

**The Right to Education
Initiative's contribution
to the global conversation on
the right to education:**

**Reviewing and extending the
understanding of the right to
education in the 21st Century**

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About the Right to Education Initiative

The Right to Education Initiative (RTE) is an international human rights organisation focusing on the right to education. We promote education as a human right, striving for a world where everyone, without discrimination of any kind, can fully enjoy the right to education in all its dimensions.

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Right to Education

1.

GENERAL REMARKS

In its 2020 Report *Education in a post-Covid world: nine ideas for action* (hereinafter referred to as ‘the Report’), the International Commission on the Futures of Education (hereinafter referred to as ‘the Commission’) rightly states that *‘the right to education needs to be flexible and adapted to different contexts and to the needs of changing societies’*, adding that *‘an updating and broadening of the right to education has clearly become necessary.’* Indeed, **the interpretation and application of human rights as established in international treaties or national laws evolve to reflect the realities of societies in continual transformation.** For instance, the right to marriage is today recognised in some countries to same sex partners. The right to water has been drawn from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of health. The right to education itself has evolved in terms of scope of application and interpretation. Recent constitutions often cover a wider dimension of the right to education reflecting global education developments and

commitments. For instance, Article 78 of the Constitution of Costa Rica, amended in 1998, recognised free and compulsory preschool education, sets that education public expenditure will not be inferior to six percent (6%) of the gross domestic product, and explicitly mentions the state shall facilitate the pursuit of higher education studies to those without pecuniary resources. Judges, at national and regional levels, have provided evolving interpretations of the right to education to reflect changes in societies. For instance, the Constitutional Court of Colombia adopted in 2016 a progressive decision regarding the freedom of expression of a transgender student within the school, judging that the school is obliged to treat the student according to his gender identity.¹

Recognising the need for the right to education to evolve, it is also important to remember that **the wording of international legal provisions related to the right to education has to be general enough to apply to various contexts and over a long period of time, as international treaties aim to apply universally and cannot be changed easily.** Similarly to constitutions, they provide a general framework. It is important to take this into account when considering expanding the definition of the right to education, for instance to address the importance of connectivity and access to knowledge and information as indicated in the Commission's Report.

¹ Sentencia T-363/16. Case summary available at www.right-to-education.org/resource/judgment-t-36316-colombia.

The Report stresses that ‘we cannot forget core principles’ when shaping the ‘Futures of education’. These must include **the human rights principles of equality and non-discrimination**, which are at the basis of the right to education and are essential to address education inequalities. The report highlights how these have been exacerbated by the Covid-19 pandemic.

The Report also indicates that choices for the ‘Futures of education’ must be ‘based on a humanistic vision of education and development and human rights framework’. Considering **the aims of education** from this perspective is fundamental as the current education context is strongly marked by private and business interests. A humanistic vision of education should encompass **children’s best interest**, particularly at a time when many education systems promote increasingly competitive school culture, and exam orientated educational systems which affect the overall well-being, development, and growth of a child to his/her full potential.

In addition, **the financing of education** must be at the heart of the discussions reviewing and extending the understanding of the right to education. Expanding the scope of application of the right of education without addressing the issue of financing will not produce the expected results. For instance, expanding the scope of the right to education to pre-primary education requires this right to be free and therefore

financed by the state. Also, a right to digital learning would imply costs for the provision of IT material and connectivity. We welcome the mentions in the Report about the need to ‘protect domestic and international financing of public education’ and ‘to ensure that any retrogression is temporary’ and recommend that particular attention is given to the ways states can finance their education systems, including through an efficient tax system, debt cancellation and measures to fight corruption and the diversion of public funds to private interests.

These key elements described above would have to be taken into consideration in any new dimension of the right to education to be recognised formally in international law.

Having set up these general observations, we would like to make specific remarks on new dimensions to consider when reflecting on the evolution of the right to education.

2.

SPECIFIC REMARKS: NEW DIMENSIONS TO CONSIDER

The world has evolved since the adoption of the UNESCO Convention against Discrimination in Education in 1960: socially, economically and culturally. The form and content of education have also evolved. In light of this new global context, the following areas since important to consider when reflecting on the need to develop the scope and application of the right to education:

- Distance and digital learning
- Pre-primary education
- Lifelong learning
- Non-states actors involvement in education and the right to public education
- Climate change and environmental education

DISTANCE AND DIGITAL LEARNING

We live in an increasingly connected world, with a massive development of Internet and digital devices which have been entering education in a de facto manner, transforming teaching and learning. The unprecedented global Covid-19 pandemic has accentuated this trend and made a drastic impact on education systems worldwide, with a shift from classrooms to online spaces and other modes of digital education. If this has provided solutions to continue education, it has also highlighted and exacerbated existing inequalities and raised other human rights concerns, such as students' data and privacy aspects, connectivity issues or digital literacy. This is a new dimension of education that should be considered from a human rights perspective with a particular attention to the following aspects:

- **Non-discrimination and equality in access to digital learning**

The Commission's Report warned that 'we should be increasingly concerned that a shift to remote online learning will exacerbate inequalities, not only in the Global South but even in the most well-resourced corners of the planet.' During the Covid-19 pandemic, we have witnessed that the introduction of remote and digital education has led to discriminations in access to education. A report published by UNICEF in December 2020 shows that two thirds of the world's school

age children – or 1.3 billion children aged 3 to 17 years – do not have internet connection in their homes.²

Even when they do have it, they may not have digital devices available to them. Families share one computer or mobile phone. The Committee on Economic, Social and Cultural Rights (CESCR) underlined the risks online learning carries of ‘deepening educational inequalities between rich and poor learners due to unequal access to affordable Internet services and equipment such as computers, smartphones and tablets’.³ There are high costs associated with digital learning that can constitute a barrier to access. Children living in poverty, in contexts of conflict, migration or natural disasters are particularly impacted. Lack of access to digital education can push many children out of schools, impact educational outcomes and may even cause extreme distress to children, as seen in the case of a Dalit girl in India who committed suicide following connectivity issues.⁴ UNESCO estimates that over 24 million learners, from pre-primary to tertiary levels, including more than 11

² UNICEF and the International Telecommunication Union (ITU), How many children and young people have internet access at home? *Estimating digital connectivity during the COVID-19 pandemic*. December 2020. Available at: <https://data.unicef.org/resources/children-and-young-people-internet-access-at-home-during-covid19/> (accessed in October 2021)

³ Committee on Economic, Social and Cultural Rights, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights. April 2020. Available at: <https://undocs.org/E/C.12/2020/1> (accessed in October 2021)

⁴ The Federal, *Dalit girl commits suicide for ‘being unable to join online classes’*. 10 June 2020. Available at <https://thefederal.com/states/south/kerala/dalit-girl-commits-suicide-for-being-unable-to-join-online-classes/> (accessed in October 2021).

million girls, risk dropping out of education.⁵ While digital forms of education developed globally should be encompassed in the right to education, it is essential to guarantee non-discrimination and equality in their access, otherwise existing inequalities in education could be further entrenched.

- **The right to Internet access and access to information**

The Commission's Report notes that 'the Covid-19 crisis has also revealed the massive importance of digital connectivity and online platforms—to the extent that we need to begin considering access to information, itself also a fundamental right, connected to the right to education in ways that were not foreseen even a decade ago'. This right should be also linked to the right to internet access⁶ as it directly impacts access to education.⁷

⁵ UNESCO, *Press release - UN Secretary-General warns of education catastrophe, pointing to UNESCO estimate of 24 million learners at risk of dropping out*. August 2020. Available at: <https://en.unesco.org/news/secretary-general-warns-education-catastrophe-pointing-unesco-estimate-24-million-learners-risk> (accessed in October 2021)

⁶ On this right, see for instance: Jack J. Barry, *COVID-19 exposes why access to the internet is a human right*, Open Global Rights. May 2020. Available at: <https://www.openglobalrights.org/covid-19-exposes-why-access-to-internet-is-human-right/> (accessed in October 2021)

⁷ See for instance, Adalah, Adalah and partners petition Israeli Supreme Court: *Connect Bedouin students in Naqab to distance-learning system*, April 2020. Available at: <https://www.adalah.org/en/content/view/9966> (accessed in October 2021)

The Commission also notes that ‘given the importance of a strengthened public commitment to education as a common good, we should also explore how knowledge itself should be considered a global common good. This requires us to think well beyond expanding and democratising the ways knowledge is accessed. We must increasingly also consider the ways that the production and circulation of knowledge intersects with the right to education’. This is also an important dimension to consider that should also encompass the development and circulation of knowledge related to the production of digital educational material, such as software.

- **The central role of teachers and the need for physical interactions**

The Commission’s Report underlines that ‘the school as a physical space is indispensable’ and that ‘in the renewal of education, human interaction and wellbeing must be given priority’, adding that ‘education cannot thrive with ready-made content built outside of the pedagogical space and outside of human relationships between teachers and students.’ Digital education mediums cannot replace the interpersonal communication that schools facilitate by bringing together young children from different backgrounds and cultures that are essential in building broader perspectives and helping students to develop social skills. These skills in turn are crucial for holistic growth and

development, as well as for building peace in society which is one of UNESCO's aims. When considering the expansion of the scope of the right to education to cover digital education, it would be important to reaffirm the importance of physical interactions and the key role played by teachers in a classroom. During the Covid-19 pandemic, we observed inequalities between children who could receive support from their family to follow lessons at home, and those who could not.

- **Children's safety, mental and physical health and behaviour**

The Commission's Report states that 'we must ensure that digitalisation does not undermine privacy, free expression, informational self-determination or lead to abusive surveillance. It is an illusion to think that online learning is the way forward for all.' The right to privacy, to protection of data and from surveillance should be recognised legally. The protection of children against potential online abuse should also be considered. In addition, the impacts of excessive use of digital devices on the students' mental and physical health should be considered - such as lack of social skills, and addiction to online activity.

- **Digital literacy**

As we live in a more and more connected world where the lack of digital skills can be a huge barrier to accessing the labour market, engaging in further education, completing administrative forms or accessing information, it is evident that digital literacy has become an important dimension of the right to education. Digital skills should be learned at schools and provided to adults as part of fundamental education and lifelong learning.

Regarding this dimension, the UN Committee on the Right of the Child's General Comment 25 on Children's rights in relation to the digital environment⁸ is a useful resource to refer to when reviewing the scope and application of the right to education.

EARLY CHILDHOOD CARE AND EDUCATION (ECCE) & PRE-PRIMARY EDUCATION

The right to education has received considerable impetus in the last two decades because of concerted efforts by many groups and agencies at local and international levels. However, the ECCE sub-sector has not received much attention until recently. Early childhood is

⁸ Right to Education Initiative, UN Committee issues recommendations to protect children's right to education in the digital environment. April 2021. Available at: <https://www.right-to-education.org/fr/node/1339> (accessed in October 2021)

understood as a critical developmental period, as it represents the most rapid phase of physical, cognitive, social, and emotional growth of the human lifespan. Access to quality early childhood care and education can be vital in laying the foundation for children’s long-term learning and development and importantly it is crucial to make education systems effective and efficient. Despite this, there is insufficient political, social, and financial commitment around ECCE at global, regional and in many cases at national levels. Furthermore, there is no specific International legal framework that protects and guarantees the fundamental rights of children in early childhood. Recognising the importance of ECCE and these key challenges, the [Sustainable development goal \(SDGs\) target 4.2](#) explicitly focuses on ECCE and pre-primary education and world leaders, committing to ‘ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education’ by 2030.

In the [Education 2030](#) Framework for Action, one indicative strategy is to ‘put in place integrated and inclusive policies and legislation that guarantee the provision of at least one year of free and compulsory quality pre-primary education, paying special attention to reaching the poorest and most disadvantaged children through ECCE services. This includes assessment of ECCE policies and programmes in order to improve their quality.’ [General Comment 7](#) of the Committee on the

Rights of the Child mentions the obligation of states to provide educational opportunities or adequate facilities for young children before they attend school. The recent Global Partnership Strategy on ECCE aims to develop/strengthen normative frameworks to ensure universal access to quality and inclusive ECCE at international and national level. The scope of the right to education framework should cover pre-primary education as one of the key components in education and guarantee the right to access to quality early childhood development, care, and education and explicitly recognise the right to one year of free and quality pre-primary education.

LIFELONG LEARNING

We live in a world that evolves very fast and requires individuals and societies to adapt rapidly, learning new skills and competencies. This includes for instance learning digital/tech skills as well as skills needed to adapt to transformative environments. Lifelong learning is an important dimension of the right to education that should be more explicit in any new international framework on the right to education.

NON-STATES ACTORS INVOLVEMENT IN EDUCATION AND THE RIGHT TO PUBLIC EDUCATION

The last decades have seen an important transformation of the education landscape with the growing involvement of non-States

actors in education, including commercial schools and EdTech companies. This evolution has raised human rights concerns as regards the cost of education, its quality and aims, as well as the inequalities and disparities it exacerbates. This phenomenon has also led to a diversion of public funding to private interest, highlighted in the Commission's Report which 'call on all education stakeholders to monitor that education resources are used for the sole purpose of advancing the interests and capabilities of learners', adding that 'it is necessary to be especially vigilant of corruption and prevent the capture and diversion of education resources to advance private aims.' The Commission's report also notes that education cannot be dependent on digital platforms controlled by private companies. The UN Special Rapporteur on the right to education, UN Treaty bodies and the UN Human Rights Council, among others, have stressed the need to regulate non-states actors' involvement in education in order to guarantee the right to education. The *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*⁹, adopted in 2019 by 57 of the most eminent international experts in human rights and education, provides guidelines based on existing states' obligations that can be a solid basis to reflect on the evolution of the right to education. They provide interpretations of existing states' obligations as regards the regulation of non-states actors' involvement in education, including a framework and

⁹ Abidjan Principles. 2019. Available at: <https://www.abidjanprinciples.org> (accessed in October 2021)

requirements for the financing of private education with public funds. They also clearly recognise the right to public education based on a rigorous analysis of human rights law¹⁰, that should be reflected explicitly in international provisions related to the right to education. The central role of the state to guarantee the right to education for all and address persisting inequalities has to be at the heart of any revision of the scope and application of the right to education.

CLIMATE CHANGE AND ENVIRONMENTAL EDUCATION

The Commission's Report states that 'humanity must achieve a healthier relationship with the natural world.' In its March progress update, it notes that 'educational pedagogy and education should regenerate from an ecologically oriented understanding of humanity that integrates our ways of relating to Earth'.¹¹ Climate change is becoming more and more alarming every day, having huge impacts on our natural environments and health. Populations are forced to migrate due to climate change. It is urgent that the whole of humanity rethinks its behaviours and adopt radical changes in order to reverse the trends.

¹⁰ Jacqueline Mowbray, Is there a right to education in Frank Adamson, Sylvain Aubry, Delphine Dorsi and Mireille de Koning, *Realizing the Abidjan Principles on the right to education: Human Rights, Public Education, and the Role of Private actors in Education*. Norrag Series on International Education and Development. Elgar June 2021. Available at: <https://www.elgaronline.com/view/edcoll/9781839106026/9781839106026.xml> (access in October 2021)

¹¹ International Commission on the Futures of Education, *Progress update of the International Commission on the Futures of Education*. March 2021. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000375746/> (accessed in October 2021)

This has implications on the forms and content of education. Climate change and environmental issues should be taken into account in schools' organisations with the aims to reduce the impacts on climate change, including as regards infrastructures, the use of energy or equipment for digital learning for instance as we know that their productions contaminate the environment and impoverish natural resources. Climate change and environmental issues should also be part of the content of education and the protection of the natural world should be added in the aims of education. Education is a critical agent in addressing the issue of climate change and empowering people to take actions towards protecting the planet. This also requires rejuvenating indigenous cultures, practices and connections with earth as part of the educational process.

RIGHT TO EDUCATION INITIATIVE
