



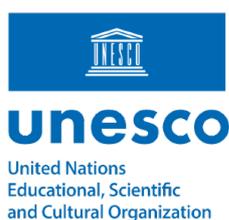
Bringing into focus the future of the right to education

Policy-oriented research paper as part of the *Initiative on the evolving right to education*

This policy-oriented research paper investigates some of the aspects of the right to education that might require a stronger footing in the international normative framework and potential expansion for the 21st century. Digital education, increasing human mobility, changing demographics, climate change, and expectations of opportunities for learning throughout life are just a few of the areas that are testing the limits of the existing international normative framework. The culmination of a round of open consultation processes, as well as international seminars and events, and research, this paper presents some of the emerging trends, challenges, and norms that have been discussed.

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This paper compiles research findings and insights derived from the extensive ongoing consultative processes. Serving as a working paper specifically for the Initiative on the evolving right to education, it will be further refined following inputs from the Formal dialogue.

Working document

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ABBREVIATIONS AND ACRONYMS

10 th Consultation	Tenth Consultation on the Convention and Recommendation against Discrimination in Education
AI	Artificial intelligence
CADE	Convention against Discrimination in Education
CEART	Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel
CESCR	Committee on Economic, Social and Cultural Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CONFINTEA VII	Seventh International Conference on Adult Education
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSE	Comprehensive sexuality education
ECCE	Early childhood care and education
ECD	Early childhood development
GCPEA	Global Coalition to Protect Education from Attack
GADRRRES	Global Alliance for Disaster Risk Reduction and Resilience in the Education Sector
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Political Rights
ICT	Information and communication technology
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IESALC	UNESCO International Institute for Higher Education in Latin America and the Caribbean
IHRL	International human rights law
IIEP	UNESCO International Institute for Education Planning
IITE	UNESCO Institute for Information Technology in Education
ILO	International Labour Organization
INEE	Inter-Agency Network for Education in Emergencies
IOM	International Organization for Migration
MDG	Millennium Development Goals

NGOs	Non-governmental organizations
OCA	Our Common Agenda
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
PPP	Public-private partnerships
RALE	Recommendation on Adult Learning and Education
Refugee Convention	Convention Relating to the Status of Refugees
RVA	Recognition, validation and accreditation
SDG	Sustainable Development Goal
STEM	Science, technology, engineering and mathematics
TVET	Technical and Vocational Education and Training
UDHR	Universal Declaration of Human Rights
UIL	UNESCO Institute for Lifelong Learning
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNESCO-GEM	UNESCO Global Education Monitoring Report
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

EXECUTIVE SUMMARY

The international legal framework on the right to education needs re-examining to achieve more equity and relevance in light of significant societal shifts and changes in the education landscape and its delivery. In an evolving world, a delicate balance is required between upholding and expanding the foundational principles of the right to education, to ensure States progress in implementing the right to education at national level. Outlined below are some of the key messages from the paper.

1. Recognizing a specific '**right to lifelong learning**'¹ as integral part of the right to education, demands the legal definition and provision for a set of **lifelong and life-wide learning opportunities**. The international legal framework should encourage States to promote flexible and seamless learning pathways between formal and non-formal education and training, ensuring that learning outcomes from participation in non-formal education and informal learning are recognised, validated and accredited. Lifelong and life-wide learning has special importance for vulnerable and marginalized groups, and they should be prioritized in the expansion of access to learning opportunities, as should those that have the fewest opportunities to continue their learning, including the elderly. In addition, the right to foundational and transformative learning including literacy and numeracy must be strengthened and expanded to reflect, in particular, the increasing importance of digital literacy.
 - a. A right to lifelong learning elucidates the premise that learning begins at birth and every child has the **right to early childhood care and education (ECCE) in its different forms**, encompassing physical, socio-emotional, cognitive and linguistic development and including a legal entitlement to at least one year of free and compulsory pre-primary education.
 - b. Moreover, **the free and compulsory nature of education is to be extended to secondary level**.
 - c. The right to lifelong learning should address the extent of **technical and vocational education and training (TVET)** provision available both for youth and adults.
 - d. **Recognizing the evolution of higher education** from a highly selective stage of learning to one that is available, accessible and open to all learners. This will entail a re-evaluation of the international legal framework as it relates to the selective requirements of admissions processes, the cost of higher education and the support of students throughout their higher education journey.

¹ There is increasing reference made in common discourse to a 'right to lifelong learning'. Rather than a new, independent right, this formulation is used to emphasize the imperative of education and learning throughout life, within the context of the right to education. The right to education applies from birth until the end of life, and therefore increased clarity and strengthened rights for learning that occurs outside of formal schooling is now highly desirable.

- e. Furthermore, entitlements for **adult learning, reskilling and upskilling** now fall under the right to lifelong learning. Learners are to be equipped to navigate flexible lifelong learning pathways through recognition and validation in diverse pathways.
2. **Redefining the aims of education:** addressing the evolving world requires revisiting the aims of education, emphasizing the importance of a human-centred and humanistic approach that prepares learners for the challenges of the 21st century and beyond. This requires reflecting in the curricula, human rights education (HRE), global citizenship education (GCED), education for sustainable development (ESD) and education for health and well-being (EHW) which play pivotal roles in nurturing this holistic development and equipping individuals to confront issues such as hate speech, racism, and all forms of discrimination, and in making better choices for their health and well-being, among other things. It is long overdue that we consider the inclusion of specific educational interventions, such as HRE, GCED, ESD and EHW in legally binding instruments within the framework of right to education.
3. Increasing acceptance of the value of **inclusive education** for *all* learners, regardless of their ability or other individual and social characteristics. This entails recognition that each learner is special and unique and requires customized support. It urgently requires stronger grounding in the right to education framework, in support of the principles of non-discrimination and equality. Education systems shall be inclusive by design helping to address and overcome individual barriers, redress past injustices and current inequalities, allow all learners to learn together and celebrate diversity in a transformative and collaborative process of peer learning.
4. There remain high levels of **direct and indirect discrimination in education**, with barriers that prevent vulnerable groups and individuals, from achieving equality of opportunity and experiencing safe learning spaces. There is scope for the integration of new substantive rights in the international legal framework that address their individual barriers. These rights could encompass the explicit protection, for example, of pregnant and parenting girls and women from discrimination in education, rights to mother-tongue instruction and rights that provide protection from violence, bullying and corporal punishment.
5. **Access to an continuity of learning** needs to be addressed. Pandemics, climate change, natural hazards, armed conflict and social and civil unrests are all contributing to disruption of education and lost learning opportunities worldwide on an increasing scale. While humanitarian law offers some protection, all **crisis-affected populations** should have specific rights relevant to their individual context and the international legal framework should better emphasize the continuity of the right to education during emergencies and enable recovery and reconstruction, encouraging return to education in a reasonable timeframe. States should be obligated to improve the preparedness and resilience of their education systems, particularly in areas vulnerable to conflicts and prone to disasters as well as hold responsible those who cause or contribute crises. Refugees, asylum-seekers, stateless people, migrants, and internally displaced persons (IDPs) should have their right to education enshrined in law, alongside provisions that support their specific needs and eliminate barriers to their enjoyment of their right to education and learning at all levels.

6. **Climate change** and the loss of biodiversity must be key considerations in any revision of the international legal framework. Learners affected or displaced by climate change or natural hazards should be granted special consideration to ensure their right to education. Climate change education as part of education for sustainable development should be mainstreamed throughout education systems and processes and crucially in curriculum and pedagogy.
7. The use of **technology in education** including the growth of use of generative artificial intelligence (AI), brings promising opportunities for hybrid and remote learning, renewed ways of connecting learners and teachers, enhancing teaching, learning and assessment strategies, teacher deployment and evaluation, participatory learning experiences, knowledge-sharing, and collaboration. At the same time, the digital divide must be addressed to prevent the further entrenchment of disparities. Access to appropriate and inclusive technology solutions need to support flexible, personalized learning approaches, including for learners with disabilities. Ethical use of AI in education, learners' online protection and privacy will also require strong attention in any reiteration of the right to education.
8. The **role of the teacher** has changed enormously over the past century. Expectations of teachers to deliver inclusive and quality education to a diverse student body with the support of digital modalities must be accompanied with strengthening teacher education, enhanced professional development practices and empowering teachers as codevelopers of the curriculum, which cover required technical skill-sets, and greater respect and recognition for their profession, and adequate support and resources, especially given the global, teacher shortage. Moreover, greater consideration and protection are urgently needed for ECCE personnel, contract-teachers, supply/substitute teachers and teachers working in adult education and literacy.
9. The responsibilities of the State regarding **minimum quality standards, governance and monitoring practices** should be made more explicit in the international legal framework to ensure guidance, accountability and support progress in the realization of the right to education.
10. **Governance structures** are evolving. The right to education today can no longer be the sole responsibility of the departments in charge of education but will require intersectoral and interinstitutional collaboration and solidarity in reflection of the **interdependence of rights** and the requirements of the lifelong learning perspective, inclusive education and equity.
11. **Role of non-state actors**: Considering the negative repercussions of marketisation and commercialization on education whereby learners are perceived as consumers, the right to education framework should consider just ways to guide, regulate and assess the role of non-state actors in the education sector - such as requiring the establishment of a clear regulatory framework for minimum education standards and creating restrictions on profit-making in education – and to foster and strengthen education systems' capacity and stakeholders including decision-makers, schools leaders and teachers to ensure appropriate regulation. Public-private partnerships can be exercised to fulfil the State's primary duty to ensure fundamental rights to quality education for all.
12. Obligations in the international normative framework as to the **financing of education** could be refined. The concepts of 'progressive realization' and 'international assistance and

cooperation' would benefit from further clarification and the obligation to finance education using the 'maximum available resources' should be updated to include a duty to prioritize resources in some contexts and with a focus on disadvantaged groups and persons.

Working document

Introduction

**‘A consequence of the symmetry of law is that there could be no right to education without corresponding obligations for governments’
— Katarina Tomaševski² —**

International human rights law instruments generate concrete duties for States to respect, protect and fulfil their implementation. The right to education is no different. As an established right with its normative basis established first in the Universal Declaration of Human Rights (‘UDHR’, 1948) and further articulated in the UNESCO Convention against Discrimination in Education (‘CADE’, 1960) and the International Covenant on Economic, Social and Political Rights (‘ICESCR’, 1966), it has now been over half a century since many of the key provisions were drafted.

Since then, a wide range of instruments and global agendas have advanced to strengthen and extend the right to education. Most recently, Sustainable Development Goal 4 (‘SDG 4’) has paved the way in redefining priorities for education in the 21st century, but even since the inception of SDGs in 2015, the world has undergone significant changes.

Given this context, the *Initiative on the Evolving Right to Education*³ was conceived to open a dialogue around which aspects of the right to education framework may need to be reframed in the light of 21st century trends and challenges. Recognizing that education is a public good, States have the primary responsibility to ensure that the right to education is implemented at national level. As the international legal framework provides a basis for holding States accountable for fulfilling their obligations, reinforcing the right to education will enhance national implementation but also ensure its enduring relevance, develop a new social contract for education, and among other things, support the transformation of education to address the twin crises of equity and relevance. This will better reflect the crucial role of education in diffusing notions of peace and human rights to every region of the world.

Purpose

This paper seeks to examine the existing international legal framework on the right to education to inform how it could be strengthened. It presents aspects of education that are lacking sufficient protection and guarantees in the existing international legal framework and addresses new and emerging norms that surpass existing legal obligations. Based on the research, this paper suggests possible **new and updated legal obligations to consider under the right to education framework, as well as the corresponding modalities** that will create the conditions for the achievement of this fundamental human right in the 21st century and beyond.

² Katarina Tomaševski was the first UN Special Rapporteur on the right to education from 1998 to 2004.

³ <https://www.unesco.org/en/education/right-education/evolving>

Box 1: Difference between hard law and soft law

Hard law (in this paper referred to as ‘the international legal framework’ or ‘international human rights law’) encompasses instruments that are legally-binding such as treaties, conventions and covenants. Ratifying States are bound to respect the legal rights and obligations contained therein. On the other hand, soft law instruments include declarations and recommendations which do not have a legally binding force but embody great political and moral authority. Soft law instruments can form the first step towards the development of legally-binding instruments such as the Universal Declaration of Human Rights in 1948, which has had a profound impact on the development of international human rights law.

This paper focuses on identifying what are the gaps in the international legal framework (i.e. hard law) while referring to soft law instruments that can guide the development of legally binding provisions.

Report structure

Section 1 provides a brief overview of some of the **key instruments and principles** of the right to education. **Section 2** argues for the better incorporation of the **lifelong learning perspective** into the right to education, such as the existence of a variety of formal, non-formal and informal learning opportunities and settings and their recognition, validation and accreditation, as well as more protective rights for ECCE, secondary education, TVET and higher education.

Section 3 investigates, whether the central tenets of the CADE, non-discrimination and equality, would be strengthened by explicit mention of a right to **inclusive education**, reflecting a similar shift in emphasis seen in some national legal systems. This section also contemplates targeted rights that would benefit **vulnerable, marginalized and disadvantaged groups** that continue to struggle to have their right to education realized, including principles that promote gender equality and protect people on the move, other crisis-affected populations and stateless people. It further examines the responsibilities of States to counteract the growing ‘digital divide’, exploring both the opportunities and risks that are entailed by the ‘digital transformation’ in education. This section also considers the need to revisit the aims of education and calls for a more explicit legal protection for addressing HRE, GCED, ESD and EHW in the curricula.

The **fourth and final section** reflects on the state of flux of **governance and financing structures**. The right to education can no longer solely be the remit of the department in charge of education, but rather will require whole-of-government and holistic implementation through intersectoral collaboration. More explicit and precise responsibilities relating to minimum education standards⁴ are suggested, as is clarification for State obligations as to education financing. The section addresses evolving **role of teachers** in 21st century education which requires reviewing their training and conditions. It further delves into the increasing influence of **non-state actors** and whether this factor

⁴ International human rights law specifies that States must ensure that education conforms to minimum standards, as laid down or approved by the competent authority.

necessitates renewed attention in the international right to education framework. On a connected note, it explores the implication of the use of generative AI and ways to **regulate online spaces** in terms of privacy, data protection and online child protection must be defined with increasing urgency.

Background and methodology

This policy-oriented research paper is part of the *Initiative on the Evolving Right to Education*, representing an important phase in the research and policy work that informs the road map towards the development of a global framework. The Initiative commenced in 2021, with a consultative process (the ‘Global Conversation’), whereby written contributions were welcomed via an [online platform](#) and a complementary [online survey](#). Over 340 contributions were received through a number of events and targeted communication actions, from educators, education specialists, activists, experts from international organizations and NGOs, as well as learners and other interested parties from the public.

In December 2021, UNESCO convened the [International Seminar on the Evolving Right to Education](#) (hereinafter ‘Seminar’). A background document, ‘[The Right to Education in the 21st Century](#)’ was prepared for the Seminar to introduce and discuss the issues that were frequently referenced through the Global Conversation and UNESCO’s monitoring work. The rich contributions during the event were recorded in a [report on the findings of the Seminar](#).

In December 2022 a youth consultation on the Initiative was organized, dedicated to hearing the voices of young people with regard to the issues that they felt were particularly pertinent to an update of the right to education. The young participants stressed that the youth must have a fundamental voice in the adaptation of international education frameworks as important stakeholders.

The year 2022 was also marked by the organization of a series of inter-governmental meetings, covering a continuum and wide spectrum of learning. In addition to the [Transforming Education Summit](#) with its call for a transformative approach to education within a lifelong learning perspective, the [Third World Higher Education Conference \(WHEC2022\)](#) aimed to define and prepare a roadmap for a new era of higher education, with the right to education at its heart. The [Seventh International Conference on Adult Education \(CONFINTEA VII\)](#), adopted the Marrakech Declaration with focus on lifelong learning entitlements. The second [World Conference on Early Childhood Care and Education \(WCECCE2\)](#), which adopted the Tashkent Declaration focusing on the right of the child to quality early education. The outcomes of these events, and experts’ meetings held on rights dimensions within their framework also inform this Initiative.

This policy-oriented research paper represents a further elaboration of the background document, incorporating the key findings from the Seminar and further research carried out within UNESCO. In the intervening months, a literature review has been conducted, taking an in-depth look at some of the key topics such as inclusive education, lifelong learning, higher education and digitalization in education.

Where implementing the proposed international provisions is less evident, the experiences of countries were explored to show the progress and direction of national systems. National policy measures have also been included as human rights principles should be translated not only in legislation but also in policies. In addition, like legislation, national policy measures can inform the evolving normative framework.

Along the same vein, UNESCO's work in monitoring the right to education, and notably the findings from the latest [Convention and Recommendation against Discrimination in Education Consultation](#) ('10th Consultation') have revealed common trends as to where the scope of the right to education has been extended in national laws and constitutions, as well as shared challenges.

The report also carries forward the work being undertaken by the UNESCO [Futures of Education Initiative](#), which launched its [report](#) in November 2021 to reimagine education through a new social contract.

This Initiative is linked to and informed by a number of events and milestones. In 2020, we celebrated the 60th anniversary of the UNESCO CADE during the height of the COVID-19 pandemic. During the same month as the Seminar, the RewirEd Global Declaration on Connectivity for Education was launched, setting forth clear norms to leverage technological power while guaranteeing the fundamental right to education.

The *Initiative on the Evolving Right to Education* is also engaging with events and processes focusing on specific components of education, such as the revision exercise for the recently adopted UNESCO Recommendation on Peace and Human Rights, International Understanding, Cooperation, Fundamental Freedoms, Global Citizenship and Sustainable Development (2023), and the launch of the Strategy for TVET articulated around the skills needed to meet individuals, economies and societies expectations and aspirations with focus on work and life. Additionally, workshops have been organized on ECCE rights and non-state actors to collaboratively discuss how concretely to strengthen these areas in the right to education framework.

Section 1. The right to education as developed in the international human rights law framework

Having outlined the purpose, background and methodology in the previous section, Section 1 delves into a detailed examination of the right to education within the international human rights law framework. This includes an analysis of key State legal obligations as well as other relevant international commitments, such as soft law instruments and the Sustainable Development Goals (SDGs).

1.1. State legal obligations

The right to education and its components is legally guaranteed for all, without discrimination, by international human rights law instruments that ratifying countries are to comply with. The CADE is the first instrument to define the concrete obligations required for the realization of this right and the ICESCR builds upon the obligations laid out.

In addition, several human rights treaties which are dedicated to specific groups of people, such as the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW', 1979), the Convention on the Rights of the Child ('CRC', 1989) and the Convention on the Rights of Persons with Disabilities ('CRPD', 2006) reaffirm the right to education for these groups and elaborate on aspects specific to their situation. Please see the Annex for the full list of human rights instruments.

Box 2: Overview of the existing main principles of right to education enshrined in international human rights instruments

- Primary education that is free, compulsory and universal
- Secondary education, including technical and vocational, that is generally available, accessible to all and progressively free
- Higher education, accessible to all on the basis of individual capacity and progressively free
- Fundamental education for individuals who have not completed education
- Professional training opportunities
- Non-discrimination and equality of opportunities in education
- Equal quality of education through minimum standards
- Quality teaching and supplies for teachers
- Education that is directed to the development of the human personality, strengthen the respect for human rights and fundamental freedom
- Freedom of choice
- Adequate fellowship system

To clarify the legal obligations, the Committee on Economic, Social and Cultural Rights ('CESCR') elaborated a framework for the realization of all human rights. With regard to the right to education, States have the obligation to:

- ◇ **Respect:** to ensure that the measures taken do not hinder or prevent the enjoyment of the right to education,
- ◇ **Protect:** to take measures to prevent that third parties do not interfere with the right to education, and
- ◇ **Fulfil:** to take positive measures that fully realize the right to education.

States can be held accountable for violations or deprivations of this right. In addition, the fulfilment of the right to education can be assessed using the '**4 As framework**', which asserts that for education to be a meaningful right it must be **available, accessible, acceptable and adaptable**.⁵

1.2. Other international commitments

Beyond legally binding instruments, the international community has adopted several soft law instruments and agendas which have a **moral and political authority** and States, although not obligated, are committed to respecting them.

The most recent global political framework is the Sustainable Development Agenda adopted in 2015 which all 193 UN Member States committed to achieve. To unpack Sustainable Development Goal 4 (hereafter SDG 4), the primary goal related to education, the Education 2030 Framework for Action was developed. The Agenda explicitly calls for legal guarantees of at least twelve years of free, and nine years of compulsory, primary and secondary education and additionally one year of free and compulsory pre-primary education. The Agenda addresses ways to ensure the inclusion of all people and is centred on the concept of lifelong learning to effectively realize the right of everyone to education, from birth throughout life. It is important to note, the Education 2030 Framework for Action is time-bound and the deadline to achieve SDG 4 is 2030.

Numerous other soft law instruments (which do not legally bind States) cover components of the right to education and will be referred to hereafter as they are relevant to each subsection.

⁵ For more information, see Chapter 3 of the Right to education handbook (UNESCO & Right to Education Initiative, 2019). Accessible at: <https://unesdoc.unesco.org/ark:/48223/pf0000366556>.

Section 2. Ensuring learning throughout life

Building upon the discussions of the aforementioned section, Section 2 explores how we can better ensure learning opportunities throughout life. The sub-sections examine early childhood, secondary and tertiary education (including TVET), as well as youth and adult literacy and the broader concept of lifelong learning.

When the right to education was initially conceived and developed, the traditional levels of a formal education system – primary, secondary and tertiary – were understandably at the forefront of legislators’ minds. Education was largely equated to schooling. Even at the development of the Millennium Development Goals (MDGs) at the start of the 21st century, the principal education goal (MDG 2) focused exclusively on achieving universal primary education. In the intervening years, there has been a major shift in our understanding and definition of education. By the time that the SDGs were drafted in 2015, SDG 4 outlined as its mission statement to ‘ensure inclusive and equitable quality education and **promote lifelong learning opportunities for all**’, creating a paradigm shift to place education within a lifelong learning perspective.

The right to education has therefore taken a wider and more inclusive view, both by broadening our conception around what education is – learning throughout life, rather than formal schooling –, and around who it is for: people of all ages, not only children and young people, while also recognizing that schoolchildren learn outside of the school walls, in family, society and/or through multi-media and cyberspace. In other words, education is extended and enriched ‘**in all times and spaces**’ (International Commission on the Futures of Education, 2021). The key premise is that opportunities as to formal, non-formal, informal and flexible learning pathways over a lifetime can have a truly transformative potential for individuals and special importance for vulnerable groups who may not have access to or have flourished in a traditional school environment.

Table 1: International human rights law overview: Lifelong learning

Theme	International human rights framework	Absence of specific legal obligations /or weak legal obligations
Early childhood education and care	The IHRL recognizes the right of the child (anyone under the age of eighteen) to education. It also provides for the best interest of the child and the right to rest, leisure and play. See: CRC, articles 3, 28 and 31.	No binding instrument establishes the right to ECCE. There are no explicit provisions on compulsory and free pre-primary education of at least one year nor on the right to childcare and healthcare services and facilities . The right of parents to support and assistance in child-rearing and child development and that they shall have education and knowledge in child health, nutrition, breastfeeding, hygiene, environmental sanitation and prevention of accidents are also not clearly established rights.

Primary and secondary education	<p>While the IHRL provides for the obligation of free and compulsory primary education, secondary education is required to be progressively free.</p> <p>See: UNESCO CADE article 4(a); ICESCR article 13(2); CRC article 28 (1); CRPD article 24(2)</p>	<p>There is no clear obligation providing for 12 years of free primary and secondary education of which 9 are compulsory.</p>
Technical and vocational education and training (TVET)	<p>Under the ICESCR, generally available and accessible TVET is only referred to as being part of secondary education. In relation to the right to work, technical and vocational guidance and training programmes are to be included.</p> <p>The UNESCO TVET Convention refers to establishing quality assurance mechanisms, ensuring the involvement of a wide range of public and private stakeholders in the governance of TVET systems and ensuring sufficient affordable TVET at tertiary levels.</p> <p>See: ICESCR articles 6 and 13(2)(b), UNESCO TVET Convention</p>	<p>There is no provision that indicates that TVET should aim to achieve steady economic, social and cultural development and full and productive employment. Educational and vocational guidance and counseling are also not guaranteed under the right to education.</p>
Tertiary education	<p>Free higher education is to be introduced on a progressive basis and shall be accessible on the basis of capacity.</p> <p>See: ICESCR articles 6 and 13(2)(b); UNESCO Global Convention on Higher Education.</p>	<p>IHRL does not provide for at least affordable higher education nor include financial incentives such as grants and scholarships for the most disadvantaged, marginalized and vulnerable groups.</p>
Post-tertiary education and learning	<p>Fundamental education for those who have not received or completed primary education is provided.</p> <p>See: CADE article 4(c); ICESCR article 13(2)(d); CDEAW article 10(e), CRC article 28(c)</p>	<p>Learning and training opportunities beyond tertiary education are not guaranteed under IHRL, nor are free quality and functional literacy including digital literacy, numeracy and fundamental education.</p>
Lifelong learning	<p>The CRPD refers to equality with regard to lifelong learning.</p> <p>See: CRPD article 24(5).</p>	<p>The right to lifelong learning, is not enshrined. Recognition, validation and accreditation of learning outcomes acquired in different contexts, and flexible and seamless learning pathways between formal and non-formal education and training is also absent.</p>

2.1. Early childhood care and education

Rights in early childhood

Everyone is entitled to rights, including children. The Universal Declaration of Human Rights described childhood as a period 'entitled to special protection and assistance' (article 25 (2)) and there is an increasing recognition that early childhood is an **absolutely critical development period**.

Small children undergo the most rapid stage of development, in terms of their maturing bodies and nervous systems, improving mobility and motor skills and increasing levels of communication, intellectual capacities and socio-emotional growth. There is a need to advocate for certain rights for this age group to ensure that this growth happens in an optimal environment to give them the best possible start to life. Early childhood care and education (ECCE) is known to play an imperative role in levelling the playing field somewhat, so disadvantaged children have a stronger start in life and enter primary education ready to learn.⁶

The **right to education applies from birth** as per the CRC Committee's General Comment No. 7 (2005), though at the time of drafting, the CRC was largely silent on the content of the right in this context. One reason for this omission could be attributed to a reluctance to create an obligation for governments to intervene with very young children, normally regarded as under the protection of their parents (Lee, Krappmann & Akosua Aidoo, 2015). Although there has been a heightened appreciation for the positive influence of strong early years programmes, structures and institutions for child development, it remains important that rights to ECCE are developed in such a way as to support the rights and freedom of parents and caregivers.

The **CRC does define some rights** as they relate to care, education and support for parents and caregivers, including appropriate pre-and post-natal care in article 24 (d), adequate education and knowledge in child health, nutrition, breastfeeding, hygiene and environmental sanitation for parents and caregivers in article 24 (e), appropriate childcare services and facilities for children of working parents and caregivers in article 18 (3) and appropriate support and assistance in child-rearing and child development in articles 18 (2) and 27 (3). These rights are supported by the CEDAW, which defines rights to gender equality in education (article 10) and calls on States to take measures to 'encourage the provision of the necessary supporting services to enable parents to combine family obligations with work obligations and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities' in article 11 (2) (c).

General Comment No. 4 of the Committee on the Rights of Persons with Disabilities ('CRPD Committee') (2016, para. 65) emphasizes the importance of **early childhood interventions** for children with disabilities, and urges States to 'ensure early access to quality early childhood development, care and pre-primary education, together with the provision of support and training to parents and caregivers of young children with disabilities'.

Only two international treaties explicitly reference education prior to primary school: the CEDAW which requires States to ensure equality for girls in pre-school, and article 30 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which prevents refusal or limitation of access to public pre-school by reason of the irregular status of the child or their parents.

⁶ See Global Education Monitoring Report / UNESCO policy paper (2021): [Right from the start: build inclusive societies through inclusive early childhood education](#) for a summary of studies evidencing the value of inclusion in ECCE for future individual learning outcomes and social inclusion.

What rights should exist in ECCE?

ECCE is sometimes split into two categories, early childhood educational development (age 0-2) and pre-primary education (age 3 until primary school age) (UNESCO & Right to Education Initiative, 2019). These divisions can vary country-to-country based on their organizational structure, and therefore the use of the term 'educare' is sometimes used to signal a shift towards integrated services and a multi-sectoral approach.

In the first years of life, many ECCE services are intrinsically linked to working parents' need for childcare. The CRC Committee has confirmed that State Parties are to provide assistance to parents and guardians by developing institutions, facilities and services for the care of children and that working parents and caregivers have the right to benefit from childcare services and facilities that they are eligible (article 18). In terms of concrete rights, this could entail the provision of an **adequate number of programmes and institutions** for every child wishing to benefit from educational facilities outside the home, on an accessible and affordable basis.

Rights in the field of ECCE go hand-in-hand with concerns about **gender equality** whereby in many countries, unpaid (and paid) childcare is predominantly undertaken by female caregivers. In early childhood, children's rights are very much dependent on the well-being and resources available to those responsible for their care. Recognizing these interdependencies and the importance of giving both parents the opportunity to return to work after the birth of a child are a crucial aspect of policy and planning in early childhood. It is important that parents are offered a choice of childcare structures that suits their needs and preferences. Ensure that ECCE services are financially affordable are also essential, especially as the cost can be a prohibitive factor in women's return to workforce, especially for women in part-time/low-paid jobs whereby the cost can outweigh or nearly outweigh their salary.

As highlighted in the side meeting during the Transforming Education Pre-Summit, the **interdependence of all human rights** also applies to early childhood including the child's right to maximum development, the right to participate in cultural life and the arts, and the right to play. This requires the adoption of a holistic approach to ECCE.

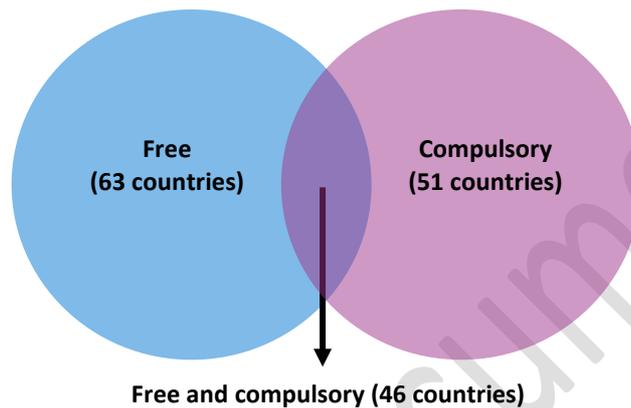
Recognizing that, at this young age, many parents prefer to keep their infants with them, States can support them in their role as primary developmental educators by ensuring there are campaigns, centres and available healthcare specialists that **teach parents ways to promote healthy child development** in the first years of life. France, for example, introduced maternal and infant protection centers (*protection maternelle et infantile* – PMI) in 1945, which provide free points of support to future and current mothers and their young children in a multidisciplinary setting. Doctors, nurses, midwives, early childhood educators and child psychologists provide healthcare and health checks, parenting classes and support and family education activities.

Whether the child is in childcare or a home-based environment in the early years, the State should have a responsibility to ensure that their development occurs in a way that **respects and protects the rights to education, health, nutrition and sanitation**. There should be early interventions for

children with developmental difficulties and sufficient checks that ensure children’s emotional and developmental needs are being met.

The pre-primary level of ECCE has gained momentum in recent years. Although not an explicit right in international law, under SDG 4 Target 4.2 States are to implement at least one year of free and compulsory pre-primary education in law and policy. As can be seen in the graph below, an increasing number of States are realizing this as a right in their legal framework.

Figure 1: Legal provision for free and compulsory pre-primary education



Source: Adapted from UNESCO, 2021c, p. 26. The infographic represents 63 of 194 countries studied that have implemented free and/or compulsory pre-primary education in the legal framework.

As Sheppard (2022) points out, the CESCR has viewed pre-primary education as within its remit when reviewing states’ right to education since as early as 1994, and the CRC Committee, in General Comment No. 6 (para. 28), recognized with appreciation the intention of States to make ‘one year of preschool education available and free of cost for all children’, suggesting a gradual movement to its acceptance as an integral part of the right to education.

The International Labour Organization (ILO) Policy Guidelines on the promotion of decent work for early childhood education personnel (2013) set out principles for the ECCE personnel. Yet, for programmes, institutions and centres that provide education and care for this entire period, States need stronger obligations with regard to **quality standards and teacher training**. ECCE has an important function to play in school readiness and assuring a level of care and diligence that meets children’s emotional needs and special developmental needs. The international right to education framework should work towards improving standards at this level through the creation of legal rights and responsibilities.

Strengthening the international legal framework

There is consensus that children’s rights in early childhood need to be strengthened in the form of legally-binding commitments from States. **Recognizing ECCE as a legal right** is vital to hold governments accountable and ensure adequate investment across the sectors. While there is much momentum around the implementation of at least one year of pre-primary education in the

international legal framework, during the consultative process the importance of services for the 0–3-year age group, and even the rights of the mother during pregnancy were highly stressed.

UNESCO can play a role in developing education normative instruments that carry ECCE rights into the priority areas of Ministries of Education. During the World Conference on Early Childhood Care and Education (November 2022), a wide range of actors agreed upon a set of priorities and strategies, as outlined in the Tashkent Declaration (2022), to accelerate Target SDG 4.2 progress.

Box 3: Promising practices on ECCE

In **Denmark**, the Kindergarten Act was amended in 2009 to assure all children the right to a place in kindergarten by the age of 1 (article 12 (a)). The same Act also ensures that pedagogical leaders are trained kindergarten teachers and the Ministry of Education and Research established regulations and curricula for kindergarten teacher education (Haug & Storø, 2013). Along these lines, France, in 2019, decided to legislate to make preschool (maternelle) free and compulsory for all. In a country where 97% of children already attended this level of schooling, the move to make it compulsory was intended to ‘even out social inequalities’ and have the greatest effect on children in overseas French territories, where the enrolment rate is about 70% (UNESCO World Education Blog, 2018).

Another inspiring example can be seen in **New Zealand**, which has a curriculum for early childhood: Te Whāriki, illustrating how education rights can be interpreted even for child development in early infancy. This curriculum acknowledges that all children, from birth, have rights to protection and promotion of their health and well-being, to equitable access to learning opportunities, to recognition of their language, culture and identity and, increasingly, to agency in their own lives. The curriculum describes ‘learning dispositions’ that are valuable for lifelong learning, such as courage and curiosity (taking an interest), trust and playfulness (being involved), perseverance (persisting with difficulty, challenge and uncertainty), confidence (expressing a point of view or feeling) and responsibility (taking responsibility).

2.2. Secondary education

The right to education framework currently distinguishes between primary education, which must be free, compulsory and universal, and secondary education, which is to be generally available, accessible to all and progressively free. However, a leap forward was made with the drafting of SDG Target 4.1 which called on States to ‘**ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes**’. The SDG target has effectively created a 15-year time limit to achieve a target of at least 12 years of free, publicly funded, inclusive and equitable quality primary and secondary education, of which at least nine years are compulsory. There has been a movement in soft law towards a right to free secondary

education, evidenced by communications of the CRC Committee to Member States, the UN Special Rapporteur on the Right to Education and the CRPD Committee (Sheppard, 2022).

In an increasing number of countries, secondary education is now considered part of basic education, and given free and compulsory status. According to the UNESCO-GEM Report (2020) 73% of countries guarantee 9 years of compulsory primary and secondary education and 52% of countries guarantee 12 years of free primary and secondary education. The benefits of secondary education, which includes TVET, barely need to be stated, quality secondary education is crucial to offer access to post-secondary levels or higher education, is often a necessary prerequisite to enter the workforce and provides adults with the skills and training to adapt to changing societies.

However, **low-income countries may encounter difficulties** in increasing access to secondary education due to the cost and the implications of abolishing tuition fees, which is not always affordable (Caillods, 2010). Schools cannot abolish school fees if they do not receive an equivalent allocation from the government. Countries that struggle to eliminate secondary school fees due to the costs involved might prefer targeted measures, such as a focus on girls and minority groups, for example (Caillods, 2010). It cannot be ignored that in some regions, fee-free secondary education is difficult to attain – 17 countries in Sub-Saharan Africa offer some form of fee-free lower and/or upper secondary education, representing just 17% of governments (Kerr, 2020).

Creating a right to secondary education with immediate application might have a counterproductive effect. Rather than reinforcing the right to secondary education, States who rush to provide free and compulsory secondary education could lead to a decline in the overall education quality. The availability of resources, expertise and infrastructure is an important consideration (UNESCO and Right to Education Initiative, 2019).

Regardless, implementing a right to free and compulsory secondary education is difficult to oppose from a rights-based perspective. In a sense, the **right may already exist in an implied manner**. Grove (2010) argues that, although international instruments do not stipulate that education be free and compulsory to the end of secondary school, they do stipulate that the child's right to education involves the right to develop to their 'full potential', and this is unlikely to occur for most children with less than secondary school completion. Similarly, education must be directed to 'the full development' of the human personality. A right to education that only guarantees free primary education 'creates numerous internal inconsistencies within the human rights framework', making accessibility reliant on parents' ability or willingness to pay fees, overriding the overarching principal of the CRC that the best interests of the child shall be a primary consideration (Sheppard, 2022).

Grove (2010) also points out that countries that have not legislated for compulsory secondary education are not always less-developed countries. High-income countries that do not ensure this level show prominent levels of drop out of disadvantaged and minority group learners, showing clear linkages to issues of inequality.

There are also undoubtedly **benefits for the State**, as well as individuals. Tomaševski (2002) found that the key to reducing poverty is secondary, rather than primary education. This level is not just imperative for human dignity and flourishing, but is also linked to the health of the national

economy. In the same report, the Special Rapporteur on the right to education cited the Republic of Korea's experience in finding a 'crucial relationship' between investment in secondary education and the country's economic growth. It has been estimated that world poverty could be cut in half if all adults completed secondary education (UNESCO-GEM Report, 2017a).

Lastly, an extension of compulsory schooling can be advocated for on the basis that it is important for the right to education to become harmonized with the ILO frameworks that make a connection between education and the **minimum age of work**. If the end of compulsory education is aligned with the completion of primary school, this results in an unsafe 'gap' for children, where they are not legally able to work, but also may be not attending school. This gap is where child labour and exploitation will flourish, in direct contradiction with the established rights of the child. On a related note, youth have reflected on the need to ensure that the curriculum and skills development offered in formal education are relevant to the world of work, as in countries where it is not, children are likely to drop out of school and pursue low-skilled jobs.

2.3. Tertiary education

Tertiary education in the 21st century

The nature of tertiary education⁷ is changing. It has broadened in form, now encompassing not just university education but also a wide TVET offering, as well as flexible learning pathways that include part-time, online and distance learning opportunities, the development of micro-credentials, *etc.* Moreover, tertiary education has seen a huge upsurge in participation across the globe. Over the past few decades, **gross enrolment has doubled** worldwide, from 19% in 2000 to 40% in 2020 (UIS data, n.d.), while acknowledging sharp disparities across regions and income levels⁸. There has been a particular rise in rates in middle- and low-income countries and among women. Some contributing factors might be increased demand from the middle classes, improved progression rates through primary and secondary, greater wealth and more options for non-traditional students including part-time students and working adults (UNESCO-GEM Report & IIEP, 2017). This upward trend is often referred to as 'massification'.

The rapid growth in higher education was identified as a potential problem as early as the 1970s, when Trow (1973) described the transition of higher education systems from 'elite' to 'mass' higher education and eventually universal access. According to Trow, this journey of growth came associated with various positive and negative effects. Among the latter, it can impact upon finance, governance, recruitment and selection of students, curriculum and form of instruction and the recruitment, training and socialization of staff.

⁷ According to ISCED, tertiary education builds on secondary education and provides learning in specialised fields of education, including both what is commonly understood as academic education but also includes advanced vocational or professional education.

⁸ In the African region, at tertiary level the gross enrolment rate was of only 9% in 2020 (UIS data, n.d.)

Fees and financing

Financing higher education is a perennial issue. When the ICESCR was drafted, higher education was to be made ‘equally accessible to all, on the basis of capacity, by every appropriate means, and **in particular by the progressive introduction of free education**’. Twenty-three years later, the CRC cut the tail from the provision, making ‘higher education accessible to all on the basis of capacity by every appropriate means’. Despite a duty of non-retrogression in relation to the right to education, higher education fees are actually increasing in many countries. In around one-third of OECD countries and economies with available data, tuition fees for bachelor’s degrees charged by public institutions to national students have increased by at least 20% over the past decade, in real terms (OECD, 2021). On the other hand, 40% of countries consider that they provide some level of free higher education, with well-funded systems offering tuition-free higher education to all (UNESCO IESALC, 2022). In Europe, most countries have offer (or at a very low cost) higher education in public institutions and in many other countries there is a move towards income-contingent, or progressive, fees.

One of the most common concerns for many of the respondents to the Global Conversation was the **expense of higher education** in their country. This was true of both developed and developing countries – ‘university fees are a serious block to equitable access to quality education for the majority of the population which lives in poverty’, was one response, another reported ‘off-putting fees at university level for students from poorer backgrounds’. These costs entail both the up-front fees, to apply, enrol and for tuition, but also the hidden costs of higher education, such as accommodation, food, books and supplies and activities necessary to maintain a healthy life balance (UNESCO, 2022a). The consultative process also revealed that the opportunity cost constitutes an important barrier to access for low-income, female students in the Global South.

As tertiary level education increasingly becomes a necessary precursor for a wide array of careers, these findings seem to go against the very heart of the CADE, by maintaining **indirect discriminatory practices against vulnerable groups** – such as those from low-income backgrounds – but also migrants, refugees and minorities and so forth.

If the correct response is to remove tuition fees to level the playing field, according to McCowan (2012) there is little doubt that high fees will represent a disproportionate disincentive to students from low-income backgrounds. Some argue that the removal of all tuition fees can have counterproductive effects too – in countries with limited resources and high levels of inequality, it can be the richer students that maintain access to elite, publicly-funded tertiary education institutions while students with fewer economic resources and weaker academic preparation are left with lower quality, and in many cases, fee-paid tertiary education institutions (Marmolejo, 2015; UNESCO-GEM Report & IIEP, 2017). However, in countries where higher education is free, it is rather the academic requirements that limit their access as wealthier families can afford fee-paying secondary schools to gain access to public universities, while poorer families send their children to lower quality fee-paying universities.

55 years since ratification of the ICESCR, **27 Member States** (33% of those that reported) declared that their national higher education system is **available free of charge** in public universities in the context of the 10th Consultation. However, the definition of free higher education is intricate and

would benefit from a consensus on the core criteria that need to be respected for higher education to be considered free (UNESCO, 2022a).

Box 4: Promising practices on free tertiary education

In **Finland** higher education is free, student meals are subsidized and financial aid offered. **Argentina, Germany, France, Norway** and **Uruguay** are also among the States that offer free higher education (or at a very low cost).

For other countries, free higher education might not be realistic at present. However, it is important that it is made **affordable as well as accessible** (UNESCO-GEM Report & IIEP, 2017) and that efforts are made to make it progressively free. The CESCR made this distinction in General Comment No. 13 (1999, para. 6), interpreting the requirement of economic accessibility under the 4As framework as meaning ‘affordable’ in the context of levels of education that are not mandated to be free in the international legal framework. Yet, what constitutes affordable higher education requires further explanation to understand what this means in practice (UNESCO, 2022a).

Affordability likely means that tuition fees, if they cannot be removed entirely, should be kept minimal taking into account socio-economic circumstances. Needs-based scholarships and income contingent loans can work together with low tuition fees to fix the quality-affordability gap (UNESCO GEM & UNESCO IIEP, 2017). Means-tested targeted support in the form of grants should offer students that are disadvantaged, whether through household income, race, gender or other factors, the financial aid that they need to enter and remain in higher education. An alternative approach is income-targeted free provision, that creates free higher education for some while retaining the principle of charging user fees to those who can afford it, protecting the right of vulnerable students to higher education. This model has been taken up in diverse locations including Chile, Ontario and New Brunswick (Canada), New York (USA), Italy, Japan and South Africa (UNESCO-IESALC, 2022). Higher education institutions require high levels of reliable investment and resources to function and massification in higher education must be carefully balanced with these needs to prevent a decline in quality of public institutions. States should also consider the affordability of living costs, which can be a barrier to access for many students, by implementing measures that ensure there is accommodation, transport and meal options catering to low budgets.

Admissions procedures

Higher education is predicated on a certain level of selectivity. The right to higher education recognizes that not all people will want or be suitable to take up the opportunity (UNESCO, 2022a). When the right to higher education was conceived, its access was limited to those that were thought to have the ‘**capacity**’ or ‘**merit**’ to engage in the learning as per article 13(2)(c) of the ICESCR and article 26 of the UDHR, respectively. While such concepts of ‘merit’ and ‘capacity’ are in principle designed to prevent the use of unfair or discriminatory criteria when undergoing the selective process of admission to higher education, their use does not always address the existing social inequalities in between or among social groups.

The use of high school results, rank-in-class measures and standardized high-stakes tests does not compensate for **systemic barriers** that exist in vulnerable populations. These criteria reflect knowledge already gained, but not the ability to succeed going forward. Simplistic measures of ‘merit’ that rely heavily on test scores and have bias against minorities and students from low-socio-economic backgrounds create a need for establishments to implement affirmative action to ensure a minimum level of diversity in colleges (Alon & Tienda, 2007). Affirmative action policies can be effective, but also controversial.

The SDG-Education 2030 Steering Committee (2020) **redefined the term ‘merit’** as ‘the potential to succeed’, making the criteria ‘merit in context’. This entails the diversification of access mechanisms and admission requirements that take into account the contextual variables to which students are exposed. The term ‘capacity’, as found in the ICESCR and the CADE, should be interpreted in a forward-looking manner, and place less emphasis on students’ academic history and more on their ability to take the path of further study. General Comment 13 of the CESCR clarifies that ‘capacity’ is assessed by reference to *all* of the individual’s expertise and experience. McCowan (2012) goes further, suggesting that capacity should be conflated as a requirement to ‘fulfil the minimum level of preparation’ and suggests that in a system of a right to universal higher education, there should be a place for every learner that is thought to have ‘capacity’. As ‘the potential to succeed’ and ‘capacity’ requires a judgement by a third party, the policy debate remains controversial. During the consultative process, some advocated for higher education to be accessible for all.

During the consultative process it was suggested that specific methods to counter issues of equity in admissions procedures, such as training admissions officers in social justice principles and the realities of conscious and unconscious bias and barriers which are pervasive in higher education. Others suggested the development of specific competencies for admissions officers and the improvement of transparency in admissions processes. Several participants reiterated that universities, even private ones, should be considered as State actors due to their close relationship with the State through funding and other factors, thereby holding them accountable to human rights standards.

Finally, the introduction of quota policies is a contemporary political issue. Some countries (such as in Brazil and India) reserve seats for underrepresented groups such as ethnic minorities in order to remediate systemic discrimination and improve diversity. While in the recent US Supreme Court decision, race-conscious affirmative action policies were prohibited in college admissions on the grounds of being unconstitutional.

Box 5: Promising practices on admission processes in tertiary education

A positive example can be found at the University of British Columbia, **Canada**, where in 2019 a new, holistic approach to university admissions was introduced – opting to examine the entirety of one’s high school transcript to determine not only a static, median grade-point average, but whether the individual in question has challenged themselves or excelled in courses relevant to their study of choice, and with space to detail personal circumstances that prevented the student from demonstrating the breadth or rigour desired (University of British Columbia, 2018).

Another interesting alternative is to offer automatic admission for each graduate of upper secondary education for the institution and programme of their choice, as is the case in **Belgium** (UNESCO, 2022a). Admission examinations are centrally organized only for regulated professions such as medical and dentistry studies. In addition, locally organized tests are organized for visual and performing arts education and a physical aptitude test for nautical education.

These national examples raise questions as to the assumed necessity of selectivity in higher education, and reinforce the notion that increasing the availability of institutions, programmes, courses and spaces will reduce the reliance on selective admissions procedures. By broadening access and addressing the issue of underrepresentation of certain groups, we not only uphold individual rights but also work towards achieving social justice. In the same vein, there is a need to redefine what constitutes capacity in international human rights law to further clarify State obligations and bring principles of inclusion to the fore in tertiary education.

Rights upon entering higher education

As higher education becomes a reality for students from a wider range of backgrounds and levels of preparation, it is important to reconsider the rights that students have once they enter the higher education system.

Mohamedbhai (2014), in describing massification of higher education in Africa, refers to the importance of **'equity in success'**, finding that increases in enrolment and institutional massification leads to an increase in dropout rates. This could be due to students from lower socio-economic backgrounds finding tuition fees or living expenses unaffordable, or due to students from rural areas or low-income schools being underprepared, or a lack of language proficiency, for example. It is important that discussions around accessibility are balanced with the holistic use of the 4As rights framework. It is not enough that students are offered admission to higher education and that spaces are made available, this level of education must be accessible on an ongoing basis (with the necessary support and measures for students to continue), acceptable (of quality, meeting the aims of education and with culturally sensitive education) and adaptable (meeting the unique needs of all students). Essack (2012) identifies a number of post-admission strategies that can be employed to ensure that marginalized groups enjoy 'equity in success'. Orientation and mentoring programmes, counselling and welfare services, monitoring and early alert systems and curriculum and pedagogical interventions to support marginalized learners can aid the translation of equity of access into equity of outcome.

Critical to this discussion is the need for more explicitly safeguarding of the right to academic freedom as a key precondition for quality education, and in this regard, quality higher education. This point emerged as an important consideration during the consultative process. This is because academic freedom is an intrinsic part of the right to education, as it protects and promotes free intellectual inquiry and knowledge generation (Shaheed, F., 2023 and General Comment 13, 1999).

However, academic freedom remains a principle under constant negotiation, confronted by – among other things – political, cultural, and economic pressures. Under international human rights law, States have obligations to refrain from and protect against violations of academic freedom, support victims, deter future violations, and promote understanding of academic freedom’s benefit to society and democracy. Yet, States and non-state actors may obstruct academic expression and inquiry through violence, legal prosecution, employment actions, surveillance, university closures, and regulations (Scholars at Risk, 2020). Therefore, it is crucial to publicly recognize threats to academic freedom, address violations by assisting victims and holding perpetrators accountable, and promote academic freedom in law (*de jure*) and practice (*de facto*) (Scholars at Risk, 2020; see also Kaye, 2020).

Inequalities in tertiary education

SDG Target 4.3 stipulates that Member States should strive to: ‘By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university.’ UIS data shows a huge uptake in tertiary education, with the figure doubling over the last twenty years. However, some regions, such as Sub-Saharan Africa, have had a slower increase in participation rates and in all countries, low-income populations lag behind with 10% access to higher education in 2018 compared with 77% of the higher-income sector in the same year (UNESCO-IESALC, 2020). Increasing access to tertiary education must not come at the expense of cementing existing vulnerabilities.

One positive conclusion is that massification in some regions has led to increasing equality between men and women. In Sub-Saharan Africa, in 2000, female gross tertiary enrolment ratio (GTER) was 3.58, while male was 5.29. In 2021, female GTER was 7.92, while male GTER was 10.23. Despite a higher percentage point increase for males, this represents an increase of 121% enrolment for females and 93% for males, suggesting that massification is closing the gap for gender inequality, albeit at a rate that should be improved (UIS data, n.d.). Nevertheless, more could be done to encourage women into science, technology, engineering, and mathematics (STEM) subjects, where they remain woefully underrepresented in all regions. Women also remain underrepresented in leadership and decision-making roles in higher education, as has been noted by the CEDAW in their concluding observations to a number of countries during the last reporting period (UNESCO, 2022a). In the area of research, women tend to publish less than their male counterparts (UNESCO-IESALC, 2021).

Technical and vocational education and training

University education is just one form of higher education. A strong TVET offering is increasingly becoming an integral part of this level as well, just as it is for secondary education. TVET has the dual purpose of preparing youth for work and continuing professional development, while also regarded as a crucial vehicle for social equity and inclusion (as well as sustainable development) in that it tends, in some countries, to reach parts of the population ordinarily excluded from general education.

The UNESCO Recommendation concerning Technical and Vocational Education and Training (2015) recommends that States should **transform and expand TVET** in all its forms to address the diversity of learning and training needs. TVET is also a part of the right to work under article 6 of the ICESCR.

There are many different learners that would benefit from the transformation and expansion of TVET in all its forms and it should be more accessible to the disadvantaged and vulnerable groups including marginalized rural and remote populations. However, in terms of inclusivity, countries' skills development policies have overwhelmingly focused on persons with disabilities.

The first consultation on the UNESCO Recommendation concerning Technical and Vocational Education and Training (2015) occurred in 2018-2019. One of the key findings of the report on this consultation is that TVET policies need to be harmonized with other skill policies including foundational literacy skills and numeracy skills, transversal skills and citizenship skills as integral components of TVET, on a par with job-specific skills. Which is both relevant for secondary education and at the tertiary level. In many countries, a patchwork of initiatives and programmes generated by different parts of government individually meet a distinct and worthwhile need, however, there is a lack of overarching policy and political commitment to bring them together in a holistic approach (ILO, 2020). A legal entitlement to lifelong learning opportunities in adulthood that provide training in a variety of skills and combine economic growth, social equity and sustainability priorities should increase the reach and priority given to TVET by governments.

Towards a universal right to higher education

This section has discussed a more generous interpretation of the 'merit' and 'capacity' thresholds to admissions processes so as to broaden access to higher education. The expansion of the group that is considered eligible for higher education must be matched with the availability of capacities, faculties and resources, including diverse modalities of provision and certification.

The international legal framework is inching closer to considering tertiary education a universal right, which will be made possible by diversifying the range of options to include an enhanced TVET offering and ensuring opportunities for learners to take preparatory courses and learn foundational skills so as to meet the minimum level of academic preparation for higher education. This interpretation is in line with an inclusive, lifelong learning approach, that anticipates supporting learners on their journey from early childhood and throughout their school career with an assumption that they can pursue learning in higher education and beyond.

A universal right to higher education requires emphasis on the related importance of affordable higher education, with a view to it being progressively free. Affordability has been interpreted as entailing *low* tuition fees, although more clarity is needed for States to understand their responsibilities in supporting tertiary institutions. Expanding provision without consideration for fees and financing will further entrench divisions in society. The meaning of 'progressively free' could be developed further, perhaps even with some time constraints, to put tangible pressure on States to move in the right direction.

Tertiary education can no longer be thought of as the reserve of the elite population. The opportunity to engage in in-depth study, deep inquiry, critical reflection and intellectual development should be available to all (McCowan, 2012). Inclusive and supportive practices within tertiary education take on heightened importance if learners with a more diverse variety of backgrounds and ability are given opportunities to continue learning at this level.

Moreover, as the landscape of higher education evolves, the growing role of for-profit private tertiary education institutions also warrants careful consideration, ensuring that their contributions align with the principles of accessibility, affordability, and inclusivity, thereby fostering a holistic and equitable approach to tertiary education.

Enforcing a right to higher education and expanding the TVET offering as part of this right, has the dual advantage of giving individuals the chance to engage in deeper learning, but also help learners succeed in their life post-higher education, providing preparation for an ever-evolving world, and in particular a globalized economy and workforce.

2.4. Youth and adult literacy

International normative framework

The right to education is often considered a "gateway right," as it enables the realization of other human rights. It empowers learners to access information, participate in civic life, and secure decent employment. However, this gateway right remains shut without literacy.

Youth and adult literacy has long been an important concern for policy-makers and **international instruments** such as the CRC, the CEDAW, and regional charters in Africa, the Americas and Arab States pay special attention to eradicating illiteracy. The CADE and the ICESCR lay down the obligation of States regarding continuing and fundamental education, of which literacy is part. The major normative base of youth and adult literacy is the UNESCO Recommendation on Adult Learning and Education (RALE, 2015) which provides normative guidance in five areas of action: policy; governance; financing; participation, inclusion and equity; and quality.

SDG 4, under Target 4.6 calls on States to 'ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy'. The Framework for Action affirms that literacy is part of the right to education and cites the **benefits of literacy**, in particular for women, including greater participation in the labour market, delayed marriage, and improved child and family health and nutrition; in turn, helping to reduce poverty and expand life opportunities.

UNESCO's 2006 Education for All Global Monitoring Report stressed the vital link between literacy and education, emphasizing that literacy is both a human right and an essential means for individuals to pursue their aspirations, acquire knowledge, and actively engage in local life. The ILO complements this perspective by recognizing literacy as a fundamental skill for economic participation and decent employment. ILO's Recommendation No. 195 on Human Resources Development (2004) further underscores the importance of basic education, including literacy, in

securing productive employment, highlighting the intrinsic connection between education, literacy and the realization of the right to education.

As mentioned above, literacy is the doorway to further education, yet there are still around 773 million illiterate adults and the majority of these are women, girls, rural populations, low-income background families, people with disabilities, refugees, migrants, nomads and other vulnerable groups (UIS data, n.d.). The international legal framework should do more to overcome this distinct challenge to the right to education, in particular by ensuring universally accessible and free access to foundational skills.

2.5. Entitlements and obligations for adult learning and education

In advancing the right to education throughout life, entitlements in adulthood need to be addressed. **Different learning pathways or modalities**, that encompass formal, non-formal and informal learning are an essential facet of lifelong learning entitlements. It is important that diverse modalities are recognized, validated and accredited (RVA). This process is already governed by the RALE. ‘Member States should promote [...] flexible and seamless learning pathways between formal and non-formal education and training’ (article 27) and [...] learning outcomes from participation in non-formal and informal adult learning and education should be recognized, validated and accredited as having equivalent values to those granted by formal education (e.g. in accordance with National Qualification Frameworks) to allow for continuing education and access to the labour market, without facing discrimination barriers (article 28 (g)). Different countries have implemented different types of RVA in legislation, such as rights-based systems in France, Canada and Norway, many countries have national qualifications frameworks (NQFs)⁹ and others have used a targeted approach for groups that did not complete a cycle of basic education or other vulnerable groups (UNESCO-UIL, 2018).

These various learning pathways should include opportunities to learn the professional skills that are needed to join or retrain for rapidly changing workforces, ensuring a coherence between the skills that employers are looking for and the training that is on offer. Care must be taken that young people and adults are able to learn ‘green skills’, to contribute to the shift to a low carbon economy and more economically sustainable modes of production and consumption.

The unlimited number of settings of lifelong learning can make it difficult to identify the measures that States are able to take to ensure a right to learning in spaces where they are not directly providing for education, such as within the home or the community. In this regard, it is important to recognize the value of ensuring equitable participation in knowledge commons¹⁰, both on and off-line. One space that might require further regulation is the digital sphere (see Section 4). States could also consider the multi-use of spaces that can be reimagined for lifelong learning activities.

⁹ See UNESCO, European Training Foundation & CEDEFOP (2023) for case studies on national qualifications frameworks from 79 countries.

¹⁰ The International Commission on the Futures of Education (2021, p. 2) refers to knowledge commons as the “collective knowledge resources of humanity that have been accumulated over generations and are continuously transforming”.

Box 6: Promising practices on the role of universities and schools in promoting lifelong learning

Universities and schools can open their doors and become a community resource for learning, such as that seen in the **Philippines** with the Open High School System Act (2015), the **Vietnam** Open University System which offers flexible learning opportunities outside of traditional courses (UNESCO-UIL, 2017). The recent UNESCO-UIL (2023) report further showcases case studies of institutions that promote lifelong learning. The consultative process also highlighted some promising measures taken in several states of the **USA** (such as South Carolina, Utah and Wisconsin), where on a space-available basis, university courses are offered tuition-free for the elderly.

States can also encourage learner-friendly workplaces and the expanded use of public spaces that already host learning opportunities such as libraries, museums and community centres (UNESCO-UIL, 2020). Along the same vein the RALE also calls on States to develop measures to provide decent infrastructure for adult learning and education, including safe learning spaces (article 28 (b)).

The diverse modalities and settings of lifelong learning will require changes in **governance structures**. The Ministry of Education can be transformed into a ministry with a lifelong learning mandate (UNESCO-UIL, 2020). Article 12 of the RALE calls on Member States to strengthen and create inter-ministerial forums to collaborate across sectors and provide suitable structures and mechanisms for the development of adult learning and education policies. Financing, though the primary responsibility of the State, will engage a co-responsibility with public authorities, enterprises and social partners (Singh, 2016). The consultative process revealed the need to build on lessons learnt from the area of health where initiatives have encouraged policy-makers to include ‘health in all policies’, for example in sectors such as agriculture, energy or transport. Similarly, education experts or stakeholders could work with all sectors to find ways to promote education from a ‘life-wide’ perspective.

Particularly **vulnerable groups** such as migrants, refugees, older people, indigenous communities, prisoners, rural populations, and persons with disabilities may require properly accredited alternative non-formal and informal learning modalities to succeed. The Fifth Global Report on Adult Learning and Education found that those that needed adult learning and education the most were still the most deprived of access to learning opportunities (UNESCO-UIL, 2022). Second-chance programmes to make up for lack of initial schooling are imperative to respond to ongoing cycles of disadvantage. Participation and inclusion of vulnerable groups must go hand-in-hand with ‘emancipatory visions of adult education’ which includes an appreciation for informal learning across the lifespan (UNESCO’s International Commission on the Futures of Education, 2021). Targeted strategies can be designed to address the cognitive and emotional diversity of learners of all age groups, backgrounds and abilities (UNESCO-UIL, 2020).

Box 7: Promising practices on entitlements in adulthood

Some countries have made radical steps forward in legislating for lifelong learning entitlements. **Singapore is a world leader in this regard.** SkillsFuture was launched in 2014, a statutory board set up under the Ministry of Education that provides an array of lifelong learning and workforce development programmes for people of all ages. Direct subsidies are offered to all Singaporean citizens over the age of 25 to encourage take-up. The National University of Singapore, for example, launched the School of Continuing and Lifelong Education (SCALE) in 2015 to expand its offerings for working adults, including part-time degrees and modular certificate courses (Kamei, 2017).

2.6. A 'right to lifelong learning' within a broad framework on the right to education and its implications

The term 'lifelong learning' appears for the first and only time in an international legally binding instrument, in the CRPD. Its article 24 (1) provides that in 'realising [the right of persons with disabilities to education] without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning [...]'. Today, the discussion has increasingly turned to recognizing a 'right to lifelong learning' as referred to in the CONFINTEA VII Marrakech Framework for Action. Whether this can be framed as relating to an entirely new right or an extension of the existing right to education is yet to be clarified.

During the consultative process it was revealed that the traditional view of education as aimed at children and young people is not sufficient. Some felt that consolidating our understanding of lifelong learning as part and parcel of the right to education would be a way to acknowledge this conceptual shift, while building on the strength of existing frameworks. Another approach may be to enshrine the right to lifelong learning in a new treaty or add this perspective to an existing instrument. Regardless, the nature of **our perspective on education has changed**. As was affirmed during the consultative process: education is no longer seen as preparation for life but is life itself. In the same vein, OCA Policy Brief 10 posits that education systems should be geared beyond preparing children and young people for their adult life, towards supporting them and learners of all ages to acquire the capacities to learn throughout their lives.

The consultative process highlighted the need to build an accepted common understanding of lifelong learning as a universal human right to shift government priorities. It was suggested that the financing of lifelong learning is not only a problem of lack of resources¹¹, but also of prioritization – the resources are there, but must be allocated effectively. This paper therefore seeks to outline some specific entitlements for right-holders and obligations for duty-bearers.

¹¹ The Global Education Monitoring Report estimates that the annual financing gap for education is almost \$100 billion.

It is possible to loosely identify two groupings of lifelong learning perspectives in the literature. First, an **expansive view** of lifelong learning, as learning that happens at all ages and is ‘life-wide’¹², occurring across a variety of settings, as per UNESCO’s International Commission on the Futures of Education (2021). It could be also described as an ‘existential-continuous process involving a lifelong biological transformation’ (UNESCO-UIL, 2016, p. 4). In this expansive view, a right to lifelong learning has implications for all levels of society and collective life, for:

... communities, cities, villages and towns, for our national ethos and cultural systems, and for our regional and international communities. Work, caretaking, leisure, artistic pursuits, cultural practices, sports, civic and community life, social action, infrastructure, digital and media engagement – these are all potentially educative, pedagogical, and meaningful learning opportunities for our shared futures, among countless others. (International Commission on the Futures of Education, 2021).

Conversely, a second, **narrower view** of lifelong learning might limit its scope to particular levels, modalities or spaces of education, such as early learning, foundational education and literacy for adults, TVET or education for age ranges that fall outside traditional schooling (i.e. very young children or adults). UNESCO-UIL (2016, p.4) describes literature purporting a narrower view as describing a ‘functional-episodic process’, discipline-bound and orientated towards competences and learning outcomes for work-related purposes.

With the Education 2030 Framework for Action, the more expansive view has generally surpassed the narrow view. It is now generally accepted that lifelong learning goes beyond, for example, adult education, or skilling, reskilling and upskilling workers for the labour market. However, the more expansive view is problematic from a rights perspective as it is difficult to lay down specific duties for States as to its proper implementation when learning is happening sometimes spontaneously, and in such diverse settings. A right would be quite meaningless if it did not impute on States obligations that they are bound to respect.

Implementing a ‘right to lifelong learning’ or ‘right to education throughout life’

Implementing the entitlements and obligations implied by a ‘right to lifelong learning’ could be pursued in different ways. The first is to consider the right to lifelong learning as already finding sufficient normative bases in the existing international human rights instruments (Singh, 2016). For example, the CADE lays down obligations relating to continuing education, as does ICESCR and there is already a right to fundamental education for all ages, including the elderly. Furthermore, the normative foundation already exists within the 4As framework for implementing the right to education (accessibility, availability, acceptability and adaptability) which applies throughout life. Hence, to emphasize the lifelong aspect of the right to education, a **first option**, might be to simply updating common terminology and redefining the right to education as a ‘right to education, learning and training’ as described by the Special Rapporteur on the right to education (Singh, 2016).

¹² Beyond the lifelong learning approach which covers learning from birth throughout life, the notion ‘life-wide learning’ refers to learning through a full range of life activities (personal, social or professional).

A second option is to consider the right to lifelong learning as a specific component within the framework of the right to education. This would have the benefit of bringing more attention to the value of continuous learning entitlements, rather than seeing them as a secondary priority after school education. A new or revised normative instrument that clearly defines State obligations as to lifelong learning would then provide clarity. If this option is considered, care must be taken that an isolated 'right to lifelong learning' is not to have the effect of supplanting or substituting the existing right to education, which has clear definitions, components and State obligations that have been developed over many years to provide a wide net of protection for learners. A separate right to lifelong learning must harmonize with the current system of rights by supporting a pathway approach for learners throughout their lives. The RALE provides thorough guidance on adult learning and education, which could be developed further into a legally-binding document.

Working document

Section 3. Reinforcing equality, inclusion and redefining the aims of education

Recognizing the importance of a lifelong learning approach, Section 3 expands on the previous section by giving greater attention to the vital issues of equality, inclusion and supporting the full development of the human personality. Conceptual shifts are discussed, along with specific challenges related to gender, disability, minorities and vulnerable groups. The global pivot to digital and remote learning modalities, a response to the COVID-19 pandemic, revealed the fragility and limitations of digital approaches. The section recognizes the pressing issues of digital inclusion, given the accelerated transition to the use of digital tools in education and the exacerbated challenges related to safeguarding learners in the digital sphere. Finally, it also calls for a need to revisit the aims and purpose of education, emphasizing the need for comprehensive human development.

Table 2: International human rights law overview: Inclusive education

Theme	International human rights framework	Absence of specific legal obligations /or weak legal obligations
Inclusion	The CRPD is the only instrument to refer to inclusive education for people with disabilities. See: CRPD article 24	There is a lack of a comprehensive definition of inclusive education which goes beyond people with disabilities, and fosters cultural, religious and linguistic diversity, among other aspects.
Discrimination	Under the CADE, the 'term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education'. See: CADE article 1(1)	At the international level, sexual orientation, gender identity, refugees, asylum-seekers, migrants and internally displaced persons (IDPs) are not included in the prohibited grounds of discrimination in education.
People with disabilities	People with disabilities have a right to inclusive education and should not be excluded from the general education system. See: CRPD article 24	
Gender equality	Women should be treated equally in education and gender stereotyped concepts of the roles of men and women should be eliminated.	IHRL does not address all issues of stereotypes and stigma . Furthermore, there is no clear obligation in relation to ensuring the continuity of education, education reenrollment and prohibiting

	See: CEDAW article 10	any restrictions in education, of pregnant and parenting girls and women . Education for health and well-being is not provided for.
Indigenous people and minorities	IHRL provides for certain educational rights of indigenous people and minorities including the establishment of their own educational institutions and facilities. See: Indigenous and Tribal Peoples Convention article 26, CADE article 5(1)(c).	Mother tongue education and learning opportunities are not provided for.
Refugees, migrants, internally displaced persons and asylum-seekers	IHRL also provides for a very limited protection of the right to education of refugees, stateless persons and migrants. See: ICPRMW article 30, UN Convention Relating to the Status of Refugees article 22; UN Convention Relating to the Status of Statelessness article 22;	Asylum-seekers and IDPs (including climate displaced) do not have their right to education enshrined nor detailed. Elimination of administrative barriers, language classes, remedial classes , etc, is not explicated in IHRL.
Emergency and protracted crises		Right to a safe learning environment and measures to ensure education resiliency and responsiveness are lacking in IHRL.
Remote learning and digital inclusion		No legal provisions address digital inclusion, including the use of technology in education and the need for digital literacy skills, to prioritize connectivity and establish standards.
Aims of education	The CRC specifies the aims of education. See: CRC article 29(1).	The aims of education lack the development of soft skills and education on climate change . No legal provision sets the right of learners to learn about sustainable development and global citizenship . Corporal punishment in education is not explicitly prohibited.

3.1. Shifting concepts

Equality and non-discrimination

The **principles of equality and non-discrimination** are central to the right to education. These principles are at the foundation of the CADE and are echoed in article 2 (2) of the ICESCR, article 26 of the International Covenant on Civil and Political Rights ('ICCPR', 1966) and numerous other international human rights provisions. General Comment No. 20 and General Comment No. 13 of the CESCR further interpret the prohibition against discrimination, affirming that both direct and indirect forms of differential treatment amount to discrimination.

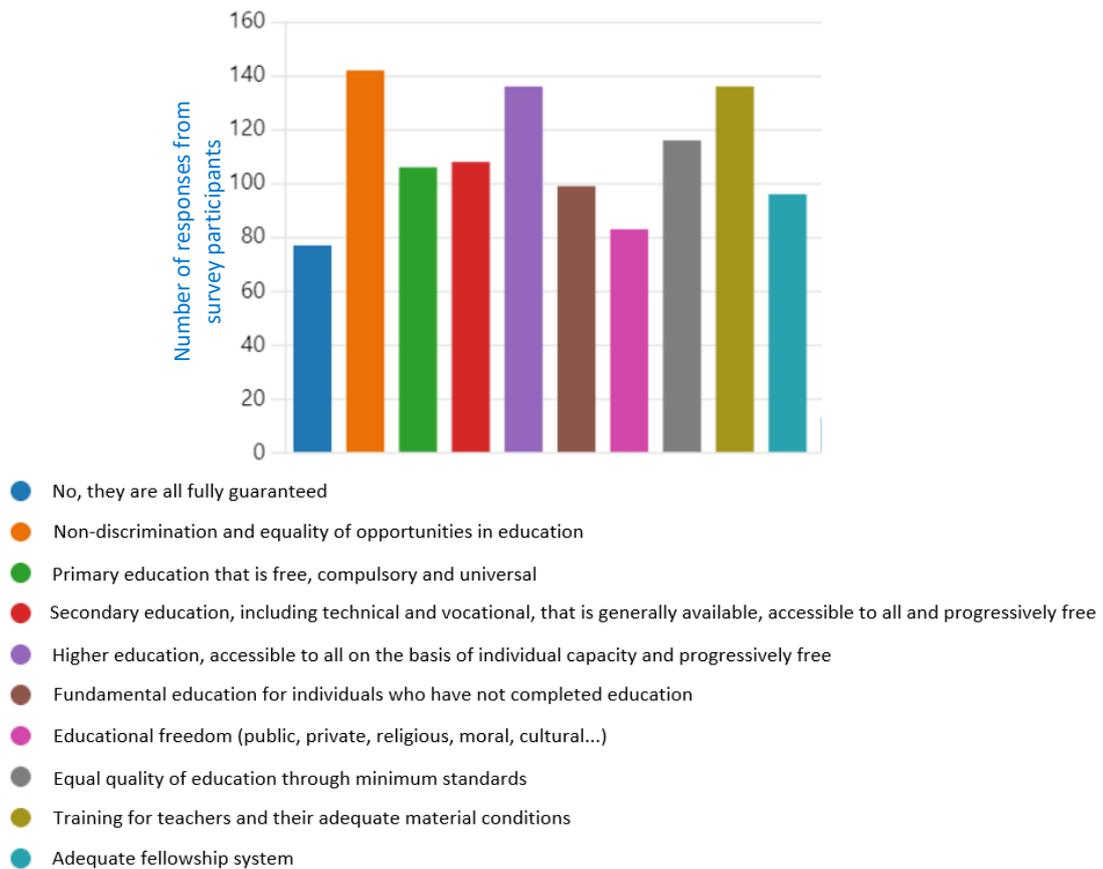
International human rights law prohibits discrimination based on various grounds, such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, or disability but this list is non-exhaustive and other statuses could yet include age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation, to name but a few.

Despite their undisputed centrality to the right to education, equality and non-discrimination continue to be cited among the most pervasive problems in national education systems. Responses to the Global Conversation sought to emphasize the need for truly inclusive education for all vulnerable or underprivileged groups. One of the most common concerns was for those in remote, rural or impoverished areas, where it was felt education all-too-often failed to reach. Around 40% of those that responded to the survey described non-discrimination and equality as 'insufficiently guaranteed' in their country (see Figure 2 below).

Inclusion has emerged in the right to education vocabulary to support and strengthen the concepts of non-discrimination and equality. While non-discrimination was the cornerstone of the CADE, SDG 4 impels States to 'Ensure inclusive and equitable quality education ...'. Shifting the focus to inclusion clearly mandates a **positive obligation on States** to put into action their non-discrimination and equality provisions. However, if the concept of 'inclusive education' is to be explicitly incorporated into the international legal framework, it is important that it has a clear definition and stipulates defined obligations for States.

Figure 2: Responses to the UNESCO online survey on the evolving right to education

Are any aspects of the right to education insufficiently guaranteed in your country? Please select all that apply.



Source: Graph taken from the UNESCO online survey on the evolving right to education, extracted from Google Forms, correct as of 10/06/2022.

Definition of inclusion

The challenge of finding a common definition of inclusive education has led to inconsistent implementation between countries (Krischler, Powell & Pit-Ten, 2019). In its most limited conception, inclusive education is defined as simply placing learners with disabilities or special educational needs in general education classrooms. Although the consensus today is that inclusive education is about 'more than just physical placement' (Göransson & Nilholm, 2014), the multifaceted nature of inclusive education makes it 'difficult to pin down' (UNESCO-GEM Report, 2020).

One of the major sources to understand inclusive education comes from the CRPD. While the right to inclusive education found therein was directed at persons with disabilities, the CRPD Committee elucidated in their General Comment No. 4 that inclusion will involve a process of 'systemic reform' of the entire education system, as placing learners with disabilities in mainstream classes without accompanying structural changes to, for example, organization, curriculum or teaching and learning strategies, will not constitute inclusion (2016, para. 11). This need for reorganization of the whole

education system echoed the consensus reached in the Salamanca Statement (1994) that called for ‘major reform of the ordinary school’.

An examination of the literature provides five key features that are often referred to in the context of inclusive education, which can provide the basis for a common definition.

1. **Everyone learns together** – this means that special schools or education units are generally discouraged, although it should be noted that in specific circumstances some communities might prefer self-segregated education, for example, members of the deaf community might consider themselves a linguistic minority and should have the right to choose separate bilingual schools (UNESCO-GEM Report, 2020).
2. The **removal of barriers** – attention is focused on the personal barriers that individual learners face in education. The identification and removal of barriers entails a particular emphasis on learners that are at risk of marginalization, exclusion or underachievement (Ainscow, 2019).
3. The view of inclusive education as a **transformative process** (UNESCO, 2017a; UNESCO-GEM Report, 2020; Cali Commitment, 2019). Some aspects of this process include: flexible curricular, teaching methods and learning strategies, individualized learning pathways, inclusive lifelong learning spaces (UNESCO- IBE, 2021) and ways to measure learners’ progress.
4. A **collaborative approach to teaching and learning** - This feature has several facets, including community involvement in education and partnerships between key stakeholders such as parents/caregivers; teachers and other education professionals; teacher trainers and researchers; national, local and school-level administrators and managers; policy-makers and service providers in other sectors (e.g. health, child protection and social services); civic groups in the community; and members of minority groups that are at risk of exclusion (Ainscow, 2019). It also means that the teaching profession is to become a collaborative profession. Teachers will work as part of a team with fellow teachers and other specialists in the school, as well as with their students to personalize education and make it authentic and relevant to the learner (International Commission on the Futures of Education, 2021).
5. Embracing, valuing and celebrating **diversity** and offering a sense of belonging (UNESCO-GEM Report, 2020). The idea is that diversity is celebrated, which is a progression from the rationale surrounding non-discrimination law, where attention is paid primarily to overcoming difference.

State obligations

Building on these common features of inclusive education, what concrete State obligations can be envisaged that give meaning to a ‘right to inclusive education’?

Inspiration can be found in article 24 (2) of the CRPD, which contains guiding principles and clearly outlines that States must, for persons with disabilities: ensure that they have access, offer reasonable accommodation, have support to facilitate effective education and effective

individualized support measures that maximize academic and social development, consistent with the goal of full inclusion. These obligations can be generalized to all learners in the education system.

Hunt (2020) distills these elements into three essential duties for an inclusive legislative framework: **non-discrimination, zero-reject** (no one is excluded from education) and the **reasonable accommodation** principle that finds its origins in the CRPD (defined in article 2 as meaning ‘necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’).

Another guiding source is the Education 2030 Framework for Action that provides detail to the overarching goal of SDG 4 to ‘ensure inclusive and equitable quality education...’. The Framework for Action echoes some inclusive language such as calling on States to develop or improve cross-sectoral policies and plans that ‘address the social, cultural and economic barriers that deprive millions ... of education and quality learning’ (para. 19) and address ‘all forms of exclusion and marginalization, disparity, vulnerability and inequality in education access, participation, retention and completion and in learning outcomes’ (para. 13). Inclusive measures ‘must include changes as appropriate in education content, approaches, structures and funding strategies’ (para. 19).

Lastly, the **role and rights of teachers** will need to be redefined. For many teachers, inclusive education will herald an expansion of their workload and skillset. Teachers will need to be trained and prepared to teach *all* learners, including those with special educational needs (UNESCO-GEM Report, 2020). They will be expected to work collaboratively, become ‘reflexive practitioners’ and empowered to design, develop and implement flexible and individualized curricular (International Commission on the Futures of Education, 2021). The level of training and skills that are required of teachers should be recognized in proper remuneration and employment rights.

A possible right to inclusive education?

Finally, while it might be possible to envision a specific right to inclusive education within the international legal framework, whether all believe it to be desirable remains a separate matter. The consultative process revealed that the content of inclusive education is already well-reflected in the existing treaties, although the right could be made more explicit. Others felt that the term ‘inclusive’ was overly technical and would not further the cause.

One benefit to a codified right to inclusive education is that it engenders a shift from thinking about vulnerable or marginalized groups, as is the nature of non-discrimination law, towards considering individuals and individual barriers. By grouping learners together, for example the highly diverse group that is ‘girls and women’, the system does not consider the individuals suffering multiple, compounded or intersectional discrimination (UNESCO & Right to Education Initiative, 2019).

An explicit expansion of the ‘**reasonable accommodation**’ principle, as applied to every learner, would be revolutionary for tackling disadvantages that do not fit well into the traditional vulnerable groups protected by non-discrimination laws, such as for those in rural locations or from disadvantaged socio-economic backgrounds. Poverty, in particular, and other systemic issues in

society continue to loom large as an issue in education. It emerged from the consultative process that an individualized approach was thought to be a positive advancement for many as it allows for context-specificity.

Another advantage of putting forward a right to inclusive education for all is that it would modernize mindsets as to who inclusive education is for. Rather than the outdated view that inclusive education is solely for persons with disabilities, policy-makers, teachers and other education staff and stakeholders would have a vision of the whole-system transformation that is required to make it a reality for all.

Box 8: Promising practices on inclusive education

In national legal systems, of the 194 States studied, only Chile, Italy, Luxembourg, Paraguay and Portugal have inclusive education laws that cover all learners (UNESCO-GEM Report, 2020, p. 32). For example, **Chile's** Inclusive Education Act No. 20.845 (2015) updates the principles of education to promote free, diverse, flexible, integrative and inclusive education and updates the language of the General Education Law No. 20.370 (2009) to include reference to inclusive education throughout. In **Paraguay**, Act 5136 of 2013 on Inclusive Education, defines inclusive education as: 'the systemic process of educational improvement and innovation to promote the presence, performance and participation of students in all national education system institutions where they are enrolled, with particular attention to students most vulnerable to exclusion, school failure or marginalization, thus detecting and eliminating the barriers that limit this process' (*Unofficial translation*. UNESCO-GEM Report, n.d.). It defines a student with specific educational support needs as not only those with disabilities, but also those with 'specific learning disorders, high intellectual abilities, late incorporation into the education system, personal circumstances or school history, requires support and/or adaptations to achieve the maximum possible development of their personal abilities.'

During the consultative process, other progressive examples of inclusive national policies were shared. In **Ecuador**, a range of services have been implemented that are intended to prevent any individual from being left behind, such as providing teachers for children staying in hospitals or those that are incarcerated, and the reopening of rural education centers. The development of the 'properly inclusive school' has taken place in **Portugal**, where 'each and every student, regardless of their personal and social situation, can find the answers that enable them to acquire a level of education and training that meets their potential, their expectation and their needs in effective conditions of equality'.

These national laws suggest that a shift in mindsets is occurring in some parts of the world, and the right to education is now gradually incorporating concepts of inclusive education as central to the achievement of equality. Giving inclusive education a more solid foundation in the international legal framework would hopefully diffuse the principles of inclusive education throughout other countries and regions.

The following subsections will consider some of the specific issues, trends, as well as solutions, that surround the inclusion of particularly vulnerable groups.

3.2. Gender equality

Despite decades of striving towards gender equality in education, there remains **considerable disparity** in the treatment of girls and women, in relation to boys and men, in education systems. An entire treaty - the CEDAW was adopted to tackle the multiple pervasive forms of gender discrimination. The CEDAW outlines specific rights for women in education including many that ensure 'equal access', for example to the same: curricula; examinations; teaching staff with qualifications of the same standard; school premises of the same quality; to scholarship and other study grants; programmes of continuing education; the same conditions for career and vocational guidance, and so on (article 10). Considering the CADE was elaborated over sixty years ago, it does not refer to gender but instead it explicitly states that sex-based discrimination must be eradicated and prevented.

In the spirit of inclusivity, however, it is essential to look beyond ensuring equivalence of educational rights and **focus on addressing the specific barriers** faced by girls and women. SDG 4, under Target 4.5, calls for the elimination of gender disparities and makes specific mention of the effect of 'gender-based violence, child marriage, early pregnancy and a heavy load of household chores' on the enjoyment of girls' and young women's education. Targeted action for boys, in contexts where they are disadvantaged, is also highlighted. Boys make up more than half of out of school children and more must be done to tackle their propensity for drop-out, grade repetition and disengagement from education (UNESCO, 2022b). Differential social norms, power dynamics and expectations faced by boys also need to be addressed.

One common and often damaging life experience that girls and young women around the world face is **early marriage and unintended pregnancy**. The Global Conversation highlighted that many perceive this to be the foremost obstacle to education for girls and women in their countries. This is a global problem that plagues diverse global contexts and affects many girls, with one in five girls worldwide married before the age of 18 (Girls not Brides, n.d.).

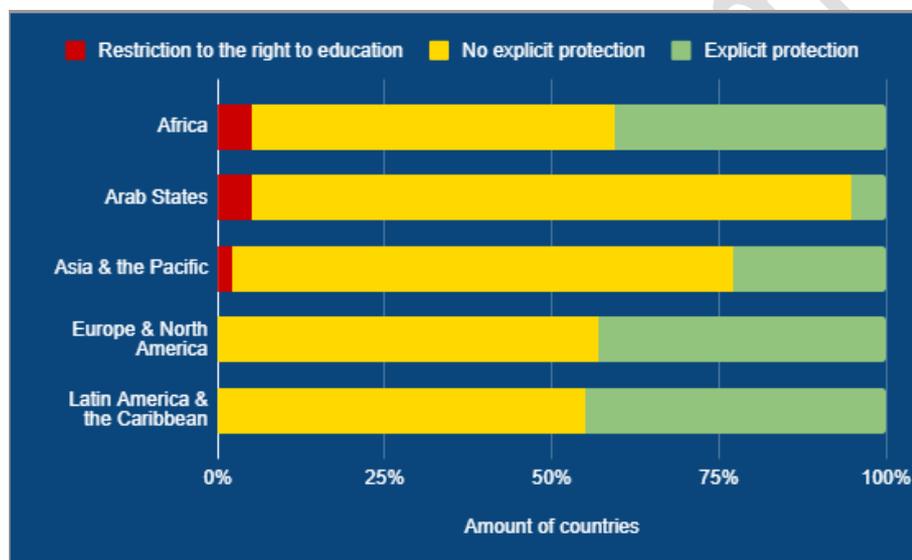
The link between early pregnancy and school dropout can be difficult to establish as it is difficult to ascertain which is the cause and which is the consequence, though a study in Chile found that being a mother reduces a girl's likelihood of attending and completing high school by between 24-37% (UNESCO, 2017b). Regardless, early pregnancy is dangerous in and of itself – adolescent mothers aged 10-19 years face higher risks of pregnancy related complications, resulting in morbidity or mortality, than women aged 20-24 years (WHO, 2023, see also Maheshwari et al, 2022; Plan International, 2013a).

One way to protect both girls and boys from the negative consequences of early marriage and pregnancy would be through constructing a **right to receive education for health and well-being**, including comprehensive sexuality education ('CSE'). CSE notably also contributes to preventing sexual abuse, sexual violence, sexual harassment and sexual exploitation, which are experiences

faced by all learners, (UNESCO, 2018). UN treaty bodies have viewed a lack of access to sexual and reproductive education as a barrier to compliance with State obligations to guarantee the rights to life, health, information, education and non-discrimination, and have frequently expressly recommended that sexual and reproductive education should be a mandatory component of learning (Muñoz, 2010).

Another significant progression would be to eliminate policies and practices that expel or exclude pregnant girls and young mothers and explicitly provide for their continued education (World Vision, 2020). In a recent UNESCO research project, *Her Atlas*¹³, that monitors the right to education for girls in national frameworks, only 26% States were found to have laws that explicitly protected the right to education for pregnant or parenting girls and women, while 8% of States actively restricted their right to education.

Figure 3: Legal protection of the right to education of pregnant and parenting girls in national legislation



Source: UNESCO, [Key data on girls and women's right to education](#) (last consulted on 16/10/2023).

Education can also play a role in overcoming inherent **stigmatization and bias** that is mirrored in wider society. In the context of the 10th Consultation, some States described progressive steps that overcame gender stereotypical patterns (UNESCO, 2022c). 49 countries (60%) reported adopting measures ensuring gender parity in STEM and technical and vocational training (TVET), for example the Advancing Women in STEM strategy unveiled by Australia in 2019 and in Germany, an annual 'Girls' Day' promoting girls' interest in STEM subjects and a 'Boys' Day' for professions generally chosen by women.

3.3. Persons with disabilities

¹³ <https://en.unesco.org/education/girls-women-rights>

Persons with disabilities are among the most marginalized groups of people and are **regularly denied their right to education**. Compared with children without disabilities, children with disabilities are 47% more likely to be out of primary school, 33% more likely to be out of lower-secondary school and 27% more likely to be out of upper secondary school (UNICEF, 2021).

Traditionally, persons with disabilities that have accessed education have commonly been educated in a **parallel system in special schools or units**. There is increasing consensus that, although there may be a place for separate institutions, ideally, mainstream education institutions should become sufficiently inclusive to welcome persons with disabilities, and that the need for special services will therefore decline.

Building inclusive schools and institutions will require policy-makers to consider accessibility, adapting education infrastructure, the form and substance of education and teaching methods, and using a lifelong learning perspective to be cognizant that persons with disabilities should also be able to participate in pre-primary and higher education, as well as have access to formal and non-formal adult education to develop their skills.

Box 9: Promising practices on inclusion of people with disabilities

71 States (88%) reported taking measures to ensure the inclusion of persons with disabilities in the context of the 10th Consultation. **Germany**, while having schools that were tailored to those with special educational needs, also in the majority of Länder strive to give pupils and their parents a choice between regular schools and special schools. This choice for learners and parents may be seen as a key component of education policy for those with special educational needs.

The CADE does not explicitly refer to persons with disabilities, though it is founded upon the fundamental principle of equal opportunities. The CRPD protects the right to education of persons with disabilities, without discrimination on the basis of equality of opportunity, and within an education system that is inclusive at all levels. The CRC specifically addresses the right to education of children with disabilities in article 23. SDG 4 Target 4.5 calls on States to ‘ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities ...’.

Reinforcing the international normative framework with principles that comprehensively protect the right to education for persons with disabilities is vital. Disability should be added as a prohibited ground of discrimination in education, and consolidating the principles of the CRPD in other education instruments will further their reach and encourage States to invoke the necessary constitutional, legislative and policy amendments to ensure that disabilities do not prevent anyone from the full enjoyment of their right to education.

3.4. Indigenous peoples and minorities

Indigenous peoples and minorities experience specific vulnerabilities in education and are often deprived of quality education due to their background or the **cultural, linguistic or financial barriers** that they face. It is estimated that 40% of the world's population cannot access education in a language they speak or understand (UNESCO-GEM Report, 2016), and in some regions this percentage is considerably higher.

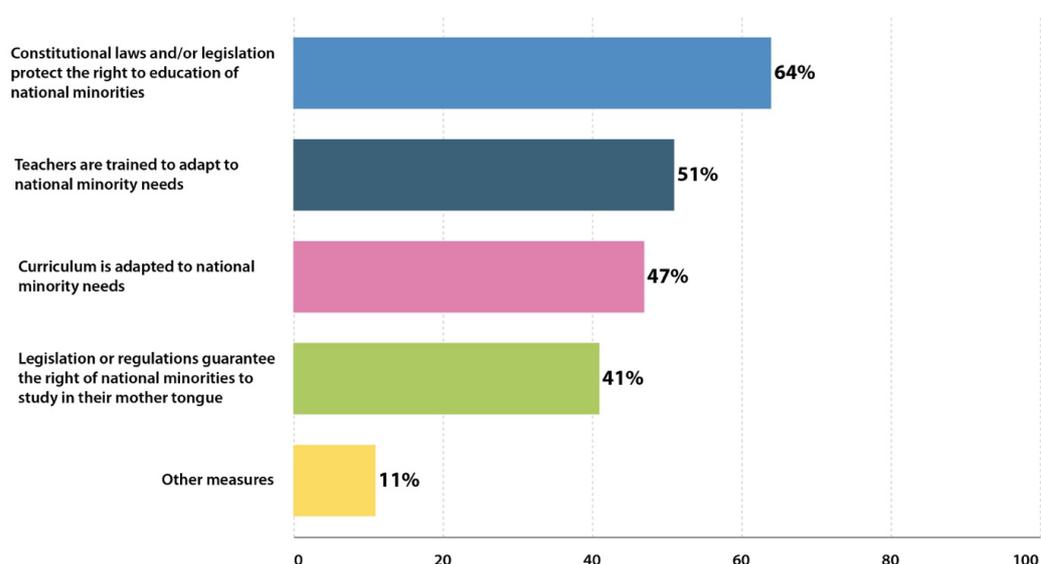
Minorities and indigenous peoples may avail of non-discrimination and equality clauses under the CADE and the ICESCR, although they are not specified groups, while under the CRC, indigenous peoples are given specific attention under article 30 where it is stated that a 'child (...) who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language'.

The UN Declaration on the Rights of Indigenous Peoples (2007) comprehensively promotes the rights of indigenous peoples, including their "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" (article 14).

National minorities are given particular attention under article 5(1)(c) of the CADE, where States have agreed on the importance of specifically recognizing the right of members of national minorities to carry out their own educational activities, including school maintenance and, depending on the educational policy of the individual State, the use or teaching of their own language, provided certain quality and access standards are met. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), under article 4 (3) protects minorities' rights to learn their mother tongue or to receive instruction in their mother tongue.

The Education 2030 Framework for Action further specifies that vulnerable groups requiring particular attention include indigenous peoples and ethnic minorities. Despite this, laws and regulations to protect these groups are lacking in national contexts.

Figure 4: Percentage of Member States taking measures to protect the rights of minorities



Source: UNESCO, 2022c, p. 38.

The rights of minorities and indigenous peoples to mother tongue-based **multilingual learning** was felt to be of great importance to several respondents to the Global Conversation. One survey response from Costa Rica described the Ministry of Public Education's progressive education policies, such as the Bilingual Indigenous Education Program and the Protocol Against Situations of Racial Discrimination, Xenophobia and all other Forms of Discrimination in the Education Centres, as a positive first step towards the integration of indigenous culture in education. The **advancement of a right to education in one's mother tongue** could work to overcome some of the systemic disadvantages that indigenous peoples' and minorities face in education.

Other responses to the Global Conversation thought that their national education systems should focus on **pedagogy and content**, which are often misaligned with indigenous ways of learning and knowing. Along this vein, New Zealand has reported that the 1989 Education Act includes provisions for parents who wish to have their child educated in te reo Māori and schools have the option of two school curricula - the New Zealand curriculum and Te Marataunga o Aotearoa.

3.5. Refugees, migrants, internally displaced persons, and asylum-seekers

Overall, the **estimated number of international migrants has increased** over the past five decades. 281 million people were living in a country other than their countries of birth in 2020, more than double the figure in 1990 and over three times the estimated number in 1970 (IOM, 2020). At the end of 2020, some 55 million people were living in internal displacement (IDMC). This number is set to rise exponentially as the effects of climate change cause devastating impacts across the globe and the massive numbers of refugees displaced by the recent crisis in Ukraine are added to the tally.¹⁴ UNHCR (2021) estimates that close to half of all refugee children (47%) remain out of school.

When people are displaced from their homes and communities, their right to education becomes at risk. **Barriers to education** are numerous and varied but may include a lack of identity papers; lack of exam or course certificates; distance to school; cost of education; xenophobia, intolerance, language barriers and incompatible curricula, among others.¹⁵

A range of international treaties protect these vulnerable groups' right to education. The Refugee Convention guarantees the right to public education of refugees in article 22. The CADE prohibits different treatment based on 'social origin', 'economic condition' or 'birth' and requests States to offer 'foreign nationals resident within their territory the same access to education as that given to their own nationals' in article 3. General Comment No. 20 (2009) of the CESCR clarifies that the Covenant rights apply to everyone, including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status

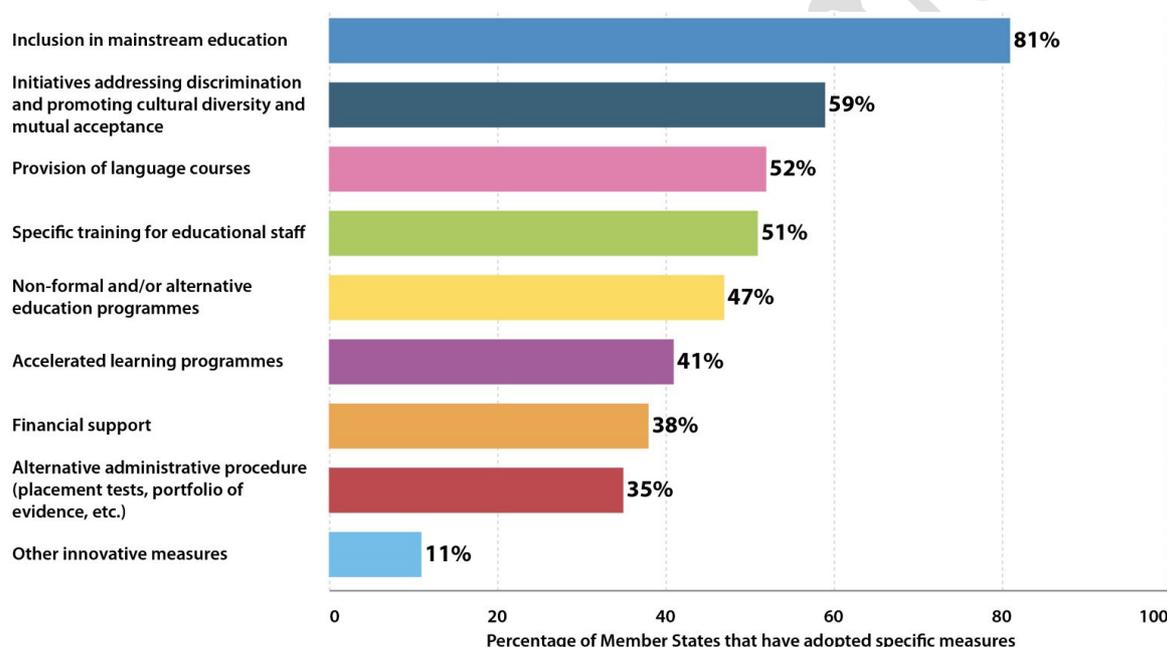
¹⁴ For more information on climate displacement and its impact on education, see the UNESCO website, *How climate change and displacement affect the right to education*. Accessible at: <https://www.unesco.org/en/right-education/climate-change-displacement>

¹⁵ For more information on the barriers to education faced by refugees, migrants and other displaced populations, see: UNESCO, 2019a, *Enforcing the right to education for refugees*. Accessible at: <https://unesdoc.unesco.org/ark:/48223/pf0000366839>.

and documentation in General Comment No. 13 (1999). Similar rights arise in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (articles 30 and 45) and the Convention Relating to the Status of Refugees (article 22). The Global Convention on the Recognition of Higher Education Qualifications was adopted by UNESCO in 2019 and aims to reduce the obstacles faced by displaced persons who require recognition of their qualifications to access higher education or continue their studies in another region or country.

Soft law instruments such as the 2016 New York Declaration and pursuant Global Compacts for Safe, Orderly and Regular Migration and for Refugees commit States to provide inclusive education and facilitate access. The Education 2030 Incheon Declaration explicitly commits States in paragraph 11 to develop more inclusive, responsive and resilient education systems to meet the needs of children, young people and adults in the context of conflict and crisis, including internally displaced persons and refugees.

Figure 5: Percentage of Member States taking measures to protect the rights of refugees and migrants



Source: UNESCO. 2022b, p. 43.

It is encouraging to observe that many States have made impressive advancements in their education offering for refugees. This figure 5 shows the percentage of Member States that had taken different measures.

Among the **innovative measures reported by States** to protect the right to education of these vulnerable groups, the Democratic Republic of Congo reported that annual action plans will now include measures to adapt education to the new needs generated by a crisis or natural disaster, including offering psychological support for traumatized children and facilitating access to education for displaced persons and refugees by waiving fees. Italy has removed the requirement for residence documentation to enroll in school and in Sweden, asylum-seekers have the same right to education as residents in law.

Impressive international and regional cooperation has been illustrated by the Quito process. Thirteen Member States from Latin America and the Caribbean have united to articulate regional coordination with regard to the flow of human mobility of Venezuelan citizens. UNESCO is supporting the Ministries of Education to guarantee learners' right to education in the context of Venezuelan displacement.

However, there is still work to be done. The right to education of migrants and refugees is still not fully enshrined in many national legal frameworks and is often not comparable to the rights enjoyed by citizens. States must be guided by the strong network of protection proffered by the international instruments above and develop policies and programmes for people on the move in line with the principals of the 4As framework. As the lack of official documentation is a large barrier to the participation of refugees, migrants and IDPs in education systems, States should consider ratifying the recent Global Convention on the Recognition of Qualifications (2019) and legislate for the recognition of qualifications for people on the move.

There would also be a benefit to education rights being strengthened for those that are on the move for reasons relating to climate change (UNESCO, 2020a). The Special Rapporteur on the right to education, in 2011, confirmed that emergencies do not relieve States from their obligation to take all appropriate measures to ensure the realization of the right to education of all persons in their territories including non-nationals, refugees or internally displaced groups, and that 'ensuring financial support for primary education so that it continues to be available during emergencies, making secondary education available without discrimination and promoting access to higher education on the basis of capacity are nothing more than the fulfilment of a human rights obligation' (para. 67). With this perspective in mind, the existing international legal framework could be reinforced by **explicitly protecting the right to education of people fleeing the effects of climate change and natural disaster** alongside the rights of refugees and asylum-seekers.

Recognizing that the majority of climate displaced persons are predicted to remain within their country of origin (UNESCO, 2020a), more attention must be paid to IDPs, who remain largely invisible in international and national legal frameworks. Although they remain within their country of origin and can avail of their rights as citizens, IDPs have specific needs, vulnerabilities and barriers to education and are therefore deserving of laws and protections that deal with their unique situation. A positive example can be found in Bangladesh's 'National Strategy on the Management of Disaster and Climate Induced Internal Displacement' (2015). In addition to providing an official definition of a climate-induced internally displaced person, this strategy sets out a comprehensive and realistic rights-based framework that respects, protects and ensures the rights of climate-induced internally displaced persons in different stages of displacement. Paragraph 2.2.7 specifically "Ensure[s] the rights to education of climate-induced internally displaced persons especially children and youths. No climate-induced internally displaced student will be denied access to a school on grounds that they have no school records (children can be tested to find their eligibility for appropriate grade)".

Finally, it must be recognized that over **85% of refugees are hosted in developing countries** and that the largest host countries simply cannot keep up with demand for services alone – international

cooperation is vital and global solidarity is imperative to work together for the common good of all peoples in every country.

3.6. Emergencies and protracted crises

The COVID-19 pandemic has highlighted the need for education systems that are **resilient, responsive and capable of providing continuity of learning** through times of crisis and recovery. No education system in the world was prepared for the widespread disruption that was caused by the pandemic, which worsened existing inequalities and increased school dropouts. For children in poor or unsafe housing, caring for others, experiencing economic difficulties or hunger, or with parents that speak a different language to that used in school, remote learning was a challenge (Boly Barry, 2020). However, global pandemics are not the only crisis that necessitates an emergency response: natural hazards, climate change, conflict, social unrest and economic crises all create urgent challenges for States.

Crisis-situations are not auxiliary concerns to the right to education, they must be placed front and centre of any future reiteration of the international legal framework. Even before the pandemic, 127 million primary and secondary school-age children and young people living in crisis-affected countries were out of school in 2019, which is equivalent to almost one-half of the global out-of-school population (INEE, 2020).

In zones of conflict and under occupation, **schools are subject to attacks**, learners and teachers experience injury and trauma, and can be fearful of attending school for their own safety, which may lead to teacher absenteeism-related issues. Between 2015 and 2019, there were more than 11,000 reported attacks on schools, universities, their students and staff (GCPEA, 2020). Natural hazards also lead to the destruction of schools, roads and impact teachers. As the occurrence of disasters increases in intensity, frequency and severity, not only are days lost in school, but long-term consequences such as physical and psychological issues and delayed or lost educational achievements grow in parallel. Every year, 3.6 million children and youths' lives are severely disrupted by disasters in Asia-Pacific alone (GADRRRES, 2022).

Finally, the number of **forcibly displaced people worldwide** has doubled in the last 10 years, reaching 82 million people, 42% of which are children (UNHCR, 2021a). As a result, 1 in 95 people are now forcibly displaced due to persecution, violence, human rights violations and events seriously disturbing public order. The right to education of people on the move will be discussed in further detail in the next sub-section.

The right to education in emergency contexts

The right to education in the context of an emergency should be upheld. The right is universal and inalienable and applies to everyone, equally, at all times. The right is non-derogable, so States are formally not permitted to temporarily limit its enjoyment during a crisis. However, the ICESCR contains a limitation clause under article 4 that allows limitations that are **necessary, reasonable, and proportionate**, and special attention should be paid to marginalized groups (UNESCO & Right to Education Initiative, 2019).

Regardless, States are still bound by minimum core obligations, such as ensuring basic education and moving as expeditiously and effectively as possible towards full realization of the right to education in line with the concept of progressive realization (CRC Committee, 2008). The importance of this requirement to reinstate education as soon as possible following disruption has become even more evident in light of the COVID-19 pandemic (Boly Barry, 2020; Human Rights Watch, 2021).

The Education 2030 Framework for Action specifically refers to the obligations of States to '[a]ddress education in emergency situations'– 'Countries must, therefore institute measures to develop **inclusive, responsive and resilient education systems** to meet the needs of children, youth and adults in crisis contexts'. International humanitarian law may also be relevant, ensuring that States protect civilian people and objects including schools, teachers and students from attack.¹⁶

Depending on the context, the international right to education framework is bolstered by international humanitarian law, refugee law and various other international policy documents, from the two Global Compacts on refugees and migrants, to the Inter-Agency Network for Education in Emergencies' Minimum Standards ('INEE Minimum Standards'), the Comprehensive School Safety Framework (2017) and the Safe Schools Declaration (2015) that implements the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.

Developing the legal framework

In contexts of crises, there already exists a wide array of international and regional legal and political instruments that outline State obligations. Yet, there are still too many instances where education is deprioritized or endangered during emergencies and conflict. The international legal framework could respond by emphasizing both the **enduring nature of the right to education throughout emergencies** and the responsibilities of States to **reinstate in-person education as soon as possible** following a crisis.

The UNESCO Guidelines to strengthen the right to education in national frameworks (UNESCO, 2021a) provide some ways to guarantee the right to education throughout times of crisis, with obvious attention to distance learning solutions. Individual monitoring, tracking, and psychosocial support should also be in place to ensure that no learner is being left behind. To do so, measures need to be put in place that go beyond the crisis itself and encompass quick recovery and concrete remedial measures to ensure the transition back to school in a safe, supportive and inclusive environment. Part of this resilience could entail the development of strong education management information systems (EMIS) in countries prone to crises, that could be linked with other relevant data systems such as social protection data systems or disaster risk management data, allowing governments to track families prone to displacement and identify learners most at risk during emergencies.

¹⁶ Geneva Conventions and their Protocols, specifically articles 48 and 51 of the Additional Protocol I; article 13 of the Additional Protocol II, Article 94 of the Geneva Convention IV, article 77 of the Additional Protocol I, article 50 of the Geneva Convention IV; Rome Statute (article 8).

There could also be further encouragement to engage in **crisis-sensitive education planning**. The Special Rapporteur on the right to education recommended that countries develop emergency education preparedness plans with a strong basis on the availability, accessibility, acceptability and adaptability framework (Boly Barry, 2020). The UNESCO International Institute for Education Planning ('IIEP') refers to crisis-sensitive education planning that involves 'identifying and analysing the risks to education posed by conflict and natural hazards, including climate risks, to inform the development of education policies and plans that help to lessen the negative impact of crises on the individual learner, teacher and the education administration and prevent disasters through adequate preparedness and mitigation measures' (UNESCO, 2020a, p. 16). Principles from the international normative framework such as preparedness, response and recovery can be integrated into education policy.

During the consultative process some participants made reference to world leading countries in the Caribbean and South Pacific Islands that have already made preparatory plans for crises caused by climatic impacts, including measures to safeguard supplies and ensure training for personnel so that education is paused for only a short time and a rapid return to education is made possible.

Keeping schools, learners, teachers and other education apparatus safe in the context of armed conflict is essential. States have made commitments in humanitarian law to protect education from attack, though more needs to be done. United Nations Security Council Resolution 2601, adopted on October 29, 2021, expressed grave concerns about the significant increase in attacks against schools and education facilities in recent years and the alarming number of children denied their right to education in the context of armed conflict. The Resolution, in paragraphs 3-4 calls on Parties to:

...safeguard, protect, respect, and promote the right to education, including in armed conflict' and 'to develop effective measures to prevent and address attacks and threats of attacks against schools and education facilities, and, as appropriate, develop domestic legal frameworks to ensure respect for their relevant international legal obligations as applicable to them...

The Safe Schools Declaration (2015) calls on States to 'ensure the continuation of education during armed conflict, support the re- establishment of educational facilities and, where in a position to do so, provide and facilitate international cooperation and assistance to programmes working to prevent or respond to attacks on education'. Key recommendations from the 4th International Conference of the Safe Schools Declaration, Abuja, Nigeria, 2022 ('Abuja Conference') can also provide inspiration to scale up into international agreement: namely;

- Restrict military use of educational facilities
- Ensure the continuation of education during conflict (which will require increased funding)
- Strengthen accountability for attacks on education
- Enhance monitoring and reporting on attacks on education

At the Abuja Conference it was reported that the Armed Forces of Ukraine are using the principles of the Safe School Declaration and the accompanying *Guidelines* for training and awareness-raising purposes, for example by locating units as far as possible from educational institutions, demonstrating the material value of international guidance in this area (GCPEA et al., 2022).

UNESCO and UNICEF have been designated to facilitate observance of the International Day to Protect Education from Attack, on September 9th, with the intention of raising awareness and strengthening legal and policy mechanisms that protect education in this context. It would be beneficial to recognize the growing attention paid to school safety in any new or updated instrument on the right to education.

Finally, **the international legal framework could underline the shared international responsibility to guarantee education worldwide** through international assistance through times of crisis. Education is one of the first services demanded by families and children during crises, but is often the first service suspended and the last service resumed. Funding must be made available to provide the humanitarian aid which is sorely lacking at present and education must be prioritized in country response plans on an equal footing as the right to safety, food, shelter and water. Despite the increased visibility of education as a core response in an emergency, especially since the establishment of Education Cannot Wait in 2016, the share of humanitarian aid remains at a mere 2.6 percent in 2019 (INEE, 2020). Moreover, the majority of funding is diverted to high profile crises, leaving many children and young people living in ‘forgotten crises’ with little hope for quality education.

3.7. Remote learning and digital inclusion

Over 70% of respondents to the Global Conversation highlighted digital education as a key emerging challenge facing the right to education today. However, information and communication technologies (ICTs) have also heralded **new opportunities in education**. From the end of the 20th century, ICTs were integrated into classroom settings, with a gradual rise in computers, laptops, interactive whiteboards and projectors assisting educators in delivering multimedia education content. In recent times, a more expansive change through digitization, digitalization and digital transformation has been taking place. An increased use of ‘synchronous’ technologies such as audio-video conferencing and text-based chat, coupled with ‘asynchronous’ technologies that permit the recording and retrieval of learning and teaching activities and projects at different times, have assisted teachers in providing education to their learners, even when physically apart due to successive lockdowns.

Digital technologies represent vast opportunities for learning, knowledge-sharing, connection and collaboration. The power of ICTs to complement and supplement in-person schooling was highlighted in the Education 2030 Framework for Action and the Qingdao Declaration (2015). ICTs have the potential to provide a more participatory learning experience. Multimedia content and gamified experiences can engage learners of all ages. Moreover, there are benefits for teachers in terms of planning, evaluation and responsiveness, with increasingly sophisticated ways to track and assess learners and target individuals at risk of drop-out or in need of extra support. The consultative process revealed that the use of AI technology has both immense potential (and risks that are outlined in section 4.6), requiring a whole-brain approach which entails cognitive, academic, social and emotional aspects. Learning spaces are changing, with repercussions on how learning occurs.

Education can happen anywhere, at any time, broadening the possibilities for part-time courses that fit around work, or for those with caring responsibilities, providing options for working parents, and particularly working mothers. The lack of geographical restraint can have huge benefits for learners more likely to be excluded from education, such as physically disabled learners with large accessibility barriers to overcome. The development of Massive Online Open Courses (MOOCs) has revolutionized access to higher education due to their low cost and flexible entry points (UNESCO, 2022d) and now allows for a certain level of virtual mobility and accessibility as learners from lower-income regions can enroll into universities in wealthier countries without the costs of moving there. Moreover, there are benefits for teachers in terms of planning, evaluation and responsiveness, with increasingly sophisticated ways to track and assess learners and target individuals at risk of drop-out or in need of extra support.

Yet, the rise in the use of ICTs in education leads to two outstanding concerns: first, an increase in marginalization, often referred to as the ‘digital divide’, and second, the lack of regulation for learner protection, including data protection and privacy online (discuss in section 4.6).

Marginalization and the digital divide

Half of learners that were affected by school closures during the COVID-19 pandemic did not have access to a household computer and 43% have no internet at home (UNESCO, 2020b). States reporting in the context of the 10th Consultation referred to the suspension of face-to-face classes and issues of connectivity for teachers and learners as the biggest obstacle faced by the national education system during the pandemic.

Online learning can also deepen inequalities between learners due to **unequal access to the internet and equipment** such as computers, smartphones and tablets. Learners with existing vulnerabilities, such as those living in poverty or in rural areas, or those living through conflict, migration, displacement or natural disasters, will likely experience a compounding lack of access. Barriers to distance learning are also often felt more keenly by girls who tend to have lower rates of access to electronic devices, and persons with disabilities that may struggle to access adaptive technologies or digital content in a suitable format.

Furthermore, barriers to digital education are **not evenly geographically dispersed**. Across the globe, 50% of learners did not have access to a household computer, whereas in Sub-Saharan Africa, this figure was 89%.¹⁷ Within countries, the urban-rural divide has undoubtedly been intensified, as people in urban areas tend to have access to better quality internet, and those in remote areas are sometimes cut off entirely.

The digital divide runs deeper than physical access to devices and internet connectivity. There is growing recognition of a psychological barrier to accessing digital education, whether that be caused by lack of interest, computer anxiety or unattractiveness of new technology (van Dijk & Hacker,

¹⁷ See UNESCO poster, *COVID-19: a global crisis for teaching and learning*. Accessible at: <https://unesdoc.unesco.org/ark:/48223/pf0000373233>.

2003). This **digital skills gap has a gendered dimension** – women are much more likely than men to report lack of skills as a barrier to internet use, and this gap is more pronounced for women who are older, less educated, lower-income or living in rural areas and developing countries (UNESCO, 2022d). These barriers will need to be addressed through the development of **digital literacy** skills. These are not just functional skills and technical know-how, but also encompass ‘critical digital literacy’ – understanding the politics of digital society and digital economy, recognizing the motivations of actors in digital spaces and the way that technologies exert profound influence on people (International Commission on the Futures of Education, 2021).

Interconnected rights

The Commission on the Futures of Education (2021) advocate for the broadening of our understanding of the right to education and recognition of the interconnectedness of that right with other rights, namely, the **right to information**, the **right to culture** and the **right to connectivity**.

The right to education is supported by, and supports in turn, the **right to information**. Education has a role in giving people the skills to seek, receive and impart information and ideas, and allows for the sharing of accurate information in a world of spiralling misinformation. Similarly, education interacts with the **right to participate in cultural life** by supporting people in accessing and contributing to cultural resources.

Whether or not there exists an independent **right to connectivity** (to include internet, availability of devices, other basic infrastructural requirements such as electricity) is another question. Several respondents to the Global Conversation specified that, from their perspective, internet connectivity is now a ‘*basic necessity*’ or a ‘*service component*’ of the right to education. In 2016, the UN General Assembly (2016) passed a non-binding Resolution that ‘declared internet access a basic right’ and ‘an important tool to facilitate the promotion of the right to education’ but only went as far as to prevent governments from ‘taking away’ access, rather than guaranteeing it. The ReWired Declaration can give guidance as to the evolving responsibilities of States with regard to ensuring connectivity.

Box 10: RewirEd Declaration on Connectivity for Education

UNESCO, in partnership with Dubai Cares, launched the **RewirEd Declaration on Connectivity for Education** on 15 December 2021. This Declaration, reflecting the inputs of a 22-person expert advisory group and a global consultation process has three core principles:

1. Center the most marginalized (including a commitment to help ensure connectivity reaches all learners, beginning with those facing disadvantage)
2. Expand investments in free and high- quality digital education content
3. Moving education to digital spaces requires pedagogical innovation and change – including a commitment to protect student and educator data

These principles can provide backbone to any future iterations of the right to education.

During the consultative process the right to connectivity was seen as more of an ‘ally’ to the right to education, than a prerequisite to its realization. Nevertheless, participants felt that if digital learning is made a part of compulsory schooling, this may produce some responsibility on the part of the State to ensure access. They reflected on whether a right to connectivity would be fulfilled by connecting schools, or whether States could have a responsibility to households or individuals in the future as well, as learning is meant to take place across all spaces and throughout life. It was agreed that education sector plans should redirect funding to areas that are most underdeveloped to create access to electricity and connection to the internet, as priority.

Strengthening the legal framework for digital inclusion

The current international legal framework can be interpreted for the digital transformation era using the **4As framework** – education must be available, accessible, acceptable and adaptable. In this context, States are already duty-bound to ensure equitable access to digital devices, internet connection, related basic infrastructures, such as electricity, and the necessary platforms and tools for learners to engage in this type of learning, without discrimination, as it becomes a necessary part of all levels of education. ICTs should be adaptable for learners at risk of exclusion and content should be acceptable in terms of quality and relevance.

The consultative process also outlined some specific rights and obligations to tackle digital exclusion, such as an obligation to ensure digital literacy skills, to regulate digital learning spaces in the context of private/commercial involvement, implementing and ensuring quality standards and empowering teachers to produce their own digital resources to ensure the inclusion of all their learners. The predominance of digital materials in dominant languages, such as English, was also noted, suggesting a responsibility to ensure the creation of resources in local languages.

The CRC Committee, in its **General Comment No. 25** (2021), elaborated a number of legislative, administrative and other measures that States should make to protect children in the digital environment, including equitable investment in technological infrastructure in learner settings, teaching digital literacy in schools and developing evidence-based policies and standards for schools to enhance educational benefits. The General Comment groups its guidance around four overarching rights of the child: non-discrimination; the best interests of the child; the right of the child to life, survival and development; and respect for the views of the child.

Box 11: Promising practices on digitalization in education

In 2007, **Uruguay** installed and maintained a computer infrastructure (laptops, digital contents, resources, programmes etc.) that reaches all elementary and public schools, with training and support for both learners and teachers and adaptive systems and resources for persons with disabilities (UNESCO, 2018). **Egypt** reported to the 10th Consultation the establishment of the Egyptian Knowledge Bank in 2015, which encompasses a large collection of online educational resources available free of charge to

all Egyptians. Tablet computers are distributed free of charge to all first and second year secondary students.

In the context of the COVID-19 pandemic, some countries, such as Rwanda, moved to make internet free, so that learners were able to continue their studies in lockdown (Iliza, 2020). Argentina, in 2020, launched the 'National Plan for Connectivity', a major effort to universalize ICT services, involving provision of telecoms for 100,000 rural families and broadening the fibre optics network. Efforts are under way to update the national data centre, broaden WiFi plans and offer free Internet access across the country (UN Commission for Social Development, 2021).

3.8. Redefining the aims of education

A changing landscape for the right to education

The dynamic intersection of human rights and education finds its foundation in international law, notably within documents such as the Universal Declaration of Human Rights (UDHR), the Convention against Discrimination in Education (CADE), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC). These documents reflect a historical progression in the objectives of education. The 20th century primarily saw education framed to serve national citizenship and development goals, leading to an emphasis on compulsory schooling. Nevertheless, the world now stands at a crossroads. Escalating social and economic disparities, climate change, environmental degradation, disruptive technology, democratic setbacks, and escalating violence necessitates a re-evaluation of education's objectives.

Incorporating 'transformative education', within the right to education framework can be instrumental in nurturing inclusive education, fostering social cohesion, and promoting respect for human rights. These theoretical approaches are grounded in the principle of universality and underscore the role of education in building a more peaceful, inclusive, equitable and just world.

Human rights education (HRE) and global citizenship education (GCED): essential components

Education's primary goal is the full development of the human personality, as underlined by UNESCO's recently revised and adopted 2023 Recommendation on Peace and Human Rights, International Understanding, Cooperation, Fundamental Freedoms, Global Citizenship and Sustainable Development. This recommendation encourages countries to embed the principles of the United Nations Charter, the UNESCO Constitution, and the Universal Declaration of Human Rights in their education systems, making human rights and the pursuit of just, equal, equitable, healthy, and sustainable societies central tenets of education. Sustainable Development Goal (SDG) Target 4.7 reinforces this perspective, emphasizing the importance of nurturing learners who understand human rights, promote sustainable development, embrace gender equality, espouse a

culture of peace, foster non-violence, appreciate cultural diversity, and advocate for global citizenship.

Today, the right to education transcends mere access to educational institutions. It encompasses the quality and relevance of education, the principles of equality and non-discrimination, and the promotion of human rights and fundamental freedoms. In the 21st century, the right to education is a dynamic concept that must evolve to address the challenges of contemporary societies.

Legal foundation for the right to human rights education

The United Nations Declaration on Human Rights Education and Training (2011) unequivocally asserts that everyone has the right to knowledge about human rights and fundamental freedoms. HRE encompasses knowledge, skills, attitudes, and behaviours that empower individuals to uphold human rights and prevent abuses. Holistic approaches to HRE, as demonstrated by the USAID school-based programs and the THRED model in India and the Council of Europe, are invaluable. Effective implementation requires collaboration between governments, civil society, and non-state actors to coordinate and deliver HRE in formal and non-formal settings.

Fostering global citizenship through education

GCED equips learners with competencies related to global issues and universal values, critical thinking, empathy, and behavioural capacities for collaborative and responsible action. This education promotes empathy, solidarity, and respect for diversity, encouraging learners to see themselves as global citizens. Effective examples from Thailand and Colombia highlight the feasibility of incorporating GCED into national policies and curricula. However, defining the aims and components of GCED at the international level is essential to ensure consistency and prevent local variations that could compromise its efficacy.

Education for Sustainable Development (ESD)

Education for sustainable development is paramount in an era defined by pressing environmental challenges. ESD imparts the knowledge, skills, values, and behaviours necessary for building sustainable societies. By focusing on issues like climate change, biodiversity, and sustainable livelihoods, ESD not only prepares individuals for the present but also equips them to address future environmental challenges. Moreover, ESD recognizes the interdependence of the right to education with other rights, including the right to a clean and safe environments and the right to sustainable livelihoods (Art.12, ICESCR, 1966; UDHR, 1948; Berlin Declaration on Education for Sustainable Development, 2021).

Building peace and countering hate speech and all forms of discrimination through education

Amidst a world plagued by hate speech, racism, and discrimination, education emerges as a potent tool for combating these issues. International law obligates states to employ education to challenge racist doctrines and promote understanding between all groups, as specified in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). A holistic approach

encompassing soft skills such as solidarity, compassion, ethics, and empathy is gaining prominence. This transformation is encapsulated in the aspiration to foster 'the full development of the human personality.' Portugal provides a compelling example of a nation updating its education aims in line with contemporary challenges.

Re-evaluating the aims of education: a legal imperative

The re-evaluation of the aims of education is an urgent legal imperative in the face of evolving global challenges. Integrating specific educational interventions, such as the right to Human Rights Education (HRE), Global Citizenship Education (GCED), Education for Sustainable Development (ESD), education for health and well-being (EHW), and education to combat hate speech, racism, and all forms of discrimination into the legal framework for the right to education is necessary. These changes underscore the multifaceted nature of education, evolving from traditional knowledge imparting to comprehensive development of skills, values, and perspectives essential for individuals to navigate a complex and interconnected world. It is a vital step towards building a more peaceful, inclusive, equitable and just global society.

Violence and bullying

Bullying and other forms of violence (including gender-based violence) in schools is an endemic issue across the world. Around one third of children experience bullying between the ages of 13-15 and one half of students at this age group experience some form of peer-to-peer violence (UNICEF, 2018). School-related violence or threats include 'psychological, physical and sexual violence (...) not only on school premises but also on the way to school, at home or in cyberspace' (UNESCO, 2017c). Consequences include missing classes, avoiding school activities, playing truant or dropping out of school altogether, which in turn has an adverse impact on academic achievement and attainment (UNESCO, 2019b).

International human rights law offers protection to children from violence. Under CRC article 19, 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'. Furthermore, the CRC Committee has confirmed that a 'school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of [the aims of education] under article 29' (2001, para. 19). In the development of the SDGs, Target 4.a calls on States to 'Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all' and a thematic indicator focuses on the 'percentage of students experiencing bullying, in the last 12 months in (a) primary, and (b) lower secondary education'.

Box 12: Promising practices on anti-bullying legislation

It is promising to see that a number of countries are implementing anti-bullying legislation. Some common features of these laws (as cited UNESCO, 2017d) include:

- **Ensuring a safe school environment** (Finland, Basic Education Act 1998; Peru, 2011 Law; Quebec, Canada, Act to prevent and stop bullying and violence in schools, 2012)
- **Development of plans or strategies to reduce violence and bullying** (Republic of Korea, Anti-School Violence and Bullying Law 2004; Sweden, Education Act 2010; Mexico, Law on the Protection of the Rights of Children and Adolescents 2014)
- **National awareness-raising** (Philippines, Anti-Bullying Act 2013)
- **Responsibilities for schools to adopt policies, address incidents and reporting requirements** (Philippines, Anti-Bullying Act 2013; Sweden, Education Act 2010)
- **Provisions for training for teachers and school staff to manage bullying and mechanisms** (Mexico, Law on the Protection of the Rights of Children and Adolescents 2014)

It is possible to visualize these national examples of legal duties with regard to a safe school environment scaled up into international normative agreements. An in-depth examination of **Sweden** and the **Netherlands'** implementation of anti-bullying laws found that both countries succeeded in both reducing and maintaining a low prevalence of school violence and bullying, showing the effectiveness of using legislation to tackle the problem (UNESCO, 2019b). A look to the Safe to Learn *Global Programmatic Framework & Benchmarking Tool* (2020) also provides indicative strategies for States.

Corporal punishment has many negative repercussions, risking serious physical injury, linked to mental health and behavioural problems, and leading to lower achievement, lower earnings, higher physical and mental health needs and reliance on social services – and all of this without in fact improving discipline or enhancing learning (Gershoff, 2017). There are also disparities in its usage according to race, gender, ethnic group, or disability status.

The CRC calls on Member States to 'take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention' in article 28 (2). In the view of the CRC Committee, corporal punishment is invariably degrading, whether that be physical or non-physical, for example forms of punishment that are cruel and degrading might include punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child (CRC Committee, 2006).

Violence and corporal punishment as used against children infringes upon the rights of the child to respect for their human dignity, physical integrity and equal protection under the law and 'States are required to take all appropriate legislative, administrative, social and educational measures to eliminate them'. Similarly, the CESCR finds that the use of corporal punishment in schools is inconsistent with human dignity and 'welcomes initiatives taken by some States parties which

actively encourage schools to introduce ‘positive’, non-violent approaches to school discipline’ (CESCR, 1999).

There are currently 135 countries worldwide prohibiting corporal punishment in schools, while in 64 countries it is still permitted (End Corporal Punishment, 2022). It is time for the international legal framework to **explicitly prohibit corporal punishment** in education to fully eradicate its usage around the world, for adults as well as children.

Working document

Section 4. Ensuring a holistic approach to education rights, systems and governance

Section 4, the final section, allows us to connect the dots and advocates for an integrated, systemic approach to the governance and realization of education rights. It scrutinizes monitoring methods, accountability structures, and strategies for sustainable funding, all within a broad framework that encapsulates the entire educational ecosystem. As the teaching profession is being transformed, emphasis is placed on strengthening education delivery by addressing training and working conditions of educators. Furthermore, this section explores the implications of non-state actors on education quality and equity, focusing on balancing educational choice while maintaining minimum education standards. The increase in the uptake of technology in education also is given careful attention to ensure the rights of learners' online protection and privacy.

Table 3: International human rights law overview: Education system, governance and delivery

Theme	International human rights framework	Absence of specific legal obligations /or weak legal obligations
Governance	For UN treaties, ratifying states are required to report on measures taken to implement the treaty.	IHRL does not refer to the interrelatedness of human rights, intersectoral and sector-wide approach to education. No reference is made to ensure regular, transparent and participatory monitoring of the right to education .
Financing		No legal obligation has been established for States to adequately finance the education system
Teacher profession	IHRL states that the material conditions of teaching staff are to be continuously improved, training should be without discrimination and qualifications of teachers should be the same standard across separate education systems for all pupils, without distinction. The CRPD also refers to teachers in relation to people with disabilities. See: CADE articles 2(a) and 4(d); ICESCR 13(2)(e); CRPD article 24(4)	Working conditions and social status of teachers as well as right to fair pay, pre-service and in-service teacher training and standards and personnel in non-formal education are not provided for in IHRL.
Non-state actors	The right to establish private education provide is provided for.	Regulations, notably considering the increasing role of non-state actors,

	Source: CADE article 2(c)	including in digital learning are lacking in the IHRL.
Learners' online protection and privacy		There is no legal provision on the right to privacy in education nor international standards on data processing in education or online security in education.

4.1 Holistic rights and systems

Heightened recognition of the interdependence of human rights was a frequent refrain during the consultative process. Through the political push in the education field, instigated by the COVID-19 pandemic and consolidated in the recent OCA Policy Brief, the need to build back better and more resilient systems. New demands are being placed on education, which must be built upon a foundation of robust infrastructure, pedagogies, teachers and materials to fulfil its principal aims.

A holistic view of education, with an explicit focus on lifelong learning, equity, inclusion, quality and learning outcomes requires a **system-wide approach**. Ministries must work in a whole-of-government approach and taking an intersectoral and coordinated manner – it is envisaged that the Ministry of Education will collaborate with Ministries of Health, Work, Children, Women and Inclusion, among others, to elaborate policies and laws that work in tandem towards the fulfilment of a wide network of interacting rights from before birth to old age. Just as the right to education is indispensable for the fulfilment of other rights, such as the right to work, or the right to gender equality, it is also intrinsically **interdependent** with the protection of other rights such as the rights of the child and the burgeoning right to information.

When it comes to governance structures, it was suggested in the consultative process that more control could be given to local governments while regional and national governments work at the level of maintaining a role-setting agenda, accountability systems and budgeting. Teachers should also be given a certain level of autonomy as 'policy-makers', as they decide what happens in their classroom. The right to education should therefore empower teachers and local government to realize the principles under the right to education and design their own systems of implementation in line with international human rights law. Similarly, participants reiterated that the right to education reaches past the school gates and engages with others that have roles in the lives of children such as families, community organizations, faith-based organizations, businesses, universities, and with the arts and sports.

4.2 Education standards and monitoring practices

It is paramount that States **perform good monitoring practices** of the education system to ensure its efficiency and effectiveness. This includes ensuring that these practices are participatory, regular and transparent. The Global Conversation demonstrated that, while many accept that their national constitutions and laws reflect and uphold the principles of the right to education, the State has not

always been successful at the implementation stage. This implementation gap was perceived to be caused by a lack of capacity, funding, infrastructure or political will. The consultative process revealed that participants were enthusiastic about building better independent monitoring mechanisms, both on a national and international scale, including through the collection of disaggregated data to ensure that policy measures are reaching the most vulnerable.

States have several interconnected obligations as to minimum standards and monitoring under the current international legal framework. The first is through the submission of **periodic reports**, for example those that are submitted to the General Conference of UNESCO under article 7 of the CADE, or those submitted to the CESCR under articles 16 and 17 of the ICESCR. In both instances, States should submit reports which cover the measures taken and progress made in achieving the observation of the rights in the treaties, indicating that they have some measure of the current state of the right to education.

The second obligation for States is to ensure a **right to quality education**. The Special Rapporteur on the right to education (2012) confirms that this right can be read into the wording of the CADE article 1 (para. 2), that refers to education as ‘all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given’. The Special Rapporteur finds that States therefore: ‘have an obligation to lay down a uniform framework of quality standards applicable throughout the country’, suggesting a corresponding duty to monitor whether these standards are met. Similarly, article 13 (3) of the ICESCR provides that States must establish **minimum education standards** that private education institutions must also conform to.

Third, the CESCR’s General Comment No. 13 (1999, para. 49) confirms that States are obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, **directed to the educational objectives** set out in the aims of education, article 13 (1). This General Comment also requires States to monitor education closely to eliminate discrimination, including by collecting educational data disaggregated by the prohibited grounds of discrimination (para. 37) and to adopt and implement a national educational strategy for the implementation of secondary, higher and fundamental education that includes mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored (para. 52).

Finally, General Comment No. 13 (CESCR, 1999, para. 44) confirms that the obligation of States to progressively realize of the right to education indicates a ‘strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education’ and implies a way to measure this progressive action.

Furthermore, the Incheon Declaration (2015, para. 13) calls for ‘strong global and regional collaboration, cooperation, coordination and monitoring of the implementation of the education agenda’, including through instituting and improving mechanisms, education management information systems, financing procedures, institutional management arrangements and making data available. The importance of strong, disaggregated education data to tackle discrimination is paramount (Education 2030: Framework for Action, 2015, para. 18).

Guidance exists in the form of the 'UNESCO Guidelines to strengthen the right to education in national frameworks' (2021), which provide States with a proposed template for monitoring processes, containing a clear guiding checklist of the indicators and data that must be collected and examined to evaluate the implementation of their duties under the right to education.

Although there exists a range of State obligations to monitor their implementation of the right to education, much of the clarity around monitoring practices stems from General Comment No. 13 of the CESCR, which is considered a guiding authority, but is not legally binding. An argument could be made for more explicit and precise responsibilities relating to minimum standards and monitoring in international law.

4.3 Financing

A common obstacle to the domestic implementation of the right to education is not the absence of an effective legal and policy framework, but insufficient resources to properly fund its implementation (UNESCO & Right to Education Initiative, 2019). There is a clear need for States to revisit their responsibility to ensure that the education system is **financed adequately, equitably and efficiently** to realize the right to education. If the scope of the right to education is broadened, for example through extending rights to free pre-primary education or to digital learning, financing will be of central importance to its implementation. Financing education concerns State obligations in two principal ways: first, the domestic financing of the education system and second, the State's potential responsibilities as to international assistance and cooperation.

In the international legal framework, States have obligations to finance education to **'the maximum of its available resources'** (ICESCR, article 2 (1); CRC, article 4). The concept of 'available resources' has become broader through time, and now also implies non-monetary resources such as natural, human, technological, organizational, informational and administrative resources (Dommen & Sepúlveda, 2017). Additionally, treaty-bodies and special procedures have come to interpret this obligation as one to mobilize resources, through their preservation and expansion, rather than taking a static view of funds currently available to the treasury.

This implied duty on States to mobilize funds could be fulfilled through tax revenue streams, such as progressive taxing of individuals (with wealthier individuals paying higher levels of tax), or corporate taxation (Archer & Muntasim, 2020). This obligation was reflected in the drafting of the Education 2030 Framework for Action, which emphasized the importance of strengthening domestic resource mobilization through widening of the tax base (ending harmful tax incentives), preventing tax evasion, and increasing the share of the national budget allocated to education (2015, para. 106). It is also accepted that States would fail in their obligation to take steps to the maximum of available resources by failing to seek resources from the international community if such resources are required, particularly for minimum core obligations (UNESCO & Right to Education Initiative, 2019, p. 139). **This responsibility to mobilize funds could be made more explicit in the legal framework**, as a duty to use 'available resources' has more limited connotations.

An explicit guideline for the financing of the education system was provided by the Education 2030 Framework for Action, committing States to allocate ‘**at least 4% to 6% of gross domestic product (GDP) to education; and/ or allocat[e] at least 15% to 20% of public expenditure to education**’ (para. 105). In 2015, the median global public education expenditure was 4.7% of GDP, suggesting that the benchmark is feasible, though equally, one in four countries met neither benchmark, indicating that there is great disparity in their achievement (UNESCO-GEM Report, 2017b). The COVID-19 pandemic has led to significant cuts in education budgets, as governments had to focus on country-level recovery. In low and lower-middle income countries, two-thirds of countries have cut their education budgets, while in upper-middle- and high-income countries, one third of countries reduced their budgets (Al-Samarrai et al., 2022). This is highly concerning and will lead to an entrenchment of disparity in education quality and outcomes between high and low-income nations. Already prior to the pandemic, an additional \$200 billion each year was required for the world to meet the SDG 4 (UN, 2022). Now, the figure is even higher. The increase in displaced learners also exacerbated the pressure on education budgets, and given the global climatic events, the number of displaced persons is expected to rise.

Large differences in education spending in low-income and high-income countries are less likely to be representative of differences in the priority accorded to education in government budgets, but rather relate to differences in the size of the public sector spending (Al-Samarrai et al., 2022). Moreover, some argue that a strong emphasis on the percentage of GDP or public expenditure is unlikely to make up the funds that are desperately needed in the education sector— it would be far more effective to increase the size of the pie rather than add 1% to the share earmarked for education (Archer & Muntasim, 2020). Conversely, a clear percentage could ensure greater accountability and clearer benchmarking. Regardless, the response falls to governments to mobilize funds by increasing the amount of money for public spending.

The second State obligation in the realm of financing is also found in article 2 (1) of the ICESCR, which requires Member States to ‘take steps, individually and through **international assistance and co-operation**, especially economic and technical.’ [*Emphasis added.*] In order to realize the right to education, States have an obligation to seek international assistance and co-operation, and States in a position to do so, have a duty to provide it. The CESCR makes clear that the full realization of the right to education worldwide is incumbent on States that are able to do so to have an ‘active programme of international assistance and cooperation’ (CESCR, 1990, para 13). Article 28 (3) of the CRC requires States to promote and encourage international cooperation in matters relating to education. Donor States must respect the principles and priorities set out in the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011).

The CESCR and the CRPD have interpreted international assistance and cooperation obligations strictly, and in line with the 0.7% (of gross national product) Official Development Assistance (ODA) target, that is widely endorsed by international and regional organizations. It is notable that a regression in the provided level of aid that is not fully justified would be treated, presumptively, as a violation of States’ obligations under international law.

To address the root cause of funding issues globally, macro-level changes are required. The concept of a ‘human rights-based economy’ has recently emerged to rethink the global economic

architecture (Center for Economic and Social Rights et al., 2020). For instance, a shift is needed to ensure that global economic governance do not impede socioeconomic rights, such as education, including by ‘cancelling debt and by cooperating, not competing, in response to collective problems such as climate change, pandemics and illicit financial flows’ (Center for Economic and Social Rights et al., 2020, p. 6). Building effective and accountable institutions that uphold human rights is also required by SDG16. Furthermore, international financing institutions often impose austerity measures that can cripple a country’s ability to provide for quality education services. Instead, such institutions could encourage countries to increase spending on the public sector wage bill to support the financing of teacher salaries at country levels (UN, 2022).

Beyond increasing the budget allocated to education, during the side meeting of the Transforming Education Pre-Summit, the importance of also addressing how the budget is allocated was raised. This requires ensuring a gender-sensitive and inclusive approach to budget allocation but also greater scrutiny of the budget to ensure that resources are allocated, dispersed, and spent in a transparent way (including to avoid tax revenues being lost to corporate tax abuses). State obligations in this regard would help in ensuring that the resources are efficiently used and reaching those who need it most.

These obligations, relating to progressive realization, international assistance and cooperation, concepts such as ‘maximum available resources’ and resisting austerity policies that reduce education financing, could benefit from clarification so that both governments and human rights monitoring bodies can accurately evaluate whether State responses are compliant with international law (Dommen & Sepúlveda, 2017). Although it is sensitive to intervene in the financial governance of States, the consultative process uncovered that many participants felt that the right to education can only be progressed by simultaneously addressing societal issues such as poverty, inequality, corruption and bad governance, head on.

4.4 Teaching profession

Responses to the Global Conversation shone a light on the mental health and well-being of teachers in an education system that was over-stretched. They noted a ‘lack of quality teachers ... because teachers are not paid with a good salary’, an urgent ‘need to address and expand capacity of teacher training institutes’, and the lack of ‘comprehensive professional development system for teachers’.

The effects of the COVID-19 pandemic and the associated digital transformation in education have reverberated through the teaching profession, revealing and exacerbating the digital divide across all levels of education. As remote learning took over as the principal modality of education during the pandemic, teachers were expected to manage even with low levels of preparation and training (Boly Barry, 2020). A survey carried out by Education International in 2020 found that only 29% of respondents found that governments had provided adequate and sufficient support for teachers in the transition to digital learning (Education International, 2020). Likewise, 52 out of 57 States that responded to a UNESCO survey on the effects of the COVID-19 pandemic on higher education indicated a **significant need for teacher training in online and distance learning** in order to

overcome the challenges posed by the pandemic, followed by the need to develop guidelines, tools, and learning materials to further develop distance learning. As students and teachers rely more and more on online sources, **teachers also require critical digital skills** to work in complex, uncertain and rapidly changing educational environments, especially in times of crisis, to fully engage in pedagogical innovation and to become resilient lifelong learners themselves. Acquiring digital skills also enable relevant and appropriate use of new technologies in education, as a means of supporting the educational process, but not replacing schools or teachers.

Another frequently cited issue was the lack of adequate devices and connectivity. Schools that were well-resourced before the pandemic in terms of technology and digital literacy for teachers, fared better (Human Rights Watch, 2021). In other areas, teachers were often lacking the financial assistance, necessary equipment or internet connectivity to deliver remote learning successfully. Some of them had to rely on their own possessions or bear the financial burden for the necessary ICTs.

Beyond the COVID-19 pandemic, education is also threatened by the effects of climate change (destruction of schools, roads and school facilities, forced displacement of teachers and pupils due to climate change, etc.) and the increase in migratory flows worldwide. One of the major consequences of these phenomena is the **increase of learner diversity in classrooms**, with learners coming from minority linguistic and cultural backgrounds often being the most impacted. This makes it difficult for teachers to provide quality education for all, especially as they already had a very high workload before the emergence of these phenomena (due to high pupil-teacher ratios, administrative and accountability tasks that had already been added to their educational duties, long working hours, a lack of balance between teaching and non-teaching activities and a lack of work-life balance...). In this context, teachers should receive adequate initial and in-service training on how to foster an inclusive learning environment, free from all forms of discrimination and based on principles of cooperation and solidarity, rather than exclusion and individualistic competition. Teachers should be trained and supported to create individualized learning pathways and to make education authentic and relevant to a diverse set of learners, meeting their different educational needs, respecting their language and culture, but also providing emotional support in the case of traumatic migratory experiences.

In that regard, the International Commission on the Futures of Education highlights a shift in the conceptualization of the role of the teacher. Looking forward to 2050, the future of teaching is recast as a **'collaborative profession'**, which thrives on teamwork between other education staff, parents, the community and other stakeholders to provide inclusive education. Similarly, the United Nations Secretary-General's High-Level Panel on the Teaching Profession calls for societies to create conditions in which learning and teaching are supported by parents and learners and for governments, learning institutions, teacher organizations and other stakeholders to work together with a view to developing teachers that can give learners the best chance to succeed in life.

The need to train teachers in ICT skills or on how to provide inclusive education is part of a more general shift in the conceptualization of the role of teachers. As noted by the United Nations Secretary-General's High-Level Panel on the Teaching Profession, teachers need to strategically utilize the digital revolution and AI in their pedagogical approach, incorporating them into engaging

and human-centered teaching and learning methods. Furthermore, as highlighted by the new social contract set out in The Vision Statement of the Secretary-General on Transforming Education (2022) and the International Commission on the Futures of Education (2021), the role of the teacher must no longer be limited to disseminating skills and knowledge, but must also act as a producer of knowledge, facilitator and guide in understanding complex realities. Teachers must be able to work collaboratively with learners to promote learning based on experience, inquiry and curiosity, and be able to develop the ability, joy and discipline necessary for problem-solving. They must also be able to prepare learners for citizenship, life and work, and contribute to the sustainability of the planet and their communities.

Updating the legal framework for teachers

In order to ensure quality education, the State has the responsibility to ensure the rights of teachers. The rise of these new challenges and responsibilities for teachers, in a context where their working conditions and social recognition were already a source of dissatisfaction, may push qualified teachers to leave the profession. In the context of the 2023 World Teachers' Day, UNESCO announced the need for an estimated additional 44 million teachers to achieve universal primary and secondary education by 2030 (UNESCO, 2023). With this global teacher shortage, there is an urgent need to address the normative framework surrounding teachers and ensure their **protection and proper remuneration**, both for their own rights but also to prevent a supply or quality crisis that affects learners' rights to education. As for now, according to UNESCO, 6 out of 10 countries still pay primary school teachers less than other professionals with similar qualifications.

The UNESCO ICT Competency Framework for Teachers (2018) can support teacher training personnel educational experts, policy-makers, teacher support personnel and other professional development providers to update teacher professional development to include teaching methods using ICTs. The ILO/UNESCO Recommendation concerning the Status of Teachers, adopted in 1966, sets the international standards for the initial training and continued professional development of teachers, alongside the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) and includes the most comprehensive normative framework on the responsibilities and rights of teachers.

In October 2021 UNESCO and ILO organized a session of the CEART, with the participation of Education International, to consider the relevance of the two Recommendations in light of the COVID-19 pandemic and the delivery of emergency education. Questions were raised as to whether it is time for an **update of the 1966 Recommendation – and, potentially, of the 1997 Recommendation, as well** – to include guidance on emergency education planning and other aspects of modern professional teaching, such as the need for using digital pedagogies for remote or hybrid instruction. Other aspects for review include the roles of specialist teachers, as well as pre-primary, TVET and non-formal educators, currently lacking regulation in the normative framework.

While recalling the continued relevance of these two recommendations from UNESCO and UNESCO/ILO, the United Nations Secretary-General High-Level Panel on the Teaching Profession has adopted new recommendations (in September 2023), applicable to all levels and streams of education, which requires implementation, by all relevant education stakeholders, and aims to

address the modern challenges faced by the teaching profession and therefore to transform the teaching workforce “into a high status, highly qualified, well-supported, properly remunerated, and highly respected profession, which is capable of guiding and promoting inclusive, effective, and relevant learning”.

4.5 Non-state actors

The non-state sector provides a large and, in many countries, growing share of education provision. Non-state education is characterized by a diversity of actors, which could include religious institutions, non-governmental organisations, foundations, community-based groups, businesses, private proprietors and parents (UNESCO, 2015b). They have an important role in the provision of education in order to ensure parental choice and educational freedom and the Education 2030 Framework for Action, which lays out the roadmap to implement SDG 4 on education, further states that ‘Civil society, teachers and educators, the private sector, communities (...) all have important roles in realizing the right to quality education’ (para. 10).

Trends in privatization

In 2014, the Special Rapporteur on the right to education warned of the ‘explosive growth in private education providers’ (Singh, 2014). There are concerns that private education is rapidly in danger of supplanting public education in many countries, rather than supplementing it. The shares of private institutions worldwide increased from 10% in 2002 to 17% in 2013 in primary education and from 19% in 2004 to 26% in 2014 in secondary education (UNESCO-GEM Report, 2021b).

The issue of privatization of education is increasingly complicated. Private provision of education can entail private regulation or decision-making, where education services are monitored by those who receive the services, ascertaining whether it is of a satisfactory standard and making decisions to exit or demand a better a service (Belfield & Levin, 2002).

Funding for private education can come from a variety of sources, in many cases supported by private funding from the learner or their family, and in others, through government subsidies. A rise in public-private partnerships (PPPs), broadly defined as arrangements between public and private actors for the delivery of goods, services and/or facilities, is an emerging area of complexity. PPPs could cover merely the outsourcing of managing the school facilities or providing ancillary services such as school meals or transport but could also entail the private provision of core education services funded by the government. Finally, the COVID-19 pandemic and the shift to digital learning modalities has accelerated the proliferation of private technology providers (i.e. ‘EdTech’).

Privatization can impact positively in some contexts, increasing the number of available schools that can have special significance for certain groups, expanding educational choice, increasing participation of parents in their children’s education and creating a perception of improved quality in education (Right to Education Project, 2014). However, privatization without regulation can also lead to discrimination and exclusion, create a two-tier system of education and adversely affect equality of opportunity. Commercialization can throw overboard the established position of education as a public good. An expansion of private education may even lead to the possibility of the State ‘exiting

the field' of education through public divestment and transfer of accountability to the private sector (Right to Education Project, 2014).

Examining the legal framework

At the time of drafting of the right to education framework, there was a desire to protect the right to educational freedom regarding the provision of education by non-state actors. This led to the twinned recognition of the **freedom to both establish or maintain private educational institutions** (article 2(c) of the CADE) and a corresponding **liberty of choice** for parents to choose schools other than those established by the public authorities under article 5(1)(b) of the CADE and article 13(3) of ICESCR. These provisions also require States to **implement minimum education standards** with regard to private institutions.

The legal framework on private education was developed to ensure parents' liberty of choice as to private education was linked to the right of parents to ensure the **religious, linguistic and moral education** of their child(ren) (articles 2(c) and 5 (b)-(c) of the CADE) suggesting that it was originally intended to cater to diverse needs and convictions. Private institutions were to be set up '**in addition**' (article 2(c) of the CADE) to those provided by public authorities, emphasizing the duty of the State to maintain its own offering. It seems unlikely, in the spirit of the CADE, that the rights and freedoms within were intended to open the door to a private sector that adopts a commercial approach whereby learners are seen as consumers or encourages divisions based on wealth and family background.

Encouraging regulation of the non-state actors

When it comes to **public-private partnerships** (PPPs), more clarity might be needed as to whether States are fulfilling their role as primary providers and regulators of education. General Comment No. 13 (CESCR, 1999) emphasizes that States have principal responsibility for 'the **direct provision** in most circumstances'. This raises questions as to whether the rise in contracted and charter schools, or voucher systems (where private schools receive public funding for individual students) can be thought to amount to direct provision of State education. The Abidjan Principles (2019) offer guidance on funding private institutions. Relinquishing control to non-state actors of publicly-funded education can pose risks to the right to education – especially with regard to quality and equity (Zancajo et al., 2021).

The second aspect of the international legal framework that would benefit from further clarity concerns **minimum education standards**. States have a responsibility in international human rights law to ensure that all education, including non-state schools conform to minimum standards. While they should cover dimensions such as prohibition of discrimination; minimum professional qualifications of staff; health and safety requirements, limitations on suspension and expulsion of learners; discipline and prohibition of corporal punishment; among others, they should also consider the quality of education outcomes. An imperative feature of these standards might lie in the prevention of exorbitant fees, which can never be in comfortable alignment with accessibility.

While absolute minimum education standards may be established at the international level, governments need to further contextualize and adapt them in order to account for the **specific country and local contexts, as well as the reality of operating environments**. Care needs to be given to ensure that the regulations establishing the minimum education standards consider the **rights of the child** and should not impede a pluralistic education system. Beyond compliance, regulations also could aim to foster school improvement by encouraging a **developmental approach** to support actors in meeting the established standards. There would also be some benefit to outlining the concrete obligations of States on monitoring these minimum standards.

Another avenue of exploration is how the international legal framework could redress the balance between non-state actors having increasing control and a larger share of the sector. This must be examined sensitively, with respect to the fact that some non-state actors have represented great value in certain contexts by filling genuine gaps in education provision, for example for disadvantaged groups in informal settlements, or those in crisis or emergency contexts.

One response might be to consider **formally setting limits to for-profit education institutions** at compulsory levels. The UNESCO-GEM Report '*Non-state actors in education*' found that 'Profit making is inconsistent with the commitment to guarantee free pre-primary, primary and secondary education' (2021, p. 25). The Abidjan Principles call for States to avoid commercialization of education (Guiding Principle 48) and emphasizes states that they must not fund or support private institutions that are commercial and 'excessively pursue their own self-interest' (Guiding Principle 73). For-profit education may conceptualize the learner as a consumer. A market approach to schooling means that companies no longer have the best interests of the child at the heart of their agenda-setting. Cost-cutting is likely to be a principal objective, competing with aims to improve the quality of education. Addressing and regulating profit-making is therefore necessary to ensure that the right to education is not infringed upon.

Some might argue that private schools offer education of better quality and are the solution to the out-of-school challenge in some local contexts, filling gaps where the State is unable to provide education. This is not altogether convincing, as most private schools are prevalent and continue to expand in urban areas, where there exists already close to universal enrolment (UNESCO-GEM Report, 2021b). Regardless, the only way for States to respect, protect and fulfil the right to education, which is their primary duty, is by ensuring that they maintain overall control of the entire education system and aim to reduce their dependency on non-state actors and strengthen the reliability and sustainability of the public sector to guarantee freedom of choice.

Private tutoring

Private tutoring can have significant impact on the right to education, creating a potential divide in access to learning opportunities. Prevalent in Asia, it is increasing worldwide and can be understood as extra lessons on academic subjects that are provided by specialist companies, teachers working on a part time basis and university students, in exchange for a fee (Mark Bray, 2014). While some argue that private tutoring enhances educational outcomes by providing personalized attention and supplementary support, it can exacerbate existing inequalities and even weaken the quality of formal education, due to the reliance on private tutoring. Affluent families can afford these additional

resources, giving their children an unfair advantage over their less privileged counterparts. Advertising practices, while creating awareness of the availability of services, can also contribute to the commercialization of education, where quality education becomes contingent on one's ability to pay for private tutoring. This can also create societal pressure and expectations.

Despite the evident repercussions on the right to education, international norms and standards are silent on this issue which would greatly benefit from regulation.

Homeschooling

Homeschooling is far from a recent practice. However, the COVID-19 pandemic provided the opportunity to parents and caregivers to simulate homeschooling, as they were required to fill the role of primary guides for their children's learning at home. While international human rights law is silent on the issue of homeschooling, the principles referred to earlier such as on educational freedom, minimum education standards but also regarding 'the best interests of the child' (article 18(1), CRC), can be applied to homeschooling. Furthermore, the education provided should conform to the aims of education laid out in the CRC, including that education is directed to 'the development of the child's personality, talents and mental and physical abilities to their fullest potential' (article 29 (1)(a)).

Besides these general principles and obligations, the international human rights framework could further detail how to ensure they concretely apply in the context of homeschooling and could provide further guidance with regard to its regulation to ensure quality education and the protection of learners.

Digitalization in education

Finally, more attention must be paid to the regulation of EdTech but also, more generally, the use of technology in education. Non-state actors have performed a **crucial role in maintaining access** to education during the COVID-19 pandemic when face-to-face learning was not possible. Education management, infrastructure and delivery, curricular content and connectivity provided by private providers kept access to education open, as well as lines of communication between learners and teachers.

However, private providers taking more responsibility for the provision of education is not without risks. Without strong regulation, there are **concerns relating to the quality of education, online learner's protection and privacy and the financial burden placed on parents and students**. These issues also can emerge regarding the use of digital tools in education. Technology is increasingly an area where public funding is being diverted to private interest, so education stakeholders must monitor that education resources and tools that are used in advancing the interests and capabilities of teachers and learners; and be vigilant of corruption and the diversion of resources to advance private aims.

It is imperative that key decisions about education driven technologies and the use of digital tools in education are made in the public sphere and that the private control of digital infrastructures and enclosure of the 'digital knowledge commons' is addressed.

4.6 Learner's online protection and privacy

The increasing digitalization and datafication of education raise pressing concerns linked to privacy and data protection. While AI, data-based analytics and other ICTs hold huge potential for the education sector and the creation of flexible lifelong learning pathways, they are also contributing to an increasing expanse of personal data processing. Digital advancements are continually evolving, such as the recent development of generative AI, opening-up not only new opportunities but also risks.

The Beijing Consensus on Artificial Intelligence and Education (2019) describes the **potential for data** to transform evidence-based policy planning processes such as Educational Management Information Systems and to support adaptive learning processes, evaluation and assessment but also calls on States to ensure 'ethical, transparent and auditable use of education data and algorithms'.

Internet technologies are capturing incredible quantities of information and the **types of data being collected** are expanding to include administrative data (name, gender, attendance, scores), to data about learning processes (learning trajectory, engagement score, response times, pages read, videos viewed) and sometimes even biometric information, such as fingerprints or eye scans to access and sit examinations (UNESCO, 2020c). Sensitive personal data such as that on medical conditions, home situation, disciplinary measures or even immigration status increase the need for strong mechanisms of protection, yet children's education data are far less protected than health data, which tends to be governed by a complex and comprehensive framework of regulations in many countries (Han, 2020).

Aside from a security breach, the **threats** inherent in the widespread collection of learners' data are wide-ranging: the profiling of learners; data used for non-educational and commercial purposes such as targeted advertising; a lack of transparency of algorithms and the bias and misinterpretations that can result; a lack of accountability and privacy intrusions where cameras and microphones are used in the private spaces of teachers and learners are just a few of the risks involved (UNESCO, 2022d).

Furthermore, **true consent** is difficult to obtain in online education as existing power imbalances between EdTech, governments, children and parents are amplified (Cannataci, 2021). 'Notice-and-choice' regimes to garner consent are flawed- privacy policies are notoriously complex and if a service has been chosen by the educational authority, little choice is left to the learner to opt-out. Unfortunately, schools tend to select applications and tools based on curriculum and financial considerations, rather than privacy (Cannataci, 2021).

Aside from data protection and privacy concerns, other risks are attributed to learners' spending more time online. Children and youth engaging in online activities can be exposed to age-inappropriate or illegal content, inappropriate contact and risk of privacy due to publishing sensitive personal information (ITU, 2020). There are also concerns for children's mental and physical health and well-being associated with heightened levels of screen-time.

Some guiding frameworks

Box 13: Guidance to protect learners' data

The following advisory statement from the CRC Committee (2021, General Comment No. 25) can provide guidance as to the form that protective measures could take to protect learners' data more widely, for all ages:

States parties should take legislative, administrative and other measures to ensure that children's privacy is respected and protected by all organizations and in all environments that process their data. Legislation should include strong safeguards, transparency, independent oversight and access to remedy. States parties should require the integration of privacy-by-design into digital products and services that affect children. They should regularly review privacy and data protection legislation and ensure that procedures and practices prevent deliberate infringements or accidental breaches of children's privacy. Where encryption is considered an appropriate means, States parties should consider appropriate measures enabling the detection and reporting of child sexual exploitation and abuse or child sexual abuse material. Such measures must be strictly limited according to the principles of legality, necessity and proportionality.

The **UNESCO Institute of Technology in Education** has developed a Guidance Handbook for students, teachers and parents, based on the 'Personal Data Security Technical Guide for Online Education Platforms' launched by UNESCO IITE and Tsinghua University in 2020.

A **Recommendation on the Ethics of Artificial Intelligence** has been adopted by UNESCO as a comprehensive global standard-setting instrument to provide AI with a strong ethical basis, though this instrument concerns AI exclusively and is not specific to education. In relation to education, it notably encourages the promotion of AI literacy education as well as prerequisite skills for AI education (including basic literacy, numeracy, coding and digital skills) alongside general awareness programmes, that cover the impact of AI systems on human rights and their implications. The Recommendation furthermore highlights the need for the ethical use of AI technologies in teaching, teacher training and e-learning and the need to ensure inclusive participation.

With regard to the protection of children and young people online, industry-led projects may also provide inspiration. **The Tech Coalition** is an alliance of global tech companies who are working together to combat child sexual exploitation and abuse online. They provide resources, education, and capacity-building to tech companies, and serve as a resource for external stakeholders. Coalitions of private companies that opt-in might not provide the most exhaustive protection for learners' rights, but they are efficient, flexible, self-regulating and are not limited by borders or government priorities.

Expansion of the legal framework

Any new regulations must be capable of accommodating shifting and evolving technologies and provide adequate legal protection around consent, data processing, data security and transparency. Ideally, data protection authorities should be established for enforcement.

Throughout the consultative process **data protection and privacy** were raised within the context of digital learning. This subject was considered absolutely key to future reiterations of the right to education, especially how data is collected, by whom, and the child's right to be forgotten. Participants stressed that teachers should also have rights to data protection and privacy. No consensus was reached as to the way forward for regulating this sphere, though there was consensus that marketing and collecting data for commercial purposes should be prohibited in education.

Article 12 of the UDHR, article 17 of ICCPR, article 16 of the CRC and multiple other international and regional human rights instruments recognize privacy as a fundamental human right, however **there is no explicit legal protection for personal data**. Currently, data protection principles are instead the focus of regional or multilateral bodies and organizations such as the Global Privacy Assembly (GPA) to the European Union, the Council of Europe, the OECD and more recently the African Union and the Asia Pacific Economic Cooperation (APEC). At the national level, 137 States out of 194 have legislation on the topic of data protection and privacy (UNCATD, n.d.).

Some feel that the protection of online data should be recognized legally as a part of the existing right to privacy in international human rights law. The Special Rapporteur on the right to privacy has frequently taken on the topic of online data protection as part of their remit, showing a conflation of the two subjects, in recognition of the principle that rights people enjoy offline should also be protected online (Cannataci, 2021; Nougrères, 2022).

Others are advocating for the enshrinement of a new distinct, fundamental right to data protection. This move would allow for the development of distinct core principles as they relate to data protection. It would provide weight to the argument that governments should be putting in place more protective legal and political frameworks for learners in the digital space, as recommended by the 2012 OECD Recommendation on the Protection of Children Online.

Some of the core principles that might form the basis of the right have been developed through international dialogue, such as a duty to: obtain personal information fairly and lawfully; limit the scope of data use to its original purpose; ensure that processing is adequate, relevant and not excessive; ensure its accuracy; delete it when no longer required, and; grant individuals the right to access their information and request corrections (Scheinin, 2009).

Specific rights for the purpose of **child online protection** should also be envisaged. Promising legal developments are happening in some parts of the world. In the UK, the Age-Appropriate Design Code (2020) contains 15 flexible standards to build-in protection for children online, for example settings must be 'high privacy' by default, children's data should not be shared and geolocation settings turned off by default. The code is binding on all online services 'likely to be accessed by children' and is enforced by the Information Commissioner. State legislators in the California are using the UK statutory code as the template for a bill they hope to pass to protect children online (Lima, 2022).

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Way forward

The education landscape looks immensely different to that of 1960, when the Convention against Discrimination in Education came into force. Primary enrollment is universal in most countries, many more girls are staying in formal education for the same length of time as boys – and longer in some countries – and the majority of States now enshrine the right to education in their constitutions and legislation: there is much to celebrate. Today, we must try to look ahead sixty years. We must imagine what the world might look like, and what will be needed of education. From there, creating a new social contract for education through the right to education will be the greatest tool to shape the future we want and need.

The paper highlights the need for a more inclusive and lifelong approach to education, analysing the various components of what fully realizing the right to education should concretely entail in today's world. Whether this requires an explicit expansion of educational opportunities beyond traditional school settings, creating better linkages between the levels as well as formal, non-formal and informal modalities, clarifying the rights of disadvantaged groups, or addressing the challenges posed by the uptake of digital tools, climate change and conflict, the paper sheds light on how to progress and solidify international norms and standards.

Looking ahead, this paper makes suggestions as to new or updated legal rights and obligations within the right to education framework, which are intended to serve as basis for discussion as part of the consultation process. The concrete suggestions have been articulated in the below table. It is envisioned that these suggestions will benefit from inputs from diverse stakeholders to ensure its enduring relevance. Some of these ideas can give rise to bilateral, regional and international cooperation that takes proactive and progressive action to review the existing provisions. The right to education does not exist in a vacuum, but co-relates to many other rights, from rights to culture and health, to those of the children and the elderly. This work therefore requires a comprehensive vision and collaborative endeavour.

Proposed recommendations

Lifelong learning

Although the right to education is lifelong, and therefore a ‘right to lifelong learning’ component already exists within its scope, there is increasing consensus that the international legal framework could be strengthened with regard to entitlements in adult learning (including formal and non-formal), ECCE, secondary and tertiary education (including TVET), so that learners can take flexible and seamless pathways of learning throughout life. In relation to informal learning, policymakers are encouraged to harness its valuable experiences and outcomes, empowering learners to navigate flexible lifelong learning pathways through recognition and validation in diverse pathways. Finally, the increase in the use of technology in education, brings new opportunities for remote learning, teacher planning and evaluation, participatory learning experiences, knowledge-sharing and collaboration. At the same time, concerns have been raised as to a ‘digital divide’ that has been witnessed, with certain groups experiencing lower levels of access to the same extent, or quality of education.

Amendments/additions to the right to education framework could be considered:

- **Recognize that the right to education begins at birth and continues until the end of life** and ensure the adoption of a holistic, lifelong learning approach to education by providing opportunities for education, learning, training and development throughout life.
- **Guarantee diverse learning modalities in education and promote flexible and seamless learning pathways** between formal and non-formal education and training, ensuring that learning outcomes from participation in non-formal and informal education are recognised, validated and accredited.
- **Recognize the right of all children to ECCE**, including by: progressively realizing the right to a place in an affordable childcare setting outside the home for every family that wishes to benefit, including introducing at least one year of free and compulsory pre-primary education; taking appropriate measures to support and educate all parents and primary caregivers in raising their children in a child-centered manner that promotes healthy child development; establishing minimum quality standards in the provision of ECCE; implementing measures that support early childhood interventions for children with developmental delays, disabilities and/or in at-risk situations.
- **Extend free and compulsory education** to provide for twelve years of free primary and secondary education, of which nine years are compulsory.
- **Make higher education equally accessible to all with the potential to succeed**, taking into account socioeconomic circumstances and systemic disadvantages; similarly, ensure equity in success by supporting vulnerable, marginalized and disadvantaged groups in completing higher education; and ensure diverse opportunities in tertiary education, to include TVET, that respond to the needs of not only the employment market, but of society as a whole.
- **Where higher education is not free, guarantee that it is made affordable**; including offering financial incentives such as grants and scholarships particularly to

disadvantaged, marginalized and vulnerable groups, and taking measures to make living costs (i.e. accommodation, transport and meals) affordable.

- **Guarantee that functional literacy, including digital literacy, numeracy and fundamental education** are universally accessible and free to all.

Inclusive education

The concept of inclusive education is gaining ground and could now conceivably be enshrined as a right for all learners. Implementing a right to inclusive education requires a whole-system transformation, necessitating the rebuilding of education systems that are able to address and remove diverse individual barriers, allowing all students to learn together, regardless of background, ability or additional needs. This section also considered some targeted rights that could enhance protection for vulnerable and marginalized groups that continue to struggle in the realization of their right to education. Education in, through and for human rights should also be given increased prominence in the international legal framework.

Amendments/additions to the right to education framework could be considered:

- **Ensure an inclusive education system at all levels**, in all types and through all modalities, including through: proscribing the exclusion of any individual from general education; the provision of reasonable accommodation; providing individualized support measures including remedial action, auxiliary assistance; ensuring learning environments free from stigmatization and stereotypes; and fostering cultural, religious and linguistic diversity in terms of educational content and delivery.
- **Update the grounds of discrimination** to include persons with disabilities, sexual orientation, gender identity, refugees, asylum-seekers, migrants and IDPs under the grounds for which discrimination is explicitly prohibited.
- **Ensure the right to education of pregnant or parenting girls and women** by explicitly providing for their continued education and re-enrolment where necessary, as well as removing any laws, policies and practices that have the intended or unintended effect of restricting this right.
- **Guarantee a right to education on health and well-being**, including comprehensive sexuality education (CSE), eliminating legislative and constitutional barriers to its enjoyment and ensuring the inclusion of CSE from primary school onwards, that is age-appropriate and culturally sensitive.
- **Ensure mother tongue education or learning opportunities**, whenever possible, for indigenous peoples and individuals belonging to minorities.
- **Explicitly enshrine the right to education of refugees, asylum-seekers, migrants and internally displaced persons**, including those that are displaced or affected for reasons related to climate change, including *inter alia*: eliminating administrative barriers and providing language and remedial classes, flexible certified learning programmes and psychosocial support.
- **Institute measures to develop inclusive, responsive and resilient education systems** that meet the needs of children and adults in crisis contexts, prioritizing the

continuity of education at times of crisis, elaborating a plan for reinstatement within a reasonable timeframe, and ensuring the protection of learners, teachers, other education staff, schools and other education infrastructure in the context of armed conflict.

- **Take measures to address the digital divide and remove barriers to digital education**, such as lack of internet connection, basic infrastructure or devices; and prioritizing the connectivity and inclusion of the most marginalized learners, while ensuring that online education expands learning opportunities, without reducing in-person education.
- **Ensure that technologies for education purposes conform to minimum education standards** and are inclusive by design, including for learners with disabilities and respecting cultural rights.
- **Take measures to ensure learner well-being in online learning environments and develop digital literacy skills in education**, including technical skills as well as critical digital literacy, which encompasses building an understanding of the digital environment including its infrastructure, business practices, persuasive strategies, uses of automated processing and personal data and surveillance.
- **Expand the aims of education** to include the building of soft skills, such as solidarity, compassion, ethics and empathy and education on climate change as well as the protection of nature and biodiversity.
- **Ensure the right of all learners to know, seek and receive information about all human rights and fundamental freedoms, sustainable development and global citizenship**, by ensuring these educational interventions are meaningfully integrated in all education policies, curricula, teacher training and student assessment and ensuring that learners are endowed with the knowledge and skills needed to uphold human rights.
- **Explicitly prohibit the use of corporal punishment in education** and take measures to ensure a safe school environment free of all forms of violence (including gender-based violence) and bullying (including cyber-bullying).

Education systems, governance and delivery

The right to education today is no longer the sole responsibility of the Ministry of Education. Intersectoral collaboration is needed to reflect the interdependence of rights and the priority increasingly afforded to the lifelong learning approach, inclusive education and equity. Obligations in the international legal framework that detail State responsibilities as to minimum standards and financing of education could also be refined to ensure accountability. Teachers need more protection in the international legal framework, in terms of training, employment rights and remuneration. The right to education must also find just ways to regulate the role of non-state actors in the education sector and redress the balance between their involvement and that of the public authorities. Finally, the safety of learners and their data online also requires attention in any reiteration of the right to education.

Amendments/additions to the right to education framework could be considered:

- **Construct systems of governance that are intersectoral, coordinated and take a lifelong, system-wide approach** to the right to education, recognizing the interdependence of this right with many other human rights, including but not limited to, the right to health, work, and gender equality.
- **Guarantee regular, transparent and participatory monitoring**, by establishing appropriate mechanisms, and ensuring the collection of reliable disaggregated data to tackle discrimination and achieve equality.
- **Prioritize the financing and provision of free, quality, public education**, by allocating the maximum available resources to education, including the mobilization of both internal resources and/or seeking resources from the international community where necessary, as well as through cost-effective and efficient approaches, resisting austerity measures that reduce education spending and combatting corruption, mismanagement and tax evasion.
- **Establish a clear regulatory framework which define minimum education standards** covering all substantive, procedural, and operational requirements, including for digital education, for which all public and non-state actors (including homeschooling parents/caregivers where relevant) must comply, and regularly monitor their compliance to these standards.
- **Ensure that teaching is adequately recognized** as a profession requiring expert knowledge and specialized skills, and that teachers and educators should be empowered, adequately recruited and remunerated, motivated, professionally qualified, and supported within well-resourced, efficient and effectively governed systems.
- **Guarantee the rights of teachers** to training, including pre-service, in-service and continuing professional teacher training, including training in inclusive education and digital instruction (critical digital literacy, training in deployment and usage of digital learning solutions), and ensure teaching training standards at each level of education.
- **Recognize the rights of ECCE personnel, including all those with an educator function in the early years, TVET and non-formal educators**, as well as the rights for those on temporary and part-time contracts.
- **Guarantee that the provision of education by non-state actors does not undermine the responsibility of the State in providing education**, nor replace access to quality, free public education.
- **Non-state actors should ensure full transparency** including with regard to their fees and other charges and ensure the protection of learners' rights in the context of failure or delay in the payment of fees.
- **Profit-making practices could be limited in education** at compulsory levels to ensure market-driven approaches do not undermine the right to education.
- **Prohibit direct or indirect state funding or support** of any non-state education provider that is commercial, excessively pursues its own self-interest or that charges fees that undermine access to education (and foresee measurement indicators for its enforcement).
- **Take measures to ensure that the right to privacy** of learners and teachers is respected and protected by all state and non-state actors that process their data,

including by adopting specific child privacy protection legislation, requiring the integration of privacy-by-design in digital education products; requiring transparency in data usage; guaranteeing that informed consent is required; ensuring security of data processing; enshrining a right to access and modify one's own personal data and establishing mechanisms for accountability for all issues related to online education activity.

- **Ensure that digital education tools and resources are learner-focused and age-appropriate by design**, including by prohibiting marketing and collecting data for commercial purposes in education products, and that children have high levels of online protection from violence, exploitation and abuse online.

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Annex: Education-related international human rights framework

The below table gathers all existing international human rights legally binding (in purple) and non-legally (in orange) binding instruments, that are related to the right to education throughout life, ranging from a minimal reference to a comprehensive coverage of the scope of this right.

International human rights framework (as of June 2023)	Relevance for education
Universal Declaration of Human Rights (1948)	Article 26 enshrines the right to education for all.
Geneva Conventions (1949) and Additional Protocols	Applicable during international armed conflict, they provide for the education of prisoners (Third Geneva Convention) and children (Additional protocol I and II), especially orphans and children who are separated from their parents (Fourth Geneva Convention).
UN Convention Relating to the Status of Refugees (1951)	Article 22 lays down basic minimum standards for the treatment of refugees.
UN Convention Relating to the Status of Stateless Persons (1954)	Article 22 lays down basic minimum standards for the treatment of stateless persons.
UNESCO Convention against Discrimination in Education (1960)	Entirely dedicated to the right to education, it calls eliminate and prevent any form of discrimination in education and to promote equality of opportunity and of treatment.
UNESCO Recommendation against Discrimination in Education (1960)	Same normative content as the Convention.
UN International Convention on the Elimination of All Forms of Racial Discrimination (1965)	Article 5 proscribes racial discrimination, including regarding the right to education and Article 7 requires combatting prejudices leading to racial discrimination in teaching and education.
UN International Covenant on Economic, Social and Cultural Rights (1966)	Articles 13 and 14 comprehensively provide for the right to education.
- UN Optional Protocol to the ICESCR (2008)	Establishes an international complaints procedure for violations of the rights contained in the Covenant, including the right to education.
- General Comment 1: Reporting by State Parties (1989)	Generally applicable to all rights laid out in the Covenant, it specifically refers to reporting on compulsory and free of charge primary education (para. 4).
- General Comment 3: The nature of States parties' obligations (Article 2, paragraph 1) (1990)	Generally applicable to all rights laid out in the Covenant, it refers specifically to education and the obligations of States parties (paras. 3, 7 and 10)

<p>- General Comment 5: Persons with Disabilities (1994)</p>	<p>Para. 35 is entirely dedicated to the right to education of people with disabilities (see also paras. 1, 15, 23).</p>
<p>- General Comment 6: The economic, social and cultural rights of older persons (1995)</p>	<p>Paras. 36-39 are specifically dedicated to the right to education of older persons (see also paras. 5, 12, 24 and 41).</p>
<p>- General Comment 8: The relationship between economic sanctions and respect for economic, social and cultural rights (1997)</p>	<p>Covers the impact of economic sanctions, including for the right to education (paras. 3 and 5).</p>
<p>- General Comment 9: The Domestic Application of the Covenant (1998)</p>	<p>Generally applicable to all rights laid out in the Covenant, including the right to education, it specifies how to ensure the domestic implementation of the Covenant.</p>
<p>- General Comment 10: The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights (1998)</p>	<p>States the role of national human rights institutions, including in the promotion of educational programs designed to enhance awareness of the rights in the Covenant (para. 3(a)).</p>
<p>- General Comment 11: Plans of action for primary education (article 14 of the covenant) (1999)</p>	<p>Entirely dedicated to primary education.</p>
<p>- General Comment 12: The Right to Adequate Food (Article 11) (1999)</p>	<p>States that education measures should be part of the strategy with regard to the food system (para. 25).</p>
<p>- General Comment 13: The right to education (article 13 of the covenant) (1999)</p>	<p>Entirely dedicated to the right to education.</p>
<p>- General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12) (2000)</p>	<p>Recognizes that the right to health is closely linked to the right to education and refers to health education (see paras. 3, 11, 16, 17, 21 and 34).</p>
<p>- General Comment 15: The Right to Water (Articles 11 & 12) (2003)</p>	<p>States the importance of access to water in educational institutions and need for education concerning hygienic use of water (see paras. 12(c)i, 16(b) and 25).</p>
<p>- General Comment 16: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights (Article 3) (2005)</p>	<p>Generally applicable to all rights laid out in the Covenant, including the right to education, it specifies how to ensure equality between men and women in the context of education (see paras. 4, 21, 30 and 31).</p>

- General Comment 18: The Right to Work (Article 18) (2006)	Covers the relationship between the right to work and education (see paras. 13-14).
- General Comment 19: The Right to Social Security (Article 9) (2006)	Highlights the need for appropriate education regarding social security schemes (see paras. 49 and 59(a)).
- General Comment 20: Non-discrimination in economic, social and cultural rights (Article 2, paragraph 2) (2009)	Generally applicable to all rights laid out in the Covenant, including the right to education, it explains the principle of non-discrimination (see paras. 3-5, 10(a), 21, 28, 30, 33, 35 and 38).
- General Comment 21: Right of everyone to take part in cultural life (2016)	Recognizes that the right to take part in cultural life is part of the right to education (paras. 2, 15(b), 16, 25- 27, 29, 32, 35, 52(i), 53, 54(c) and 55(c))
- General Comment 22: on the right to sexual and reproductive health (article 12) (2016)	Emphasizes the importance of comprehensive education and information on sexual and reproductive health (paras. 9, 19, 28, 47, 49(f))
UN International Covenant on Civil and Political Rights (1966)	Article 18 provides for educational freedom.
ILO/UNESCO Recommendation concerning the Status of Teachers (1966)	Sets forth the rights and responsibilities of teachers, for their initial preparation and further education, recruitment, employment, teaching and learning conditions.
ILO Convention n° 138 concerning Minimum Age for Admission to Employment (1973)	Article 2 provides that the minimum employment age shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years (with exceptions).
ILO Convention n°140 concerning Paid Education Leave (1974)	Dedicated to granting of paid educational leave as part training and continuing education on a non-discriminatory basis.
ILO Convention N°142 concerning Human Resources Development (1975)	Provides for the establishment and development of general, technical and vocational education, educational and vocational guidance and vocational training, within the system of formal education or outside of it.
UN Convention on the Elimination of All Forms of Discrimination against Women (1979)	Article 10 recognized equality between men and women and the elimination of discrimination against women in education.
- UN Optional Protocol to the CEDAW (2000)	Establishes an international complaints procedure for violations of the rights contained in the Convention, including the right to education.

<p>- General Recommendation No. 3, Education and public information programmes (1987)</p>	<p>Urges the adoption of education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.</p>
<p>- General recommendation No. 5, temporary special measures (1988)</p>	<p>Recommends the use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education.</p>
<p>- General recommendation No. 15: Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS) (Chapter I) (1990)</p>	<p>Recommends to enhance women's role as educators in the prevention of infection with HIV.</p>
<p>- General Recommendation No. 14, Female circumcision (1990)</p>	<p>With regard to female circumcision, recommends the introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision</p>
<p>- General Recommendation No. 19, Violence against women (1992)</p>	<p>Recommends introducing education and public information programmes to help eliminate prejudices (para. 24(f)).</p>
<p>- General recommendation No. 21: Equality in marriage and family relations (Chapter I,A) (1994)</p>	<p>Notes that the responsibility of women in their child-rearing duties affects their right to access education (para. 21) and notes the need to guarantee access to sex education (para. 22).</p>
<p>- General recommendation 24: Women and health (Chapter I) (1999)</p>	<p>Notably refers to health education (paras. 13, 18, 23, 28 and 31)</p>
<p>- General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures (2004)</p>	<p>Covers temporary special measures, including for education (paras. 23, 31, 32 and 37).</p>
<p>- General recommendation No. 26 on women migrant workers</p>	<p>Details the education, awareness-raising and training with standardized content for migrants (para. 24(b), see also para. 10).</p>
<p>- General recommendation No. 27 (2010) older women and protection of their human rights</p>	<p>Specifies the right of older women to adult education and lifelong learning opportunities (para. 40, see also para, 12 and 19).</p>

<p>- General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010)</p>	<p>Specifies the implementation of article 2 of the Convention, including in relation to education (see paras. 13, 21, 34, 36, 38(d)).</p>
<p>- General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014)</p>	<p>Recognizes that without status as nationals or citizens, stateless women and girls are deprived of their right to education and states that women seeking asylum and women refugees be granted, without discrimination, the right to education (paras. 33, 53, and 55).</p>
<p>- General recommendation No. 33 on women’s access to justice (2015)</p>	<p>Specifies the importance of education to ensure women’s access to justice (paras. 30- 33, see also para. 24 and 24(c))</p>
<p>- General recommendation No. 34 on the rights of rural women (2016)</p>	<p>Explains the obligation to protect the right of rural girls and women to education (see particularly paras. 42-47).</p>
<p>- General recommendation No. 35 Gender-based violence against women, updating general recommendation No. 19 (2017)</p>	<p>Details the preventive educational measures for gender-based violence against women (para. 30 (b) and (e)) as well as protective measures (para. 30(iii))</p>
<p>- General recommendation No. 36 on the right of girls and women to education (2017)</p>	<p>Entirely dedicated to ensuring the right to education of girls and women.</p>
<p>- General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change (2018)</p>	<p>Specifies the importance of education to mitigate climate change and the impact of climate change on their right to education (paras. 58-60, see also paras. 3, 4, 29, 41, 42, 53, 57(f), 62, 67, 68(c), 75 and 78(b)).</p>
<p>- General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration</p>	<p>Explains how education can help to address the root cause of trafficking women and girls (para. 47, see also paras. 20, 51, 57(c), 62, 66, 82, 90 and 92).</p>
<p>- General recommendation No. 39 on Indigenous women and girls (2022)</p>	<p>Paras. 47-48 are dedicated to the right to education of indigenous women.</p>
<p>UNESCO Convention on Technical and Vocational Education (1989)</p>	<p>Provides that States are to elaborate strategies and implement programs and curricula for technical and vocational education and recognizes that equal employment opportunities should be offered, without discrimination, to teachers and other specialized staff in technical and vocational education.</p>
<p>UN Convention on the Rights of the Child (CRC, 1989)</p>	<p>Article 28 recognizes education as a legal right for every child on the basis of equal opportunity.</p>

<p>- UN Optional Protocol to the CRC on the involvement of children in armed conflict (2002)</p>	<p>Article 3 raises the age for direct participation in armed conflict to 18 and establishes a ban on compulsory recruitment for children under 18.</p>
<p>- UN Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (2002)</p>	<p>Prohibits the sale of children, child prostitution and child pornography.</p>
<p>- UN Optional Protocol to the CRC on a communications procedure (2014)</p>	<p>This treaty establishes an international complaints procedure for violations of the rights contained in the Convention and its Protocols.</p>
<p>- General Comment No. 3: HIV/AIDS and the rights of the children (2003)</p>	<p>Specifies the need of sexual education and education on HIV/AIDS prevention and care (see paras. 6-7, 18-19 and 31).</p>
<p>- General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin (2005)</p>	<p>Explains the rights of unaccompanied and separated children, including ensuring full access to education (see paras. 41-43).</p>
<p>- General Comment No. 7: Implementing child rights in early childhood (2005)</p>	<p>Lays out the right to early childhood education (see paras. 28 to 30 and 33).</p>
<p>- General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006)</p>	<p>Explains school discipline and the protection against corporal punishment in school settings.</p>
<p>- General Comment No. 9: The rights of children with disabilities (2007)</p>	<p>Details the right of children with disabilities to quality and inclusive education (paras. 62 - 69).</p>
<p>- General Comment No. 10: Children's rights in juvenile justice (2007)</p>	<p>Specifies the rights of the child sentenced to imprisonment to education (paras. 18 and 89).</p>
<p>- General Comment No. 11: Indigenous children and their rights under the Convention (2009)</p>	<p>Paras. 56 - 63 are dedicated to the right to education of indigenous children.</p>
<p>- General Comment No. 12: The right of the child to be heard (2009)</p>	<p>Explains the right to be heard in education and school (paras. 105 to 114).</p>
<p>- General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration (2013)</p>	<p>Para. 79 is dedicated to the child's right to education and the need to respect their best interest.</p>

<p>- General Comment No. 17: The right of the child to rest, leisure, play, recreational activities, cultural life and the arts (2013)</p>	<p>Explains children’s rights to rest, leisure, play, recreational activities, cultural life and the arts in relation to the right to education (para. 27), pressure for educational achievement (para. 41) and States’ obligations in school environment (para. 58 (g)).</p>
<p>- General comment No. 20 on the implementation of the rights of the child during adolescence (2016)</p>	<p>Paras. 68-74 are specifically dedicated to the right to education for adolescent children.</p>
<p>- General comment No. 21 on children in street situations (2017)</p>	<p>Specifies the rights and obligations in relation to the right to education for children in street situations (notably paras. 54-55).</p>
<p>- Joint general comment No. 18 of the Committee on the Rights of the Child and joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women on harmful practices (2019)</p>	<p>Details the importance of girls’ and women’s education, the role of education in eliminating gender stereotypes and how education can prevent child marriage and early pregnancy (see notably paras. 61– 69).</p>
<p>- General comment No. 25 on children's rights in relation to the digital environment (2021)</p>	<p>Explains the rights of children in the digital environment, particularly in the context of education (paras. 99 – 105)</p>
<p>ILO Convention n° 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)</p>	<p>Part IV is dedicated to education and Article 26 specifically establishes that indigenous and tribal peoples have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.</p>
<p>UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</p>	<p>Article 30 guarantees basic education standards for children of migrant workers, that access to schools shall not be refused or limited because of the irregular situation of either parent or child. Article 43 also sets out educational rights for migrant workers and Article 45 for members of migrant workers.</p>
<p>United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)</p>	<p>Sets essential standards to ensure the rights of persons belonging to minorities including on education (Article 4).</p>
<p>UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education (1993)</p>	<p>Recommends establishing mechanisms and procedures to harmonize degrees, qualifications and standards, ensure quality and carry out fair and expeditious assessments of skills and competencies.</p>
<p>UNESCO Recommendation concerning the status of Higher-Education Teaching Personnel (1997)</p>	<p>Sets out the norms and standards for educators working in universities and institutions of higher education</p>
<p>UNESCO Hamburg Declaration on Adult Learning (1997)</p>	<p>Establishes the development of adult learning.</p>

UNESCO World Declaration on Higher Education for the 21st Century (1998)	Set out global standards on the ideals and accessibility of higher education.
Roma Statute of the International Criminal Court (1998)	Provides that the targeting and destruction of educational property may constitute a war crime.
ILO Convention n° 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)	Requires the prohibition and elimination of the worst forms of child labour and access to free basic education for children (Preamble and Article 7).
UNESCO Declaration of Amsterdam on the Right to and the Rights in Education (2004)	Lays out commitments to the right to and the rights in education.
UNESCO Jakarta Declaration (2005)	Emphasizes the importance of the right to basic education and the need to mobilize financial resources.
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	Article 10 is dedicated to education and public awareness regarding the protection and promotion of cultural diversity.
UN Convention on the Rights of Persons with Disabilities (CRPD, 2006)	Article 24 is dedicated to guaranteeing the right to education of persons with disabilities.
- Optional Protocol to the CRPD (2008)	This treaty establishes an international complaints procedure for violations of the rights contained in the Convention, including on the right to education.
- General Comment No. 2 - Article 9: Accessibility (2014)	Explains accessibility in terms of the right to education (para. 39, see also: paras. 3, 6, 28 and 48).
- General Comment No. 3 - Article 6: Women and girls with disabilities (2016)	Highlights issues regarding girls and women with disabilities including in education (para. 56, see also paras. 2, 10, 20, 21, 24, 27, 40, 50, 53, 57 and 64(b)).
- General comment No. 4 on Article 24: Right to inclusive education (2016)	Entirely dedicated to the right to inclusive education, especially for persons with disabilities.
- General comment No. 5 - Article 19: Living independently and being included in the community (2017)	Links the right to living independently with the right to inclusive education (para. 88, see also paras. 16(b), 29, 33, 76 and 90)
- General Comment No. 6 - Article 5: Equality and non-discrimination (2018)	Explains the right to equality and non-discrimination including with regard to education (para. 63 – 65, see also paras. 25(c), 30, 50, 57, 67(h), 73(c)
- General Comment No. 7 - Article 4.3 and 33.3: Participation with persons with disabilities, including children with disabilities, in the implementation and monitoring of the Convention (2018)	Explains the need for a participatory approach to ensure inclusive education (para. 85, see also paras. 20, 45, 59, 85)

<p>- General comment No. 8 on the right of persons with disabilities to work and employment (2022)</p>	<p>Highlights the importance of inclusive education for the exercise of the right to work and employment (para. 76, see also paras. 60, 62, 64(h) and 68).</p>
<p>UN Declaration on the Rights of Indigenous Peoples (2007)</p>	<p>Establishes a universal framework of minimum standards for the survival, dignity, and well-being of indigenous peoples, including regarding their right to education (Article 14).</p>
<p>UN Declaration on Human Rights Education and Training (2011)</p>	<p>Recognizes the importance of receiving and providing education and training on human rights in contributing to the promotion, protection and effective realization of all human rights.</p>
<p>UNESCO Recommendation concerning Technical and Vocational Education and Training (TVET) (2015)</p>	<p>Provides guidance for the transformation and expansion of TVET and lifelong learning around the world.</p>
<p>UNESCO Recommendation on Adult Learning and Education (2015)</p>	<p>Calls upon Member States to take action in policy, governance, finance, participation, inclusion and equity, and quality, for adult learning and education, while building on the potentials of information and communication technologies.</p>
<p>Incheon Declaration (2015)</p>	<p>Sets out the education commitments to achieve SDG 4.</p>
<p>Safe Schools Declaration (2015)</p>	<p>Supports the protection of students, teachers, schools, and universities from attack during times of armed conflict; the importance of the continuation of education during armed conflict; and the implementation of concrete measures to deter the military use of schools</p>
<p>Global Convention on the Recognition of Qualifications concerning Higher Education (2019)</p>	<p>Dedicated to higher education it covers access, facilitating the cross-border education for students, teachers, researchers and jobseekers, strengthening the international cooperation in higher education and raising its quality.</p>
<p>UNESCO Recommendation on Open Educational Resources (OER) (2019)</p>	<p>Embraces the field of openly licensed educational materials and technologies in education.</p>
<p>UNESCO Recommendation on the Ethics of Artificial Intelligence (2021)</p>	<p>Sets out global standards on ethics of artificial intelligence, including on education (see particularly paras. 101-111).</p>
<p>UNESCO Recommendation on Education for Peace and Human Rights, International Understanding, Cooperation, Fundamental Freedoms, Global Citizenship and Sustainable Development (2023)</p>	<p>Lays out recommendations to foster peace and human rights, international understanding, cooperation, fundamental freedoms, global citizenship and sustainable development through education.</p>



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