthermore, both countries have been actively involved in conversations on women's rights and indigenous peoples' rights at the United Nations, hosting special rapporteurs and adhering to provisions that allow for individual complaints to reach this global human rights body against the State. At the same time, both have been notorious for their continuous subjugation of marginalized communities, including indigenous groups, women, and people with disabilities. Mexico, Peru, and the international human rights of these three groups of children are researched and analyzed in this thesis.

The methodology of this research includes namely the use of international jurisdiction on human rights treaties and the relevant provisions that reflect the focused marginalized groups with their right to education. Primary sources such as constitutions and legislations at the national levels also enhance this report. Additionally, academic journals, reports from United Nations officials and independent experts, as well as from civil society members provide useful information and qualitative data that fill the gap on dry statistical data. Data from organizations such as the World Bank and International Monetary Fund at the international level paired with national governmental agency reports provided a useful platform for contrast against qualitative reports. Additionally, national online newspapers were useful in gathering the most recent information on current events in both countries.

The mandate of United Nations Special Rapporteurs became a large influence in framing this thesis. Their work is unique in that they are independent experts on a voluntary basis and work to be non-politicized human rights advocates. As this thesis will explore, the intensity and weight

of their mandate is not to be taken lightly. The reports and research they produce is a true testament for their sincere belief in universal human rights. Former Special Rapporteur to the right of education Kishore Singh's 2014 report to the Human Rights Council (A/HRC/26/27) on "national assessment at the level of basic education with reference to regional or international assessment systems" in part influences this research.¹ As he stated, the way the classrooms are taught and configured are connected with the national perception and policies set in place and are the "priority concern of the international community and likely to remain central to the post-2015 development agenda."² With the work of Special Rapporteurs on countless of thematic and country-specific reports and areas, the recommendations for the right to education guide the State and the international community towards a path of human rights-based education, while collaborating and acknowledging progress made by States and civil society members.

In the years leading up to the post-2015 development agenda, Special Rapporteur Kishore Singh attended dozens of events with the main focus on the human right to education for all and of quality organized by global entities such as Global Campaign for Education and Open Society Foundation, among many others; a testament of the relevance of this thesis. Furthermore, 2013 was the inauguration of the International Decade for the Rapprochement of Cultures (2013-2022), an initiative by the government of Kazakhstan. The importance of adapting educational systems to reflect a human rights-based approach is paramount for the student to gain quality education that is also consistent with internationally, regionally, nationally, and locally accepted standards, tailored to their culture and needs. Finally, other issues have been discussed in the global sphere that will be addressed throughout this comparative analysis including the *justiciability* of the right

¹ Singh, Kishore, *Report of the Special Rapporteur on the Right to Education, Assessment of the Educational Attainment of Students and the Implementation of the Right to Education*, 26th sess., A/HRC/26/27, (UN Human Rights Council, 2014).

² Ibid.

to education, of which Kishore Singh devotes his A/HRC/23/35 report to the Human Rights Council in 2013.³

The research and analysis conducted for this thesis included certain limitations that hindered the depth and inclusivity of the whole. Location, unavailability of funds for traveling to countries for on-sight research, and limited time constrained the development of a rich thesis reflecting all of the marginalized children in Mexico and Peru that do not have access to quality education. Thus, a number of groups of children were not developed nor addressed through this thesis. For example, better understanding the access to quality education of street children, orphans, and seasonal migrant children, and foreign migrant children, as well as the effect of rampant and systematic violence on a child's education would have provided a much deeper understanding of the use or misuse of international human rights treaties in these countries. Furthermore, topics that are active in international discourse but are not developed in this thesis include, the role of privatization of education and the use of technology as an educational tool in providing quality education.⁴ Thus, considering all limitations, only three segment groups of marginalized children – indigenous, girls, and disabled – in relation to their access to quality education are considered in depth.

The chapters within this thesis address the following questions: has the international human rights regime, including independent experts, influenced the realization of universal human rights in Latin America, specifically in Mexico and Peru? How can the reports, observations, and recommendations of independent experts, such as Special Rapporteurs, influence at the national level? What systems of human rights protection for individuals are set in place within these countries that reflect their commitment and ratification of key international treaties? And, what

³ Ibid.

⁴ Ibid.

information is lacking from quantitative statistics that claim universal education is close to being reached? The development of these answers in the three chapters is aimed at continuing the discourse on the right to education and allow for new questions to form.

Chapter 1, “Right to Quality Education as a Legal Standard,” is an introduction into the recognition of education as a human right through a legal standpoint. Exploring how the right to education became to be such is imperative in understanding its importance not only from an economic developmental perspective, but from a legal obligation perspective of states. Additionally, the role of special rapporteurs is central to this thesis, thus the mandate under the UN special procedures is also discussed. After the legal landscape has been presented, Chapter 2 dives into the marginalized groups.

Chapter 2, “Marginalized Children,” explores and identifies the marginalized populations of indigenous children, girls, and children with disabilities and their relevant treaties with the right to education. The historical and contemporary challenges children experience within these groups to obtain quality education reflective of their culture and special needs within Latin America are critical in appropriately representing their plight. Throughout, examples from Mexico and Peru are explored and analyzed, as well as from Latin America, for a broad, regional outlook. Having established the appropriate legal background and identifying the marginalized groups that highlight not only their needs, but also the gaps where the State has failed to fulfill their human rights obligation. Chapter 3 is specific at bringing these elements to the national level of Mexico and Peru.

Chapter 3, “Case Studies: Mexico and Peru on Quality Education,” addresses the educational issues within Mexico and Peru, as well as their advancement, considering national laws, regulations, educational policies, and the impact of international human rights. Within Latin

America, Mexico and Peru share characteristics in history and demographics, and contrast in aspects related to their international human rights involvement and record, which provides for an interesting comparative analysis. The role and impact on the right to education from Special Rapporteurs in both countries' policies and initiatives are examined. Furthermore, a system for human rights remedies due to international customary law and treaties' specific provisions is a legal obligation when there are violations to human rights and freedoms. The systems set in place in Mexico and Peru are distinguished in the last subchapter as well as their accessibility to the citizen. Finally, recommendations and final remarks on the right to quality education in these national jurisdictions are made from a human rights-based standpoint.

1. Right to Quality Education as a Legal Standard

In Chapter 1, “Quality Education as a Legal Standard,” the right to education is identified as international human rights standard with State Parties’ obligations established by its jurisdiction. Thus, it serves as a meeting point for comparison between the national jurisdictions of Mexico and Peru. The international recognition of the right to quality education as a legal standard is relevant in understanding its development onto a universal right and global standard. Major international declarations, treaties, agreements, and covenants will be discussed, such as the Universal Declaration of Human Rights (UDHR) and the Convention on the Rights of the Child (CRC). Additionally, the work of Special Rapporteurs within the United Nations’ Human Rights Council under the Special Procedures mechanism is also addressed. Chapter 1 provides the international legal basis for the right to quality education and the growing and developing international concerns that are related to it.

1.1. International Recognition for the Universal Right to Education

Since 1948, the right to education has been universally recognized as a fundamental human right.⁵ Article 26(1) of the UDHR declares, “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.”⁶ The next international effort to ensure education for all without discrimination is rightly titled as the Convention against Discrimination in Education (CDE), which entered into force in 1960.⁷ Mexico did not sign nor ratify CDE, while Peru ratified it four years after it entered into force in 1966. Still, Articles 1, 4,

⁵ Universal Declaration of Human Rights, UN General Assembly, December 10, 1948, Res. 217 A (III).

⁶ Ibid., art. 26(1).

⁷ Convention against Discrimination in Education 1960, UN Educational, Scientific and Cultural Organization, 11th sess., Paris, December 14, 1960.

and 5 are examined for their unique provisions outlining discrimination in education at an international level.

Article 1 sets the parameters of the term ‘discrimination’ to include,

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.⁸

A critical element to distinguish from this list is the “economic condition or birth” as a form of discrimination. For example, quality education is least accessible to children living in rural communities generally living at poverty or below poverty levels. As it is clear in the next two chapters, economic discrimination is a rampant and systemic issue in Latin America.

Article 4 sheds light on the importance to educate outside the normative ages set by country standards.⁹ Factors like attendance, retention, labor, gender roles, family, and community expectations influence a child’s accessibility to education and may delay the start or completion of basic, fundamental education. Thus, it encourages the States to make education flexible enough to ensure children are active recipients of quality education. Finally, Article 5 speaks to the moral and fundamental importance of education, drawing up on the elements of developing individuality while working in collaboration with each other at the individual and international levels. It resonates with part of Humboldt’s theory of freedom: how each individual cannot express or experience all their potential alone, they have to do it in tandem with others, appreciating and benefiting from the skills and contributions of others that by default expand that individual’s possibilities to experience and develop beyond what one could do alone.¹⁰ The rights of children

⁸ CDE, art. 1.

⁹ Ibid., art. 4.

¹⁰ Wilhelm Von Humboldt, *The Limits of State Action*, edited by J.W. Burrow, (Indianapolis: Liberty Fund, 1993), 14-15.

to education where not discussed outside of Article 5 of the CDE within the treaty, until the adoption of the Convention on the Rights of the Child.

International discourse on children's rights expanded since the UDHR and CDE throughout the '70s and the '80s until 1989, when the Convention on the Rights of the Child was adopted. It entered into force in 1990 and has become the most ratified UN convention with 193 signatories, including both Mexico and Peru.¹¹ The CRC emphasizes the concept and principle of "best interest of the child" throughout the treaty body, perhaps the most unique feature of the treaty as it is meant to guide Member States in every step of decision-making, policy-making, and enforcement of laws, and the like.¹² The CRC considers youth under the age of eighteen as children,¹³ and establishes a link between the parents and the State for the best interest of the child.

Articles 2, 23, and 28 are relevant within the discussion of children's right to education. Contrasting the CRC and CDE on discrimination, the right to freedom from discrimination on the basis of economic standing, as listed in CDE's Article 1, is unfortunately not mirrored in Article 2 of the CRC.¹⁴ However, it does expand the discrimination to apply to the child or the child's parents or legal guardians. Article 23, distinguishes the importance of protecting the life of children with physical or mental disabilities, relevant for Chapter 2.3, "Children with Disabilities' Struggle for Quality Education;" and Article 29 speaks to children's rights to development and respect for their human rights.¹⁵ Lastly, Article 28 is the stand-alone right within the CRC that focuses on an inclusive right to education for children. Article 28(2) also states that, "States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with

¹¹ The United States of America is the only UN Member State that has not ratified the CRC, even though it had a major role in the drafting process. Somalia ratified the CRC in 2015.

¹² Convention on the Rights of the Child, UN General Assembly, November 20, 1989, *United Nations Treaty Series*, vol. 1577, 3.

¹³ CRC, art. 1.

¹⁴ CRC, art. 2.

¹⁵ CRC, arts. 23 and 29.

child's human dignity and in conformity with the present Convention.” The CRC has expanded the dialogue on children's rights and State Parties' obligations on an international platform spilling over to impact national legislations, international cooperation, and creating civil society groups to advance the goals of this Convention.

Universal education became a fundamental tool and universal right to end poverty and expand children's opportunities of development and growth. Combating world poverty, including child poverty, became an international and trans-national goal in the 20th century formalized by the UDHR. It was not until the late 1970s that nations began to mobilize globally and collaborate to reach universal education: 1979 became The Year of the Child; the ratification of the CRC took place in 1989; and in 2000 the World Education Forum at Dakar established the *Education for All* (EFA) campaign, followed by the 2000 and 2015 *Millennium Development Goals* (MDG).¹⁶ When there is poverty or extreme poverty, the chances of a child's education becoming unattainable increase dramatically.

The international treaties that Mexico and Peru have signed and/or ratified acknowledge the importance and universality of children's right as well as their inalienable right to education.¹⁷ The right to education is not only acknowledged in the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR),¹⁸ but it also crosses over to civil and political rights of individuals, including children in the International Covenant on Civil and Political Rights (ICCPR),¹⁹ which came into force in 1976 as well. Peru ratified the ICCPR in 1978 followed by

¹⁶ Stephen McKinney, “The Relationship of Child Poverty to School Education,” *Improving Schools* 17, no. 3 (2014): 204-205.

¹⁷ See Appendix A.

¹⁸ International Covenant on Economic, Social and Cultural Rights, UN General Assembly, December 16, 1966, *United Nations Treaty Series*, vol. 993, 3, art. 3.

¹⁹ International Covenant on Civil and Political Rights, UN General Assembly, December 16, 1966, *United Nations Treaty Series*, vol. 999, 171, art. 18.

Mexico in 1981. International treaties are legally binding, and include a monitoring mechanism from the United Nation's Human Rights Council.

Within the international conventions such as the ICESCR of 1976, a Committee has been established in order to respond to individual petitions through means of Committee views, country reporting on State Parties, and publishing General Comments, and other monitoring responsibilities.²⁰ States Parties are held accountable to implement the international provisions within their respective national legislative systems in order to uphold and comply with their obligations and duties to protect human rights. State positive obligations should only go as far as their available resources allow for in terms of provisions spelled out within the ICESCR.²¹ The implication for children in Mexico and Peru is that there will be disparity in the resources communities receive, such as financial budget, qualified teachers, books, infrastructure, and the like, namely in how the states are divided and who is in charge of the educational system within the regions, provinces, or states.

General Comments by the Committee on Economic, Social, and Cultural Rights (Committee) are useful because, they serve a dual purpose for State Parties. First, they allow for an interpretation of ICESCR provisions, which require general standards of implementation in order for States Parties to comply with the Convention requirements. In other words, General Comments provide a framework of implementation, and set standards, which make comparative analysis possible within State actors and non-state actors, such civil society, academia, or for the interest of private individuals. Second, a complementary feature to the provisions' general or broad interpretation by the Committee, allows for States Parties to allocate resources, monetary, natural,

²⁰ "Working Methods," OHCHR, accessed October 30, 2016, <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/WorkingMethods.aspx>.

²¹ ICESCR, art. 2(1).

or human capital, where applicable in areas where it best suits the particular country in attaining economic, social, and cultural goals. While the provisions are universal, the implementation is socio-economically and culturally adaptable. In this light, General Comment No. 11 (GC No. 11)²² deals with Article 14, and No. 13 (GC No. 13)²³ expands on Article 13 of the ICESCR dealing with children's rights to and in education.

General Comment No. 11

The plan of action for primary education, as enshrined under Article 14 of the ICESCR, is otherwise known as General Comment No. 11 (GC No. 11). It is primarily focused on urging States Parties to implement primary education nationally and non-discriminatorily free of charge within two years of submission of the comment, in 1999 during the twentieth session of the Committee on Economic, Social and Cultural Rights. It drew attention as well to the fact that a handful of nations had not implemented a “plan of action for free and compulsory primary education.”²⁴ It also highlights the vitality of the right to education, as “central to the full and effective realization” of civil, political, economic, social, and cultural rights.²⁵ Thus, it “epitomizes the indivisibility and interdependence of all human rights.”²⁶

Additionally, GC No. 11 highlights that outside of a plan of action that is non-discriminatory and time-bound according to the State's financial resources, it has an obligation to seek international cooperation in the event that the government is unable to provide free compulsory primary education. In doing so, the Committee names the following international

²² UN Committee on Economic, Social and Cultural Rights, *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, 20th sess., E/1992/23, May 10, 1999, accessed November 2, 2016, <http://www.refworld.org/docid/4538838c0.html>.

²³ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 21st sess., E/C.12/1999/10, December 8, 1999, accessed November 2, 2016, <http://www.refworld.org/docid/4538838c22.html>.

²⁴ *General Comment No. 11*, 1.

²⁵ *Ibid.*

²⁶ *Ibid.*

entities that have within their institutional framework, the resources and ability to assist in the fulfillment of Article 14: International Labor Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Development Program (UNDP), the United Nations Children's Fund (UNICEF), and the International Monetary Fund (IMF), as well as the World Bank, all of which have influenced the access to quality education in Mexico and Peru.²⁷ The financial crises of the 1970s, '80s, and '90s, which also affected Latin America, hindered the early fulfillment of the provisions of Articles 13 and 14 for universal education.

General Comment No. 13

Subsequently, General Comment No. 13 (GC No. 13) submitted by the Social and Economic Council and released in 1999, expands on Article 13 on the right to education. The United Nations (UN) Charter is referenced in paragraph 4 as a way of acknowledging the universality of the right to education as well as Article 26(2)²⁸ of the UDHR. Mexico and Peru have accepted and recognized the universality of education as a vital and fundamental tool for individual growth, development, and dignity. States' full cooperation in fulfilling the right to education for every individual adds to one's 'sense of dignity,' which in turn prepares each student to become an active participant in a democratic society. Tolerance and understanding of other cultures and traditions are primary for a working pluralistic community. In order to attain this, education is the tool for developing the personality of each individual to the fullest potential.²⁹

Under Article 13 (1), The Committee proposes four particular features for States Parties to implement in providing within their nationwide free and compulsory primary education:

²⁷ Ibid., 3.

²⁸ UDHR, art. 26(2).

²⁹ *General Comment No. 13*, 2.

availability, accessibility, acceptability, and adaptability – the 4 As. Education should be of equal quality and accessible to all individuals regardless of race, religion, ethnicity, or whether their community members are located in rural or urban areas.³⁰ The implementation of the treaty provisions varies greatly across national borders according to resource availability, among other factors. The Committee has put forth a general benchmark of ‘interrelated and essential features’ from which each Party can be compared against one another and allow universalized approaches to the goals of education.³¹

Availability refers to having sufficient educational institutions to provide their services to all children. *Accessibility* namely highlights that it is not enough to have a certain quantity of schools throughout the country, but that the children, from rural to urban communities, of all ethnic backgrounds can access these resources. Within this, the non-discrimination feature is mentioned and reinforces that education should be “accessible to all especially the most vulnerable groups, in law and fact.”³² Accessibility can be described to have three distinct indicators, one has already been mentioned - non-discrimination. Secondly, it should be physically accessible, as well as economically accessible for the parents or guardians to afford primary and secondary schooling.

Acceptability refers to the content – “the form and substance”³³ – of education, meaning, culturally acceptable, quality education. The most important element that is particularly relevant for vulnerable children, as we will come to see, is the *adaptability* of the education children receives. It should be adaptable to their particular communities and societies, including and mitigating with changes that occur at any level of national government and can shift accordingly

³⁰ ICESCR, art. 13(2).

³¹ *General Comment No. 13*, 2.

³² *Ibid.*, 3.

³³ *Ibid.*

as international standards shift.³⁴ This means that indigenous communities, particularly in rural areas, should be receiving education that suits their specific societal needs, one that is diverse and culturally rich, of course, without excluding or neglecting the diversity of other vulnerable groups in rural or urban areas. Furthermore, educational policies should address the needs of girls as gender roles and stereotypes continue to predetermine the fate of millions across the world.

General Comment No. 13 echoes the CRC's stance on focusing on the best interests of the children when making decisions on how to address each interrelated and essential feature of the right to education. The 4 As have become the benchmark for the international community, including individual and independent experts, to establish whether there has been sufficient progress or in which areas require heightened resources.

GC No. 13 offers guidance on a number of topics within education, some of which are outside the scope of this research. However, it advances the legal obligation of States to Article 13(1), is clear that States should abstain from hindering girls from attending school, and provide culturally acceptable education for minorities and indigenous peoples – education of quality for all. Specifically, it outlines that, “States Parties are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.”³⁵ Overall, GC No. 13 has become one of the most influential General Comments on education due to its detailed description of States' obligations in fulfilling the provisions related to the right to education. As such, it has become an instrumental tool in the work of civil society and independent experts at assessing the progress of the right to education within a country.

1.2. Mandate for the Special Rapporteur on the Right to Education

³⁴ Ibid.

³⁵ Ibid., 12-13.

The Commission on Human Rights³⁶ adopted resolution 1998/33³⁷ on April 17, 1998 creating the mandate for the Special Rapporteur on the right to education as part of the Human Rights Council's Special Procedures (SP).³⁸ The SP investigates, reports, and advises the Council and General Assembly on a nonexecutive list of human right violations. The work of Special Rapporteurs involve country visits under the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR) with the purpose of obtaining evidence, making observations, interviewing high government officials, prisoners, communicating and collaborating with local and national non-for-profit organizations, and the like.³⁹ Thematic and country-specific reports are presented to the Human Rights Council and the General Assembly, including non-binding recommendations to the country in focus as they are presented to the international community.

The Special Rapporteur on the right to education implements its mandate by analysis, drafting observations, and proposals corresponding to State Parties' obligations in fostering an environment where every child has access to education equally and removing any interference a child may suffer from in accessing this right in its full capacity.⁴⁰ Expert Katarina Tomaševski was the first UN Special Rapporteur with this mandate, and used the 4 As in assessing State's role on the right to education: availability, accessibility, acceptability, and adaptability. Tomaševski applied these components in general and country specific reports, manuals on implementation, as

³⁶ "Overview of the Mandate," OHCHR, accessed October 30, 2016, <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/Overview.aspx>. General Assembly resolution 60/251 replaced by the Commission on Human Rights with the Human Rights Council in 2006.

³⁷ UN Commission on Human Rights, *Question of the realization in all countries of the economic, social, and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights*, 54th sess., E/CN.4/RES/1998/33, Geneva: United Nations, 1998.

³⁸ "Overview of the Mandate." The Commission of Human Rights initiated the system of Special Procedures, but the Human Rights Council acquired the supervisory position after it's dismantling.

³⁹ UN Special Procedures, *Facts and Figures* 2013, 1-17, 25, 37.

⁴⁰ "Special Rapporteur on the Right to Education," OHCHR, accessed October 30, 2016, <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx>.

well as a very detailed and lengthy set of primers.⁴¹ Special Rapporteurs on the right to education after Tomaševski include Vernor Muñoz (2007-2010), Kishore Singh (2010-2016), and Dr. Koumbou Boly Barry (2016-). The Special Rapporteurs provide incredible knowledge, experience, and, when feasible, country-specific reports on the proper and fair implementation of the human rights standards at hand.

In 2004, resolution 2004/25⁴² renewed once more the mandate and added new requirements for the Special Rapporteur to follow, including “to intensify efforts aimed at identifying ways and means to overcome obstacles and difficulties in the realization of the right to education,” and “to review the interdependence and interrelatedness of the right to education with other human rights.”⁴³ Additionally, it required the mandate holder to include a “gender aspect” to the evaluations, reports, and recommendations.⁴⁴ Both are themes that have long before affected children’s access to quality education and continue to resonate in today’s societies as well.

Muñoz claims that policies that are not sensitive to the protection of the human rights of illiterate children, both boys and girls, increase their exclusion in society and hinder further their access to other fundamental human rights. Diversity is diminished by the curriculum in schools that are geared to the average child, rather than focusing on the specific needs of the particular child or community. Lack of sensibility in the human rights of children can be linked with historical circumstances, as it is for the indigenous populations around the world, including Latin

⁴¹ Katarina Tomaševski, *Right to Education Primers No. 3: Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable*, (Gothenburg: Novum Grafiska AB, 2001), accessed October 30, 2016, http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf. See also Katarina Tomaševski, *Manual on Rights-based Education: Global Human Rights Requirements Made Simple*, (Bangkok: UNESCO Asia and Pacific Regional Bureau for Education, 2004).

⁴² UN Commission on Human Rights, *Commission on Human Rights Resolution 2004/25: The Right to Education*, E/CN.4/RES/2004/25, April 16, 2004, accessed October 30, 2016, <http://www.refworld.org/docid/43f313640.html>.

⁴³ “Overview of the Mandate.”

⁴⁴ Ibid.

America.⁴⁵ Muñoz emphasizes the objectives of Dakar, stating the alarming situation in 2007 where almost 80 million children did not receive basic education, and the improbability of nearly 58 countries not being able to provide universal primary education by 2015.⁴⁶ In his lecture during the Education for All campaign in 2007, Muñoz heavily focuses on the gender disparities in education, continuing on with the focus of Tomaševski's mandate. According to him, not one single country in the world has been able to provide gender-equality education, and discredits the belief that gender disparities in education stem from issues like poverty, since it is visible in North America and Europe.⁴⁷

Through the implementation of the objectives of the Dakar Framework for Action on Education for All,⁴⁸ and by taking seriously the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women⁴⁹ (CEDAW) a decrease of gender inequality in education for children should be noticeable. Article 10 of CEDAW, the Convention ratified by Mexico in 1981 and Peru a year later, is specifically for equality girls and women in education.⁵⁰ The relevant specifics of CEDAW's Article 10 are available in the Appendix and are discussed further throughout the subsequent chapters. The CRC also contains provisions against discrimination on all grounds in the treatment of children.⁵¹ According to Muñoz, 75 percent of mothers in 47 countries, which have not fulfilled their obligations of providing universal education

⁴⁵ Vernor Muñoz, "El Derecho a la Educación en el Mundo: Miradas a las Metas de Educación para Todos," lecture, General Assembly for Education for All Campaign, (Sao Paulo, Brazil, January 24, 2007), 1, accessed November 2, 2016, http://justiciabilidad.campanaderechoeducacion.org/downloads/documentosCLAVE/documentosanaliticos/MUNOZ_Vernor2007_El_Derecho_a_la_Educacion_en_el_mundo_miradas_a_las_metas_de_Educacion_para_Todos.pdf.

⁴⁶ Ibid., 2.

⁴⁷ Ibid., 4.

⁴⁸ World Education Forum, *The Dakar Framework for Action. Education for All: Meeting our Collective Commitments*, ED-2000/WS/27, (France: UNESCO, 2000).

⁴⁹ UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, December 18, 1979, *United Nations Treaty Series*, vol. 1249, 13.

⁵⁰ Ibid., art. 10.

⁵¹ CRC, art. 2.

for children, also lack education.⁵² Gender inequality and education are persistent in many countries and through many dimensions of life.

In 2010, Mr. Kishore Singh succeeded Muñoz and became the rapporteur for the mandate on the right to education. He focused on several important issues that often hinder children's access to the appropriate education, such as equality, *justiciability*, and quality of the same. Singh believes that equality of opportunity in education “both *in law* and *in fact*” is a continuous struggle for States: “Eliminating sex, ethnic and rural-urban disparities” are elements that add to the discrimination in education for children.⁵³ Along the same lines, Singh explores the different dimensions education is protected by national and international legal systems, and whether the measures adopted by the judicial and quasi-judicial systems have indeed effectively strengthened the protection of this right.⁵⁴ Finally, another important issue that Singh has focused on is on the quality of education – the conditions of the teaching profession must be increased; sufficient materials and qualified teachers are all vital components in States' obligations with the right to education.⁵⁵ These three issues are among the most relevant issues for this research that Mr. Kishore Singh has sought to address all throughout his mandate.

Until August 2016, Singh reported on factors that affect the access to quality education around the world, including the issue of privatization and commercialization of education that is increasing in the South. The concern for non-discriminatory quality education is not an irrelevant or outdated concern when dealing with human rights. In October 2014 celebrating World Teacher's Day, Mr. Singh participated in the “Unite for Quality Education” launching campaign.⁵⁶

⁵² Muñoz, “El Derecho a la Educación,” 5.

⁵³ “Issues in Focus,” OHCHR, accessed October 30, 2016, <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/IssuesFocus.aspx>.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Singh, A/HRC/26/27, para.14.

Mr. Singh capitalizes the role of national assessment tests and systems as a whole and addressed the need for a human rights-based approach and a “humanistic mission of education” rather than a solely instrumental role of education.⁵⁷

Researching and analyzing the practices and challenges in promoting the right to education in Mexico and Peru are meaningful for the comparison with internationally established standards. Out of the two, Mexico has been the only one to have the Special Rapporteur do a country visit under the Right to Education mandate. The specificities of the report and their current status are developed further in Chapter 3 with their country case studies.

Chapter 1 first laid out the international human rights laws that have recognized the universal right to education from the beginning to what contemporary concerns are the emphasis of major debates and campaigns. Secondly, the mandate of the Special Rapporteur as an independent expert is identified as instrumental for assessing State Parties’ progress on the right to education. Next, the populations and challenges faced by marginalized indigenous children, girls, and children with disabilities are the components of Chapter 2, “Marginalized Children.”

⁵⁷ Ibid., para. 26.

2. Marginalized Children

Marginalized children are stigmatized by deeply rooted stereotypes, often intersecting and increasing their level of oppression. One way this is visible is through the barriers of accessing quality education. Factors that influence their lack of access, or lack simply put, lack of quality education include: socio-economic standing – poverty level, education of parents – gender, ethnic background, and physical appearance or disability. The challenges, often compounded by an initial disadvantage attributed to their income level or poverty status,⁵⁸ include: lagging (beginning a school term at a later year than the norm), repetition, low attendance, marginalization and isolation within the classroom, nonattendance at all, high transportation costs, high drop-out rates, stereotyping, social exclusion, and discrimination, among others. Children’s rights are the “parents, educators, local, regional and state governments’ [obligation to protect] around the world.”⁵⁹ UNICEF, UNESCO and UN Women among other global entities have devoted their resources and time in gathering and reporting, as well as demanding the State authorities to take on the role and responsibility they have signed on by ratifying international treaties protecting the rights of marginalized groups.

Thus, Chapter 2 is divided into three subchapters, each addressing the situation for marginalized children in Latin America. Chapter 2.1 is devoted to indigenous children and their struggle of maintaining and growing their identity, communities and reviving their language against the forces of the dominant cultures. Chapter 2.2 is important for understanding the various treaties established for eradicating gender discrimination and the struggle for girls to obtain quality education that is rights-based and in an environment that is acceptable. Finally, Chapter 2.3 focuses

⁵⁸ Fernando Reimers, ed., *Unequal Schools, Unequal Chances: The Challenges to Equal Opportunity in the Americas*, (Cambridge: Harvard University Press, 2000), 312.

⁵⁹ Quoted in McKinney, “Relationship of Child Poverty,” 205.

on children with disabilities in Latin America and their plight for equal representation. All three subchapters together provide a window into the challenges these marginalized populations experience in exercising their right to education in Mexico and Peru and the legal treaties that are set in place to protect it.

2.1. Indigenous Children's Right to Education

As children's rights emerged with great power and demanding the rightful attention in the late 1970s, indigenous groups began to voice their demands for freedom, dignity, and self-determination.⁶⁰ Through periods of imperialism and colonialism by the Spanish, indigenous groups have endured serious efforts of *deculturalization*, namely being forced to abandon their culture, language, and customs in order to adopt theirs. Lack of sensibility in the human rights of children can be linked with significant moments in history and a continuum of isolation, stigmatization, and absence of legal standing and representation in Latin America.

Altogether, this next section provides a lens into the struggles and human rights violations that indigenous children experience on a daily basis, and at a systemic level as it pertains to the right to culturally appropriate and quality education.

2.1.1. International Rights Recognition

Indigenous communities around the world began a movement for recognition through citizenship and human rights since the 1980s. At the national level, demands for citizenship and political participation emerged with active participants in demonstrations and petitions. Internationally, indigenous peoples rightfully opened the eyes of the world to the gross injustice experienced by these groups and lack of human rights protection. Even though the traditional

⁶⁰ McKinney, "Relationship of Child Poverty," 204-5.

human rights regime has been focused on the protection of individuals against State violations and not of collective persons or communities, they won the battle in gaining the initial recognition to human rights, as collective rights, that they long sought and advocated for.⁶¹

The International Labor Organization (ILO) became the first international organizational body to recognize the rights of indigenous peoples in their Convention No. 169,⁶² providing “significant recognition of indigenous peoples’ collective rights in key areas, including cultural integrity; consultation and participation; self-government and autonomy; land, territory and resource rights; and non-discrimination in the social and economic spheres.”⁶³ Following suit, in 2001 the Commission on Human Rights passed resolution 2001/57⁶⁴ establishing the mandate for the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

The Declaration on the Rights of Indigenous Peoples (DRIP)⁶⁵ came into force in 2007 passed with 143 votes in favor, and Colombia as the only Latin American country abstaining.⁶⁶ In 2014, the World Conference on Indigenous Peoples was held in response to General Assembly’s resolution 65/198 passed in 2010.⁶⁷ All of these international movements act as tools of legitimization of the neglect and often violations of human rights of these diverse groups. They

⁶¹ *Springer Briefs on Pioneers in Science and Practice, Texts and Protocols*, edited by Hans Günter Brauch, vol. 4, *Peasants, Culture and Indigenous Peoples: Critical Issues*, by Rodolfo Stavenhagen, (Mexico: Springer, 2013): 56-60.

⁶² International Labor Organization, *Indigenous and Tribal Peoples Convention* (No. 169), 76th sess., June 27, 1989. Amending ILO Convention No. 107 passed in 1957.

⁶³ Anaya, A/HRC/9/9, 11.

⁶⁴ *Ibid.*, 3. The mandate was extended by the Commission with resolution 2004/62, by the General Assembly through resolution 60/25, and later by the Human Rights Council resolution 5/1 and resolution 6/12.

⁶⁵ United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 62nd sess., A/RES/61/295, UN General Assembly, October 2, 2007.

⁶⁶ “Declaration of the Rights of Indigenous Peoples,” OHCHR, accessed October 31, 2016, <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>.

⁶⁷ UN General Assembly, *Outcome Document of the High-level Plenary Meeting of the General Assembly known as the World Conference on Indigenous Peoples*, 69th sess., A/69/L.1, September 15, 2014, accessed November 2, 2016, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/69/L.1.

also display the willingness of delegations of universal human rights by welcoming and pushing towards creating norms of protection for indigenous peoples at all jurisdictional levels.

Articles 14, 15, 17 and 21 of the DRIP directly relate to education rights for indigenous peoples. Articles 14 and 15 firmly grant the right of indigenous peoples to establish and control their education system, for children to be taught in a culturally environment and curriculum, and take collective effective measures to increase access to education in their own language.⁶⁸ Effective measures include collective decision-making on the methods of teaching and learning.⁶⁹ Article 15 reflects the need for increased tolerance and decrease prejudice and discrimination, working in tandem. It also reassures the right to a dignified life with diversity reflective in the educational and social spheres.⁷⁰

Article 17 was designed to protect the rights of indigenous peoples in the labor market, including protecting indigenous children from being exploited or having their education disturbed due to labor.⁷¹ Article 21 creates the right for indigenous peoples to grow socially and economically, including in terms of education. Article 21(2) states, “Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.”⁷² Though vague in what paying “particular attention” means for the State Parties, the special needs and rights of indigenous peoples have been recognized. The vagueness is a drawback of UN declarations that do not hold States legally accountable on the failure to take positive action to move towards the provisions included.

⁶⁸ DRIP, art. 14, 15.

⁶⁹ DRIP, art. 14(1).

⁷⁰ DRIP, art. 15.

⁷¹ DRIP, art. 17.

⁷² DRIP, art. 21(2).

Complementing the DRIP, Articles 29 and 30 of the CRC specifically speak to the right of culture, religions and languages of indigenous children.⁷³ Furthermore, the Committee on the Rights of the Child has devoted considerable attention to the specific needs and circumstances of indigenous children in its review of the application of the Convention.”⁷⁴

Great strides on international human rights have emerged and continue to be in the UN’s agenda, yet there are still pressing human rights’ challenges in Latin America. Communities have not been able to fully exercise their recognized rights as it is with the rights of indigenous children to education. The population of indigenous peoples in Latin America and the challenges faced by children in accessing education is discussed next.

2.1.2. Challenges Faced by Indigenous Children

In Latin America, there are close to 600 indigenous cultures comprised of approximately 40,000,000 people,⁷⁵ living mostly in Bolivia, Ecuador, Guatemala, Mexico and Peru.⁷⁶ History of mistreatments, cultural devalues, and social rejection of indigenous peoples has hindered children from attending culturally appropriate schools.

Poverty is a compounding factor for inequality affecting indigenous children. Having the highest drop-out, failure, and repetition rates than non-indigenous children enrolled in school are three major concerns for indigenous children’s access to quality education, according to Kim, et al.⁷⁷ Consequently, “according to World Bank figures, 12.76% of the entire American population

⁷³ CRC, art. 29, 30.

⁷⁴ Anaya, A/HRC/9/9, 9.

⁷⁵ “Indigenous Peoples in Latin America- A General Overview,” International Work Group for Indigenous Affairs, accessed November 5, 2016, <http://www.iwgia.org/regions/latin-america/indigenous-peoples-in-latin-america>.

⁷⁶ Paul Kim, Talia Miranda, and Claudia Olaciregui, “Pocket School: Exploring Mobile Technology As A Sustainable Literacy Education Option For Underserved Indigenous Children In Latin America,” *International Journal of Educational Development* 28 (2008): 435. The number may vary depending on the source. A study published by the *International Journal of Educational Development* reports that number of “underserved indigenous people” living in Latin America is closer to 50 to 60 million according to a 2004 UNDP report.

⁷⁷ Ibid, 436.

and approximately 40% of the rural population is indigenous.”⁷⁸ Thus, indigenous children are faced with a weighty challenge and hardships in being able to fulfill their full capacity as individuals.

Former UN Special Rapporteur for the rights of indigenous peoples Rodolfo Stavenhagen comments on indigenous peoples in Mexico stating that, “the degree of illiteracy, poor academic achievement and poor school attendance, especially at the middle-school and higher levels, tend to be higher among indigenous peoples than in the rest of the population.”⁷⁹ In Mexico, some indigenous communities are very small and are not equipped with educational facilities. Stavenhagen infers that the country-specific issues within this topic are mirrored worldwide, as it is the case of issues particular to indigenous communities in Mexico.⁸⁰

Moreover, indigenous children lack school materials, qualified teachers with certifications, and the proper facilities; sometimes their needs are as fundamental as easy access to a school within reasonable distance of their homes. Indigenous children and children in rural settings experience lack of access to education because of the distance and the transportation hardship this creates for the families in making sure that the child will arrive to school and home safely.⁸¹

According to a 2015 study on the impact of conditional cash transfer programs, indigenous children are twice as likely to work than nonindigenous children.⁸² More specifically, in Mexico, sixty percent of the indigenous population lives in the lowest socio-economic level.⁸³ The belief

⁷⁸ “Indigenous Peoples in Latin America.”

⁷⁹ Rodolfo Stavenhagen, “Indigenous Peoples’ Rights to Education,” *European Journal of Education* 50, no. 3 (2015): 255.

⁸⁰ Ibid.

⁸¹ Sheila Aikman, “Language, Literacy and Bilingual Education: An Amazon People’s Strategies for Cultural Maintenance,” *International Journal of Educational Development* 5, no. 4 (1995): 419.

⁸² Luis F. Lopez-Calva, and Harry A. Patrinos, “Exploring the Differential Impact of Public Interventions on Indigenous People: Lessons from Mexico’s Conditional Cash Transfer Program,” *Journal of Human Development and Capabilities* 16, no. 3, (2015): 454.

⁸³ René Leyva-Flores, et al., “Inequidad Persistente en Salud y Acceso a los Servicios para los Pueblos Indígenas de México, 2006-2012,” *Salud Pública de México* 55, supp. 2, (2013): S123.

and continuous political rhetoric that education will reduce the level of poverty is what stabilizes an otherwise paradoxical relationship of the State to education. On one hand, “education is portrayed as a social good open to all,” and on the other, “public education is treated with neglect and the children of the poor receive the lowest quality of education,”⁸⁴ since “the fundamental goal of education has usually been to assimilate indigenous peoples in the dominant culture” leading to the marginalization and in some instances the extinction of indigenous cultures as the dominant prevails in the educational system.⁸⁵

Prior to 1980s, policies forced indigenous communities to assimilate throughout Latin America to the dominant culture, traditions, and language, while at the same time, not enjoying the same rights as those of citizens. The need of creating a “homogenous nation state” is no longer, at least formally, the primary goal of the State.⁸⁶ Providing culturally acceptable education to indigenous communities is vital in order to fully embrace and practice the international human rights norms and principles providing a legal foundation and inclusive platform for the policies to reflect respect, pluralism, and tolerance and understanding.

Cultural preservation, a goal shared with UNESCO, is a challenge for indigenous peoples – preserving practices that reflect their particular culture, language and religion.⁸⁷ The path toward assimilation of one group with the dominant achieves the opposite goals fitting into what scholars have identified as a one-world school model – the dominant culture is taught regardless of the

⁸⁴ Nelly P. Stromquist, “What Poverty Does To Girls’ Education: The Intersection of Class, Gender, and Ethnicity in Latin America,” *Compare: A Journal of Comparative Education* 31, no. 1 (2001): 39-56; Nelly P. Stromquist, “What Poverty Does To Girls’ Education: The Intersection of Class, Gender, and Ethnicity in Latin America,” keynote speech, Oxford International Conference on Education and Development, Oxford, England, United Kingdom, September 9-13, 1999, accessed November 2, 2016, <http://files.eric.ed.gov/fulltext/ED435122.pdf>.

⁸⁵ Stavenhagen, “Indigenous Peoples’ Rights,” 255; Tamara Slayton, “Mexican Education: An Analysis. Fulbright-Hays Summer Seminar Abroad Project,” *Center for International Education*, (Washington, DC: ERIC Clearinghouse, 1994): 7.

⁸⁶ Aikman, “Language, Literacy and Bilingual Education,” 412.

⁸⁷ Aliza Segal, “Schooling a Minority: The Case of ‘Havruta’ Paired Learning, School of Education, The Hebrew University of Jerusalem, Israel,” *Taylor & Francis Group* (2013): 150.

background of the student, rather than a two-world model – where children explore and learn about both cultures.⁸⁸ In Peru, one example of assimilationist policies is via the experience of the Quechua in which they were excluded from access to education until the middle of the twentieth century, and restrained from learning in their native language.⁸⁹ A challenge for the Peruvian government has been to reduce and to eradicate the disparities and inequalities experienced by Quechua and other indigenous children in their access to quality education that also fulfill the particular needs of the communities.

The meaning as well as the components of quality education is in flux, varying in expectations and criteria according to the target population. Martínez and Myers attest to the differing definition of quality education for indigenous peoples compared with the universal definition of the same commonly used throughout the world through their study of Mexican indigenous preschools.⁹⁰ Quality education involves a “respect for, and the promotion of, indigenous culture.”⁹¹ Expectations in schooling are categorized into six different levels of curriculum expectations (See Table 2.1.1).

Table 1.1.1 Differing Views On The Meaning Of Quality Education⁹²

Dimensions of Quality: ECCP-5 and the Scales From Yucatán	
ECCP (Version 5)	Yucatán (Indigenous Preschool Education)
1. Adequate resources/inputs	1. A school that expresses an intercultural world
2. Proper management	2. A school that promotes an organized and simple environment
3. An enriching educational process	3. A school that creates a happy learning environment
4. A good relationship with participating parents and the community	4. A school that promotes a world that is just
	5. A school that promotes harmonic living together
	6. A school that helps establish a natural and healthy world

⁸⁸ Patricia Ames, “Language, Culture and Identity in the Transition to Primary School: Challenges to Indigenous Children’s Rights to Education in Peru,” *International Journal of Educational Development* 32 (2012): 454.

⁸⁹ Ibid.

⁹⁰ José Francisco Martínez and Robert Myers, “Defining and Improving Quality of Indigenous Preschool Education in Mexico: An Intercultural Perspective,” *Childhood Education* 91, no. 4 (2015): 245.

⁹¹ Ibid., 246.

⁹² Ibid., 246. Titled in original as, Table 1 “Dimensions of Quality: ECCP-5 and the Scales From Yucatán.”

Table 2.1.1 compares the nation-wide preschool expectation of quality education (ECCP stands for *Escala de Evaluación de Calidad Educativa en Centros Preescolares* and translates to Evaluation Scale for Educational Quality in Preschools) with those of indigenous preschool education in Yucatan, where several kinds of actors, including indigenous educators shared their opinions and needs. Findings included quality measured in terms of how well it “promotes world that is just,” a measure that lends itself to be interpreted as human rights-based education. Additionally, happiness, enjoyment, collaboration, and “harmonic living,” as well as the protection of the environment also influence the quality of preschool education.⁹³ Then, a new model was implemented in some schools with the aim of improving quality education took place in collaboration and communication between key actors and evaluation methods between 2012 and 2014. Their results showed the progress in quality of education (Table 2.1.2).

Table 2.1.2 Changes in Levels of Quality⁹⁴

**Levels of Quality Determined by
Supervisors’ Assessments, 2012 and 2014***

Combining All Dimensions of Quality

Level of Quality	October 2012 (%)	June 2014 (%)
Inadequate	15	8
Incipient	21	13
Basic	36	32
Good	23	37
Excellent	5	10
Total	100	100

*N = 66 indigenous preschools in Yucatán, México

Source: Martinez and Myers, “Defining and Improving,” *Childhood Education* 91, no. 4 (2015): 247.

⁹³ Ibid.

⁹⁴ Ibid, 247. Titled in original as, Table 2 “Levels of Quality Determined by Supervisors’ Assessments, 2012 and 2014.”

Table 2.1.2 “Changes in Levels of Quality” shows the positive impact of collective efforts between key actors and considering the needs of the beneficiaries. The percentage of preschools of excellent quality in Yucatan, Mexico doubled in the two-year period, from five percent to ten percent of schools. At the same time, the percentage of schools with inadequate quality of education diminished by half, and in 2014 it was measured at eight percent from fifteen percent in 2012. In general, inadequate, incipient, and basic quality education dropped while good and excellent education increased throughout the use of the new educational model, serving as an example for other communities across Latin America to consider.

Martínez and Myers’ work display the strong impact that tailoring education curriculum and expectations for indigenous children to match or come closer to their self-determined lifestyles and educational goals, can result in children receiving higher quality education. Whether it is up for the State to ensure this or whether it falls on the hands of the community members and the families is up for debate. Ideally, both groups would collaborate in providing outlets for children to practice and excel in both languages for opening opportunities outside the indigenous communities if they so wish to pursue later in their lives. Forward and progressive thinking is necessary in creating these programs and teaching practices that do not negate the child’s identity and fosters a sense of self, growth, and development. The following section speaks to the fundamental nature of language as part of indigenous children’s identity that enhances the culturally acceptable quality education.

2.1.3. Right to Language as a Fundamental of Identity

Framing language as a human right is possible with a couple international instruments already available. Indigenous language endangerment has created a movement to recognize and

revive many of the languages. Through ICCPR's Article 27⁹⁵ and efforts put forth by UNESCO, minority rights have surged legitimizing the use of "their own language"⁹⁶ in education and other aspects of their social life. Article 27 has been interpreted by some as a provision that establishes no positive obligation of the State party towards its people. Alston ed. points out that this is one of the rights where "the state may not impede, but it need in no way assist, through funding bilingual education, for example."⁹⁷ Due to the nature of this right as a negative obligation for the state, protecting minorities' linguistic, ethnic, or religious cultures may not be a pressing concern.

Language became the easiest target for assimilationist educational models and for homogenous cultures to reflect the dominant culture. Now, indigenous communities are empowered by their international recognition to act as active change agents and advocates on their own behalf via the revival and continuation of their languages as a form of self-identity and cultural preservation.⁹⁸

Indigenous peoples have the their right to obtain education that is culturally appropriate and sensitive to their educational needs to thrive not only within their communities. Studies addressing the importance of language as a major identity factor give a better understanding of where positive state action is required, as well as examples of projects already implemented. The level of proficiency of learning a second language has been shown to be dependent on the same of the mother tongue or native language for the *Center of International Education*.⁹⁹ Thus, respect for culture and language, and continuous effective collaboration in necessary for acceptable

⁹⁵ ICCPR, art. 27.

⁹⁶ Miguel Mantero, "Official Language Education in Ecuador: Exploring the Humanistic Outcome of Official Bilingual Initiatives," *Humanising Language Teaching* year 14, issue 5, (2012), accessed November 5, 2016, <http://www.hltmag.co.uk/oct12/mart03.htm>.

⁹⁷ Philip Alston, ed., *Peoples' Rights*, (United Kingdom: Oxford University Press, 2001), 23.

⁹⁸ Stavenhagen, "Indigenous Peoples' Rights," 256.

⁹⁹ Slayton, "Mexican Education: An Analysis," 4-5.

education for indigenous children and their full development as active members of their communities.

Uniformity of education, namely the language of instruction, has taken a heavy toll on the diversity of minorities, specifically indigenous peoples in Mexico and Peru and has questioned the relevance of traditional education in this context. Education policies aim at teaching indigenous communities Spanish has created a loss of their native languages and traditions. Still, the needs and wants in terms of education, whether monolingual, bilingual, or multicultural, solely depend on each community and it varies from one community to the next.

Aikman speaks on behalf of indigenous minorities in Peru and establishes that education in indigenous language after the 1980s was viewed as counterproductive by some indigenous community members due to the absence of traditional indigenous language practices involving tale-telling, storytelling, rituals, and the like, rather than contemporary educational means.¹⁰⁰ The implications of language loss for children of indigenous communities include inconsistent and unpredictable education that may change from generation to generation, affecting the ability to communicate within their community and with the rest of the population. Furthermore, Aikman explains that language resources for the Aymara in Peru have been rarely made available, thus there is a lack of sufficient native bilingual teachers that has slowed down the revival of their native language.¹⁰¹ Formal education has only negated indigenous language and devalued their traditions.¹⁰²

There are positive aspects of indigenous bilingual programs like the Tarahumara program in Mexico. Indigenous bilingual programs have shown to be agents of change in that attitudes

¹⁰⁰ Aikman, "Language, Literacy and Bilingual Education," 420.

¹⁰¹ Ibid., 419.

¹⁰² Ibid., 419.

towards their heritage have improved.¹⁰³ As a consequence, it has attracted non-indigenous or Mestizo students to learn the indigenous language. Thus, traditional education may not be the best system for the country as a whole to implement.¹⁰⁴

Miguel Mantero's research attributes the colonizing history of South America to the type of bilingual education available today in the affected Amazonian region, namely Ecuador and Peru.¹⁰⁵ Mantero states that, "many indigenous groups have felt conflicted as they develop their identity when the dominant group has devalued their importance as a people group."¹⁰⁶ In Peru, the Puno Bilingual Education Project recognizes the language rights of Quechua and Ayamara speaking communities of Puno – a city located in the southeast of the country bordering Bolivia, implementing an intercultural educational model. Phillipson suggests that, "When the mother tongue is banned from the classroom, the teaching leads to the alienation of the learners, deprives them of their cultural identity and leads to acculturation."¹⁰⁷ In the same vein, the Tarahumara in Mexico decided to transform their native language from a spoken language to a written language in efforts to preserve it.¹⁰⁸ However, there has been a lack of qualified bilingual or multilingual teachers to teach indigenous children in a culturally acceptable educational setting.¹⁰⁹

Isolation of indigenous communities comes from the cause-and-effect relationship observed by the forced acculturation of non-indigenous people and the resistance to integrate indigenous people into the "mainstream culture."¹¹⁰ When the child has access to education in

¹⁰³ Slayton, "Mexican Education: An Analysis," 7-8.

¹⁰⁴ Muñoz, "El Derecho a la Educación," 1-2. "In fact, the need to unify and efficiently utilize the 'factors of production' was the reason that motivated the creation of the concept of an education based on the elimination of all differences between people, imposing this way an asymmetric patriarchal model based on the needs of the market." [Translated from Spanish original].

¹⁰⁵ Mantero, "Official Language Education."

¹⁰⁶ Ibid.

¹⁰⁷ Robert Phillipson, *Linguistic Imperialism*, (United Kingdom: Oxford University Press, 1992), 193.

¹⁰⁸ Slayton, "Mexican Education: An Analysis," 7.

¹⁰⁹ Stavenhagen, "Indigenous Peoples' Rights," 256.

¹¹⁰ Slayton, "Mexican Education: An Analysis," 7.

these regions, but the curriculum is not adapted to teaching material that is culturally relevant and progressive, it becomes difficult for the child to connect the new information to their lifestyles and find practical and useful ways to develop what they have learned. In a way, this also isolates the child from the parent. If the child obtains an education that is in the mainstream language, Spanish, the parents will have little to no input in their child's home growth and thus will not be able to facilitate a dialogue that expands on their daily education at home and alienates them further from their traditions and cultures.

In summary, the indigenous peoples have fought long and hard to be visible in the human rights discourse at all levels of power and decision-making. Indigenous children's right to education gave a platform in constructing the needs and rights of a culturally appropriate education. The language of instruction has been at the forefront of the discussion in advocating for multi-lingual inclusivity in the classrooms, as it can be a foundational element of indigenous children's identity. Though great strides in their rights recognition has moved universality of the right to education towards the right path, indigenous children are still heavily marginalized and oppressed in their countries. In the same vein, systems of patriarchy in Mexico and Peru have played an imperative role in women's rights and protection, including the right to education. The next subchapter explores the intricacies that girls are subjected to navigate with and against in their search for quality education.

2.2. Gendered Education: Girls' Right to Quality Education

Chapter 2.2 lays out the educational experience of girls in Latin America. Women's plight to equality, non-discrimination, and legal recognition has had a profound history of challenges. Access to quality and equal education is fundamental for gender equality allowing for equal opportunity and a path out of poverty for women. In this subchapter, the applicable international

human rights law and mechanisms are established first. Second, specific barriers faced by girls in attaining quality education are discussed. Finally, the importance of accessible and adaptable education with a human-rights perspective in the pursuit of true quality education for girls and boys is explored. Gender equality is not synonymous with benefiting and advancing the goals of one gender over the other; rather, it is a wholesome and inclusive benefit – a fundamental right.

2.2.1. International Human Rights Law

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) of 1981 is the most specifically defined convention to combat discrimination against women.¹¹¹ Alongside the Convention of Discrimination in Education from 1960 mentioned within the introduction of this chapter, the CEDAW Convention is the result of how various intersections of oppression have not guaranteed women the same opportunity to quality education as its male counterpart.

The fight for women's rights commenced in the 1970s at the international level. In 1975, the Plan of Action for the Implementation of the Objectives of the International Women's Year took place in Mexico City, "which called for a convention on the elimination of discrimination against women, with effective procedures for its implementation."¹¹² The working group under the Commission on Human Rights, encouraged by many international entities, including the General Assembly, pushed forward and presented the CEDAW Convention draft at the World Conference on the United Nations Decade for Women: Equality, Development and Peace in Copenhagen.¹¹³ Mexico became a signatory to the Convention in July of 1980 and ratified it a year later in 1981.

¹¹¹ CEDAW, 1981.

¹¹² "Short History of CEDAW Convention," UN Women, accessed August 18, 2016, <http://www.un.org/womenwatch/daw/cedaw/history.htm>.

¹¹³ Ibid.

Peru followed suit a year later signing the treaty in 1981 and ratifying it in 1982.¹¹⁴ Unlike other State Parties, neither Mexico nor Peru made declarations or reservations at the time of ratifying it, thus accepting the convention as a whole.¹¹⁵ In contrast, the delegation of Mexico raised a large number of objections to other State parties' declarations and reservations.¹¹⁶ Since, CEDAW Convention has been a major pushing force towards gender equality and non-discrimination.

Moving towards breaking through stereotypes and social schemas engrained in society as early as the time of birth worldwide can become a reality through human rights-based educational practices and teaching mechanisms. Out of the 30 articles that comprise CEDAW, Article 10¹¹⁷ pertains in particular to women and education. It calls for States Parties to take specific measures for eliminating educational or institutionally discriminatory policies and practices against women. Article 10 (c) suggests that through educational practices, such as coeducation, reviewing the content and delivery method of schooling and of textbooks, the aim to eliminate "any stereotyped concept of the role of men and women at all levels" can be achieved.¹¹⁸ Article 10's goal is to create schooling practices that educate and foster equality between men and women at an early age.

Like other UN treaties, CEDAW, the CRC, and the Convention Against All Forms of Racial Discrimination, include committees to monitor, investigate, and report on the status of State Parties' provision enactment within their respective jurisdictions. For CEDAW, Article 17

¹¹⁴ United Nations Treaty Collection, "Chapter IV. Human Rights: 8. Convention on the Elimination of All Forms of Discrimination against Women," United Nations, accessed November 5, 2016, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en. There are 99 Signatories and 189 States Parties since it was open for signatures in March 1980.

¹¹⁵ For a full list of States Parties ratifications, declarations, and reservations, including country reports, see "Convention on the Elimination of All Forms of Discrimination against Women," UN Women, accessed August 18, 2016, <http://www.un.org/womenwatch/daw/cedaw/>.

¹¹⁶ See UN, *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/SP/2006/2, 10 April 2006, accessed August 18, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/309/97/PDF/N0630997.pdf?OpenElement>.

¹¹⁷ CEDAW, art.10.

¹¹⁸ Ibid., art. 10(c).

establishes the Committee on the Elimination of Discrimination against Women. In January 1982, the Committee began its first session, and as of now, 97 experts – namely women – have provided their expertise, recommendations, and observations on the implementation of CEDAW in various jurisdictional levels.¹¹⁹ In tandem with the Convention, the Optional Protocol allows for individuals to submit individual complaints to the Commission for review. Mexico signed the Optional Protocol in 1999 and entered into force in 2002.¹²⁰ Similarly, Peru had ratified it by 2001 granting individuals the possibility of the individual complaint mechanism.¹²¹

Furthermore, a Special Rapporteur on violence against women (SRVAW) has been held since 1992 after the CEDAW's committee adopted "General Recommendation Number 19."¹²² Through the work of Economic Commission for Latin America and the Caribbean (ECLAC), the educational goals in Latin America have seen progress, and equal distribution of education based on income levels and through rural/urban disparities have narrowed; progress that cannot be denied. Still, the progress for gender equality has not enjoyed paralleled growth. In the region, the concern for gender equality was not officially discussed until the 1970s. Twenty years later, a second plan addressing gender equality in education took place.¹²³ As a result, the majority of Latin American countries have government agencies and mechanisms exclusively for women's development.

¹¹⁹ U N, *The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. Handbook for Parliamentarians*, (Switzerland: United Nations, 2003): 22, accessed October 31, 2016, http://www.ipu.org/PDF/publications/cedaw_en.pdf.

¹²⁰ "Ratification Status for Mexico," OHCHR, accessed October 29, 2016, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=112&Lang=EN.

¹²¹ "Ratification Status for Peru," OHCHR, accessed on October 29, 2016, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=112&Lang=EN.

¹²² Audrey Thompson, ed., *15 Years of the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences (1994-2009) – A Critical Review*, (OHCHR, 2006), 4, accessed November 2, 2016, <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>.

¹²³ "Datos y Estadísticas," Economic Commission for Latin America and the Caribbean, accessed August 20, 2016, <http://www.cepal.org/es/datos-y-estadisticas>.

For example, in Mexico the National Institute for Women - *Instituto Nacional de las Mujeres* or *Inmujeres* in Spanish – has been established in 2007 to protect the right of non-discrimination and advance gender equality¹²⁴ as a result of CEDAW and in line with Mexico's decrees for *Ley General para la Igualdad entre Mujeres y Hombres* and *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*.¹²⁵ Since 2008, *Inmujeres* has worked towards advancing the knowledge a understanding of gender inequality or intersectionality of discriminators that women in Mexico experience across a variety of sectors of life with their “*Programa de Fortalecimiento a la Transversalidad de la Perspectiva de Género*.”¹²⁶ The *Ministerio de la Mujer y Poblaciones Vulnerables (MIMP)* was established in 2012 after the Peruvian legislative decree No. 1098 with the mandate to protect and promote the elimination of gender violence, the rights of women, as well as of other vulnerable communities, such as people living with disabilities.¹²⁷

Next, the many barriers faced by girls to access education, including redefining the meaning of quality education are analyzed.

2.2.2. Girls' Barriers to Education

This section addresses the challenges faced by women as an inherently marginalized population group in Latin America, particularly in the legislations of Mexico and Peru. While elementary education is nearly at a universal level, studies show a lower percentage of girls

¹²⁴ Instituto Nacional de las Mujeres, “Inmujeres,” Government of Mexico, accessed September 1, 2016, <http://www.gob.mx/inmujeres>.

¹²⁵ Instituto Nacional de las Mujeres, “Pasos Hacia la Igualdad de Género en México, 2007,” Government of Mexico, accessed September 1, 2016, http://cedoc.inmujeres.gob.mx/documentos_download/100894.pdf.

¹²⁶ For yearly reports, See Instituto Nacional de Las Mujeres, “Fortalecimiento a la Transversalidad de la Perspectiva de Género,” Government of Mexico, accessed September 1, 2016, <http://www.gob.mx/inmujeres/acciones-y-programas/fortalecimiento-a-la-transversalidad-de-la-perspectiva-de-genero?idiom=es>.

¹²⁷ Ministerio de la Mujer y Poblaciones Vulnerables, “Reseña Histórica Del Ministerio De La Mujer y Poblaciones Vulnerables,” Government of Peru, accessed September 1, 2016, <http://www.mimp.gob.pe/homemimp/transparencia/resena-historica-mimp.php>.

transitioning from elementary school to secondary school compared to boys.¹²⁸ Focus needs to be placed in responding accordingly to the relationship of gender discrimination with other types of discrimination. The challenges and intersectionality of oppressors that stem from these countries and this region can be broadened to understand the current global concern that is girls' access to education.

The library of studies, reports, and statistics on the benefits of educating girls over boys is vast, coming from differing perspectives and schools of thought. Economists tackle the issue on a cost analysis basis testing the opportunity cost of a family to educate a girl child over a boy child and their potential return on investment.¹²⁹ However, viewing gender equality and access to quality education solely through an economic perspective should be rejected. Fundamental human rights like non-discrimination and education cannot be decided upon an opportunity cost analysis, for example.

Special Rapporteur Kishore Singh explains the marginalization and oppression that women have been subjected to:

Women have historically been victims of social injustice and educational deprivation. In some cases, they are prevented from attending schools by parents who see no value in educating daughters, or by religious extremists threatening them. Violence against women and girls is an impediment to the exercise of their right to education. Governments should be urged to foster school environment, which is protective of girls' and women's right to education and promotes human rights and mutual respect.¹³⁰

¹²⁸ Patricia E. Muñiz, "The Schooling Situation of Children in Highly Underprivileged Rural Localities in Mexico," In *Unequal Schools, Unequal Chances: The Challenges to Equal Opportunity in the Americas*, edited by Fernando Reimers, (Cambridge: Harvard University Press, 2000), 291.

¹²⁹ See Peter Glick, "What Policies will Reduce Gender Schooling Gaps in Developing Countries: Evidence and Interpretation," *World Development* 36, no. 9 (2008): 1627-1630; Paul T. Schultz, *World Development* 30, no. 2 (2002): 207-225; Lopez-Calva, "Exploring the Differential Impact," 452-467.

¹³⁰ Kishore Singh, "Elaboration of a General Recommendation on Women and Girls' Right to Education," keynote speech, 58th Session of the Committee on the Elimination of All Forms of Discrimination against Women, United Nations, Geneva, July 7, 2014, accessed November 2, 2016, http://www.ohchr.org/Documents/HRBodies/CEDAW/WomensRightEducation/HDGD_RtE_Outline_Mr.KishoreSingh.pdf.

Global projects such as Education For All have adopted CEDAW's vision of gender equality in schools and policy decisions towards this same goal.

Global Campaign for Education (GCE) – a civil society coalition¹³¹ focused on combating and eliminating gender discrimination experienced by the girls through advocacy in policy and practice changes – highlights a case brought to the Inter-American Commission of Human Rights against Chile in 2002 where a Chilean girl in secondary school was expelled after being seen on the streets with her girlfriend. The interrelated levels of gender discrimination are clearly visible here: gender, age, and sexual orientation. Thus, it is not surprising to know that “women and girls are often the most marginalized among marginalized groups.”¹³² The current situation for girls' access to education calls for proactivity, reconciliation processes, education, and social justice to de-normalization of such treatment and abuse of rights.¹³³

A rights-based approach to the disparity in access to education for girls is necessary.¹³⁴ The right to education without distinction based on gender is a right that is found in international treaties, and have influenced national legislations and policy-making decisions at the administrative and educational levels. In 2013, UNESCO reported an estimated 31 million girls not enrolled in primary school. From the same year, non-enrollment of secondary school aged girls reached close to 32 million.¹³⁵ UNESCO admits that this disparity narrows “their horizons and

¹³¹ *Gender Discrimination in Education: The Violation of Rights Of Women and Girls*, (Johannesburg: Global Campaign for Education: 2012): 4, accessed October 30, 2016, http://www.campaignforeducation.org/docs/reports/GCE_INTERIM_Gender_Report.pdf. “GCE’s Global Action Week in 2011 focused on gender equality in education. GCE mobilized members and schools in over 100 countries to discuss gender discrimination in education, and to call for politicians to ‘Make it Right’ for gender equality in education. We presented parliamentarians, ministers and heads of state with demands in the form of manifestos and petitions. Our coalitions joined forces with national women’s groups and enlisted the support of high-profile women to amplify our demands. The GCE coalition continues to campaign and lobby on the global, regional, and national stage to ensure gender justice prevails within and beyond schools.”

¹³² Ibid., 8.

¹³³ Ibid.

¹³⁴ Ibid., 1-18.

¹³⁵ Institute for Statistics, “Gender and Education,” UNESCO, 2014, accessed November 2, 2016, <http://www.uis.unesco.org/Education/Pages/gender-education.aspx>.

undermines their potential to contribute to society” and violates their fundamental rights.¹³⁶ Stromquist studies the role poverty has on girls and reminds one that the statistics provided by UNESCO are in them of themselves provided by Member States, hence she believes she believes that the number of out-of-school children is underestimated.¹³⁷ This is a harsh reminder that while data may suggest gender parity in education, there is still huge progress to be made.

Poverty lies at the heart along with historically embedded sentiments of paternalism and stereotyped gender roles that place women in as the primary care-taker of children and “as a result of gendered distribution of domestic labour, they often have to manage income and household resources.”¹³⁸ McKinney attests that women’s poverty is closely linked to child poverty for this reason. The stigma of poverty can also indirectly impact the self-esteem and dignity of the child.¹³⁹

Girls living in rural conditions and of indigenous background have been recognized to experience the most adverse circumstances in which education is a merely a dream and not an attainable right to be exercised.¹⁴⁰ Poverty also reflects the children’s likelihood to begin working at an early age and not go to school, do both, or neither. Special Rapporteur on Violence Against Women (VAW) conducted a country mission to Mexico in 2006 and noted that it “is an inherent part of indigenous culture, in relation to the multiple violations faced by indigenous women from rural areas due to ethnicity and poverty.”¹⁴¹ Lopez-Calva, et al. acknowledges that, “age, gender and whether a child is indigenous have a significant effect on schooling and work decisions in every model.”¹⁴² The pattern of labor roles that have been set in place decades ago is a “clear

¹³⁶ Ibid.

¹³⁷ Stromquist, “What Poverty Does,” 43.

¹³⁸ McKinney, “Relationship of Child Poverty,” 206.

¹³⁹ Ibid.

¹⁴⁰ See Lopez-Calva, “Exploring the Differential Impact,” 452-467; Stromquist, “What Poverty Does,” 39-49.

¹⁴¹ Thompson, *15 Years of the United Nations*, 41.

¹⁴² Lopez-Calva, “Exploring the Differential Impact,” 457, 460. Found in a study assessing the effects of bilingual education for indigenous children. Models included clusters of students in Indigenous-monolingual, bilingual, and Spanish-monolingual education programs.

reflection of the gender discrimination.”¹⁴³ The interrelated obstacles for girls to access education and remain in a full year of primary and secondary education are conflicting with the high probability of girls taking on domestic servant jobs to help their families.

In rural and indigenous settings, girls are less likely to work and attend school. At the same time, there is higher chance for girls to not participate in school or work than to attend school.¹⁴⁴ Staying at home to do household chores is widely recognized as a common trend in Latin America¹⁴⁵ and countries in Asia and Africa that obstruct the girl child to attend preschool, primary, and secondary education.¹⁴⁶ This adds to the cycle of undereducated women and strengthens the gendered roles and schemas instilled in cultures from the time of birth.

The role of the private demands and public supplies along with family and community structures are linked in the decision-making process of equality and non-discrimination in children’s education.¹⁴⁷ Schultz proposes that:

Merging school administrative and household survey information on the school and family inputs, enrollments, and test scores should provide a firmer basis for evaluating national policy options to equalize educational opportunities between females and males, and also between the poor and rich families, and rural and urban areas.¹⁴⁸

Schultz’s observation correlates with Stromquist’s belief that a qualitative rather than quantitative approach on data gathering assessing all relevant factors influence how policies whether gender neutral or targeted will react at the implementation stage.¹⁴⁹

¹⁴³ *Gender Discrimination in Education*, 7.

¹⁴⁴ Lopez-Calva, “Exploring the Differential Impact,” 460.

¹⁴⁵ Thompson, *15 Years of the United Nations*, 34. “For instance, the high rates of VAW in Mexico were contextualized by the SRVAW in the country mission report in relation to gender discrimination in *machista* cultures that institutionalize women’s subordination in the family and the community, and that sanction the use of violence to uphold double standards in male and female sexuality.”

¹⁴⁶ Sudharshan Canagarajah and Harold Coulombe, *Child Labor and Schooling in Ghana*, policy research working paper no. 1844, (Washington: World Bank, 1997), 45.

¹⁴⁷ *Ibid.*, 217.

¹⁴⁸ *Ibid.*, 220.

¹⁴⁹ Stromquist, “What Poverty Does,” 42.

Addressing one challenge that girls experience without mentioning others is nearly impossible. The intersection of oppressive factors that diminish the opportunity for girls to attend and remain in quality schools beyond primary and secondary education is powerful. For example, within indigenous communities in Latin America, many of them live in rural communities, with already low resources. Within these communities, as already presented, girls are more likely than boys to stay home and handle house chores rather than gain an education. In the event that the contrary occurs, rural areas in Latin America may only provide one-classroom schools, “usually offer(ing) only the first three or four grades of primary school.”¹⁵⁰ As Stromquist presents, “for reasons of gender ideology, physical mobility affects girls more than boys, one-classroom schools truncate the schooling trajectory of girls.”¹⁵¹ Thus, in order to complete their education, children will attend nearby towns, implying that time spent traveling to and from school will impede girls to attend. Girls do not experience one type of discrimination, but rather a compounding discrimination – gender, ethnic, age, and economic – that exacerbate their access to quality education.¹⁵²

Distance from home to the school has an adverse effect on accessibility for girls than for boys. A longer distance implies a safety concern for the parents, higher transportation costs, longer transportation time; time that would otherwise be used to contribute to the household by working or taking care of chores. States’ obligations include making education accessible to all, girls and boys. Facilitating access to nearby schools “may reduce the effective cost of girls’ school attendance while having no effect or a small effect on costs for boys.”¹⁵³ Thus, policies and practices that reduce the distance traveled by children will reduce the costs of families to send girls

¹⁵⁰ Stromquist, “The Intersection of Class,” 9.

¹⁵¹ Ibid.

¹⁵² Muñiz, “Schooling Situation of Children,” 291, 300.

¹⁵³ Glick, “What Policies Will Reduce,” 1632.

to school. Glick's results can be presented in tandem with Stromquist's assessment of parental decisions correlated with factor of price and distance as well as Global Campaign For Education's report submitted to CEDAW's Committee.

Globally, organizations such as the World Bank, among others, have a large influence in policy making and contribute many resources and time to the development efforts of countries around the world, of which both Mexico and Peru have been beneficiaries time and again. Their efforts combined with State cooperation facilitate policy implementation, international or trans-national cooperation towards global developmental goals, as well as provide monitoring systems. Nevertheless, this input often overlooks the best interest and rights of marginalized groups, like those of indigenous communities, according to Alston.¹⁵⁴

National studies and statistics are given by averages, consequently diminishing the regional deficiencies and lack of access education and other social and economic rights. For example, Mexico's program support, *Progresa*, reports that there are in fact regional disparities in children's access to education between rural and urban localities and between boys and girls. Nationwide; however, access to education through a gender lens appears to be seemingly the same¹⁵⁵ – a notion that continues to prevail at a national and international scope.¹⁵⁶

In short, education should be accessible, adaptable, available, and attainable to meet international minimum standards of quality education. The next section is devoted to the adaptability and availability of quality education for girls in Latin America. As the coming section will show, the content of education as well as the environment girls learn under play a major role

¹⁵⁴ Alston, *Peoples' Rights*, 6. The term 'peoples' has no clear definition and is often an element of high debate. "Perhaps the appropriate response is that there is no need for a shared conception as long as it is sufficiently clear in each context what is meant by the use of the term 'peoples'."

¹⁵⁵ Muñiz, "The Schooling Situation of Children," 294.

¹⁵⁶ McKinney, "Relationship of Child Poverty," 207.

in transforming basic education to quality education: one that actively seeks to eliminate gender stereotypes, forms of discrimination, and truly provides an equal opportunity for girls and boys to prosper under.

2.2.3. True Quality Education for Girls

The content of the curriculum and the environment of the school are important in creating a safe and acceptable atmosphere for girls to study in. The content requires a human rights perspective founded on non-discrimination, equality, and respect.¹⁵⁷ Making education accessible – considering factors such as cost and distance – does not alone remove the barriers of development and opportunities to females of all ages. The content of the education presented to children should reflect the ideals of equality, self-confidence, respect, and assertiveness for both boys and girls; something that human rights-based educational practices can accomplish. Some have noted the need to make the “content and experience of schooling to make education more responsive to women’s feelings and practice of empowerment.”¹⁵⁸ School curriculums are gendered as well as the teaching methods used in the classroom.¹⁵⁹

Gender parity in school enrollment has increased in Latin America, yet girls’ rights continue to be neglected throughout the education cycle. GCE advocates for the “deconstruction of gender stereotypes as well as the promotion of equality of experience and relations for both sexes in education,” as crucial means for forming a balanced and just education system.¹⁶⁰ Girls continue to experience discrimination in access to education, unequal opportunities to progress within the educational system and later in the labor market. A GCE conducted surveyed showed

¹⁵⁷ *Gender Discrimination in Education*,” 7.

¹⁵⁸ Stromquist, “What Poverty Does,” 46.

¹⁵⁹ *Ibid.*, 46, 48, 53.

¹⁶⁰ *Gender Discrimination in Education*, 3.

preliminary results of at least one in every five girls in secondary school were unhappy with their gender and two of every five had been bullied or made fun of for their gender.¹⁶¹ These are alarming results that inherently affect the child's development and self-esteem.

One of the goals of gender parity should include education that aims to increase girls' autonomy and their capacity to be actors in decision-making processes. However, the girl child spends more time doing classroom chores than the boy child.¹⁶² Besides, "there is very little research of a qualitative nature documenting the lived experience of girls and boys in Latin American schools."¹⁶³ GCE notes that primary school enrollment rates are generally only recorded on the first day of school, thus they fail to provide accurate data on the number of girls that remain in a full education cycle.¹⁶⁴ More attention and comprehensive data gathering are required to close this gap. Stromquist strongly rejects "identifying the symptoms" that hinder girls' access to education, and rather move towards addressing the "underlying causes of gender" instead.¹⁶⁵ For this approach, feminist theory is welcomed and necessary in understanding the interrelated causes of gender schemas and gender-based discrimination entrenched and woven into and through so many aspects of life, including education.

Adaptability of education includes the ability to adjust the access to it according to the needs of the community. Statistics maintain that many girls drop out of education early on due to pregnancies, among other factors.¹⁶⁶ For example, there is increasing need for sexual education to be included in the curriculum. Health education is vital in learning of the risks and consequences of having unprotected sexual relationships, affecting both girls and boys.¹⁶⁷ UN Special

¹⁶¹ Ibid., 3-4.

¹⁶² Ibid., 4.

¹⁶³ Stromquist, "The Intersection of Class," 11.

¹⁶⁴ *Gender Discrimination in Education*, 6.

¹⁶⁵ Stromquist, "The Intersection of Class," 11.

¹⁶⁶ Glick, "What Policies Will Reduce," 1637.

¹⁶⁷ Ibid.

Rapporteur Vernor Muñoz speaks on the matter stating that, “there is no valid excuse for not providing people with the comprehensive sexual education that they need in order to lead a dignified and healthy life.”¹⁶⁸ Early education on how to prevent pregnancies and avoid sexually transmitted diseases such as AIDS/HIV is necessary and appropriate for quality education.¹⁶⁹

Though some find that increased health education may not have the desired outcome, Glick suggests that while there are mixed findings relating to behavioral impacts of such curriculum, a randomized study in Kenya found that “teaching 8th grade girls about the high HIV risk from older men led not just to a very large drop in the subsequent incidence of pregnancies by adult partners, but also a nearly one third overall decline in pregnancies.”¹⁷⁰ It should be noted that health and sex education should not only be made available for girls, but also for boys.¹⁷¹ Government assistance, such as subsidized childcare, for young mothers can also have a huge positive impact in girls and women feeling like they are capable and able to continue their education. A flexible schedule that appeals to their lifestyle and culture may also welcome more girl enrollment in schools.¹⁷²

Additionally, the role – and gender – of educators in primary and secondary school appear to also impact girls’ education. The presence of female educators in primary and secondary schools may positively affect the enrollment of girls into these institutions. Perhaps due to cultural or traditional norms, parents may feel more comfortable knowing that there is a female teacher teaching their girl child rather than a male teacher.¹⁷³ GCE found the correlation to be stronger in the Sub-Saharan region and for secondary education above primary education in creating the

¹⁶⁸ Quoted in *Gender Discrimination in Education*, 8.

¹⁶⁹ Glick, “What Policies Will Reduce,” 1637.

¹⁷⁰ Ibid., 1637-38.

¹⁷¹ See Esteban Restrepo-Saldarriaga, “Advancing Sexual Health Through Human Rights in Latin America and the Caribbean,” working paper, *World Health Organization*, 2010, accessed November 2, 2016, http://www.ichrp.org/files/papers/183/140_Restrepo_LAC_2011.pdf; Thompson, *15 Years of the United Nations*.

¹⁷² Glick, “What Policies Will Reduce,” 1638.

¹⁷³ Ibid., 1634; *Gender Discrimination in Education*, 7.

environment “more acceptable for girls.”¹⁷⁴ GCE links the gender disparity in the teaching profession to the lack of opportunities to women and girls in accessing education and the learning of skills.

Unfortunately, gender discrimination breaches girl students’ and female educators’ right to nondiscrimination in educational institutions. GCE reports that thirty percent of the female teachers surveyed experienced gender discrimination in the workplace.¹⁷⁵ For the girl student, gender discrimination is experienced in the content of the curriculum, in social interactions with peers and teachers often leading towards having a larger portion of classroom chores over boys, to name a couple examples. Additionally, “surveys conducted by GCE members indicate that violence against and abuse of girls often exists alongside a culture of impunity, in which abuse is rarely reported or punished.”¹⁷⁶ Thus, safety and protection of girls at schools must be taken seriously. Protection from violence and abuse needs to prevail over impunity. Therefore, practices that do not advance the principle of nondiscrimination, and continue to turn a blind eye towards harassment and violence against women in educational institutions need to be abandoned to adopt a human rights-based system.

In tandem with a positive and human rights focused atmosphere and curriculum at school, societal response and perception of girls education can also have an impact in how girls perceive their own education. Public awareness and information about the multiple benefits and rights of girls in education are means of promoting and affirming girls’ rights to education. Moreover, “strong local participation may reflect an existing commitment to girls’ education or a strong role of women in community decision making, which would independently contribute to education

¹⁷⁴ *Gender Discrimination in Education*, 7. For example, in Ethiopia, 1 out of every 10 teachers is female.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

equity.”¹⁷⁷ Education campaigns at the local, regional and national levels are significant in perhaps shifting traditional parental beliefs on girls’ education and moving past the opportunity cost and return of investment train of thought that has prevailed throughout the years.¹⁷⁸

In short, girls’ education necessitates a human rights-based approach through qualitative determinants to distinguish appropriate educational systems in facilitating girls’ access to quality education. States have a legal obligation to ensure girls can finish their education, the same as boys. The job requires hard work, due diligence, and recognizing where the setbacks in attaining universal education lay. The collaboration of global entities alongside civil society and other key actors allows for open dialogue and more effective decision-making relating to school policies. Yet, discrimination in education based on different forms is rampant in Mexico and Peru. Discrimination based on national and ethnic identity, gender, and language has been discussed. In the following section, discrimination on the basis of mental and physical ability is dissected as it affects children’s access to quality education.

2.3. Children with Disabilities’ Struggle for Quality Education

Chapter 2.3 is devoted to children with disabilities’ struggles for special human rights protection and their right to education. This subchapter is divided into two segments. The first segment dives into the international legal protection of people with disabilities, including international expert observations, opinions, namely from a UN Special Procedures agent. The second segment discusses the challenges faced by children belonging to this cluster of marginalized children. The information provided has a Latin American focus. In the last chapter of this thesis, the situations in both Mexico and Peru will be discussed in a comparative analysis

¹⁷⁷ Ibid., 4.

¹⁷⁸ Glick, “What Policies Will Reduce,” 1638.

pulling together elements from all previous sections and particularly distinct legal and policy components pertaining to each aforementioned jurisdiction.

2.3.1. The Legal Protection for People with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) signed into force in 2006¹⁷⁹ is perhaps one of the most recent and progressing UN Conventions against discrimination. The recognition of unequal treatment and lack of a dignified life for persons with disabilities, including children, is addressed within the context of the treaty. Many of these inequalities begin at a very early age and include the lack of quality education for children. Plausibly seen as a heavy financial and other resource burden for many states, children, particularly in impoverished areas and/or of low-income levels, are left to suffer the consequences of inaction. With this convention, States Parties have the positive obligation to fulfill their role in protecting their nationals and children and adhering to the principles of non-discriminatory universal education. The CRPD has currently 167 State Parties, including Mexico (2007) and Peru (2008). Through Article 42, the Optional Protocol allows for individual complaints to be submitted to the Committee. Mexico and Peru both accepted this alongside the possibility of an inquiry procedure at the time of their respective ratifications. In the following, the specific articles pertaining to children with disabilities and education will be briefly discussed.

The most relevant Articles of the CRPD to the right of education are Articles 4, 7, 8, 23, and 24. States Parties are provided with their general obligations in Article 4.¹⁸⁰ These include, but are not limited to: giving a voice of persons, including children, with disabilities in consulting and maintaining active communication. Emphasis on the best feature of the best interest of the child is

¹⁷⁹ Convention on the Rights of Persons with Disabilities, UN General Assembly, December 13, 2006, A/RES/61/106, Annex I.

¹⁸⁰ Ibid., art. 4.

mentioned in Article 7 (2)¹⁸¹ involving the positive obligation of the state to provide the adequate assistance in order for children to be heard equally as other children and their opinions to be given due weight. Awareness rising is addressed within the purview of Article 8.¹⁸² It calls the States Parties to increase awareness-raising of and within the society in proactive efforts to de-stigmatize and “combat stereotypes, prejudices and harmful practices” affecting children with disabilities. Article 23 establishes the right for children to the respect for their home and the family and against neglect and segregation.¹⁸³

Additionally, Article 24 directly addressed the right to education, without discrimination and “the basis of equal opportunity”, access to free and compulsory education including secondary without discrimination, “reasonable accommodation.”¹⁸⁴ The mentioning of nondiscrimination and equality is persistent throughout the Convention, but ever more so in Article 24. This Article is detailed and lengthy within its contours, including the importance of ensuring awareness raising, hiring quality trainers and educators – including those with disabilities themselves – and “the use of augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities” as described in Article 24 (4).¹⁸⁵ Without a doubt, the detail and premise of this article and the Convention as a whole calls for State attention and community awareness, thus, combating discrimination, neglect, stigmatization, and negative stereotypes towards people with disabilities.

To complement the CRPD, the CRC under Article 23 directly corresponds to the right to extended assistance provided by the State for children with disabilities, and ensuring that “the

¹⁸¹ Ibid., art. 7(2).

¹⁸² Ibid., art. 8.

¹⁸³ Ibid., art. 23.

¹⁸⁴ Ibid., art. 24(2)(c).

¹⁸⁵ Ibid., art. 24(4).

disabled child has effective access to and receives education,” among other public services.¹⁸⁶ Article 16 of the Constitution of Peru also addresses the right to non-discrimination in education for children with disabilities.¹⁸⁷

For children, this is an immense effort in reducing the social inequalities and expanding on their capabilities, which are often vast and fascinating, not to mention unique. However, attention alone does not suffice. Appropriate resource allocation, not only material and monetary, but also human from experts in the field of special education and the like is more than necessary for marginalized children to thrive in their communities. For children with disabilities, they have all the rights that other children do yet they have to face stronger and deeper hurdles to be able to access the most basic levels of these rights.

2.3.2. Hardships in Accessing Education

The World Bank estimates that ten percent of the population – around 50 million people – in Latin America is disabled based on the 2004 International Disability Rights Monitor (IDRM) Regional Report of the Americas.¹⁸⁸ Furthermore, only a third of children with disabilities attend schools in Latin America. The World Bank estimates that perhaps only twenty to thirty percent of children with disabilities have access to schools.¹⁸⁹ This leaves hundreds of thousands of children without the education that they are entitled to by law. The prevalence of disability among 0-19

¹⁸⁶ CRC, art. 23(3).

¹⁸⁷ 1993 Political Constitution of Peru, art. 16.

¹⁸⁸ “Disability in Latin America and The Caribbean,” World Bank, accessed October 29, 2016, <http://siteresources.worldbank.org/DISABILITY/Resources/Regions/LAC/LACfactsheetEng.pdf>. The World Bank recognizes “disability” as the following: “Disability is the result of the interaction between people with different levels of functioning and an environment that does not take these differences into account. In other words, people with physical, sensory or mental limitations are often disabled not because of a diagnosable condition, but because they are denied access to education, labor markets, and public services. This exclusion leads to poverty and, in a vicious circle, poverty leads to more disability by increasing people’s vulnerability to malnutrition, disease, and unsafe living and working conditions.”

¹⁸⁹ Ibid.

year-olds is present in 5.1 percent of Mexico's population and 8.9 percent in Peru's.¹⁹⁰ While these numbers are certainly an estimate and for the region, they do provide a window to the level of exclusion experienced by people with medically diagnosed disability or perceived disability. According to Inter-American Development Bank, "having a disability can be a greater barrier to accessing education than where you live, your gender, or your socio-economic status."¹⁹¹ Exclusion is not only visible in terms of access education for children, but it spreads affecting their political life and participation, as well as their social and economic standing among within their community.¹⁹²

Children with disabilities face a multitude of challenges in a pursuit of a prosperous and fulfilling life. Just as any other child in the world, children with disabilities have the right to an education that is catered to their particular needs. Unfortunately, many in Mexico and Peru do not receive the education they are entitled to as a fundamental human right. On the one hand, discrimination, social ostracism, misunderstanding, and stereotyping are some of the challenges that society imparts on people with disabilities. Furthermore, governments may arguably harbor these sentiments of exclusion by avoiding or neglecting the marginalized group. Lack of access to primordial sources for a healthy and sustainable lifestyle, including education, is one crystalized form of such. As one may deduce, the struggle for children to a quality and adaptable education is not a novel problem, but it is evident throughout the world in various degrees.

Global bodies such as UNICEF and UNESCO work diligently to address the injustices lived by marginalized children around the world, including those with disabilities. Under

¹⁹⁰ UNICEF and ECLAC, *Challenges: Newsletter on Progress Towards the Millennium Development Goals from a Child Rights Perspective. Rights of Children and Adolescents with Disabilities*, no. 15 (UN, April 2013), 6.

¹⁹¹ Gábor Manzano, "10 Myths About Students with Disabilities in Latin America," Inter-American Development Bank, December 6, 2013, accessed November 3, 2016, <http://blogs.iadb.org/education/2013/12/06/six-myths-about-students-with-disabilities/>.

¹⁹² "Disability in Latin America."

UNICEF's large umbrella of ensuring each child has a dignified life and holding states accountable while increasing their advocacy efforts locally, is the heightened attention to disabled children, among others.

There is a positive correlation between poverty and children with disabilities' access to quality education. UNICEF paints a shocking picture of Mexico when it described the country's regional availability of resources: "Some areas of Mexico have development levels close to those of Scandinavia, while others are in line with those of sub-Saharan Africa."¹⁹³ In a regional context, the World Bank reports that living in poverty is the reality of approximately 82 percent of people with disabilities.¹⁹⁴ In some instances, as it is with Mexico, UNICEF works on the ground and very closely with governmental officials and ministries. In 2011, UNICEF reported having a monitoring mechanism for the implementation of the budgetary plan. Thus, they work diligently with the Ministry of Finance to oversee the State's budgetary dispersion to meet or come as close as possible to their expectations and "promote public accountability."¹⁹⁵ However, it is worth mentioning here that Mexico, "a member of G-20 and a pioneer of South-South cooperation,"¹⁹⁶ and one of the largest economies in the world – top fifteen in gross domestic product – is in a leader position to lead other countries particularly those in Latin America and the Caribbean, thus transparency, accountability, and respect for human rights law are essential for becoming a model to other emerging Latin American countries.

¹⁹³ Quoted in "Amidst Widespread Inequity, Mexico Leads Efforts to Plan and Monitor Investment in Children," UNICEF, December 23, 2011, accessed November 2, 2016. http://www.unicef.org/media/media_61143.html.

¹⁹⁴ "Disability in Latin America."

¹⁹⁵ "Amidst Widespread Inequity."

¹⁹⁶ Ibid.

The lack of attention given to children with disabilities can be seen in the kind of education that they receive, or better yet, that they are unable to access. World Bank reports the following country-specific statistics on schooling and children with disabilities:

- i. “In Honduras, people with disabilities have an illiteracy rate of 51 percent compared to 19 percent for the general population;
- ii. Only an estimated 20 percent of regular schools in Brazil are accessible to disabled children and less than 10 percent in Mexico;
- iii. In Surinam, 90 percent of disabled children in school attend special segregated schools.”¹⁹⁷

These statistics are alarming and call for heightened attention and policy reform that is also reflected in the administrative practice of the countries in order to adhere to international norms with regards to children’s right to education.

Disabilities arise upon countless determinants and scenarios. The environment a child is brought up in has been found to affect the same. Living in poverty as we have been able to observe, further marginalizes the child. Hence, “children with disabilities are more likely to be poor, neglected and malnourished and die younger than their peers without disabilities.”¹⁹⁸ Moreover, at least “80% of disabled people in Latin America live in poverty,” by which economic hardships, continue to exacerbate the cycle of poverty.¹⁹⁹ The broad statistics that show the countering effect that poverty’s role plays in the lives of children with disabilities are alarming and should be raising more questions leading to action at all levels of government.

Reports have been made concluding that close to fifty percent of disabilities “are preventable and directly linked to poverty,” such as “poor nutrition, dangerous working and living conditions, [and] limited access to vaccination programs and to health and maternity care.”²⁰⁰

¹⁹⁷ “Disability in Latin America.”

¹⁹⁸ Manzano, “Students with Disabilities in Latin America.”

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

Furthermore, disability is multifaceted incorporating the perception of others upon an individuals' capacity to perform the task as expected. Thus, even if the child is not clinically identified to have some kind of disability, if the child is treated as he or she can be experiencing the similar discrimination based on disabilities, namely because she will not have the equal opportunity to participate and take advantage of all the resources available to children without disabilities.

2.3.2. Human Rights-based Education

The ratification of the Convention on the Rights of Persons with Disabilities is one outcome of the successful fight for equality of people with disabilities. The treaty itself has aided in challenging the stereotypes and misperceptions that have been institutionalized or formalized since birth, paralleling to the effects of the DRIP. In an effort to discredit and educate society, public policies need to be realized that directly address the needs of people with disabilities, with a human rights-based approach moving towards a common goal of social inclusion.²⁰¹

UNICEF lists several suggestions on policies that may be included within national governments to further this goal. They include, “inclusion of schools and recreational activities, different types of accessibility, special provisions within social protection systems... training of teachers and families regarding care for children with disabilities, measures to combat discrimination, use of technology for education and play,” among others.²⁰² Furthermore, educational institutions should heighten educational efforts to a human rights education at an early age for the purpose of learning how to live together and accept each other.

For children with disabilities attending non-segregated schools is possible to experience bullying in the classroom perpetrated by fellow classmates. While a single comment may arguably

²⁰¹ UNICEF and ECLAC, *Challenges: Newsletter on Progress*, 2.

²⁰² Ibid.

not have a direct impact on the child, it does harbor an unsafe environment for the child with disability and the every child to learn and study. Persistent bullying affects the self-esteem, may question the child's self-worth, and ultimately harm the dignity of the child. Thus, establishing values and principles that guide the classroom's environment for a safe and positive learning space is essential.

A multitude of misconceptions surround this marginalized group, such as the implications of inclusive schools and the unlikeliness for children with disabilities to learn together with children without. The Inter-America Development Bank describes inclusive education as a "system [that] must respond to the diversity in ways that allow all children to participate."²⁰³ Furthermore, it is "about structures, systems, and methodologies to meet the needs of ALL students by acknowledging and respecting differences."²⁰⁴ The second point is directly linked with inclusive education. Without inclusive education, segregated schools, like Suriname's 90 percent example, will most likely prevail. Having an inclusive educational system as much as possible is beneficial for all children. According to the Inter-American Development Bank, "research shows that when students with disabilities are included, all students learn and achieve more," thus the quality of education for all increases.²⁰⁵ The more diverse and inclusive the education is, the more the quality of the educational experience the individual child will receive.

In the end, one of the goals of receiving quality education is to better prepare oneself to be a contributing member of society. If children do not have the opportunity to interact and form friendships and relationships with peers that may appear different from them, they are not receiving it is a disservice to their education. The diversity within people with disabilities is just as broad as

²⁰³ Manzano, "Students with Disabilities in Latin America."

²⁰⁴ Ibid.

²⁰⁵ Ibid.

diversity outside this grouping. Thus, the needs of each individual will vary depending on the individual itself.

Though it may appear creating inclusive educational facilities a daunting task, the international community has been working together through various platforms to support each other in resource sharing. For example, UNESCO uses platforms like “the database ‘Inclusive Education in Action’, developed in cooperation with the European Agency for Development in Special Needs Education, and the online knowledge Community ‘Building Inclusive Societies for Persons with Disabilities.’”²⁰⁶ Furthermore, “the establishment of institutional partnerships, through the Education Task Force of the Global Partnership for Children with Disabilities, that is co-led by UNICEF and UNESCO which seeks to guide Member States with regard to the implementation of Article 24 on the Convention on the Rights of Persons with Disabilities.”²⁰⁷ UNESCO also works to strengthen the “countries’ capacity through the development of guidelines and tools that help build an inclusive learning environment, as well as on teacher training and ICTs in education for persons with disabilities.”²⁰⁸

Disability Rights International is an international NGO actively advocating for the rights of children with disabilities producing reports, appearing at international human rights bodies’ hearings, and conducting ongoing research. They have reported about the situation in Mexico and Peru and how children are denied the access to education, even when the federal law states otherwise. There have been reported instances contravening the Peruvian Federal Law 27050,

²⁰⁶ “Inclusive Education: People with Disabilities,” UNESCO, 2016, accessed November 3, 2016, <http://www.unesco.org/new/en/education/themes/strengthening-education-systems/inclusive-education/people-with-disabilities/>.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

Article 23.1 on the right of children with disabilities to have access to inclusive and adequate education.²⁰⁹

The intersection of ethnicity, gender, physical or mental (dis)ability, and economic standing exacerbate the segregation and discrimination marginalized children face. Children and youth have the voice and the right to quality basic education, and their corresponding jurisdictions have accepted this universally set minimum standard. Though there has been progress in years and heightened attention at issues surrounding quality education, including the importance of educating girls and respecting and including all cultures and traditions of indigenous peoples, there are still many classrooms and chairs to fill. No child chooses the situation and circumstance he or she will be born in, no child decides if there will be conflict or peace, or whether they will be born a certain gender with or without a disability, nor their ethnicity or race. It is up to individuals to collectively ensure that children have the opportunity to be children and absorb and learn as much as they are able to from an early age in an environment that is respectful and inclusive of all people without discrimination.

²⁰⁹ Mental Disability Rights International and Asociación Pro Derechos Humanos, “Human Rights & Mental Health in Peru,” (Peru: Mental Disability Rights International, 2004), 24-25, accessed November 2, 2016, <http://www.driadvocacy.org/wp-content/uploads/Peru-Report-Eng-Final.pdf>.

3. Case Studies: Mexico and Peru on Quality Education

Chapter 3 is dedicated to analyzing and critiquing the appropriate implementation of the internationally set standards for universal quality education, specifically to reach and impact historically marginalized groups in Mexico and Peru. Chapter 1 and Chapter 2 identify the relevant international legally binding standards applicable to both Mexico and Peru. The CRC protects all children without discrimination, and CEDAW is enforced to heighten attention and protection of women by state due to systemic subjugation, violence, and unequal access to rights and participation in society. Chapter 2 has described and acknowledged the interlocking barriers surrounding indigenous children and girls, often times the child belonging to both marginalized groups, or more.

This chapter develops on the premise that Mexico and Peru have not fulfilled their positive obligation to provide universal quality education. The lack of culturally appropriate education to fit the needs and wants of the communities, namely indigenous communities in Latin America is not uncommon. A comparative analysis gives way to new understanding and perspective on marginalized children's access and attainment to their right to quality education in these two diverse and contrastingly similar countries. Mexico and Peru share common threads of colonizing history and macro-demographics – high population of indigenous peoples and a deeply entrenched paternalistic and *machista* culture. Each one has succeeded and lagged in different aspects within their legal obligations, that will be highlighted throughout this chapter.

Chapter 3.1 describes through statistical and governmental policy lenses the current situation facing both countries in education attainment. Next, Chapter 3.2 focuses on the impact of independent experts, such as special rapporteurs, in Mexico's public policy and educational institutions distinguishing where these forces come synergize. The last section is supports that

even though remedy processes like *amparo* for social rights are available, they accessibility and usefulness are deficient.

3.1. Education's Situation in Mexico and Peru

Education, above security and health, is the primary concern for the Mexican people. This is what a survey conducted by the Organization for Economic Cooperation and Development (OECD) showed in 2015. The Mexican people believe that education is the most appropriate and vital factor in their lives acting as a change agent for their economic and individual development.²¹⁰ Peru, though not an OECD member, has put forth programs like 'Road to Lima' in partnership with the International Monetary Fund (IMF) in 2015, to advance the quality and access to education for marginalized children.²¹¹ The end goal of universalized education has not been reached even though the right to education is constitutionally recognized in both countries.²¹²

Peru's efforts to the improvement of quality education for the marginalized continues to be at the forefront of their international cooperation with groups like the IMF, UNICEF, UNESCO, and the World Bank. With the majority of the rural Peruvian population being indigenous – 70 percent²¹³ – experts have stated that, “inequality that marks Peruvian society, despite the recent high levels of economic growth, is reproduced in the educational system, and that rural regions lag behind cities on every level.”²¹⁴ The involvement of these global organizations are present

²¹⁰ Fernando Rodriguez, “Educación en México, Reprobada. Las Gráficas de la Semana,” *Expansion*, June 5, 2015, accessed September 30, 2016, <http://expansion.mx/economia/2015/06/05/ocde-reprueba-la-educacion-en-mexico-graficas-de-la-semana>.

²¹¹ “The Road To Lima,” International Monetary Fund, 2015, accessed October 23, 2016, <http://www.imf.org/external/np/seminars/eng/2014/imflima2015/aboutus.htm>.

²¹² 1993 Political Constitution of Peru, art. 17; *Political Constitution of the United Mexican States*, art. 3, February 5, 1917.

²¹³ Martha Hernandez-Zavala, et al., “Quality of Schooling and Quality of Schools for Indigenous Students in Guatemala, Mexico and Peru,” Policy Research Working Paper 3982, (World Bank, 2006), 2.

²¹⁴ Milagros Salazar, “PERU: Rural Education Reflects Ethnic, Socioeconomic Inequalities,” *Inter Press Service*, January 31, 2011, accessed November 3, 2016, <http://www.ipsnews.net/2011/01/peru-rural-education-reflects-ethnic-socioeconomic-inequalities/>.

throughout all of Latin America, in part due to the disparity of achievements in education and economic development between the indigenous populations and non-indigenous peoples.²¹⁵

This subchapter dives deeper into the parameters that the universal right to education in Mexico and Peru are situated in. Starting with statistical data, the challenges facing these two countries to achieve the international standard are presented.

3.1.1. Statistical Data on Education in Mexico and Peru

The World Economic Forum (WEF) ranked Mexico in 102th place out of 124 countries in quality education for students under 15 years of age and 107th place for youth between the ages of fifteen and twenty-four, as Table 3.1.1 illustrates. On a survey response, the quality of education for the under 15-years-old age group, Mexico received a score of 2.84 (1 = worst score, 7 = best score).²¹⁶ Peru is only a few rankings behind Mexico. While Peru shows higher attainment and enrollment rates for primary and secondary schooling, the quality of education is rated at 2.27 out of 7. WEF results as displayed on the right column of Table 3.1.1. rank Peru 118th place out of 124 countries in quality education for both students under 15 years of age and youth between the ages of fifteen and twenty-four. These surveys do not say much in absolute and substantial terms, yet they do serve a place of comparison with international community that has for the most part been party to international human rights treaties.

Table 3.1.1 Education Statistics in Mexico²¹⁷ and Peru²¹⁸

²¹⁵ Hernandez-Zavala, “Quality of Schooling,” 3.

²¹⁶ “Human Capital Report 2015: Mexico,” World Economic Forum, 2016, accessed November 3, 2016, <http://reports.weforum.org/human-capital-report-2015/economies/#economy=MEX>.

²¹⁷ Ibid.

²¹⁸ “Human Capital Report 2015: Peru,” World Economic Forum, 2016, accessed November 3, 2016, <http://reports.weforum.org/human-capital-report-2015/economies/#economy=PER>.

	Value	Score	Rank
Under 15 Age Group	79.93	72	
Enrolment in education			
Primary enrolment rate	98.0	97.96	45
Secondary enrolment rate	67.9	67.88	74
Basic education survival rate	89.5	89.48	59
Secondary enrolment gender gap	100.0	100.00	1
Quality of education			
Quality of primary schools ¹	2.84	30.58	102
Vulnerability			
Incidence of child labour	6.3	93.70	57
15-24 Age Group	68.61	63	
Enrolment in education			
Tertiary enrolment rate	29.0	28.99	70
Vocational enrolment rate	8.8	8.85	87
Quality of education			
Quality of education system ¹	2.81	30.23	107
Youth literacy rate	99.0	99.04	56
Educational attainment			
Primary education attainment rate	99.0	98.98	64
Secondary education attainment rate	73.4	73.41	65
Economic participation			
Labour force participation rate	48.0	48.00	58
Unemployment rate	9.9	90.10	36
Underemployment rate	7.7	92.30	39
Not in employment, education or training rate	18.2	81.80	45
Long-term unemployment rate	0.9	99.13	4
Skills			
Incidence of overeducation	—	—	—
Incidence of undereducation	—	—	—
Skill diversity ²	0.275	72.52	71

	Value	Score	Rank
Under 15 Age Group	75.62	87	
Enrolment in education			
Primary enrolment rate	94.4	94.42	76
Secondary enrolment rate	76.3	76.28	62
Basic education survival rate	95.4	95.39	41
Secondary enrolment gender gap	100.0	100.00	1
Quality of education			
Quality of primary schools ¹	2.27	21.10	118
Vulnerability			
Incidence of child labour	33.5	66.50	106
15-24 Age Group	73.90	35	
Enrolment in education			
Tertiary enrolment rate	40.6	40.65	61
Vocational enrolment rate	—	—	—
Quality of education			
Quality of education system ¹	2.54	25.64	118
Youth literacy rate	98.9	98.94	63
Educational attainment			
Primary education attainment rate	99.8	99.81	43
Secondary education attainment rate	86.6	86.60	37
Economic participation			
Labour force participation rate	61.4	61.40	22
Unemployment rate	9.2	90.80	30
Underemployment rate	—	—	—
Not in employment, education or training rate	16.5	83.50	41
Long-term unemployment rate	—	—	—
Skills			
Incidence of overeducation	29.8	70.20	53
Incidence of undereducation	18.5	81.50	22
Skill diversity ²	—	—	—

Source: *World Economic Forum*, 2016, accessed on 10 October 2016,
<http://reports.weforum.org/human-capital-report-2015/economies/#economy=MEX>,
<http://reports.weforum.org/human-capital-report-2015/economies/#economy=PER>.

A few observations can be made from these two country-specific tables. First, Mexico has a slightly larger quality margin over Peru in basic fundamental education, meaning, primary and secondary levels. At the same time, Peru has performed better at every level in enrollment of students in primary and, most notably, in secondary education.

These successes are not met without struggles. In, Piura, a city in the northern region of Peru, overall dropout has seen an increase of four percent from 4.5 percent to 8.6 percent. 2014 dropout rates for secondary education reflecting youth between the ages of twelve and seventeen years old was twenty percent.²¹⁹ Many of these students dropping out could arguably be linked to

²¹⁹ Center for Promotion and Defense of Sexual and Reproductive Rights – PROMSEX, Planned Parenthood Federation of America, and Centro Ideas – Piura, “Ref. Report for the 71st Session of the Committee on the Rights of the Child (January 11-29, 2016) Regarding the Right to Sexual and Reproductive Health of Children and Adolescents in Peru,” presented to the Committee on the Rights of the Child, (Geneva, Switzerland, December 15, 2015), 21, accessed

the high number of teenage pregnancies and lack of access to social networks and resources necessary to meet their needs, as will be discussed in detail later. Furthermore, there is a “gap of 30.8% of adolescents that are not studying; 86.6% of adolescents enrolled live in urban areas and only 13.4% in the rural areas.”²²⁰ Considering school retention aggregate data is useful in gaining a full picture of the issues surrounding the right to education. Consistently high percentage of poverty – 30 percent in urban areas and roughly above 55 percent in rural areas – has adverse effects for children, “school enrollment has improved, but achievement scores reflect ongoing problems with educational quality. Many poor children temporarily or permanently drop out of school to help support their families.”²²¹ Close to a third of Peruvian children are involved in dangerous child labor rather than obtaining their rightful education.²²²

The WEF further reports on the amount of GDP spent on education per country and results show that Mexico contributes 5.19 percent of its GDP²²³ versus Peru at 2.76 percent.²²⁴ Nevertheless, Mexico has vast resources and should be spending eight percent of their GDP according to reports of Muñoz.²²⁵ Hence, there is probably a correlation between the amount of public spending in education and the level of perceived or actual quality of fundamental education accessible to their populations. Furthermore it is necessary to echo further the challenging act of describing and prescribing a standardized measurement of quality, namely for countries as diverse as Mexico and Peru.

November 3, 2016,
http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/PER/INT_CRC_NGO_PER_22626_E.pdf.

²²⁰ Ibid.

²²¹ World Factbook, “South America: Peru,” CIA, October 27, 2016, accessed November 3, 2016, <https://www.cia.gov/library/publications/the-world-factbook/geos/pe.html>.

²²² Ibid.

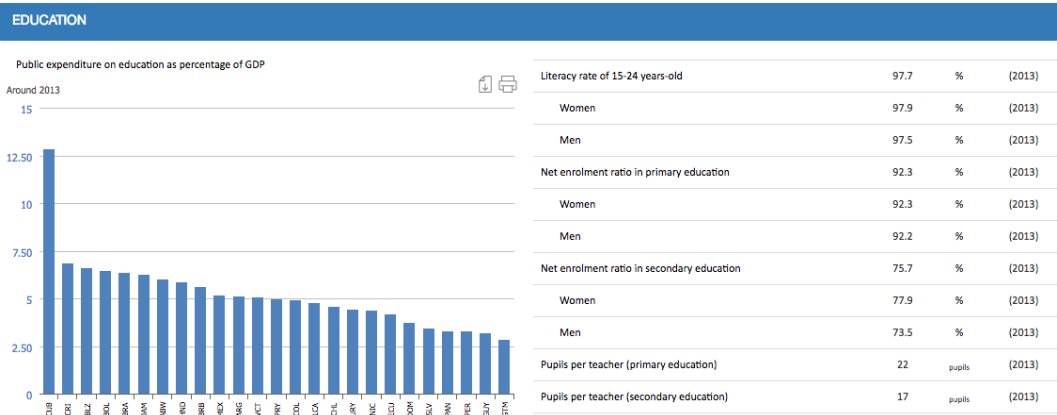
²²³ “Capital Report 2015: Mexico.”

²²⁴ “Capital Report 2015: Peru.”

²²⁵ Vernor Muñoz, *Informe del Relator Especial Sobre el Derecho a la Educación*, 14th sess., A/HRC/14/25Add.4, (UN General Assembly, 2010).

For girls, poverty is an added barrier to their fulfillment of many rights, including education. In Latin America, 28.2 percent of the regional population live in or under the poverty rate, 46 percent of them are located in rural areas.²²⁶ While the LA region has experienced economic growth after the 1990s economic crisis and later in the 2008-09 economic crises, 11.8 percent of the population is living in extreme poverty. Furthermore, 31.1 percent of women are living without their own individual income compared to 11.4 percent of the male population. Mexico spends slightly above ten percent on social public expenditure, whereas Peru is slightly below the ten-percentage mark. A link of dependency, paternalistic traditions and cultures, and lack of employment opportunities for women is apparent.

Table 3.1.2. Education in Latin America²²⁷



2016, http://estadisticas.cepal.org/cepalstat/Perfil_Regional_Social.html?idioma=english.

Source:
CEPAL,
2016,
accessed on
20 august

Table 3.1.2 gives Latin American educational statistics including public expenditure on education as a percentage of GDP. Mexico spends 5.1 percent as of 2011 in education as

²²⁶ Economic Commission for Latin America and the Caribbean, “Latin America And the Caribbean: Regional Socio-Demographic Profile,” CEPAL, accessed October 30, 2016, http://estadisticas.cepal.org/cepalstat/Perfil_Regional_Social.html?idioma=english.

²²⁷ Ibid.

percentage of GDP, compared to Peru's 2013 expenditure of 3.3 percent.²²⁸ Their percentages of expenditure are not outliers within the region. Meaning, they fall consistent with the expenditure of other countries in the region, with the exception of Cuba at around thirteen percent.

Two observations from Table 3.1.2 are worth making. First, women and men rates show that they are at par for all three sections – literacy rate, primary school enrollment rate, and secondary school enrollment rate. However, from the vast research and studies done, it has been recognized that these educational statistics fail to address the adversity faced by women in many sectors of life, in which education is one. They fail to “capture the dynamics of discrimination that women face in the educational systems of their respective countries in terms of completion and what is learned in school.”²²⁹ Though not easy to measure, qualitative research, as Stromquist argues, is essential to display these inequalities.²³⁰ Gender discrimination becomes clearer as two thirds of illiterates in the world are females.²³¹ An analysis of 80 countries around the globe has shown no direct link between a country's income level and the cost of the investment to better the education accessibility to marginalized children, in particular girls.²³²

Second, there is above fifteen percent enrollment rate drop-out from primary to secondary school. State fulfillment of universal primary education, while commendable, is not sufficient. There is a wealth of evidence that point to understanding that if the aim is to reduce poverty and increase justice, and development of the child, then secondary education and further schooling is necessary.

²²⁸ “Datos y Estadísticas.”

²²⁹ Stromquist, “What Poverty Does,” 53.

²³⁰ Ibid.

²³¹ *Gender Discrimination in Education*, 3.

²³² Ibid., 6.

3.1.2. Mexico's Shortcoming in Providing Quality Education

Mexico stands at the forefront of international affairs in trade, economics, and labor being a participatory member of the OECD while Peru has not reached that specific threshold of international recognition. Mexico is one of the top fifteen global economies according to OECD reports of the yet their investment in the education sector lags behind, largely due to the drastic level of corruption and impunity that saturated in almost every Mexican governmental agency. Mexican secondary students showed a well-below average competence in PISA exams in mathematics, science and reading in the 2012 results.²³³ PISA exams are an international comparative, educational assessment system measuring students' levels of comprehension and competence in these areas. As a non- OECD member, Peru does not take part of PISA testing. In fact, PISA 2012 test results show that fifty-five percent of Mexican students have not tested at or above the basic level for mathematics, forty-one percent are below average for reading comprehension in comparison with international test standards.²³⁴ The next PISA testing will take place in December 2016, assessing the competence level of 15-year-olds of 72 countries around the world.²³⁵ There is undeniably a concern for the future of the youth in Mexico, and it cannot go unmentioned, and there is a large adult population without any literacy competence whatsoever.

Mexico has struggled with centuries of segregation and discrimination due to the lack of remembrance and acknowledgment of the huge contributions the indigenous people have made for the country since the 1500s. In the most recent publication *México Engañado*, Francisco Martin Moreno speaks passionately of the role of indigenous communities, the real natives to the land,

²³³ Rodriguez, "Educación en México."

²³⁴ "Reforma Educativa: ¿Qué es?" Government of Mexico, accessed November 3, 2016, <http://reformas.gob.mx/reforma-educativa/que-es>.

²³⁵ "PISA," OECD, 2016, accessed November 3, 2016, <https://www.oecd.org/pisa/>.

the *mexicas* and how in and with education, they are often disregarded and forgotten.²³⁶ Primary education attainment is the most saturated out of the levels of basic education, which on a constitutional level includes preschool, primary, and secondary education. Nevertheless, indigenous children do not receive the resources – human, material, and content – that are available to non-indigenous children or children living in an urban setting close to more resources. The legal obligation of the state to provide these resources should not be determined by the location of the population affected.²³⁷

The state of Oaxaca, in the southern region of Mexico, is exemplary. Historically, Oaxaca is home of the indigenous peoples identified as Zapotec Indians – 347,000 people – and the Mixtec Indians – 241,000 people – remaining as an indigenous state by majority. At least half of the nearly four million inhabitants live in rural areas. While these two groups are the most populated, within the borders of Oaxaca, one can find at least “sixteen ethno-linguistic groups” separated and secluded both by choice and because of the topography of the land before the colonization began.²³⁸

For many students, going to school involves traveling by bike or public transportation long distances. For parents, school represents an added cost that will take away from other household needs and living necessities.²³⁹ Students and parents feel dissatisfaction, anger, and frustration as school commencement was delayed by months.²⁴⁰ The news reporter stated that in order to ensure

²³⁶ Francisco Martín Moreno, *Mexico Engañado*, (Mexico: Editorial Planeta Mexicana, 2015): 63-65, 125-130.

²³⁷ Muñoz, A/HRC/14/25Add.4, 66-78.

²³⁸ John P. Schmal, “Oaxaca: A Land of Diversity,” Houston Institute for Culture, accessed November 3, 2016, <http://www.houstonculture.org/mexico/oaxaca.html>.

²³⁹ Ismael García, “CNTE Impide Clases en Mayoría de Escuelas de Oaxaca,” *El Universal*, August 22, 2016, accessed November 3, 2016, <http://www.eluniversal.com.mx/articulo/estados/2016/08/22/cnte-impide-clases-en-mayoria-de-escuelas-de-oaxaca>.

²⁴⁰ “Regresa la CNTE a Impartir Clases en Escuelas de Oaxaca,” *Excelsior*, September 7, 2016, accessed September 17, 2016, <http://www.excelsior.com.mx/nacional/2016/09/07/1115508>. Similarly, the states of Michoacán and Chiapas, also with an indigenous majority, have suffered the consequences of school closures and delayed academic year commencements.

kids obtained their rightful education, at least in some degree, parents stepped in and took charge of the classroom. Parents took a positive role in preventing the children to go home without a day's worth of education due to the teachers' protest and strike.²⁴¹ Parents are further dissuaded from registering their children for a new year of education when they are presented with a deplorable situation such as this one.

Under these circumstances, protests during school hours and the state's inaction are the ones hindering and slowing down the normal fulfillment of an academic year, rather than adequate resources and teachers put up by the State for the students to benefit from quality education. The teachers themselves are not adhering to the constitutional right of children and adolescents to have an education. Just like education is a multi-layered right and necessity for development across many aspects of a child and human, so are the factors that can have an adverse effect on its access, availability, adequacy, and attainability.

The status of education in these regions has been allowed to deteriorate to deplorable degrees largely due by state inaction. The State should have intervened at a much earlier stage of the disagreements. Arguably, interpretation of the consistent State inaction could lead to a case of indirect discrimination against indigenous groups and on the basis of socio-economic standing. This is a clear example of how the right to education is not respected nor addressed accordingly by the State through positive action.

²⁴¹ Moisés Robles, "Pase a Paro, Hay 35% de Escuelas Abiertas: IEEPO," October 12, 2015, *Milenio Digital*, accessed November 5, 2016, http://www.milenio.com/estados/paro_CNTE_Oaxaca-IEEPO-Moisés_Robles-maestros_CNTE_0_608339234.html.

3.1.3. Peru's Struggle for Women's Rights affecting their Right to Education

Alejandro Toledo became the first native or indigenous identified president of Peru in 2001, with a campaign slogan titled *Towards a Nation of All Peoples*.²⁴² Though his background and childhood are not as common as the experiences of most indigenous children in the country, he is still an emblem of progress, diversity, and inclusiveness that the country is moving towards. Toledo headed a working group under the Organization of American States (OAS) to draft the American Declaration of Indigenous Peoples, strongly advocating that without the voice of the indigenous community there cannot be a true democracy.²⁴³ Peru has been greatly involved in the global discourse for human rights partly due to its multilayered human rights violations, and partly for its juxtaposing progress of recognition and signatory commitment to the fundamental and basic human rights laws and treaties. Countrywide, violence against women is perhaps the most notorious and arguably one of the most severe violations entrenched within the Peruvian culture.

Reports concluded that pregnancy is the most influential factor in ceasing to attend school in Peru.²⁴⁴ In fact,

Pregnancy becomes more common as the age of girls increases and it is inversely who only received elementary (primary) education, 34.9% are or have been pregnant, which falls to 4.5% among adolescent girls in Peru who have higher education levels.²⁴⁵

Alongside these statistics, it is noteworthy to mention that pregnancy is rampant across the country with underage girls. More specifically, "14.6% of adolescent girls have been pregnant or are

²⁴² Thomas W. Sweeney and Alejandro Toledo, "Peru's Gentle Revolutionary," *National Museum of the American Indian* 4, no. 2, (Washington, D.C., 2003): 21.

²⁴³ Ibid.

²⁴⁴ Center for Promotion and Defense of Sexual and Reproductive Rights, "Ref. Report for the 71st Session," 21-22.

²⁴⁵ Ibid., 19.

currently pregnant.”²⁴⁶ A 2009 study indicated that while 69.3 percent of adolescents that have never been pregnant continue their education – already a very low percentage – less than ten percent of adolescent mothers further their education.²⁴⁷ Further perpetrating the suffering and the cycle of poverty in Peru – being a country with strong religious principles in some regards – criminalizes abortion.²⁴⁸

The criminalization of abortion is tied to education attainment and is thus worth mentioning. First, the victim is criminalized and receives little to no restorative justice, such as health care and other social services. Second, the dignity of the girl is negatively affected through plausible community resentment and public shaming if brought the rape case to the police. Third, and most relevant reason for the purpose of this thesis is how it affects girls’ education. With “77% of pregnant adolescents drop[ping] out of school due to pregnancy, and 94% carry out household chores” the cycle of poverty is continued.²⁴⁹

At the 2010 Human Rights Council “Empowering Women through Education” conference it was estimated that gender equality will more than likely not be achieved before 2040 because of its slow progress. The role of both poverty and pregnancy were the focal points of what continues to disrupt the access to education for women. Without education, as previously discussed in Chapter 2.2, education on health, nutrition, and pregnancy education is very limited or absent.²⁵⁰

When the levels of dissatisfaction of the general public are high and pressure increases for the governments to act, reforms are often the process that takes place. Reforms ideally should both seek to ameliorate the hardships and substitute them with appropriate resources. Next, Mexico’s

²⁴⁶ Ibid., 4.

²⁴⁷ Ibid., 21-22.

²⁴⁸ Ibid., 7.

²⁴⁹ Ibid., 21.

²⁵⁰ “Girls Have a Right to Know,” OHCHR, June 18, 2010, accessed November 3, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/Girlshavearighttoknow.aspx>.

ongoing education reform is discussed in relation to the impact of independent experts as special rapporteurs have had.

3.2. Impact of Independent Experts

3.2.1. The Weight of Special Rapporteurs

Special Rapporteur's impact is distinguished at various levels and via different actors, such as through recommended national policies being implemented, or the international community coming together to create a space for marginalized groups to access representation and gather data and other resources. On the topic of education, the special rapporteur on the right to education, though it was the mandate most explicitly detailed and explored in this research, is not the only one impacting children's access to quality education world-wide.

For example, the special rapporteurs for the rights of indigenous peoples have affected the perception and interest of the United Nations through OHCHR with the development of programs, like the 'Andean Project' in 2006 that sought to address the issues and barriers of States Parties to implementing SR Rodolfo Stavenhagen's recommendations in Peru, Ecuador, and Bolivia.²⁵¹ The impact can also be seen at the national level. The SR conducted a country visit to Mexico in 2004 to evaluate the conditions of indigenous peoples and assess the areas that required heightened government involvement in pursuit of protecting and ensuring indigenous peoples' rights and access to justice. SR's research and mandate became the focal point of the a nation-wide campaign to increase awareness of the mandate itself and importance of the implementation of the recommendations by the Citizen Observatory of Indigenous Peoples, established by the Mexican Academy of Human Rights.²⁵² Alongside this,

²⁵¹ Stavenhagen, *Peasants, Culture and Indigenous Peoples*, 143-144.

²⁵² Ibid., 147.

The Ministry of Public Education has recently expanded bilingual secondary education, already provided in preschool and primary school, through a special course on indigenous peoples taught in several indigenous languages, and a number of ‘intercultural high schools’ and ‘communitarian high schools’, with adapted curricula and teaching in indigenous languages, have been created in areas of Chiapas, Oaxaca and Tabasco.²⁵³

The SR’s on indigenous peoples rights was a huge motivator and catalyst institutionalizing “bilingual intercultural education” in Mexico, something that as Chapter 2 recognizes, is one of the most ideal ways to build communities, collaboration, development, provide culturally relevant education and afford children their right to quality education.²⁵⁴

While the SR is one individual who puts forth the recommendations, they are not possible without the assistance and cooperation from the international community, but most importantly from the host country’s willingness to host the SR and the contributions and communications with various actors including civil society members, and the local communities. This initiative was taken by civil society in the country, also a very important actor in moving towards inclusiveness, respect for human rights, and non-discrimination. Host States ideally should take the SR’s recommendations and observations seriously, because they give an expert’s opinion on their standing versus international human rights recognized standards, as their individual mandates establish.²⁵⁵ Gaining this unique perspective on its own country’s progress is a privilege; as it is extremely valuable for progressiveness coming closer to the fulfillment of said human rights treaties. One of the goals of SR’s mandate is to increase capacity building within the country by offering ways to strengthen the institutions, and have a “more direct impact on legal, social and

²⁵³ Stavenhagen, *Peasants, Culture and Indigenous Peoples*, 156.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

political dynamics at the national level in relation to the recognition and protection of the rights.”

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Special Rapporteurs’ reports are linked to amazing progress and national attention to marginalized groups’ needs as the previous quote highlights. Arguably, the recommendations and observations, while unique to location, space, and time, have the potential to influence nations around the world, specifically if they have similar demographics and struggles. Peru has not been host to neither the SR on education nor the SR on indigenous peoples rights; however, it could, without a doubt benefit from participating in conversations and needs assessment testing on bilingual intercultural education systems, for example. However, at the time of the Toledo administration in Peru, one of the two main goals of the administration was to fight poverty through education and to “reinstitute a bilingual education” system already beginning in 2001.²⁵⁷

Worth reiterating from Chapter 1 is that SRs can produce both country-specific and thematic mandates. So, while Peru may not have been an official host to a SR in recent years, it has been at one point or another been a focal point of the experts’ research. The Inter-American Court and Commission of Human Rights play an important role in this throughout the cases brought to them submitted by individuals seeking redress. Experts warn that the impact of SR reports and official UN documents “cannot [be] evaluated in terms of the implementation of the specific recommendations.”²⁵⁸ Hence, overestimating the positive impact of these reports may discredit the ongoing debates and policy discussions already occurring at the host country.²⁵⁹

Next, the country visit to Mexico by former Special Rapporteur on the right to education Vernor Muñoz is considered.

²⁵⁶ Ibid., 158.

²⁵⁷ Sweeney, “Peru’s Gentle Revolutionary,” 24.

²⁵⁸ Stavenhagen, *Peasants, Culture and Indigenous Peoples*, 158.

²⁵⁹ Ibid.

3.2.2. Country Visit to Mexico

In 2010, Vernor Muñoz completed his official country visit to Mexico as a Special Rapporteur to the Right to Education mandate. After spending ten days in the country and holding meetings and visits to five different states across the country, Muñoz described the legal and administrative situation on the right to education in the country. Unfortunately, Peru has never taken part of such country visit in its assessment of the right to education and how marginalized groups are affected.

Though Muñoz' mandate holds to maintain a gender perspective throughout the investigation and reporting, as well as the recommendations made, it is not clearly identifiable throughout his observations. Instead, a substantial portion of his report is devoted to issues relating to indigenous peoples and those living in rural areas under vast poverty. Certainly, both girls and boys are implicitly included in the pool. However, the absence of the topic within the report can be disappointing especially when considering issues that have been established previously in Chapter 2.

The survey results presented in Chapter 2 exemplified the large percentage of young girls are dissatisfied with their gender compared to boys, and the rules and roles established throughout their cycle of socialization institutionally. These have been sharply influenced by stereotyped and paternalistic gender perspectives in Mexico, but are not mentioned throughout his 2010 report. Meanwhile, OECD reports have shown that Mexico has one of the lowest gender disparities in education.²⁶⁰ The challenge in Mexico, at least at the primary level, has moved from obtaining

²⁶⁰ Rodriguez, "Educación en México."

gender parity in education to providing quality education that is human rights-based and is a tool for dismantling rather than reinforcing gender stereotypes and oppression.

3.2.3. Mexico's Education Reform

The Education Reform has been an ongoing project in Peña Nieto's Administration in Mexico. One of the first steps was to amend Article 3 of the constitution to formalize the fundamental right to education in 2013. Additionally, the National Institute for the Evaluation of Education "full autonomy as a constitutional body, [and] it has a mandate to evaluate the quality of teaching professionally, with both teachers and government authorities sharing that responsibility."²⁶¹ The amendments on the laws of the National Institute and the General Law on Professional Teaching Service were made to as to improve "performance assessment instruments for achieving free, equitable, quality public education as a legal responsibility, as well as an ethical obligation of the Government."²⁶² An education reform is necessary to ameliorate past and current injustices in the education system for all children.

The Education Reform seeks to improve quality education, and reduce or eradicate the educational inequities experienced by marginalized communities across the country. 2016 is an important year for education in Mexico as the Education Reform crystalizes. The three-prong goals and objectives include 1) the betterment of quality basic education (preschool, primary and secondary) as well as post-secondary education; 2) reduce or eradicate the educational inequities experienced by marginalized communities across the country including special needs; 3) increase the involvement of parents and civil society at all levels – local, municipal, regional, and nation-wide – with regional-needs assessments through panels for discussion and query.²⁶³

²⁶¹ Singh, HRC/26/27, 12.

²⁶² Ibid.

²⁶³ "Reforma Educativa: ¿Qué es?"

In order to achieve the first objective of the education reform, Mexico's government is suggesting the following:

Efforts will be made to make teaching a professional endeavor, establish basic standards for school administration, curriculum betterment, improvement of programs' premises, use of technology to access information and communication, as well as continuous assessment of all components of the educational system.²⁶⁴

The language of the education reform suggests deep consideration and implementation of key words from international human rights treaties, concepts, and principles of universal education as a human right.

The mechanisms that the new education reform does not explicitly establish are how they will function and who will be in charge of its clear, transparent operations. The reform also does not create a legal system of access to justice in instances of discrimination or inequality in quality education for children and parents. Furthermore, it lacks a time-bound goal for the objectives. Comparing this reform to current events in education at the national and state level, sentiments of doubt and skepticism are difficult to deflect. While true for many reforms, Mexico's global positioning and involvement leaves much to desire in their struggles for human rights in general, particularly education all levels and for all ages.

Moreover, the reform makes no mention of the *Coordinadora Nacional de Trabajadores de la Educación* (CNTE) that has continuously received nation-wide attention from the teacher protests, and how it will seek to better their relationship and collaboration. Achieving the common goal of universal education without synergy and collaboration from all key actors will be unattainable. Considering Mexico's current events, one may conclude that teachers' goal are no longer to educate the youth, but rather to be respected within their profession. While this is a topic on its own deserving its own discussion, it is worth mentioning the deteriorating status that

²⁶⁴ Ibid. [Spanish Original, translated by author].

educators have at the municipal, local, regional and state level because they ultimately have a direct effect on the education the child receives. Having high numbers of primary and secondary school enrollment is not sufficient; the right to education is highly dependent on the substance of achieving that right fully.

Seemingly, there have not had direct or substantive work done to decrease the gendered educational policies in Mexico. Arguably, through the proposed and hypothetical involvement of parents and civil society in the third objective of Mexico's education reform, this change may be suggested and pushed through into policies and administrative as well as institutional changes. However, considering the political environment that circulates the country at the moment, the successfulness of such civil societal and parental interventions are heavily questionable. Furthermore, the right of the child to be heard as established in General Comment No. 12 of the CRC and as suggested by many experts, is also not considered as part of the third objective for the panels of discussion on the educational doctrines used.²⁶⁵ While the reform is somewhat progressive in nature, the progressiveness comes from the focus on the use of technology²⁶⁶ and not so much on the basic principles of human rights.

On the one hand, Mexico appears to formally react either directly or indirectly to the reports produced by the special rapporteur on the right to education. On the other hand, there is less consideration at the highest political decision-making level of the country by civil society members and experts on the field. As presented in previous chapters, the voice of the child is of paramount importance. Not only does the child feel empowerment through self-expression, but also the key actors receive unique primary information to assess on the challenges and experiences that marginalized children are faced with. Perhaps more fruitful policies would come from effective

²⁶⁵ See CRC/C/GC/12.

²⁶⁶ Singh, HRC/32/37.

communication strategies that would reflect how girls feel unsatisfied with her gender at the age of ten. Or, one would better understand the travel burden facing families and children to have access to a school, namely safety concerns and costs. Possible changes would include in shifting the start and end times of school days or, better yet, the building of a school closer to dispersed rural communities.

International customary law and UN human rights treaty provisions require a system or reparations and justiciability when the State party violates human rights. The right to education, as a commonly perceived social or 2nd generation right, is more complex for establishing standing. As the next subchapter explains, access to justice in Latin American courts, namely Mexico and Peru, is no simple matter.

3.3. Remedies

3.3.1. Access to Justice in Latin America

The justiciability of economic, social, and cultural rights has been a topic of debate researched and analyzed at the state constitutional, regional, and international level by a myriad of legal scholars, in large due to the rhetoric of category of rights that have historically considered civil and political rights as legally binding for their “immediate applicability” contrasting to ESC rights viewed as “merely aspirations of ‘progressive realization.’”²⁶⁷ For Latin America, many of the constitutions were founded on a socialist doctrine, like the 1917 Mexican Constitution, which heavily represented the right to assembly, to unionize, and many aspects of labor rights. The right to education was included among the list of social rights protected.²⁶⁸ Peru has its own *Tribunal*

²⁶⁷ Mónica Fera Tinta, “Justiciability of Economic, Social, and Cultural Rights in the Inter-American System of Protection of Human Rights: Beyond Traditional Paradigms and Notions,” *Human Rights Quarterly* 29, no. 2 (Johns Hopkins University Press, 2007): 432-433.

²⁶⁸ Carlos Hakansson, “Social Rights in the Peruvian Constitution: Elements for an Approach to the Recognition and Enforcement of the Social Rights in the Latin American Context,” *Persona y Derecho* 66, (2012): 152.

Constitucional to address violations on social rights in 2004. However, Peru's *la Carta* of 1979 the catalog of social rights protected by the constitution came about, influenced primarily by the Spanish Constitution of 1978 and UN Human Rights Treaties, namely ICESCR.²⁶⁹

At the regional level, the Inter-American Commission for Human Rights has established its own court, the Inter-American Court of Human Rights (IACtHR), which serves as the benchmark and monitoring mechanism for the protection and States' respect for human rights. There have been several cases brought to the Commission and to the Court on the right to education. There have only been cases addressed in relation to indigenous peoples' land rights and self-determination, one of the vulnerable populations that is researched within this thesis.²⁷⁰ The Court has referred to building schools and ensuring education as a remedy by the State for the communities. Shelton writes, "the Court unhesitatingly examines colonial policies and current assimilationist laws, challenging the elites that held power in the respondent states,"²⁷¹ referring to the imperialistic policies affecting indigenous peoples. The Court has also ordered the "assignment of teachers trained in intercultural and bilingual teaching for primary, secondary and comprehensive schooling"²⁷² in the case of collective reparation measures in response to the 1982 *Plan de Sanchez* in Guatemala. "Paradoxically coming from a poverty-stricken region – is contributing to a new era of effectively dealing with violations of economic, social, and cultural

²⁶⁹ Ibid.

²⁷⁰ Dinah Shelton, "Who May Claim Redress?" in *Remedies in International Human Rights Law*, 241-256, 3rd ed. by Dinah Shelton, (United Kingdom: Oxford University Press, 2015). Shelton refers to as samples from indigenous cases at the Inter-American Court of Human Rights: *Sawboyamaya Indigenous Community v. Paraguay* (2006) Series C No. 14; *Yakye Axa v. Paraguay* (2006) Series C No. 142; *Xámok Kásek Indigenous Community v. Paraguay* (2010) Series C No. 214.

²⁷¹ Shelton, "Restitution," in *Remedies in International Human Rights Law*, 312-313, by Shelton. Referring to *Saramaka People v. Suriname* (2007) Series C No. 172.

²⁷² Shelton, "Who May Claim," 253; *Plan de Sánchez Massacre v. Guatemala*, Series C No. 116, (Inter-Am. C.H.R., 2004), para. 110.

rights,” The Inter-American Court of Human Rights (Inter-Am. C.H.R.) has taken a proactive role in advocating for this category of rights.²⁷³

The right to education in Latin America is considered mainly a social right, advancing the individual’s development, increasing their contribution to society, and as a right that everyone benefits from. According to the General Comment no. 12 of the CRC, if a child is excluded from a school or institution, the “decision must be subject to judicial review as it contradicts the child’s right to education.”²⁷⁴ Yet, the access to bring state violations on the right to education is not a simple task. Violations may consist of the enactment of discriminatory laws and policies, either formally or indirect, as well as omission of state support. In instances of such, victims of the right have a right to remedy and reparation as “a fundamental rule of international law, and forms part of customary international law.”²⁷⁵

The right to education tends to show in courts linked with other rights, and rarely on its own, accentuating the interdependence of the right itself. A notion of “a decent life” in relation to children, as explained by Inter-Am. C.H.R. in an Advisory Opinion, “the right includes conditions of life which ensure dignity, the right to receive the highest priority and the best effort from states, the right to education, and the right to health.”²⁷⁶ In another instance, it has been linked to the “right to existence of indigenous populations” alongside the right to health, and the right to property among others.²⁷⁷ The Inter-American Court of Human Rights in *Caso de las NiZas Yean*

²⁷³ Feria Tinta, “Justiciability of Economic, Social,” 432.

²⁷⁴ CRC/C/GC/12, 22.

²⁷⁵ Feria Tinta, “Justiciability of Economic, Social,” 439.

²⁷⁶ Advisory Opinion OC-17/2002, Series A: No 17, requested by the Inter-American Commission On Human Rights, (Int-Am. Ct H. R., Aug. 28, 2002).

²⁷⁷ Feria Tinta, “Justiciability of Economic,” 437.

y *Bosico v. República Dominicana* (8 Sept. 2005)²⁷⁸ stressed the vitality of the right of children to quality education and the interplay with governments,

The Court placed particular importance on the **right to education** since “[it] contributes to the possibility of enjoying a **dignified life** and to the prevention of unfavorable situations for the minor and for society itself.” “It is mainly through education that the vulnerability of children is gradually overcome,” held the Court. This right would encompass not only the right to receive education (free and compulsory at least in the elementary stages) on the basis of equal opportunities but also the right to play and have recreation.”²⁷⁹

General Comments on Economic, Social and Cultural Rights have given States Parties a detailed layout of their expectations as the legal protectors and providers of these fundamental rights. Within the General Comments, is the work of the Special Rapporteurs and the experts within the ESC Committee at the United Nations that have also “equally produced important authoritative means of construing obligations.”²⁸⁰

The right to education is not absolute; however, it may not be arbitrarily violated or abused by the government without legal justification. Maintaining the right of non-discrimination and heighten protection for “vulnerable groups” (here referred to as marginalized groups) is essential in avoiding rights violations at times of national economic hardship.²⁸¹ Peru has been an active actor in the protection of arbitrary government action against social rights in the country. As such, it has generated case law on these types of cases, especially those related to labor and health care.

²⁸² Even though there is justiciability with social rights, the State exercises a wide margin of

²⁷⁸ Ibid., 447. See *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Series C No. 79, (Inter-Am. C.H.R., Aug. 31, 2001); *Caso Comunidad indígena Yakye Axa v. Paraguay*, Series C No. 125, (Inter-Am Ct H. R., June 17, 2005) [available in Spanish only].

²⁷⁹ Ibid. [Internal footnotes removed, emphasis added].

²⁸⁰ Ibid., 435. Mentioned in this essay is the work of Special Rapporteur Asbjørn Eide on the right to food in 1987.

²⁸¹ Natalia Torres Zúñiga, “Justiciability of Regressive Measures of Social Rights. Some Reflections About Their Judicial Protection in Latin America,” *Derecho PUCP*, no. 75 (2015): 99-100. Referring to the notion of regressive rights.

²⁸² Ibid., 99.

appreciation, for which proportionality tests resembling the European Court of Human Rights jurisprudence on proportionality has been used throughout Latin American countries.

3.3.2. The Role of *Amparo* in Mexico and Peru

Legal standing in Latin American jurisdictions is very distinct from other known judicial systems around the globe. Granting a writ of *amparo* – protection or aid – to individuals in Mexico and Peru increased their accessibility to the courts, all other variables held constant. Meaning, in an ideal world without corruption, conflict of interest between the branches of government, and a stable political and economic environment, writ of *amparo* granted to individuals should ensure a fair chance in remedial court decisions.²⁸³ In education, however, access to the courts rarely make it to the hands of the judges when tackling issues of discrimination in the public schools or institutions, claims against the State for lack of availability or poor accessibility to educational facilities, and systemic patterns of marginalization of communities affecting the quality of education of their children.

The Amparo Law has been part of the Mexican Constitution since 1935 with amendments in 1950. Some scholars refer to *amparo* in Mexico as “an extraordinary recourse in the Mexican justice system, with no equivalent in the common law tradition.”²⁸⁴ Within the current Mexican system, there is no distinguishability among classes or types of rights enshrined in their constitution in relation to which may be granted a writ of *amparo*.²⁸⁵ The *amparo*, nevertheless, is

²⁸³ Bruce Zagaris, “The Amparo Process in Mexico,” *U.S.-Mex. Law Journal*, 61, (1998): 67-8.

²⁸⁴ *Ibid.*, 61. “Since its incorporation into Article 102 of the Constitution of 1857, *amparo* has evolved into a highly complex and peculiarly Mexican institution with three distinct functions: (1) the defense of the civil liberties enumerated in the first twenty-nine articles of the Constitution; (2) the determination of the constitutionality of federal and state legislation; and, (3) cassation.” *Ibid.*, 66.

²⁸⁵ Hakansson, “Social Rights in the Peruvian,” 157.

considered a final remedy for administrative tribunals, both against state or federal officials.²⁸⁶

Keeping in mind,

In Mexico, the enactment and repeal of laws is an exclusively legislative function. Hence, Section H1 of article 107 of the Constitution directs that "the judgment [in *amparo*] shall always be such that it affects only private individuals, being limited to affording them redress and protection in the special case to which the complaint refers, without making any general declaration about the law or act on which the complaint is based." Hence, the *amparo* judgment cannot have the effect of abrogating a law.²⁸⁷

Thus, the court in Mexico does not have the mandate to appeal or abolish a law passed by the legislative body. *Amparo* decisions between parties, or *inter partes*,²⁸⁸ applies only to the parties involved, namely those that are "adversely affected" must seek their own redress.²⁸⁹ At the same time, the decisions on unconstitutionality apply to everyone, or *erga omnes*.²⁹⁰ Undoubtedly this can cause many that cannot afford the expenses and time commitment to go through the *amparo* process from receiving their compensation from the state.

Mexico hinders individuals' possibilities to redress on constitutional concerns in relation to education because it is time consuming, difficult, and long process. Thus, citizen's access to the court is very limited.²⁹¹ Mexican courts in general have been less active in disputes involving individual rights.²⁹² If the case reaches the Supreme Court of Justice – Mexico's constitutional organ since 1994²⁹³ – with the writ of *amparo* to that judicial level, they cannot make broad legislative decisions on the constitutionality of the laws. In other words, if a law affects a

²⁸⁶ Zagaris, "The Amparo Process in Mexico," 66.

²⁸⁷ Ibid., 67.

²⁸⁸ Julio Ríos-Figueroa, "Institutions for Constitutional Justice in Latin America," in *Courts in Latin America*, edited by Gretchen Helmke and Julio Ríos-Figueroa, 27-54, (New York: Cambridge University Press, 2011): 42. "These instruments can be heard by any judge, the legal processes that use this instrument typically start in the lower courts, and thus decisions in these cases generally have *inter partes* effect."

²⁸⁹ Ibid., 31; Zagaris, "The Amparo Process in Mexico," 67.

²⁹⁰ See Ángel R. Oquendo, *Latin American Law*, (New York: Foundation Press, 2006): 262-266.

²⁹¹ Arianna Sánchez, Beatrix Magaloni, and Eric Magar, "Legalist Versus Interpretativist," in *Courts in Latin America*, edited by Gretchen Helmke and Julio Ríos-Figueroa, 187-218, (New York: Cambridge University Press, 2011): 188.

²⁹² Ríos-Figueroa, "Institutions for Constitutional Justice," 5, 27.

²⁹³ Ibid., 38.

community, each individual has to bring a case to have *amparo*. A progressive shift would entail allowing the court to analyze a law by how a population is affected by its particular application and provisions. In the case of marginalized groups, this has an immense adverse effect in seeking remedy through of policy and administrative changes, and sometimes even monetary or other kinds of compensation.

For indigenous communities, in particular, it has been a continuous struggle in gaining fair and equal legal representation. The *Zirahuén Amparo* serves as an example of indigenous peoples in Mexico demanding fair representation in the drafting and application of laws “which may affect them and their rights directly” in accordance with ILO 169,²⁹⁴ and to consider indigenous communities as municipalities according to their traditions and cultures.²⁹⁵ In Mexico, language is considered as the main distinguishing feature that causes “consciousness of Indigenous identity” needed for legal standing for torturous claiming indigenous peoples rights and protection, since there is no “registry of Indigenous peoples” in Mexico.²⁹⁶

The 1993 Political Constitution of Peru does not distinguish among human, fundamental or constitutional rights.²⁹⁷ It does, however, consider solidarity and human dignity as fundamental pillars to the constitution.²⁹⁸ The Peruvian *Tribunal Constitucional* is the highest jurisdictional body to oversee matters of constitutionality as well as to protect the rights and liberties of the Peruvian people. In 2004 the writ of *amparo* was introduced to the *Código Procesal Constitucional* [Constitutional Procedural Code].²⁹⁹ One of its most important features is its progressive take on

²⁹⁴ Naayeli E. Ramirez Espinosa, “Consulting Indigenous Peoples in the Making of Laws in Mexico: The Zirahuén Amparo,” *Arizona Journal of International and Comparative Law* 32, no. 3 (2015): 650.

²⁹⁵ *Ibid.*, 659.

²⁹⁶ *Ibid.*

²⁹⁷ Hakansson, “Social Rights in the Peruvian,” 148.

²⁹⁸ *Ibid.*, 164.

²⁹⁹ Laws No. 23506 and 25398 of Peru’s Complementary Law of Habeas Corpus and Amparo. Omar Cairo Roldán, “El Amparo Durante la Vigencia del Código Procesal Constitucional Peruano,” *Pensamiento Constitucional*, no. 19 (2014): 252.

the ICESCR, namely the high regard to Article 2(1) of the same UN treaty.³⁰⁰ With such, this transitory article of the *Tribunal Constitucional* is Peru is obliged to recognize and act in accordance to the ICESCR, a huge testament of how international human rights law has affected the constitutions of countries worldwide. Ángel R. Oquendo reaffirms, “the Peruvian constitution specifically call[s] on the national judiciary to interpret the domestic bill of rights in accordance with international human rights law.”³⁰¹ The trickle-down effect is in motion, because the constitution is the most important and at the highest tier for influencing local and federal laws.³⁰² The downfall of social rights, a category in which the right to education falls under, is that they are difficult to make a case for at the courts.

Rights recognition in Peru and its courts varies on the nature of the right, whether it is a positive or negative right, or a social, civil or political right in accessing the courts and ultimately amparo and has been heavily influenced by United Nations human rights treaties.³⁰³ The right to education is among the social rights listed in Article 37 of the Constitutional Procedural Code (CPC) - Article 200 of the 1993 *La Carta*.³⁰⁴ Positive rights – rights highly dependent on the economic standing of the government – including the right to bilingual education (art.17), and the right to receive adequate education (art. 16) are not easily recognized by governments as rights. If they are, it is ambiguous whether or not they carry any enforceable judicial muscle:³⁰⁵

Social rights may reach a certain level of justiciability through the notion of equality or effective judicial protection. However, both have the presupposed demand that the content of the social right is not in question, rather that the implementation or application of the right’s content has violated the principle of equality of effective

³⁰⁰ ICESCR, art. 2(1).

³⁰¹ 1993 Political Constitution of Peru, art. 4; Oquendo, *Latin American Law*, 237.

³⁰² Hakansson, “Social Rights in the Peruvian Constitution,” 163.

³⁰³ See Jorge Luis Cáceres Arce, “El Tribunal Constitucional y Su Desarrollo Constitucional,” *Pensamiento Constitucional*, no. 19 (2014): 236.

³⁰⁴ Hakansson, “Social Rights in the Peruvian Constitution,” 159.

³⁰⁵ *Ibid.*, 156.

judicial protection. In other words, rather than the social right being justiciable, it is the principle of equality and judicial protection that do so.³⁰⁶

In contrast, negative rights require the absence of State action for certain rights and freedoms to be enjoyed, and are judicially enforceable. So, while there are mechanisms that can be accessed by individuals to contest the injustices surrounding unequal education, it is complicated and inaccessible in many instances. Social rights as education is considered in Latin America, is not a right that can be easily brought to court as this subchapter has shown. The intersecting factors hindering children's right to quality education are compounded when economic and geographical disadvantages are considered.

Altogether, Chapter 3 served as a comparative platform to distinguish the circumstances in Mexico and Peru as well as the internationally set norms on human rights and universal education. The role of Special Rapporteurs is considered in the context of how much influence an independent expert representing the true essence of the Universal Declaration of Human Rights and its subsequent treaties has within national jurisdictions. Finally, the question of justiciability and remedies for violations of the right to education were considered. Mirroring the interdependence and inherent nature of the right to education, the right to education is considered in a variety of cases, namely as part of the State Party obligation to restore culture and traditional norms for indigenous peoples in Latin America. This is something that is unique to the Inter-American Court of Human Rights as it actively seeks to advance social, economic and cultural rights within its decisions and remedies awarded to the affected parties.

³⁰⁶ Quoted in Ibid., 175. [Translated Spanish original text].

Conclusion

As history evolves, people's perception of what is important and necessary for a full-development in a child's life may be contested. Periods of colonialism, strong assimilationist policies, harsh stereotypes and gender roles institutionalized from birth, disregard and indifference for children with physical or mental disabilities continue to persist in today's world. As history evolves and current events change, it has been shown time and again that marginalized groups continue to be marginalized. As a strong believer that without education there cannot be progress, by stripping away the right to education of marginalized children, their futures are being stolen. Quoting the first Special Rapporteur to right to education Katarina Tomaševski, "Education... is the key to unlocking other human rights."³⁰⁷ The obligation of the countries, like Mexico and Peru, extend beyond the ratifying of treaties that acknowledged the rights of special groups. The appropriate actions must follow with purpose, determination, inclusivity, and intent.

When it comes to education, the interrelatedness of the right itself is reflective on how it needs to be assessed and established in practice. UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein has said,

From the earliest age, human rights education should be infused throughout the program of every school – in curricula and textbooks, policies, the training of teaching personnel, pedagogical methods and the overall learning environment.... [Children] can be guided by human rights education to make informed choices in life, to approach situations with critical and independent thought, and to empathize with other points of view.³⁰⁸

A human rights-based approach is the recommended tool of perspective to guide in decision-making.

³⁰⁷ Katarina Tomaševski, *Education Denied - Costs and Remedies*, (London: Zed Books, 2003), 172.

³⁰⁸ Zeid Ra'ad Al Hussein, keynote speech, Conference on "Education for Peace," United Nations, Geneva, January 14, 2015, accessed 15 November, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15482>.

Throughout her time as UN Special Rapporteur Tomaševski alongside UNESCO published the “Manual on Rights-based Education: Global Human Rights Requirements Made Simple.”³⁰⁹ Keeping true to the 4A’s – availability, accessibility, acceptability, and adaptability – the content of this manual expands on how best to tackle inclusivity for children with disabilities, gender differences, and the rights of indigenous children at the micro and macro levels. Additionally, the manual has provided a matrix of assessment of the quality of education with “questions raised by the relevant human rights standards.”³¹⁰ Member States need not go far for tapping into the vast amount of resources, tools, and information on how best to provide and ensure that children are receiving quality education. Tomaševski’s work is only a small, yet rich and informative, sample of such. Mexico and Peru have actors that are working for the same goals as UN Special Rapporteurs on the right to education. There is a demand for collaboration, open-dialogue, and willingness from all sides to positively contribute to the education the children and the future generations will have at their disposal.

By having human rights-based educational policies and administrations, a myriad of progressive efforts are made. For starters, the policies would be in a human rights context, addressing the inalienable right to education of children, and the rights of children that are affected by education. If carried out aptly, addressing the 4 A’s - availability, accessibility, acceptability, and adaptability – will be inherently part of the process. Along the way, the welcoming of international experts and others may enrich the prosperity of the schools. An outsider’s contribution is useful and should be welcomed, as their main goals are also to enhance children’s quality education and respect their human rights and dignity.

³⁰⁹ Katarina Tomaševski, *Manual on Rights-based Education: Global Human Rights Requirements Made Simple*, (Bangkok: UNESCO Asia and Pacific Regional Bureau for Education, 2004).

³¹⁰ Ibid., 30. See Appendix B.

In establishing educational policies and teaching practices in indigenous communities, careful attention needs to be paid to cultural sensitivities and language. Indigenous children may experience identity deprivation when they are not taught in their mother tongue, impacting the dignity of the child. Therefore, introducing sustainable efforts to restore indigenous languages and continue providing appropriate resources for children's education is imperative.

A human rights-based approach is more compatible with a two-world model where "students are introduced to the views of the majority as well as their own."³¹¹ Ongoing discourse among all actors, including parents, children, educators, and civil society is necessary. The UN Committee on the Rights of the Child, General Comment No. 12 was created to develop the parameters within the international human rights regime for the right of the child to be heard.³¹² On the premise of the best interest of the child, Ames argues that indigenous children can voice their opinion and bring attention to the strengths and weaknesses of the educational policies.³¹³ Along the same vein, René Leyva-Flores, et. al. agrees on the importance of giving a voice to the marginalized groups, i.e. indigenous communities, girls, and children with disabilities.³¹⁴ Working collectively will prove to benefit the quality of education children can experience.

Within the limitations of this research and the broadness of the topic, it is difficult to conclude with certainty that the international human rights regime positively impacts marginalized children in obtaining quality education. What this international jurisdiction does provide is a standard of rights and responsibilities that aids in validating the need for protection of rights for

³¹¹ Ames, "Language, Culture and Identity," 454.

³¹² UN Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to be Heard*, 51st sess., CRC/C/GC/12, July 20, 2009, accessed November 2, 2016, <http://www.refworld.org/docid/4ae562c52.html>.

³¹³ Ames, "Language, Culture, and Identity," 455.

³¹⁴ Leyva-Flores, "Inequidad Presistente en Salud," S123-S128. Their study relates to the access to health resources for indigenous communities and this is one of four recommendations/conclusions they made. Vulnerability and inequality between non-indigenous and indigenous peoples may be reduced by implementing policies that address the socioeconomic determinants in relation to their culture and rights.

special groups and their dignity as equal members and contributors to society and the future. More importantly, however, is the mandate for special rapporteurs stripping away bureaucracy and power and focus on what is important: ensuring that children have the resources to obtain quality education that is accessible, attainable, available and adaptable. By increasing the support and the credibility of UN Special Rapporteurs at the international level, Member States will perhaps be more motivated and open-minded to accept their recommendations, as it will guide them towards the universalization of human rights. Their work and reports cannot be possible without the cooperation of the host country and open communication with key actors including civil society members.

From the research conducted and presented in this thesis, Mexico and Peru are far from providing quality education to marginalized groups. The intersection of social determinants that increase the discrimination for children's access to education is directly linked to their level of marginalization and was discussed throughout the body of this thesis. For example, girls living in poverty within rural communities and as part of an indigenous groups experience some of the most adverse and exacerbated forms of discrimination clearly distinguishable in the education they are able to access. Yet, there is much more on-the-ground research that needs to be conducted in order to fully understand and tackle children's lived experience of discrimination in education. Regardless of statistics of school enrollment, the content and environment of the education is not inclusive and culturally acceptable for marginalized children. Education as an inalienable human right is fundamental for children to develop their identities as individuals, as members of communities, and global citizens.

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Appendix

A. International Human Rights Treaties on the Right to Education

Universal Declaration of Human Rights, 1948 (UDHR)

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

International Covenant on Economic, Social and Cultural Rights, 1976 (ICESC)

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - a. Primary education shall be compulsory and available free to all;
 - b. 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, and in particular by the progressive introduction of free education;
 - c. Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - d. Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - e. The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

International Covenant on Civil and Political Rights, 1976 (ICCPR)

Article 18

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents, and when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Convention on the Rights of the Child, 1989 (CRC)

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction 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.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 23

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives

education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Article 28

1. States Parties recognize the of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a. Make primary education compulsory and available free for all;
 - b. Encourage the development of different forms of secondary educations, 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;
 - c. Make higher education accessible to all on the basis of capacity by every appropriate means;
 - d. Make educational and vocational information and guidance available and accessible to all children;
 - e. Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - a. The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - b. The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - c. The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, an for civilizations different from his or her own;
 - d. The preparation of the child for responsible life in a free society, in the sprit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - e. The development of respect for the natural environment.
2. No part of [articles 28 and 29] shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the

requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Convention on the Elimination of all forms of Discrimination against Women, 1981
(CEDAW)**

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a. The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general (...) education (...);
- b. Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c. The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- d. The same opportunities to benefit from scholarships and other study grants;
- e. The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f. The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- g. The same opportunities to participate actively in sports and physical education;
- h. Access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning.

**Convention against Discrimination in Education, 1960
(CDE)**

Article 1

1. For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
 - a. Of depriving any person or group of persons of access to education of any type or at any level;
 - b. Of limiting any person or group of persons to education of an inferior standard;

- b. Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
 - c. Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.
- 2. For the purposes of this Convention, the term 'education' refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

Article 4

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

- a. To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
- b. To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;
- c. To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;
- d. To provide training for the teaching profession without discrimination.

Article 5

- 1. The States Parties to this Convention agree that:
 - a. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;
 - b. It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions;
 - c. It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

- d. That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;
 - a. (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and
 - b. (iii) That attendance at such schools is optional.
- 2. The States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this Article.

Convention on the Rights of Persons with Disabilities, 2006 (CRPD)

Article 3 - General principles

The principles of the present Convention shall be:

(...)

- a. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4 - General obligations

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

Article 7 - Children with disabilities

- 1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
- 2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
- 3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Article 8 - Awareness-raising

- 1. States Parties undertake to adopt immediate, effective and appropriate measures:
 - a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
 - b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

- c. To promote awareness of the capabilities and contributions of persons with disabilities.

Measures to this end include:

- a. Initiating and maintaining effective public awareness campaigns designed:
 - i. To nurture receptiveness to the rights of persons with disabilities;
 - ii. To promote positive perceptions and greater social awareness towards persons with disabilities;
 - iii. To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
- b. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
- c. Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
- d. Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Article 23 - Respect for home and the family

- 1. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

Article 24 - Education

- 1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:
 - a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - c. Enabling persons with disabilities to participate effectively in a free society.
- 2. In realizing this right, States Parties shall ensure that:
 - a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - c. Reasonable accommodation of the individual's requirements is provided;
 - d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

- e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
- 3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
 - a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - c. Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
- 4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
- 5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Declaration on the Rights of Indigenous Peoples, 2007 (DRIP)

Article 14

- 1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
- 2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
- 3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

- 1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
- 2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote

tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Constitución Peruana [Constitution of Peru]

December 31, 1993

Chapter II: Social and Economic Rights

Article 13

The aim of education is the comprehensive development of the human being. The State recognizes and guarantees freedom of education. Parents have the duty to educate their children and the right to choose their schools and to participate in the educational process.

Article 14

Education promotes knowledge, learning, and practice of the humanities, science, technology, the arts, physical education, and sports. It prepares individuals for life and work and encourages solidarity.

The State promotes the scientific and technological development of the country.

Ethical and civic training and the teaching of the Constitution and human rights are mandatory in all civil and military educational processes. Religious education is provided in keeping with freedom of conscience.

Education is provided at all levels, in conformity with constitutional principles and the purposes of the relevant educational institution.

Communication media shall cooperate with the State in education and in moral and cultural formation.

Article 15

The teaching profession in public schools is a public service career. The law sets forth the requirements for serving as a principal or a teacher in a school, as well as his rights and obligations. The State and the society ensure their continuing evaluation, training, professionalization, and promotion.

The student is entitled to a type of education that respects his identity, as well as to proper psychological and physical treatment.

Any person or corporate entity has the right to promote and operate educational institutions, and to transfer the ownership of such institutions, in accordance with the law.

Article 16

Both the educational system and its governing regulations are decentralized.

The State coordinates the educational policy. It formulates the general guidelines of school curricula, as well as the minimum requirements for the organization of education centers. It oversees their compliance and the quality of education.

The State ensures that no one is prevented from receiving appropriate education on grounds of economic status, or mental or physical disabilities.

Education enjoys priority in the allocation of ordinary resources in the Budget of the Republic.

Article 17

Early childhood, primary, and secondary education are compulsory. In public schools, education is free. In public universities, the State guarantees the right to a free education to those students who maintain a satisfactory performance, and lack the economic resources needed to cover the cost of education.

In order to ensure the greatest number of educational offerings and to help those who cannot afford their own education, the law sets forth the method of subsidizing private education in any of its forms, including communal and cooperative education.

The State promotes the establishment of schools, wherever people may require them.

The State guarantees the eradication of illiteracy. It also encourages bilingual and intercultural education, in accordance with the particular characteristics of each area. It preserves the diverse cultural and linguistic manifestations throughout the country. It promotes national integration.

Constitución Política de los Estados Unidos Mexicanos
[Political Constitution of the United Mexican States]
February 5, 1917

Article 3

Every individual has the right to receive an education. The State--the Federation, the States, the Federal District and the municipalities--shall provide pre-school, primary, and secondary education. Pre-school, primary and secondary education constitutes the basic compulsory education.

The education imparted by the State shall be designed to harmoniously develop all the faculties of the human being and shall foster in him, at the same time, the love of the fatherland and a consciousness of international solidarity in independence and justice

- I. As Article 24 guarantees freedom of beliefs, education shall be secular (laica) and, as such, must be maintained entirely apart from any religious doctrine.
- II. The guiding criterion for such education shall be based on the results of scientific progress and shall strive against ignorance and its effects, servitudes, fanaticism, and prejudice.

Moreover:

- a. It shall be democratic, considering democracy not only a judicial structure and a political arrangement but also a system of life based on the constant economic, social, and cultural improvement of the people;
 - b. It shall be national insofar as--without hostility or exclusiveness--it shall achieve the understanding of our problems, the utilization of our resources, the defense of our political independence, the assurance of our economic independence, and the continuity and growth of our culture; and
 - c. It shall contribute to better human relationships not only by the elements which it provides toward strengthening and at the same time inculcating, together with respect for the dignity of the person and the integrity of the family, the conviction of the general interest of society but also by the care which it devotes to the ideals of brotherhood and equality of rights of all men, avoiding privileges of race, religion, class, sex, or individuals;
- III. In order to fully comply with the provisions in the second paragraph and in section II, the Federal Executive shall determine the initiatives and study programs for preschool, primary, secondary, and post-secondary education for the whole Republic. To that effect, the Federal Executive will take into consideration the views of the federal entities' governments and of the various social segments involved in the education field, consistent with the terms that the law specifies.
- IV. All education provided by the State shall be free of charge.
- V. Besides providing preschool, primary, and secondary education, as established in the first paragraph, the State shall promote and assist in all types and means of education--including primary and higher education--which are necessary for the development of the Nation, will support scientific and technological research, and will advance the strengthening and knowledge of our culture.

- VI. Private persons may engage in education of all kinds and grades. Consistent with the terms established by law, the State grants and withdraws official recognition of studies performed in private facilities. In the case of preschool, primary, secondary, and post-secondary education, the criteria shall be:
- a. To provide education following the same objectives and criteria established in the second paragraph and in section II, as well as to be in full compliance with the plans and programs referred to in section III, and
 - b. To obtain previously, in each case, express authorization from the public power, consistent with the terms established by law;
- VII. Universities and other institutions of higher education that have been granted autonomy by law will have the ability and responsibility to govern themselves; will realize their objectives of education, research, and spreading culture consistent with the principles embodied in this article, respecting freedom of teaching and research and of free examination and discussion of ideas; will determine their initiatives and programs; will fix the terms related to salary, promotion, and tenure of their academic personnel; and will administer their own property. Labor relations concerning both academic and administrative personnel will be subject to section A of Article 123 of this Constitution and in conformity with the terms and requirements that the Federal Labor Law establishes with regard to the characteristics of a special work, in a manner that is consistent with the autonomy, freedom of teaching and research, and objectives of the institutions referred to in this section, and
- VIII. The Congress of the Union, with the goal of unifying and coordinating education throughout the Republic, shall enact the necessary laws for dividing the social function of education among the Federation, the States, and the Municipalities, for setting the appropriate financial allocations for this public service and for establishing the sanctions applicable to officials who do not comply with or enforce the pertinent provisions as well as the penalties applicable to all those who infringe such provisions.

B. Tomaševski's Rights-based Matrix on Assessing Quality Education

Table 10: Rights-based matrix for the quality of education

KEY COMPONENTS	QUESTIONS RAISED BY THE RELEVANT HUMAN RIGHTS STANDARDS
INTAKE	<p>Is the right of each child to be registered at birth fully guaranteed? If not, what measures have been undertaken to remedy this? Is the census of school-aged children all-encompassing and effective? If information is available on excluded children or those beyond reach, what measures have been taken to close the gaps in the coverage of compulsory education?</p> <p>Do the available statistics include all internationally prohibited grounds of discrimination relating to the children and their parents (race, colour, sex, language, religion, political or other opinion, origin, economic status, birth, social condition, minority or indigenous status, and disability)? If not, are there plans to develop education statistics to cover all internationally prohibited grounds of discrimination?</p> <p>Which data are recorded for each child enrolled in school? Does the procedure require official certificates (such as birth registration, or proof of citizenship or residence)?</p> <p>What is known about each child's family environment? How is parental freedom of choice regarding the education of their children assured? What measures are in place to secure education for children deprived of the family environment?</p>
INPUT	<p>Is there a constitutional or legal guarantee whereby budgetary allocations for compulsory education must be aligned with the estimated cost of quality education for all children? If so, is there an institutional mechanism (such as a constitutional court or a human rights commission) to provide remedies when budgetary allocations are insufficient?</p> <p>If not, has a national plan to ensure compulsory education for all children been developed?</p> <p>If the fiscal responsibility for compulsory education has been decentralized, are the responsibilities of local authorities accompanied by adequately guaranteed resources?</p> <p>Alongside budgetary allocations, have all other necessary inputs in education been defined as well as government or public institutions assigned whose responsibility it is to ensure that they are provided?</p>
PROCESS	<p>TEACHING Is teachers' participation in the creation of education policies and laws ensured? Are teachers' human and professional rights and trade union freedoms guaranteed in accordance with universal standards? Have measures been introduced to align the profile of teachers (regarding sex, race, ethnicity, language, etc.) with the profile of learners? Have both the contents and methods of teaching been assessed by the human rights yardstick? Does teachers' training include human rights education?</p> <p>LEARNING Does the education strategy affirm the need for adjustment to each individual child? If not, which measures have been put in place to initiate such adjustment?</p> <p>How are children's diverse abilities and disabilities assessed and recorded? Are obstacles to children's learning continuously assessed so that they can be effectively overcome?</p> <p>What approach has been adopted towards education in the child's mother tongue?</p>
OUTCOMES	<p>When was the last review of the curriculum undertaken and what was changed? Which learning outcomes have been prioritized and why? How is the process of assessing learning outcomes adjusted to children's diverse abilities and opportunities? Which models for assessing learning outcomes are applied to the assessment of human rights education?</p>
IMPACT	<p>Have education curricula been analysed based on human rights requirements? How are external objectives (such as poverty eradication, gender equality or social cohesion) monitored? If graduate unemployment exists, what measures have been taken towards aligning education with employment-creating measures? What strategy has been adopted to achieve gender parity in education? Is the impact of education on progress towards gender and racial equality monitored?</p>

