



# The Right to Education Movements and Policies: Promises and Realities

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NORRAG Special issue (NSI) is an open-source periodical. It seeks to give prominence to authors from different countries and with diverse perspectives. Each issue is dedicated to a special topic of global education policy and international cooperation in education. NSI includes a number of concise articles from diverse perspectives and actors with the aim to bridge the gap between theory and practice as well as advocacy and policy in international education development.

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# The Right to Education Movements and Policies: Promises and Realities

## Guest editors

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# Foreword

The year 2018 marks the 70th anniversary of the Universal Declaration of Human Rights (UDHR), which was adopted by the global community in 1948. Amongst other fundamental human rights, we have yet to realise the right to education as outlined in Article 26 of the UDHR:

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.<sup>1</sup>

Commitment to ensuring the right to education for all has since been affirmed in several international frameworks and, most recently, within Sustainable Development Goal 4: Ensure inclusive and quality education for all and promote lifelong learning.

However, according to UNESCO, 264 million children and youth are still out of school around the world, and this is only accounting for the primary (61 million) and secondary school (203 million) age population. In particular, the poorest and most marginalised, including ethnic and religious minorities, persons with disabilities, girls, and populations experiencing conflict, are often systematically unable to access and complete a full cycle of quality education. The first volume of NORRAG Special Issue

(NSI) is dedicated to examining international frameworks and national policy as well as the challenges of fulfilling the right to education in practice.

Since its inception in 1986, NORRAG has been charged with the task of disseminating knowledge, providing critical analysis and perspective, and facilitating dialogue on global education and education cooperation policy. Over the last 30 years, under the leadership of our distinguished colleague Kenneth King, Professor Emeritus of the University of Edinburgh, 54 issues of *NORRAG News* (NN) were published. *NORRAG Special Issues* (NSI) will build on this achievement and will aim to further decentralise and amplify the voices of the Global South in critical analyses of education policy and practice.

The inaugural issue of NSI on the *Right to Education Movements and Policies: Promises and Realities* aims to highlight the global and national level experience and perspective on guaranteeing the right to education, as outlined in international frameworks, national constitutions, legislation, and policy, when creating the required administrative structures to ensure that the right is respected, protected, and fulfilled for all. As with other NORRAG activities, we attempt to bridge the gap between both theory and practice and advocacy and policy in international educational development. We pursue this intellectual project by generating a platform in which an informed dialogue between researchers, policy actors, and advocacy groups may take place.

The Issue is divided into six parts, each focusing on a specific theme of right to education policy and practice. In part 1, authors take a global perspective in highlighting the experience, opportunities, and challenges with the implementation of global normative and legal frameworks for ensuring the right to education for all. Part 2 delves more deeply into the historical evolution and reconceptualisation of education for the progressive expansion of the right to education. Beyond the global discussion, authors bring contextualised

perspectives from India, South Africa, and China. In the third part of the Issue articles present the challenges encountered at the national level in Brazil, South Africa, and India, with the implementation of international frameworks, legal standards, policy goals and domestic legislation on right to education. In part 4, contributions exemplify the engagement of various stakeholders, from regulatory bodies to parents and community, in ensuring and holding the government to account for the provision of the right to education.

Within part 5, authors with diverse perspectives highlight imperative debates and experiences concerning private sector engagement in the provision of education and in guaranteeing the right to education to all. The concluding part of the Issue brings attention to the challenges faced by specific marginalised populations in accessing their right to education—street children in Brazil, refugees, Roma populations in Europe, mobile populations in India, and indigenous peoples of Canada.

We are pleased that Professors Archana Mehendale and Rahul Mukhopadhyay serve as the guest editors for the inaugural issue of NSI:

Archana Mehendale is a Professor at the Centre for Education, Innovation and Action Research, Tata Institute for Social Sciences. She also serves as a Lecturer at the University of Geneva in the Master of Advanced Studies on Child Rights program. She was a member of the CABE committee, which drafted the Right to Education legislation in India, and has previously worked with the Centre for Child and the Law,

National Law School of India University, Bangalore, where she helped to design and launch the Post Graduate Diploma in Child Rights Law.

Rahul Mukhopadhyay is currently a visiting faculty member with the School of Education, Azim Premji University. He also works with the Connected Learning Initiative under the Centre for Education Innovation and Action Research (CEIAR), Tata Institute of Social Sciences. He has worked on several projects on education in India related to the right to education, the changing nature of the public and the private in school education, strengthening of institutional capacity, quality in education, and education governance.

The guest editors, Professor Mehendale and Dr. Mukhopadhyay, would like to acknowledge with gratitude the support extended by a number of individuals and institutions in the preparation of this Issue. The Tata Institute of Social Sciences, Mumbai and the Azim Premji University, Bengaluru, made it possible for them to embark on this exciting and highly stimulating engagement. Colleagues from these, namely Shubhangi Wankhede, Sunita Badrinarayan, Gitanjali Somanathan, and Professor. Padma Sarangapani, have been extremely generous with their time and support. They sincerely appreciate the professional support provided by Abhigna A.S. and Aparna Tulpule who helped with the editing of this Issue. Baidehi Sengupta and Sankar Ram Barman deserve specific mention for assistance with the interview with Prof. Krishna Kumar, as does, Dr. Manish Jain, Ambedkar University Delhi, who also helped with this interview.

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# Realising the Right to Education: Experiences and Insights

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## Introduction

The first NORRAG Special Issue is devoted to the Right to Education movement. As Guest Editors, we are honoured to present to the readers an immensely rich collection of insightful articles authored by academics, researchers, practitioners, and policy makers from various parts of the world. This Special Issue opens with a set of introductory articles that present the landscape of normative and legal frameworks on the right to education, highlighting the key opportunities and challenges before the international community. We then delve more deeply into five important themes related to the right to education. In these sections, contributors bring together an interesting array of articles on issues related to history and perspectives, legislation and policy, actual implementation and progress, the role of different actors involved and their responses, and the right to education in fragile contexts. We conclude by underlining the recurring challenges that these contributions draw our attention to and the lessons learned from the progress so far.

## Normative and Legal Frameworks

The contribution of the United Nations Special Rapporteur on the Right to Education, Koumbou Boly Barry, sets the tone for this Special Issue. The article underlines the significant progress made by the international community towards education for all since the Universal Declaration of Human Rights in 1948, now re-affirmed in the Sustainable Development Goals (SDGs). Given that equitable and quality education still eludes a large section of the world's population, comprising different disadvantaged groups, she emphasises the need to address the entire spectrum of human rights. National governments, international organisations, and civil society organisations need to play a larger role to realise these elusive goals.

Taneja's contribution echoes similar concerns and draws attention to the slow progress made on Sustainable Development Goal 4 (SDG4). She suggests that factors such as inadequate financing, weak and diffused accountability, and lack of effort to manage the process of institutional change, have to be addressed, besides developing formal linkage between the SDG review processes and treaty bodies so as to ensure greater accountability for multiple stakeholders.

The application of international standards established through international legal frameworks and political compacts within domestic jurisdictions through laws, policies, and programmes, is critical for the realisation of the right to education. We have two rich contributions that highlight the legal and juridical developments on the right to education. Naidoo and Santini share the findings of their 11-country study, which analysed the extent to which national legal provisions were aligned to, and help achieve, SDG4 and its targets 4.1, 4.2 and 4.5. They suggest that while inclusion of education in a country's constitution or legislation does not always guarantee its fulfilment, it does provide the legal grounds to invoke the judiciary in protecting the right. The contribution by Dorsi and Murphy examines the role of court decisions on the right to education. In an extensively researched piece citing case law, they show how states have failed to effectively implement the right to education; and how courts have progressively interpreted the right to education and held states accountable for delivering on their duties.

## History and Perspectives

The need to reconceptualise education in broader terms is an idea that has formed an integral part of the progressive expansion of the right to education, and an idea that we find recurring in different forms in this issue. Two contributions in this section on history and perspectives also approach the same idea, albeit from distinct perspectives. Chakroun and Daelman remind us that the right to education, as guaranteed by the international human rights law, is not limited to the right to schooling, but also extends to the right to life-long learning. Since the right to education is an empowerment right and critical for the fulfilment of all other rights, they argue that the challenge is to consider how the state shares these responsibilities with other stakeholders and regulates them to ensure the principles of non-discrimination and equality in access to life-long learning are upheld. The other contribution by the Former United Nations Special Rapporteur on Right to Education, Kishore Singh, talks about the values crisis in education and the need to preserve the humanist mission of education by reinforcing human values.

Two contributions from India cover a set of important issues around the right to education, related to the nature of the state and aims of education, from a historical perspective. Juneja walks us through a brief history of the making of this right in India and the departures from colonial legislation that were modelled on truancy legislation and discussed compulsory education. Further, the interview with Kumar delves into the contesting aims of education that the Right to Education Act (2009), in its current avatar, has to negotiate, as well as the challenges it faces. These include the quasi-federal nature of the Indian State and its contradictory impulses, the complex recent history of large-scale educational programmes, and the emergence of strong neo-financial concerns in educational policy making.

Continuity of historical inequalities from the apartheid regime and the changing nature of the state similarly find mention in the two contributions from South Africa. Both Vally and Maniar point out the tension between market-based solutions to remedy the challenges in realising the right to education and persisting structural inequalities, as well as educational options suitable for the local social-economic-cultural milieu. These tensions, as Vally observes, are indicative of the 'negotiated compromise' of educational policies straddling diverse political compulsions. Maniar sees in these tensions a need to look at overall well-being from a Capabilities Approach, as he notes that education and aspirations for education are inextricably tied up with the multi-dimensional nature of inequalities.

Jun Li's contribution brings another important region into focus through a historical lens. Jun Li elaborates upon China's historical experience with the right to education and emphasises the embracement of a pragmatic philosophy that has helped China in recent years to address, in a balanced way, persisting challenges, such as inadequate public investment in education and centralised versus decentralised approaches to educational administration.

Even influential concepts and their relationship to education, and also education policymaking, have had distinctive historical trajectories. Bajaj's article traces the evolution of the concept of human rights and its relationship to education, and draws attention to the critical implications of human rights education, especially for marginalised communities. She stresses the importance of moving the human rights education agenda, from that of only ensuring a conducive and non-discriminatory learning environment, to one of transformative human rights, more evident in the work of social movements and non-state actors that seek to address larger questions of power and structural inequalities for wider change.

### Implementing Legislation

The contributions in this section engage with the challenges encountered in implementing international legal standards,

policy goals, and domestic legislation related to the right to education. The article by Morais de Sa e Silva highlights the widespread reductions of poverty and improvements in educational opportunities, especially for the poor, achieved through conditional cash transfers in Brazil. In a similar vein, Bassalo, Weller, and Zardo outline the progress made in addressing issues of disability, ethnicity, and gender diversity, through earlier educational policies in Brazil. At the same time, underlying these contributions is a concern around recent conservative trends and counter-movements, that seem to be challenging the gains achieved ever since the state endorsement of a rights-based approach to education in Brazil in the 1990s.

Ranieri's contribution, also from Brazil, elaborates on the role of autonomous public institutions that have, often in collaboration with civil society organisations, been able to influence state action in the generally neglected area of early childhood education, through legal and extrajudicial mechanisms. We see similar experiences from South Africa in Veriava's article, in which she emphasises the role that civil society organisations can play to influence jurisprudence towards a more substantive approach to the right to education, given that the South African Constitution considers education as an unqualified right, not subject to a progressive realisation like other social, economic, and cultural rights.

Resource constraints, whether financial or institutional, are often seen to be a major impediment in the translation of legislative intent into practice. Jha's contribution shows how inadequate financial planning, mobilisation, allocation, and disbursement, at both the central and state levels, lead to slow progress in implementing right to education legislation in India. The article emphasises the critical importance of a clear and visible financial mandate that should be available to endorse the State's legal commitments. A somewhat similar concern is reiterated by Namala, who references the guarantees provided by the State, through the Right to Education Act, of non-discrimination and equal opportunity to education for all children in India. Namala examines the measures taken by the government to address social exclusion and to promote equity and inclusion, and most importantly, the budgetary provisions made to reach these goals. She argues that the measures to ensure inclusion of children from the Scheduled Castes, Scheduled Tribes and minorities should be at the core of policy measures and not lie on the periphery.

### Institutional Actors: Government, Non-Government and Community

Normative and legal frameworks on the right to education, at both the international and national levels, have unambiguously endorsed the need for collaboration among, and participation of, key stakeholders, besides the state, for the realisation of universal education. Contributors, in this section, share experiences of the collaboration and participation of different

key stakeholders that have propelled the right to education movement across diverse contexts. In the context of Brazil, Priscila and Olavo cite the positive contributions made to the right to education movement by the Brazilian Government Agency for Law Enforcement and advocacy organisations such as All for Education. Importantly, they suggest the need for a new public narrative around an evidence-based policy agenda encompassing an emotional social justice idea. Similarly, Shantha Sinha, the first chairperson of the statutory National Commission for Protection of Child Rights entrusted with the mandate of monitoring the implementation of the Right to Education Act in India, shares the experiences of collaborations with different stakeholders, including the judiciary, civil society organisations, and government functionaries. Both these contributions allude to the political implications of such collaborations in scenarios where the progress of the right to education is enmeshed in multiple contestations—institutional, material, and symbolic.

Besides quasi-judicial governmental agencies, in many instances, as in India, both parents and the community are designated as important stakeholders for the realisation of the provisions of national-level right to education legislations. Drawing upon the Right to Education Act in India, the contribution from Sriprakash and Maithreyi, however, cautions against an uncritical embracement of the idea of parental participation, especially in a context where both structural inequalities and local-level hierarchies of power continue to prevail. Such conditions, the authors argue, hinder ideas and assumptions of both ‘voice’ and ‘choice’, which seem to underlie the provisions of parental participation in the right to education in India. On a more optimistic note, the contribution by Niranjana Radhaya, Raman, and Krithika shares the exemplary work done by school-level community structures in one of the Indian states, Karnataka, and highlights the success of collective work undertaken by the state-level federation of these structures.

It is interesting to note similarities of the challenges in the school education system in South Africa and India. In both countries, conditions of historical inequalities continue, and these have probably been accentuated amidst concerns of inadequate state funding for education and an expanded role of the market in education. It is against such a scenario that Soudien and Juan, using the example of Equal Education in South Africa, draw attention to the efforts of civil society organisations to hold the State accountable and to the need to focus on quality in education, both in terms of school infrastructure and facilities, and in terms of student learning levels.

The need for collaboration among multiple stakeholders—international development agencies, national governments, and public and private donors—is aptly exemplified in the contribution from Education Cannot Wait. As the

article by Yasmine Sherif, its Director, underlines, there is an urgent need for higher levels of humanitarian funding for education from the international community for the realisation of the right to education in conditions of armed conflicts, disasters, and emergencies.

## Private Actors and Privatisation

Building an implementation approach around education as a human right can be a challenging task when there are private actors involved. International human rights law recognises the parental right to choose education for their children and the rights of private actors to run educational institutions. Understandably, such a task requires the state to negotiate conflicting approaches towards ensuring equitable and quality education for all. Aubry’s contribution elaborates on a three-pronged approach—empirical, theoretical, and mobilisation-based—that the Global Initiative for Economic Social and Cultural Rights has been working on to develop a framework and policy approach for private actors in education.

The nature of conflicting objectives that surface when private actors are involved as part of the progress of the right to education movement is amply illustrated in a series of contributions from India. Section 12 (1)(c) of the Right to Education Act in India, which requires private schools to admit students from marginalised children, has been a matter of much debate. We have two articles that review the implementation of this provision. Krishnaswamy and Prasad, using the example of one state in India, bring out the contested views and changing nature of public debates around this provision. The main tensions are seen to be between the inclusionary potential of this provision and the concerns arising from an expanded role of the private in school education. Sarin and Ranjan also discuss the challenges faced in the implementation of this provision, on the basis of the work undertaken by the Right to Education Resource Centre of the Indian Institute of Management, Ahmedabad. Looking at the uneven implementation of this provision, they point to the failure of the State to inform the rights-holders of their entitlements and the role played by ‘knowdents’, the knowledgeable students of their Institute who acted as intermediaries and helped improve implementation.

The dynamics and tensions between the role of the state and the private sector in education governance has been a matter of continuing debate in education, both internationally and in the context of specific countries, and India is no exception. Spreen and Kamat contextualise this debate with the specific example of the expansion of low-fee private schools for the poor in India. As they note, the argument of financially viable and quality educational options for the poor, through such low-cost options and edu-businesses, is misleading. The contributors observe how such options accentuate the disparities between educational experiences of the rich and the poor, and between urban and rural children, and

also lead to de-professionalisation of the work of teachers. Nambissan continues with the same broad concern of an expanded and diversified role of the private in school education in India in recent years. She, in turn, elaborates the increasing role of educational discourses and projects endorsing the ideas of affordable learning, edu-businesses, and public–private partnerships in policy trends. The concerns that such projects and policy directions generate, in terms of unequal outcomes for privileged and marginalised groups in an already segregated school system, are also discussed.

Ambast's contribution provides a broader regulatory context for the state–private issues examined in the previous articles from India and also resonates with the issues and concerns around regulation in Aubry's contribution. She discusses the role of private schools within the legal framework of the Right to Education Act and underlines fundamental governance issues such as the lack of state capacity to regulate and monitor the private schools, the ability of private schools to circumvent the Right to Education Act's provisions by seeking exemptions as minority institutions, and fee regulation and child safety in private schools, all of which call for stronger state intervention.

### Education in Fragile Contexts

The issue brings together six contributions covering different special groups and regions and efforts that are needed for the realisation of the right to education in these social geographies. Rizzini and Chattopadhyay, while noting the benefits of welfare policies, such as cash transfer programmes to eradicate poverty significantly, draw attention to the relatively neglected issue of appropriate educational options for street children in Brazil and the linkages that exist between urban poverty, street children, trafficking related to drugs, and drug-gangs.

The articles by Dryden-Peterson, as well as, Mendenhall, Russell and Buckner, focus on the challenges faced by refugees, despite the acknowledgment of their rights to equitable education in international conventions. Both emphasise the importance of integrative strategies—political, economic, and developmental—without which refugee education remains a system parallel to, and segregated from, the education policies and systems in place for citizens of nation-states. The contributions also highlight the role that inter-governmental and civil society organisations need to play to ensure that larger geopolitical conversations on the movement and hosting of refugees articulate with national-level concerns around economic and political security. Contributions from Kovács Cerović, Dyer, and Garakani draw attention to the difficulties faced by specific minority groups in different regions, such as the Roma in Europe, mobile pastoralists in India, and the Inuit in Canada, respectively. Kovács Cerović uses the example of Roma Pedagogical Assistants in Serbia to show how such effective bridging mechanisms between minority community groups and

the school can synergise multiple stakeholders for more integrated education efforts. They highlight how rights-based approaches, and policy frameworks emerging from them, often fail to encompass the context-specific educational and developmental requirements of different minority groups. They also emphasise the need to conceptualise education more broadly than just considering formal schooling, so as to enable minority groups to traverse and negotiate the conflicting experiences and demands of indigenous knowledge systems and mainstream knowledge systems.

### Summing Up



What is evident in this rich set of contributions on the right to education is both a set of recurring concerns on the challenges facing its progress and a note of optimism with reference to the strategies, interventions, and approaches that have marked this progress. Among the concerns, noteworthy are those of inadequate funding within nation-states and from the international community; the persistence of both historical and new forms of inequalities, mainly in the form of discrimination of different marginalised groups; and the inadequate efforts to make provisions for a more integrated system of education for all. The country specific examples also emphasise how educational inequalities are often accentuated by the expansion of market-based solutions. A simple analysis of the contributions, with reference to the 4As framework, seems to suggest that the initial gains in terms of *Availability* are being challenged in terms of inadequate progress on *Accessibility*, *Acceptability*, and *Adaptability*, and in terms of extending the initial gains to both early years and higher levels of education. These challenges, as contributors note, have implications for quality, beyond that of mere basic infrastructural provisioning, to that of learning levels of students and their well-being, which needs to be defined in broader terms than is often visible in existing rights-based articulations and policies.

On the other hand, far-reaching changes that have been brought in by holding the state accountable for the progressive realisation of the right to education through judicial interventions, autonomous public institutions, and civil society organisations, often in collaboration with each other, bespeak the possibilities of such approaches to further strengthen the work on the right to education. As rightly noted by contributors, such efforts need to be complementary with efforts to read, interpret, and develop policies to implement the right to education as inextricably linked with wider socio-economic, cultural, as well as civil-political rights. It is only through such collaborative efforts of multiple stakeholders and through more substantive articulations of different human rights that the international community can hope to address both deep-seated historical and structural inequalities and develop more focused, innovative, and integrative strategies for realising the right to education for different marginalised groups.

## Part 1

# **Normative and Legal Frameworks for the Right to Education**

# Education is Not a Privilege, It is a Human Right

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## Summary

This article emphasises how, despite making progress in access to education internationally, the goal of ensuring equitable outcomes in education remains elusive for many disadvantaged groups - women and girls, children with disabilities, different minority groups, and refugees. The article advocates for the fulfilment of all fundamental human rights and a strong role of the state in realising the goal of equitable educational outcomes for all children.

## Keywords

Human Rights  
Educational Quality  
Discrimination

## Right to Education: Access or Outcome?

Education is a human right and has been since 1948. When the Universal Declaration on Human Rights proclaimed in Article 26 that ‘everyone has the right to education’, it became enshrined in international law that states are obligated to provide education for their citizens. Since then, a number of legal instruments have been developed by the United Nations to facilitate the realisation of the right to education, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the UNESCO Convention against Discrimination in Education. The right to education for all has also been reaffirmed in numerous global and regional treaty bodies covering specific marginalised groups and contexts and has been preserved in many national constitutions and laws.

With this clear mandate, the international community has made great strides in ensuring access to education for all. Having worked towards the Millennium Development Goals, by 2015, net enrolment rates had reached 91 per cent for primary education, 84 per cent for lower-secondary and 63 per cent for upper-secondary (ECOSOC, 2017). Yet, whilst this is a step in the right direction, these statistics obscure the fact that *quality* educational outcomes remain elusive for many. For example, an estimated 6 out of 10 children and adolescents are not reaching minimal proficiency in reading and mathematics (UNESCO, 2017) and despite increased access, children from the poorest 20 per cent of households are less able readers at the end of primary school than those from the richest 20 per cent (ECOSOC, 2017). Moreover, girls, children with disabilities, refugees, indigenous peoples, and other minority groups (to name but a few) account for the majority of out-of-school learners. In short, it has become clear that more equitable access does not equal equitable outcomes.

## The Classroom and Beyond: Education that Teaches Discrimination?

Currently then, certain people and groups are forced to cope with barriers that not only impede their access to education but also their success once they arrive at school. Schools may

lack infrastructure, materials, know-how, or drive to cope with learners who do not fit into existing categories. As such, many face an uphill battle when trying to make the most of an education system which fails to adapt to their individual circumstances. This leaves many students floundering and unable to fulfil their potential in school, which of course, hurts their opportunities to find work or to participate fully in society. This is problematic not only for the wellbeing of the individual but also for the sustainable development of society. By normalising discriminatory and non-inclusive practices, such educational barriers have far-reaching consequences that go beyond the education system and take root in society itself. Consequently, those who face barriers in the classroom will likely face similar discriminatory practices in their everyday lives, thus perpetuating an unsustainable societal model which limits personal growth, participation, and productivity. Indeed, discriminatory attitudes and beliefs must first be addressed before system changes can take hold. Inclusive education practices not only help excluded and vulnerable learners, but more importantly, they bring an attitude of understanding and tolerance to students, educators, and parents.

### Who is Affected?

There are certain people and groups who are disproportionately affected by non-inclusive education, each facing their own contextual difficulties. The largest number of those excluded are women and girls. The unequal division of household labour; child, early and forced marriage; and traditional attitudes and beliefs often result in families choosing to favour boys when investing in education. Indeed, 15 million girls of primary age will never get the chance to read or write in primary school compared with 10 million boys (UNESCO, 2016). For those girls who do attend school, sub-standard sanitary facilities, gender-based violence, and poor quality curricula often prohibit them from fulfilling their potential.

Children with disabilities are another group who experience discrimination in schooling. It is estimated that over one billion people around the world have some form of disability, with over 80 per cent living in the Global South (World Health Organization, 2011). However, there is a lack of reliable education-related data to fully comprehend the situation that children with disabilities face in schools. This lack of data is emblematic of the exclusion they routinely face and is often cited as the reason why children with disabilities are left out of national education plans. Children who are not counted are thus not included. Most schools throughout the world also remain physically inaccessible, and students with disabilities often suffer from stigma, prejudice, and bullying.

Cultural, ethnic and linguistic minorities also face significant challenges in realising their right to education. Formal schooling sometimes does not pay adequate attention to cultural and linguistic diversity, making it difficult for many

learners to navigate their way through the school system. This may be because they struggle with the language of instruction or because the curricula and pedagogy are not relevant to their way of life. Indigenous peoples face similar difficulties, with children regularly deprived of access to quality education that is relevant and responsive to their specific needs. As a result, children of indigenous populations are less likely to enrol in primary education than non-indigenous children (UNESCO & ECOSOC, 2008).

There are 65.6 million forcibly displaced people worldwide (UNHCR, 2017). Refugees, internally displaced persons, and the stateless, who are already experiencing considerable upheaval, are unsurprisingly among those excluded from receiving an education. States hosting refugees are obligated to provide them with education; however, the United Nations Refugee Agency (UNHCR) estimates that only 50 per cent of refugee children have access to primary education, a figure which falls to 22 per cent for secondary school. Internally displaced persons are also vulnerable as they are still under the geographical jurisdiction of their own state, which in some cases may be the cause of their displacement. Consequently, accessing education for the some 31 million internally displaced persons across the globe is a serious challenge (IDMC, 2016).

### Human Rights and Education: A Virtuous Circle?

These are just some of the groups struggling to realise their right to education. However, in reality, there are many more. Those living in rural areas, or affected by poverty, also face constant challenges. Indeed, individuals who belong to more than one vulnerable group cope with discrimination on multiple fronts. For those who face discrimination, an education system which excludes so many cannot be judged to be equitable, by any measure. As such, in many areas across the world, the provision of quality education remains the preserve of the privileged - for those few who do not face discrimination on one or more fronts or are not victims of their national or geographical circumstances.

This has clear implications for right to education. To fully realise the right, the benchmark for educational quality should consider individual circumstances. Any child (or adult) should be able to attend any school with the knowledge that she will receive the support she needs to achieve quality education outcomes. It is not enough to put children into schools; we must ensure that they are all learning while they are there. Consequently, the ability to realise the right to education depends largely on eliminating discrimination and fostering an environment that promotes equity and inclusion, by addressing educational barriers. In other words, enabling the right to education is crucial to the fulfilment of other fundamental human rights and vice versa.

In recognition of this, as part of the 2030 Agenda, the international community committed to Sustainable



Development Goal (SDG) 4 to 'ensure inclusive and equitable quality education and promote lifelong learning opportunities for all'. SDG4 and its related targets were deliberately built on a rights-based approach to reflect the understanding that sustainable development can only be achieved if the full enjoyment of human rights is realised. Consequently, there is a much sharper focus on the provision of quality education for all than in previous agendas, which focused largely on access in an attempt to ensure that 'no-one is left behind'.

### What Can We Do?

Governments now have a responsibility to address discrimination and exclusion in education by identifying people and groups requiring specific and targeted support and by implementing the actions required to meet their needs. Through inclusive consultations with all stakeholders, governments can thus ensure that learners receive the support they need to succeed once they are in school. For states to meet these obligations, it is vital that disaggregated data be collected and published. Donors and international organisations must provide financial and technical support to ensure that all states develop the capacity to monitor and report on all segments of the population and to address identified barriers. Without such support, it will be incredibly difficult for states to fully comprehend the scale of the problem for certain groups, and likewise to monitor any progress made.

Lastly and perhaps most importantly, efforts must be made to address the conditions which foster discrimination in the first instance. States must strive to eliminate discrimination throughout society by addressing attitudes and beliefs which devalue those who are excluded. Laws and policies designed to prevent exclusion must filter down to the local level and be implemented with strong political support. Politicians and leaders in communities must champion human rights when bringing reforms to address old attitudes that created exclusion. The right to education encompasses all aspects of education, from early childhood care to lifelong learning, and as such equitable, inclusive approaches must be applied to all levels of education and to all facets of society. Only then can individuals and groups hope to realise their human right and thus be able to productively contribute to a sustainable, equitable, and inclusive society.

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# Who is Responsible for SDG 4?

## Managing Change in Institutions to Ensure Implementation

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### Summary

It is now over two years since the world embarked on the journey of SDG implementation, which has been slow to take off. While the changed political landscape is partly responsible for some of the delays, the real reasons are deeper and rest in inadequate attention to their financing, weak and diffused accountability, and inadequate efforts to manage the process of institutional change that is required to convert the SDGs' vision into reality.

### Keywords

SDG  
Education 2030 Agenda  
Accountability  
Implementation  
Systems

### Introduction

On 25 September 2015, all 193 member states of the United Nations (UN) adopted a new sustainable development agenda, the 2030 Agenda for Sustainable Development. This agenda is much more explicitly rights-based, universal, and no longer divides the world into rich donor countries and poor recipients as the Millennium Development Goals (MDGs) and Education for All (EFA) agendas did. Its holistic and interconnected nature appeared to reverse the misplaced belief in the virtues of simplicity, concreteness, and quantification, as prerequisites of success in development (Fukuda-Parr, 2016). Their drafting was also more open with the majority of the world led by the G-77, and with China in particular playing a critical role in shaping the agenda. Inputs were also taken from the full range of stakeholders including civil society, unlike the MDGs, which were drafted by technocrats. They appeared to open new opportunities for more participatory global governance, with global citizens having a more direct say (Fox & Stoett, 2016). For the education community, this agenda marked a break from the past global development agenda as laid down in the MDGs, and committed the world to ensuring 12 years of free quality education for all, to strengthening public education systems, and to putting in place mechanisms for lifelong learning.

Two years later, a degree of pessimism is beginning to set in. A recent Thomson Reuters Foundation poll of global policymakers, campaigners, and executives with an interest in the SDGs, finds that two-thirds of the respondents felt that progress was slower than anticipated and only a quarter were confident in meeting the deadline (Reuters Staff, 2017). Partly, the world itself is a different place with the growth of nationalism and right-wing populist governments in several countries. However, this is only part of the picture. A globally more coordinated approach to ensuring implementation, and concrete steps towards addressing accountability gaps, is essential for ensuring the realisation of the agenda.

### Doing What It Takes to Implement the Specific SDGs

According to the latest estimates, financing the implementation of the SDGs will require US\$6 trillion per year, or US\$90 trillion

over 15 years. While this is a prohibitive figure, the cost of inaction is much higher (Leone, 2017). The Global Education Finance Commission's report estimates that financing for education needs to steadily increase from US\$1.2 trillion to US\$3 trillion by 2030 (Education Commission, 2016). One of the biggest lessons that we have learned from the last 15 years is that good intentions and political commitments cannot be delivered without sufficient, good quality public financing. Dedicated resourcing commensurate with the enhanced ambition of SDG implementation has not been forthcoming. Indeed, education's share in total aid (excluding debt relief) has fallen for six years in a row, from 10 per cent in 2009 to 6.9 per cent in 2015 (Global Education Monitoring Report, 2017).

However, the problem is far from being just that of resourcing. The greatest weakness has been the limited effort to translate the specifics of the SDG4 goals and the Education 2030 Agenda into processes that are owned nationally. This is not to say that this is a problem that is specific to the SDGs. In my own country, India's Right to Education (RTE) legislation, which is derived from a constitutional provision, is seeing its own delays in implementation.

## The Role of Institutions

The presence of a new international agreement or a new legislation alone is not enough to guarantee action. The SDGs' ambitious vision must be converted into specific action plans and must find a foothold in existing institutions of governance to have impact. It takes time for global and regional institutions to change; it takes longer for all national policy priorities, legislations, planning cycles, institutional arrangements, programmes, and modes of working to be dovetailed with the new paradigm, and for human, financial, and technical capacities to be put in place.

For implementation to happen in an effective manner, governments must invest resources and time for:

- **Awareness** raising, both among citizens at large, but also more critically among those tasked with the Agenda's implementation. Regional and sub-regional consultations on SDG4 implementation have highlighted the need for strengthening awareness of the specifics of the Agenda among policy makers, senior officials, and front-line workers responsible for policy implementation.
- Developing the **ability to exercise** the right to education through modifying existing national policies, legislations, and plans in line with new SDG commitments, allotting funds necessary for their implementation, strengthening implementation mechanisms, and strengthening monitoring systems.
- Strengthening their **ability to enforce** the right to education through strengthening existing redress and state accountability mechanisms.
- Building a **wider community of SDG supporters** that can

push for the Agenda's implementation by creating enabling environments for civil society and citizen participation in the governance processes.

Not enough is being done towards these. Instead, SDG fatigue appears to have set in and not enough focus is now being paid to steer the Agenda through the shoals of national implementation. Of course, this is partly because doing so requires different skillsets from the ones needed during the negotiations, and thus, national stakeholders have to take ownership of the process.

## Overcoming the Challenges of Ensuring Accountability in a Political Declaration

Expectations need to also be tempered since the SDGs are a political declaration and hence not legally binding. Political declarations have had considerable impact through the indirect norm-setting role and they are key in laying down global planning benchmarks, standards for performance evaluation by member states, and norms that determine what 'ought to be done', as well as in shaping the narrative about implementation (Fukuda-Parr, 2014). As Tikly (2017) points out, the SDGs are not just structures but also a range of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge (Krasner, 1982). Changes to these intangible processes not only take time but also require a more active process of mediation. While UNESCO has made significant efforts to initiate dialogue between member states in several regions and this appears to be beginning to dominate the discussions in the Education 2030 Steering Committee,<sup>1</sup> much more needs to be done to ensure fidelity to the vision of the Framework of Action. The global targets and the provisions of the Framework for Action must be adopted at, or adapted to, the country level, without compromising on the global ambition of the SDGs.

Another opportunity is inherent in the fact that the SDGs are so intrinsically rooted in existing human rights agreements. The right to education is explicitly recognised in 82 per cent of national constitutions and is a legally enforceable constitutional right in 107 states (55 per cent of the states).<sup>2</sup> Clear alignment exists between all SDG targets and provisions under human rights law. This offers a clear window of opportunity for synergy with international and regional human rights mechanisms to ensure accountability for the fulfilment of SDG4 through avenues such as submission of shadow reports highlighting the status of education; submission of individual and collective complaints; submission of complaints to the office of the United Nations Special Rapporteur on the Right to Education; and engagement with the Universal Periodic Review (UPR) process. Regional African, European and Inter-American human rights frameworks provide additional windows of reporting that could be used to highlight progress and push for implementation. The human rights commitment to non-discrimination would

provide additional arguments for supporting the SDGs' vision of 'Leaving no one behind'.

A more formal linkage between SDG review processes and treaty bodies would also be desirable. Recommendations issued by UN human rights mechanisms, including the Human Rights Council's UPR mechanism and special procedures, and conclusions of human rights treaty bodies such as the CRC, should inform reviews at the High Level Political Forum (HLPF). Linkage between regional SDG reviews and peer reviews under regional human rights mechanisms would be useful. International human rights mechanisms should also include a focus on the SDGs in their reviews to ensure their implementation in accordance with international human rights obligations.

### **Weak Accountability Structures and Ignoring the Specifics**

The HLPF is the apex body for SDG accountability globally. Early experience suggests that while it presents a global convening space for organisations working on the SDGs, it has been repeatedly found to be weak in terms of its scope for ensuring accountability for the Agenda as a whole, let alone for individual goals and targets. Similarly, all goals are reviewed each year globally (combining quantitative data and qualitative assessment of progress). A sub-sample of countries also undergoes a so-called Voluntary National Review (VNR) at the HLPF, but countries are also expected to set up their own accountability and monitoring mechanisms for the SDGs. Considerable efforts are therefore underway to improve data systems nationally. Education, as one of 17 goals, frequently gets lost among competing priorities.

UNESCO made an explicit decision not to create parallel structures and processes to the global SDG architecture, unlike the formal mechanism for reporting that existed during the EFA period. While that logic is understood, global and regional SDG mechanisms focus more on creating an enabling environment for the implementation of all goals, rather than providing mechanisms for accountability of the implementation of the specifics of individual goals (let alone targets). While UNESCO has convened Regional Forums on the Education 2030 Agenda, these are not primarily accountability spaces. A more organic linkage between these processes and regional SDG reviews would likewise be desirable. Neither is there a formal connection between the Education 2030 track of monitoring and VNRs; the absence of formal structural convergence between the Global Partnership for Education's national Local Education Groups and the Humanitarian Education Clusters with processes of VNR is a missed opportunity. Considerable emphasis has been given to strengthening coordination and data collection, but less attention has been paid to tracking the extent to which the processes and structures necessary for implementation have been put in place. Lastly, accountability systems under the SDGs are grounded in

the principle of mutual accountability whereby all development actors are responsible for their implementation. While this contributes to the sense of collective ownership, it also makes the fulfilment of the SDGs 'imperfect duties' (Murphy, 2014), since their non-fulfilment cannot be attributed to a specific duty holder, making enforcement and answerability difficult. This diffusion of accountabilities makes it difficult to pin down the role played by any individual actor and risks diluting the central role of state accountability, especially for goals such as education, where the principal duty for delivery lies with the state.

### **New Agenda, New Accountability Risks**

The SDGs are the first instance of inclusion of indicators for learning outcomes in the framework for a UN goal. Given the universal nature of the Agenda, it makes global testing an integral part of the SDG monitoring architecture. This risks accelerating the trend of increasing testing-based accountability. Quality and learning need to be assessed based on the full range of SDG thematic indicators, not focussing on learning assessments alone. Indeed, the framing could be expanded to include several other rights-based education indicators. Efforts to tie aid to performance on internationally comparable standardised tests, as the principal metric of quality, has too many potential drawbacks.

The SDG Agenda recognises the private sector as a partner in the web of mutual accountability for the SDG implementation. The role of the private sector in the SDG processes globally has been recognised and promoted during the SDG negotiations and thereafter extensively critiqued (Scheyvens, Banks, & Hughes, 2016). The SDGs directly incentivise public-private partnerships (PPPs) further through recognition of an indicator for PPPs (for target 17.17). The stress on private sector engagement must be seen in light of the massive increase in investment in PPPs in developing countries more broadly (Romero, 2015), and particularly in education. As Verger and Moschetti (2017) point out, PPPs raise both democratic and administrative accountability concerns and necessitate strong state regulatory and management capacity, which is frequently limited in developing countries. The implementation of the recent Human Rights Council Resolution A/HRC/32/L.33,<sup>3</sup> urging states to put in place regulatory frameworks to regulate and monitor education providers, will be key in minimising the potential risks inherent in this target.

### **Strengthening Citizen Agency and Social Accountability**

Sustainable development initiatives that focus on state-led action have often failed because they have not acknowledged the multiple sources of power that drive change. While the current global governance structure offers a potential array of spaces and channels for accountability, citizen and civil society participation holds the key as the potential driver of change.

The organic role of civil society in the SDG Agenda is one of its characteristic features. Civil society has a significant role in mobilising citizens to demand implementation; undertaking policy monitoring and generating evidence; participating in social dialogue to ensure that drafted policies are reflective of peoples' aspirations; and using the evidence collected to ensure formal accountability and redress. A stronger and more strategic process of engagement is needed that builds on existing civil society mechanisms established during the EFA/MDG regime. The unfinished legacy of the MDG and EFA agendas highlights the need for wider citizen engagement to address persistent inequality, push for stronger national ownership, and propose alternative visions of development. It is unlikely that the transformative potential of the SDGs will be achieved without a strong and more coordinated push towards accountability, which brings together citizens, civil society organisations, teachers, government officials, representatives of member states, and the global system.



## Endnotes



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# SDG4, National Legislation, and the Right to Education

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## Summary

The study examines the implications for national legislation of three of the Sustainable Development Goal 4 (SDG4) targets (4.1, 4.2 and 4.5) on the basis of an 11-country review of national legal frameworks, which was undertaken as part of the SDG4 Pilot Initiative within UNESCO's Capacity Development for Education (CapED) Programme.

## Keywords

SDGs  
National Legislations  
Right to Education  
Free and Compulsory Education  
Early Childhood Development  
Discrimination  
Gender Equality

## Introduction

This contribution on the right to education in the context of Sustainable Development Goal 4 (SDG4) is based on an 11-country review of national legal frameworks relating to targets 4.1, 4.2, and 4.5,<sup>1,2</sup> which was undertaken as part of the SDG4 Pilot Initiative within UNESCO's CapED Programme. The countries reviewed comprise Afghanistan, Bangladesh, Cambodia, Democratic Republic of the Congo (DRC), Haiti, Madagascar, Mali, Mozambique, Myanmar, Nepal, and Senegal.

The right to education is a human right covered and guaranteed by international law; and in committing to the right to education, states do so legally, through the ratification of human rights instruments<sup>3</sup> and the adoption of relevant national legislation. While SDG4-Education 2030 does not establish legal obligations, states, through their political commitment, are expected to take ownership and establish requisite national frameworks, including laws, policies, plans, and programmes, for the effective implementation of the Education Agenda (UNESCO, 2015). National commitment to SDG4 has clear legal implications for three of the SDG4 targets (4.1, 4.2, and 4.5). As indicated in the Framework for Action (UNESCO, 2015), target 4.1 implies ensuring 12 years of free education, of which at least nine years are compulsory; target 4.2 implies introducing one year of free and compulsory pre-primary education; while target 4.5 ensures eliminating all forms of discrimination.

This review was undertaken by noting that the gaps resulting from incomplete or obsolete national legal frameworks will hinder efforts to achieve SDG4. Conversely, legal frameworks meeting international standards may be key to the realisation of the Education Agenda. The *Transforming Our World* resolution (UN General Assembly, 2015) acknowledges the importance of implementing the SDG Agenda in a manner consistent with the rights and obligations of states under international law and the central role of national legislation: 'We acknowledge also the essential role of national parliaments through their enactment of legislation and adoption of budgets and their role in ensuring accountability for the effective implementation of our

commitments' (UN General Assembly, 2015, paragraphs 18-19).

### **Critical Need for Consistent and Appropriate Legal Reforms**

The review shows that inclusion of education in a country's constitution or in legislation is not necessarily an absolute guarantee for it to be protected as a right. It may indeed be addressed in a very limited manner in practice and not enforceable by national courts, compromising progress towards SDG4. For instance, in Bangladesh, education is not enshrined as a fundamental right in the Constitution but only listed as a 'Fundamental Principle of State Policy'.<sup>4</sup> As a component of state policy, the right to education is not a justiciable right under the constitutional regime of Bangladesh.

On a positive note, there is some indication that in some countries, such as Mali and Senegal, legal reforms consistent with international human rights standards may provide a foundation for the implementation of SDG4. However, the adoption of a new constitution or updating of legal texts are but only important first steps. The case of Haiti is instructive. Recent legal reforms there have not led to progress in spelling out the right to education. In amendments to its Constitution in 2011/2012, sanctions for the non-respect of the compulsory requirement were waived and no significant extension of the right to education introduced. This shows that, although the process of legal reform is in itself important, the content and implementation of the reform is even more critical.

Additionally, legal reforms should include review and withdrawal of reservations and declarations that restrict the scope of application of international human rights treaties and conflict with SDG4 commitments. For example, Madagascar entered a reservation concerning free and compulsory primary education.<sup>4</sup>

### **Free, Equitable Primary and Secondary Education**

While SDG target 4.1 to 'ensure that all girls and boys complete free, equitable and quality primary and secondary education' is fully aligned with existing international human rights instruments (notably, UNESCO Convention against Discrimination in Education, 1960; International Covenant on Economic, Social and Cultural Rights, 1966), it operationalises these commitments by calling upon countries to provide at least 12 years of free education, of which at least nine are compulsory (UNESCO, 2015, paragraph 15). The review indicates that while there are often constitutional provisions related to target 4.1, there is a frequent gap in enacting fully the constitutional provisions, for example, on the compulsory requirement. In some countries, such as Haiti, failure to draft and adopt requisite legislation has resulted in weak implementation of the right to education. In other countries, where education legislation exists, the challenge lies in

the misalignment between the constitution and education legislation, which may spell out different provisions, especially relating to free and compulsory education.

The existence of a clear and consistent legal framework enshrining both free and compulsory primary and secondary education, with duration aligned with the Framework for Action is of critical importance. Yet, across the 11 countries, while satisfactory guarantees may exist for free or compulsory education, it rarely exists for both. Major progress has been achieved in the DRC with the adoption of new education legislation in 2014 abolishing the previous law, which mandated payment of school fees. As a step in the right direction, eight years of free education is now explicitly enshrined in law.

There is also a need to ensure that policy developments are appropriately reflected in legislation and are enforced. In several countries, including Madagascar, recent policy developments make an effort to extend free and compulsory education. Such major policy developments should be seen as valuable opportunities to revise and update legislation.

A noteworthy development is the reference to quality education in national law. For instance, Cambodia guarantees by law the 'right to access qualitative education' and Madagascar has included in its law the state's mission to provide a quality education. Although quality aspects are more frequently addressed by decrees or regulations, such mention of quality education is a positive way of expressing that access must go hand-in-hand with quality standards, and that it constitutes a long-term priority for the countries less subject to policy changes.

### **Early Childhood Development**

While international human rights law may not clearly articulate a right to early childhood care and education (ECCE), they do recognise its importance,<sup>6</sup> with SDG target 4.2 expressing a commitment to equal access to quality ECCE. The Framework for Action clearly operationalises this target through the introduction of at least one year of free and compulsory pre-primary education. However, the review shows a general under-development of national legal norms at this level across countries, compared to primary and secondary education.

With the exception of Afghanistan (for free education), no legal grounds for free and compulsory pre-primary education could be identified in these countries. In approximately half of these countries, the law defines the organisational system for pre-primary education, but without it being translated into legal terms concerning the recommended introduction of at least one year of free and compulsory pre-primary education (UNESCO, 2015, paragraph 12).

These countries, however, adhere to the four general principles of the Convention on the Rights of the Child: 1) non-discrimination;



2) the best interests of the child; 3) the right to life, survival, and development; and 4) respect for the views of the child. Moreover, Article 28 establishes the child's right to education. However, learning and education do not begin with primary school, and accordingly the Committee on the Rights of the Child recommends that states consider making early childhood education an integral part of basic/primary education, to nurture the child's evolving capacities in a stress-free environment.

### **A Focus on Non-Discrimination, Exclusion, Gender Equality, and Protection**

The achievement of SDG4, especially targets 4.1, 4.2, and 4.5, may be constrained by discrimination and exclusion, which constitute severe barriers to the right to education. In many cases, the prohibition of discrimination in national law is limited and does not cover the range of prohibited grounds specified in international treaties or by Agenda 2030. Accordingly, there is a need for countries to align their legal definition of discrimination to international standards and review their legal framework to better comply with SDG4 commitments.

The ratification of UNESCO's Convention against Discrimination in Education (UNESCO, 1960) and other international human rights treaties should be regarded as a priority. Of the countries reviewed, only Afghanistan, Madagascar, Mali, and Senegal have ratified the convention. Likewise, the ratification of the 18 core human rights treaties<sup>7</sup> varies greatly between countries, ranging from four ratifications for Myanmar to 15 for Mali.<sup>8</sup> Ratification would provide countries with a supportive legal environment for all efforts to achieve SDG4.

Regarding the elimination of harmful practices, this review indicates that the legislation is not well-aligned in most countries. For instance, laws may set different minimum ages for the end of compulsory education, admission to work, and legal minimum age to marry. Such loopholes may simultaneously weaken the application of compulsory schooling and give cover to child marriage and child labour, with detrimental and lasting consequences on children's education, particularly for that of girls, thus hindering the achievement of SDG4.

Great strides have been made by the pilot countries in committing to respecting the rights of persons with disabilities, which is explicitly covered by target 4.5. All of them have ratified the UN Convention on the Rights of Persons with Disabilities, which protects the right to inclusive education for persons with disabilities. Yet, in the majority of cases, laws on the rights of persons with disabilities lack a rights-based and inclusive approach, and worse still, some promote the establishment of a separate school system or do not recognise their right to education.

Education in conflict situations is also an important shared challenge. As underlined by the Framework for Action (para 27), 'schools and educational institutions - and the routes to

and from them - must be free from attack, forced recruitment, kidnapping, and sexual violence'. Yet, the recruitment and use of children during conflict and attacks on schools continues in four pilot countries (Afghanistan, DRC, Mali, and Myanmar),<sup>9</sup> despite these being two of the six grave violations affecting children the most in times of war identified by the UN Security Council.<sup>10</sup> A ban on the recruitment and use of children during conflict is often lacking, as is the prohibition of the use of school buildings for military purposes and their targeting.

### **Conclusion**

Legal frameworks should not be regarded as static and unchangeable texts; rather, they should accompany the evolution of countries' needs and enshrine fundamental principles applicable to all. A supportive legal framework is paramount, as it lays down the conditions for the delivery and sustainability of inclusive and equitable quality education for all. Nevertheless, whilst necessary, this is not a sufficient condition. Laws alone are insufficient to guarantee the full enjoyment of the right to education without discrimination. Their full enforcement, as well as other measures, such as public awareness-raising campaigns, are equally important to create a lasting change in the attitudes and social norms, and to progress towards SDG4.

## Endnotes



1. See <http://unesdoc.unesco.org/images/0026/002604/260460E.pdf>
2. Target 4.1: 'By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes'; Target 4.2: 'By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education'; Target 4.5: 'By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations'.
3. In addition to Article 26 of the Universal Declaration of Human Rights (UDHR), which states that 'Everyone has the right to education', various international treaties have reaffirmed this right including the following: UNESCO Convention against Discrimination in Education (1960); International Covenant on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Economic Social and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention on the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of their families (1990) and Convention on the Rights of Persons with Disabilities (2006).
4. Article 15 of the Constitution of Bangladesh requires the state to secure to its citizens the provision of basic necessities of life, including food, clothing, shelter, education, and medical care.
5. The full reservation reads, 'The Government of Madagascar states that it reserves the right to postpone the application of article 13, paragraph 2, of the Covenant, more particularly in so far as relates to primary education, since, while the Malagasy Government fully accepts the principles embodied in the said paragraph and undertakes to take the necessary steps to apply them in their entirety at the earliest possible date, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage'. It can be accessed at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en) (Last consulted on 8 August 2017).
6. General Comment No. 7, on 'Implementing Child Rights in Early Childhood', by the United Nations Committee on the Rights of the Child. Though General Comments are not of themselves legally binding documents, they are widely regarded as useful contributions to the understanding of human rights instruments.
7. Including notably the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Woman, and the Convention on the Rights of Persons with Disabilities, which all cover specific dimensions of the right to education and non-discrimination.
8. <http://indicators.ohchr.org/>
9. Report of the UN Secretary-General on Children and Armed Conflict (A/70/836-S/2016/306), 2016
10. The six grave violations identified and condemned by the United Nations Security Council include: the killing and maiming of children; the recruitment or use of children as soldiers; sexual violence against children; abduction of children; attacks against schools or hospitals; and denial of humanitarian access for children. See: <https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/>



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# The Role of Court Decisions in the Realisation of the Right to Education<sup>1</sup>

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## Summary

Courts play an important role in ensuring that states and other duty-bearers are held legally accountable for human rights violations. In this article, the authors review court decisions from various jurisdictions and highlight the role played by courts in holding states accountable for fulfilment of the right to education.

## Keywords

Court Decisions  
Implementation of Right to Education  
Legal Accountability

## Introduction

Access to justice is essential for the full realisation of the right to education. Courts play an important role in ensuring that states and other duty-bearers are held legally accountable for human rights violations. This includes ordering remedies, not only to address the harm done to the individual in question, but also to ensure better compliance with the obligations stemming from the right to education under international human rights law (RTE Initiative, 2017a).

This article examines the role of court decisions in two regards: 1) how they highlight states' failure to effectively implement the right to education; and 2) how they contribute to the enjoyment of the right to education by holding states accountable.

## Court Decisions Highlight Violations of The Right to Education and States' Failure to Implement It

The right to education has been adjudicated in many jurisdictions around the world (RTE Initiative, 2017b). This body of right to education cases shows that some states have failed to guarantee the right to education without discrimination, particularly for vulnerable groups, such as pregnant girls,<sup>3</sup> children with disabilities,<sup>4</sup> minorities and indigenous peoples,<sup>5</sup> children with HIV,<sup>6</sup> and displaced persons.<sup>7</sup>

Court decisions also highlight the failure of the state in guaranteeing the right to free education. Recent decisions in South Africa<sup>8</sup> and Colombia<sup>9</sup> have ordered the government to provide free transportation for children, thereby eliminating an indirect cost of education. In Costa Rica, the Constitutional Court (2013) has declared that school fees or charges of any kind, whether direct or indirect, are unconstitutional.

A number of courts have also dealt with the funding of public education, often in regards to the principles of non-discrimination and equality, notably in the United States. In a recent decision for instance, the Kansas Supreme Court ruled that the State legislature had failed to ensure equitable school funding (RTE Initiative, 2016).

Other decisions show the current and growing issue regarding the role of private actors in education,<sup>10</sup> including with respect to the quality of education.<sup>11</sup> There is also a mounting body of decisions banning or restricting the non-civilian use of education institutions.<sup>12</sup>

### **Court Decisions Contribute to The Realisation of The Right to Education**

Interpretations made by courts on various aspects of the right to education contribute to a better understanding of its normative content and related states' obligations, adapted to the national context, and in light of changing societal values. For instance, in a recent case, the Constitutional Court of Colombia adopted a progressive decision regarding the freedom of expression of a transgender student within the school. The Court reasoned that the school is obliged to treat the student according to their gender identity (Constitutional Court of Colombia, 2016).

Courts often play an important role in realising the right to education by providing a forum for people to hold their governments to account by granting enforceable remedies. Court decisions can have an impact on the specific circumstances of those bringing the case and/or can lead to structural and policy changes. In South Africa, the Legal Resource Center 'litigate[s] always with the view of systemic challenges', seeking 'to leverage individual victories into systemic relief for all schools and learners that face similar challenges'. Their cases 'often run in stages, with the first stage securing immediate relief for client schools, and the subsequent stages broadening that relief to all schools in the province, and addressing systemic blockages (Legal Resource Center, 2015).'

Remedies for violation of the right to education can take different forms. For instance, in a recent Argentine case brought to the Administrative Court of Buenos Aires by a student with Down syndrome because the school he attended for three years refused to give him his degree, the Court ordered that the school and Ministry of Education issue and legalise his degree (Tax and Administrative Court of Buenos Aires, 2016). In another case, the Buenos Aires Court of Appeals (2001) forced the government to build a school, because the local authorities had, for several years, failed to implement a law ordering the construction of the school. Sometimes, courts impose financial sanctions as a means to compel the implementation of court orders. For instance, the Washington Supreme Court ordered the Washington State Legislature to pay a daily fine of US\$100,000, to be reserved for education funding, for non-compliance with the court order to adopt and fully implement a programme of basic education for each school year until 2018 (McCleary v. State, 2012).<sup>13</sup>

Court decisions recognising a violation of the right to education are important<sup>14</sup> whether they concern individual cases (e.g. in the case of pregnant girls excluded from schools) or society

in general (e.g. Brown vs. Board of Education of Topeka in the US (US Supreme Court, 1954).<sup>15</sup> However, court decisions have a stronger impact when they bring structural and policy changes that create the condition for the full enjoyment of the right to education (United Nations, 2013), impacting thousands of individual cases (Gloppen, 2009). For instance, it has been estimated that 350,000 additional girls are now going to school in India, thanks to the midday school meal scheme implemented as a result of the right to food litigation before the Indian Supreme Court (United Nations, 2013).

Court decisions can lead to constitutional, legislative, and policy changes. For instance, in a historic decision in India, the Supreme Court of India ruled that the right to education (even when not expressly provided for in India's Constitution) was an integral part of the right to life (Supreme Court of India, 1993) and was therefore indirectly justiciable. Pursuant to this and other Supreme Court decisions, the Constitution of India was amended, establishing the right of children aged 6-14 years to free and compulsory education.

In Colombia, following a decision of the Constitutional Court (Constitutional Court of Colombia, 2010) that found that the Education Act, which allowed the government to impose fees for primary education, was unconstitutional, the Colombian Government issued a national decree establishing that education shall be free in public institutions at the primary and secondary levels.

In the United States, the Supreme Court of Washington ruled that an Act establishing and funding charter schools (a type of private school) by using public money was unconstitutional, and consequently charter schools in Washington are no longer funded through public money (The Washington Supreme Court, 2015).

Court decisions have a real impact when they order for the fulfilment (rather than protection or respect) of the right to education. For instance, a recent decision from the Court of Appeal of the State of Sao Paulo in Brazil ruled that the city of Sao Paulo should provide at least 150,000 new spots in childcare facilities and elementary schools by 2016, for children aged five years old and under. In its decision, the Court kept open the possibility of penalising the failure of the executive to produce a consistent plan and even warned that it would adopt its own plan in the case of an unsatisfactory proposal from the executive (Vilhena Vieira, 2014). Another recent decision from the United States shows how courts can compel states to fulfil their obligations. In February 2016, the Kansas Supreme Court (2014) ruled in *Gannon vs. Kansas II*, that the legislature had failed to cure inequities between rich and poor school districts and was therefore in violation of the Kansas Constitution. The legislature had been given until 30 June 2016 to find a way to constitutionally (i.e. equitably) fund schools or risk the closing of public schools. On 27 June 2016, after a special session in

the Kansas Legislature, the Governor of Kansas signed a bill that restored US\$38 million in funding to the Kansas public education system.

In Indonesia, following a decision of the Constitutional Court of 2008 (as cited in Singh, 2013), the government had to increase the national budget for education in line with the Constitution, which stipulates that the State shall provide 20 per cent of national and regional budgets for education (Government of Indonesia, 1945). Following this decision, the parliament allocated 19.31 per cent of the national budget to education for the year 2009. Then the budget went up and down between 16.65 per cent in 2010 to 20.52 per cent in 2015 (UNESCO UIS). However, this decision is important, and shows that the Judge can pressure the parliament to conform to constitutional provisions providing a specific budget for education.

Sometimes, litigation gets the attention of the executive even without a judgment having been entered. In the ‘mud schools’ case in South Africa (so-called because of the deteriorating mud buildings and lack of water and sanitation facilities), litigation became necessary because repeated requests from seven schools to address severe infrastructure problems were ignored. Once faced with a legal challenge, the government saw fit to enter into a significant memorandum of agreement.

It is important to note that even if a case fails, this does not mean that there is no discernible effect. In some instances, dissenting opinions are published, which may have an effect in the future as interpretation evolves. Further, an unfavourable decision may attract the attention of decision-makers, the media, civil society, and other stakeholders, raising awareness of the issue and spurring political mobilisation.

## Conclusion

As shown in the examples above, courts decisions, by holding states and other duty-bearers accountable, can have a positive impact on the realisation of the right to education. Although judicial mechanisms are a key avenue by which to pursue legal redress and remedies for violations of the right to education, they are not the only means of enforcing the right to education: quasi-judicial and administrative bodies, such as national human rights institutions, and ombudspersons also play an important role (Alston, 2016). In addition, for greater impact, court actions must be used in conjunction with other advocacy strategies, such as monitoring social policies, lobbying of political branches of governments, social mobilisation, and public awareness campaigns (Abramovich, 2005 and United Nations, 2013).

To find out more about legal accountability and the right to education, read our report, [here](#).

## Endnotes

1. This article is an extract of a background paper contribution to the GEMR 2017 on Accountability in Education: Right to Education Initiative (October 2017) - *Accountability from a human rights perspective: The incorporation and enforcement of the right to education in the domestic legal order*: <http://bit.ly/2ziZR5o>
2. The Right to Education Initiative (‘RTE’ - formerly the ‘Right to Education Project’) is a global human rights organisation focusing on the right to education. For more information, see our website: <http://www.right-to-education.org>
3. See for examples Supreme Court of Colombia. (11 November 1998). Case No. T-177814; Court of Appeal of Botswana. (31 January 1995). Student Representative Council of Molepolole College of Education v The Attorney General. Retrieved from <http://bit.ly/2y5KR92>
4. See recent cases in Argentina and Colombia: Tax and administrative court of Buenos Aires. (24 October 2016). Rodríguez, César Alan / acción de amparo. Case summary retrieved from <http://www.right-to-education.org/resource/c-sar-alan-rodriguez>; Constitutional Court of Colombia. (2016). Sentencia T-523/16. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/2016/t-523-16.htm>; See also Supreme Court of Canada. (2012). The Board of School Trustees of School District No. 44 (North Vancouver) and others. Case summary retrieved from <http://www.right-to-education.org/resource/moore-v-british-columbia>
5. See Child Rights International Network. (27 January 2016). *Canada: Droits des enfants autochtones: un jugement sans précédent*. Retrieved from <http://bit.ly/2gzM3ZK>
6. In April 2016, ruling on a case involving a 5-year-old boy who was denied admission to school because he was believed to be HIV-positive, Sri Lanka’s Supreme Court said that children living with or affected by HIV have the full right to education. The court also reminded the government of its obligation to take steps to protect, promote and respect the human rights of people living with HIV. See Right to Education Initiative. (16 May 2016). *Sri Lanka’s Supreme Court rules to prohibit discrimination in education settings*. Retrieved from <http://bit.ly/2gzNVlg>
7. See Constitutional Court of Colombia. (22 January 2004). Case T-025/04. Retrieved from <http://bit.ly/1l9DSy1>
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13. For further information, see: Right to Education Initiative. (17 August 2015). Court fines Washington State over education funding. Retrieved from <http://www.right-to-education.org/news/court-fines-washington-state-over-education-funding>
14. Rupert Skilbeck highlights: ‘the power of courts to declare that something is wrong should not be underestimated. Court proceedings force governments to address political problems that have been ignored, which are unpopular,

or have no champions, requiring the authorities to make an official response to the claim, on the record, and to be held to an account.' See Skilbeck, R. (18 November 2015). *Litigating the right to education*. Oxford Human Rights Hub. Retrieved from <http://bit.ly/2gTl1dc>

15. In this case, the US Supreme Court decided that the existence of schools segregated according to racial criteria amounted to a breach of the equal protection clause, and ordered that the school system be overhauled in accordance with the ruling.

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## Part 2

# History and Perspectives

# Lifelong Learning Examined from a Rights-Based Perspective: The Road Not Yet Travelled

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## Summary

The right to education is recognised as an empowerment right - an indispensable mean for the realisation of other rights. This paper will take another angle and, after making a case for lifelong learning to be considered as a right in itself, will examine whether other rights would need to be secured in order to advance lifelong learning opportunities for all.

## Keywords

Lifelong Learning  
Right to Education

## The Need to Revisit the Understanding of the International Right to Education: A Progressive Development of the Right to Education

The 'Charter of Human Rights' in international law is the combined reading of three texts recognising fundamental human rights: the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966). In all three of them, education is affirmed as a human right.

Several other international legal texts have been adopted over the years, some of them being specific to education,<sup>1</sup> while others concern specific target populations or issues, and contain provisions concerning the right to education.<sup>2</sup> This evolving legal corpus has been described by Daudet and Singh (2001, p. 13) as a reflection of the 'progressive development' of the right to education. It is precisely the potential for innovative development in the formulation and interpretation of the legal rule that this paper intends to explore, in light of the recognition of lifelong learning (LLL) as the conceptual framework and organising principle for education in the 21<sup>st</sup> century. The question the authors have in mind is to examine whether, and to what extent, LLL opportunities can be ensured as a right that can be claimed by individuals.

## Lifelong Learning as the Paradigm for Education Conceptualisation

The tendency in the past of international education agendas to focus primarily on schooling has been criticised, because of its narrowing understanding of effective and relevant learning for all children, youth, and adults (UNESCO, 2015). But the recently adopted Education 2030 Agenda, which corresponds to Sustainable Development Goal (SDG) 4 in the framework of the broader 2030 Agenda for Sustainable Development, promotes an approach to education that seeks to 'ensure inclusive and

equitable quality education and promote lifelong learning opportunities for all', thus putting an emphasis on opportunities that go beyond basic education and learning. Given the transversal nature of LLL and its connection with life and work, a diversity of legal and policy frameworks need to be examined in this context, going beyond the mere education world.

### Shared Responsibilities in Ensuring Lifelong Learning Opportunities

In addition, the identification of who is to be held accountable for the provision of LLL opportunities is a challenge. Like all human rights, the right to education imposes three levels of obligations on states: the obligation to respect, to protect, and to fulfil (the latter includes both an obligation to facilitate and an obligation to provide) (UNESCO & United Nations' Economic and Social Council, 2003, p. 19). However, because of the life-long and life-wide dimensions of LLL, the role of the state in ensuring the right to education has been shifting. The state is not the only provider of education anymore, with increasing involvement of other stakeholders (such as the private sector and the civil society). There is therefore an arising challenge to identify how responsibilities can be shared between the state and other stakeholders, and how regulation and oversight can ensure that principles, such as non-discrimination and equality in access to LLL, are preserved.

### Lifelong Learning Guaranteed as a Right in National Legal and Policy Frameworks

The vast majority of countries in the world have enshrined the right to education in their constitutions and legislations. Usually characterised by their focus on guaranteeing schooling opportunities, these provisions seem to progressively include the LLL dimension. The Republic of Korea offers a good example of this. Its Constitution now provides that 'the State promotes lifelong education'. At the legislative level, its Framework Act on Education introduced the right to learn through life for every citizen,<sup>3</sup> while its Act on Lifelong Education affirms that 'all citizens shall be guaranteed equal opportunity for lifelong education'.<sup>4</sup>

Beyond the affirmation of the right to LLL, states have developed measures and systems that support this affirmation to varying degrees, be it by granting individuals entitlements to learning opportunities or ensuring that the pre-requisites that may be necessary for individuals to successfully access and achieve LLL opportunities are met (e.g. through recognition and validation of prior learning, career guidance or educational leave schemes).

### Entitlements to Lifelong Learning Opportunities

Two UNESCO reports that have significantly contributed to the emergence of LLL as a major paradigm in the conceptualisation of education both suggested the idea of accounts capitalising on study-time entitlements as a possible scheme supporting

LLL (UNESCO, 1972, p. 230; UNESCO, 1996, p. 32). Such individual account models (including those crediting other types of entitlements, such as learning opportunities, a level of qualification, financial resources geared towards learning opportunities, etc.) have since been designed and developed. They reflect the shift of focus on learning and individuals instead of education and educational institutions. However, concerns have been raised that the predominant limited concept of learning as a means of 'adaptation of individuals and societies to the alleged changes in the world', is confining LLL to a logic of human capital formation in a knowledge economy, instead of unleashing its full potential for social transformation and justice (Vargas, 2017). France's case of individual accounts with its 'personal activity account' is interesting in this regard, because it reflects a holistic dynamic and social approach to LLL activities, going beyond a mere utilitarian vision of LLL.

The country adopted a 'personal training account' in 2014.<sup>5</sup> The account is meant to follow every person throughout life, even in times of unemployment or after a change of work, and is yearly credited with training hours. Its financing is a shared investment between the state, regions and social partners.<sup>6</sup> In 2016, Labour Law 2016-1088 created the 'personal activity account', under which the rights stemming from the personal training account as well as those from the 'personal prevention of arduousness account', and the 'account for civic engagement', are grouped.<sup>7</sup> The account for civic engagement interacts with the personal training account. The voluntary activities of the account holder can generate additional training hours to be credited, but also leave days in support of voluntary activities.

Another example of a training entitlement — which is more targeted as it seeks to promote the acquisition of a certain level of qualification — can be found in the Australian national training entitlement. It was introduced by the Australian National Agreement for Skills and Workforce Development and credits a government-subsidised training place to individuals who have not yet reached the first Certificate III qualification level.<sup>8</sup> In addition to LLL entitlements, education and labour systems also need to provide for the pre-requisites necessary for the successful achievement of such opportunities.

### Pre-requisites to the Successful Achievement of Lifelong Learning Opportunities

Because LLL takes place, per definition, throughout life, individuals need support in the management of their learning paths through different settings if they are to succeed in their learning endeavours. A first illustration thereof is the *need for recognition and validation of prior learning* (RPL) — a guarantee that the knowledge learned outside of the formal education system will be assessed and recognised. Several countries have recognised RPL as a right. In Brazil, for example, the National Qualification Plan considers the social and professional qualifications of the worker as a right and an essential tool for



their inclusion in the world of work. The National Network of Professional Certification (Network CERTIFIC)<sup>9</sup> aims to offer free professional certification processes for the continuation of studies or the professional practice.

*Guidance* is another key element enabling individuals to ‘identify and reflect on their capacities, competences and interests, to make education, training and occupation decisions’ (Cedefop, 2014, p. 30), which is of specific relevance for vulnerable target groups. France’s law of March 2014 introduced a service offer called ‘counsel for professional development’. It is free and accessible to all persons engaged in active life, including the workforce of the private sector, employees in the public sector, job seekers, young people without a school—leaving qualification, self-employed workers, craftsmen, and liberal professions.

*Educational leave schemes* are another type of pre-requisite necessary to access learning opportunities, as time constraints are ‘one of the main reasons for not participating in learning’ (Cedefop, 2014, p. 49). The International Labour Office’s (ILO) Paid Educational Leave Convention No. 140 is an international endeavour to guarantee such schemes as rights.

### **The Right to Education: Both an Empowerment Right and a Right That Needs Empowerment**

Education is recognised as ‘a human right in itself and an indispensable means of realising other human rights’, because of its ‘empowerment’ potential (UNESCO & United Nations’ Economic and Social Council, 2003, p. 7). But the opposite is true as well, and there are conditions needed for realising the right to education, especially in a LLL perspective.

### **Access to Information and the Internet in a Digitised and Connected World**

The Broadband Commission report of 2017 stated that by the end of the year, 52 per cent of the global population would not be online, one of the main barriers being the affordability of internet access. The report also adds that a differentiation should be made ‘between mere Internet access and the ability for consumers to fully maximise their experience online’ (Broadband Commission for Sustainable Development, ITU & UNESCO, 2017, pp. 10-11).

Yet, as the United Nations Human Rights Council recognized in a resolution of 2016, ‘[a]ccess to information on the internet facilitates vast opportunities for affordable and inclusive education globally, thereby being an important tool to facilitate the promotion of the right to education’ (United Nations, 2016). Further, the resolution called on states to consider the adoption of ‘national internet-related public policies that have the objective of universal access and enjoyment of human rights at their core’.

The World Economic Forum White Paper on the topic of internet access, reported in 2016, shows that about 4 billion people do not use the internet, with one of the main barriers being its affordability. It also reported that public-sector policies can have a direct impact on costs (be it of devices or of connectivity) through measures such as financial assistance to families, low-cost phones and operating systems, tax levels and breaks on devices and services, and Wi-Fi in public places (World Economic Forum & The Boston Consulting Group, 2016).

The case of Kenya is cited as an example of how lowering or eliminating taxes can stimulate a market of mobile phones. Starting in June 2009, the government exempted mobile phones from VAT for two years. The result was noteworthy, with handset sales doubling in the following two years and the mobile penetration rate jumping to 70 per cent. On the service side, an interesting public national endeavour is that of the Government of the Philippines, with its plan to offer free Wi-Fi in nearly 1,000 cities and in a wide variety of venues, both urban and rural. In a day and age where increasing volumes of learning opportunities are offered online, it will require that access to the internet is secured for all individuals if equality and non-discrimination in learning opportunities is to be bettered and preserved.

### **Comprehensive and Coherent Social Rights**

In its World Employment Social Outlook issue of 2016, the ILO stressed the importance of coherence between policy developments. It notably cited the example of active labour market policies, whose overall impact ‘is maximised when they are designed in combination with passive measures (i.e. income support) in a mutually compatible manner’ (ILO, 2016, p. 166). Training opportunities, in particular, were said to run the risk of being refused if not accompanied by income support measures. In the same vein, the ILO’s Social Protection Floors Recommendation No. 202 provides that in designing and implementing their social protection floors, Member States should ‘ensure coordination with other policies’, including those that enhance ‘education, literacy, vocational training, skills and employability’. Successful engagement with LLL opportunities, especially for vulnerable populations, is indeed dependent on whether they are also granted the means to support this engagement; and coherent social rights are a foundation stone in this regard.

### **Conclusion**

The right to education of all individuals calls for a renewed and broadened understanding in an age where individuals are increasingly encouraged and expected to learn throughout life. Guaranteeing schooling opportunities is not enough anymore to support the claim that all have a right to education and there is a need to ensure learning opportunities beyond school walls. A combined effort of government officials,



education specialists, lawyers, the private sector, civil society, and any other relevant stakeholder, should aim to develop a comprehensive system ensuring the access and financing to LLL opportunities for all. Such an effort should recognise the need for an efficient guarantee of complementary rights (whether already established or emerging) insofar as they may constitute the condition for access to learning.

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# The Humanist Mission of Education



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## Summary

The article emphasises how, in national education systems, children and youth are being uprooted of human values in pursuit of materialistic ends. It therefore underscores the need for state policy in the sphere of education to preserve and foster the humanistic mission of education.

## Keywords

Values Education

Humanism

Privatisation

Digital Education

## Introduction

Nearly 20 years ago, the World Declaration on Higher Education for the Twenty-First Century (UNESCO, 1998) shed light on the impending values crisis. In its Preamble, the Declaration expressed the need for radical changes in higher education ‘so that our society, which is currently undergoing a profound crisis of values, can transcend mere economic considerations and incorporate deeper dimensions of morality and spirituality’ (UNESCO, 1998, p. 25).

## Values Crisis

Since then, while a ‘values crisis’ has assumed larger dimensions, the concern expressed in the Declaration remains most pertinent today, not only for higher education but also for school education. Rather than being peace-loving, schools are becoming prone to incidences of violence. Lack of respect by children and adults for their teachers, parents, and community, bears evidence to the surging values crisis. Children and youth are being uprooted of human values. Violence in schools and a school environment that is disrespectful of human values, are its manifestations. This calls into question the responsibility of school management. In recent years, tragic incidents in India concerning the mid-day meals in schools, causing sickness and even death among several children, bear evidence to the moral depravity of school authorities.

## Forces Jeopardising the Humanistic Mission of Education

Materialistic pursuits to the detriment of humanism have become commonplace today. Education is being bereft of its humanistic mission. This owes a great deal to the mushrooming of privatisation in education, resulting in its commercialisation. Schools as a bedrock of human values and universities as seats of learning for the pursuit of ideals of humanity are being drawn into a stronghold of materialistic values by forces of privatisation. Privatisation and commercialisation of education promote a corporate culture dominated by materialistic pursuits. Private entrepreneurs or enterprises commercialising education propagate materialist values and establish a learning system devoid of cultural diversity, as they cater to particular

social strata and business interest of the corporate sector. Education systems are also being infested with corruption. This is casting its spell, even on teachers.

Challenges of preserving human values in education should also be reckoned with in the face of euphoria for digital technologies. Use of digital technologies in education brings the advantages of connectivity, accessibility to information and material, and innovative teaching learning processes. However, Information and Communication Technologies (ICTs) are merely tools to supplement educational processes. They should not be allowed to become an alternative path to education, undermining face-to-face learning and teaching and especially, human contact in education. Digital devices and the internet have a deleterious impact on students' capacity for 'concentration' and 'contemplation', making 'human elements' outmoded and dispensable when it comes to the nurturing of our children's minds: 'meditative thinking, as the very essence of our humanity, might become a victim of these' (Carr, 2010).

### **Founding an Education System on the Humanistic Mission**

In the face of such developments, paramount importance must be attached to preserving values education and fostering the humanistic mission of education. A daunting challenge for school education is to kindle critical thinking and nurture moral values in children and adults. New pedagogical approaches that are child-friendly, inspiring, and motivating, are necessary, while ensuring that teaching and learning reflect human values. Teachers play an important role in nurturing human values so that they become an integral part of behaviour patterns of students. Building a peace-loving school environment is an essential vocation of education, in which not only teachers but also parents and communities, are all stakeholders and active participants. This requires public authorities to assume their responsibility. They can be inspired by the Paris Declaration undertaken by the ministers responsible for education in the European Union, expressing their 'special duty to ensure that the humanist and civic values [they] share are safeguarded and passed on to future generations'.<sup>1</sup> In this, a heavy responsibility devolves on higher education to 'help protect and enhance societal values and [to] reinforce (...) humanistic perspectives, (...) inspired by love for humanity and guided by wisdom' (UNESCO, 1998, Articles 1, 2). This should in fact permeate the entire education system.

It is now being realised that it is critically important to transmit human values while imparting skills through technical and vocational education and training (TVET). Going beyond technical considerations, TVET as well as technical higher education, must include the development of social skills and critical thinking and the cultivation of work ethics with a sense of social responsibility. As in the case of China, education policies should put 'a premium on integrating learning with thinking'.<sup>2</sup>

### **Right to Education and the Normative Basis of Human Values**

The right to education, as an internationally recognised right, can guide us in moving in that direction. Two key dimensions of the right to education - entitlement in terms of access to education and empowerment in terms of imparting knowledge, values, competencies, and skills — are inextricably linked together. The empowering role of education must be judged in terms of its humanistic mission. This is central to 'the full development of human personality' as the essential objective of education, enshrined in the Universal Declaration of Human Rights (1948), whose Article 26 lays down the objectives of the right to education. The UNESCO Convention against Discrimination in Education (1960) gives verbatim expression to these objectives. They are also established in other international human rights conventions, notably in Article 13 of the International Covenant on Economic, Social and Cultural Rights (1966), which provides for the right to education comprehensively. These are expounded in the Convention on the Rights of the Child (1989) Article 29(1), which stipulates that education must prepare the child for responsible life in a free society and develop respect for human rights, 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, and for civilisations different from his or her own. In this context, it is also important to mention the Article 18(2) of the African Charter on Human and Peoples' Rights (1981), which stipulates that 'the state shall have the duty to assist the family which is the custodian of morals and traditional values recognised by the community'. The Delors Report (UNESCO, 1996), as it is popularly known, reflects most succinctly the objectives to be pursued in education centred on the 'four pillars of education' — learning to know, learning to do, learning to live together, and learning to be.

It is incumbent upon governments to operationalise the international normative framework of the right to education. Education laws and policies to that end should embody the principles and norms of the right to education and elaborate upon the underlying spirit and concepts. In an education system so devised, it is critically important to define well the objectives and contents of education. It has been aptly remarked that '[d]emocratic citizenship and human rights education do not only teach norms: they also make us more compassionate, more human, more socially engaged, thus providing the building blocks to ensure dignity, freedom and justice for all' (Council of Europe, 2017, p. 48).

### **2030 Education Agenda: New Global Ethics and Human Values**

Considerations pertaining to dignity, freedom and justice for all were also central to the elaboration of the post-2015

development agenda. Reflections on future agenda recognised the need for developing ‘new global ethics for our common humanity’ (United Nations, 2013). In committing to the 2030 Sustainable Development Agenda, world leaders have pledged themselves ‘to foster inter-cultural understanding, tolerance, mutual respect and an ethic of global citizenship and shared responsibility’ (United Nations, 2015).

The right to education is an individual right for the sake of the full development of the human person; simultaneously, it is a collective right for social development and common well-being. In its realisation, prime consideration must be given to human values with a focus on learning to live together, and above all, on ‘learning to be’ a human person. In that spirit, the humanistic mission of education must be upheld and fostered globally for creating a better world.

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# Constitutional History of the Right to Education and Legislation in India

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## Summary

This paper explains why the Right to Education Act (RTE Act) in India is referred to as historic and illustrates its difference from legislation elsewhere for free and compulsory education.

The paper also discusses an important provision of the RTE Act that requires private schools to admit and give free education to 25 per cent of its enrolment from among economically weaker sections.

## Keywords

Compulsory Education  
Private Schools  
Constitution Framing  
India

## Introduction

Nearly 20 years ago, the World Declaration on Higher Education for the Twenty-First Century (UNESCO, 1998) shed light on the impending values crisis. In its Preamble, the Declaration expressed the need for radical changes in higher education ‘so that our society, which is currently undergoing a profound crisis of values, can transcend mere economic considerations and incorporate deeper dimensions of morality and spirituality’ (UIndia’s Right of Children to Free and Compulsory Education Act, 2009, hailed as ‘historic’ as the first such legislation is already undergoing its third amendment — imaginably, to compensate for 60 years of legislative inactivity on this subject. Free and compulsory education for children had been a long-standing Indian demand from its British colonial rulers. After the Indian independence in 1947, education provision until the age of 14 years was incorporated into the Constitution of India in 1950, not as a right, but merely as a directive to the State to ‘endeavour to provide’.

Shortly after India’s ratification of the United Nations Convention on the Rights of the Child in 1992, the Supreme Court of India, in a judgement critical of the State and its ‘inversion of priorities’, declared and converted the right to education until the age of 14 years into a justiciable ‘fundamental right’. Even so, the wheels of the government, to align and amend the Constitution of India to this effect, moved only in 1996 when a new political regime came into power, which had on its programme undertaking the legislative changes necessary to make education into a fundamental right. Interestingly, more than just legislative change was needed. By then, compulsory education and the lack of efforts for it had become rationalised in negative terms, constructed in images of ‘coercive’ and ‘penal’ actions, and exemplified in statements such as ‘there will be more parents in the jail than children in the school’. This phrase, evidently known to all at that time, was invariably quoted in early meetings on this issue, and the vexatious problem of ‘who will go to jail?’ dominated, trivialised, and distracted discussion.

In such an attitudinal environment, the two national policies on education, in 1968 and 1986, made no attempt to make

education compulsory. Likewise, findings showing that barely 3 per cent of educational administrators were even aware of the existence of provincial legislation enabling education to be made free and compulsory in specified areas, should come as no surprise (Juneja, 2003).

So deep was this conviction of the unsuitability of compulsory education to the Indian context, that when the bill to amend the Constitution to make free and compulsory education a fundamental right was being considered by the Parliament in the late 1990s, the then Secretary of Education to the Government of India needed to reassure the members that compulsion was being envisaged, not on the children to attend, but on the government to provide!

The Constitution of India was amended in 2002. It now included as Article 21A, the justiciable right of all children aged between 6-14 years to free and compulsory education. However, the right and its terms were to be spelled out in a follow-up legislation. It took another eight years for this law, the Right of Children to Free and Compulsory Education Act, 2009 (hereafter, 'RTE Act'), to be passed and come into effect in 2010.

### **The RTE Act: Distinctive and Different**

The background given above, of the government having to be coerced into providing 'compulsory education', and of the negative mental construction of compulsory education, is important in order to understand why India's RTE Act is different from other such legislations elsewhere in the world, which focus not on the duty of the governments to provide education, but on the duty of the child to receive it.

For this very reason, the group drafting the essential provisions of the RTE Act started off by addressing what needed to be changed. First on the list, in the context of 'non-formal' education centres and para-teachers, was the establishment of every child's right (including of children with disability) to free education in a full-time formal school, with professionally qualified teachers. 'Schools' and teachers' duties were, for the first time, specified by law. Certification requirements for schools and teachers were put in place, while requirements that kept children away were prohibited, such as those for birth certificates, transfer certificates, and capitation fees. Parents were given recognition and voice through school management committees, while classroom transaction and evaluation processes were mandated so as to move away from the culture of performativity. Child-friendly environments were given legislative support through banning corporal punishment, mental harassment, detention and expulsion, and board exams, throughout the elementary stage.

### **Unique Clause**

Despite these paradigm-shifting provisions, the RTE Act is

best known for its clause mandating all private schools to admit and provide free education to a quarter of all children admitted at the entry stage. The history of this clause is also rooted in situational and historical contexts. By the late 1990s, between a quarter and half of all schools were private, fee—charging schools, and the social fabric was shredding along the dimensions of ability to pay for education. The 83<sup>rd</sup> Constitution Amendment Bill, seeking to make education a fundamental right, threatened to aggravate this situation by placing the sole responsibility for free and compulsory education on the government, while completely absolving private schools. Objections to this, along with revelations of violations by private schools of the terms of the contract under which they had received free land from the government in exchange for providing free education to a quarter of their enrolment, surfaced simultaneously. By aiming to apply this idea to all private schools, this practice hoped to dent, if not change, the beliefs supporting the stratification of schooling along socio-economic lines. Predictably opposed by private schools, this clause emerged victorious, but not unscathed, from a challenge in the Supreme Court of India. Unaided minority-managed schools and residential schools escaped this clause.

### **Opportunity Lost During Constitution Framing**

The situation that the RTE Act attempted to rectify might perhaps have been stemmed at the flow, had this right been taking up for consideration after 3<sup>rd</sup> June, 1947, during the framing of the Constitution of India. Recent findings show that the right to education had been approved as a fundamental right by the Fundamental Rights Subcommittee of the Constituent Assembly. Until 3<sup>rd</sup> June, 1947, constitution framing proceeded under the Cabinet Mission Plan and envisaged India as a union of three politically autonomous groups of states, surrounding a weak centre having powers only for communications, currency, and defence.

In this situation, it was feared that such an expensive fundamental right might need subvention (from other provinces, or from the centre, and would surely come with strings attached). Control by others under the guise of subvention might put at risk the hard-won, prized political autonomy. The right to education was dropped from the list of fundamental rights on 22<sup>nd</sup> April, 1947, on this realisation, triggered by the question, 'what if a government has no money?'. On 3<sup>rd</sup> June, the Mountbatten Plan for creation of India and Pakistan came into effect.

Even so, opportunities remained until the adoption of the Constitution, but this right was never considered for restoration to the list of fundamental rights. Had the provision for education been first taken up under the new structure of India, with 'powerful centre and weak states', perhaps the Constitutional right to education might have had a different story to tell (Juneja, 2014).

## Recent Amendments

The right to education in India continues to be a work in progress, and opinions differ on the direction of change. Recent amendments to the RTE Act, while improving the definition of a child with disability, have provided children with multiple disabilities with the right to be home-schooled. Certain primarily religious schools have been released from its ambit, while another amendment gives governments more time to train all its teachers. Waiting to be passed into law is an amendment to enable the return of high-stakes examinations and detention as early as at the end of class five.

## Challenges

In the context of the educational situation prevalent in India, the biggest challenge to the right to education perhaps lies as much in inadequate provisioning as in the lack of recognition of the power of a justiciable fundamental right — and the lack of friends to wield such power on behalf of children

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# The Right to Education in India: A Long Social History Begins

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## Summary

This excerpt from an interview with Krishna Kumar (KK) conducted by Rahul Mukhopadhyay (RM) provides an overview of the historical significance, fundamental dilemmas, and challenges in the implementation of the Right of Children to Free and Compulsory Education Act, 2009 in India and possible opportunities for its meaningful realisation. The interview was conducted as a part of this NORRAG Special Issue.

## Keywords

Elementary Education  
Child-Centred Education  
Governance  
Teachers  
India

**Rahul Mukhopadhyay:** *What according to you is the true significance of a constitutionally guaranteed fundamental right to education in the Indian context?*

**Krishna Kumar:** I think when you ask about significance, you need to take into account the reluctance that this idea has encountered in our society; and I think one measure of that reluctance is the time that this law has taken. It was 1911 when an early and a very limited kind of attempt was made by Gopal Krishna Gokhale. Then again, in the 1950s to 1960s, the idea was revived by people like R.V. Parulekar and J.P. Naik. But apart from state-level laws of this kind, nothing much has happened. And these state laws made a difference in regions of the country where greater awareness about the importance of education already existed. But as a whole, large parts of India remained quite oblivious of the need for evolving a system in which every child would be covered. We must realise that India is a country with very sharp internal inequalities and then very strong regional imbalances. So the chances of children being covered by a law that in a way enforces elementary education are very low. And that is where the significance of a parliamentary law has to be recognised. It is a new chapter in the social history of a very unequal and imbalanced country.

This benchmark set by the Federal Parliament not only gives children a right but also extends the number of years of education, which so far were believed to be enough if covering the primary grades. The benchmark creates a conceptual breakthrough by calling the first eight years of education 'elementary'. The law certainly starts the settlement of some completely unnecessary debates about how many years should go into primary education. For a country like India, which is multi-vocal, multi-lingual, and where there are so many problems of interlocution and interchange, this creates a more receptive environment in which deeper issues about education can be discussed, which have to do with this eight-year block grades 1 to 8.

**RM:** *How do you think the right to education negotiates contesting aims of education?*

**KK:** India has had very serious problems with deciding how education should be conceptualised at different levels or stages



of the school system. Also, apart from the general reluctance to have every child covered by the provision of schooling, there has been a long reluctance in India about defining the aims of education. This reluctance or resistance was sharpest in acknowledging what in modernist kind of discourse you would call 'child-centred education'. Now this law tries to define what quality is because the question of equal right to education is not only about access to schools. This law also includes in it access to education of equitable quality. It tries to set certain norms under which quality should be perceived from a broadly child-centred perspective.

As J.P. Naik mentioned in 1974, there is a tremendous tension in India between quality, quantity, and equality. He called this the elusive triangle of Indian education. Now, what is that tension? The tension is that if you try to increase numbers, then you compromise on quality because investment in education is low and the state's motivation to make that investment is also low. That has remained a persistent feature. Education has never been seen as a matter of national interest. The thing that the Right to Education Act (RTE Act) clarifies is that covering every child does not only mean that every child is enrolled in grade 1- the law requires that you keep that child at school till grade 8; retention is now legally enforced. Systemic compulsion for educational planning in the 1970s and the 1980s was how you get 90 per cent of the children enrolled in grade 1 eliminated from the education system by the end of the higher secondary classes. This whole perspective and structural assumption in education, as the selection of a few who have the eligibility to move onto the higher levels of education, has been challenged by this new law in terms of the aims of education. The aim of education is not to select a few for higher education. If you read RTE Act in terms of aims, then the aim of education is to create capacities for engaging with life in a richer manner, which is what education offers. So, in a way the RTE Act changes the discourse of aims.

**RM:** *What do you think are the main challenges that the right to education faces today?*

**KK:** The law is right now facing deeper systemic questions. India is politically not very clearly definable. Neither is it as clearly federal as the USA, nor is it a unitary state like France. It is a quasi-federal country where the central Government has more powers than state or provincial governments have. And yet, the states are very vibrant in a political sense. So when you enact a law through the parliament, then that law is not very easy for the parliament or the central government to enforce. That becomes even more complex because the same Constitution, under which this law makes elementary education a fundamental right, says that children's education is a concurrent responsibility. This issue of concurrence is also a little fraught with contested meanings because with the transfer of education from being a state or provincial subject to a concurrent subject in 1975, the central government gained

some more responsibilities without necessarily gaining any more powers in terms of how education would be governed in the states. So despite the issue of concurrency, children's education is almost entirely governed by state governments, and state governments do that depending on how much importance they give to education, how much money they can or will spare, how much experience they have, how enlightened their own bureaucracies are, and how good their teacher training procedures and institutions are, and then what levels of poverty and social awareness they are dealing with. That is the wider reality framing the implementation of the RTE Act that has just begun.

The story actually has a pre-history. During the 1990s, the internationally backed programme called the District Primary Education Programme had considerably expanded enrolment, while also weakening the system's capacity to maintain quality. Afterwards, another internationally backed programme called Sarva Shiksha Abhiyan — Education for All — started. This programme was slightly better planned and supported by academic insights compared to the earlier programme, and between these two programmes the system of elementary education greatly expanded. Dropout rates came down quite radically under these two programmes. Data collection also improved to a great extent because of a new district information system.

So now let us fast forward to the current times. After the RTE Act became a law, a new kind of contradiction emerged. This contradiction has to do with the centre beginning to feel that they have done their job by making this law and that now it is the duty of the states to take it forward. So in the last three to four years, with changes in the planning process and centre-state financial mechanisms, a somewhat unfamiliar picture has emerged. That picture suggests that the states that were already enlightened about the need of elementary education of reasonable quality are maintaining a certain level of financial support for elementary education in order to fulfil certain quality goals. But the states that were, to use an Indian term, 'backward' to begin with, are not spending enough to keep up the momentum that had been built by those earlier national flagship programmes; and in the last three years, one sees enough evidence to suggest that the momentum is actually dying.

One big issue now pertains to teachers, their status, and salaries. Those national flagship programmes that enabled the expansion of enrolment were part of the World Bank's safety net idea, that is, a safety net for the possibility of social unrest resulting from economic liberalisation and dilution of welfare funds. They also weakened the structure, and one of the ways in which they weakened the structure was by making the full-time salaried teacher a thing of the past. In many states, the expansion took place by hiring what was often called the 'para teacher', the 'insecure teacher', or the 'contractual teacher'.

The emoluments of the elementary teacher, particularly the primary-level teacher, were brought down very radically and service conditions were created that would make the teacher permanently vulnerable. This has made the contradiction of expansion versus quality very sharp. If the RTE Act is to be pursued with due regard for quality, then you need teachers who are committed, who are dedicated, and who see teaching as a career. But the neo-financial discourse uses insecurity as a means of creating motivation to work hard.

However, new forces are arising. For the first time, metropolitan cities have lawyers who take up cases pertaining to elementary education brought up by Non-Governmental Organisations (NGOs) and various other organisations. In a sense, the administration is warier of this new force that has been unleashed by the law.

**RM:** *Keeping in mind the challenges and concerns you have raised, what could be done for a meaningful realisation of the right to education at this juncture?*



**KK:** I think the capacity to manage social unrest is not particularly high in the neo-liberal state. In the long run, India will inch back towards a greater role of the State both financially and in terms of responsibility for children's education and health. This may not happen immediately in the wake of rampant privatisation, but the neo-liberal formulation will slowly wear off because India is a very vast, diverse, and highly stratified society. Its contradictions cannot be kept under wraps for very long.

We need mechanisms to make more balanced investments, both across and within states. And one of the biggest imbalances in India, historically as well as at present, is the rural-urban imbalance. In elementary education the rural-urban imbalance will have to be addressed by the State and for that, we need more specialised care of the village child. And if I were to recommend policy, I would say we need either a separate ministry for rural education, or we need, at least within the Ministry of Education, a specialised cell or a specialised bureau of rural education where specific issues to do with rural schools can be addressed.

Another question I think that I would like to address is a curriculum reform plan. Very strong investments will have to be made for creating the kind of vibrant curricular growth and advancement of high-quality teacher training. Both these functions will have to be based on research and strong academic inputs at the state level and similarly at the central level. I do not think that the market is going to generate good curricular resources or good quality textbooks that will be meaningful for schools in different kinds of settings. The State will have to do that. And wherever the State has done that, we have seen results.

These are some of the things we need to do to pursue the great philosophical transition to education that is more centred on the child. The child in India, as you know, is a contestable category. As a social category, the Indian society is moving towards acceptance of the child very, very slowly. And within that category, if you are talking about girls, then I think we are still light years away from accepting that girls are children. And then, we must look at the caste system where extreme levels of oppression and poverty among children prevail. Then again, we are looking at the problem of this social category called a child, which can be recognised across castes, across regions, across classes — a child who is the responsibility of an enlightened state. Now, the RTE Act is the first articulation of that kind of vision and it is going to take a while to unfold into greater acceptance of children's needs in terms of health, in terms of education, and a more child-centred view of the needs of childhood.

# Between Rhetoric and Reality: The Struggle for the Right to Education in South Africa

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## Summary

This article briefly defines the meaning of the right to basic education within South Africa's current post-apartheid constitutional framework. It argues that educational rights cannot be divorced from wider socio-economic rights and cautions against an uncritical use of human rights instruments without applying them to pedagogical practice, and urges that legal mechanisms and human rights instruments must be understood within the larger realities of power and social relations.

## Keywords

Critical Education Rights  
Apartheid  
Neoliberalism  
South Africa

There can be no doubt that the end of formal apartheid in 1994, and the attainment of a liberal democratic dispensation, was a momentous victory, not only for the people of South Africa, but also for humanity and the advancement of human rights. The lyricism of the phrases in our Constitution, the promise of its words of justice, and the education policies after decades of apartheid, became a symbol of hope for advocates of social justice and education rights the world over. However, the South African Constitution, despite its resonant words, has not been able to compensate for the systematic undermining of social justice and human rights by the routine operation of society's structure and institutions.

A founding principle of South Africa's Constitution is common citizenship and equal enjoyment of an array of citizen rights, including freedom of belief, religion, expression, assembly, and association. A range of socio-economic rights, including the right to basic and adult education and the rights of children, are emphasised in the Bill of Rights. In addition, Chapter 9 of the Constitution specified the formation of many institutions such as the South African Human Rights Commission, the Commission for Gender Equality, the Public Protector, and others, to promote a culture of human rights in South Africa.

The democratic state dismantled the pre-1994 education system, consolidating the 18 segregated departments into one central department and nine provincial departments. The Constitution vests substantial power in the nine provincial legislatures and governments to run education affairs subject to the national framework, and each province also has an education department.

The South African Schools Act of 1996 (RSA, 1996a) and the National Education Policy Act of 1996 (RSA, 1996b) — steeped in the discourse of human rights — govern the administration of education in South Africa. The South African Schools Act repealed the many racially discriminatory education laws that existed under the apartheid education system, and the National Education Policy Act aimed at 'the advancement and protection of the fundamental rights of every person' to education as guaranteed in the Constitution (RSA, 1996b, Section 1, clause 4a).

Equity reforms introduced in the late 1990s attempted to equalise funding among the provinces, schools, and socio-economic groups. South Africa has almost universal enrolment, and relative to schools in other African countries, has a favourable enrolment of girls. However, many of these achievements are compromised by a context of persistent poverty and inequality and its social consequences. For instance, the high level of violence and sexual harassment often nullifies gender parity. South African learners also fare badly on local assessment tests and international benchmark scores, indicating serious problems with the quality of education. Numerous studies have tried to understand this desultory state of affairs, variously and specifically pointing to areas such as teacher training, quality, and working conditions; infrastructure and facilities; language; early childhood development; leadership and management; malfeasance; and other egregious issues.

The South African experience has shown that often, statements of rights and rights discourse, while providing a useful universal framework as a reference point, do not automatically translate into rights on the ground. Despite South Africa's impressive compendium of laws and policies ostensibly aimed at giving effect to rights to, in, and through education, these rights do not always exist in practice. The mere insertion of rights language into public and policy discourse — as we have seen in South Africa since 1994 — does not automatically translate into the fulfilment of rights, nor is it sufficient to ensure that the State will meet its commitments.

Reflecting on this experience and the limitations of the normative framework, some advocates of human rights (see Vally & Spreen, 2006; Thapliyal, Spreen, & Vally, 2013) have embraced the praxis of critical education rights with the following key elements:

- Rights considerations in education should straddle and inform every facet of the education system and the whole range of educational processes: policy, access, curriculum, management, budgeting, provisioning, and teaching and learning. Issues of access to schools are not the only considerations affecting a learner's right to quality education.
- Educational rights cannot be divorced from wider socio-economic rights. Achieving curricular goals, and the rights of a child to a meaningful quality education, will depend, for example, upon confronting patterns of child poverty, illness and malnutrition, discrimination, spatial inequality, and social exclusion. We cannot expect children to come to school ready to learn if they are without parents, if they are hungry, if they have been evicted from their homes, if they spend many hours walking to school, or if they lack light by which to read at night. Related issues concern safe public transportation where schools are not within walking distance, adequate nutrition for learners, and sufficient

facilities and infrastructure in schools. Issues of poverty and inequality are important and have a profound impact on achieving education rights. South Africa is one of the most unequal countries and recent figures released by the Statistician-General in 2017 (Statistics South Africa, 2017, p.14) show that 53.8 per cent of South Africans are poor (surviving on under R779, which is approximately US\$57, per month,). In 2016, the University of Cape Town's Children Institute showed that nearly two-thirds of South African children (63 per cent) lived in poverty and 30 per cent lived in households where no adults were employed (Hall & Sambu, 2016: pp.111-3; Children's Institute, 2016; Child Gauge, 2016).

- It is necessary to caution against an uncritical use of human rights instruments without applying them to pedagogical practice, an over-reliance on legal experts, and ignoring the agency, struggles, and activism of rights claimants and holders. Legal mechanisms and human rights instruments must be understood within the larger realities of power and social relations. Active and direct participation by marginalised constituencies in decisions concerning the provision and delivery of education is imperative. Collective rights-based praxes through community organisations and social movements can be an effective tool for engaging the State and demanding accountability.

The law's autonomy from politics, the economy, and society, is the normative presumption. The discourse of rights, championed as the mainstay of South African public institutions and the Constitution, has often served to promote a fiction. Acting as if certain rights exist for all in an equal way, inhibits people's ability to recognise when they are in fact illusory, and why society does not act to protect these rights. Economic, social, and political structural circumstances that impact upon groups on the basis of 'race', class, gender, religion, indigeneity, and other categories, must be considered to make human rights concrete and meaningful (Falk, 1996). A single mother in one of South Africa's dusty townships or impoverished rural areas cannot be said to have the same power of political persuasion or opportunity compared to a suburban corporate executive. These are real distinctions that give some people advantages and privileges over others.

Many education policies were formulated under the assumption that after the 1994 elections, the new political dispensation would automatically translate into a better educational system for all — gleaming rhetoric that suggested that anything replacing the vile apartheid past was better. Moreover, dissimilar realities of 'race', class, gender, and geographical location, were not factored into the politics behind 'stakeholder' composition. Policy documents reflected a 'negotiated compromise' — a careful balancing act between contradictory political imperatives, which are chiefly social justice and international economic competitiveness. This attempt at consensus, without addressing the cleavages in society, left an

indelible imprint on the evolution of policies.

The patent failure of the public education system to provide quality education for most learners has dangerously spawned several suggestions, including the crude resort to an apartheid-like disciplinary regime (as a backlash against the perception that ‘learners have too many rights’), and the privatisation of education. All these ‘solutions’ have the potential to undermine the hard-won gains in promoting a rights-based quality education system for the public good.

The upshot of neoliberal discourse in education has been to ignore the problems faced by public schools and to promote market solutions through private schools, vouchers, charters, and the like. This proposed ‘market solution’ to our education crisis, even with state regulation, is less a case of a pragmatic attempt at resolving the problem than a case of ideological wishful thinking. This ideological agenda is uncaring about any idea of human rights and of their role in producing social cohesion and social equity through the provision of education, but instead, it is about lucre and profit-making.



The limitations of rights, framed as merely a legal and justiciable phenomenon in effecting redress and equity, as well as the narrow instrumental link between education and economic growth, must be interrogated. Similarly, the structure of the education and training system and the role and possibilities for agency through collective organisation in the form of social movements, associations, and unions of ‘rights beneficiaries’, in advancing education rights, should receive more attention.

After over two decades of our democracy, social injustice and inequality remain pervasive, despite progressive changes to various aspects of our society, thus reminding us once again of Marx’s view in his work ‘The German Ideology’ that ‘one cannot combat the real existing world by merely combating the phrases of this world’. However, popular energies, which once sustained the powerful pre-1994 education social movements, are again resurgent. While these new social movements have established continuity with past struggles, they have also shed the disarming and misplaced hope that changes to the political dispensation, a progressive constitution, and a new elite, are sufficient to realise socio-economic rights and democratic citizenship.

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# Right to Education and Capability Enhancement in Rural South Africa

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## Summary

Using the Right to Education and Capabilities Approach as complementary frames to evaluate the role of basic education in promoting opportunities for a better life for the learners in rural South Africa, this article argues for a greater focus on local contexts. These contexts may sometimes be different from the assumptions of the popular discourses on education and development.

## Keywords

Human Rights  
Capabilities Approach  
Sustainable Education  
South Africa

The South African constitution enshrines a right to basic education for all children from age 7-15, or completion of ninth grade, whichever comes first. Like other socio-economic rights, the justification for the right to education is premised upon it being essential to lead a dignified life. The rights discourse is important because it acts as a moral force to provide basic education as an entitlement, and it clearly identifies the stakeholders responsible to provide that. The 'Capabilities Approach' complements the human rights discourse (UNDP, 2000) by providing an evaluative space to ensure that the promise of a dignified life is realised. It focusses on substantive freedoms for 'valued beings and doings' that are available to individuals through a combination of personal capacities and societal arrangements (Sen, 2001; Nussbaum, 2000). This article deploys these complementary approaches to look at the provision of basic education in rural South Africa.

Rurality is not easily defined in the case of South Africa, where the segregation policies of the apartheid regime have resulted in densely populated townships adjacent to urban areas that still retain the features of rurality, in addition to the relatively sparsely populated regions in erstwhile homelands. Further, there are former white commercial farming districts that can also be categorised as rural. This article focusses on two rural communities with a population of about 1,000 people, each in the former Ciskei region of Eastern Cape, where I had spent some time in 2016. Each of these have a primary and a secondary school within the community and near-universal enrolment in primary school. Many students continue their education beyond the mandatory grade 9. Further, each of these schools does not charge fees and has a free school nutrition programme. While many of the children join secondary schools, only about 70 per cent of those who reach grade 12 pass matric (the provincial average for Eastern Cape is 63.3 per cent).<sup>1</sup> For most of the pass outs, matric becomes the terminal degree as they cannot afford higher education on their own and the bursaries are scarce. Prima facie, the constitutional obligation of providing basic education for all children is met in these communities. However, does this education help them lead a dignified life by providing opportunities 'to be and to do' things that that the children and families value? That is the focus of the rest of this article.

In my discussion with youth and families, I could discern four broad categories of valued doings and beings in relation to schooling. As would be expected for a predominantly poor community, the foremost aspiration from schooling was related to present and future material wellbeing. Schools were seen as a way out of poverty and the role of schools as a site of welfare (through nutrition programmes, health check-ups, and as a relatively safe space) was valued. Second, schooling was seen as a grounding to operate in the modern social and political context. Acquiring literacy and numeracy, as well as life skills, were seen as essential for negotiating day-to-day life. Benefits included the ability to travel out of the community, to be able to communicate with friends, and to access various government welfare schemes. Third, school was seen as a site of a complex cultural negotiation between immanence (i.e. rootedness in the local cultural norms and practices) and transcendence (i.e. fluency in the norms and practices of those from without, including those of western modernity). While the school's role in marginalising the home language, local cultural practices, and indigenous knowledge, was lamented on the one hand, on the other hand, its role in introducing children to new ways of living was seen as important. Finally, school was valued for its ability to transform learners into 'educated persons'. Schooling was expected to open up their minds and teach them 'discipline', elegance in carrying themselves, and the confidence to talk to strangers.

What became clear was that each of these aspirations was subject not just to what happens to the child in school, but also to the material and institutional contexts of rural communities in which the schools operated in, which were somewhat different from the assumptions of liberal and neo-liberal theories of development. Owing to space constraints, I briefly discuss the mechanics of only one of these: the role of schools in promoting the future material wellbeing of learners. The role of education in helping secure employment in the capitalist economy is well established in popular, policy, and theoretical discourses. For most of the families and youth I have talked to, getting jobs was one the foremost aspirations from education. This education–employment link is also reflected in many policy pronouncements and theoretical frames, such as the 'Human Capital theory', that guide much of the policy making. The situation on the ground however is at odds with these expectations. First, jobs are hard to get. I could only find a handful of youth living in the community who had some kind of salaried employment, and of those, many were employed on part-time contract jobs with community services. Rogan and Reynolds (2015) report the unemployment rates for 17–24 year olds in Eastern Cape at 71 per cent, using an expanded definition that included the non-job-searching unemployed (57 per cent as per official figures).<sup>2</sup> Thus, the promise of jobs in the capitalist economy had not materialised for these youths. On the other hand, the subsistence livelihoods of farming and livestock have suffered in the recent years, despite the availability of significant amount of communal land, owing to a

series of droughts and a general apathy in government policies. This was the mainstay of material wellbeing for the previous generation. Most people in their 40s fondly remembered how they would plough the land and own livestock when they were younger. A prominent member of the community wondered if they could set up a community-owned dairy farm on this land, which could then employ the local youth. Another woman who led a self-help group enquired how she could get a better price for the aloe they produce. There are many other locally oriented livelihoods options that can be gainfully pursued, without depending on industrial jobs, in the capitalist economy. At present, schools are not geared to respond to these. Their focus remains on preparing learners for higher education or for salaried employment in the industry. In fact, they drive youth away from such livelihoods. Most of the youth I talked to do not want to take up agriculture. A young man who had recently passed his matric exam and taken up to tending the family herd was on constant lookout for jobs outside the community. What is evident from this discussion is that families in rural communities achieve their aspiration through schooling only when schools respond to the contexts in which they operate. The theories of development from the Global North are sometimes unable to factor these in effectively. This results in driving many rural youths in these communities out of respectable options for livelihoods.

Despite the trend of aggressive urbanisation, about a third of South Africa's population is in rural areas. In provinces such as Eastern Cape, where 3,056 of 5,641 schools and 823,977 of 1,961,434 learners are in rural areas (Department of Basic Education, 2016), the issue is much more urgent. In 2015, the Department of Basic Education revived the Directorate of Rural Education and set up an Inter-Provincial Rural Education Committee to focus on rural education. The terms of reference of this committee include the following observation: 'There is a need for a collaborative effort to improve the quality of education in rural schools by identifying, developing and implementing context-specific and sustainable strategies for improving quality and performance' (Department of Basic Education, 2015). My experience in these communities suggests that these context-specific strategies would have to search for solutions that go beyond the given models of development from the Global North if they are to provide an opportunity for a dignified life to rural youth.



## Endnotes

1. Source: <https://www.education.gov.za/Newsroom/Speeches/tabid/950/ctl/Details/mid/6106/ItemID/4272/Default.aspx>. Some reports suggest that effective matric pass rates are much lower if we account for drop-outs in secondary schools. See <https://www.da.org.za/2017/01/matric-2016-da-requests-investigation-culling-learners/>
2. The official unemployment rate across age groups was 29.6%, and it was 42.3% using an expanded definition. About a fifth of jobs were in the informal sector, and of the formal sector jobs, 28.4% were in the public sector (Rogan and Reynolds, 2015).

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# China's Long March to Educational Rights: A Zhong-Yong Policy Choice for Educational Development

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## Summary

This article focuses on the policy development of educational rights in China, especially after 1949, and examines how China has struggled between ideals and realities of educational rights in the most recent decades. Policy implications are reflected from the Chinese Zhong-Yong model for educational development.

## Keywords

Educational Rights  
Compulsory Education  
Educational Development  
Zhong-Yong  
Policy Choice  
China

The ethical sense of educational universality and the first ideal concept of Education for All (EFA) in human history was elaborated by Confucius more than two thousand years ago. According to him, 'education shall have no discrimination' [You Jiao Wu Lei] (in *The Analects of Confucius*, 15.39). Not long after, Plato echoed Confucius with a state plan of compulsory education up to 20 years for youngsters. Government schools in ancient China started to flourish during the Han Dynasty around the 2<sup>nd</sup> century BC, but it was not until the early 1900s that educational rights were institutionally protected and legalised by the Chinese Government in the form of compulsory education as a *Zhong-Yong* policy choice.

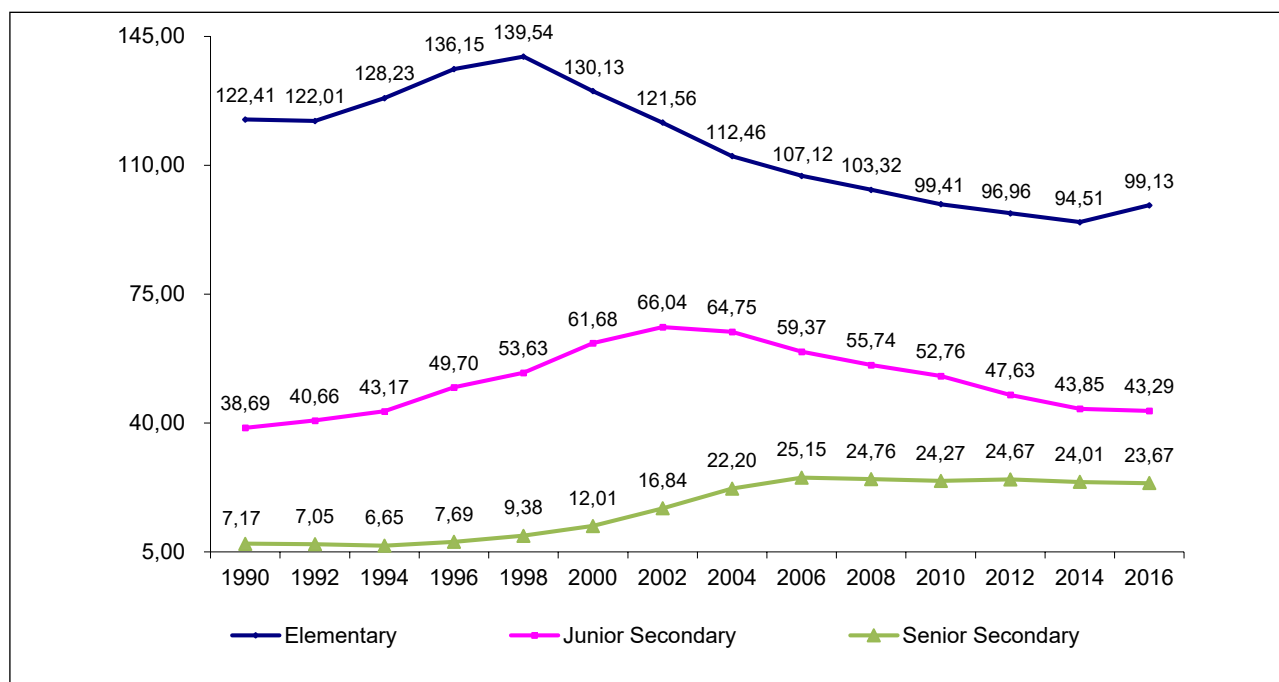
Modelled from Japan in 1904, a five-year compulsory education system was endorsed and implemented by the central government of the late Qing Dynasty to ensure educational rights for all school-aged children (Sun, 2009, p. 348). Years later, the Republic of China was established in 1912, and then carried out this national legislation. In 1935, the nationalist government enacted *The Implementation Guidelines of Compulsory Education*, which demanded four-year compulsory education by 1944. This objective partly came true in 1946, with the record that more than 76 per cent of children went to schools for education and 57 per cent were lifted out of illiteracy (Zhang & Jin, 2001).

After the political power was taken over by the Communist Party of China in 1949, China further made progress in educational rights. In 1965, the gross enrolment rate of elementary school students reached 85 per cent, registering 98 million children. It was an amazing achievement, given the poor socio-economic condition (resulting from five-decades of war from the 1890s to the 1940s) at that time. Five years before the 1990 Jomtien World Declaration on Education for All (EFA), China had adopted a nine-year compulsory education policy. One year later, in 1986, the Law of Compulsory Education was enacted. The 1986 Law dictates in Article IV that 'The state, society, schools, and the family shall, by law, ensure the right of school-aged children and juveniles to receive compulsory education'. However, this law was not fully implemented until 2001, when China officially announced its success and became the first country to achieve its scheduled EFA goals, among the nine most overly populated

countries, including India, Egypt, and Mexico. By 2016, China had 229,700 schools that enrolled a total of 142.4 million students in compulsory education, with the net enrolment rate of elementary schools and gross enrolment rate of junior secondary schools having reached 99.92 per cent and 104 per cent (Ministry of Education, 2017), from 99.1 per cent and 88.6

per cent in 2000, and 96.3 per cent and 66.7 per cent in 1990, respectively (for historical trends, please refer to Figure 1). Currently, the Chinese Government is further enhancing this achievement by extending compulsory education from 9 to 12 years, and such provinces or autonomous cities as Jiangsu or Shanghai tried out this ambition since the early 2000s.

**Figure 1 Enrolment Trends of Students in China 1990–2016 (unit: million)**



Source: Adapted from *Quest for World-Class Teacher Education? A Multi-perspectival Study on the Chinese Model of Policy Implementation* by Jun Li (Springer, 2016), p. 37; and *The National Statistical Communiqué of Educational Development 2016* by the MOE (2017).

China's huge enrolment in compulsory and senior secondary education equals almost half the population of the United States. With the largest compulsory system of education in the world, China's achievement is unparalleled by any nation in the history of the institutional expansion of compulsory education. Several policy implications may be reflected from the following three major obstacles of educational rights in China.

After 1978, when China adopted an open-door policy, there were three persistent obstacles in their march to achieve the goal of nine-year compulsory education. The first was a severe shortage of public fiscal budget for compulsory education over decades. Before 2012, the Chinese Government struggled to supply public expenditure on education at 4 per cent of Gross Domestic Product (GDP), an international standard benchmarked for public education investment. Thanks to its meeting the 4 per cent threshold in 2012, China has been in a much better financial position to ensure educational rights, with a public fiscal budget for education over US\$446.3 billion in 2015. Secondly, China has constantly suffered from the dilemma of distributing educational responsibilities between the central and local governments, between public and private funds, and among governments, families, and communities. Lastly, as a

huge country in terms of geography, population, and diversity, China has been challenged recurrently by the imbalance between the increasing public budget available for education and disaccoring development of educational rights.

Chinese policymakers and implementers have relied on a Zhong-Yong philosophy for educational rights — a Confucian pragmatism pervasively in the process of policymaking and implementation for educational development. To Confucius, Zhong means central, proper, right, or just; Yong carries the meaning of ordinary, mediocre, pragmatic, or universal; and Zhong-Yong are the most important values that lay the foundation for Confucian philosophy. In a broader sense, Zhong refers to moderation, propriety, and decency, centred in benevolence and righteousness without extremism, while Yong focuses on rationality, normality, and practicality, based on core doctrines (Li, 2016, pp. 203–205). Looking back at China's long march, especially in the most recent decades, a valuable lesson for educational development is that China has succeeded with pragmatic ambitions and in according measures to turn its huge population into a huge human resource, and that the Zhong-Yong Model seems realistic and promising in achieving China's primary goal of equal educational rights.

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# Transformative Human Rights Education as the Expansive Promise of the Right to Education

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## Summary

As the right to education has gained considerable attention internationally, this article argues that an expansive and transformative human rights education fulfils the promise of the right to education, particularly for children and youth from historically marginalised communities. This essay charts the linkages between right to education discourses and the contemporary field of human rights education (HRE), arguing for more comprehensive integration of HRE into debates and discussions of right to education.<sup>1</sup>

## Keywords

Human Rights Education  
Right to Education  
International Initiatives

## Introduction

The right to education has been an increasingly central part of discussions concerning what constitutes sustainable development amidst deep global inequalities. Human rights concepts have influenced international discussions and policymaking related to education, delineating three relationships: 1) education *as a* human right (also known as the right to education); 2) education *with* human rights; and 3) education *for* human rights.

## Education as a Human Right

From the vantage point of the Global South, in the years after independence from colonial rule, access to schooling shifted from an elite concern to part of broader national visions for advancing integration and social cohesion (however slowly and partially realised) (Meyer, Ramirez, & Soysal, 1992). Post-World War II, as the process of decolonisation began in parts of Asia and Africa, and with the emergence of institutions such as the World Bank and the United Nations, seminal instruments such as the Universal Declaration of Human Rights (UDHR) (1948) announced the right to education for all children. Governments were conceived as the primary guarantors of rights. The deepening of Western schooling in newly independent nations corresponded with international calls for equitable and broad access to schooling regardless of whether rights justifications were utilised locally for such decisions (Fuller, 1991; Boli, Meyer, & Ramirez, 1985).

Positing access to schooling as a human right provided rights-bearers the ability, at least in theory, to hold governments accountable. These efforts, which require involvement on global scales, were advanced most notably through the Education for All Declarations adopted in Jomtien<sup>2</sup> and Dakar (1990 and 2000, respectively) and codified through the Millennium Development Goals (MDGs) (2000) and the more recent Sustainable Development Goals (SDGs) (2015). Rights frameworks also facilitate the agency of children and their families in demanding their right to schooling, as opposed to being passive beneficiaries or targets of interventions (typically framed in larger efficiency terms rooted in arguments for

economic development) (McCowan, 2013; Robeyns, 2006). Critiques of the rights framework in education often focus on the limited entitlement offered by international declarations and meetings, that is, ‘access to primary schooling’, rather than a more comprehensive vision of rights to further secondary and tertiary education, to food, to work, to social security, etc. Additionally, the inordinate focus on access, at least in the MDGs, has also been critiqued for its myopia to questions of overcrowding, lack of resources in schools, and consequent poor quality education that does not benefit children (and may actually put them at heightened risk, particularly girls, as they attend crowded schools with limited adult supervision) (Mirembe & Davies, 2001).

Still, the contemporary framing of access to education as a human right demonstrates the potential of globalisation to diffuse ideas and frameworks internationally. Since the initial codification of the right to education in the UDHR in 1948, when a small minority of the world’s children had access to schooling, the rise of globalisation and international attention on educational access has resulted in the majority of children across the globe attending school with considerable consensus on the need for attaining universal primary enrolment. Less discussed, however, are questions of ensuring students’ rights once they reach schools.

### Education with Human Rights

The importance of education of high quality, with dignity, and as part of a process in which families and communities can effectively participate in schooling, is increasingly a focus of attention in international and national policy forums. Access to crumbling and overcrowded primary schools is surely a poor realisation of the right to education. Nonetheless, despite the growing recognition of the limits of policy focus on access, donor funding has been inordinately earmarked for primary education and removing access-related barriers (Jones, 2007). Only recently has literature begun to expand its focus from school ‘drop-outs’ (where the blame is placed on children and families), to ‘push-outs’, or children and families who opt out of schooling due to school-level factors, such as discrimination, harassment, poor quality, and other reasons (Reddy & Sinha, 2010).

Education with human rights is promoted within global networks that diffuse ideas, curricula, and school-level policies. Many of these initiatives emerged in response to the numerous reports across the globe of abuses within schools, ranging from corporal punishment, teacher absenteeism, sexual abuse, and violence or bullying. In order to make schools places where students can learn with dignity and safety, attention has been paid towards developing indicators and standards for ‘Child-Friendly Schools’, UNICEF’s flagship initiative of thousands of schools in over 56 countries (UNICEF, 2009). Since 1953, UNESCO has had a network of educational institutions (now

numbering 9,000) that form its Associated Schools Project Network, in which rights-based curricula and approaches are shared through a global network of schools (UNESCO, 2013). Amnesty International (AI) has also published guidelines for human-rights-friendly schools that lay out the processes, content, pedagogy, structures, and policies, that frame how schools can operate with the principles of equality, dignity, respect, non-discrimination, and participation (AI, 2009). Schools globally have been identified and selected as human-rights-friendly schools in order to advance AI’s vision. One component of child- and rights-friendly schools—whether connected to UNICEF, UNESCO, or AI—is curricular content and pedagogy oriented towards teaching for human rights.

### Education for Human Rights

Over the past four decades, human rights education (HRE) has become a greater part of international discussions of educational policy, national textbook reform, and the work of non-governmental organisations (NGOs) (Bajaj, 2012 & 2017; Ramirez, Suarez, & Meyer, 2007; Meyer, Bromley-Martin, & Ramirez, 2010). While there are many variants of HRE, there is broad agreement about certain core components of HRE. First, most scholars and practitioners agree that HRE must include both *content* and *processes* related to human rights (Flowers, 2003; Tibbitts, 2002). Second, most literature discusses the need for HRE to include goals related to cognitive (content), attitudinal or emotive (values/skills), and action-oriented components.

HRE assumes various forms, depending on context, ideologies, and location (Bajaj, 2012; Tibbitts, 2002). Transformative human rights education—rooted in the critical analyses of power and social inequalities—has been developed by non-state actors more than by government school systems, specifically by NGOs, social movements, and community-based educators (Bajaj, Cislighi, & Mackie, 2016). Despite the highly favourable and prescriptive literature on education for human rights, some scholars of globalisation and education have asserted that by the time human rights content gets incorporated into textbooks, HRE may be altered such that it loses its activist-oriented focus to the extent that human rights are presented in a manner delinked from the struggles that have achieved such rights (Bajaj, 2012; Cardenas, 2005). Transformative HRE seeks to counter this, and myriad examples of such forms of HRE exist, such as in the work of the West African NGO Tostan (Cislighi, Gillespie, & Mackie, 2016), the Indian NGO, the Institute of Human Rights Education (Bajaj, 2012), and in the United States in various settings including Humanities Prep High School in New York City (Hantzopoulos, 2016). Indeed, these processes of adaptation can generate greater variation among HRE initiatives; just as pressure from above de-politicises HRE, pressure from below can deepen the connection of HRE to social justice struggles.

I have argued elsewhere (Bajaj, 2011) for the importance of

following the varying ideologies of HRE initiatives as they have proliferated across the globe. Depending on relationships to power and conditions of marginalisation, the perceived and actual outcomes of HRE may differ based on social location (Bajaj, 2012).

Initiatives working towards transformative HRE tend to fuse Freirean notions of consciousness-raising with the philosophical tradition of cosmopolitanism, as others and I have noted elsewhere (Bajaj, 2011; Bajaj et al., 2016; Osler & Starkey, 2010; Tibbitts, 2002). Paulo Freire's (1970) notion of conscientisation results from individuals—often those from disadvantaged groups—analysing collectively, conditions of inequality, and then acting and reflecting to inspire new action in a cyclical fashion, in order to overcome situations of oppression and subordination. Cosmopolitanism is a philosophical position that posits a shared human community and a global notion of citizenship and belonging (Appiah, 2007). Pairing these philosophical orientations together results in local action and critical analysis (à la Freire) informed by global solidarity and connection (as is posited in some versions of cosmopolitanism). Some scholars have termed this type of HRE 'transformative HRE' and have documented its principles and components across formal and non-formal settings (Bajaj et al., 2016).

This form of transformative HRE—and its linkage with the right to education—is represented in an 8<sup>th</sup> standard (grade) student's reflections on his experience in a HRE program in India run through an NGO, the Institute of Human Rights Education:

HRE has created a lot of change in the school itself. Earlier, there was this big tree behind my school and if you take a stick from that tree and hit someone on the hand or anywhere, the place will swell up a lot. We used to get beaten black and blue with those sticks before HRE. Once we got the book, our teachers came and told us, "hereafter, we are not going to touch the stick". That really took us aback and we were shocked, in fact. That increased our interest and curiosity about the entire book because they became so different. After that, they never took the stick once. They believed that they could teach us just by affection and love. The teachers became so friendly that we could go and even stand close to them, which we couldn't do earlier because you would not know what kind of mood they are in and if they were just going to hit you and take it out on you. Now we even go into the staff room and ask any questions we have. All the teachers have changed because the HRE teachers mingle with all the other teachers. And they not only impart the knowledge on the students, but they also share it with the rest of the teachers. If there are any administrative decisions they have to make among the teachers, it always comes to them through the human rights teacher. So we really like school now.

(Surya, an 8<sup>th</sup> standard student, Tamil Nadu, as cited in Bajaj, 2012, p. 116)

Despite India's landmark Right to Education Act, 2009 and the prohibition of corporal punishment in earlier policy mandates, it remains a common practice and has been linked to high dropout rates across the country.<sup>3</sup> As noted in Surya's comments above, HRE transformed teachers and the student-teacher dynamic as well, encouraging students to persist in school and share their problems with teachers when they arise. As a country with one of the highest out-of-school youth rates (1.4 million Indian children aged 6-11 are out of school according to UNESCO), India and other countries would do well to incorporate broad-based transformative HRE as a catalyst for the fulfilment of the right to education. Guaranteeing a right to education alone does not compel families to send their children to school or ensure that teachers treat their students with dignity. Integrating transformative HRE in content, pedagogy, and overall school practices, into educational spaces, offers the missing ingredient to guarantee that the promise of the right to education translates into an actual reality.

#### Endnotes

1. This article draws from previously published work by the author and sections of this essay were adapted from Bajaj (2014).
2. The United Nations Convention on the Rights of the Child adopted by the United Nations in 1989 also provided a contemporary framework for the discussion of the right to education for the first World Conference on Education for All at Jomtien in 1990.
3. See, for example, <http://indianexpress.com/article/cities/chandigarh/cbse-warns-schools-about-corporal-punishment/>



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## Part 3

# Implementing Legislation

# Same Right, New Means: Promoting the Right to Education through Poverty Reduction Policies in Brazil

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## Summary

This article discusses how Brazil's conditional cash transfer (CCT) programme, named Bolsa Família, has helped improve school enrolment and attendance, and the political and institutional challenges around this programme, which has moved the right to education beyond just written law.

## Keywords

Conditional Cash Transfers  
Paulo Freire  
Political Constraints  
State Policy  
Brazil

When one thinks of education and Brazil, the name of Paulo Freire comes directly to mind. The author of the *Pedagogy of the Oppressed* has been internationally recognised for his ideas on critical pedagogy and concepts such as 'banking education' (Freire, 1970). *Pedagogy of the Oppressed* is unquestionably the most translated Brazilian education book. Paulo Freire probably rivals with only another Paulo—Paulo Coelho—when it comes to the international outreach of his writings.

What is commonly not taught about Freire, is that he wrote his major pieces during the dictatorship years of Brazil, when political oppression was at its peak and when social inequality was dire. What is also not well-known internationally is that his work has inspired social movements and organisations fighting for the right to education in Brazil, as well as across the rest of Latin America, ever since. Brazil's Workers Party (*Partido dos Trabalhadores*, PT), since its foundation in the 1980s, has based its education platform on Freire's ideas. When PT won the presidential elections for the first time in 2002, leading to Luiz Inácio Lula da Silva's (popularly known as Lula) first term as the President beginning in 2003, poverty reduction and education were expected to be high on the federal policy agenda.

Although the socialist and Freirean background of the Lula government made education a top priority—and Lula, to this day, constantly talks about his government's achievements in education—the means used to improve access to education were quite unexpected. Based on the World Bank's advice and motivated by a high political commitment to fighting hunger and poverty, Lula decided to invest in expanding conditional cash transfer (CCT) programmes in the country, all of which he consolidated under the name of *Bolsa Família* (Family Allowance).

As this article will show, *Bolsa Família*, or simply *Bolsa*, has been responsible for great improvements in the country's social and educational indicators, thus making the right to education a reality for millions of Brazilian children.

## Formal Guarantees and the Right to Education in Brazil

The Brazilian Constitution was enacted in 1988 as the country walked out of two decades of military rule and tried to make its way back to democracy. The 1988 Constitution is called the Social Constitution, as it brought articles and clauses that assured a vast array of basic social and economic rights. Right from the outset, Article 6 defines education as a social right. Then, Article 205 states the following:

Education, which is everyone's right and an obligation of the State and of the family, will be promoted and supported with the collaboration of society, looking for the full development of the individual, his/her preparation for the exercise of citizenship and his/her qualification for work<sup>1</sup> (Brazil, 2017).

The same article, and the ones that follow, assure that the State will offer public and free basic education. At that time, considering that Brazil was going through the so-called 'Lost Decade' in terms of economic stagnation and rampant inflation, this was an ambitious, if not visionary, constitutional guarantee. For an example of the challenges faced, the illiteracy rate among Brazilians aged 15 years or older was 20.1 per cent in 1991 (Instituto Brasileiro de Geografia e Estatística, 2017).

In addition, the 1988 Constitution established the so-called 'Federative Pact', according to which the federal government, state governments, and municipal governments share the responsibility of providing public education. To put it simply, primary education is the responsibility of municipalities, whereas secondary education is the responsibility of states. Tertiary education mostly rests with the federal government. Therefore, the federal government, which is in charge of establishing the national curriculum, can only do so much when it comes to making sure that all children are in school and that primary and secondary education are reaching everyone.

## Surmounting Institutional and Political Constraints: Conditional Cash Transfers

Lula was elected on the promise that he would change the lives of the poor in Brazil. He wanted to keep that promise and quickly so. The first initiative attempted, called *Fome Zero* (Zero Hunger), did not deliver results at the pace he had envisioned. So, in a meeting with top-level World Bank officials in 2003, they suggested that he should expand CCTs, which had existed in the country since the 1990s (Morais de Sa e Silva, 2017).

CCTs, as they have become internationally known, are poverty-reduction programmes that transfer cash to the female head of the household on the condition that the family performs pre-defined activities such as enrolling its children in school, maintaining their minimum school attendance, and getting them vaccinated and frequently checked by a physician. Along with Mexico, Brazil had one of the first CCT programmes in

the world—*Bolsa Escola* (School Stipend)—which was first implemented in the federal district.

The 1990s saw a proliferation of local and different CCTs in Brazil, with the support of the national government. When Lula took office he consolidated existing programmes into *Bolsa Família* and extended the new programme to the whole country. Also, during his two terms, as well as during the one-and-a-half terms of his successor Dilma Rousseff, *Bolsa Família* was significantly up-scaled, reaching 14 million families with the aim of eradicating extreme poverty in the country.

For the 1998-2005 period, Glewwe and Kassouf (2010) estimate that *Bolsa Família* was responsible for raising school enrolment by 5.5 per cent in grades 1-4 and by 6.5 per cent in grades 5, as well as for reducing drop-out rates by 0.5 per cent and 0.4 per cent, respectively.

According to national data, encompassing a more recent time period, extracted from the UNESCO Institute for Statistics (UIS), primary enrolment did not change considerably between 2007 and 2015, as the country was already close to universal enrolment. Indeed, net enrolment only rose from 91 per cent to 92 per cent in primary education. However, improvements were most significant in secondary education, with the net enrolment rate going from 73 per cent in 2007 to 81 per cent in 2015 (UIS, 2017). Of course, these are national indicators and one cannot draw direct causality between that trend and *Bolsa Família*. However, there is reason to believe that much of that progress is likely to have been concentrated in poor households, which had been previously out of the formal education system.

Additionally, most recent data for the programme indicate that it reaches 17 million students across the country's public schools. In the period between 2008 and 2016, monitoring of conditionalities conducted by the Ministry of Education concluded that an average of 96 per cent of *Bolsa Família* beneficiary students complied with the condition of attending a minimum of 85 per cent of classes for those aged 6-15 years or of 75 per cent of classes for those aged 16-17 years (Fernandes, 2014). Hence, the programme helped improve two important indicators with regards to access to education: enrolment and attendance.

## Where will Brazil Go from Here?

Some of the social policy and education policy communities were somewhat resistant to *Bolsa Família* at the beginning of its implementation because it did not seem to depart from a critical perspective or seek to revolutionise power structures. Despite this, the programme's impact throughout the slowly convinced most progressive sectors in Brazil that it had done well in reducing the country's historical poverty and inequality rates. Again, even though the programme does not

fundamentally touch upon curriculum issues and does not alter education policies, it has been crucial in bringing the poorest Brazilian children to school.

In spite of broad support from progressive sectors, the programme now seems to be at a crossroads. PT was ousted from power in 2016 with the impeachment of President Rousseff, which many have considered to have actually been a coup. The conservative sectors that took power and formed the new government have been critical of *Bolsa Família* and have scrutinised the programme beneficiary pool, looking for any beneficiary that could be excluded.

As conservatism gains increasing political space and momentum around the world, it is not surprising to watch critical ideas such as Freire's being rejected. In a conservative demonstration that took place in Brasília in 2015, a protester was seen with a poster that read, 'Enough of Paulo Freire'. What is surprising, though, is how conservatives are turning against a policy solution that was originally supported by the World Bank and that many called 'neoliberal' at one time.

Therefore, the realisation of the right to education in Brazil, which had been formally guaranteed by the Brazilian Constitution of 1988, was turned into a reality with support of the largest poverty-reduction program in the country's history. The future of this fortunate combination between law and policy is yet to be seen, as the country faces high political turmoil and an uncertain future.

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1. Author's translation from original in Portuguese.



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# The Right to Education in Brazil: Advances, Limitations, and Challenges in the Fields of Disability, Ethnic-Racial Diversity, and Gender

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## Summary

This article discusses the positive gains made by Brazil's educational policies to address specific inequalities related to gender, ethnicity, race and persons with disabilities, and the counter-movements, which continue to challenge affirmative action.

## Keywords

Disabilities  
Ethnic-Racial Diversities  
Gender Inequalities  
Counter-Movements  
Brazil

Education is a constitutional right in Brazil and provided by the National Education Guidelines and Framework Law (abbreviated in Portuguese as LDB, No. 9,394), which was enacted in 1996. The 1988 Constitution declares that family, society, and state, should guarantee to every child, adolescent, and youth, the right to education, dignity, and freedom, protecting it from 'all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression' (Art. 227, Brazilian Federal Constitution, 1988). Among other principles, the Constitution guarantees that everyone has equal conditions of access to and permanence in school; that access to freedom is a basis for learning, teaching, and research; and that education must be based on respect and tolerance, while aiming at quality learning. The LDB affirms that education is a 'duty of family and state, inspired by principles of liberty and ideals of human solidarity; it aims at the full development of the student, his or her preparation for the exercise of citizenship and qualification for work' (Art. 2. Law No. 9394, 1996).

The right to education, which translates as a guarantee of enrolment and access to schools, a historical problem in the country, was achieved only in the late 20<sup>th</sup> century. With the universalisation of education in schools for children from 7-14 years of age, other issues inherent to the debate on the right to education, such as staying in school, nonlinear school careers, fighting violence and discrimination, and coping with silencing and segregation, started to be included in the agenda. Since the 1990s, public and non-governmental institutions have promoted significant initiatives and debates on the recognition of the right to education in the spheres of disability, ethnic and racial diversity, and gender. The right to education has come to be understood as a human right in need of specific educational policies and affirmative action and



as a way to fight and reduce inequalities and discrimination. From 2003, there was an increase in educational policies to promote gender equity, overcome ethnic and racial inequalities, promote people with disabilities, and fight racism and prejudice against homosexuals. With the participation of civil society, recommendations were prepared from old claims of social movements and efforts were made to design educational policies and proposals that would provide training and support for the action of teachers and managers at different levels of education. It was an ongoing speedy process of implementing public policies for equality and for respect for diversity and human rights, in various spheres (see Weller, 2010; Gomes, 2011). In education, we highlight the following:

- Regarding persons with **disabilities**: The promulgation of the Convention on the Rights of Persons with Disabilities (UN, 2006) as a constitutional amendment in Brazil (Decree No. 6,949/2009) has transformed public educational policies by aiming at the social inclusion of these citizens. As a result of the demands of social movements and advancements in the conception of disability and human rights, public policies and government actions are breaking free from welfare and clinical conceptions. Different regulations were published which aimed to guarantee the right to education and specialised educational services for people with disabilities, including the regulation of the Brazilian Sign Language known as Libras. Among the main actions, those which stand out are the provision of equipment, teaching materials, and accessibility features in schools; teacher education for school inclusion and specialised educational services; and assured enrolment for any child, in the school of their choice.
- Regarding **ethnic and racial diversity**: The Brazilian society is characterised by different ethnic groups, but its history is marked by the disadvantage of black men and women in all spheres of society. In January 2003, Law 10,639 was enacted, which made the study of African-Brazilian history and culture compulsory at all levels of education. Five years later, the document was expanded with the inclusion of indigenous people and their history and culture, through Law 11,645. However, we must recognise that racial and ethnic discrimination are still present in schools (Abramovay & Castro, 2006).

From 2008, we can identify new government investments in teacher education and production of teaching materials aligned with the following legal recommendations: (a) the offering of continued education programs for teachers, with many hours in distance education mode, intending to prepare them methodologically for their teaching practices to work directly in fighting biased, discriminatory, and racist attitudes; (b) production of teaching materials and books that are widely accessible and free to download from the internet; (c) in Brazilian universities, a quota policy of reserving places for black students, who have been historically excluded from higher levels of education and professional training (we

must note that there is resistance, among different groups in society, to this affirmative action), similar to how in some states, places are reserved for indigenous people. Recently, the enactment of Law No. 13,409/2016 has guaranteed that college places shall be reserved for people with disabilities in federal educational institutions.

- Regarding **gender**: Gradually, from the beginning of the 21<sup>st</sup> century, the right to education has been widening and incorporating the demands of women and lesbian, gay, bisexual, transvestite, and transgender (LGBT) social movements. Based on the argument of social inclusion, claims were oriented towards recognition, respect, and coexistence with differences. The construction of a new perspective was underway and new ways of looking and attitudes in the classroom would be needed. Thus, and in view of the right of women, homosexuals, lesbians, bisexuals, transvestites, and transgenders, to study in a non-homophobic and non-heteronormative environment, continuing teacher education programs have been developed. Projects were carried out for training education professionals, focused on the study and discussion of issues related to gender, sexuality, sexual orientation, and ethnic and racial relations (Moehlecke, 2009; Vianna, 2012).

However, such principles and achievements are at risk. In addition to the difficulties inherent to implementing such programs in a country of Brazil's proportions, these inclusive policies, although supported by the Brazilian Government in past decades, have produced tensions, resistances, and counter-movements, which began to interfere in the public sphere and to inhibit the rights conquered. At the governmental level, we saw the dismantling of important institutions created in 2003, such as the Secretariat of Policies for Women, the Secretariat of Policies for the Promotion of Racial Equality, and the Secretariat of Human Rights. The status of these secretariats as ministries was abolished in May 2016, and their duties were encompassed by the Ministry of Justice and Citizenship. For social movements, this represented a setback in the promotion and guarantee of rights, precisely for the groups that have been on the margins of society, thus jeopardising the construction of gender equity, respect for ethnic and racial diversity, and the dignity of persons with disabilities.

A small movement, but one organised enough to change law-making, has been designed in the country, called School Without Party (*Escola Sem Partido*). Initially gathered around the debate on political indoctrination, they have recently emphasised the fear of discussions about gender in school and are guided by the position that such discussions endanger the construction of masculine or feminine identity in children. They maintain a neutral education, which cannot counteract that performed by the family (Miguel, 2016). Defending archaic, sexist, anti-democratic, and sometimes racist and homophobic values, they have managed to interfere in the design of legal

guidelines for teachers, removing from the text subjects that refer to, for example, gender diversity. They intend to pass laws, pending in congress, to prevent textbooks with content referring to sexual diversity from being distributed in schools, and for teachers who make mention of these topics to be prosecuted (Frigotto, 2016). These actions jeopardise the education of children and adolescents regarding respect and equity, solidarity and coexistence with differences.

The affirmation of the right to education in the spheres of disability, and ethnic and gender diversity is very recent in Brazil. Further, although hard-won, it is fragile. In times of changes in the political direction of the country, democratic vigilance and resistance are needed to guarantee the right to education as a fundamental human right for all.

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# The Role of the Brazilian Public Prosecutor's Office and the Public Defender's Office in Promoting the Right to Education: The Case of Early Childhood Education

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## Summary

This article examines two public institutions that are responsible for ensuring access to justice in Brazil, the Public Prosecutor's Office and the Public Defender's Office, with reference to their pioneering role in lawsuits and extrajudicial actions against the State and municipalities to guarantee day-care and pre-school for all children, with positive outcomes, in the state of São Paulo.

## Keywords

Judicial Action  
Legal System  
Equity  
Early Childhood Education  
Brazil

In the almost 30 years of existence of the Brazilian Federal Constitution (FC) of 1988, the universalisation of the first three years of basic education has been practically achieved. On the other hand, according to recent official data, only 25 per cent of children aged under four years attend day-care, while 21 per cent of children aged 4-6 years, and 62 per cent of young people aged 14-17 years do not attend school (Instituto Brasileiro de Geografia e Estatística, 2015). In absolute numbers, currently, 2,486,245 million children and young people (between 4-17 years of age) in Brazil are out of school. Another problem is the generally poor quality of public education: less than half of children have acquired adequate reading skills by the end of the third year of basic education. At the end of 11 years of basic education, only 9 per cent of the students have acquired the expected knowledge in mathematics and there is no guarantee that they have learned the minimum skills required in their respective school grades. Overall, these circumstances punish the black population and the communities in the poorest rural areas, affecting Brazil's ability to develop equitably, fairly, and sustainably.

How and to what extent can the legal system guarantee and promote the right to quality education for all? In the Brazilian judicial system, in the light of their increasing activities in the Courts after 1988, two institutions have been responsible for promoting equity in terms of access and quality in the field of education — the Public Prosecutor's Office and the Public Defender's Office. Taking advantage of the constitutional principle of the access to justice for all (FC Art. 5, XXXV), their strategy is the use of lawsuits against public authorities when more complex issues related to individual, collective, or diffuse education rights are not solved in any other way.

The Public Prosecutor's Office, both federal and state, is a permanent institution, essential to the jurisdictional function of the State, entrusting it, among other incumbencies, with the power to act in favour of social demands, which involves

the duty to not only monitor public policies but also act in the promotion and supervision of individual, collective, or diffuse interests, related to childhood and adolescence (FC Art. 127). The peculiarity of the Public Prosecutor's Office is that its members act with institutional independence, that is, they sue authorities based on their independent decision.

The federal and state Public Defender's Offices have the prime purpose of promoting individual and collective human rights, especially those involving education, health, and housing, both in the judicial and extrajudicial areas, for those who cannot pay for legal assistance (FC Art. 134). Its free activities begin with a request of the interested party on issues such as enrolment in schools, lack of places in public schools, and school reorganisation policies that address student rights, etc.

Collective interests include the claims of determinate or determinable categories of individuals; while diffuse interests include the claims of a group, or a mostly determined group, among whom there is no precise legal or factual link. In the case of the defence of diffuse and collective interests, the Public Prosecutor's Office and the Public Defender's Office have legitimacy to file a Public Civil Action (FC Art. 129, III) against the government in situations foreseen by The Child and Adolescent Act (Law 8.069/90), such as the non-offer or irregular offer of compulsory education; specialised educational services for people with disabilities; kindergarten and preschool care; and supply of teaching materials.

The Public Prosecutor's Office and the Public Defender's Office can work jointly for the right to education and they have been doing so, especially in the area of early childhood education. Towards this, they have started a pioneering role in lawsuits and extrajudicial actions against state authorities to guarantee day-care and pre-school for all children, with very positive outcomes.

Every child between 0-5 years of age has the right to day-care and pre-schools, and it is the duty of the municipalities to ensure free places for them indiscriminately (FC Arts. 6; 7, XXV; 208, IV; and 227, which guarantee the absolute priority of the rights of the child). In 2009, the Constitutional Amendment No. 59 made school enrolment compulsory from the age of four years; consequentially, universal access for all became a requirement under penalty of responsibility of the competent authorities (FC Art. 208, I and paragraph 2; Art. 30 of the National Education Act, Law 9.394/1996). In the light of these legal provisions, the Public Prosecutor's Office and the Public Defender's Office have been pushing municipal education authorities to create available places in day-care and pre-school institutions for all children, through judicial and extrajudicial legal actions.

According to recent studies (see, Cajuella, 2016 and Côrtes, 2010), between the years 2005 and 2015, the results of the

lawsuits were more effective when dealing with individual claims than when they were related to collective or class actions that could affect public expenditure, and to which judges were more resistant, in respect to the principle of separation of state powers. Moreover, class actions that request the construction or the expansion of schools are usually rejected as they are seen as an interference in the executive branch of the government. However, there is a pioneer and paradigmatic exception—the case of São Paulo State Prosecutor's Office vs. the City of Santo Andre (Appeal No. 410,715, 2005), in which the Brazilian Supreme Court ruled that the local municipal government immediately create new places in pre-school, even at the expense of public funds earmarked for other areas. In this case, the court determined the sum of public expenditures required from the local education agencies to guarantee free pre-school for all. The decision influenced the National Congress, which voted for a constitutional amendment (No. 59/2009) determining universal access to pre-school.

In the same period, the judicial claims encompassing individual rights related to day-care and pre-school were normally accepted; after 2006, 100 per cent of these actions had a favourable outcome for the authors. There is no pattern for court decisions in São Paulo State regarding collective and diffuse claims, which are not related to a specific number of children; therefore, the Public Defender's Office files more individual actions than public civil actions.

The studies also detected that public civil actions are mostly motivated by the prosecutors' and defenders' personal values, rather than an institutional project specifically designed for the educational area. Yet, even if they are not guided institutionally, they have given rise to discussions about the promotion of the right to education in the courts.

However, the decisions of the courts concerning individual enrolments in day-care have created another problem. Since they are dealing with individual claims, they do not say anything about the municipalities' obligations to expand available places, but merely state that the child in question will be a 'priority'; that is, the pre-existing vacancy must be allocated to him/her in detriment of the waiting list specially created by the municipalities for places in day-care institutions. Therefore, it was necessary to develop new strategies, changing the lawsuits' profiles to establish a broad public policy for early childhood education.

Taking advantage of a public civil action already filed by some non-governmental organizations (Brazil, 2013), which claimed for diffuse interests in the expansion of places in day-care and pre-school in the capital of the state of São Paulo, prosecutors, defenders, and some law offices created a working group with the various actors involved in the lawsuit, including the judiciary. After many public hearings that received extensive



media exposure, the Supreme Court finally decided that the municipality was obliged to eliminate the waiting list and to meet the quality parameters of the National Education Council in the expansion of available places. Furthermore, the court stated that the number of vacancies to be created until 2016 would be the one publicly announced by the executive itself in its government plan (150,000 places). This was the first judicial decision that prevailed upon the executive branch to elaborate an action plan, under certain parameters, instead of merely stating that a child was entitled to vacancies. The municipality appealed the court's decision and the case is currently in the Supreme Court, which will be obliged to analyse the extent of the interference of the judiciary in this matter (Brazil, 2014).

The positive results that have been achieved in this case express the fundamental role that the Public Prosecutor's Office and the Public Defender's Office play in promoting the right to education in courts, but it was only through their articulation with the judiciary and the civil society, and under great social pressure, that the expansion goal was achieved.

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# The Contribution of the Civil Society and the Courts to the Normative Development of the Right to Basic Education in the South African Constitution

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## Summary

A mobilisation of civil society organisations has, over the last few years, initiated vibrant campaigns and legal challenges to remedy the status quo in historically disadvantaged schools in South Africa. This article discusses the influence of this jurisprudence on the normative development of the right to basic education and more broad-based education reform.

## Keywords

Education Jurisprudence  
Civil Society Organisations  
Apartheid  
South Africa

In 2007, the then Deputy Chief Justice of the South African Constitutional Court ('the Concourt'), Dikgang Moseneke, famously bemoaned the absence of a case addressing educational quality. He said, "Nobody has come to me and said, 'My son is studying under a tree, there's no chalk, there's no blackboard, the teachers don't come to school every day'. Nobody came here to say that (See Barron, 2007)." At that point, there had not been a single legal challenge in respect of the South African Government's provisioning for basic education, despite the education system being widely perceived as being in a state of crisis.

A fundamental pillar of apartheid was the unequal funding of Black education to create and maintain a source of cheap Black labour. This legacy of apartheid education persists today. Most poor Black learners continue to attend historically disadvantaged schools, which are ravaged by decades of under-resourcing and remain insufficiently redressed in the post-apartheid context.

The impact of poor educational quality is evident in the results of national and cross-national assessments of educational performance. These results suggest that learners attending historically disadvantaged schools perform far below their counterparts attending historically advantaged and better resourced schools, with many learners struggling to move beyond basic literacy and numeracy skills.

The South African Constitution states that everyone has the right to a basic education. This right has been described as an 'unqualified' socio-economic right because it is not subject to the qualifiers—'progressive realisation' and 'within the state's available resources'—which characterise the other socio-economic rights in the Constitution (which include the rights to further education, health care, food, water, and social security).

The standard of review adopted by South Africa's Concourt, with respect to these qualified socio-economic rights, has been termed the 'standard of reasonableness review'. Thus, where there is a challenge in respect of these qualified socio-economic rights, a court merely evaluates whether the government programme under review is reasonable in progressively facilitating the fulfilment of the right. Furthermore, the Concourt's jurisprudence, in respect of the qualified socio-economic rights, has developed a list of criteria for evaluating whether government programmes may be considered to be reasonable. The Concourt has adopted this 'reasonableness' test, rather than an alternative approach, which was suggested by certain legal scholars, which would entail defining the core content of a socio-economic right and then requiring the government to provide accordingly.

Given the textual differences between the qualified and unqualified socio-economic rights, until recently, there has existed only speculation among legal scholars and education rights activists, regarding the possible approach to be adopted by the courts concerning the unqualified right to basic education. Many among them have argued that the different framing of the right to basic education is suggestive of the necessity of a higher level of protection being accorded to the right than that provided by reasonableness review.

A watershed moment in South Africa's basic education jurisprudence occurred in the case of *Juma Musjid* (2011). The case was not about education provisioning, but concerned a private property owner who sought to evict a public school established on its property.<sup>1</sup> The Concourt, nevertheless, proactively seized the opportunity to distinguish the unqualified right to basic education from the qualified socio-economic rights, as well as lay a foundation for a substantive approach to the interpretation of the right to basic education. In doing this, the Concourt stated the following:

- It is important, for the purpose of this judgment, to understand the nature of the right to a basic education under section 29(1)(a). Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be 'progressively realised' within 'available resources' subject to 'reasonable legislative measures'. The right to a basic education in section 29(1)(a) may be limited only in terms of a law of general application, which is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'. This right is therefore distinct from the right to 'further education' provided for in section 21(1)(b). The State is, in terms of that right, obliged, through reasonable measures, to make further education 'progressively available and accessible.' (*Juma Musjid*, 2011, para 37, emphasis added.)

The Concourt then further went on to identify 'access' as one of

the 'necessary' components of the right to basic education.

Subsequent to the judgement, a core group of civil society organisations,<sup>2</sup> emboldened by the promising signals from South Africa's highest court, initiated a string of education provisioning cases, each predicated on the underlying notion that the inadequate provisioning of specific inputs, such as school infrastructure, textbooks, teacher provisioning, furniture, and transport, at historically disadvantaged schools, constitute violations of the right to a basic education.

This loosely coordinated adequacy movement has become a regular player in the education provisioning litigation, sometimes acting collaboratively with each other, or sometimes independently of each other, but with a common approach to the interpretation of the right to basic education. Thus, in each of the cases, these organisations have asserted the immediate realisation principle established by *Juma Musjid* (2011) as being indicative of the right as a directly enforceable one. Furthermore, in each case, they have asserted that a particular entitlement is 'essential' to the fulfilment of the right, thereby advocating for a substantive approach to the right.

This common approach has significantly impacted on the evolving jurisprudence in incrementally defining the contents of the right. Thus, in the Supreme Court of Appeal judgment of the Minister of Basic Education (2016), it was held that every learner is entitled to a textbook in every subject at the commencement of the academic year. The judgment further explicitly noted that the corollary to this entitlement is the duty of the government to provide these textbooks to every learner.

The lower courts have similarly identified other entitlements that seek to give content of the right to basic education. Thus, in the case *Madzodzo* (2014), the court held that there is an obligation of the government to provide desks and chairs to learners in schools with 'immediate effect'. In the case of the Tripartite Steering Committee (2015), the court held that the right includes a direct entitlement to be provided with transport to and from the school, at the state's expense, for those learners who live far away and who cannot afford the cost of transportation. Somewhat less explicitly, the courts have suggested that teaching and non-teaching posts in schools are further entitlements in respect of the right to basic education (see Centre for Child Law, 2012; see also Linkside, 2015). There have also been cases dealing with school infrastructure that have been settled in favour of applicants and that suggest that adequate school infrastructure constitutes a further component of the right (see, e.g. Centre for Child Law, 2011; Equal Education, 2011).

However, in many of these cases, despite court orders directing the relevant education departments to provide these specific entitlements, the departments have failed to comply. This



apparent government recalcitrance has required persistent civil society vigilance in monitoring compliance with court orders and in several instances, has necessitated repeated returns to court by organisations seeking remedies that have been increasingly innovative, experimentalist, and even coercive in nature, to ensure compliance.

Thus, while gains may sometimes have been slow, these cases have nevertheless put pressure on the government to improve conditions in disadvantaged schools in respect of the specific entitlements for which litigations have been undertaken. The cases have simultaneously widened public awareness as to the systemic issues that bedevil basic education in South Africa. It is hoped that this will create a ripple effect to further pressurise the government into more effective education reform in accordance with its constitutional obligations and in line with the vision of reducing the ongoing legacy of structural inequality in South Africa.

#### Endnotes

1. While the eviction went ahead because the learners had been successfully placed at alternative schools, the Concourt nevertheless acknowledged the principle that private entities have an obligation to respect the right to basic education of learners on their property.
2. The legal organisations and social movements constituting this core group include the Legal Resources Centre; the Centre for Child Law; Section27; Equal Education; and the Equal Education Law Centre.

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# A Right Without Resources

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## Summary

Adequacy of resources has been central to the discourses on public policy on education in India. This article engages with a couple of major concerns with respect to public provisioning for universal and quality elementary education, and flags a set of relevant core issues. In particular, it is argued that the government has shown scant attention to the critical challenges of mobilising appropriate resources and the processes underlying the utilisation of the earmarked resources.

## Keywords

Right of Children to Free and Compulsory Education Act  
Public Provisioning  
Financial Allocations  
India

As is well known, India enacted the Right of Children to Free and Compulsory Education Act (RTE Act) in 2009 for its children in the age group of 6-14 years and thus became the 135<sup>th</sup> country to make elementary education a fundamental right. To begin with, such a right having been enacted over 60 years after the country's independence, reflects the negligence of successive governments towards providing a fundamental entitlement to the country's 'most vulnerable citizens'. Another important issue is the fact that the legislation was not accompanied by a financial memorandum, which was essential to make provision for substantial resources for universalising quality education. Further, the RTE Act came with several lacunae, including the following: the definition of a 'child' that excluded children below 6 and above 14 years; ambiguity on the issues of neighbourhood schools and eligibility of teachers; inadequate attention to matters of quality, division of responsibilities between union and state governments, architecture of implementation and management; and ambiguities regarding timelines, etc. There is substantial literature on these, and many other concerns, which I do not wish to engage with here. The objective of this note is to flag, arguably, one of the biggest challenges that the right to education confronts — that of adequate public provisioning.

Adequacy of resources has been central, and rightly so, to the discourses on public policy for education in India. As mentioned earlier, with respect to public provisioning for universal and quality elementary education, this note engages with a couple of major concerns at the current juncture and flags a set of relevant core issues. In particular, it is worth highlighting that the union, as well as other governments, have shown scant attention to the critical challenges of mobilising appropriate resources—money as well other institutional resources—and the processes underlying the utilisation of the earmarked resources. The overall situation in this regard is taking a turn for the worse and the idea of a (good quality) universal right to education may well be diluted further under the current ruling dispensation by the union government.

It is now almost 50 years since the recommendation of the first National Policy on Education (1968) that an allocation

of 6 per cent of the Gross Domestic Product (GDP) has been treated as a benchmark. Scholars and activists working on education have often highlighted this figure, but this target has remained elusive to date. The available evidence shows that at no point since independence, has India come close to this benchmark. Currently, the total government spending on education is approximately 3.7 per cent of the GDP; of this, the union government spends less than 1 per cent, and the rest is accounted for by the states and union territories. We may also note that the proportion of school education budget has come down from 2.7 per cent of the GDP in 2011-12 to 2.68 per cent of the GDP in 2015-16.

Further, it may be noted that in the budgetary allocations of the union government, even though the Ministry of Human Resources Development (MHRD) approves a budget (which according to it is adequate), the Ministry of Finance almost never provides the same. For example, in the financial year (FY) 2014-15, the allocation of funds for MHRD was only 54.7 per cent of what had been demanded. By FY 2017-18, this proportion had come down to 42.7 per cent, thus once again reflecting the lack of priority accorded to school education by the government. The situation of funding by state governments is no different. In most of the states, the total outlay for school education is less than 50 per cent of the total resources demanded. More worrisome is the fact that the release of funds for school education is often lower than the budgetary allocation; for instance, it varies in the range of 40-55 per cent of the total outlay in FY 2014-15 across different states. In short, the provisioning by state governments remains extremely inadequate and ad hoc.

In fact, the planning for what may be considered appropriate allocation has not received sufficient and serious consideration by policy makers in any sustained way. The benchmarking of unit costs for quality education ought to be the starting point in this respect. Thus, to arrive at benchmarks in a dynamic frame, the per-child spending in an 'appropriate school', with respect to acceptable parameters on quality, should be computed on a regular basis. It is not the case that such exercises have not been done, as several committees and commissions (e.g. the Kothari Commission (1964-66), Tapas Majumdar Committee (1999), and Central Advisory Board of Education Committees, to name a few) have attempted to do so. However, first, many of these exercises have been subjected to substantial criticism in being far too conservative; and second, differences across committees in arriving at resource requirements indicates that methodologically, it has been a seriously slippery and contentious terrain. Hence, I would like to suggest that as a simple rule of thumb, it may be appropriate to consider the per-student expenditure for *Kendriya Vidyalaya* as an approximate benchmark for all government schools.

The lack of resources for meeting the RTE Act commitments

has to be seen in the context of the overall deflationary macroeconomic policy stance (towards public expenditure) in recent years. As per the directions of the government, the RTE Act was to be implemented through the *Sarva Shiksha Abhiyan* (SSA), which is a central government sponsored scheme that has been in operation since 2001. Launched on 16 November, 2000, across the country, its primary objective was universalising quality elementary education through community ownership of the school system. The *Kasturba Gandhi Balika Vidyalyaya* (KGBV) scheme, which was launched in August 2004 to focus on educating the girl child, was merged with the SSA as one of its components in April 2007. The SSA had set out to provide useful and relevant quality elementary education to all children in the 6-14 age group by 2010. It also aimed to bridge social, regional, and gender gaps. It is important to note that the programme has experienced an absolute decline in resources ever since its inception. Though the first five years of the programme between 2009 and 2014 experienced an increasing trend in allocations in SSA, the same is not true for the last three years. The total SSA allocation has decreased from Rs. 28,258 Crore (US\$4.2 billion) in 2014-2015 to Rs. 23,500 Crore (US\$3.5 billion) in 2017-18. Further, a large portion (approximately 65 per cent) of this funding was done through the education cess, which in effect was only meant to be a supplementary source of funding.

As one would expect, the lack of adequate funding is reflected in the per-student SSA allocations, which are calculated by dividing the total approved budgets by the number of children enrolled in government schools. In FY 2016-17, per-student allocations stood at Rs. 6,350 (US\$99) (using 2015 enrolment numbers); however, this level of expenditure is far lower than the government expenditure on students studying in a *Kendriya Vidyalaya*, which was Rs. 32,698 (US\$507) in 2015-16. Hence, there is a yawning gap between the level of funding and what may be considered a reasonable requirement for appropriate quality education.

A study by the Centre for Budget and Governance Accountability (2016), in 10 major states in the country, brings out several important relevant findings with respect to the progress of the RTE Act. As per this study, one may conclude that the objective of providing free elementary education under the RTE Act remains an elusive dream. The data shows that only approximately 60 per cent of the children avail of free elementary education and that there are significant state-level variations in providing this education. The study reports that in almost every state, parents end up spending substantially out of their own pockets. On average, in 2014, a rural household spent Rs. 975 (US\$15) per child, per annum, in a government school, and this went up to Rs. 6,452 (US\$100) in a government-aided school and Rs. 7,905 (US\$123) per child in a private school. This expenditure increased substantially at each higher level of schooling, the maximum being Rs. 6,056 (US\$94) per child in a

government school, Rs. 10,803 (US\$168) in a government-aided school, and Rs. 13,688 (US\$212) in a private school at the higher secondary level. Clearly, such out-of-pocket expenditure in rural areas is almost impossible for the overwhelming majority of households, in a situation where the average annual income of a farmer is about Rs. 32,692 (US\$507) and the average debt of a farming household is approximately Rs. 40,000 (US\$620) in the same period (as per the latest available estimates for 2012-13). It may be emphasised that relevant research shows a remarkable and strong positive association between educational expenditure and attainments.

Given such a backdrop, the recent pronouncements by the National Institution for Transforming India (NITI Aayog), regarding the relationship between budgetary outlays and learning outcomes in schools seem worrisome. In a recent workshop on learning outcomes, Prof. Kartik Muralidharan, the Honorary Adviser at NITI Aayog said the “[h]ighest quality evidence available suggests that across the board increase in education spending in India has not led to an improvement in learning outcomes. Inputs such as infrastructure, teacher training, student-teacher ratio etc. alone have had negligible impact on student learning.” Such an erroneous claim appears to have been adopted by the current government to justify its lack of funding for elementary education. Not surprisingly, available data suggests that in the recent years, there is an exodus from government schools to private schools and only the poor and vulnerable sections, which cannot afford private schools, are sending their children to government schools.

To conclude this brief note, one may recall the concern voiced by the Union Minister of Education, Mr. M.C. Chagla, who said as early as 1964 that “[o]ur Constitution fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is expanding (cited in Jha, Das, Mohanty, & Jha, 2008).” It is a monumental tragedy that 70 years after independence, the fears of the first Minister of Education should continue to haunt us.

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# Implementing the Right to Education Act for All: With Special Focus on the Socially Excluded

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## Summary

Despite the Right to Education Act in India, large numbers of children from socially excluded communities do not access education equal to others. The article emphasises how, apart from enrolment, which is a first step to education, equally important are decisive measures to address discrimination and exclusion in schools and in classrooms, and adequate fiscal flows to finance non-discrimination and social equity measures.

## Keywords

Discrimination  
Equity  
Socially Disadvantaged Groups  
India

## Introduction

The National Survey on Estimation of Out of School Children<sup>1</sup> (NSEOSC), 2009 reported that 8.15 million children were out of school. Among them, 2.31 million belonged to scheduled castes (SCs), 1.07 million to scheduled tribes (STs), and 1.88 million to Muslim minority communities.<sup>2</sup> The same survey in 2014 reported 6 million out-of-school children. Among them, 1.96 million belonged to SCs, 1.0 million to STs, and 1.55 million to Muslim minority communities (Oommen, 2015). The numbers of out-of-school children in the socially excluded communities have reduced over the five-year period, along with an overall reduction of out-of-school children. However, the data also reflects a trend of increasing inequality for socially excluded children in school access over the five-year period. In 2009, 5.26 million of the 8.15 million out-of-school children belonged to these three communities, making it 64.5 per cent of the total. In 2014, 4.51 million of the 6 million out-of-school children belonged to the three communities, making it 75 per cent of the total. In both cases, the number of out-of-school children in the three groups is way above their population proportion of 58 per cent<sup>3</sup> in the said age group.

Special measures such as scholarship, residential schools, welfare hostels, and additional coaching, to promote education among the children from the SC, ST, and Muslim communities, do exist. In addition, school educational programmes, such as *Sarva Shiksha Abhiyan* (SSA) and *Rashtriya Madhyamik Shiksha Abhiyan*, place special emphasis on these children and are directed towards reducing inequalities. Despite these special measures and focused attention, the above data evidences that large numbers of children from these communities are not entering school, or are being pushed out of the school system. This paper recognises the need to review existing measures from three dimensions: 1) measures to address continuing practices of social exclusion; 2) measures to promote social equity and social inclusion; and 3) adequate fiscal measures and budget provisions to ensure that the above measures are financed. Bundled-up strategies on the above three dimensions are essential to ensure that the promised fundamental right to education is realised by children from the socially excluded communities.

## Measures to Address Social Exclusion

**Addressing discrimination in schools:** SC, ST, and Muslim minority children are routinely discriminated in seating, eating, leadership, and participation in their schools.<sup>4</sup> They are also segregated, discouraged, and humiliated in schools. The school system has recognised the prevalence of discrimination under Sections 8 and 9 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). In October, 2012, the Ministry of Human Resource Development (MHRD) issued guidelines/advice to address discrimination in schools (Gol, 2010). Considerable information is already available in the school education system, for example: 1) the SSA and MHRD commissioned a qualitative study (Sarva Shiksha Abhiyan, 2012) on inclusion and exclusion of students in primary and upper primary schooling across six states, which reported widespread prevalence of the practice of discrimination against children from these communities; 2) the Draft Recommendation Note 'Towards Ending Discrimination in Schools' (2013) outlines many specific recommendations to address discrimination in schools; and 3) the equity task force of the National Advisory Council on the RTE has detailed the issues of equity and social inclusion.<sup>5</sup> Both children and teachers reflect, practice, and perpetuate social discrimination in schools. The State needs to carry out long-term public education and campaigns to create public opinion against discrimination in schools, evolve tools and methodology to support teachers address discrimination in schools, develop curriculum materials, and positively endorse inclusive teacher behaviour codes in schools.<sup>6</sup>

**Addressing violence in schools:** The caste system sanctions violence against SC communities, including children. Twenty-six children, parents, and activists, deposed before the National Public Hearing<sup>7</sup> on identity-based discrimination and violence against children in school education in 2015. Forty-four cases were documented in the jury kit, covering 152 victims, and 39 educational institutions from 13 states across the country. The additional and serious nature of violence against these children in schools needs to be recognised. Here too, the school and the educational system need to put in necessary public education and mechanisms to address violence in schools against minority students.

## Promoting Social Equity and Inclusion Measures

**Build community-based learning support to children:** Socially excluded children need role-models, confidence-building, and continuous encouragement and support, to overcome historical education-related disadvantages.<sup>8</sup> There need to be special efforts to ensure that the vicious cycle of disadvantages is overcome. Given that these children do not get family support, as children from educated families do, state strategies are needed to promote community-based support mechanisms. Educated youth within minority communities can bridge the gaps and challenges of the socially excluded communities

and become role-models and support mechanisms in their communities. Many of them are already engaged in similar tasks voluntarily in their habitations, which can be harnessed to reach the last milestone in bringing education to these communities. Similar support mechanisms are found to be effective in promoting education among children in extremely marginalised communities around the world, such as the Roma community, the African-American community, indigenous communities, and migrant communities.

**Teachers are trained in non-discrimination and social inclusion:** The current syllabus includes gender and social inclusion in its framework. While the gender framework is fairly robust, the perspective or processes to understand issues of identity-based exclusion and its continuing negative impact on their learning is weak. This needs to be enhanced with conceptual understanding, perspective, and skills of teachers, to promote non-discrimination and social inclusion in their classrooms and schools in both pre-service and in-service training. The process needs to be regularly revisited and reviewed to strengthen teacher capabilities and skills in this regard. Teacher recruitment and assessment should therefore include these dimensions.

**Effectively implement Section 12.1.C of the RTE Act:** The section reserves 25 per cent of seats in non-minority unaided private schools for children from disadvantaged and economically weaker sections. It is estimated that over two million seats every year are available across the country under this provision. Implemented well, one can anticipate a healthy mixing of children in these schools. However, the challenges in the implementation have been severe, with high levels of resistance from the private schools. Many private schools are run by people of power, money, and political connections, making it difficult for the officers of the education system to regulate and monitor them. The policies and provisions concerning the reimbursement of fees and other costs are not made clear. Further, the process cannot stop with mere admission, but must include the support to children, parents, and teachers, to ensure that there is no discrimination and that the children thus admitted enjoy the same opportunities as other children.

## Fiscal Measures and Budget Provisions

**School costs support:** The provision of pre-matric scholarship to SC, ST, and minority children, and to children whose parents are engaged in unclean occupations, are critical for a family to provide education for their children. Despite school education being free, parents say that it costs an average Rs. 3,000 (US\$46.50) per child per year. The National Sample Survey's 65<sup>th</sup> round, 2008-2009, reports that the monthly per capita expenditure (MPCE) of SCs is Rs. 923 (US\$14.30) and that of STs is Rs. 883 (US\$13.70), making it extremely difficult for poor families to meet school costs. In this context, one is perplexed when the Pre-Matric Scholarship for SC children has been

drastically reduced from Rs. 5,100 million (US\$791 million) in 2016-17 to merely Rs. 500 million (US\$7.7 million) in 2017-18 by the union government.

#### Scheduled Caste Sub Plan (SCSP) and Tribal Sub Plan (TSP):

These are two designated budgets to address the inequalities between the SC and ST communities and the general communities across a variety of development dimensions. Allocation to education is a major part of this budget. However, the implementation is poor. As per this policy, the Union Budget is due to allocate Rs. 993,940 million (approximately US\$15.47 billion) to SCs and Rs. 513,070 million (approximately US\$7.95 billion) to STs. The allocation in 2017-18, Rs. 523,930 million (approximately US\$8.13 billion) to SC schemes and Rs. 319,200 million (approximately US\$4.95 billion) to ST schemes, is far below that mandated. A deeper analysis of the nature of the allocation for SC and ST welfare schemes shows that only half of these schemes are capable of reaching the target of SC and ST welfare, while the others are general schemes, which do not have any special focus. The allocation in education in the SCSP and TSP, and similarly under the Multi-Sector Development Programme for the Muslim children, needs to be enhanced and made effective.

This paper reviews the need for enhancing the current education system as well as the need for interventions with a better understanding of the issues of social exclusion and inclusion. It is essential to locate these interventions at the centre of the system and not at the periphery, catering to marginalised groups alone. A quality government education system catering to a diverse group of children is essential.

#### Endnotes

1. The data on out-of-school children varies widely. In the age group of 6 to 13 years, the NSEOSC reported 6.0 million out-of-school children in 2014; the National Sample Survey Office estimated 20 million for the same year. The 2011 census estimates 32 million children in the 6–13 years' age group to be out of school.
2. Government of India; 'Planning Commission Working Group on Elementary Education', 2011, reported in Govt. of India, MHRD, 'Education for All – Towards Quality with Equity', 2014, NÚEPA.
3. NSEOSC 2014 estimates 60,772,699 SC children, 23,991,282 ST children, 35,168,529 Muslim children (who all make 119,932,510 of the total 20,40,87,274 children in 6 to 13 years' age group). Thus, 58.7% of the children in this age group belong to SC, ST and Muslim communities.
4. The school system in India is a replica of the caste system and even the *jatis* within the caste system. One has (i) the elite private schools at the top in hierarchy, followed in order by (ii) the *Kendriya Vidyalaya/Navodaya Vidyalaya* in the government system, (iii) the government schools run by various state bodies, and (iv) the specialised schools for the disadvantaged children, such as residential schools, *Kasturba Gandhi Balika Vidyalayas*, non-formal schools. It is a fact that there are sub-categories (*jatis*) within each layer. It is also true that the children who attend the different layers of schooling follow similar caste/class characteristics, perpetuating the social system.
5. The Task Force on Social Equity and Inclusion was constituted in the National Advisory Council (NAC) on RTE under the MHRD in 2010. It made recommendations to address social exclusion and discrimination in schools.
6. India is yet to ratify the UNESCO convention against discrimination in education, 1960.
7. The National Public Hearing was jointly organised by Centre for Social Equity and Inclusion (CSEI) and National Dalit Mission for Justice (NDMJ), a unit of the National Campaign on Dalit Human Rights (NCDHR), in Delhi in 2015.
8. The government effort in Bihar in promoting Tola Sevaks and Talim-e-markas to support and promote the education of Dalit and Muslim children, respectively, is note-worthy. Tola Sevaks and Talim-e-markas are educated Dalit and Muslim youth recruited by the Bihar Dalit Vikas Mission to serve in their habitations. They are entrusted the responsibility to ensure that all children in their habitation attend school regularly and get support to cope up with school work at the habitation level after schools. Despite the loopholes, the programme has initiated a process of change in the children and communities at the habitation level.

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## Part 4

**Institutional actors:  
government, non-government  
and community**

# Right to Education Agenda in Brazil: A Brief Status on Advancements, Challenges, Key Stakeholders, and the Need for a New Narrative

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## Summary

The article conveys a brief picture of Brazil's educational scenario over the last few decades as it relates to securing the right to education to all children and provides a quick analysis of two key stakeholders in this process. It also argues that if the 'right to education' advocacy stance has in fact lost its momentum as a lever to mobilise transformational change in Brazil's educational debate, then a new narrative should be advanced if we are to expect relevant change in the near future.

## Keywords

Ministério Público  
Non-Government Organization  
Todos Pela Educação  
Advocacy  
Brazil

The right to education agenda has now been part of Brazil's public policy scenario for close to 30 years. Included in the Federal Constitution of 1988 as an important component of what represented Brazil's return to a democratic regime, the right to education stance has had profound impacts in a country that had long been known for its inability to advance basic educational goals, such as provision of access to all children, where in 1970, for example, 54 per cent of Brazilian youth aged 5-19 years were still out of school (Lourenço Filho, 1970).

The 1988 Constitution established education as a right for children aged 6-14 years (known as 'fundamental education'), and while it was only in 2009 that a constitutional amendment determined education to be obligatory to children aged 4-17 years, Brazil made significant strides in coverage. However, the right to education agenda has largely stalled over the past decade, as the country struggles to advance quality throughout the educational system.

In this paper, we initially strive to briefly convey a picture of Brazil's educational scenario over the last few decades, as it relates to securing the right to education for all children. Interspersed with that delivery, we aim to provide a quick analysis of two key stakeholders in this process. Lastly, we argue that if a right to education advocacy stance has in fact lost its momentum as a lever to mobilise transformational change in Brazil's educational debate, then a new narrative should be advanced if we are to expect relevant change in the near future.

Over the last 30 years, largely catapulted by a significant wave of economic stability and growth, particularly between 1994 and 2008, Brazil has seen a significant increase in public expenditure in education and remarkable advancements in expanding access. By 1998, 97 per cent of children aged 6-14 years had matriculated, and after the constitutional amendment in

2009, coverage to children aged 4-5 years shot up significantly. Today, nearly 90 per cent of children in that age category are guaranteed access (Anuário da Educação Brasileira, 2017).

In addition to the central role that government agencies at the national, state, and municipal levels have had in promoting significant policies to secure these results (such as the internationally acclaimed FUNDEF/FUNDEB law that designed an unique redistributive financing mechanism aimed at providing resources for local and regional operators to increase school access), two key stakeholders have played a relevant role in the advancement of such an agenda: *Ministério Público* (Brazilian Government Agency for Law Enforcement) and advocacy organisations in education, such as *Todos Pela Educação* (All for Education).

The work of the *Ministério Público* is primarily focused on judicially overseeing the enactment of the law at the federal, state, and municipal levels. One of its main branches of action ever since the 1988 Constitution has been around securing the provision of health, social assistance, and educational services, in accordance with the rights promulgated by the higher law. Considering that the problem of access to education had long been a supply problem (i.e. not enough schools), the pressure enacted by the *Ministério Público*, especially over state and municipal department of educations to build facilities and increase coverage, has been well documented in the last couple of decades.

In a similar fashion, the rise and strengthening of the non-governmental educational sector in Brazil has greatly contributed to the creation of a pro-right-to-education environment in the last couple of decades. One example is the national non-governmental organisation (NGO) *Todos Pela Educação*, which has managed to establish itself as one of the main civil-society institutions advocating for the right to education in the country. Founded in 2006 by some of the most influential specialists in the field in partnership with private educational foundations, along with a politically diverse set of former public educational managers, the impact of *Todos Pela Educação* in the access agenda has been two-fold: first, it was the main actor responsible for pressuring Congress to enact the constitutional amendment in 2009; and second, over the first few years of its existence the organisation managed to train over 500 media personnel all over the country (*Todos Pela Educação*, 2017) to better cover (and push for) a right to education agenda in the national and regional press (newspaper, television, and radio).

Despite such relevant advancements, and perhaps most importantly, considering that public investment in education has almost tripled over the last two decades, recently achieving 6 per cent of the gross domestic product (GDP), Brazil has not yet been able to tackle the quality agenda with

the same success. While early primary education (elementary school) results at the national level have been showing signs of consistent improvement over the last few years, student achievement results at the middle school level have been stagnant at extremely low levels over the last two decades, and high school performance indicators have been getting worse over time, creating what many have called ‘a national high school crisis’ (*Todos Pela Educação*, 2013), with a dropout rate of 35 per cent and only 7 per cent of students graduating at an adequate level in mathematics (SAEB 2015 / Ministry of Education of Brazil).

While recent advancements at the national policy level, such as the soon-to-be-enacted National Common Core and a new high school curriculum structure law that will allow for flexible routes during the final two-thirds of a student’s learning itinerary, provide a relevant glimpse of hope for the near future, the fact that the average school attendance is still short of five hours per day, that very few successful policies are sustained over different management cycles, and that the scenario of an extremely low-quality teaching workforce continues to be neglected as the main roadblock to improving student performance (Bruns & Luque, 2015), paints a challenging landscape for the years to come.

It is no surprise, then, that such a context has led many specialists in the field to correctly indicate that the right to education agenda in Brazil has been falling dramatically short of its promise. We go further in that analysis and register that the power of the ‘call to action’ set forth in 1988 around the right of every child to have access to school and to learn has, unfortunately, lost momentum. Brazil’s incapacity to promote quality, complemented by the more recent economic, political, and institutional crises that dramatically hit Brazil, has largely naturalised a disastrous reality in student achievement and numbed a great portion of the population to the need for profound and structural change in education. Indeed, while “improving the quality of education” was listed as the third priority for the country in a national survey in 2013, today, it sits at seventh place (*Confederação Nacional da Indústria*, 2017).

In this context, we argue that, at least in the short run, one of the most effective ways to overturn the scenario rests, initially, on the development of a new (and pragmatic) public narrative around the urgency for the enactment of the right to education agenda (which is often characterised as an emotional social-justice stance). This is a narrative oriented and sustained by five pillars:

- 1) anchored on the notion that while education will not solve all of Brazil’s problems, without quality education, we will always remain as a ‘country of the future’;
- 2) efficient at concretely conveying the impact of a low-quality educational system in other areas such as productivity levels, violence indicators, health problems, economic development, etc.;

- 3) powerful enough to clearly depict that in a knowledge-based global economy, education is not a ‘nice-to-have’ but, instead, a ‘must-have’;
- 4) linked to an evidence-based policy agenda that not only indicates the main areas that should be the focus of governmental agencies but also, most importantly, an agenda that is accompanied by a robust public monitoring of both educational results and processes (policies);
- 5) targeted at those that can enact direct influence on the national and state political agendas other than the general voters: the intellectual and economic elite of the country.



Such strategy has as its core an understanding that while good policy design is key, Brazil’s challenge in advancing the right to education agenda has been one of lack of political centrality, not only because of a low prioritisation of the theme amongst Brazil’s general population, but also due to the fact that the political cost of ‘inaction’ and the political ‘benefits’ of creating change in education are both fairly low. Thus, there is little or no incentive to induce political will. Furthermore, such an approach sets forth a vision that while Brazil’s current crisis indeed presents an additional challenge to the advancement of the quality piece of the right to education agenda, perhaps it is exactly at this particular moment that the ‘case for education’ could get stronger, especially given a growing sense of the need to rethink the foundations of the country and the rise of many civil society groups focused on discussing the need for the development of a long-term project for the nation.

As the country approaches national and state elections in 2018 and considering that the opportunity for structural reform in education may present itself during the first few months of 2019 (as it often does in the beginning of new political terms), the moment to ‘jump-start’ a new chapter for the right to education agenda in Brazil—focused on quality—has to be now. Otherwise, not only will we lose another relevant window of opportunity but will, most surely, continue to see the right to education agenda remain just an agenda.

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# Monitoring Children's Right to Education: Role of the National Commission for Protection of Child Rights

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## Summary

This paper presents the early interventions of an independent statutory authority, the National Commission for Protection of Child Rights (NCPCR), that was mandated to examine and review the safeguards of the Right to Education Act (RTE Act), 2009, in India

## Keywords

Monitoring  
Civil Court  
NCPCR  
India

## Introduction

During the last decade, the focus of state policies and public discourse has moved from a welfare approach to that of protection of rights. Thus, the enactment of the Commission for Protection of Child Rights Act, 2005, which established the National Commission for Protection of Child Rights (NCPCR) in 2007, and the Right of Children of Free and Compulsory Education Act, 2009 (RTE Act), fall in this frame.

The RTE Act of 2009 made it mandatory for the Indian State to “ensure compulsory admission, attendance, and completion of elementary education, by every child of 6-14 years”. In making it mandatory for the State to “ensure that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education (Section 3),”<sup>1</sup> the RTE Act places the onus on the State for guaranteeing and ensuring this fundamental right. The RTE Act seeks to remedy the structural deficiencies that have pushed children out of schools and spells out in detail the norms and standards of a school.<sup>2</sup> The RTE Act is indeed a paradigm shift, as it provides for every child the fundamental right to be in school as a State obligation, as against the six decades of systems’ tolerance of children being out of school.

## National Commission for Protection of Child Rights (NCPCR or the Commission)

It is precisely in such a rights-based framework that the NCPCR was mandated to monitor the implementation of the RTE Act under Section 31 of the Act. The Commission is vested with all powers of a civil court to the extent that it can summon and enforce the attendance of any persons, examine them under oath, seek the production of both documents and witnesses, receive evidence on affidavits, and so on. Thus, the NCPCR was entrusted with the task of monitoring the rights of over 200 million children aged 6-14 years, 1.3 million schools, 6.5 million teachers, well over 50 entitlements, and issues pertaining to equity and quality of education, under Section 31 of the RTE Act. This section gives an overview of NCPCR’s interventions in monitoring the RTE Act.

The Commission set up a Right to Education Division which, in the long term, was to develop as a full-fledged office with a complement of permanent staff, research wing, and a complaints management section. The NCPCR pressed for a well-defined institutional mechanism for registering, investigating, and responding within the education system<sup>3</sup>, and for the setting up of a grievance redressal mechanism.<sup>4</sup>

The issue of corporal punishment and violence against children, including discrimination of children on caste basis, was yet another issue that the NCPCR took up vigorously with the state governments (NCPCR, 2012). Further, it held consultations on amendments to the Child Labour (Prohibition and Regulation Act), 1986 (henceforth, Child Labour Act, 1986).<sup>5</sup> The NCPCR also submitted a note for the Parliamentary Standing Committee on the Ministry of Human Resource Development's (MHRD) sub-committee to examine the implementation of the RTE Act.<sup>6</sup> The NCPCR engaged with the Delhi High Court and Supreme Court on issues pertaining to the implementation of the RTE Act. It contested the decision of the Delhi Government to conduct screening tests for children, when the government sought relief from the Delhi High Court against the NCPCR's recommendation.

The NCPCR set up a separate complaints mechanism focusing on all the entitlements of the RTE Act. It dealt with complaints of violations/deprivations of child rights.<sup>7</sup> Such cases have been referred to the concerned authorities in respective states and union territories for remedial action.

### The NCPCR: Interface with the Civil Society

The NCPCR created a team of state representatives who were nominated to act as the 'eyes and ears' of the Commission at the state, district, and sub-district levels, to act as an interface between the community and state functionaries of the education department, and to help in conducting public hearings. This was also necessitated by the fact that the State Commissions for Protection of Child Rights (SCPCRs) were not constituted in most states. The NCPCR took up a pilot on the social audit of schools in collaboration with select non-governmental organisations (NGOs) in the country (NCPCR, n.d.).

### The NCPCR: Challenges

There were several systemic challenges that the Commission had to contend with. Investments in education were far from adequate, despite an increase in budget after the enactment of the RTE Act. A three-year window period was given for many provisions of the RTE Act, namely, opening of schools within the neighbourhood, prescribed pupil-teacher ratio, and infrastructure, etc. Huge gaps on most of these indicators remain. Many states furnished affidavits on having provided drinking water to schools in order to report compliance with the Supreme Court directives; although, authenticity of several such affidavits was found doubtful by the Commission.

There were also flaws in the state rules of the RTE Act. For instance, in half the states in the country, the local authority that was given the responsibility for delivery-level monitoring of the implementation of the RTE Act was not defined clearly. Involvement of *gram panchayats* (village level local authority) and urban local bodies was not spelled out under the state rules. In most of the states where the local authority was defined, its functionality remains a major issue.

The government focus was for decades on primary education, as in the case of District Primary Education Program in the 1990s, and most officials could not visualise going beyond the *Sarva Siksha Abhiyan* (SSA or Education For All programme) framework to a rights-based framework. It tolerated out-of-school children with impunity, and completion of elementary education was seen as a herculean task. It seems that there was just no preparation or a sense of urgency to tackle discrimination of children from scheduled castes, scheduled tribes, minorities, and girls, or to reach out to child labour, street children, or children with disabilities. There was no conscious effort to build a cadre of special educators for children with special needs, or develop special training pedagogy to integrate older children into age-appropriate classes, in accordance with the RTE Act.

At times, it became impossible to attend to each and every case concerning the violation of child rights, since there are so many of them. Ideally, the Commission has to be selective and take up the cases that reveal broader systemic problems and inform larger policy debates, or the issues that are to be dealt with in coordination with two or more states or a couple of ministries, and refer the complaints to the respective SCPCRs. However, this cannot happen, as complaints management becomes the benchmark for evaluating the Commission. Indeed, most parliamentary questions are addressed on complaints! Moreover, the Commission is drawn into responding to every high-profile case that has drawn media attention and is consequently of public concern. This often diverts its attention from examining and analysing policies and programs, and keeping abreast of macro-issues.

### Conclusion

It is the bounden duty of the NCPCR to not be overwhelmed by the systemic constraints but to function in the best interest of children, fully empowered with statutory authority and status, and to monitor the intent of the State to guarantee children their right to education.

Protecting children's rights, including the right to education, are seemingly soft issues, but it must be recognized that they are deeply contentious and enmeshed in structures of politics and ways of thinking and doing things. Thus, providing for education is a site for contestation of resources. It calls for the

State to transcend multiple and competing claims and make a wholehearted commitment to protecting children's rights and building children's capabilities. Simultaneously, it requires boundless energy and coming together of all stakeholders to actualise the vision of the State for its children, their well-being and well-becoming. The Commissions' role is in insisting on the indispensability of children's right to education for building children's capabilities and consequently for the process of democratization of the nation.

Ultimately, independence and autonomy are pivotal in determining the success or failure of the Commission. Enjoying a legal and especially a constitutional status confers on the NCPCR a certain rank. It is by taking categorical and consistent stands in favour of children and their rights and in truly representing children and their path to dignity and freedom that the Commission establishes its credibility. This is its main strength and the source of its authority. In fact, it is by standing its ground that the Commission's effectiveness is tested and its legitimacy is maintained. It is precisely this that enables the Commission to gain its independence and autonomy in reality. It is this quality that allows it to do justice to the task entrusted to it by the Parliament of India.

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## Endnotes

1. All the Sections in parentheses in this paper are Sections notified under the RTE Act, 2009.
2. This includes at least one class room for every teacher; barrier-free access; separate toilets for boys and girls; safe drinking water; kitchen where mid-day meal is cooked in school; playground; and boundary wall/fencing; trained teachers for every 30 children at the primary stage and 35 children at the upper primary stage; subject-wise teachers at the upper primary school level; part-time teachers for art education, health and physical education and work education; library, play material, games and sports equipment. The Act clearly provides that "no child shall be subjected to physical punishment or mental harassment (Section 17)." It also spells out a child-friendly pedagogy (Section 29).
3. See MHRD, 'Advisory on implementation of Section 31 and 32 of the RTE Act'. Retrieved from [http://mhrd.gov.in/sites/upload\\_files/mhrd/files/upload\\_document/30.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/30.pdf)
4. Few of the state governments issued orders on the grievance redressal mechanism, comprising the states of Rajasthan, Andhra Pradesh, Odisha and so on. See Government of Rajasthan Notification Education (Gr-1) Department No.F.21(19)Edu.-1/E.E./2009 Jaipur, dated March 29, 2011. Retrieved from [http://rajshiksha.gov.in/Rajasthan\\_RTE\\_Rules\\_\\_29-03-2011\\_.pdf](http://rajshiksha.gov.in/Rajasthan_RTE_Rules__29-03-2011_.pdf); School Education (PE-PROGSI) Department, G.O.Ms. No.130 dated 9/09/2011, Retrieved from [http://mhrd.gov.in/sites/upload\\_files/mhrd/files/upload\\_document/Andhra\\_Pradesh.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/Andhra_Pradesh.pdf); Govt of Odisha, School and Mass Education Department, Retrieved from <http://www.odisha.gov.in/schooleducation/resolution/2016/2100.pdf>; See also Agenda Items & Background Notes 'Conference of State Education Ministers 6<sup>th</sup> June, 2011 MHRD Government Of India. Retrieved from [http://mhrd.gov.in/sites/upload\\_files/mhrd/files/document-reports/AgendaEdMiniConf-2011.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/AgendaEdMiniConf-2011.pdf)
5. NCPCR engaged with Prime Minister's Office, Ministry of Labour, Ministry of Law, National Advisory Council and some State-level labour departments, which eventually resulted in the drafting of a bill to amend the Child Labour Act, 1986.
6. The note highlights the importance of establishing a grievance redressal mechanism; the need for an amendment to the Child Labour Act, 1986 and the National Child Labour Project (NCLP) to bring the former in harmony with the RTE Act; the status of RTE compliance in terms of school standards and norms regarding infrastructure, teachers' training, facilities for children with special needs, involvement of gram panchayats and school management committees; convergence with other Ministries; establishment of SCPCRs; drafting of state rules; and taking to scale the protocols of social audit and the Bal Bandhu Scheme.
7. Some of the issues taken up by NCPCR are as follows: the issue of admission (non-issuance of transfer certificate, charging of fees, screening tests, etc.); inaction/delayed action on part of authorities; occupation of schools by security forces in areas affected by civil unrest; corporal punishment (attempt to suicide, severe injury, mental/emotional/physical torture, etc.); curriculum and evaluation, detention and expulsion; denial of entitlement including non-provision of uniforms, midday meal, scholarship, text books, etc.; discrimination based on gender/caste/community/religion/disability/HIV/AIDS; head master and teacher-related issues (non-availability of teachers, irregular attendance, non-compliance of teaching norms, engagement of teachers in non-teaching activities, etc); denial of admission under the economically weaker section category in private schools; inadequate infrastructure and non-availability of separate class room for each teacher, non-availability of all-weather buildings, functional separate toilets for girls and boys, non-availability of safe drinking water, absence of boundary wall, etc.



# Rights, Responsibility, and Participation in Education: The Case of the Right to Education in India

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## Summary

India's Right of Children to Free and Compulsory Education Act of 2009 (RTE Act) emphasises the importance of parental participation in terms of ensuring children's enrolment in schools and being involved in school management and monitoring. In this article, we review how the social and economic contexts of India's education system significantly constrain the possibilities for such parental participation in education. We suggest that these are the politics of rights and responsibility that can lead to the entrenchment, rather than mitigation, of educational inequality.

## Keywords

Right of Children to Free and Compulsory Education Act  
Parental Participation  
Rights and Responsibilities  
India

## Introduction

India's Right of Children to Free and Compulsory Education Act<sup>1</sup> of 2009 (RTE Act) laid down for the first time a national legal framework for the constitutional right of every child to free and compulsory education. Under the RTE Act, every child between 6-14 years of age is to be enrolled in age-appropriate schooling in public, private, or aided institutions recognised by the State.

The RTE Act explicitly calls on parents to be active participants in implementing its goals. While local and decentralised participation has a long history in Indian education, this has intensified and become mandated through the RTE Act. The responsibility of parents is framed as a 'moral compulsion' (MHRD, GoI, 2011, p. 6), bringing the political commitments of the State into firm association with the moral obligations of the family.

In this article, we review how the social and economic contexts of Indian education significantly constrain the possibilities for such parental participation. We suggest that these are the politics of rights and responsibility that can lead to the entrenchment, rather than mitigation, of educational inequality. As such, this article asks policy-makers and researchers to be attentive to the limitations and contingencies of participation in rights-based educational development.

## Parental Participation Under the RTE Act: Conditions and Consequences

India's RTE Act has been introduced in an educational context characterised by extensive decentralisation and marketisation. The rapid growth of the low-fee private sector—and the reach of its ecosystem of allied products and services—has firmly embedded and mainstreamed the educational market as a key force for achieving education for all (Srivastava, 2016).

Indeed, the RTE Act has legitimised the schooling market in India. It seeks to achieve the goal of free and compulsory schooling for all through a provision that requires private schools to reserve 25 per cent of enrolments to "children

belonging to weaker sections and disadvantaged groups in the neighbourhood” (Ministry of Law and Justice, GoI, 2009, pp. 5-6). These reserved seats are compensated by the State. What this means is that public funds are channelled into private schools, rather than strengthening government schools in which all seats are free and open to children from all sections of society.

It is in this context that we identify the threefold role for parents in realising educational rights under the RTE Act. We discuss these roles in turn and reflect on their consequences for addressing educational inequality.

### Parents as Moral Agents

The RTE Act makes clear that, in taking a rights-based framework, it seeks to depart from previous incentive-based approaches in education and move towards the notion of educational entitlements. As part of this move, parents are accorded greater responsibility for realising their children’s entitlements. As the legislation states, “it shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school (Ministry of Law and Justice, GoI, 2009, p. 5).”

It is particularly significant to note that the duty of parents (and other educational actors) is explicitly framed in terms of morality—an inner compulsion to achieve the State’s goals. As a 2011 national framework for the RTE Act’s implementation sets out, *moral compulsion* is imposed through the RTE Act on parents, teachers, educational administrators, and other stakeholders, rather than shifting emphasis on punitive processes (MHRD, GoI, 2011, p. 6; emphasis added). Arguably, the consequence of emphasising individual (even inner) obligations to achieve educational rights conceals and leaves unaddressed the structural conditions through which educational inequality is produced.

### Parents as Participants

India has a long history of decentralised governance in education, including the establishment of local School Monitoring Committees (SMCs), which have been accorded legal status under the RTE Act. They have a range of functions including monitoring teachers’ work, record keeping, and making school development plans for child entitlements, teaching and learning materials, and assessment methods (MHRD, GoI, 2011, p. 79). Parents/guardians are to make up at least three quarters of the committee, including the chairperson position. Therefore, parental participation via the SMC has become a mandated responsibility.

However, despite the increasing emphasis on participation, the agency of parents in schooling is highly conditional. As research on the functioning of SMCs has long shown, local communities

are only given ‘soft powers’; their increased responsibility has not been accompanied by real authority to take action (Mukhopadhyay, Ramkumar, & Vasavi, 2009). Parents are required to monitor the functioning of the school system at the local level, while they have no say in the larger decision-making processes related to curriculum or planning. Furthermore, inadequate attention is paid to micro-level processes and contexts, especially power differentials between actors across the decentralised system (Ramachandran et al., 2013). That is, parents who often come from communities that have been educationally and socially marginalised often have little power or influence compared to other members of the SMC, which include figures of relative authority, such as teachers or the local government (panchayat) members.

### Parents as Consumers

The RTE Act requires parents to become ‘consumer citizens’ (Fernandes, 2006) within the school market. Parents are expected not only to choose between schooling options within a structurally unequal system, but also to take on responsibility for the functioning of public (school) services via their role in the SMC.

However, this gesture towards greater parental choice and agency is in fact highly conditional. For example:

- The reserved places in private unaided schools mandated by the RTE Act are to be filled through a random selection process. However, these are in effect only open to a small proportion of parents with the social and cultural capital to work through the complex, and often corrupt, bureaucratic processes of allocation (Sarangapani, Mehendale, Mukhopadhyay, & Namala, 2014).
- Although parents are expected to choose the right school for their child, the RTE Act has reduced the parameters of choice by narrowing what constitutes a school. The RTE Act introduced new requirements relating to infrastructure, curriculum, teacher qualification, and teacher numbers for schools, to be officially recognised by the State. This has led to the de-recognition of several local and community initiatives which function as education providers, including home-schooling, non-formal, and alternative schooling.
- Recent and widespread government school mergers and closures, reportedly due to low enrolment rates, have left many poor families with limited local schooling options. Government school closures have led to the further growth of low-fee private schools as alternative providers, and in many cases, closures contravene the norms of the RTE Act, which stipulates the need for ‘neighbourhood schools’ within walking distance of children’s habitations (Rao, Ganguly, Singh, & Dash, 2017).
- While parental choice is both structurally and discursively tilted towards private schools, parental participation in private schools is in fact highly limited. This is because private schools have no obligations to include an SMC, or any other form of parental participation, within schooling.

Therefore, while parents are seen as moral consumers, responsible for making educational choices, these are choices (entitlements, even) that are highly conditional and are often not open to the most disadvantaged.

## Conclusion: The Politics of Rights and Responsibilities

The RTE Act has been celebrated for enabling families' rights to demand education, especially for those who have been most marginalised and excluded from schooling. However, it is also important to pay attention to how, in enabling these rights, the RTE Act has made families (and especially parents/guardians) responsible for improving their own educational outcomes. As scholars of development have argued, such participatory approaches do not

“reverse or modify development's hegemony so much as provide more effective instruments with which to extend technocratic control or advance external interests ... (Mosse, 2005, p. 4).” We argue that the emphasis on responsibility and participation in the RTE Act—and its operationalisation in a

highly marketised and stratified educational context—obscures hegemonic relations at both the macro-level (e.g. unequal structures of the schooling market) and at the micro-level (e.g. power differentials within school communities). By shifting attention to the responsibility and participation of individuals, the mechanisms that produce and sustain unequal educational systems and practices are overlooked, and potentially entrenched. These are the politics of rights and responsibility that educationalists should urgently attend to.

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1. See <http://mhrd.gov.in/rte>


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# Community Participation: Founding Stone of Universalisation of Quality Education in the Neighbourhood

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## Summary

The role and work of decentralised structures of community participation, such as School Management Committees (SMCs), can have positive effects on the public schooling system. This article explores this through the mandated structure of SMCs, under the Right to Education Act (RTE Act) in India and the evolution of the School Development and Monitoring Committees in the state of Karnataka.

## Keywords

Decentralisation  
Community Participation  
School Management Committee  
India

## Introduction

Universalisation of free, compulsory, and quality education, is the need of the hour. It is a widely admitted fact that the Indian public education system needs to be strengthened and education needs to be made accessible to all children. While it is the responsibility of the State to provide access to education, involvement of the community also plays a crucial role in universalising education and strengthening the system. Community participation is a major tool for improving the reach and functioning of schools (Niranjanaradhya, 2014). Accordingly, community participation in governance in general, and education in particular, received legal impetus through the 73<sup>rd</sup> and 74<sup>th</sup> Amendments to the Indian Constitution, with the insertion of Article 243G (Schedule XI), which provides powers and functions to *Panchayat Raj* Institutions (rural level local authority) to plan and implement schemes for socio-economic development, including primary and secondary school education.

## Community Participation in Education

Community participation has been a crucial component of education policies and programmes in India. The innovative pilot projects such as the Andhra Pradesh Primary Education Project (1984–87), Shiksha Karmi Project (1987), Bihar Education Project (1991), Uttar Pradesh Basic Education Programme (1993), and Lok Jumbish (1992–94), all give due importance to the involvement of communities in realising the right to education of children. The insights and learnings of these programmes were later fed into the major national flagship projects, such as the District Primary Education Programme (DPEP) and *Sarva Shiksha Abhiyan* (SSA), in 1994 and 2000 respectively. The DPEP<sup>1</sup> envisaged the constitution of village education committees, as part of the decentralised management structures at the village school level, to ensure community participation in the smooth functioning of the school. The SSA programme defines itself as “an effort to universalise elementary education by community-ownership of the school system (Ministry of Human Resource Development, 1999).”

Subsequently, the Right of Children to Free and Compulsory Education was recognised as a fundamental right by inserting Article 21A in the Indian Constitution through the 86<sup>th</sup> Amendment in 2002. The Right of Children to Free and Compulsory Education Act, 2009, (RTE Act) was enacted to give effect to, and to enforce, this right. The RTE Act ensures “free and compulsory education to all children in the age group of 6-14 years.” One of the approaches adopted by the RTE Act to achieve its goal is the constitution of School Management Committees (SMCs) in all state-run and local schools, to ensure community participation at the school level and to encourage parents of school-going children to cherish the goal of universalising elementary education.

Sections 21 and 22 provide for the constitution of SMCs in all government schools comprising of representatives of local authority, parents or guardians of children admitted in the school, teachers, and children. The SMCs, 75 per cent of which shall comprise parents/guardians, are to monitor and oversee the functioning of the school; prepare and recommend a school development plan, based on which grants will be allotted to the school; and monitor the utilisation of grants allotted, among others. The SMCs are legal entities which, when evolved into suitable democratic institutional mechanisms, will promote the realisation of the right to education of all children by ensuring community participation in the process of universalising education. The School Development and Monitoring Committees (SDMCs) in the State of Karnataka can be quoted as a plausible example of the effectiveness of this mechanism in ensuring the right to education of children and strengthening of the public education system.

### **School Development and Monitoring Committees in the State of Karnataka**

The journey of School Development and Monitoring Committees (SDMC) in the state of Karnataka can be traced back to 1999, when the then Education Minister and a few individuals started discussing the methods which could be adopted to ensure community participation in school education. Subsequently, in 2000, the Task Force on Education set up by the Government of Karnataka, recommended the constitution of SDMCs in each school in its interim report, which would replace the existing village education and school betterment committees. In 2001, the Government of Karnataka acted upon this recommendation and evolved the structure and composition of SDMCs, after consultations with parents and various non-governmental organizations (NGOs) in collaboration with the Centre for Child and the Law at the National Law School of India University. An SDMC, consisted of nine elected representatives, including: parents of school-going children; the head teacher; a health worker; an *anganwadi* worker; representatives from community based organization and NGOs; elected representatives from *gram panchayat*, *taluk panchayat* and *zilla panchayat* (various local-level

*authorities*); donors who have contributed in cash or kind for the development of the school, and two child representatives from classes VII or X (State Government of Karnataka, 2001).

The State government passed an executive order on 28<sup>th</sup> April, 2001, to constitute SDMCs in all lower primary, higher primary, and high schools, across the State. The broad mission of these committees is to involve the community in general, and parents of school-going children in particular, in the process of schooling, to ensure their active participation in order to deliver quality education to all children. Some of the objectives of the SDMCs are as follows:

- Achieve the goal of universalisation of school education
- Ensure effective functioning of all government schools
- Ensure effective participation of the community at all levels of schooling, and ensure access, enrolment, retention, quality, and institutional reforms
- Decentralise the education system and improve school administration and monitoring to ensure accountability and transparency (State Government of Karnataka, 2001).

The executive order provided adequate financial and monitoring powers to the SDMCs, and a few Members of the Legislative Assembly (MLAs) exerted pressure on the State government to modify the executive order and appoint MLAs as chairpersons of the SDMCs. Succumbing to the pressure, the State passed two circulars that gave powers to the MLAs to nominate the president of the committee from amongst the nine elected parent representatives, and nominate the nine parent representatives to the committee.

In order to oppose this move of the State government, the SDMCs came together in 2004 and the School Development and Monitoring Committees Coordination Forum (SDMCCF) was formed, which comprised of the presidents of the SDMCs and representatives of the NGOs working with the SDMCs. Gradually, the issue of political interference was settled, and even though MLAs could exert their powers, they were not allowed to do so. With the enactment of the RTE Act, this interference was completely done away with.

Model by-laws were framed in 2006, which were notified by the State government in the State Gazette, and brought the SDMCs under the Civic Amenities Committee of the Gram Panchayat and defined SDMCs, their functions, powers, procedure for constitution and functioning, among other matters (State Government of Karnataka, 2004).

### **School Development and Monitoring Committee Coordination Forum**

The SDMCCF, which was formed in 2004, continued to garner support from all factions of the society. The forum ensures representation from all government schools in the state of Karnataka. Its structure is laid below:

- At the *panchayat* level, the forum is constituted by drawing the presidents and vice-presidents of all SDMCs within the panchayat. Elections are conducted and an executive body is formed.
- At the *taluk* level, the forum draws representation from the panchayat forums through their presidents and secretaries. Elections are conducted and an executive body is formed.
- The district forum is constituted by the members of the *taluk* forum and the executive body is elected from amongst them.
- The state forum draws the presidents and secretaries of the district forums and the state executive body is constituted through elections.

Several of the objectives of the forum can be enumerated as follows:

- Organise capacity-building programmes for SDMCs
- Conduct the required programmes to save and strengthen government schools and transform them into neighbourhood schools
- Oppose privatisation and commercialisation of education
- Bring SDMCs from all over the state together.

## Success of SDMCs

Over the years, it has been found that the functioning of government schools has drastically improved when the SDMC functions well. SDMCs have been effective, not only in improving the functioning of government schools, but also in convincing parents to send their children to government schools as opposed to private schools. For example, in the district of Ramanagara, nearly 970 children in classes 1-8 have joined government schools, thereby leaving private schools in the academic year 2017-18.<sup>2</sup> This is due to the efforts put in by SDMCs, through conducting enrolment drives, and creating awareness in the community regarding the facilities available in government schools. The formation of SDMCCFs has given further impetus to the efforts of SDMCs by strengthening their voices and ensuring the effective functioning of the public education system.

It is evident from the structure and functioning of SDMCs and SDMCCF that community participation is no more a jargon of tokenism for community participation. Instead, it is a well-established decentralised institutional mechanism for the effective participation of primary stakeholders, vis-à-vis the parents of school-going children, to ensure equitable quality education to all children within the neighbourhood school. Our work with SDMCs for over one-and-a-half decades has fully convinced us that the system of education can be strengthened by strengthening SDMCs through SDMCCF. In other words, taking the community along with the system will positively succeed in establishing and strengthening the public education system, based on the principle of neighbourhood schooling, and thus warranting the

universalisation of quality education for all children without any discrimination.

## Impact of the SDMCCF on Government Policies and Programmes

The SDMCCF has made visible and far reaching impacts on the overall governance of education, including universal access, enrolment, quality, and monitoring and modification of policies and programmes. Decades of work was consolidated through a mammoth community state level convention on 30-31 October, 2017, under the thematic slogan 'save, strengthen, and transform each government school into a genuine neighbourhood school'. Around 1000 delegates, drawn from 225 educational blocks, were part of this historic community meet. The Chief Minister, who witnessed the deliberations, instructed the Education Minister to prepare an action plan to address all the issues raised during the convention. Thereafter, a detailed action plan has been prepared and sent to the Principal Secretary of Primary and Secondary Education, for further action. The concrete and visible outcome is an indication of the vibrant functioning of the SDMCCF as a social movement.

## Endnotes



1. DPEP is a centrally sponsored programme launched by the Government of India in 1994 to revitalise primary education system in India and achieve universalisation of education by providing access to primary education to all children.
2. Data as available in the office of Deputy Director, Department of Public Instruction, Ramanagara.



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# The Right to Education in South Africa: The Struggle Continues

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## Summary

South Africa has, over recent decades, developed an extensive framework of legislation and policy, to give effect to the right to basic education for every child. This paper summarises what has, and has not, been achieved with respect to the right to basic education. It also discusses the efforts of Equal Education (EE) to force the State to comply with its own policy framework as an important civil society initiative.

## Keywords

Education Legislations  
Civil Society Initiative  
Equal Education  
Inequality  
South Africa

During its rule of over 40 years, the South African apartheid government introduced a battery of legislation that had devastating effects on the social development of its people. It produced privilege and power for people classified as white, and subjugation for Black people. This was particularly so in the field of education (Fiske & Ladd, 2004). When the new, democratic government came into power in 1994, it had to make education one of its priorities. Its first move was to abolish the 11 racially separate, grossly unequal, and differentiated departments of education inherited from apartheid, and to replace them with a de jure single national system. In doing so, over a period of two years between 1994 and 1996, it entrenched in law, through the Constitution as well as the South African Schools Act (both passed in 1996), the right to basic education for all. This right was to be achieved by expanding the system, ensuring access, redressing past imbalances, and standardising quality.

In what follows, we attempt to show how challenging this process of social correction has been. We provide a synopsis of the elaborate and ambitious legislative agenda developed by the post-apartheid government and a brief analysis of its outcomes. In addition, we attempt to show how this agenda stimulated a new wave of social resistance. We focus on the work of a leading civil society initiative, Equal Education (EE). EE demanded that the government fulfils its promises made after coming to power in 1994.<sup>1</sup>

## Legislative Promises and Disappointments

In a recent assessment of the effectiveness of the post-apartheid government's policy work in education, we found that between 1994 and 2017, at least 172 policy instruments (laws, regulations, and policy guidelines) had been introduced (Soudien, Juan, Harvey, Zulu, & Hannan, 2017). Key amongst these were the Constitution of South Africa (Republic of South Africa (RSA), 1996a), the National Education Policy Act (NEPA) (RSA, 1996b), and the South African Schools Act (SASA) (RSA, 1996c), which were all introduced in 1996, two years after the end of apartheid. The Constitution stipulated unambiguously that everyone had the right to basic education. The NEPA, as part of the process of eliminating legacy inequalities, prescribed



the national norms and standards for the provision of all aspects of education. The SASA provided for a uniform system for the administration, governance, and financing of schools, with the goal of ensuring that all learners had access to quality education without discrimination. Motivated by the need to give previously disempowered communities much more say in the education of their children, it adopted a model of school governance that devolved significant powers to School Governing Bodies (SGBs). It also introduced drastic curriculum reforms. However, these reforms are not discussed here.

In reviewing this legislative agenda, we acknowledged that the government had made significant progress since 1994. It had met the goal of ensuring access. By 2015, it had achieved almost universal enrolment of 1.2 million children in Grade 1. In addition, the number of individuals aged 15 years and older completing Grade 12 and higher education, had risen. Between 1996 and 2016, the number of South Africans aged 15 years and older who completed grade 12 increased from 3.7 million to 11.6 million (Statistics South Africa, 2017).

While acknowledging these achievements, it is clear that the weight of the past hangs heavily on the system. While the recent reforms have brought improvements, they have also, unintentionally, exacerbated old inequalities, resulting in a bifurcated education system—on the one hand, the creation of a poor-quality, largely black schooling system; and on the other hand, perpetuation of the historically white system of a much higher quality. This is particularly evident in two areas of the educational experience—access and language of instruction.

With respect to access, the new democratic State chose a macro-economic policy that limited social spending, including that on education (Fataar, 2008). Despite its promises, it was not able to provide free and compulsory basic education for all. Instead, it introduced a market-related system of fees (Christie, 2010). In 2006, in an attempt to fix some of the challenges that arose in relation to the implementation of this system, the government declared several schools as ‘no-fee schools’. These schools were, and remain, fully subsidised by the State and are not permitted to charge any school fees. This produced the result of almost full enrolment at the basic education level. Under-provision, however, continued. The National Education Infrastructure Management System Report (Department of Education, 2011) found that of the 24,793 public schools in the country, 3,544 did not have electricity, 2,402 had no water, and 913 had no ablution facilities (Equal Education, 2016). Conversely, wealthy schools, with access to abundant parental support through high levels of school fees, have flourished (Soudien et al., 2017).

In terms of language of instruction, the country finds itself enmeshed in a grip begun during the apartheid period. The government has attempted to reverse the apartheid fiat that children should learn in either English or Afrikaans. Learners

now have the right to receive education in their home language (RSA, 1996a; RSA, 2011). However, through the continuation of the practice where most schools in the country switch from mother-tongue instruction to either English or Afrikaans at grade 4; and the power vested in SGBs to determine their school’s language of instruction—which is invariably English—this right has been negated, with deleterious effects on the academic development of children (Soudien et al., 2017). In 2006, the Progress in International Reading Literacy Study (PIRLS) determined that the average South African reading literacy at the grade 4 and 5 levels was the lowest out of all 45 education systems where tests were conducted. South African grade 4 learners achieved 253 points, while the grade 5 learners achieved an average score of 302, both well below the international CenterPoint of 500 points (Howie et al., 2007).

### **Civil Society Holding Government to Account: The Case of Equal Education**

South Africa has one of the most intense records of civil protest in the world. In education, given the challenges described above, the results of civil protest have been surprisingly weak. Instead, the struggle for the right to quality education has taken place at a legal level where the State has been forced, through the judicial system, to meet its constitutional mandate of providing basic education to all. A constitutional court case that set the precedent for interpreting the right to basic education arose in respect to the School Education Bill of 1995. In this case, the court ruled that under the interim Constitution, a positive duty was created for the State to provide basic education to all citizens. A negative obligation was also created, as the State could not prevent any person from pursuing his or her basic education.

The organisation that has been most active in this arena is EE, a social movement consisting of learners, parents, and teachers. The focus of EE has been to demand that the State fulfils its promises. This has seen the organisation mounting education campaigns for its members and, most significantly, taking on the State directly with respect to the issues of quality provision, as promised in the NEPA, as well as the commitments it has made to improve the quality of teaching and learning. It has consistently and regularly convened its members and the broader public in meetings, conferences, and forums, around the challenges to quality learning and teaching in schools. EE is in the process of developing an Education Charter that “...recognises the basis of historical inequality and sets out the principles for a quality and equal education system (EE, 2015/2016, p. 12).”

It is in the area of quality provision that EE has been most active. Beginning from about 2010, the organisation initiated the Schools Infrastructure Campaign to compel the Minister of Basic Education to “promulgate legally binding regulations for norms and standards for school infrastructure (EE, 2016, p. 4).” The

campaign was motivated by research conducted by EE, which showed “the government’s failure to provide infrastructure in terms of section 5A of the [SASA], a problem that most harshly affects the poorest schools in the country... (EE, 2016, p. 5).” EE filed an application against the Minister in 2012, accompanied by campaigns such as Ten Days of Action in March 2012, marches throughout the country, pickets at the parliament, write-ins, and camp-ins outside courts. While the government agreed to the demands and published the draft norms and standards in January 2013, EE found this draft unacceptable. Moreover, EE found the actions taken by the government to be unsatisfactory. A study by EE found that as of June, 2016, 171 schools in the country still did not have running water, 569 had no electricity, and 68 schools had no toilets (EE, 2015/2016, p. 18). Against these outcomes, EE has concluded that it won “an incomplete victory (EE, 2015/2016, p. 18).” This has led to further protest, much of it focused in the Eastern Cape Province, where education conditions are among the worst in the country. A new campaign has begun to ensure that the norms and standards are effectively implemented. The campaign is named after Michael Komape, a five-year-old boy who died after falling into a pit toilet. The struggle continues.



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# Education Cannot Wait: Investing in Our Shared Humanity

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## Summary

In this article, the Director of the world's first global fund for education in emergencies, Education Cannot Wait (ECW) talks about their response to a call for action on behalf of the 75 million children in crisis situations who want, need, and have a right to an education. ECW's vision, commitment, approach, and the funding support it offers to countries experiencing crises, is presented.

## Keywords

Education in Emergencies  
Sustainable Development Goals  
Education Cannot Wait  
World Humanitarian Summit

The world's first global fund for education in emergencies was launched at the pivotal moment when world leaders committed to a new way of working in humanitarian settings during the World Humanitarian Summit (WHS). This spirit of collaboration and the collective determination to do things differently have permeated the work of Education Cannot Wait (ECW), creating a movement that is defined by the shared vision of a world where no child's education will be interrupted because of crises. Undeterred by the increasing complexity and duration of crises, ECW has pinpointed investment in education in emergencies as the most effective means of bridging the humanitarian and development divide. The WHS marked a historic shift, from viewing education in humanitarian action as a privilege, to recognising it as an essential right that is life-saving, protective, and non-negotiable—no matter what the circumstances, the right to education must not be compromised.

Providing safe, free, and quality education for every child in crisis requires an unprecedented level of collaboration and partnership, and the fund is dedicated to mobilising the operational, political, and financial resources needed to make this a reality.

Global education is firmly on the political agenda, with historic agreement on our shared ambitions. We have universal agreement on Sustainable Development Goal (SDG) 4 to 'ensure inclusive and equitable quality education and promote lifelong learning opportunities for all'. The work of the Education Commission and the World Bank has spotlighted the education and learning crises that threaten to undermine these promises. Vibrant civil society groups, high-profile champions, and global advocates lead the call for increased and more efficient spending to translate these commitments into concrete results.

The 2030 Agenda for Sustainable Development was at the forefront of the recent 72<sup>nd</sup> General Assembly, where renewed calls were made for our universal values that laid the foundation for the United Nations (UN). "Investing in education is the most cost-effective way to drive economic development, improve skills and opportunities for young women and men, and unlock progress on all 17 Sustainable Development Goals,"

the UN Secretary-General, António Guterres, gave the message loud and clear.

World leaders reaffirmed their commitment to education in emergencies through significant investments from Denmark, the European Union, and Dubai Cares bringing much needed resources, together with other committed partners of ECW, such as Australia, Canada, France, the Netherlands, Norway, the United Kingdom, and the United States.

Our moral duty and legal obligation towards these children is steadfast — those young girls and boys struggling to sustain hope amidst abnormal circumstances of armed conflicts and abject poverty, their dignity at threat. Failure to progress on education for children affected by crises will make the achievement of the SDGs impossible: 63 million out-of-school children of primary and lower secondary school age currently live in countries affected by conflict (UNESCO Institute of Statistics, 2016). And in disaster and conflict, the most vulnerable are hit the hardest. Conflict widens education inequalities, with wealth-based and gender disparities particularly impacted. Even though natural disasters do not ‘pick their victims’ based on ethnicity or gender, history consistently shows that women and girls suffer disproportionately in these types of crises.

The international community is being called upon to respond to enormous challenges—historic levels of displacement, increasingly complex and protracted crises; the average duration refugees spend outside their country at more than 10 years with some refugees having spent over 20 years in exile (Devictor, 2016). Despite being prioritised by families in these circumstances, education is often the first service suspended and the last service restored.

Education brings a sense of hope, dignity and normalcy to families who have suffered unimaginable horrors. For those worst affected, it is a lifeline and a continuous layer of protection that equips communities to positively shape their future. Education has the power to break the cycles of poverty, injustice, and inequality, that fuel crises in the first instance. The numbers indicate a worsening situation. The number of people affected by natural disasters is projected to increase by 50 per cent by 2030 compared to 2000-15, while violent conflicts have increased sharply since 2011 (Education Commission, 2016). This is particularly important, considering that currently half of the countries emerging from violent conflict relapse into conflict within five years (Mueller, Piemontese & Tapsoba, 2017). Higher education levels, particularly when education supports student participation and the expression of differing opinions, tend to lead to higher civic engagement, understanding of and support for democracy and conflict resolution, participation in civic life, tolerance for people of different races or religions, concern for the environment, gender equality, and adaptation

to climate change.

Our capacity and willingness to respond to crises is thankfully growing. In 2016, global humanitarian funding for education in emergencies increased to a historic high of US\$433 million.<sup>1</sup> Further, in 2017, over US\$150 million additional funding for education in emergencies is coming through ECW. These successes should, however, not hide the fact that the needs are even larger—with a sobering estimated US\$8.5 billion financing gap to reach SDG4 for children in crisis contexts.

ECW is undeterred and has tailored mechanisms to reach crisis-affected children. ECW operates a first-of-its-kind catalytic pooled fund, which provides seed funding to prioritise education in crisis-affected countries. This approach encourages in-country governmental and non-governmental education actors to join forces to develop and implement contextualised, holistic, and sustainable education programmes. ECW seeks to go beyond ‘business as usual’ and promote the use of better disaggregated data and the measurement of beneficiary outcomes such as completion, learning achievement, or socio-emotional learning.

Through the **First Response Window**, the fund provides support to cope with rapid onset or unforeseen crises, and provides funding for up to a year to help the country recover from the crisis. This window is activated within a short timeframe, typically within four weeks from the start of an emergency. ECW has allocated US\$1.9 million to help ensure continuous access to quality learning for the children most affected by the flooding in Nepal in August 2017, which has impacted 1.7 million people in 75 districts with 460,000 people displaced. The floods have destroyed 80 schools and damaged a further 710. ECW’s funding will support up to 50 per cent of the emergency education response until February 2018, as defined in the joint Nepal Response Plan issued by the UN Resident Coordinator.

The **ECW Multi-Year Resilience Window** is designed for protracted crises and provides sustained funding support, typically for a duration of three to five years, to help bridge the divide between acute emergency response and longer-term education system strengthening. It provides multi-year funding in high-need protracted crises for joint proposals developed by a broad coalition of actors. This window may require several months for joint assessment and planning. The fund selected Syria as one of its initial investments in response to protracted crises and the US\$15 million grant aims to provide a strategic approach to address the severe and complex education needs inside Syria, as agreed by both by the Whole of Syria (WoS) education coordination mechanism and the Syria Education Development Partners Group (DPG). The result of this collaboration has been the establishment of the Syria Education Dialogue Forum to ensure a unified and cooperative approach, and to resolve strategic and technical education issues.

Through these two funding windows, ECW has targeted 3.4 million children in its first few operations. The fund is firmly on track to exceed its first-year programmatic goals, with rapid response times and more predictable funding underpinning this initial success.

We know that education is the cornerstone of development, peace, and security, and that the return on investment in terms of human capital, stability, and prosperity, is unrivalled. While crises themselves are the greatest barriers for children to access their right to education, only our inaction will threaten our progress, not crises alone. Jointly with government partners, humanitarian and development actors, such as the Global Partnership for Education, UN agencies, the World Bank, NGOs and civil society, we strengthen political commitment, cooperation, quality, accountability, and financing for education in emergencies and crisis.

ECW has embodied the principles of the Agenda for Humanity, the values of the UN and the energy of our supporters. This is evident in how we are structured—lean and agile—and how we respond, moving with humanitarian speed and development depth. Donor support has fuelled our determination to create a world where no children will have their education interrupted because of crisis. As the UN Special Envoy for Global Education, Gordon Brown, so aptly states: “education is the civil rights struggle of our time.” ECW responds to a call to action on behalf of the 75 million children in crisis situations who want, need, and have a right to an education. Investing in their education means investing in our shared humanity.

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## Part 5

# Private Actors and Privatisation



# Beyond Slogans, Putting the Right to Education in Practice: Defining Human Rights Guiding Principles on Private Actors in Education

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## Summary

A human rights analysis of the involvement of private actors in education demands a nuanced approach that finds a balance between potentially conflicting dimensions and liberties. This article discusses the work done by the Global Initiative for Economic Social and Cultural Rights (where the author is working) and the Right to Education Initiative on how the right to education applies to instances of privatisation.

## Keywords

Right to Education  
Private Actors in Education  
Civil Society Movement

The right to education is referred to, and claimed in, many spaces, from global declarations<sup>1</sup> and institutional donors<sup>2</sup> to advocacy organisations.<sup>3</sup> It is also one of the best protected rights in international law through a range of legally binding treaties, including the quasi-universally ratified Convention on the Rights of the Child,<sup>4</sup> which has two provisions dedicated to this right.<sup>5</sup> However, references to the right to education are often general and symbolic. It remains a poorly understood right, which is rarely applied to the complex issues that affect its implementation.

Since 2013, a group of international and national civil society organisations (CSOs) have been working to put the right to education in to practice, with regards to the involvement of private actors to education. This ongoing experience is rich in both the substance of the issue and the lessons learned, in terms of the process of applying the right to education in practice. It has taken place through three partly overlapping phases, which will be discussed in turn.

## The Basis: Unpacking the Legal Content and the Understanding of the Right to Education

The question of the involvement of private actors in education from a human rights perspective is particularly interesting and challenging, as international treaties protect both what has been termed (Aubry & Dorsi, 2016) the ‘social-equality’ dimension of the right to education, which requires states to ensure quality education for all without discrimination and segregation, and the ‘freedom’ dimension, which protects the parents’ liberty to choose or set up a school, other than the state’s (UN, 1996). As is the case with many other issues, the human rights analysis of the involvement of private actors in education demands a nuanced approach that finds a balance between potentially conflicting dimensions and liberties.

To do so, several organisations, including the Global Initiative for Economic Social and Cultural Rights (where the author is working) and the Right to Education Initiative, both of which are human rights organisations, have been working on a set of initiatives to define how the right to education applies

to instances of privatisation. This has involved three sets of parallel activities. The empirical side of the work has consisted of conducting research at the national level, essentially by reviewing the laws, policies, and secondary literature, to assess the reality of some states against the human rights framework.<sup>6</sup> Drawing from an inception research piece in Morocco,<sup>7</sup> reports were produced jointly by national and international organisations in a dozen additional countries. Each of those reports were presented before United Nations (UN) and regional human rights treaty bodies, as part of the periodic review process that each state party to international human rights treaties must go through every four to six years. These reviews, during which these treaty bodies examine evidence presented by the state and CSOs, have been obtained through over 20 concluding observations addressing the role of private actors in education.<sup>8</sup> Such concluding observations are quasi-legal interpretations of the right to education, which help to understand how it applies to particular situations. For instance, the UN Committee on the Rights of the Child (CRC) recommended that Brazil “establish a clear regulatory framework, under which all private education providers are obliged to report regularly to designated public authorities on their financial operations, in line with prescriptive regulations, covering matters such as school fees and salaries, and to declare, in a fully transparent manner, that they are not engaged in for-profit education (CRC, 2015).”

In the meantime, the theoretical phase of this work has consisted of reviewing the literature, jurisprudence, the treaties’ *travaux préparatoires* (negotiation history), and other theoretical legal sources. Since 2013, different documents have been produced out of this work, including case law summaries, a review of laws and policies on private education, etc.<sup>9</sup> Civil society has also increased its non-legal understanding by analysing the impact of the privatisation of education from a non-legal perspective, such as the Global Campaign for Education’s review of the literature on low-cost private schools (Global Campaign for Education, 2016) and by increasingly working and connecting with the academia, particularly at conferences, such as the Comparative and International Education Society (CIES) annual conference. In addition, the former UN Special Rapporteur on the Right to Education (Singh, 2014; 2015a; 2015b) produced three reports on the issue.

Adding to the empirical and theoretical phases of work, growing mobilisation has taken place through a series of regular meetings between organisations. In 2014 and 2015, two foundational meetings in Geneva allowed organisations to discuss key issues, thus improving the dialogue and understanding between organisations on this topic.<sup>10</sup> This is also where the three-phase strategy discussed here was collectively devised. This process, which is both legal and political, gave rise to an initial, broadly accepted tool to assess the existence or growth of private actors in education against human rights standards,

called the Privatisation in Education Assessment Framework (PAF). The PAF lists five areas that should be assessed when private actors are involved in education, as they are legally protected by the right to education and cannot be undermined:

1. equality, non-discrimination and segregation;
2. free quality education;
3. the humanistic nature of the right to education;
4. adequate regulations;
5. due process.

The PAF has been reviewed several times, accompanied with a methodological guide,<sup>11</sup> and used in several instances to assess particular cases, including to analyse data on a chain of schools.<sup>12</sup> It was eventually formalised in an academic article published in the Oxford Review of Education (Aubry & Dorsi, 2016).

### **Preparing for Action: Consolidating the Normative Framework and Building a Movement**

While the PAF provides a good initial grounding, it is a limited tool for assessing reality and does not have a comprehensive approach to the issue. It also lacks the full weight and legitimacy of a legal text. As a result, it has limitations with regards to the practical implementation of the right to education, for instance, for litigation purposes.

Hence, the next step of the work has been to solidify the initial unpacking of the human rights framework conducted in the first phase. A key means to do so has been the definition of the Human Rights Guiding Principles on State’s obligations regarding private actors in education (hereafter, ‘Guiding Principles’; the title is still being discussed at the time of writing).<sup>13</sup> The aim of these Guiding Principles is to further unpack and solidify the existing human rights law protecting the right to education. Through a series of consultations, expert inputs, and meetings, they seek to develop a sound understanding of the legal framework that can be used by judges, policy-makers, and practitioners. This process is facilitated by five organisations as part of a secretariat (i.e. Amnesty International; the Equal Education Law Centre; the Global Initiative for Economic, Social and Cultural Rights; the Initiative for Economic and Social Rights; and the Right to Education Initiative) and which should end with the adoption of a text by a group of experts by the end of 2018.

In parallel, advocacy efforts have also gained momentum and provided the political basis for changes in decision-making. In a series of three resolutions (2015, 2016, 2017), the UN Human Rights Council (HRC), the highest UN political body for human rights matters, increasingly addressed the role of private actors in education. The 2015 resolution built on the report of the UN Special Rapporteur on the Right to Education, presented that year and called for adequate monitoring and regulation of private actors and research on the impact of commercialisation.

The 2016 and 2017 resolutions were remarkable as they addressed the issue without drawing on any particular report from the UN Special Rapporteur, and they became part of the core language in the annual resolution on the right to education. Further, they also expanded the language. The 2016 resolution explicitly called to “address any negative impacts of the commercialisation of education,”<sup>14</sup> and the 2017 version demanded “independent assessments” of education models.<sup>15</sup> Over the years, in response to the scepticism of a few states, particularly the USA, the UK, and Mexico, several states have become more vocal in defending the inclusion of this issue in the annual HRC resolution on the right to education.

Supporting these political evolutions, CSOs have started organising themselves into an informal consortium. Building on early meetings in Geneva, CSOs met in London (2015), Nairobi (2016), and Kathmandu (2017), as part of an informal network regrouping nearly 50 organisations, from the international to the local. This loose movement, which aims to complement and add value to existing networks, has been instrumental in articulating and coordinating strategies among actors working on the topic and rapidly responding to key worrying developments, such as the unchecked growth of Bridge International Academies.<sup>16</sup>

An example of this movement’s influential and mobilisational power is the Francophone network against the commercialisation of education, which is part of the aforementioned global consortium.<sup>17</sup> This network gathered over 300 signatures across Francophone countries on a Francophone Civil Society Call Against Commercialisation of Education,<sup>18</sup> which led the 57 heads of states of the Francophone organisation to include a paragraph calling for the regulation of private schools in an annual declaration.<sup>19</sup>

## Conclusion: Lessons Learned and Next Steps

The last, and perhaps the most important, phase of the work will be to turn the normative development and political impetus mentioned above into concrete policy instruments and changes for the affected communities. The momentum gained until now and the adoption in 2018 of the Guiding Principles will enable the use of more tools for the implementation of the right to education. For instance, the normative clarification provided by the Guiding Principles will make possible the full use of strategic litigation where privatisation involvement in education violates human rights, which groups such as the Equal Education Law Centre have already started on a small scale in South Africa.<sup>20</sup> It could also enable larger protests and mass movements of communities whose right to education is being negatively affected by the privatisation of education, reinforcing, for example, the mobilisations of teachers’ unions where labour rights are undermined by privatisation.

Nevertheless, the progress already made so far, in just a few

years, cannot be overstated, and some changes have already started to happen in 2017. For instance, France has changed its policy to include the response to the commercialisation of education as a priority in its 2017-2020 education strategy for development aid, which could have a major political impact and affect the use of millions of dollars for education.<sup>21</sup> The normative developments have also started to find a place in official interpretations, such as the UN Committee on Economic Social and Cultural Rights’ (2017) General Comment 24, which addresses privatisation issues in two seminal paragraphs i.e. 21-22. Meanwhile, some schools failing to respect minimum standards are being closed in Uganda and Kenya.<sup>22</sup>

The last four years have demonstrated how civil society can participate in shaping the meaning of a right and its implementation, in a relatively short time and with limited resources. This progress has been made possible thanks to the combination of three elements, which would probably apply to other areas of the right to education. Firstly, it needed to work on the normative clarification of the meaning of the right for a particular area, private actors in education, which is the necessary basis for the use of human rights tools, such as litigation, and to mobilise the civil society at large. Secondly, the organisation of diverse CSOs—involving both human rights and other sectors—into a light, flexible, and informal structure that complemented other existing initiatives, which took the form of a consortium, has been essential. And thirdly, no dynamic would be possible without building a positive political dynamic among states, reflected, for instance, by the changing politics at the UN Human Rights Council.



## Endnotes

1. For example, Education 2030: Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4, [http://uis.unesco.org/sites/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en\\_2.pdf](http://uis.unesco.org/sites/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en_2.pdf), p. 10, 28, 30, 31, 44, 46, 57, 65, 70.
2. See, for example, <https://www.norad.no/en/front/thematic-areas/education/right-to-education/>
3. For example, <https://www.unicef.org.uk/rights-respecting-schools/the-right-to-education/>
4. [http://www.ohchr.org/Documents/HRBodies/CRC/OHCHR\\_Map\\_CRC.pdf](http://www.ohchr.org/Documents/HRBodies/CRC/OHCHR_Map_CRC.pdf)
5. UN General Assembly, Convention on the Rights of the Child, 20 November 1989, Retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.
6. See generally <http://bit.ly/privatisationproject>
7. See <http://bit.ly/privatMaroc>
8. See <http://bit.ly/synthesisprivatisation>
9. See <http://www.right-to-education.org/issue-page/privatisation-education>
10. For example, <http://www.right-to-education.org/blog/civil-society-organisations-discussed-privatisation-and-right-education-during-human-rights>; <http://globalinitiative-escr.org/human-rights-council-side-event-human-rights-policy-responses-to-the-growth-of-private-actors-in-education/>
11. See [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE\\_GIESCR\\_Methodological\\_Guide\\_Privatisation\\_and\\_Human\\_Rights\\_2016\\_En.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_GIESCR_Methodological_Guide_Privatisation_and_Human_Rights_2016_En.pdf)
12. See <http://bit.ly/2h2Vizs>
13. See more on <http://bit.ly/GPprivatisation>
14. See <http://globalinitiative-escr.org/historic-un-resolution-urges-states-to-regulate-education-providers-and-support-public-education/>.
15. See <http://globalinitiative-escr.org/new-un-resolution-urges-again-states-to-take-action-on-commercialisation-of-education/>.
16. See <http://bit.ly/statementWBprivatisation>
17. See <http://nevendezpasleducation.org/>.
18. See <http://nevendezpasleducation.org/wp-content/uploads/2017/07/CallFINALVERSION.pdf>.
19. See <http://globalinitiative-escr.org/57-head-of-states-signed-a-declaration-without-precedent-against-commercialisation-of-education/>.
20. See <https://eelawcentre.org.za/portfolio-posts/right-protest-challenging-regulations-gatherings-act-2/>.
21. See <http://globalinitiative-escr.org/france-commits-to-act-against-commercialisation-of-education-in-international-cooperation/>.
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# Section 12(1)(c) of the Right to Education Act, 2009: Ensuring Diversity or a Private School Voucher System?

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## Summary

In this article, the authors examine the changing contours of public debate on and support for the implementation of Section 12(1)(c) of the Right to Education Act (RTE Act), 2009, in the state of Karnataka. It asks if this particular provision is a diversity enhancing inclusion device or if it has become a voucher system for the promotion of private school education.

## Keywords

Right to Education  
Social Inclusion  
Voucher System  
India

The Constitution (86<sup>th</sup> Amendment) Act, 2002, introduced Article 21.A, making the right to education for children aged 6-14 a fundamental right. Parliament enacted the Right of Children to Free and Compulsory Education Act (RTE Act), 2009, as an enabling legislation to realise this right. This law came into force in April 2010. Since 2010, the RTE Act has been implemented in various states through slightly different programmes. In this essay, we explore the changing contours of public debate on and support for the implementation of *Section 12(1)(c)* (hereafter '*12(1)(c)*') of the RTE Act in the state of Karnataka. In particular, we assess the ongoing debates about whether this provision achieves its original intention as a diversity enhancing inclusion device, or if it has become a voucher system for the promotion of private school education. We begin with a brief overview of the legislative motivation to include 12(1)(c) in the RTE Act.

The RTE Act introduced many far-reaching changes to the Indian school education system. While historically, advocates of universal primary and secondary education in India argued for a common public school system as the institutional mechanism to deliver education as a right, the government chose an intermediate strategy that placed a primary obligation to provide free education on the state school system, and a secondary obligation on private unaided schools to accommodate students from disadvantaged sections of society through quotas. Section 12(1)(c) mandates all private unaided schools in the country to reserve 25 per cent of their seats at the beginning of school (at class 1 or pre-school education) for children belonging to economically weaker sections (EWS) and disadvantaged groups (DG). These schools are mandated to provide free and compulsory education up to class 8 and are assured reimbursement of the actual fee paid or the per-student expenditure by the state government, whichever is lower. The Ministry of Human Resources Development (MHRD), in a 'Clarification on Provisions of the RTE Act', offered three reasons for such a provision: first, to promote inclusive education by enabling children from different backgrounds to share knowledge and learn from one another in a common space; second, to enhance pedagogical goals, as inclusion across classes, genders, and castes leads to a higher quality of learning for all; and third, to achieve

social justice, fraternity, and equality of opportunity, all of which are enshrined in the Constitution. The long-term goal of the policy was to strengthen social cohesion by getting children from different classes, castes, and genders to sit, eat, and live together, during the formative years of their lives. To achieve these wide social and educational goals, 12(1)(c) mandated a role for the private sector to ensure equitable schooling. Not surprisingly, 12(1)(c) was the subject of intense public debate and legal challenges.

When the Act was brought into force, various private schools, individually and through associations, challenged the constitutional validity of the RTE Amendments and the Act. While they were generally opposed to the RTE Act itself, they were particularly focused on the effects of 12(1)(c) as it regulated their rights to select and admit students of their choice. Two important cases were decided by the Supreme Court: *Society for Unaided Private Schools of Rajasthan vs. Union of India* ((2012) 6 SCC 1) and in April 2012 *Pramati Educational and Cultural Trust vs. Union of India* (W. P. (C) 416 of 2012). The petitioners in both cases claimed that 12(1)(c) placed unreasonable restrictions on their fundamental freedom to establish and run a school and that the State's obligations to provide free and universal schooling could not be transferred to private parties. The State defended the provision as an equality and social diversity enhancing device and argued that private schools did not enjoy a fundamental right to do business in education. Intervenor took diverse views. The Azim Premji Foundation supported the State's argument and emphasised the pedagogical and educational goals that could be met by such a provision. The Supreme Court upheld the RTE Act generally, and 12(1)(c) in particular. It accepted the social diversity and educational objectives of the provision and confirmed that the Indian Constitution permitted the horizontal application of fundamental rights to private citizens. However, the court confined the application of 12(1)(c) to aided and unaided non-minority institutions. It excluded minority institutions, as such a quota would erode the special protection to minority educational rights in the Constitution. Though minority educational rights do indeed enjoy special protections in the Constitution, this regulatory

gap has created incentives for schools to rebrand themselves as minority schools, thereby igniting another round of potential litigation over the definition of minority schools.

The Supreme Court's imprimatur on 12(1)(c) shifted the focus from justification to implementation. State governments developed specific programmes for the implementation of these provisions. State policy had to identify the schools obligated under the provision, define and identify the 'disadvantaged groups' and 'weaker sections' who could apply, determine the benefits that such applicants would receive, as well as the quantum and periodicity of reimbursement that the schools would receive. The states have developed different approaches to these policy design choices and several studies have catalogued and indexed these approaches. While some studies have attempted to frame national indices to measure implementation, others have focused on more detailed case studies of a few states. In this essay, we approach these issues within a narrow frame: we assess whether the shifting discourse on 12(1)(c) in Karnataka is justified given what we know about the implementation of the policy in Karnataka.

Karnataka was one of the first states to implement the RTE Act and is widely regarded as a state that has embraced the RTE Act in full measure. The grandiosely titled *State of the Nation on 12(1)(c)* (Dongre, Sarin, & Wad, 2017) does not list the State of Karnataka as either having the most progressive rules and processes (p. 23) or the highest seat-filled rates (p. 24). However, it does have among the highest number of students utilising the provision to secure admissions in unaided private schools among the states. Moreover, it has significant parent mobilisation and vibrant political and civil society responses to the aggressive implementation of the RTE Act. Hence, it is appropriate to evaluate the implementation of section 12(1)(c) in Karnataka to garner insight into the likely evolutionary path for this policy. The provision was implemented in 2012, so five years of implementation has been completed in 2017. Most existing studies cover the period up to 2015, and in this essay, we briefly survey the available data on the implementation of this provision across five years.

**Table 1: Enrolment Figures in Grade 1 in Karnataka**

Year	Enrolment: government school	Enrolment: private unaided school	Potential 12(1)(c) seats at 25 per cent of grade 1*	Actual enrolment under 12(1)(c) in grade 1**	Total enrolment in grade 1*	Percentage (%) of total students enrolled under 12(1)(c) in grade 1*
2012-13	6,91,424	4,56,102	1,14,025	43,626	11,47,526	3.8
2013-14	6,73,874	4,60,000	1,15,000	48,864	11,33,874	4.3
2014-15	6,44,696	4,92,479	1,23,119	53,189	11,37,175	4.6
2015-16	6,24,895	5,11,730	1,27,932	50,638	11,36,685	4.4

Sources: Karnataka UDISE data. | \*Calculated using Karnataka UDISE data | \*\*Department of Public Instruction

Note: Figures are for primary sections and do not include pre-primary.

We had noted earlier that there have been two primary concerns with the implementation of 12(1)(c). First, whether it is creating incentives for enrolment in private schools as opposed to public schools. In Table 1, we notice that the number of seats available and the number of students admitted to class 1 under 12(1)(c) is steadily increasing in Karnataka. It peaked in 2014-15 with 53,189 students, amounting to 4.6 per cent of all students in class 1 that year. There is a minor dip in 2015-16, but unless we have data from later years, it is difficult to discern if this is a trend.

Contemporary debates on section 12(1)(c) have focused on the effect of the provision on public school enrolment. So it is useful to begin by situating this debate in the context of overall enrolment in class 1 across schools in Karnataka, as set out in Table 1. While in 2012, the ratio of enrolment between government and private

schools was approximately 60 per cent to 40 per cent, by 2016, government school enrolment in class 1 in government schools was down to about 52 per cent, and private school enrolment had gone up to about 48 per cent of total enrolment. However, analysis of enrolment data from years prior to the RTE Act show the decline in government school enrolment had begun long before the RTE Act was passed. 12(1)(c) may have contributed to this decline, but as the percentage of students admitted under the provision is less than 5 per cent of the total number of students enrolled in class 1, it is not the decisive element that establishes the overall pattern of student enrolment in government and private schools. However, if we assume that all of these students would be in a state school if not for the 12(1)(c) quota, this 5 per cent may raise private school enrolment in class 1 above 50 per cent.

**Table 2: Section 12(1) (c) Expenditures**

Year	Maximum per student costs* (in INR)	Total annual RTE reimbursement** (in INR crore)	Education budget (elementary and secondary education)*** (in INR crore)	Percentage (%) of budget used on 12.1.C reimbursements
2012-13	11,848	21	15,071	0.1
2013-14	11,848	72	15,680	0.4
2014-15	11,848	160	17,425	0.9
2015-16	11,848	204	16,204	1.2
2015-17	11,848	241	17,373	1.3

\*Lok Sabha Starred Question No. 311, Answered on 21<sup>st</sup> December 2015 | \*\* (Kulkarni, 2017) | \*\*\*GOK Finance Department.

Note: Figures are for primary sections and do not include pre-primary.

The second concern in Karnataka has been whether the 12(1)(c) quota is effectively a voucher system, transferring a significant part of the state education budget to the private sector. Recently, the Karnataka Minister in charge of Primary Education remarked that he was inclined to roll back 12(1)(c) implementation as it threatened the education budget in Karnataka. In Table 2, we set out the budgetary implications of the 12(1)(c) policy. Significantly, the maximum per child state expenditure has been held constant across the last five years. There are serious doubts about how this amount was determined in the first place, and it has not been revised in subsequent years. The Education Department has spent Rs. 685 crores (US\$106 million) on RTE reimbursements to private schools cumulatively from 2012 to 2017. Reimbursements started at Rs. 21 crores (US\$3.2 million) in 2012-13 and have grown steadily to Rs. 241 crores (US\$37 million) in 2016-17 (Kulkarni, 2017). These expenditures will continue to rise until the first cohort of students admitted under 12(1)(c) reach class 8 in 2019, after which it is likely to plateau with minor increases.

While these are not insignificant expenditures, reimbursements comprise less than 2 per cent of the total education budget in

all years. In 2017-18, the fee reimbursement ceiling has been increased to Rs. 16,000 (US\$250) per student and the cumulative expenditure is estimated at Rs. 425 crore (US\$66 million). Despite a substantial increase from 2016-17, it is less than 2 per cent of the state education budget of Rs. 18,266 crore (US\$2.8 billion) in 2017-18. We noted earlier that up to 5 per cent of students entering class 1 are utilising the state reimbursement facility. As this 5 per cent is calling on only about 2 per cent of the state budgetary allocation to primary education, there does not appear to be a cause for moral or political concern that this is corrosive of the overall budgets for public education.

Recent academic and policy work on 12(1)(c) of the RTE Act has reached widely divergent conclusions. Geeta Kingdon has recently argued that 12(1)(c) type quotas should be mainstreamed and evolve into a new suitably designed public-private partnership system, where the State funds the private delivery of superior education outcomes at lower costs (Kingdon, 2017, p. 30). Mehendale and others make measured policy recommendations for the better implementation of these provisions based on their analysis of implementation in Bangalore and Delhi (Mehendale,



Mukhopadhyay, & Namala, 2015). However, the political leadership, and some academic voices, have now come to portray this provision as the thin end of the wedge for the privatisation of school education in India. Dr. V. P. Niranjana Aradhya suggests that the RTE Act has resulted in shutting down of government schools and a mushrooming of low-cost private schools, where the quality of teaching is not as good as in government schools that employ qualified teachers. Aradhya argues that the money used to reimburse private schools should instead be diverted to improving the infrastructure of government schools (Buradikatti, 2015).

While this essay does not settle these sharp debates, it reveals the changing contours of the debate on 12(1)(c) in Karnataka. The elite private school sector, which was initially keen to declare the RTE Act unconstitutional and avoid it altogether, have now given way to a growing private unaided low-cost school sector that is embracing the RTE Act and seeking better implementation of the 12(1)(c) provision in Karnataka. The political class, and some sections of civil society that had initially embraced the RTE Act fully, now seek to either cap the reimbursement of the private sector or do away with 12(1)(c) altogether.

The available evidence on the implementation of 12(1)(c) from Karnataka provides a reasonable basis to review these competing claims and understand the shifting positions in this area. While 12(1)(c) enrolment numbers in Karnataka are significant, they are not rising alarmingly, as more than half the available seats remain unfilled due to parental choice or bureaucratic apathy. In any event, the 12(1)(c) enrolment does not exceed 5 per cent of students enrolled each year, and hence will not decisively shift the balance towards private school enrolment. Secondly, we show that despite the political alarm bells, the government expenditure on this programme is less than 2 per cent of the State's primary and secondary education budget and does not lead to a stark misallocation of public education resources. Though this expenditure is likely to rise until 2019 before it stabilises, it is unlikely to have a significant budgetary impact.

There is no reason to suggest that a significant part of 12(1)(c) enrolment fails to achieve the original social inclusion and pedagogical goals that motivated the provision; a conclusive demonstration would require careful longitudinal analysis of student cohorts. There is also evidence to suggest that this policy supports some parental choice to admit their wards into the private school system and may have the unintended consequence of enabling some parents to exit the public school system. However, enabling parental choice through 12(1)(c) implementation will enhance the resources available to spend on the state school system, as the programme is relatively inexpensive and not a significant drain on the state budget. Seen in this light, current evidence suggests that 12(1)(c) implementation may well serve both intended and unintended purposes in a manner that ultimately advances the state education sector.

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# Implementing the Right to Education: Creation of ‘Knowdents’

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## Summary

This article describes the implementation challenges of admissions and inclusion of children from disadvantaged and economically weaker sections mandated under the Right of Children to Free and Compulsory Education (RTE Act), 2009, in India. It also highlights the role of students and community volunteers and new forms of citizen engagement in implementing such mandates.

## Keywords

Private Schools  
Civic Engagement  
‘Knowdents’  
India

## Introduction

Under the Right of Children to Free and Compulsory Education, 2009 (RTE Act), the Indian State accepted an obligation to make schooling accessible and compulsory for children between the ages of 6-14 years. In a rather controversial provision (Section 12(1)(c)), the act also mandated that unaided private schools admit at least 25 per cent of their children at the entry level from sections of society deemed to be economically weak and disadvantaged, at no cost to the students. In turn, the State promised to reimburse schools an amount equal to either the per child expense incurred by the government or the school fee, whichever is lower. The reimbursement rule implied a financial burden (in terms of lost revenues) for schools whose per child expenditure exceeded what the government claimed to spend in its schools, but more significantly, threatened the underlying logic of private enterprise, to select ‘customers’ based not only on the customer’s ability to pay but also of the school’s choice (Sarin & Gupta, 2013). Contested in the country’s highest court, the mandate was deemed to be constitutional and aligned with the obligations that the private providers had accepted when they were allowed to set up their schools.

With private schools schooling a significant proportion of the children in India, the mandate could potentially impact 20 million children.<sup>1</sup> Critics of the mandate have derided it for doing too much, by unfairly interfering in the running of private schools, as well as for doing too little, by not shutting down private schools completely. The latter see the mandate as an instrument that brings in vouchers and encourages the growth of private schools. In the cacophony around the desirability of the mandate, what remains hidden is the poor state of its implementation. Of the 36 states and union territories (UTs) in India, only 11 states and one UT have reportedly sought funds as per procedures.<sup>2</sup> While ‘implementation failures’ might be seen as natural in a ‘flailing’ state such as India, the lack of attention to the mandate’s implementation is not surprising, given that the potential beneficiaries have had no voice in debates and discussions. In this article, we draw on our experiences of engaging in the implementation process, as part of an action research project at the Indian Institute of Management, Ahmedabad, under the

rubric of the Right to Education Resource Centre (RTERC) over the last four years. As part of this, we also led collaborative efforts to assess the national implementation of the mandate (Sarin et al., 2015; Sarin et al., 2016; Sarin, Dongre, & Wad, 2017). We draw on findings from these reports to reflect on the challenges in implementing the mandate.

## Local Engagement

RTERC's engagement began by studying the status of implementation in the city of Ahmedabad, where we are located. In part, we were motivated to bring the benefits of the RTE Act to children living in communities around the Indian Institute of Management. A select few of these children were already being supported in their private schooling by an inhouse student run initiative, which also supported after-school studies.<sup>3</sup> Despite the existence of reasonably well defined (but hardly publicised) rules and guidelines for the city of Ahmedabad, there was little or no implementation. In contrast to over 25,000 children who could have been availing the mandate (by the size of the unaided private school sector), the government disclosed that only 32 children were doing so. Incredulously, the explanation provided was a lack of demand. Surveying the potentially eligible communities immediately around us—the 'right holders'—suggested a complete absence of any knowledge about the mandate.

Our efforts to enter into a dialogue with the private schools, which should have been admitting children under the mandate, were met with reactions that ranged from indifference to expressions of enthusiasm, tempered with the argument that they too were uninformed about the processes and that the responsibility of policy implementation ultimately lay with the government. Of the nearly 50 schools that we reached out to, only one school had proactively responded, by not only having conversations with existing parents, but also admitting children according to their understanding of the mandate. Given that the government's information, education, and communication efforts amounted to a small, nondescript advertisement run once in the year in a local newspaper, the lack of a public discourse about the mandate was not surprising. However, what was surprising was the near absence of any civil society mobilisation or efforts around the mandate.<sup>4</sup> For a rights-based mandate to translate to anything beyond words on paper it needs demands on the State to fulfil its obligations. Unfortunately, the 'duty holders' seemed to be missing.

In this milieu, we saw both a role and a potential for higher education institutions in the implementation of a rights-based mandate. Mobilising students from academic institutions across the city, in the first year we reached out to potentially eligible communities, both through existing community-based organisations and directly. In the process we also discovered individuals within communities, who, enthused by what the mandate could provide, selflessly took on the task of assisting

others. Leveraging the privileged position of an eminent academic institution, we simultaneously worked with the government by communicating grievances from the field, asking questions, and seeking clarifications that were then disseminated. The on-field efforts were conducted even more systematically in the second year, when we worked with over 150 student volunteers to participate in information, education, and communication activities. Our involvement with the local municipal simultaneously deepened, with us being invited to be involved from the initial stages of dissemination. In subsequent years, we also reached out to local ward councillors, who are locally elected representatives. One of the ward councillors conducted a 75 km, three-day *padyarta* (march on foot) across 26 of the 48 wards in Ahmedabad. The 60,000 pamphlets that he distributed, and the extensive resources he deployed for the campaign, also pointed to the potential of engaging with elected representatives under a rights-based approach. Over time, as information continues to be spread through word-of-mouth, we at RTERC decided to curtail our efforts from dissemination towards being a watchdog and looking at other systemic issues. Our engagement with the government did not prohibit us from supporting a public interest litigation challenging some of the implementation problems.

## National Assessment

Nationally, we find that while some states (e.g. Rajasthan, Karnataka, Madhya Pradesh, and Delhi) have taken significant steps towards the mandate's implementation, others such as West Bengal, Punjab, and Telangana, seem to have done little. For the 2014-15 school year, the fill rates (percentage of eligible seats reported filled) varied from around 44.6 per cent in Delhi to 0 per cent in Andhra Pradesh, and the school participation rate was the highest (63 per cent) in Rajasthan. While some schools have seen in the mandate an opportunity to increase diversity in schools (Indus Action, 2014), others continue to defy not only the State but also the judiciary (Pandey, 2017). The State's inactions against the schools point to the political economy of schooling, in which private actors play an increasing role.

Many states have moved to adopting information technology-based platforms for managing the application and selection process. While these promise greater transparency and more efficient data management, they have also implied exclusions and the increase in commercial intermediaries who exploit the limited knowledge that potential right holders have with both the policy and the online platform. Accompanying the exclusions are also complaints of ineligible inclusions, with increased instances of using false documents coming to light. Unfortunately, the burden of these institutional failures is almost passed onto the parents, with little acknowledgement of the State's own complicity. The failure of the State to inform citizens of their rights, and to address the increasing issue of corruption, questions the underlying motivations.

## Creating ‘Knowdents’

The success of the rights-based approach demands translation from a global, transnational concept into the language of the community (Chanock, 2002), and there is a critical role for intermediaries in this process. With conventional civil society organisations increasingly morphing into service delivery agencies, a rights-based approach that apparently puts them in conflict with the State might appear non-rewarding and risky to many of them. Not surprisingly, critics of the rights-based approach argue that it might fail to resonate with citizens (Joshi, 2010), a phenomenon that we experienced as well. However, this does not imply a jettisoning of the approach. Instead, we believe rights-based approaches need new forms of civic engagement and to provide an opportunity for doing so.

In the most recent admissions cycle, more than 20,000 children have been admitted to schools under the RTE Act mandate in Ahmedabad, according to government claims (Times News Network, 2017). While attributing any credit is fraught with challenges (and perhaps unnecessary), our experience points to the contribution that students made as ‘knowdents’<sup>5</sup>—a term that is meant to convey knowledgeable students as well as which deliberately invokes the gnawing behaviour characteristic of rodents—in the implementation of a rights-based legislation. In the case of Section 12(1)(c) of the RTE Act, the rights-based legislation lays out a relatively clear framework. The framework provided a platform for students to impact the community around them by informing potential populations of their rights and how to avail them. In doing so, the framework also enabled students to enact their citizenship by furthering a constitutional mandate. What was essential was also the act of being persistently present, questioning, and gnawing at the State’s indifference to fulfil its obligations.

## Endnotes

1. The estimates of the number of children in private schools vary considerably. The 20 million figure is derived from the National Sample Survey (2014) estimate of 27%, which is a conservative one.
2. Unfortunately, reliable data on the true implementation status of the mandate is lacking and data about actual fund flows is perhaps the safest way to measure the status of implementation.
3. The authors were then the faculty guide and student coordinator of the initiative.
4. Nationally, organisations such as Indus Action, Kagad Kach Patra Kashtakari Panchayat and Anudanit Shiksha Bachao Samiti were some of the few to engage with the mandate’s implementation. Their work was undoubtedly an inspiration and an influence for the RTERC, and as civic society actors, they were exceptional in their engagement.
5. The term ‘knowdents’ has been coined by the authors.

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# How the Privatisation and Commercialisation of Schools Undermines the Right to Education in India

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## Summary

This article elaborates the presence of a complex, well-networked assemblage of global actors who are heavily invested in the business and commercialisation of education. It challenges claims of such private schooling for the poor being profitable and being able to provide quality education simultaneously.

## Keywords

Privatisation  
Commercialisation  
Low-Fee Private Schools  
India

Private for-profit multinational corporations are making billions of dollars by charging poor families around the world to send their children to school. Governments are diverting significant funds and attention to what global corporations have posited as ‘the solution’ to the crisis in education, loosening regulations or outright ignoring the many violations of laws and standards by these multinational companies. Governments are also guilty of inviting corporations to run large segments of the education sector (from pre-school through university level). If education is a fundamental human right, why should the world’s poor be paying billions to multinational corporations for their education?

India is an emerging market for the global education industry, and corporations like Pearson, international chains like Bridge International Academies, foundations like Dell, Gates, and Omidyar, as well as international consultants and venture capital firms, have encouraged privatisation of the school sector, especially targeting low-income communities that represent, for them, a vast untapped market. Astonishingly, estimates from global rating agencies place the potential value of India’s education market at US\$110 billion. For decades, government-funded schools have suffered from lack of investment and neglect, creating a mass exodus of the working poor and middle class from public schools, leaving only the poorest and most vulnerable behind. The lack of political will to adequately finance public education has opened the door for the corporate sector to enter the education sector through the promotion of private for-profit schooling, e-learning, and public-private partnerships (PPPs).

In 2016, we co-authored a report for Education International, *Profiting from the Poor: The Emergence of Multinational Edu-businesses in Hyderabad, India* (Kamat & Spreen, 2016), that revealed the plans of global edu-businesses to invest in, grow,

and profit from education serving India's poor communities. In our research, we found that Pearson, and other key players in the global education industry, were positioning themselves as forerunners in this vast education market with significant profit potential. Inspired by Indian economist C. K. Prahlad's *Wealth at the Bottom of the Pyramid*, these multinational corporations have been eyeing profits drawn from poor parents who merely aspire to send their children to good schools, even if it costs dearly. With 68.7 per cent of the Indian population earning below US\$2 a day and 41.6 per cent of the population earning below US\$1.25 a day, the push toward private schools for the poor is a matter of serious concern. Our report explains how families spend about 30 per cent of their income per child on 'low-fee' private schools (also putting this option out of the reach of many families, further bifurcating an already stratified and unequal system). We argue that the commercialisation of education is in flagrant violation of India's Right to Education Act (RTE Act) and will only deepen inequality and undermine an already ailing education system.

Over the last two decades, private schooling has grown significantly in India. Alarming, enrolment in private schools is now over 50 per cent in Andhra Pradesh (AP) and Telangana and over 80 per cent in Hyderabad alone. *Profiting from the Poor* shows how, given the proximity of Hyderabad's information technology (IT) sector and density of low-fee private schools, this area has emerged as a laboratory for the global education industry to incubate and develop commercially profitable education products and services. To the multinational e-learning industry, Hyderabad is an 'edu-solutions ecosystem' and laboratory to test new models and technological solutions to be replicated around the country and in other developing economies. Our research reveals a complex, well-networked assemblage of global actors that are heavily involved in the business of education and stand to make a considerable profit from it. We challenge the multinational actors' claims that private schooling for the poor can be profitable while simultaneously promising quality education. Our research shows that, despite high expectations, low-fee private schools have not been profitable for the local proprietors nor have they delivered anything close to a quality education.

### Public vs. Private Schools and the Right to Education

India has the largest youth demographic in the world, and primary school enrolment has improved due to various government programmes and sustained interventions.<sup>1</sup> With enrolment reaching at least 96 per cent since 2009 and girls making up 56 per cent of new students, many problems related to access to schooling have been addressed. Yet, while gains have been made, this is clearly not enough. In many ways, schools have not been adequately resourced to handle the increasing school-going population. There is a teacher shortage of 689,000 teachers in primary schools, only 53 per

cent of schools have functional girls' toilets, and 26 per cent have no access to drinking water. Despite growth in enrolment, the quality of learning is a major issue and reports show that a majority of children are not able to read or understand mathematics after years of schooling. According to Pratham's ASER 2013 report, close to 78 per cent of children in grade 3 and about 50 per cent of children in grade 5 cannot yet read, and only 26 per cent of students in grade 5 can do division (ASER, 2014). Without immediate and urgent efforts on the part of the government and teachers, many children will not progress in the education system. Improving the quality of learning in schools is the next big challenge for the Indian government.

Due in large part to government neglect of government schools, private schooling has grown significantly in India, and in Hyderabad the ratio of government to private schools is nearly 1:4. While there are many types of private schools, it is the 'low-fee private schools', described as 'affordable schools' that are of primary interest to multinational investors. There are an estimated 1,300 low-fee private schools clustered in and around the Old City in Hyderabad. Children attending low-fee private schools are seen to be at an advantage, forming discrimination against the poor who are forced to go to underfunded and poorly maintained government schools. It is also estimated that 37 per cent of the country's population live below the poverty line and cannot afford even the cheapest low-fee private schools. On average, 30 per cent of household expenditure across different income categories is spent on private schooling and all types of inequalities in household expenditure on education—by gender, rural-urban, household expenditure quintiles, and even by type of education—are the highest in primary education. Increasingly, critics point to this huge disparity between urban and rural education, where rich and poor children have radically different schooling experiences. Throughout the world, user fees in education have been shown to exacerbate inequality and lead to social stratification. In particular, the low-fee private school system has been criticised for continuing to deepen and "legitimise the present multi-layered, inferior quality school education system where discrimination shall continue to prevail to the elites who are able to afford school fees in a country where a large number of families live in absolute poverty." (Sadgopal, 2011)<sup>2</sup>

*Profiting from the Poor* was launched in June, 2016, in Hyderabad and Delhi, with much fanfare from politicians and teachers' organisations. We called on Indian policymakers and education advocates to critically examine the popular discourse around 'failing government schools' that is being used to justify the growth and establishment of low-fee private schools, and instead to look at the compounding factors that have led to the decimation of public education and the undermining of the right to education. Our study demonstrated how privatisation offers not only poor quality schooling for working class and poor children, but also leads to increasing inequalities arising from gender discrimination

and social exclusion and to the de-professionalisation of teachers. We also questioned the level and type of learning that takes place in low-fee private schools, with unqualified teachers, scripted curricula, and ‘growth on standardised tests’, being the primary concern of this new industry.

We argued that children have the right not only to free public education but also to quality education in schools that are adequately resourced and with teachers who are professionally trained. The Indian Right to Education Act (RTE Act), 2009, underscores the right to free and compulsory education for children between 6-14 years of age. The RTE Act lays out key principles and standards for education provisioning, making it legally enforceable for every child to demand free elementary education and providing for the admission of children to private schools without any certification. Unfortunately, the RTE Act also has provisions for compensating these private schools for enrolling poor children, but this measure has been viewed by some organisations (such as the All-India Forum for Right to Education), as the State abdicating its ‘constitutional obligation towards providing elementary education’.

Guaranteeing the right to education and ensuring that all students have access to a quality education in India will take more than promises or legal mandates. The growth of low-fee private schools is directly related to the government’s failure to meet its constitutional responsibilities and its obligations under the RTE Act, as well as its international obligations to provide free quality education as a fundamental human right. Adequate funding and better provisioning is desperately needed. India’s education budget hovers at around 3 per cent of gross national product, which is far short of the 6 per cent commitment made over 60 years ago!

## The Edu-Business Industry

*Profiting from the Poor* also describes how the density of low-fee private schools has functioned as a ready market for global edu-businesses and investors, to incubate new products and services, and develop new models of for-profit schools. We describe the presence of an IT industry as an essential part of the business model being pursued. Replicating a start-up business model, the edu-businesses appear intent to test and incubate new products and services and develop new models of for-profit schools. The IT industry in Hyderabad uniquely has easy access to altruistic young software workers that design IT-enabled products and services, such as large scale assessment systems, online curricula, and training and testing software. These technology-based ‘edu-solutions’ are an essential part of the business model where schools for the poor are expected to operate on a large scale, relying mainly on tablet-based e-learning curricula, facilitated by untrained and unqualified teachers who are paid subsistence wages.

Pearson, along with numerous private foundations, such as the

Gates and Dell Foundations, are promoting edu-businesses in Hyderabad. They work with venture capital firms, such as Gray Ghost, to market products and services to the low-fee schools, offering school proprietors high interest loans (up to 25 per cent interest) to scale up and start-up funds to set up franchises and create profitable business models for schools for the poor. The recent memorandum of understanding between the government of Andhra Pradesh and the international chain Bridge International Academies to run the state’s primary and early childhood education, is an ominous sign of things to come. Bridge is financed by Pearson, Gates, and the Zuckerberg Foundation, and has come under heavy criticism in Uganda and Kenya for its scripted curriculum and dependence on untrained teachers, among other issues.<sup>3</sup>

*Profiting from the Poor* very clearly shows that low-fee schools fail to meet universal norms of quality education. They utilise cost-cutting approaches such as ‘standardised and replicable processes to achieve economies of scale and allow rapid development’ and ‘leverage low-cost, high-impact technology’. Lastly, research on learning outcomes is mixed, with few studies that are externally conducted, being rigorous or well-designed (e.g., they do not control for socioeconomic differences between students that may affect learning outcomes).

A key reason why such predatory for-profit schools are on the rise, and receiving billions annually in fees and corporate investments while taking money from poor families, is that international power players, politicians, lawyers, business leaders, and celebrities, have been willing to vouch for these companies, serving as their paid lobbyists, board members, investors, and endorsers.

Throughout the world, governments are trying to redefine how we understand and promote education quality, particularly underscoring that the role of the teacher is not just about imparting knowledge and skills for testing, but rather a professional with duties and responsibilities to prepare students for life and to shape and transform society. The Sustainable Development Goals (SDGs), the current blueprint for global policy, not only expanded the scope of education beyond enrolment, but included goals and specific targets regarding inclusive ‘quality education for all’, while also aiming to address gender disparities and improve teaching and learning. More importantly, central to Goal 4 of the SDGs is increasing the number of qualified teachers, especially through teacher development and support. *Profiting from the Poor* centrally argues that entire school sectors cannot be run by employing unqualified, minimally trained, and underpaid, (mostly) female teachers. India must support its teachers, not just with a tablet and scripted curriculum so they can teach to a narrowly defined set of learning outcomes, but by providing opportunities and resources for teachers to build skills and capacities to offer quality education, through respectful and

non-discriminatory curricula, (e.g., through gender-sensitive and culturally responsive approaches and attending to life skills) in well-resourced schools.

The privatisation of education (in all aspects) undermines the right to education, further encouraging separate and unequal education for the poor. It also leads to teacher de-professionalisation and exacerbates inequality across gender and class. There is ample research in India, and elsewhere, highlighting the urgent need for the revitalisation of and reinvestment in public schools. There is an equally urgent need to stop the rampant commercialisation of education and profit-seeking of multinational corporations. This should serve as a serious reminder of the reasons why schools should not be for sale and multinational corporations should not be permitted to make profits off of governments and poor communities. This is clearly explicated in India's RTE Act legislation as well as international human rights law.

#### Endnotes

1. Interventions such as Sarva Siksha Abhiyan (SSA) and the Mid Day Meal Scheme(MDM)
2. Well-known educationist Anil Sadgopal (speaking on low-fee private schools).
3. <https://ed-gesf.com/2016/11/11/ugandas-high-court-orders-closure-of-bridge-international-academies/>

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# Low-Cost Education for the Poor: School Chains and Affordable Learning<sup>1</sup>

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## Summary

This article examines the claims of, and advocacy around, low-cost private education for the poor and disadvantaged groups in India. It also discusses the implications of affordable learning, edu-businesses and public-private partnerships emerging from this advocacy for equitable and quality education as endorsed by the Right to Education Act, 2009, in India.

## Keywords

Affordable Learning  
Edu-Business  
Privatisation  
India

## Introduction

Markets in schooling are embedded in a global agenda of neoliberal reforms in education. However, low-cost education (school chains and affordable learning) is the most questionable aspect of private interests in education, as minimal skills are packaged and marketed as high-quality schooling for the poor. Focussing on India, this paper dwells on the implications of low-cost private education, especially against the backdrop of the Right to Education Act, 2009 (RTE Act), which lays down norms and standards to ensure elementary education of equitable quality to all children, with special attention to those from poor and disadvantaged groups.

## Low-Cost School Chains

Low-cost schooling for the poor as a for-profit business venture was mooted by James Tooley around 2005. Based on a study conducted in Hyderabad, Tooley (2009)<sup>2</sup> claimed that ‘unrecognised (unregulated) private primary schools’ (UPS) in India, hitherto viewed as illegal ‘sub-standard teaching shops’,<sup>3</sup> were better performing (in terms of learning achievement) and more cost effective (teacher salaries being extremely low), compared to government primary schools. Renaming UPS, ‘low-fee private schools’, he also highlighted that, as they charged low tuition fees (US\$1–2 per month), they were accessed by the poorest, bottom of the pyramid families, who aspired to English medium private schools for their children. Equally emphasised was that low-fee private schools yielded profits, and hence could be attractive for edu-business as well (ibid). However, what Tooley was actually recommending as a good business proposition was not a revamped UPS in tune with RTE Act. Using elements from the UPS, a low-cost education model was evolved that would offer standardised education, be scalable through branded school chains, and yield profit. Led by Tooley, a transnational advocacy network (TAN) for low-cost education for the poor was built comprising pro-market organisations, foundations, and think tanks, both global and local (Nambissan, 2014). The TAN proactively built discourses around failing government schools, non-performing and absentee teachers on the one hand, as against ‘high quality’, ‘world class’ education that could be provided at low cost to the poor and yield profits.



An attempt was made to establish low-cost school chains in Hyderabad around 2009, but the venture was abandoned within a couple of years (Nambissan, 2012).

Bridge International Academies (BIA), a for-profit multinational school chain established in Kenya in 2009, presents the low-cost education model in terms of discourses and practices. Bridge aims to “*revolutionise access to affordable, high quality primary education for poor families across Africa*” with a “network of *ultra low-cost, for-profit, primary schools,*” and claims that “its schools *profitably deliver high-quality education for less than \$4 per child, per month,* enabling local school managers to operate their school businesses *profitably,* while creating a *highly successful business at the central level*”<sup>6</sup> (emphasis here and through the paper mine). What is on offer in BIA is “scripted schooling”, where “every step of the learning process is remotely directed” (Stewart, 2015). Professionally untrained teachers (usually high school graduates on low salaries) are instructed to transact standardised and digitalised content, scripted lessons that tell them what to say and do, through nook readers, e-books and tablets. Teaching is reduced to simple standardised tasks that are closely monitored with a focus on learning outcomes.

Low-cost school chains have come under increasing criticism for the narrow curriculum offered, the ways in which it is transacted, the professionally unqualified and poorly paid teachers, and so on. BIA, Omega, and other chains, do not reach the poorest children as promised, as their fees comprise a significant proportion of the daily income earned by wage workers in these countries (Riep, 2014).

### Affordable Learning and Edu-Business

The last five years have seen the emergence of ‘affordable learning’ as the new *avatar* of edu-business in the name of the ‘poor’. Pearson, the corporate giant and now a ‘learning company’, established the Pearson Affordable Learning Fund (PALF) in 2012, with a US\$15 million fund to “help improve access to *quality education for the poorest families in the world.*”<sup>5</sup> Affordable learning is an umbrella category that includes diverse profitable ventures for ‘learning’ (the shift to individualised ‘learning’ is strategic), informed by the low-cost school model, with an emphasis on ‘efficacy and learner outcomes’ as indicators of quality. Affordable learning is enmeshed in networks, not merely for advocacy, but to further business interests as well. These are affordable learning advocacy and business networks (ALABN) which comprise powerful corporate houses (that include Pearson, Google, Gates, Dell, Village Capital, and others) through their philanthropic foundations or social enterprises.

Kamat, Spreen, & Jonnalagadda (2016) provide a window into the expanding affordable learning market in India. Focusing on Hyderabad, they point to the rapid expansion of the high profit

unregulated markets for pre-schooling, tuitions, and ‘coaching’, made available to families at ‘affordable’ prices depending on what they can pay. The picture they paint is one of the pro-active ‘growing’ of markets for edu-business, funding and support (ibid). For instance, PALF supports educational entrepreneurs who are “*creating scalable and profitable education solutions for the low income segment.*”<sup>6</sup> In India, the ventures PALF has identified and launched include Sudhiksha pre-schools (*affordable* early childhood education through low cost pre-school centres), Experifun science gadgets (*affordable* and *cost-effective solutions* for schools), and Zaya (blended learning solutions accessed through software and tablets sold to schools).<sup>7</sup> What we are seeing is edu-business launched within the framework of affordable learning: cost-effective, technology-based solutions, with an emphasis on ‘affordability’ for the consumers, who are poor or low income families, and their schools.

Srivastava (2016) is sceptical of the actual scalability of low-cost private school chains and points out that they (including BIA) comprise only a minuscule proportion of public provision in the few countries in which they operate. However, as discussed, affordable learning comprises much more than school chains and includes a range of cost-effective, profitable educational ventures. The unregulated pre-schools, higher fee unrecognised schools (called ‘affordable’ private schools), tutorials or coaching, as well as new pedagogies for learning (digital content, scripted lessons, smart phones, and tablets), are likely to see expanding markets. Services, such as testing and assessment of students and schools, are integrated into the affordable learning market, as learning outcomes are increasingly projected as indicators of teacher effectiveness and school quality. ‘Teacher development’, alternate certification, as well as school leadership, are also new spheres of edu-business. However, the larger goal of the ALABN appears to be the reform of publicly funded education, and the over 1.2 million government primary schools across India today offer a vast site for the advocacy and edu-business of affordable learning.

### Government Schooling, Public-Private Partnerships and Low-Cost Education

Robertson and Verger (2012) note that public-private partnership (PPP) in education is part of the privatisation agenda mooted since the late 1990s, led by the World Bank, IFC, and other pro-market organisations. Today, PPP is embedded in education policy in India and is viewed by governments at the centre, and in the states, as necessary for reforms to improve the quality of education for the poor (Nambissan, 2014). The handing over of primary schools or sections to private actors to improve their quality through PPP, can be seen from around 2009. For instance, Airtel’s Satya Bharti Foundation ‘adopted’ 49 primary schools in Rajasthan in 2009, and in the same year, private organisations were given land and other incentives to establish Adarsh Schools in Punjab. In 2010, as many as 143 schools under the Municipal Corporation of Greater Mumbai (MCGM) were handed over to the

School Excellence Programme (SEP) as a PPP, led by McKinsey along with Dell, Naandi Foundation, Akanksha, UNICEF, and others. The rationale and terms of specific educational PPPs lack transparency and are not brought within the structures of the democratic process. What happens within schools that the PPP operates is also kept under wraps.

Low-cost advocacy and practices can be seen in efforts towards educational reform by STIR (Schools and Teachers Innovating for Reform), a global forum with a focus on India. For STIR,<sup>8</sup> the solution to raising school quality is “re-igniting intrinsic motivation” in teachers and “changing mindsets” through “building teacher networks” where they share their work. It also seeks to identify, *test*, and *scale* “promising school and teacher ‘micro-innovations’ to *improve educational outcomes for the poorest children*”. STIR offers to bring about reform in government schools with this simplistic global model and points to its “cost-effectiveness”: it will be done for “as little as \$70 per teacher, or \$2 per child, per year”!! (ibid). STIR states that it has entered into PPPs with the state governments of Uttar Pradesh and Delhi and is hoping to spread across India. Teach for India (TFI), run by Akanksha (mentioned earlier), places professionally untrained youth as teachers on short-term contracts in the specially created English medium sections of government primary schools. This leads to further de-professionalisation of teachers and segregation within primary schools catering mainly to the poor.

Under a PPP in 2015, ARK (Absolute Return for Kids) ‘adopted’ one of the primary schools of the South Delhi Municipal Corporation where it will provide “academic *management*, *TLM* and *accountability for outcomes*”.<sup>9</sup> In the same year, the chief minister of Andhra Pradesh invited BIA “to *strengthen* delivery of early childhood education and primary education in the state...”. He is quoted as saying that “the group could use *low-cost technology* it has pioneered, to *radically improve learning outcomes through accountable delivery*.”<sup>10</sup> These are familiar elements of low cost or affordable learning that are being brought in to ‘reform’ government schooling through PPP. There is little doubt from what has been discussed, that low-cost private education (with scalable solutions and testing regimes) is seeking to expand markets in publicly funded education. Further, it contravenes every norm under the RTE Act. That the State is complicit in this is a matter of serious concern.

## Conclusion

Under RTE Act, obligations of private schools to ensure children’s right to education are clearly laid down within a broad comprehensive framework. However, what we are seeing is the deliberate (mis)construction of ‘high quality’ education for the poor, in minimalistic terms, by powerful pro-market organisations. These are unethical and illegal practices driven by the search for profits. The poorest families in India (who predominantly include socially discriminated against and

disadvantaged groups) are excluded from private schooling (including UPS) and are concentrated mainly in government primary schools. These schools are today the focus of low-cost edu-business through PPP, framed by cost-effective solutions, de-professionalisation of teachers, and narrow learning outcomes, all of which are detrimental to concerns of quality and social justice in education. Low-cost edu-business is part of the larger agenda of privatisation that places publicly funded education and the RTE Act at grave risk. The defence of both is critical. However, there are also urgent questions to be addressed that relate to the role of teachers, pedagogies, and institutionalised processes that will strengthen publicly funded schooling. For this, we must reflect on the quality of the ‘public’ in education today, what is meant by ‘publicness’, and indeed, the very purpose of education from the perspective social justice and democratic citizenship.

## Endnotes

1. This paper draws from research conducted for the Transnational Research Group (TRG) – Poverty Reduction and Policy for the Poor between States and Private Actors: Education Policy in India since the Nineteenth Century. I thank Professor Nargis Panchapakesan for her comments on an earlier draft.
2. See also Nambissan (2012) for details including conceptual and methodological problems with Tooley’s research.
3. <http://www.delhidistrictcourts.nic.in/Feb08/Social%20Jurist%20Vs.%20GNCT.pdf>. Under the RTE Act, 2009, all unrecognised schools were given until 2013 to meet the required norms and gain recognition or close down.
4. Retrieved July 2017 from <https://www.omidiyar.com/news/bridge-international-academies-launches-affordable-schools-kenyaOmdiyar>
5. See PALF website: <https://www.affordable-learning.com/about.html>
6. Ibid
7. Ibid.
8. <http://stireducation.org/>
9. <http://arkonline.org/news/new-school-model-south-delhi-could-transform-education>
10. [http://www.business-standard.com/article/pti-stories/bridges-international-to-partner-with-ap-state-government-115090901472\\_1.html](http://www.business-standard.com/article/pti-stories/bridges-international-to-partner-with-ap-state-government-115090901472_1.html)

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# Enforcing the Right to Education through Private Actors in India: Challenges and Opportunities

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## Summary

India has seen increasing privatisation of education due to the perceived failure of the public education system. This article examines the regulation of private schools under the Right to Education Act, 2009, outlining its major challenges in design and implementation, while recommending measures for reform.

## Keywords

Right to Education Act  
Private Actors  
Regulation  
India

It has been noted, rightfully, that the question on private participation in education is no longer about whether it is desirable, but rather about how, and to what end, private actors should be regulated by the state (Rizvi, 2016). India is among the countries that have experienced de-facto privatisation, where private schools have sprung up as a response to the perceived failure of public education. According to the latest available figures, the proportion of private schools in the country is 24.88 per cent, of which 19.38 per cent are unaided schools or schools that do not rely on state funding (National University of Educational Planning and Administration, 2016). Indeed, some 42.83 per cent of school-going children are enrolled in private schools. With such significant numbers, the need for a robust regulatory framework for private schools is vital. This is especially important if we seek to contain the far-reaching threats that privatisation poses to the meaningful realisation of the fundamental right to education. This article examines the regulation of private schools under the Right to Education Act, 2009 (RTE Act), outlining its major challenges in design and implementation, while recommending measures for reform.

It would appear that the biggest challenges in the regulation of private schools under the RTE Act are threefold: rigid approach, poor state capacity, and inadequate coverage. The first refers to the kind of norms prescribed for private schools under the RTE Act. The RTE Act secures a range of rights for children between the ages of 6-14 years, including the right to free education in a neighbourhood school, the right to an age-appropriate education, the right to not be detained or be subjected to corporal punishment, the right to barrier-free admission, and the right to non-discrimination. In tandem, the RTE Act obligates governments, schools, teachers, and parents to help protect and fulfil these rights. Private schools are required to follow a schedule of norms and standards in order to be recognised by the government. These include basic infrastructural standards, such as building norms, toilets, kitchen facilities, playgrounds and libraries, as well as ensuring access to drinking water and an adequate pupil-teacher ratio. Further, private schools have to hire teachers with minimum qualifications mandated by the RTE Act. Finally, the RTE Act requires that private schools reserve 25 per cent of their seats in their entry-level classes

as no-fee places for children from economically weaker and disadvantaged groups. Schools are supposed to be reimbursed for these seats by the government at the per-child expenditure of a government school or the private school, whichever is less. However, schools run by religious and linguistic minorities have been exempted from this RTE Act by two Supreme Court rulings (*Society for Unaided Private Schools vs. Union of India*, 2012; *Pramati Trust vs. Union of India*, 2014).

The main critique of the schedule of norms and standards has been that it is input-focussed and it does not hold schools accountable for learning outcomes. Further, most private schools, especially low-fee schools, do not have the resources to provide the required physical infrastructure, nor can they afford to hire qualified teachers (Shah & Joshi, 2017). This is usually coupled with an assertion that these schools are able to provide better learning outcomes, even in the absence of proper 'inputs'. However, evidence of this assertion is not forthcoming, with the exception of Karthik Muralidharan's seminal study in Andhra Pradesh, which shows that private schools are more cost effective at providing slightly higher outcomes than government schools (Muralidharan & Sundararaman, 2013). However, anecdotal evidence suggests that it is common practice for low-fee schools to indulge in bribery to get recognition and pass inspections.

The overall shortage of qualified teachers in the country also adds to the problem, causing these schools to either recruit under-qualified teachers at very low salaries, or to hike school fees to recover the high salaries. Moreover, it has been noted that strict input norms have acted as an entry barrier for new schools, curtailing availability and access (Dixon, 2010).

In the interest of easing access, as well as allowing existing schools to operate without excessive hindrance, it is necessary to re-examine the norms and institute a more flexible regulatory regime that recognises the challenges on the ground. This does not mean waiving basic safety standards or legitimising the hiring of underpaid and unqualified teachers, but rather instituting and allowing reasonable alternatives, wherever possible. One such example is the change in the requirement of having a playground to simply providing access to a playground, as notified by the central government. The government has also taken steps to move from inputs to outputs; a recent amendment to the RTE Act requires schools to be accountable for learning outcomes.

It should be noted that in addition to the RTE Act and Rules, each state has pre-existing legislation that regulates the recognition, operation, and closure of private schools. Some of these lay down onerous and outdated conditions for schools, such as the requirement for the government to conduct a 'needs assessment' before permission to start a school is granted, or very detailed norms for building and classroom size

and school equipment (Ambast, Gaur, & Sangai, 2017). When remedying the regulatory framework, it should be ensured that the various laws are consolidated into a single set of regulations and that the norms are in accordance with the current policy and practice in education.

Section 12(1)(c) of the RTE Act, that is, the provision on 25 per cent seat reservation, continues to be the bane of private schools, and not without reason. The rationale provided for the reservation was that it would enable social inclusion and lead to the creation of a more just and humane society. This provision is a big opportunity for closing the gap in a country like India, where access to schooling is highly segregated and outcomes are unequal. However, this measure has faced many issues with respect to implementation and has largely failed as a collaborative model between the State and private actors (Sarin et al., 2015).

First, there appears to have been poor budgetary planning. The government does not seem to have anticipated the cost associated with this provision. Most states have not come up with an appropriate method to calculate recurring per-child costs. The eligibility criteria for getting admission under this section are not clearly defined and are regularly met with legal challenges. The admission process has also faced some hiccups and there have been cases of undeserving applicants gaining admission through fake certificates. Therefore, it is a huge undertaking, which the states evidently do not have the capacity to implement. However, there are some best practices across states that can provide models for reforms. (Sarin et al., 2015).

There is also a severe lack of State capacity in monitoring private schools, whether it is in adherence to recognition norms or implementation of Section 12 (1)(c). The RTE Act does not provide strong monitoring mechanisms and has a grievance redressal system that is poorly designed (Bhattacharjee & Mysoor, 2016). The Commissions for Protection of Child Rights, which are designated as the monitoring and enforcement authorities under the RTE Act, are also known to be under-resourced and ill-equipped to perform their functions. An option that may be then explored is supplementing state capacity with other stakeholders, namely, parents and the school themselves. There have to be clearer norms regarding the functioning of parent-teacher associations in private schools. Moreover, schools should be encouraged to self-regulate wherever possible by disclosing information about important parameters on a public platform, as well as by submitting regular compliance reports to the government—an area where resources can be saved by moving operations online.

The third challenge is that of coverage. The exemption granted to minority schools has led many schools to exploit loopholes in the minority certification process so that they

could be declared as ‘minority schools’ and avoid their RTE Act obligations. This exemption status should be reviewed, considering how a large number of schools are not held accountable for minimum standards under the RTE Act simply because they are run by minorities. It is possible to strike a harmonious balance between the rights of minorities and the fundamental right to education, in the interest of furthering access, equity, and quality in education (Sangai, Ambast, Gaur, & Sengupta, 2016). Another issue is that the RTE Act does not apply to early childhood education or pre-school education. Private playschools are largely unregulated, and this has posed a number of concerns, of which child safety is a key one. It is essential that minimum standards of education are applied to all varieties of private actors.

It is also a matter of concern that there are challenges that go entirely unaddressed by the RTE Act, such as fee regulation and child safety. There have been many reports of schools charging unreasonably high fees and indulging in fraudulent practices, such as laundering and mismanaging funds. Moreover, state laws seeking to regulate fees have not been effective. When it comes to child safety, there simply are not enough preventive measures in place, except in the form of guidelines that are unenforceable. Another grey area is public–private partnerships. Although many public–private partnerships arrangements are already underway, there is little clarity on how they are to be regulated. Thus, a new regulatory framework should factor in these concerns.

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## Part 6

# Fragile Contexts



# Street Children in Brazil and their Right to Education

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## Summary

This article examines the unequal educational circumstances, options, and practical barriers to social mobility, faced by street children and adolescents in Brazil.

## Keywords

Street Children  
Educational Inequality  
Unequal Schooling  
Trafficking  
Human Capabilities  
Brazil

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The street child, as a phenomenon, has long been associated in international media with the image of Brazil's poverty and inequality. Photographs of unaccompanied children and adolescents asking for handouts or performing juggling acts for money at busy traffic intersections in urban Brazil have frequently attracted the lens of foreign journalists. Beneath this media image lies a much more complex reality of Brazil's entrenched social and economic inequalities. It is in this complexity that we need to situate the challenges of deprived childhood that impact the education of street children and adolescents in Brazil.

Children and adolescents in street situations<sup>1</sup> have been the focus of several studies since the 1980s, when the problem started gaining visibility in Brazil and in many other countries (Rizzini, 1986; Rizzini & Butler, 2003). Young people on the streets became strongly associated with criminality and were seen as 'threats' to society, leading to the repressive public policies of their widespread institutionalisation. However, sustained activism by progressive citizen groups and human rights organisations slowly began to change the social discourse on street children and adolescents and eventually made the inhuman practices of institutionalisation morally unacceptable. Inspired by the passage of UN Convention on the Rights of the Child (1989), in 1990, Brazil adopted its highly progressive constitutional Statute on the Rights of Children and Adolescents (or ECA, as known by its Portuguese abbreviation). It was a watershed moment:

There was a new sense of hope that things could indeed change and the possibility of change was clearly associated with the idea of citizenship—a hope that was expressed in the popular motto—*de menor a cidadão*: from minors<sup>2</sup> to citizens... This expression was often used in Brazil in the 1990s, particularly by advocates, to mark the struggle to recognize that all children, including poor children, had rights as citizens (Rizzini, 2011, p. 67).

Much has changed for the better in the past two-and-a-half decades. Policies have evolved and welfare support has increased to prevent small children from wandering on the streets. Cash transfer programs, such as *Bolsa Família* (family allowances), have improved the conditions of millions of families in extreme poverty. Most importantly, the human rights impetus of ECA has shifted the perception of street children from sources of danger to young people who are ‘subjects of rights’ and citizens. However, alarmingly, there is an almost complete absence of public concern about the education of street children in Brazil today.

On the one hand, Brazil has made important progress in educating its children—with near-universal (98 per cent) enrolment of 7-14 year old children in mandatory basic education (grades 1 to 9). Yet, for a populous country like Brazil, the 2 per cent unenrolled represent around half a million vulnerable children. That number increases significantly when one considers the 15-17 year olds who have dropped out of school—approximately 1.5 million adolescents (UNICEF, 2012). While efforts to universalise basic education continue to focus on historically excluded subgroups of population, such as Afro-Brazilians, indigenous people, *quilombolas*, children with disabilities, and children from low-income families in the semi-arid rural areas of the Northeast, the unique plight of urban street children and adolescents remains unaddressed.

Life on the streets exposes children to threats that are likely to irreversibly damage their development—drug use, sex for survival, absence of safe and secure shelters, and the daily difficulty of availing basic hygiene and securing enough food (Morais N., Koller, Reis, & Moraes, C., 2010). Further, adolescents who are on the streets 24 hours a day have lost connection, not only with educational institutions, but to their home communities (Rizzini, Butler, & Stoecklin, 2007). For such young people, the chances of reconnecting with mainstream society and economy seem nearly impossible, unless there are specially designed social policies that go beyond ensuring access to schools.

As Silva (2005) has pointed out, for children on the streets, the problem is not only access to educational institutions but also their regular attendance in schools. Her study about the differences between the world of the streets and the world of education—conducted with adolescents in shelters—concludes

that it is necessary to change the organisation and structure of schools to create mechanisms that would enable them to more effectively serve street children and adolescents.

Unfortunately, the status quo of educational inequality in Brazil persists. It includes an incomplete move to full day schooling and the poor conditions in public schools serving low-income children, where few students pay attention to what the teacher is saying and the majority just play around. We should add to these problems the largely demoralised teaching force in public schools. Such inequalities risk further intensification in the face of the current economic and political crises in Brazil.

For example, it is estimated that a quarter of the young population in the city of Rio de Janeiro lives in intensely poor communities called favelas. While many of these children are growing up in loving families, they are also growing up in noisy, densely populated, unhygienic conditions, and under the constant threat of drugs and gang-related violence. Unequal schooling in such a social context not only limits the cognitive potential of children and adolescents in favelas, but also deprives them of the social capital that is necessary to improve their opportunity structures (Chattopadhyay, 2014).

The narrowing of possibilities for the social mobility of young people within a consumer society, whose fruits remain inaccessible, fuels a sense of hopelessness, desperation, and alienation among adolescents growing up in the *favelas* of Brazil (Abramovay, 1999)—and these make gangs a powerful ‘pull factor’. As Silva and Urani (2002) have noted, gangs operate by using low-income communities as their bases for logistic support. Indeed, co-opting disenchanted youth from low-income communities remains a way of maintaining a broader trafficking system, where children and adolescents are used as part of the constant violent confrontation between criminal groups and police. As a result, today, a greater proportion of street children are older adolescents; and unlike previous years, they are more likely to be involved with drugs and drug-related gang activities.

Thus, seen through the lenses of multi-dimensional poverty and human capabilities (Sen, 1999), the right to education for street children and adolescents in Brazil is a necessary right, but not a sufficient one to fulfil their right to childhood. As we have argued here, the phenomenon of street children is the ‘tip of the iceberg’ of what constitutes the plight of urban poverty for children and adolescents in Brazil. Re-imagining education that addresses the broader consequences of urban poverty is an important step towards a new possibility of childhood, with rights and dignity for the children of Brazil.

## Endnotes

1. We use the phrase 'children in street situations' to include both those who live on the streets night and day, and those who spend their days on the streets but their nights sleeping at, for example, their homes, with friends, or in shelters.
2. 'Minor' in this context and in the Portuguese word *menor* means not just young people but also those seen as potentially dangerous.

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# Refugee Education: Looking Back, Thinking Forward<sup>1</sup>

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## Summary

Education is important to the life chances of refugees and to the economic and political security of an interconnected world polity. This article provides a framework to understand the realisation of the right to education for refugees in the context of exclusions of non-citizens within nation-states.

## Keywords

Refugees  
UN Agencies  
Non-Citizens

## Defining Refugees' Right to Education vis-à-vis Nation-States

Refugees have crossed an international border due to a well-founded fear of persecution (UNHCR, 2010a). Eighty-six per cent of the world's refugees live in countries that neighbour their conflict-affected countries of origin (UNHCR, 2014). These are, primarily but not exclusively, countries with over-stretched education systems, fragile political institutions, and struggling economies. Most refugees flee their countries of origin with the intention of returning home rapidly; however, the average duration of exile for refugees is 17 years (Internal Displacement Monitoring Centre [IDMC], 2014). Despite the protracted nature of exile, access to citizenship is generally unavailable to refugees who remain in their regions of origin (e.g. Nunn, McMichael, Gifford, & Correa-Velez, 2015).

Education is a human right, enshrined in the Universal Declaration of Human Rights and the Convention on the Rights of the Child, among other instruments. In theory, the right is post-national and exists beyond a particular nation-state, set of institutions, or citizenship status (Goodale, 2007). Yet, for refugees, articulation of the right to education is variable. Article 22 of the 1951 Convention specifies that signatory states "shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. . . [and] treatment as favourable as possible. . . with respect to education other than elementary education" (UNHCR, 2010b). While 144 nation-states are party to this Convention, several states where large numbers of people seek asylum are not: India, Lebanon, and Malaysia, for example. In these states, the rights of refugees are not bound by international conventions. In addition, some states have ratified only portions of the international instruments. Egypt, for example, does not endorse Article 22 of the 1951 Refugee Convention, noting "reservations because these articles consider the refugee as equal to the national" (UNHCR, 2011).

Realisation of the right to education for refugees is also variable. For example, in 2014, 50 per cent of refugees had access to primary school, compared with 93 per cent of all children globally; at the secondary level, 25 per cent of refugees had

access to education, whereas 62 per cent did globally. This variation is further evident within a given national context: in Pakistan, 43 per cent of refugees access primary education compared to 72 per cent of nationals; 5 per cent of refugees access secondary education compared to 38 per cent of nationals (Dryden-Peterson, 2015, pp. 9-10).

### Realisation of the Right to Education for Refugees

From the mid-1980s to the early 2010s, the model of refugee education favoured by the United Nations High Commissioner for Refugees (UNHCR) and host governments was a parallel system, where refugees and nationals attended separate schools. This preferred model developed alongside the proliferation of refugee camps, where refugees lived isolated from nationals, often in remote areas of nation-states. Realisation of the right to education for refugees was thus influenced both from within and outside of nation-states, by the political and economic interests of the nation-state, and by educational service provision that was alienated from nation-state structures. While working within the sovereignty of nation-states, UN agencies at this time acted as a 'pseudo-state' for refugees (Waters & Leblanc, 2005).

Nevertheless, between 1998 and 2011, the UNHCR had no education officers working in refugee-hosting nation-states. Refugee education programs were "plagued by inconsistencies" (UNHCR Inspection and Evaluation Service, 1997, p. 1), with implications for the realisation of the right to education in different settings. In 2000, for example, 25 per cent of refugee children in Sudan had access to primary education, while 98 per cent did in Uganda (UNHCR Education Unit, 2002).

In 2012, the UNHCR released the Global Education Strategy (GES) 2012-2016, which represented a shift in conceptualisation of how the right to education for refugees would be realised. This policy emphasised the "integration of refugee learners within national systems" (UNHCR, 2012, p. 8). In 2010, only 5 out of UNHCR's 14 'priority countries' integrated refugees to the national curriculum and language; by 2014, 11 of these 14 countries did so. Further, while historically, refugees have been absent from national development plans and education sector plans, for the first time, Cameroon, Niger, and Pakistan included refugees in provincial and national planning documents by 2014 (Government of Balochistan, Pakistan, 2013; Republic of Cameroon, 2013; République du Niger, 2013), thus re-centring the right to education for refugees within the nation-state rather than with a UN 'pseudo-state'.

Even in situations where the right to education for refugees was conceptualised within the nation-state, in no nation-state do refugees have the legal rights that would enable the future economic, political, and social participation for which that education, in theory, seeks to prepare them.

### The Future of the Right to Education for Refugees

Refugees are increasingly able to access their right to education. However, universal access to education for refugees has not been realised. Importantly, refugees are also non-citizens and without, for example, accompanying legal rights to work they continue to be unable to make use of their education to participate in society. However, if education is to contribute to the well-being of individual refugees, to their countries of exile, and to their conflict-affected countries of origin, it is essential that they be able to participate economically, politically, and socially. Thus, the central question for research and practice moving forward must be how both to enable the realisation of the universal right to education and the realisation of refugees' ability to use that education to the benefit of themselves and their communities.



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# The Right to Education for Urban Refugees and the National Security Conundrum: A Closer Look at the Kenyan Context

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## Summary

This article provides a brief look at the growing national security concerns that threaten to hinder promising practices for extending educational access to urban refugees in Kenya, even though Kenya has ratified three international treaties that uphold refugees' right to education.

## Keywords

Refugee Education  
National Security  
Inter-Governmental Organisations  
Kenya

## Introduction

Six out of 10 refugees are now living in urban areas around the world (Crawford, Cosgrave, Haysom, & Walicki, 2015). As the refugee population continues to grow, with currently over 21 million refugees displaced globally (United Nations High Commissioner for Refugees, UNHCR, 2017a), refugees' movements toward urban spaces and their desires to send their children to schools in the city will only increase. Refugees living in cities are typically self-settled and dispersed among host communities. Unlike camp-based refugees, they are dependent on their integration into local formal and informal economies for survival. High costs of living in cities mean urban refugees tend to be highly mobile as they move around to find more sustainable living arrangements. They are more likely to be dependent on national and local governments for social services than in camp settings, where international and national civil society organisations play a large role in service provision. Furthermore, urban refugee families face critical challenges in sending their children to school, including the following: making decisions about going to school versus pursuing livelihoods opportunities in cities with higher costs of living; distance to school and lack of transportation in many urban centres, not to mention the fear of negative interactions with police and other law enforcement officials on the way to and from school; and discrimination and xenophobia within the host community that often permeates the school walls, just to name a few.

## Global Frameworks uphold the Right to Education for Urban Refugees

At an international level, three treaties establish the legal



basis for the right to education for urban refugees: 1) the 1951 Refugee Convention and its 1967 Protocol; 2) the International Covenant on Economic, Social and Cultural Rights (ICESCR); and 3) the Convention on the Rights of the Child (CRC). Only one of these three treaties—the 1951 Refugee Convention and its accompanying 1967 Protocol—specifically addresses the rights of *refugees*. The ICESCR and the CRC, on the other hand, concern the right to education for all individuals, including refugees, regardless of their origin, current location, and legal status. These three treaties are powerful instruments in the sense that they are legally binding for the countries that sign them and can, therefore, be legally enforced when a country fails to respect its obligations.

During 2016-17, we conducted a study in an effort to examine existing policies and practices in urban refugee education, and to identify gaps, opportunities, and promising examples to better meet the distinct needs of urban refugees (please see Mendenhall, Russell, & Buckner, 2017 for the full study and related findings). In doing so, we found that global legal and policy instruments are largely supportive of urban refugees' right to education, and that these policy commitments have helped secure a more welcoming policy environment at the national level in which to uphold urban refugees' right to education. It also showed, however, how promising gains made in the education sector can be frustrated by decisions and actions taken within other parts of the government, particularly when a country is confronted with national security concerns.

### **Opportunities and Challenges for Policy Implementation: The Situation in Kenya**

Kenya provides a clear example of the ways in which global and regional policies have been adopted, and in some cases, further expanded. It also depicts how tenuous and contradictory the policy environment can be, as well as how concerns about security further complicate matters. Kenya currently hosts over 500,000 refugees within its borders (UNHCR, 2017b), with estimates of the number of refugees living in urban centres ranging from 50,000-100,000. Refugees hail from several different countries in the region, including Somalia, South Sudan, Sudan, the Democratic Republic of Congo, Ethiopia, Burundi, and Uganda (UNHCR, 2017c). Children from refugee families attend both government and community-run schools in camps and cities, depending on their location of residence.

The Kenyan Constitution (adopted in 2010) outlines that the Kenyan government is responsible for adhering to the international conventions to which it is a signatory, including the 1951 Refugee Convention, the ICESCR, and the CRC. While the Kenyan Constitution legally recognises its responsibility to abide by these conventions, national insecurity in the country has prompted policies limiting the rights of refugees. Following a string of terrorist attacks in 2012 and 2014, the Kenyan government ordered the strict enforcement of an Encampment

Policy, a 'policy' (as its legality has been highly contested) restricting refugees' residence exclusively to the camps. This directive indicated that Dadaab and Kakuma (the two refugee camps in the country, both of which have been there for over 25 years) were the only designated areas for refugees and asylum seekers to reside in Kenya. This meant that any refugee families and their children living in Nairobi and other cities and towns outside of the camps, including those with approved petitions to go to school in Nairobi and elsewhere, were forced to interrupt their schooling and return to the camps.

In May 2016, the Kenyan government issued a directive to close its refugee camps. Citing economic and environmental burdens, as well as national security, the Kenyan government disbanded the Department of Refugee Affairs (DRA), established in the 2006 Refugee Act, and threatened to shut down the Dadaab refugee camp by November of 2016 (though this is not the first time the government has issued these types of statements). Prior to the Refugee Act of 2006, the UNHCR had been responsible for refugee affairs management and refugee status determination (RSD) since 1992. Within the Ministry of Immigration and Registration of Persons, the DRA was responsible for the admission, coordination and management of refugees within Kenya. Its closure of the DRA threatened the rights of over half a million refugees in the country. Currently, provincial governments appear to be handling refugee status determination activities and the Dadaab refugee camp remains operational, despite the government's threats to close it. Amidst these concerns about national security and stringent constraints on refugees' movements, the Ministry of Education along with the UN and civil society partners, developed new Guidelines on Admissions of Non-Citizens to Institutions of Basic Education and Training in Kenya (Admissions Guidelines) (Republic of Kenya, 2015) that aimed to provide clarity and support for refugees and other learners striving to access schooling opportunities in Kenya, including in its cities.

### **Engaging and Supporting National Governments**

The shifting and volatile policy environment, illustrated through the Kenyan example above, is one of the major policy barriers that may interfere and ultimately undermine urban refugees' access, retention, and achievement in formal schooling. Decisions about the provision of education in a country, and to refugees in particular, cannot be separated from the larger geopolitical conversations influencing a country or region that is hosting refugees. Both in Kenya and the other case studies in the study, we found that concerns about security are often used as a justification to limit refugees' movement, and this impacts refugee children's ability to attend school. We believe that the international community can more forcefully make the case that ensuring that refugee children have uninterrupted access to schooling is essential, not only on normative grounds, but also because it is a key to their integration and well-being, and is important for the future stability of their societies, regardless



of whether they return, integrate, or resettle.

As the role of national governments must be respected and further strengthened in regard to the ways in which educational opportunities are being extended to refugees (inside and outside of camps), inter-governmental and civil society organizations need to play a more complementary role with regard to these efforts, while simultaneously identifying new strategies for garnering support for refugees in the country. In the development of the Admissions Guidelines mentioned above, the UN Refugee Agency (UNHCR) and its partners created opportunities for Ministry of Education representatives to conduct field visits, both to schools in Nairobi and the two refugee camps. This exposure and interaction with members of the refugee community further sensitised education authorities to their plight and helped them to understand the incredible value that many refugee families place on education for their children. Similar efforts may prove helpful for representatives from other ministries, particularly those working on national security and counter-terrorism measures.

More efforts, both at the national-policy level and the school-programmes level, are needed to help refugee children go to, and remain in, school in urban centres, where they ultimately have better chances of accessing a quality education through trained and certified teachers that will help them, their families, and the larger refugee population improve their futures and make beneficial contributions to their communities, whether they remain where they are, repatriate to their countries of origin once peace returns, or move on to another country for longer-term resettlement.

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# Education Policies for Roma Integration through Narratives from the Roma Pedagogical Assistants in Serbia

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## Summary

This article examines inclusive education policies for Roma and specifically underlines the role of a successful pedagogical assistantship programme in Serbia.

## Keywords

Inclusive Education Policies  
Roma  
Pedagogical Assistants

Europe's largest minority, the 12 million Roma, are the most discriminated against in the continent, and they still face poverty, exclusion from public life, and threats. Roma are living mostly in East and South Europe, and their situation is similar regardless of the level of economic prosperity of the country where they live. Many situational assessments highlight that a big part of the Roma population of Europe is living in deep poverty, often segregated in informal settlements such as favelas, without basic infrastructure and without access to services such as education, healthcare, and employment (Ringold, Orenstein, & Wilkens, 2005). Educational opportunities of children from the Roma settlements have been especially endangered by discrimination leading to segregation, lower quality education, enrolment in special schools, and neglect to prevent dropping out of school (Burnett et al., 2005).

As a mechanism to facilitate the integration of the Roma in the most critical areas of education, health, employment, housing, and the international policy, Decade of Roma Inclusion 2005-2015 (the Decade), brought heightened attention and focused research and policy development around the integration of the Roma. The Decade was endorsed by the Roma community and state governments, from initially 8 and later 12 countries, and was supported foremost by the Open Society Foundations and the World Bank, followed by the EU and other donors. The Decade brought in to play not only new content but also new ways of policymaking through participatory structures. This ensured collaboration with the Roma civil society and consequently, national government line ministries elaborated national action plans for Roma integration. Mobilised through around 30 thematic conferences, and by influencing other international organisations, such as the Roma Education Fund, UNICEF, Council of Europe, World Bank, OSCE, OECD, and others, the Decade also contributed to the production of about 150 publications, policy papers, thematic research studies, and overviews ([www.romadecade.org](http://www.romadecade.org)). The Decade gave rise to several subsequent multinational strategies, most notably, an initiative at the level of EU member states—the EU Framework for National Roma Integration Strategies up to 2020 (European Commission, 2011),

instigated when several Decade countries became new EU members, such as Hungary, Romania, and Croatia.

All action plans, integration strategies, and frameworks address education as a key priority and treat education integration as the main vehicle for breaking the vicious circle of poverty that the Roma in Europe are facing. What kind of policies were promoted through these wide initiatives? A more detailed look at the strategic priorities of the Roma Education Fund (REF), other donors, and the series *Advancing Education of Roma* (<http://www.romaeducationfund.org/publications/country-assessments>), allows us to distinguish several types of policies spread through a wide range of countries involved in Roma integration.

### **Policies Supporting Access to Integrated Education**

Ensuring access to schooling is one of the policy priorities; many projects are focusing on informing and mobilising parents, expanding pre-school capacities to allow for a wider intake of Roma children, abolishing school enrolment procedures that could cause bottlenecks, such as residence permits or identification papers, or providing assistance in obtaining them, and, abolishing entrance testing which traditionally streamlines Roma children into special schools based on inappropriate diagnostics. A special set of policies falling under this category are those focusing on prevention of segregation in schools or classes, or on desegregation of already segregated settings, coupled with manuals and guidance (e.g. Roma Education Fund, 2015; Kovač-Cerović & Orlandić-Lukšić, 2016). Special education settings can serve as Roma ghetto schools across Decade countries. For example, in Serbia, even five years after introducing nation-wide inclusive education, special classes comprised 35 per cent Roma students, a huge overrepresentation compared to the 3-6 per cent Roma in the population (IPSOS, 2016). Particularly effective examples of the implementation of desegregation policies are found in Bulgaria (Panayotova & Evgeniev, 2002), Montenegro (Kočić-Rakočević & Nagy, 2015), and Hungary (Kezdi & Suranyi, 2009), while the structural characteristics and internal logic of segregation has become much clearer than it was before 2005 (Rostas, 2012; Rostas & Kostka, 2014).

### **Policies Supporting School Attendance**

For preventing absenteeism and dropping out of school, well organised, timely, foreseeable, and respectful support in providing free meals, clothes, school equipment, and textbooks, is a widespread set of measures found throughout countries. Organising transportation from settlement to school, or bussing into different schools to avoid further segregation, is an effective policy, but it needs sustained financial support and organisational oversight (Panayotova & Evgeniev, 2002). Attendance is also often supported by a variety of scholarships

and stipend schemes, for example, the Dynamic Scholarship and Mentoring Scheme, which was implemented over several years in countries such as Macedonia and Serbia. The combination of providing small stipends contingent upon school attendance and positive grades, with assigned teachers as mentors, to every Roma child, proved to be a game-changer in upper secondary education. Not only did it decrease the drop out rate of girls to near zero per cent, the prospect of receiving a stipend for continuing education in the future also served as an incentive to complete lower secondary education (Mickovska-Raleva, 2012). Scholarships, mentoring, peer support, and empowering social activities are the main integration policies for higher education implemented through many REF-funded projects (such as Romaversitas in Hungary, <http://romaversitas.hu>) and the Roma Memorial University Scholarship Program (<http://www.romaeducationfund.hu/scholarship-program-tertiary-education>).

### **Policies Supporting Attainment and High Grades**

These policies correspond to the inclusive quality education policies that are supported also through Erasmus and projects financed through the Instrument for Pre-Accession Assistance (IPA). These policies include: building teacher competencies through a variety of mechanisms, such as teacher networking and training; embedding inclusive education indicators in quality assurance frameworks; collaborative activities ensuring peer support; enriching curricula with Roma history and culture-related content; celebrating the success of Roma students; providing Romani language classes to interested students; cooperation with civil society in celebrating diversity; ensuring support in learning the language of instruction; increasing parent involvement; and ensuring early education possibilities for Roma children both in urban and rural areas. All these policies impact teachers' attitudes, help abolish their typically low expectations from Roma students (Open Society Institute, 2007; Rosenthal & Jacobson, 1968), and consequently might change their behaviour from neglect to active support and increase their trust in success and constructive challenge.

### **Policies Supporting Progression to Higher Levels of Education**

The most common policies addressing the Roma are the variety of affirmative action schemes. Affirmative action was created prior to the Decade, and is among the oldest of integration measures in typically multi-ethnic countries, such as former Yugoslavia (Roma Education Fund & The Gallup Organization Romania, 2009). and is designed differently in diverse country contexts. In Serbia, for example, affirmative action is implemented widely for entrance into upper secondary education, while at pre-school and university enrolment, it is facing considerable challenges. Avoiding abuse by non-Roma, or the negative attitudes of those competing for the same placement, is still a challenge, even in countries where affirmative action at high school and tertiary

level has been implemented for more than 25 years, such as in Romania (Roma Education Fund & The Gallup Organization Romania, 2009). Raising the bar on affirmative action to include school employment possibilities for the educated Roma could be a next step, which is an often discussed but unimplemented policy.

There are divided views about the effectiveness of the promoted policies and their impact (Rorke & Usein, 2015). Although education is rated best among the four Decade-priority areas, showing moderate but steady increase of coverage and higher progression rates of Roma students (Bojadžijeva, 2015), the attribution of this modest success to particular policies is not yet possible. On the other hand, the social context is still (or even more than 10 years ago) burdened by discrimination and social distance between communities (Brown, Dwyer, Martin, Scullio, & Turley, 2015), also influencing the way education settings function. For example, in a recent small study in Serbia focusing on the integration of newcomer migrant students from the Middle East, we found social distance to be twice as high towards Roma students than towards migrant students (Kovačs-Cerović, Grbić, & Vesić, 2017).

One of the education policies can, however, be flagged as a clear success, especially in Serbia—the Roma Pedagogical Assistants (RPA) program (Duvnjak, Mihajlović, Skarep, Stojanović, & Trikić, 2010; Friedman, Pavlović Babić, Simić, 2015). Designed as change agents for both schools and the community, with functions crosscutting the above listed types of policies, over the course of 15 years the RPA program grew, developed, and organised an association, the Association of Pedagogical Assistants of Serbia (APAS), and started to assume responsibility for overseeing, facilitating, and coordinating other Roma-related policies. The RPAs became helpers not only to students, parents, teachers, schools, and the community, but also to policymakers, —as providing insight into the integration processes from the vantage point of those who are simultaneously at the centre of the new policy and are active participants in implementing it. A recent thorough study that gathered all the 174 RPAs employed in schools throughout Serbia in ‘dynamic storytelling workshops’ shows the strength and uniqueness of this insight (Daiute & Kovács-Cerović, 2017). Through this innovative methodology, the RPAs wrote narratives, letters to future RPAs, and messages to teachers, and discussed the possible outcomes. The nearly 600 narratives talk about the complexities of the life of contemporary Roma who are entangled in processes of personal, community, local, national, and multinational change. The detailed analysis of the approximately 6000 communication units highlights the wealth of collaboration with all stakeholders, the endurance in facing a wide range of obstacles, including discrimination and poverty, and a strong commitment to the Roma people and children, as well as to the requirements of the role they took (Daiute & Kovács-Cerović, 2017). Their role seems to be the critical catalyst

for the integration policies to happen and become effective.

As one of the RPAs, similar to many others, writes in his letter to an imagined future RPA, “Dear Colleague ... The beginning will not be easy; it wasn’t easy for me, too. All in the [school] collective were at some distance and rejected to cooperate. You have to be persistent, diligent and responsible to achieve the results with children with whom you work. Then, they will see you in different light; then, they will cooperate and recommend you ...”.


The RPAs in Serbia are now unique critical and reflexive participants in the education reforms, who might appropriate the strong voice of the policy adviser, teacher trainer, and counsellor, as seen through their messages to teachers collected by the same study in Serbia (Daiute & Kovács-Cerović, 2017). Among others, they are reminding the teachers to enact their humane role when it comes to Roma students as well, such as “somebody’s future depends on your work”, “sometimes, give more than you can”, “a little more effort will mean a lot”, “smile when Roma children arrive; one smile can make a big difference”, or “be the first role model for a Roma child throughout his/her life”. These messages are also putting the spotlight on concrete acts of discrimination, such as “don’t put them in the back rows”, “do not neglect them at maths”, “at a bad school event, do not immediately think that a Roma child is the culprit”, “Roma is not equal to incapable”, “don’t judge based on the colour of their skin”.

We hope that these and similar messages will be widely heard and that the successful policies for Roma integration can pave the way for integration of other excluded children as well, such as the refugees from Syria, Iraq, and Afghanistan.

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# ‘Other Indians’ in the 2009 Right to Education Act: India’s Neglected Mobile Pastoralists

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## Summary

India’s Right of Children to Free and Compulsory Education Act, 2009 has done little to address the social exclusion experienced by children from mobile pastoralist communities. Using Tomasevki’s 4A terminology, I have argued that right to education norms around Availability, Accessibility, Adaptability, and Acceptability are not (yet) consistent with a well-realised rights-based approach to education entitlement for mobile pastoralist children in India.

## Keywords

Right Of Children to Free and Compulsory Education Act  
Mobile Pastoralists  
4A Framework  
India

## Introduction

Mobile pastoralist communities in India form a sizeable, but largely policy-invisible, segment of the population and continue to experience discriminatory denial of access to formal education provision. This is a consequence of the particular normative discourses of development and social inclusion that underpin policy and strategies for service design and delivery, which perpetuate exclusions that the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) has done little to interrupt.

India’s pastoralist populations number millions. Sharma, Koller-Rollefson, & Morton, (2003), reiterate a much-cited but unsourced figure of 6 per cent of the national population. Mobile pastoralists participate in animal husbandry by raising livestock and moving them to pastures, and they sustain themselves primarily from sales of animals and their products. India’s information deficits in respect of these ‘other Indians’ (Ratnagar, 2004) are acute. However, mobile pastoralism is practised virtually all over the country, with ‘vertical’ mobility of people herding yaks, cattle, and goats between summer and winter pastures in mountainous regions and ‘horizontal’ mobility of people herding sheep, cattle, goats, camels, and even ducks elsewhere (Dyer, 2014). Alongside population *stocks*, population *flows* are at least as important for policy (Deshingkar & Akter, 2009); and the information available to service providers, especially mobile pastoralists, is scant.

Alongside mobility, pastoralism depends on children undertaking situated livelihood-orientated learning from skilled adults—as unschooled apprentices learning how to live as socially competent, successful pastoralists. Specific development policies for pastoralism are absent in India, in stark contrast with the presence of deficit discourses of its assumed low productivity and backwardness (Kavoori, 2005). Increasingly, pastoralism is being curtailed by the great Indian land grab, which unevenly pits pastoralists’ claims against those of corporate business interests (Dyer, 2014). Further, modalities of health and education service delivery are poorly attuned to mobile people in general, and pastoralists in particular.



Policy discourses promote formal education as a means of addressing societal inequalities and facilitate the social inclusion of disadvantaged social groups. This intent was not placed within a rights-based legal framework until 2009, when the national RTE Act was enacted, with a further wait until all the states completed their respective delegated legislations. The RTE Act has significant gaps for mobile pastoralist populations. I use Tomasevski's 4A terminology (Fig. 1) here to focus on the RTE Act's norms around Availability, Accessibility, Adaptability, and Acceptability and show that they are not (yet) consistent with a well-realised rights-based approach to education entitlement for mobile pastoralist children.

**Figure 1. The 4A framework of education rights**

Available	Free and compulsory
Accessible	All discrimination eliminated
Acceptable	Meeting appropriate standards of quality
Adaptable	Able to respond and adapt to the best interests of each child

Source: Tomasevski (2004: ii)

### Sedentary Norms Frame Entitlement

India reached the 2015 Millennium Development Goals/ Education for All deadline with vastly discrepant tallies of how many children were still out of school (6 million according to the 2014 National Survey of Out of School Children, and 17.8 million according to UNICEF—see discussion at Oxfam, 2014). The size of the eligible school population derives from enumeration instruments that routinely miss particular population segments who are absent from 'home' when stock-taking, that is, census or other counts, take place (Carr-Hill, 2012; UNICEF, 2014). The resulting institutionalised misrepresentation in turn misinforms the State's interpretation of enrolment targets: the national total fails to include recognisable sections of the population, such as pastoralists. One hundred per cent by such reckoning is far from being 'universal' and leaves those uncounted beyond the purview of the duty bearer.

*Sarva Shiksha Abhiyan programme's* (SSA) early framework documentation (SSA, 2005a) set out the *programme* as "an effort to universalise elementary education by community-ownership of the school system" and a "response to the demand for quality basic education all over the country" (SSA, 2005b, Para 1.1). Regarding accessibility, it identified the need for "specific strategies for special groups like child labour, street children, adolescent girls, girls belonging to certain backward communities, children of migrating families, etc." (SSA 2005b, Para 5.1.1.iii).

Making education available (in policy terminology, ensuring universal, fee-free access) by expanding the network of state primary schools is a well-established planning preoccupation (Dyer, 2000). Standards governing placement of school facilities are framed by a notion of geographical proximity and sedentary habitation: "Provision of primary schools in all habitations having a population of 300 persons within a walking distance of 1 km. for children of 6-11 years age group" (Ministry of Human Resource Development, Government of India, 2000). This and SSA's "community based approach to planning with habitation as a unit of planning" (SSA, 2005b, Para 1.7.7) have helped improve availability and enable the right to education (albeit raising many issues linked broadly to the acceptability of schools) for many children, but these have not helped make a facility available to mobile pastoralist communities. Moreover, these do not adequately promote accessibility or adaptability of provision, for they reflect and perpetuate an assumption that school users are consistently located within a habitation, and in a minimum, standardised numerical concentration. These planning standards have effectively denied availability and accessibility to children in households that move—and are loosely coupled into larger migrating groups that flex according to the demands of animal welfare—because their occupational mobility requires them not to be in the same place, at the same time, every day.

Conditions of this denial are readily visible in the RTE Act's stipulation that "every child of the age of 6-14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education" (RTE, 2009, Section 3). The RTE Act has collapsed the right to education in the United Nations Declaration on Human Rights (1948) to the right to schooling—although these are of course not the same thing. Making explicit reference only to schools as the object of both duty and entitlement, the RTE Act clarifies that "school" means any recognised school imparting elementary education" (RTE Act, 2009, Section 2). It also establishes it as the duty of local state authorities to provide such a school, within "limits of neighbourhood ... as prescribed" within three years (RTE Act, 2009, Section 3). This phrasing discriminates against children who confound the RTE Act's underlying assumption of a 'neighbourhood', such as those who undertake transhumance via numerous transient neighbourhoods for about nine months of the year. The RTE Act does direct that children should be able to transfer from one such school to another, in acknowledgment of learner mobility, but on-the-ground systemic capacity to apply this norm of adaptability to enable availability is far from established, with evidence of some progress made only in relation to the education of seasonally migrating labourers (Bengtsson & Dyer, 2017).

Improving adaptability in ways that promote availability so that discriminatory denial of access is not imposed on mobile pastoralist children nevertheless does not address a further





gap. This concerns how the norm of adaptability for school-based education can be put to work under the RTE Act to ensure that mobile pastoralist children have the opportunity to combine school-related learning with the situated learning of a pastoralist apprenticeship. At present, norms underpinning the entitlement to formalised education place this in conflict with the right to a (pastoralist) livelihood. This undermines acceptability for families who do not seek to use schooling as a means of exiting their traditional livelihood, and for whom a broader framing of 'education' is more consistent with the moral intent of the fundamental right.

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# Education Experience of the Inuit in Nunavik, Canada

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## Summary

This paper draws from a three-year action research project, to describe the education experience of Inuit in Nunavik, Canada, and emphasises the need to understand education through ways and means wider than the formal schooling experience.

## Keywords

Inuit  
Nunavik  
Inuktitut  
Culture  
Language  
Formal and Non-Formal Education

The right to education is a fundamental human right. Every individual, irrespective of race, gender, nationality, ethnic or social origin, religion or political preference, and age or disability, is entitled to a free elementary education (Article 26 of the Universal Declaration of Human Rights, 1948). Furthermore, the rights of indigenous families and communities to retain shared responsibility for the upbringing, training, education, and well-being of their children, consistent with the rights of the child, have been highlighted in the United Nations 2007 Declaration on the Rights of Indigenous Peoples. More specifically, Article 14.1 of the Declaration stipulates that “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”.

While much has been done to draw attention to the plight of indigenous peoples worldwide, much more is needed to improve their living conditions, and to protect their livelihoods, land, cultures, and languages. This brief overview focuses on the education experience of the Inuit, specifically in Nunavik, Canada. The majority of the 59,460 Inuit (Statistics Canada, 2011) live in Nunavut, Nunavik (northern Quebec), Nunastivut (Northern coast of Labrador), and Inuvialuit (Northwest Territories and Yukon), collectively known as Inuit Nunangat (an Inuit term that refers to land, water, and ice). While Inuktitut<sup>1</sup> is the official language, there are significant differences between regions (e.g., use of syllabics vs. the Latin alphabet). It remains therefore a serious challenge for Inuit Tapiriit Kanatami, the national voice of Inuit in Inuit Nunangat, to support the development of the Inuktitut curriculum and materials specific to each region.

In Nunavik, some 11,000 Inuit live in 14 communities, spread over a large territory covering an area of 443,684.71 square km. Nunavik has had the fastest growing Inuit population, a 25 per cent gain between 1996 and 2016, and hence, 43 per cent of Nunavik's population is under the age of 19 years (Statistics Canada, 2006).

The history of education of the Inuit, like other indigenous peoples in Canada, has been marked by the legacy and the trauma of the residential schools (Truth and Reconciliation

Commission, 2012). The James Bay and Northern Quebec Agreement of 1975 is the first modern comprehensive land claim agreement in Canada. It created the Kativik School Board<sup>2</sup> and gives it exclusive jurisdiction in Nunavik to develop programs and teaching materials in Inuktitut, English, and French, and to provide elementary, secondary, and adult education in the region's 14 communities. There is a school in every community, varying in size between 55 to 500 students. Due to the size of most schools, the small student populations and the trilingual programming and staffing, most classes are multi-level, with two to three grades per class. The school board is funded by both the province of Quebec (75 per cent) and the federal government (25 per cent). Funds are channelled through Quebec and administered by the Board that is internally governed by a Council of Commissioners, who are elected by their respective communities for a three-year term (Kativik Ilisarniliriniq, 2017a).

Programme objectives are set by the Quebec Ministry of Education, but the content and language levels may be adapted to Inuit second-language learners (Kativik Ilisarniliriniq, 2017a). From kindergarten to the second year, students study exclusively in Inuktitut, their mother tongue. The third grade is a transition year; students study half the time in Inuktitut and the other half in English or French. From the fourth grade onwards, they have the choice to pursue their education in either French or English streams. In practice, it also means that from the fourth grade onwards, most subjects are taught exclusively by *qallunaat* (non-Inuit) teachers, who are often early-career teachers, trained in different provinces of Canada, with little or no knowledge of the Inuit language and culture, and presenting the culture and expectations of the 'South' in different ways.

*Qallunaat* teachers find themselves teaching second or third language learners and trying to meet the standards of the South while trying to compensate for academic delay accumulated by many of their students. Feeling overwhelmed by high rates of student absenteeism and managing classroom discipline in the multi-level classrooms, some *qallunaat* teachers question the relevance of the subject they teach to the needs and the future of their students. For some, a weak sense of control over the environment and the success of the students can lead to a lowering of school expectations. Concerned about the difficulties faced by many students, some shift all their focus to the relational aspect and to management of students' behaviour, to the detriment of the pedagogical aspects and the learning (Garakani, 2015).

The school board provides a teacher training programme to Inuit teachers. The teaching certificate is recognised by the Quebec Ministry of Education. Given that most teachers are pursuing the programme while working full time in Nunavik schools and juggling family commitments, it takes the Inuit teachers, on average, between five to seven years to complete the teacher training programme (Kativik Ilisarniliriniq, 2017b). The Inuit

teachers' perception and attitudes are influenced by the cultural practices of their communities, where informal education is handed down by parents, family, and community. Learning is done by observation and imitation, without the pressure of time to acquire or master a skill. Everyone is progressing at their own pace. While the Inuit teachers do not have to follow the standards set by Quebec Ministry of Education, they struggle with the lack of adequate material and insufficient resources to teach Inuktitut and the Inuit culture. The Inuit teachers feel that the programme should devote more space and time to teaching history, culture, language, and Inuit traditions. They advocate for creating designated areas in the school to teach traditional activities with a hands-on approach and urge the need to involve elders, parents, and the community (Garakani, 2015).

Although the majority of students have the will to succeed, they do not always have the adequate preparation or a clear idea of the demands of classroom activities, and they do not know how to approach them in a systematic way. It is an ongoing effort for students to manage the demands of their two worlds (Inuit and non-Inuit) and to integrate indigenous and Eurocentric knowledge systems. They convey an irrevocable attachment to their language, culture and community, while recognising the importance of other academic subjects for their future. However, they know very little about the options available to them after high school, in terms of training and employment opportunities. Although most Inuit in Nunavik speak Inuktitut, the Inuit students think that their inability to master Inuktitut prevents them from developing meaningful bonds with elders. Many students live in households that no longer have the opportunity to hunt, camp, or take part in traditional land-based activities. Like their Inuit teachers, students believe that the school can become more relevant by incorporating cultural and land-based activities, which also provide a sense of wellbeing and connection.

To meet the needs of the Inuit youth, education must be understood as wider than the formal schooling experience. Education needs to be grounded in the Inuit holistic lifelong-learning model, which understands learning as a journey and as connected to community wellbeing. To do so, there needs to be a relationship between learners, teachers, parents, and the community members. This requires the expansion of the role of schooling and the creation of a hub that can integrate community programming of traditional cultural and land-based activities and thus facilitate the link between formal and informal learning opportunities (Rahm, 2017).

The history of the people of Nunavik shows great potential for individual and collective adaptation and resilience. Indeed, before, during, and after the arrival of the Europeans, the Inuit population of Nunavik experienced extremely rapid changes in its habitats, its livelihoods, its institutions, and its socio-political organisations.

The population of Nunavik is young, resilient, creative, and aware of the issues that affect their communities. They know that the burden of preserving their language and culture rests on their shoulders and that they must find ways to voice their concerns. They seek to bridge the past, present, and future. Recent reports by the Truth and Reconciliation Commission of Canada have highlighted both the harm done to, and the continuing adverse effects towards, the indigenous communities. It is hoped that these reports will mobilise the political will to take concrete action: to confront the past, to heal and to compensate, but above all, to provide the necessary resources and conditions for indigenous peoples to flourish while preserving their language and culture.

#### Endnotes

1. In fact, for Eastern Canadian Inuit, Inuktitut refers to the entire culture, values, societal norms, mannerisms and language.
2. The name Kativik School Board was changed to Kativik Ilisarniliriniq on 11 September 2017. (See <http://www.kativik.qc.ca/kativik-school-board-refreshes-visual-identity/>)

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