

Ensuring Accountability in Post-2015: Potential Threats to Education Rights

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Abstract

Education is a human right enshrined in a number of international human rights treaties and integrated at the national level through national constitutions, legislation, and policies. The human rights legal framework enunciates international standards that States must adhere to. Both MDGs and EFAs lack a robust accountability mechanism and are not explicitly linked to international human rights standards. This needs to change, as parallel frameworks should be complementary and mutually reinforcing. However, the Right to Education Project has observed a number of potential threats to education rights, such as privatisation, a reductionist approach to learning outcomes, watered down perceptions of equality, austerity measures, lack of accountability on legal guarantees, among others, at these early stages of consultation in the lead up to developing new education goals and targets. This session will explore the implications of some of these threats and how this may impact efforts to improve accountability.

The following observations are based on the Right to Education Project's (RTE) experience of engaging in discussions, debates, consultative processes, and policy networks within the education and development sector regarding Post-2015 education goals and priorities. The list below outlines some of the challenges or threats to ensuring that education is expressed in the Post-2015 development framework as a human right¹.

Threats the right to education in the Post-2015 frameworks, as observed by RTE:

A long, unmonitorable global wish list could hinder accountability, but a goal that is too narrowly focused may result in a reduction or weakening of education systems.

Goals should be aspirational, developed to suit a global audience, universally applicable but taking into account the national realities². Education is a large and complex social issue and as a human right, it is equally complex, consisting of inter-related obligations. The focus on access to education in the current MDG framework has been criticised for inadequately drawing attention to the need to improve quality while increasing education provision. As a result, the Post-2015 discourse for education has largely revolved around the quality of education, and some education actors are focusing their attention on very specific and narrow interpretations of quality education. For example, The Center for Universal Education at The Brookings Institute, seeks to 'investigate the feasibility of common learning goals to inform the Post-2015 global policy discourse and to help improve learning outcomes for children worldwide'³. This approach is problematic for a number of reasons, for example, adaptability to the local context may be lost or marginalised groups may be left behind⁴. Most importantly, this approach ignores the wider context of quality education, which must explore the learning environment, the number of quality trained teachers, access to appropriate learning materials and more. Learning outcomes are an important and valuable tool for teachers, schools and policy-makers, but if they serve as the sole focus of education goals, education may be reduced to test scores and league tables.

Goals that mention or refer to rights but that are not fully compliant with internationally agreed international human rights standards may dilute international law in meaning and / or practice.

¹ See generally, United Nations Office of the High Commissioner of Human Rights and the Center for Economic and Social Rights, 'Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda', New York and Geneva, 2013, for more information on incorporating human rights into the Post-2015 framework.

² *Ibid.*, p.60-61.

³ Learning Metrics Task Force, 'Proposed Competencies for Learning Outcomes: Early Childhood, Primary and Post-Primary', Draft for consultation, July 2012.

⁴ See generally, The Right to Education Project, 'Learning Outcomes Assessments: A Human Rights Perspective', February 2013, for a more detailed critique of this approach from a human rights perspective.

In the education sector, there has been a lot of talk about the right to education and human rights principles with great enthusiasm and commitment, which is very encouraging. However, RTE has observed through discussions, events, publications and policy networks that the development and education sector has promoted the right to education without a very clear understanding of the legal terminology or the range and scope of international human rights standards. Generally, there is a relatively solid recognition of education as a right and of the 4As (Availability, Accessibility, Acceptability, and Adaptability). However, there are significant knowledge gaps on core human rights principles, such as equality and non-discrimination, progressive realisation (which provides a framework for ensuring adequate funding of rights), and the general nature of State obligations (i.e., respect, protect, and fulfil), as well as the specific obligations of States regarding education, which includes varying obligations for different education levels, educational freedoms, and accountability measures. At best, civil society policies mistakenly confuse legal principles, such as equality, with socio-political terms, such as 'equity'. At worst, civil society policies replace the right to education with popular phrases, such as 'right to learn'. The use of rights language that is unattached to accurate human rights standards could have a detrimental effect on our efforts to hold States accountable on the right to education. Although the technical and sometimes rigid nature of human rights law can be a cause for confusion and frustration, if understood properly, this legal framework can provide a mechanism to empower communities to hold decision-makers accountable. To achieve this, we will need to work across disciplines and take active steps to overcoming these disciplinary obstacles.

Progress on the current goals, particularly with regards to access to education, may be abandoned in favour of a focus on other areas, such as quality.

Amongst many education stakeholders, there is a strong feeling that quality of education has not received adequate attention in the current framework, but some civil society organisations are concerned that in an effort to address the quality gap, access and equality may be abandoned⁵. Goals should build on the successes⁶ of the last fifteen years and aim to progress education to the next level. This is especially important for education, given the strong inter-related nature of educational systems. Access will only be successful if it is access to quality education. Quality education will only be relevant if everyone has access to it. It is difficult to compartmentalise education, and a holistic approach that sets clear targets is needed in order to develop and maintain robust education systems.

⁵ See generally, Beyond 2015, Global Thematic Consultation on Education and the Post-2015 Development Framework, 'Making Education for All a Reality', March 2013.

⁶ United Nations Office of the High Commissioner of Human Rights and the Center for Economic and Social Rights, 'Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda', New York and Geneva, 2013, for more information on incorporating human rights into the Post-2015 framework, p. 61.

Goals could be convoluted in an effort to please States or civil society and other actors and may not be easy to implement or relate to local communities.

The Post-2015 discussions have incorporated multiple and often over-lapping consultation processes. In the discussions regarding education, there are a wide range of stakeholders, many with very specific and narrow objectives. Most importantly, there is not a unified voice or message regarding education. Consultation is an important component of the Post-2015 process. However, without some degree of unity, there is a risk that civil society messages will compete with one another or that some sort of compromise could lead to weakened or convoluted goals. Goals should be clearly linked to implementable policies with clear standards (based on human rights standards) and effective monitoring systems, yet tailored to the national context⁷. Furthermore, local communities will need to feel some ownership over the goals, which should be simply worded and easy to understand. This should include language that is grounded in values and ideals and more universally understood, embracing both negative obligations (e.g., ‘do no harm’ or ‘remove barriers to’) as well as positive obligations (e.g., ‘achieve 6% of GDP’)⁸.

Narrow visions of equality and non-discrimination will mean that some groups may continue to be left behind.

There was a strong and much-needed emphasis on girls’ education in the current MDG framework and this emphasis has significantly increased awareness and outcomes in the situation for girls. However, one of the key criticisms of this approach is that other marginalised groups have not received adequate attention or prioritisation. The human rights framework identifies a very long list of potentially marginalised groups and also highlights the need to pay attention to ‘any other status’ or group. This flexibility ensures that groups that may be marginalised at the local, national or regional level are identified and that measures are put in place to address locally-specific inequalities. Universality is a key human rights principle and regardless of the barriers or root causes, States are obliged to ensure that all people enjoy their rights, regardless of the circumstances.

Prioritisation of the interests of private actors could lead to less sustainable, rights-oriented goals.

Education privatisation has gained traction amongst some policy-makers and there are some actors, such as World Bank and DFID, that are actively promoting the expansion of education markets as a means of filling education gaps or improving education outcomes. Based on preliminary analysis conducted by RTE, many States lack the appropriate monitoring and

⁷ *Ibid.*, p.61.

⁸ *Ibid.*, p. 64.

regulatory mechanisms to ensure that private education providers meet minimum education standards which are laid down by the State⁹. There are increasing concerns about the impacts of privatisation on the right to education. In particular, some civil society organisations view this policy shift towards privatisation as a means of cutting education budgets, which in practice may shift the education costs onto families and threaten the goal of achieving free education for all. Most importantly, this policy shift transfers accountability onto private actors, and without an adequate monitoring and regulatory framework for holding private education providers accountable, increased privatisation could ultimately do harm to education systems. For these reasons, the expansion of education markets should not form the part of the framework, especially since there is a significant gap in evidence on the topic.

Poor governance practices, such as corruption, political clientalism, threats to the freedom of civil society and others, will continue to serve as barriers to realising the right to education if these overarching governance issues are not addressed in the new framework.

Accountability is lacking in the current Post-2015 framework, and civil society organisations are advocating for greater accountability measures attached to the Post-2015 framework. Once goals and targets are defined, the dialogue will shift towards identifying indicators¹⁰, which will help to create a more concrete frame of reference. However, accountability goes beyond monitoring progress against the new goals with indicators and holding governments to account through civil society actions. Systemic failures in governance may render a new development framework inoperable. This also means that civil and political rights, such as freedom of expression, access to information, etc., need to be immediately realised as part of the Post-2015 framework, as all rights are inter-related¹¹, and civil society must be allowed the freedom to operate effectively.

Without adequate redress mechanisms on the right to education, there will continue to be a lack of accountability on legal guarantees.

With all rights, accountability is largely ensured through the access to effective remedies, which may include administrative complaints mechanisms, but ultimately must be given the broadest legal protection with access to judicial review. There are challenges in many countries concerning access to justice, including a lack of independence of lawyers and judges, inadequate training of legal professionals on human rights standards, and lack of access to legal aid. Nevertheless, accountability on the right to education is not likely to be fully achieved without access to effective redress mechanisms and the Post-2015 goals should seek to ensure these legal guarantees¹².

⁹ The Right to Education Project, 'Privatisation of Education: Global Trends of Human Rights Impacts', (awaiting publication).

¹⁰ For more details about assessment methods, see *Ibid.*, p. 64-65.

¹¹ *Ibid.*, p. 63.

¹² See generally, Report of the Special Rapporteur on the right to education, Kishore Singh, 'Justiciability of the right to education, A/HRC/23/35, 10 May 2013.

Instrumentalist and context-specific methods to achieving development could squeeze out the focus on achieving human rights outcomes.

There is a trend of focusing on instrumentalist methods and approaches to economic growth and development, which can divert attention away from the importance and significance of rights. There is nothing wrong with pointing out the economic added value of educating a population. However, from a rights perspective, not all benefits of education can be easily measured as economic returns. Furthermore, a focus on achieving the right to education is not necessarily in conflict with economic needs (e.g., according to international law States should be focusing on ensuring the full educational needs of each person, which includes ensuring that children are prepared for a responsible life in a free society¹³). Further to this, the means for achieving education for all may vary from State to State, so an emphasis on achieving a human rights 'end' may be better suited to adapting to local contexts¹⁴.

States that benefit from a relatively high degree of development will demonstrate greater achievement of results, and States with fewer resources may appear to be performing poorly.

In human rights law effort as well as result are both relevant when measuring progress¹⁵. The current MDGs focus primarily on results, which ignores the conduct of States. Human rights law allows for some flexibility for States that genuinely have limited resources and can demonstrate that they are using the 'maximum of their available resources'. Since progress depends largely on political will, this distinction between effort and result may help to identify when political will is the barrier or resources. For this reason, goals will need to include both relative and absolute benchmarks¹⁶.

¹³ See generally, Committee on the Rights of the Child, General Comment 1 (2001) Article 29 (1): The Aims of Education, CRC/GC2001/1, 17 April 2001.

¹⁴ United Nations Office of the High Commissioner of Human Rights and the Center for Economic and Social Rights, 'Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda', New York and Geneva, 2013, for more information on incorporating human rights into the Post-2015 framework, p. 63.

¹⁵ *Ibid.*, p. 64.

¹⁶ *Ibid.*, p. 64.