Over the past 15 years I have oscillated between two extreme poles ... that of a human rights zealot on the one hand and that of the human rights sceptic on the other. This of course is not intellectually healthy or conceptually desirable ... and lead to substantive contradictions in my own hypotheses. However, it has usefully rooted me in an analytical framework which I decided to describe as “human rights critiques”. So yes, since 5 years ago I have explored most of my writings through the lens of “human rights critiques”, not because I think that human rights have become obsolete, but because of the emergence of a dominant market-friendly paradigm of human rights.

Using “rights critique” as my heuristic devise, I am posing a simple question in this presentation: “Has the codification of education as a basic human right become counter-productive to education itself?”

1 The genesis of the ideas in this paper were first presented at the World Conference on the Right to and Rights in Education, Netherlands, (Amsterdam-Tilburg-The Hague), 25-30 November 2004 … Education as a Human Right, Conceptual Challenges and Practical Concerns: a South African experience.
When OSISA asked me to talk about “putting education into a rights-based framework” I was tempted to request to talk about “taking education out of a rights-based framework”...I think that education has been firmly rooted in a rights-based framework over the past two decades and this in itself might at least be one of the major educational challenges we are facing today in the SADC region.

I first presented my general human and educational rights critique at the World Conference on the Right to and Rights in Education in the Netherlands in 2004 and since then has been trying to develop critical alternative ways to look as educational rights. The logic of my argument goes as follows:

**Education in an Age of Rights (and Markets)**

First, the rights codification of education in the SADC region took place at a historical juncture that witnessed a worldwide preoccupation with human rights norms and human rights standards generation. Just in terms of sheer numbers and range, the business of rights enunciations has and continues to dominate the international agenda and relations amongst nations and peoples.

In reflecting on these developments, Baxi (1997: 1) states:

No preceding century of human history has been privileged to witness such a range of rights enunciations as ours. Moreover, never before have we come to a situation in which the language of rights nearly replaces all other moral languages...Further, even as the alleged end of ideology is being proclaimed worldwide, a human rights socio-dialect emerges as the only ideology-in-the making, enabling both legitimation and delegitimation of power and anticipatory critiques of human rights futures.

As human rights displaced all other moral languages, it provided for the surfacing, especially over the past 20 years, of an age of universal rights
(some might even refer to it as the overproduction of rights). During the same period and with similar hegemonic trajectories, the grand narrative of capitalist globalization, and the mostly destructive reaction which it brings in its wake, unfurls [ed] across the planet”. We should therefore ask the following question: “What is the relationship between the “age of rights” and the “age of markets” and why did they coalesce into the only surviving grand narrative of our times?

The Commodification of Education-as-a-human-right

Second, it has become a parody to speak of economic and social rights in “pure” human rights terms whilst they are in fact fast losing all their rights-aligned features and have started to act as commodities a long time ago. This is especially true for educational rights as a central cluster within economic and social rights. There is a particular complex relationship between human rights, globalization and markets as a central constitutive element of the political discourse on human rights. There was a time, not so long ago, when we uncritically assumed a contradiction between rights and industry markets. Baxi’s (2002: 119-131) in fact says that such contradiction so longer exists and speaks of a the ‘human rights markets’ that

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\text{consist of a network of transactions that serve the contingent and long-term interests of investors, producers and consumers. These transactions rely upon the availability, which they in turn seek to reinforce, of symbolic capital in the form of international human rights norms, standards, doctrines, and organisational networks. Since grids of power are globalized, human rights markets also create and reinforce global networks, each of which seeks to influence the patterns of compliance and violation of human rights norms...Human rights markets thus share salient features of global service industries.}
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He argues further that human suffering needs to be commodified and packaged according to market requirements in order for human rights entrepreneurs to flourish:
Human suffering must be packaged in ways which the mass media markets find it profitable to bear overall… (ibid: 125).

The commodification and marketization of human rights and human suffering thus follow similar patterns to the globalization of markets and industries and the commodification of social services. Human rights and human suffering has, from this perspective, become a regulated service industry. However, it is clear that human rights may both challenge and extend the ideals of neoliberalism. There is a choice to be made here.

The question so seldom asked is “Why do rights-codifications of human and developmental needs so effortlessly translate into traded services?” This question is even more urgent when considering that from a social justice perspective rights should in fact be viewed as being market resistant. As part of the human rights service industry, it is therefore no surprise that the EFA framework was converted into a framework of educational targeting that is partly aimed at measuring input-output ratios within a cost-benefit analysis discourse that eventually displaced the education-as-a-common-good discourse. This leads us into the third point.

**EFA target setting**

Thirdly, the tendency of the broader human rights framework to be dominated by standards generation, compliance checklists and target setting is not an innocent confluence of social justice sentiments. Rather, the languages and technologies of rights and markets have come to share a common semiotic structure to such an extent that governments and global agencies are given an ever expanding platform to invoke the rights language to deputize for the “human capital” discourse, adding to the incremental cutback of education-as-a-public-good. This has allowed the anti-pedagogical frameworks of global agencies to dominate the dialectical space of interplay between global educational narratives and the micro-politics of people’s struggles for quality education. Target setting and compliance replaced pedagogy.
Declarationism

Fourth, since the conceptual identity of education-as-a-right is almost wholly dependent on human rights universals it would inevitably suffer from *declarationism*. I use this term to refer to the almost dogmatic belief that all human rights truths are generated and consummated within human rights instruments such as declarations, conventions and covenants.

The epistemological implication of *declarationism* is that the rights discourse is altogether reliant on a *diplomatic consensus theory of truth*\(^2\) or diplomatic regimes of knowledge. Consensus is claimed through diplomacy ... not pedagogy ... and truth, such as educational truth, is mediated through this consensus...the notion of “international consensus” replaced commonsensical rationality. Such a conception of truth invariably provides for a validation of its own weaknesses ... that is why targets are perpetually not met and therefore continually shifted...the justification for not meeting these targets are already preconfigured in “rationality as international consensus”. But this has not deterred us from ‘overproducing’\(^3\) these normative educational rights, standards and targets because we erroneously equate standard and target setting with rights delivery...or we at least regard them as prerequisites for rights delivery. Education systems are thus inadequately assessed within a framework of narrow and technocratic benchmarking with an inordinate emphasis on ‘rights-compliance’...this might be a major weakness of the EFA framework that has deflected our attention away from dealing with the inadequate educational experiences of most of our learners in the SADC region.

\(^2\) Certainly, epistemological critiques and constructions are much more complex than reflected here. However human rights universals do generate, at least for the purposes of human rights instruments, their own truth claims based on a vague acceptance of “international consensus” through diplomatic and political processes.

Conclusion

The hegemonic rights language, which constitutes the backbone of the EFA framework, carries a number of conceptual and practical limitations if measured against the notion of social justice. Baxi (2002: 133) is clear that these limitations are linked to the emerging paradigm of a “trade-related and market-friendly human rights”.

So, while we chant the tune of economic and social rights for the purposes of social justice, neo-liberalism unfortunately provides the lyrics.

Yes … human rights is continuing to play a significant a role in advancing educational rights and adopting a human rights approach to education has its advantages. However, we cannot altogether abdicate our pedagogical responsibilities to a compliance framework that translates educational progress into compliance standards.

Our main task should be to reconceptualise and re-imagine human rights in general and educational rights in particular and through that find ways to measure educational progress in social justice and human investment terms and not simply in terms of a cost-benefit analysis.

References


