

# Introduction

This Right to Education Monitoring Guide (*'Guide'*) is an easy to use, step-by-step guide to monitoring problems in education, using a human rights-based approach.

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## Why use the *Monitoring Guide*?

You should use this *Monitoring Guide* if you would like to add a human rights perspective to your education advocacy<sup>1</sup> efforts.

More often than not the education issues you will want to monitor are human rights issues. By linking the issues you encounter to the right to education, your advocacy efforts are strengthened because States are legally and politically bound to protect everyone's human rights and can be held accountable if they fail to do so.

This *Guide* aims to simplify the monitoring process<sup>2</sup> and ensure that the right to education remains the focus of your advocacy efforts.

This *Guide* consists of six easy to follow steps. Each step provides guidance on how to monitor various aspects of the right to education, particularly through the use of human rights indicators.<sup>3</sup>

Using indicators will help you to gather evidence that a human rights violation has occurred. The Right to Education Project<sup>4</sup> has developed a comprehensive list of human rights-based education indicators.<sup>5</sup> In order to help you select the most appropriate indicators for your monitoring project, we have created a special online tool - the *Right to Education Indicators Selection Tool*<sup>6</sup> ('Tool').

## Why use a human rights approach to advocacy?

There are several reasons for adopting a human rights approach to education advocacy:

- Human rights provide a universally accepted normative framework that details the content of the rights people have and the corresponding obligations of the State. Thus it gives advocates a solid basis upon which to claim that the State has acted in a way that violates the right to education and to demand a change of policy.<sup>7</sup>

- Grounding education advocacy in a human rights framework promotes accountability. Human rights are not just moral rights - they are legal rights. Every country has ratified at least one human rights treaty that guarantees the right to education,<sup>8</sup> and the majority of countries protect the right to education in their constitutions. This means that most States can be held legally accountable for violations.
- Using human rights-based strategies empowers rights-holders,<sup>9</sup> who are often ignored, giving them a voice and allowing solutions to emanate from the people who are directly affected. This is particularly important for those belonging to marginalised groups.
- Using a human rights lens to analyse education issues changes the way we view a situation. For example, instead of seeing children who are out-of-school as unlucky or unfortunate, by recognising that they are rights-holders, we realise that these children are in fact victims of intolerable injustices, for which the State must be held accountable.

### Why monitor the right to education?

The main purpose of monitoring the right to education is to identify problems in the implementation of the right to education, both in law (*de jure*) and in fact (*de facto*). For example, if a State does not prohibit discrimination<sup>10</sup> in access to and through education, it is likely that many children will be denied their right to education. However, if a State does prohibit discrimination but many children remain out-of-school, the problem is not with the law but with the State's failure to properly implement the right to education through adequate policies and programmes.

It is only by identifying problems – through right to education monitoring – that these problems can be addressed.

When States make a legal or political commitment to implement the right to education (such as by ratifying a treaty, enshrining it in the constitution or guaranteeing it in laws and policies), they must monitor implementation; otherwise they cannot identify problems and solve them. Monitoring is the most effective way to understand problems in education and the impact these problems have. Without this information, States cannot formulate suitable, targeted and effective solutions.

Although the State is responsible for implementing the right to education, it is not desirable for the State to be the only actor engaged in monitoring. The State's responsibility to monitor serves a particular role – to ensure that laws, policies and programmes adequately address real problems. Other actors have different reasons to monitor the right to education.

Civil society plays an important and specific role in monitoring the right to education. Civil society provides an alternative view and insight in to education problems that the State may not be aware of. This is because civil society organisations (CSOs) are usually embedded in specific areas and have specialist knowledge of the problems that their constituents face. They may also have the time and skills that States lack to examine issues more rigorously and comprehensively.

In most instances, civil society monitoring complements State monitoring. Like States, civil society monitors *de jure* and *de facto* enjoyment of the right to education. However, in certain situations the State itself may be responsible (either by act of omission or commission) for certain problems. In these instances, it is the role of civil society to hold the State to account for its failure to protect the right to education.

Unlike States, CSOs cannot effect direct change. In order to hold the State to account and improve the protection of the right to education, CSOs must influence duty-bearers<sup>11</sup> through advocacy. In short, CSOs monitor the right to education in order to put pressure on the State to fully implement the right to education for all.

Lastly, human rights mechanisms<sup>12</sup> such as UN treaty bodies,<sup>13</sup> National Human Rights Institutions and ombudspersons, and international development agencies also engage in monitoring work.

Human rights mechanisms play a specific monitoring role in that they assess the compliance of the State with either national or international law. These processes usually engage both the State and civil society, for example both the State and CSOs submit reports to UN treaty bodies.

International development agencies, in collaboration with States and civil society, work together to solve specific education problems and will usually monitor the right to education in order to uncover where States most need support, usually in the form of financial aid and technical support.

## Who should use the *Guide*?

This *Guide* is aimed primarily at civil society organisations (CSOs) including: national and international non-governmental organisations, trade unions, faith-based organisations, indigenous people's movements, and other groups.

For CSOs interested in monitoring the right to education, whether coming from a development, education or human rights background, the overall purpose of human rights monitoring<sup>14</sup> is generally to solve specific problems faced by the constituencies of those CSOs and hold States accountable for their human rights obligations. Monitoring serves as the backbone of effective advocacy:<sup>15</sup> its main purpose is to generate evidence to advocate for the full realisation of the right to education.

Beyond CSOs, other actors may have an interest in using this *Guide*, such as: academics, governments, international organisations and donor agencies.

## What are the special features of the *Guide*?

### Using indicators to monitor the right to education

This *Guide* is designed to help advocates to strengthen their advocacy<sup>16</sup> efforts by using human rights indicators.<sup>17</sup> The use of human rights indicators can help advocates build a strong case, based on empirical evidence, that there has been a violation of the right to education. Specifically human rights indicators can help users to:

- Obtain evidence about the scope and magnitude of various forms of deprivations and inequalities in the field of education.
- Reveal and challenge policy failures that contribute to the perpetuation of those deprivations and inequalities.
- Assess the implementation and enforcement of education laws and policies.<sup>18</sup>
- Uncover hidden forms of discrimination,<sup>19</sup> providing standardised measures that can be compared across various population groups.

Each step of the *Guide* will explain which types of indicators you should use, how to select appropriate indicators using the *Indicators Selection Tool*,<sup>20</sup> how to collect data for your chosen indicators and how to interpret that data from a human rights perspective.

### Types of human rights indicators

This *Guide* uses three types of human rights indicators, which collectively enable you to monitor various aspects of the right to education:

- **Outcome indicators** measure the extent to which a population enjoys the right to education. That is, they measure the impact of the State's efforts to implement the right to education through laws, policies and programmes. For example, primary completion rates<sup>21</sup> can tell us about the general level of enjoyment of free and compulsory primary education and percentage of students at the lowest level of

reading proficiency<sup>22</sup> may, to some extent, tell us whether that education meets students' basic learning needs and is of sufficient quality.

- **Structural indicators** measure the commitments made by States to meet their obligations regarding the right to education, as reflected in the adoption of legal instruments and basic institutional mechanisms necessary for the promotion and protection of the right to education. For example, whether a State has ratified a human rights treaty that guarantees the right to education<sup>23</sup> and incorporated it in to domestic law can tell us about the strength of commitment to the right to education of that State.
- **Process indicators** measure the various types of efforts (such as education policies, education inputs, budget allocation, and programmes and measures to address specific education issues) being undertaken by the State, as the primary duty-bearer,<sup>24</sup> in implementing its obligations with regard to the right to education. Process indicators thus measure how the State is transforming commitment into concrete realisation of the right to education for all. For example, percentage of trained teachers<sup>25</sup> measures a State's efforts in realising the right to a quality education, and finance indicators, such as education allocation ratio,<sup>26</sup> show the extent to which the government prioritises education in the budget.

By using all three types of indicators, it is possible to make the connection<sup>27</sup> between the enjoyment of the right to education and the commitments and efforts made by the State. The aim of this Guide is to enable users to show that low levels of enjoyment of the right to education are a result of State actions or inactions, whether it is because of lack of commitment and a failure to adopt laws and policies (measured using structural indicators) or because the efforts they have made are inadequate (measured using process indicators). By showing this you can build a strong case to show that there has been a violation of the right to education.

## Indicators Selection Tool

In order to help you monitor the right to education, the Right to Education Project has developed a *Right to Education Indicators Selection Tool*<sup>28</sup> containing over 150 indicators<sup>29</sup> to monitor just about every aspect of the right to education. However, for your monitoring purposes, you will probably only need to use a small number of indicators which are directly relevant to your work. By default, the *Tool* will show all our indicators. However, when you select the relevant criteria it will eliminate the indicators you don't need, leaving you a list of right to education indicators to use in your monitoring project.

The *Tool* has six selection criteria. For each one you can select the categories that are relevant to the issue you are monitoring. Below is a list of the selection criteria and categories:

The screenshot displays the 'Indicators Selection Tool' interface with five main selection criteria, each with a list of sub-categories and a count in parentheses:

- 1. Levels and Types of Education**
  - Pre-Primary (21)
  - Primary (36)
  - Secondary (36)
  - Vocational Education (20)
  - Higher Education (16)
  - Adult Education (3)
- 2. Types of Indicator**
  - Outcome Indicators (17)
  - Structural Indicators (19)
  - Process Indicators (116)
- 3. Areas of Focus**
  - Quality of Education (62)
  - School Safety and Violence (18)
  - Learning Outcomes (7)
  - School Infrastructure (10)
  - Teachers (24)
  - Learning Material (6)
  - Content of Education (7)
  - Access to Education (53)
  - Administrative Accessibility (4)
  - Economic Accessibility (3)
  - Physical Accessibility (4)
  - Free Education (15)
  - Educational Freedom/Private Education (33)
- 4. Marginalised groups**
  - Women and Girls (38)
  - Indigenous Peoples and Minorities (38)
  - Persons with Disabilities (38)
  - Persons with HIV/AIDS (29)
  - Migrants, Refugees and IDPs (33)
  - Persons in Detention (29)
  - Persons Living in Poverty (35)
  - Child Labourers (23)
- 5. Contexts**
  - Armed Conflict (Including Child Soldiers) (33)
  - Natural Disasters (18)

Below the 'Contexts' section, there is an additional category: **Policy Processes and Governance**

- Transparency (8)
- Participation (7)
- Accountability (25)
- Decentralisation (4)
- Education Financing (13)

So, if you wish to monitor the primary education of girls, under *Levels and Types of Education* you should select *Primary* and under the selection criteria *Marginalised Groups* you should select *Women and Girls*. The *Tool* will then eliminate all irrelevant indicators.

In order to further assist you, we have also provided information (where possible) on each indicator, including: definitions, comments on interpretation, where to find data, how data should be disaggregated, and relevant human rights standards.



The *Tool* has been designed to be user-friendly. At each step of this *Guide* you will be shown how to select the most relevant indicators for your project. You will also find further guidance in the *Tool* itself.

Please note that the *Tool* and the indicators are still being developed and tested. If you would like to contribute to this process, please send us your feedback.<sup>30</sup>

## How to use the *Guide*

### What to monitor

This *Guide* will help you monitor the right to education, as guaranteed in international and national law.

### International law

One of the main goals of monitoring the right to education is to identify violations.<sup>31</sup> In order to do this you must 1) have a clear idea of the content of the right to education<sup>32</sup> and 2) apply the content of the right to education to States' legal obligations.<sup>33</sup> Put simply: you must show that a State has failed to comply with its legal obligations and that this has affected someone's enjoyment of the right to education.

1) The right to education is most comprehensively laid out in Articles 13 and 14 of the *International Covenant on Economic, Social and Cultural Rights*<sup>34</sup> (ICESCR). In addition, there are numerous right to education provisions in international law,<sup>35</sup> laying out the content and scope of the right to education as applied to different groups and in different circumstances. The normative content of the right to education is derived from international law and is usually determined by the bodies responsible for interpreting treaties, such as courts or UN treaty bodies.<sup>36</sup> These bodies use various frameworks to interpret right to education provisions; the most widely used being the 4As framework.<sup>37</sup> This states that all education must be:

- **Available** in sufficient quantity.
- **Accessible** to everybody without discrimination.
- **Acceptable**, that is, the form and substance must be appropriate and of good quality.
- **Adaptable**, so that it is able to meet the unique needs of individual students.

2) A violation of the terms of a treaty occurs when a State fails to comply with its human rights obligations. This failure to comply may be a result of direct action (act of commission) or a failure to take steps (act of omission).<sup>38</sup>

As with other economic, social and cultural rights, the full realisation of the right to education may be hampered by a lack of resources. This means that in some cases, certain aspects of the right to education can only realistically be achieved over a period of time, particularly for countries with fewer resources. For this reason some State obligations are progressive,<sup>39</sup> for instance, the introduction of free secondary (including technical and vocational), higher and fundamental education.<sup>40</sup> Although progressive realisation means that obligations are subject to time and available resources, States are obliged to “move as expeditiously and effectively as possible” towards the full realisation of the right to education. This implies that States should not take backwards steps or adopt measures that will repeal existing guarantees of the right to education. For instance, arbitrarily ending adult education programmes that provide those who have never received or completed primary education with a good quality substitute, would constitute a retrogressive measure.<sup>41</sup>

In addition to the obligation to progressively realise certain aspects of the right to education, States have an immediate obligation to “take appropriate steps” towards the full realisation of the right to education to the maximum of its available resources.<sup>42</sup> A lack of resources cannot justify inaction or indefinite postponement of measures to implement the

right to education. States must demonstrate they are making every effort to improve the enjoyment of the right to education, even when resources are scarce.

One important aspect of the right to education which must be immediately realised, and is therefore not subject to progressive realisation or resource constraints, is to guarantee non-discrimination and equal treatment<sup>43</sup> in all aspects of education. Non-discrimination is considered a minimum core obligation.<sup>44</sup>

Minimum core obligations<sup>45</sup> prioritise certain aspects of the right to education, without which rights-holders<sup>46</sup> are considered to be deprived of the right to education. According to the Committee on Economic, Social and Cultural Rights<sup>47</sup> (CESCR), there are five minimum core obligations:

- To ensure the right of access to public educational institutions and programmes on a non-discriminatory basis.
- To ensure that education conforms to the aims of education.<sup>48</sup>
- To provide free and compulsory primary education for all.
- To adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education.
- To ensure free choice of education without interference from the State or third parties, subject to conformity with “minimum educational standards”.

One commonly used method for clarifying human rights obligations is to apply the ‘tripartite typology’<sup>49</sup> consisting of the obligations to respect, protect and fulfil.<sup>50</sup>

## National law

In most cases it is necessary to monitor the right to education as guaranteed in national law. National law is typically more detailed than international law; it also takes into account the national context and is usually directly applicable.

Violations at the national level occur if an actor (usually the State) acts in contravention of its constitution or education law, if education laws do not align with the constitution or if education policies are not in line with education law.

It is also important to remember that national law should be aligned with international law. States are legally obliged to implement the right to education through the adoption of laws and policies<sup>51</sup> and to repeal laws that run counter to the right to education.

## A monitoring framework

This *Guide* is organised around a *monitoring framework*, based on relevant international human rights standards<sup>52</sup> and the literature on education. There are four substantive steps:

1. Identify deprivations and inequalities in the enjoyment of the right to education using outcome indicators.<sup>53</sup>
2. Analyse education laws and policies and the implementation of these policies using structural and process indicators.<sup>54</sup>
3. Analyse the use and misuse of financial resources allocated to implementing education policies, using finance process indicators.<sup>55</sup>
4. Examine key policy processes, using process indicators that measure compliance with key human rights principles in the formulation of education policies.<sup>56</sup>

The underlying premise of the monitoring framework is the recognition that prevalent problems in the enjoyment of the right to education (such as insufficient access to education and poor quality education) are often a result of:

- Avoidable deprivations,<sup>57</sup> that is, people are deprived of their right to education as a result of policy failures that are frequently generated or exacerbated by the lack of political will of governments.
- Unequal enjoyment of the right to education, which could reflect a pattern of discrimination.<sup>58</sup>

The analytical framework at the heart of this *Guide* can strengthen your efforts to hold governments to account for widespread avoidable deprivations and inequalities in education, helping you to assess the extent to which those deprivations and inequalities can be traced back to specific public policy failures, thus building the case for arguing that violations of the right to education have taken place.

The distinction between outcome indicators<sup>59</sup> and structural<sup>60</sup> and process indicators<sup>61</sup> is crucial for monitoring the right to education. In most cases,<sup>62</sup> the first step in the monitoring process is to identify (using outcome indicators) deprivations and inequalities in the enjoyment of the right to education. The next step (using structural and process indicators) consists of identifying the various causes of those deprivations and inequalities in the enjoyment of the right and assessing the adequacy of policy interventions undertaken by the State to address these obstacles.

By linking evidence of the lack of enjoyment of the right to education using outcome indicators (eg high primary school drop-out rates or poor learning achievements in secondary schools) and specific shortcomings in education policies or their implementation using structural and process indicators (eg a high percentage of children for whom school-house distance is more than 5km<sup>63</sup> or a low percentage of trained teachers),<sup>64</sup> the *Guide* can also help users make policy recommendations to address those shortcomings.

It should be stressed that using indicators to monitor the right to education is not a linear process in which the issues and marginalised groups are first identified, then the indicators selected and finally the data collected and analysed. Rather, the monitoring process is an iterative process, in which these steps feed each other. Therefore, once you have moved onto Steps 3, 4 or 5<sup>65</sup> of the *Guide*, you may sometimes need to return to Step 2<sup>66</sup> to refine the selection of outcome indicators.

### **A focus on access to education and quality of education**

Although monitoring the right to education can focus on a whole range of topics<sup>67</sup> most problems related to the right to education are related to two issues: access and quality.

Moreover, many of the obstacles that specific groups face – whether girls, minorities, persons with disabilities or children in detention – are related to inequalities or discrimination with regards to access to and / or quality of education. Even when the focus of a monitoring exercise is another issue – teachers without proper training or working conditions, decaying school infrastructure, lack of sufficient resources for the educational system, etc – these are policy failures which ultimately have a negative impact on access to and / or quality of education. Accordingly, the majority of reports monitoring the right to education focus on these issues. For that reason this *Guide* is primarily focused on helping users to monitor various aspects of access and quality.

However, there are some violations of the right to education that are unrelated to these two areas of focus, such as the freedom of parents to ensure the religious and moral education of their children in conformity with their own convictions and the freedom to establish private institutions (and the obligation that the education given in such institutions conform to minimum standards as set or approved by the State).

At this stage, this *Guide* does not provide detailed guidance on how to monitor these issues. However, the accompanying *Indicators Selection Tool*<sup>68</sup> lists a selection of indicators for issues related to the right to education not currently covered by this *Guide*. In the future, additional modules will be added on some of these specific issues.

## Endnotes: Introduction

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<sup>1</sup> **Advocacy** is the process of influencing those who make policy decisions, write laws and regulations, and distribute resources that affect people's well-being. Advocacy delivers deliberate messages intended to influence the thoughts, perspectives and actions of people in authority.

Campaigning is one strategy for advocacy, building public pressure around an issue through strategies like mass action, public forums and media campaigns.

Lobbying is another strategy for advocacy, building pressure around an issue within the education system through strategies such as policy analysis and dialogue, negotiation and forming collaborative partnerships.

Source: Commonwealth Education Fund (2009) *A Budget Guide for Civil Society Organisations Working in Education*: p.24:

[www.right-to-education.org/resource/budget-guide-civil-society-organisations-working-education](http://www.right-to-education.org/resource/budget-guide-civil-society-organisations-working-education)

<sup>2</sup> **Human rights monitoring** is the process of collection and verification of information on human rights problems. For more details on monitoring the right to education, see Right to Education Project's page on *Monitoring*: <http://www.right-to-education.org/page/monitor>

<sup>3</sup> An **indicator** is a "trend or fact that indicates the state or level of something" (Oxford Dictionary: <http://www.oxforddictionaries.com/definition/english/indicator>). Indicators differ from statistics, which tend to be purely descriptive, in that they have a reference point. In the case of human rights indicators, the reference point is human rights norms, standards and principles.

Human rights indicators are used by civil society to monitor human rights compliance and report findings to advocate for changes in legislation, policy and practice.

<sup>4</sup> See: [www.right-to-education.org](http://www.right-to-education.org)

<sup>5</sup> The entire list of right to education indicators can be downloaded, here: <http://www.right-to-education.org/monitoring/content/download-all-indicators>

<sup>6</sup> Access the *Indicators Selection Tool*, here: <http://www.right-to-education.org/monitoring/tool>

<sup>7</sup> **Education policies** are the set of actions, laws, regulatory measures, and funding priorities on education adopted by a government.

Strictly speaking laws and policies are distinct: laws are a system of rules that regulate behaviour, and are usually enforceable in courts; whilst policies are informal and set out a government's major objectives, defining the government's priorities and strategies to achieve its goals.

Education policies and laws are the primary means by which the right to education is implemented at the national and sub-national level.

<sup>8</sup> For a comprehensive list of human rights treaties and other instruments, see the Right to Education Project's page on *International Law*: <http://www.right-to-education.org/page/international-law>

<sup>9</sup> **Rights-holders** are individuals or social groups that have particular entitlements in relation to specific duty-bearers. In general terms, all human beings are rights-holders under the Universal Declaration of Human Rights.

In particular contexts, there are often specific social groups whose human rights are not fully realised, respected or protected. More often than not, these groups tend to include women and girls, ethnic minorities, indigenous peoples, and migrants and youth.

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A human rights-based approach not only recognises that the entitlements of rights-holders need to be respected, protected and fulfilled, it also considers rights-holders as active agents in the realisation of human rights and development – both directly and through organisations representing their interests.

Source: UNICEF *Gender Equality - UN Coherence and You – Glossary*:  
<http://www.unicef.org/gender/training/content/resources/Glossary.pdf>: p.5.

<sup>10</sup> **Discrimination** “implies any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms” (Human Rights Committee *General Comment 18*: <http://www1.umn.edu/humanrts/gencomm/hrcom18.htm>: Para.7).

International law prohibits both direct and indirect discrimination:

- Direct discrimination is when a person, on account of one or more of the prohibited grounds (see multiple discrimination), is treated less favourably than someone else in comparable circumstances.
- Indirect discrimination is when a practice, rule, policy, or requirement is outwardly neutral but has a disproportional impact upon a particular group. For an example of indirect discrimination, see *DH and others v Czech Republic*: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256>

For further information, see INTERIGHTS (2011) *Non-Discrimination in International Law: A Handbook for Practitioners*: <http://www.interights.org/document/153/index.html>

<sup>11</sup> **Duty-bearers** are those actors who have a particular obligation or responsibility to respect, promote and realise human rights and to abstain from human rights violations. The term is most commonly used to refer to State actors, but non-State actors can also be considered duty-bearers. An obvious example is private armed forces or rebel groups, which under international law have a negative obligation to refrain from human rights violations. Depending on the context, individuals (eg parents), local organisations, private companies, aid donors and international institutions can also be duty-bearers.

Source: UNICEF *Gender Equality - UN Coherence and You – Glossary*:  
<http://www.unicef.org/gender/training/content/resources/Glossary.pdf> : p.1.

<sup>12</sup> For further information on human rights mechanisms, see the Right to Education Project's pages on:

- *International Human Rights Mechanisms*:  
<http://www.right-to-education.org/page/international-human-rights-mechanisms>
- *Regional Human Rights Mechanisms*:  
<http://www.right-to-education.org/page/regional-human-rights-mechanisms>

<sup>13</sup> **UN treaty bodies** are committees of independent experts created under a particular UN treaty. They are mandated to monitor how States that have ratified the treaty in question comply with their obligations to implement the human rights guaranteed by the treaty. They periodically examine State reports and issue concluding observations on States' compliance to the treaty, as well as make recommendations.

Most treaty bodies can receive individual complaints or communications in cases of human rights violations, if the State in question has recognised the competence of the treaty body to do so.

Treaty bodies also adopt General Comments, which provide authoritative interpretations of the provisions of the treaty the treaty body oversees.

For further information, see Right to Education Project's page on *International Human Rights Mechanisms*:  
<http://www.right-to-education.org/page/international-human-rights-mechanisms>



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<sup>14</sup> *Idem* 2

<sup>15</sup> *Idem* 1

<sup>16</sup> *Idem* 1

<sup>17</sup> *Idem* 3

<sup>18</sup> *Idem* 7

<sup>19</sup> *Idem* 10

<sup>20</sup> *Idem* 6

<sup>21</sup> For further information on the indicator ‘Primary completion rates,’ see: <http://www.right-to-education.org/monitoring/content/primary-completion-rate>

<sup>22</sup> For more information on the indicator ‘Percentage of students at the lowest level of reading proficiency,’ see: <http://www.right-to-education.org/monitoring/content/percentage-students-lowest-level-reading-proficiency>

<sup>23</sup> For more information on the indicator ‘International human rights treaties relevant to the right to education ratified by the State,’ see: <http://www.right-to-education.org/monitoring/content/international-human-rights-treaties-relevant-right-education-ratified-state>

<sup>24</sup> *Idem* 11

<sup>25</sup> For more information on the indicator ‘Percentage of trained teachers,’ see: <http://www.right-to-education.org/monitoring/content/percentage-trained-teachers>

<sup>26</sup> For more information on the indicator ‘Education allocation ratio,’ see: <http://www.right-to-education.org/monitoring/content/education-allocation-ratio>

<sup>27</sup> The following box taken from UNDP’s Human Development Report 2000 illustrates the potential use of making this distinction:

BOX 5.3

#### Using statistics to look behind the questions

Imagine a country in which 87% of children are enrolled in secondary school. What does this reveal about the right of a child to an education? Certainly, the final goal—secondary education for all—has not been reached. But have all the obligations of those involved been met? Answering means looking beyond this one statistic, deeper into the issues.

If we discover that only 77% of girls are enrolled and 97% of boys, then much of the failure is due to discrimination. Do opinion polls reveal that parents discount the importance of girls’ education? Then parents are failing to respect the rights of their daughters to a literate future and the government is failing to raise awareness and change that norm. Or do surveys reveal inadequate provision of school facilities, such as a lack of separate classrooms for girls or very few female teachers? Then the government is failing to promote the rights of girls to real access to an education.

Perhaps there is gender equity—but discriminatory legislation enforces apartheid and grossly underprovides for schools for children of the oppressed ethnic group, with only 40% of them in school. That would be a failure of the government to respect the rights of all people without discrimination, calling for an immediate change in legislation, but also for changes in institutions and norms.

Source: Human Development Report Office.

Or perhaps there is no discrimination—but all schools lack resources and cannot provide quality education. Is the government giving enough priority to education? It depends on resource availability. In a country spending twice as much on military power and presidential palaces as on secondary education, the answer would be no—and the government would be failing to adequately fulfil rights. But in a country spending 0.5% of revenues on national security and 8% on secondary education, the answer would be quite different: a lack of resources, not a lack of priority, would be the constraint.

And what about progress? If a country had raised enrolments from 50% to 87% in five years, it would be making strong progress in realizing rights—but if the country had let enrolments fall from 95% to 87%, it would be headed backwards.

If resources are lacking, what are donors and the international community doing? How much development assistance are they providing? What percentage is allocated to the education sector?

Clearly, statistics alone cannot give conclusive answers—but they do help open key questions. They need to be embedded in a deeper analysis of the actors involved and their range of obligations. But if statistics can reveal whether or not those obligations are being met, they help to create accountability and, ultimately, to realize rights.

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Source: UNDP (2000) *Human Development Report 2000*:  
[http://hdr.undp.org/sites/default/files/reports/261/hdr\\_2000\\_en.pdf](http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf): 92: Box 5.3.

<sup>28</sup> *Idem* 6

<sup>29</sup> *Idem* 5

<sup>30</sup> Send feedback, here: <http://www.right-to-education.org/monitoring/content/contact-us>

<sup>31</sup> For further information on identifying violations of the right to education see:

- The *Limburg Principles* (1987): <http://www.right-to-education.org/resource/limburg-principles-implementation-international-covenant-economic-social-and-cultural>
- The *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997): <http://www.right-to-education.org/resource/masstricht-guidelines-violations-economic-social-and-cultural-rights>
- Coomans, F (2007) *Identifying Violations of the Right to Education*: <http://www.right-to-education.org/resource/identifying-violations-right-education>

<sup>32</sup> For further information on the normative content of the right to education, see Committee on Economic, Social and Cultural Rights (1999) *General Comment 13: The right to education (Article 13)*: [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_13\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf)

<sup>33</sup> For further information on States' legal obligations regarding the right to education, see:

- The *International Covenant on Economic, Social and Cultural Rights* (1966): <http://www.right-to-education.org/resource/international-covenant-economic-social-and-cultural-rights>
- Committee on Economic, Social and Cultural Rights (1999) *General Comment 13: The right to education (Article 13)*: [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_13\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf)
- Committee on Economic, Social and Cultural Rights (1990) *General Comment 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*: <http://www.refworld.org/docid/4538838e10.html>

<sup>34</sup> Articles 13 and 14 of the *International Covenant on Economic, Social and Cultural Rights* (1966): <http://www.right-to-education.org/monitoring/content/additional-information-international-covenant-economic-social-and-cultural-rights>

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

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(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

<sup>35</sup> For a comprehensive list of provisions relating to the right to education in international law see the Right to Education Project's *International Instruments - Right to Education*:

<http://www.right-to-education.org/resource/international-instruments-right-education-0>

<sup>36</sup> *Idem* 13

<sup>37</sup> For further information on the 4As Framework, developed by Katarina Tomaševski, see:

- The Right to Education Project (2001) *Project Primer 3: Human Rights Obligations: Making Education Available, Accessible, Acceptable and Available*: <http://www.right-to-education.org/resource/primer-no-3-human-rights-obligations-making-education-available-accessible-acceptable-and>
- Committee on Economic, Social and Cultural Rights (1999) *General Comment 13: The right to education (Article 13)*: [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_13\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf): Para.6.

<sup>38</sup> Examples of right to education violations, include:

- The introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education.
- The failure to take measures which address *de facto* educational discrimination.
- The use of curricula inconsistent with the educational objectives set out in Article 13 (1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).
- The failure to maintain a transparent and effective system to monitor that education is in conformity with Article 13 (1) ICESCR.
- The failure to introduce, as a matter of priority, primary education which is compulsory and available free to all.
- The failure to take "deliberate, concrete and targeted" measures towards the progressive realisation of secondary, higher, and fundamental education.
- The prohibition of private educational institutions.
- The failure to ensure private educational institutions conform to the "minimum educational standards" required by Article 13 (3) and (4).

- The denial of academic freedom of staff and students.
- The closure of educational institutions in times of political tension.

Adapted from the Committee on Economic, Social and Cultural Rights (1999) *General Comment 13: The right to education (Article 13)*: [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_13\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf)

<sup>39</sup> Article 2 (1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (1966) recognises that economic, social and cultural rights are not always immediately realisable. The full and immediate realisation of the right to education can be hampered by a lack of resources and can only be achieved over a period of time, particularly for countries with fewer resources.

The ICESCR therefore imposes the obligation to **progressively realise** certain aspects of the right to education (including free secondary, higher, and fundamental education). However, not all aspects of the right to education are subject to progressive realisation, for example, States must prohibit discrimination in and to education and ensure that primary education is free and compulsory for all.

For further information, see Right to Education Project's page *Understanding Education as a Human Right*: <http://www.right-to-education.org/page/understanding-education-right#sthash.Uat6sLqc.dpuf>

For further information on progressive realisation, see Committee on Economic, Social and Cultural Rights (2003) *General Comment 3: The Nature of States Parties' Obligations (Art.2, Para.1)*: <http://www.refworld.org/docid/4538838e10.html>

<sup>40</sup> **Fundamental education** replaces missed primary education; however the right to fundamental education is far broader. The Committee on Economic, Social and Cultural Rights (CESCR) provides the following interpretation of fundamental education (Article 13 (2) (d)) in *General Comment 13*:

"It should be emphasised that enjoyment of the right to fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons. Fundamental education, therefore, is an integral component of adult education and life-long learning. Because fundamental education is a right of all age groups, curricula and delivery systems must be devised which are suitable for students of all ages" (Para.24).

Furthermore, the CESCR adds that 'fundamental education' in general terms corresponds to 'basic education', as laid out in the *World Declaration on Education for All* (1990, *Jomtien Declaration*): [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Dakar\\_Framework\\_for\\_Action\\_2000\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Dakar_Framework_for_Action_2000_en.pdf)

<sup>41</sup> **Retrospective measures** are those taken by States that downgrade or limit existing levels of enjoyment of the right to education. The Committee on Economic, Social and Cultural Rights (CESCR) states:

"There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources" (CESCR (1999) *General Comment 13: The right to education (Article 13)*: <http://www.right-to-education.org/resource/cescr-general-comment-13-right-education-article-13>: Para.45).

Examples of retrogressive measures include introducing school fees in secondary education when it had formerly been free of charge or an unjustified reduction of public expenditure on education.

<sup>42</sup> Article 2 (1) of the *International Covenant on Economic, Social and Cultural Rights* (1966) obliges States to take the necessary steps to the **maximum of its available resources** to progressively realise the right to

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education. Maximum available resources refers to the resources available within the State and from the international community.

States must prioritise the allocation of necessary resources to ensuring the satisfaction of minimum essential levels of the right to education and other economic, social and cultural rights.

See the Committee on Economic, Social and Cultural Rights Statement (2007) *An evaluation of the obligation to take steps to the 'maximum available resources' under an optional protocol to the Covenant*: <http://www2.ohchr.org/english/bodies/cescr/docs/statements/Obligationtotakesteps-2007.pdf>

<sup>43</sup> See Paragraph 31 of Committee on Economic, Social and Cultural Rights (1999) *General Comment 13: The right to education (Article 13)*: [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_13\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf)

<sup>44</sup> **Minimum core obligations** are the obligations on the State to ensure the satisfaction of minimum essential levels of a right. Vis-à-vis the right to education this includes: prohibiting discrimination in access to and in education, ensuring free and compulsory primary education for all, respecting the liberty of parents to choose schools for their children other than those established by public authorities, and protecting the liberty of individuals and bodies to establish and direct educational institutions.

Minimum core obligations are not subject to progressive realisation, however: "In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations" (Committee on Economic, Social and Cultural Rights (2003) *General Comment 3: The Nature of States Parties' Obligations (Art.2, Para.1)*: <http://www.refworld.org/docid/4538838e10.html>: Para.10).

For further information on the minimum core obligations of the right to education, see Coomans, F (1998) *Clarifying the Core Content of the Right to Education*: <http://aihr-resourcescenter.org/administrator/upload/documents/core.pdf>

<sup>45</sup> On minimum core obligations, the Committee on Economic, Social and Cultural Rights states:

"On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of (...) the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."

Committee on Economic, Social and Cultural Rights (2003) *General Comment 3: The Nature of States Parties' Obligations (Art.2, Para.1)*: <http://www.refworld.org/docid/4538838e10.html>: Para.10.

<sup>46</sup> *Idem* 9

<sup>47</sup> See Paragraph 57 of Committee on Economic, Social and Cultural Rights (1999) *General Comment 13: The right to education (Article 13)*: [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_13\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf)

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<sup>48</sup> Aims of Education – Article 29 of the *Convention on the Rights of the Child* (1989):

States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

For further information, see *Convention on the Rights of the Child*: <http://www.right-to-education.org/resource/convention-rights-child> and Committee on the Rights of the Child (2001) *General Comment 1: Article 29 (1): The Aims Of Education*: <http://www.right-to-education.org/resource/crc-general-comment-1-article-29-1-aims-education>

<sup>49</sup> The tripartite typology consists of three types of human rights obligations:

- The obligation to respect requires the State to refrain from interfering with the enjoyment of the right. For example, the State must respect the liberty of parents to choose schools for their children.
- The obligation to protect requires the State to prevent others from interfering with the enjoyment of the right usually through regulation and legal guarantees. For example, the State must ensure that third parties, including parents, do not prevent girls from going to school.
- The obligation to fulfil requires the State to adopt legislative, administrative, budgetary, judicial, and other appropriate measures towards the full realisation of the right to education. For example, the State must take positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all.

For further information on the tripartite typology see Committee on Economic, Social and Cultural Rights (1999) *General Comment 13: The right to education (Article 13)*: [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_13\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf): Paras.46-48 & 50.

<sup>50</sup> For a useful table that links outcome, structural and process indicators, States' obligations and violations, see Table 2, p.300 of Kalanry, S, Getgen, JE & Koh, SA (2010) *Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR*: [http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Kalanry\\_Getgen\\_Koh\\_Enhancing\\_Enforcement\\_of\\_Economic\\_Social\\_and\\_Cultural\\_Rights\\_Using\\_Indicators\\_2010\\_En.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Kalanry_Getgen_Koh_Enhancing_Enforcement_of_Economic_Social_and_Cultural_Rights_Using_Indicators_2010_En.pdf)

<sup>51</sup> *Idem* 7

<sup>52</sup> *Idem* 35

<sup>53</sup> See Step 2 of the *Monitoring Guide*, available to download here: <http://www.right-to-education.org/monitoring/guide/step-2-identify-deprivations-inequalities-education>

<sup>54</sup> See Step 3 of the *Monitoring Guide*, available to download here: <http://www.right-to-education.org/monitoring/guide/step-3-analyse-educational-laws-policies-their-implementation>

<sup>55</sup> See Step 4 of the *Monitoring Guide*, available to download here:

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<http://www.right-to-education.org/monitoring/guide/step-4-analyse-use-resources-education>

<sup>56</sup> See Step 5 of the *Monitoring Guide*, available to download here:

<http://www.right-to-education.org/monitoring/guide/step-5-examine-policy-processes>

<sup>57</sup> There are numerous reasons why millions of people around the world are deprived of adequate education. Some of these reasons, such as natural disasters, humanitarian crises or scarcity of resources are often beyond the control of governments, and as such, cannot be deemed human rights violations. Nonetheless, using a human rights approach calls attention to the fact that widespread deprivations are all too often not inevitable; rather, they are frequently generated or exacerbated by the lack of political will of governments

A government's failure to prevent or rectify avoidable deprivations can take many forms. In some cases, these failures are the result of deliberate policies of government agents, such as corrupt practices that reduce the resources available for the progressive achievement of economic and social rights, or discriminatory practices such as deploying less qualified and experienced teachers to those areas where the majority of people belong to an ethnic minority group.

Adapted from Felner, E (2008) *A new frontier in economic and social rights advocacy? Turning quantitative data into a tool for human rights accountability*, *Sur International Journal on Human Rights*, Year 5, Number 9: <http://www.right-to-education.org/resource/new-frontier-economic-and-social-rights-advocacy-turning-quantitative-data-tool-human>

<sup>58</sup> *Idem* 10

<sup>59</sup> **Outcome indicators** measure the extent to which a population enjoys the right to education.

<sup>60</sup> **Structural indicators** measure the commitments made by States in order to meet their obligations regarding the right to education.

<sup>61</sup> **Process indicators** measure the various types of State efforts (such as: education policies, education inputs, budget allocation, and programmes and measures to address specific education issues) undertaken in order to realise and implement the right to education.

<sup>62</sup> In other – less frequent - cases, the starting point would be the use of process indicators. This would be the case, for instance, when the monitoring exercise focuses on the working conditions of teachers or on disparities of specific policy inputs that affect the quality of education, for example trained teachers, textbooks, class size, etc.

In such cases, you should subsequently check whether the data for the process indicators you use are reflected in outcomes, that is, there is a tangible impact on enjoyment. For example, in school completion rates or learning assessment results.

<sup>63</sup> For more information on the indicator 'percentage of children for whom school-house distance is more than 5km,' see: <http://www.right-to-education.org/monitoring/content/percentage-population-whom-school-house-distance-more-5-km>

<sup>64</sup> *Idem* 25

<sup>65</sup> *Idem* 54 - 56

<sup>66</sup> *Idem* 53

<sup>67</sup> Access Step 1.3 of the *Monitoring Guide*, available to download, here:

<http://www.right-to-education.org/monitoring/guide/13-categories-education>

<sup>68</sup> *Idem* 6