



Right to Education

**Right to Education Initiative's contribution
to the UN Special Rapporteur on the right to
education's report on the right to education,
advances and challenges**

January 2023

The Right to Education Initiative (RTE) is an international human rights organisation focusing on the right to education¹. Created by the first UN Special Rapporteur on the Right to Education, Katerina Tomasevski, we have been working for almost 25 years to advance the realisation of the right to education. As we mainly operate at the international level, our contribution responds to question 9 about the crucial issues to address, nationally as well as internationally, to ensure the realisation of the right to education. It is based on our work over recent years and on our current reflections about the future of the right to education. We would like to underline that this contribution is limited, and does not reflect all the challenges that must be addressed to realise the right to education. Other important issues are not covered.

While progress has been made since the first recognition of the right to education in international law, this right essential for the realisation of other human rights, which contributes to the development and wellbeing of both individuals and societies, is far from being fully realised. Further still, it is at risk. While we have seen an increase in global enrolment rates since the 2000's, inequalities and discrimination in access to quality education remain a major issue, leaving behind vulnerable, marginalised and disadvantaged groups. There are multiple barriers to access quality education and cost is a major factor. States should do everything possible to realise free, quality education for all, including at pre-primary and higher education levels. Yet there is a projected financial gap of \$200 billion to realise the right to education². The realisation of the right to education is at a turning point, seriously impacted by a world in crisis and rapid transformation. Ongoing conflicts, affecting 25% of the global population³, the global and unprecedented Covid-19 pandemic, the current economic crisis and alarming climate change, coupled with the fast development and increased use of new technologies, is exacerbating existing challenges and transforming education profoundly and rapidly. In particular, we observe a worrying trend in the privatisation and commercialisation of education, the closure of schools for long periods of time, and the growing use of technologies in education which raise human rights concerns. While education is evolving, there are also discussions about the need for the scope of the right to education to expand, which will have to build on the existing provisions and be managed carefully to ensure no retrogression.

1. Inequalities and discrimination in education persist and must be addressed

The right to education is based on the rights to non-discrimination and equality, which apply both in access and within education systems. However, inequalities intersect with multiple factors and affect learners at every level and in every educational system.

¹ www.right-to-education.org

² UNESCO. 2020. [UNESCO warns that the funding gap to reach SDG4 in poorer countries risks increasing to US\\$ 200 billion annually due to COVID-19 if we do not take urgent action](#)

³ UN Economic and Social Council. 2022. [Progress towards sustainable goals report](#). Report of the Secretary-General. E/2022/55.

Access is one such factor; more than one in ten children and youth worldwide are out of school⁴. Children and youth from vulnerable, marginalised and disadvantaged groups⁵ often face higher barriers to access.

Girls face particular challenges⁶, despite country commitments to gender equality in education⁷. The exclusion of pregnant girls remains unfair and discriminatory⁸. Insecurity on their way to schools, and even in schools, is a major barrier⁹. Inadequate and unsafe education infrastructure, including sanitation, is also an issue that must be addressed. While their enrolment rates have increased higher education, they are still underrepresented as faculty members and struggle to get into the job market¹⁰. At the time of writing, women are legally forbidden to [access higher education in Afghanistan](#).

Migrants also face particular challenges in accessing education. Despite States' international legal commitments to the right to education of migrants, at national level, migrants face various legal, administrative and practical barriers in the enjoyment of their right to quality education, even when inclusive and protective laws exist. Such barriers include: discriminatory laws and policies, temporary protection, documentation requirements, lack of educational structures or school closures, lack of information, geographical inaccessibility of schools, schools fees and other costs, language of instruction, lack of qualified and experienced teachers and social integration issues¹¹.

In addition, the cost of education is still a major barrier to access quality education, leaving the poorest behind.

Furthermore, multiple ongoing crises have exacerbated existing inequalities¹². In particular, the mass and long school closures due to the Covid-19 pandemic have increased the risk of school abandonment due to child labour exploitation¹³, early and unintended pregnancy¹⁴, and child marriage¹⁵.

In this regard, we recommend the Special Rapporteur to consistently highlight the inequalities faced by vulnerable, marginalised and disadvantaged groups both in country visit reports and

⁴ Manos Antoninis, and Silvia Montoya. 2022. [New measurement shows that 244 million children and youth are out of school](#). World Education Blog.

⁵ See Right to Education Initiative [webpage on marginalised groups](#).

⁶ See Right to Education Initiative [webpage on girls](#).

⁷ See Right to Education Initiative. 2018. [Country commitments to gender equality in education](#). GEM Report.

⁸ See Hakijamii and Right to Education Initiative's multimedia essay on pregnant girls published in 2020: [The right to education of pregnant girls in Kakamega county](#)

⁹ See for instance the [documentary](#) made by the photojournalist Smita Sharma.

¹⁰ See UNESCO / Right to Education Initiative. 2022. [Right to Higher Education: Unpacking the international normative framework in light of current trends and challenges](#).

¹¹ See Right to Education Initiative. 2018. [The status of the right to education of migrants: International legal framework, remaining barriers at national level and good examples of states' implementation](#). See also, Right to Education Initiative. 2022. [ECCE migration: Child migration and access to Early Childhood Care and Education: Limitations in legal frameworks and other concerns](#).

¹² See Right to Education Initiative's [resource page on Covid-19 pandemic and the right to education](#).

¹³ Human Rights Watch. 2021. [Covid-19 Pandemic Fueling Child Labor](#).

¹⁴ Christina Kwauk, Dana Schmidt, and Erin Ganju. [What do we know about the effects of COVID-19 on girls' return to school?](#) Brookings Institute.

¹⁵ UNICEF. 2021. [COVID-19: A threat to progress against child marriage](#)

thematic reports, and urge States to introduce, protect and effectively implement affirmative action in policies and education programs.

2. Realising the right to free quality education is a challenge that must be taken up at all levels

Providing free quality education is key to ensure that no-one is excluded from education due to the inability to pay. Efforts have focused on realising free primary and secondary education. However, this goal is not yet achieved at either stage. We wish to emphasise that even with the necessary progress at primary and secondary levels, the right to education will not be fully realised without the realisation of free education at pre-primary and higher education stages.

- **In pre-primary education**

Early childhood care and education (ECCE) lays the foundations for the enjoyment of the lifelong right to education. It is central to healthy cognitive, physical and social development, and builds resilience in children and their wider communities. It is also a powerful equaliser that can improve education outcomes for the most disadvantaged children, in the process making systems more equitable and improving functioning. The importance of ECCE, especially as regards inclusivity in educational systems, has been highlighted across most of the reports the successive UN Special Rapporteurs on the Right to Education have produced¹⁶. In line with their recommendations regarding legal frameworks for inclusivity, regulatory structures, public financing, and interculturality, due priority should be given to ensure equal access to ECCE for all without discrimination of any kind.

Education has the potential to act as a leveller between children of different backgrounds, but inequalities threaten access to and the quality of education, right from the start of a child's life. Though access to early childhood care and education has demonstrable benefits for children, their families, and communities, only [half of the world's nations](#) provide free, pre-primary education to their children. The cost of pre-primary education is a huge barrier for the most disadvantaged. The right to education cannot be realised without financial commitments which are implemented and enforced. In order to realise this right, States must prioritise the historically underfunded ECCE sector and invest at least 10% of their education budget into ECCE, as stated in the Tashkent Declaration adopted in November 2022¹⁷.

The Declaration recognised the neglect and inadequate progress made so far to realise ECCE and strongly emphasised the need to ensure legal guarantees and [public investment for equitable, inclusive, and quality ECCE services for all](#). Both the Declaration and the former UN Special Rapporteur's report on ECCE¹⁸ call for a more specific legal instrument to complement the protections already established in International human rights instruments. A [thematic](#)

¹⁶ See Right to Education Initiative. 2022. [Early Childhood Care and Education as a gateway to inclusive education: an analysis of UN Special Rapporteurs' Reports](#).

¹⁷ Right to Education Initiative. Right to Education Initiative welcomes the Tashkent Declaration's call for an enhanced legal framework and increased public expenditure for ECCE. December 2022

¹⁸ Koumba Boly Barry. 2022. [Report of the Special Rapporteur on the right to education: Early Childhood Care and Education](#). A/77/324. Un General Assembly

[report](#) published by UNESCO and co-authored by Right to Education Initiative and other organisations highlights the key components that it should focus on, covering dimensions of both access and quality, including the right to non-discrimination and equality, one year of free pre-primary education, regulation of non-state involvement, play based pedagogy, mother tongue learning, and adequate human technical financial resources¹⁹.

We recommend that the UN Special Rapporteur systematically highlights the challenges, gaps, and recommendations regarding the ECCE sub-sector, under different thematic areas and during country visits. The UN Special Rapporteur, in the exercise of her mandate, may urge States to focus on the following areas which would help ensure the realisation of the right to education:

1. Guaranteeing at least one year of free pre-primary education to all without discrimination of any kind
2. The inclusion of ECCE as an integral part of education systems
3. Ensuring legal guarantees at the national and international level
4. Allocating adequate and sustainable financing
5. Reinforcing state accountability for providing public provisions, and thereby
6. Ensuring inclusion, quality, and equal access to all.

- **In higher education**

The right to higher education does not allow for any form of discrimination. However, all countries face challenges guaranteeing equal access to higher education. Issues such as privatisation of higher education and rising tuition fees represent a threat to equal access to higher education, especially in contexts where structural inequalities - such as, for example, class or territorial inequalities - persist. Women and minority groups (such as migrants and disabled people) may also have more difficulties in accessing higher education²⁰. Divides that remained invisible until the Covid-19 pandemic, such as the digital divide, have been brought to light since 2020²¹.

Inequalities in access to higher education are highly related to socio-economic status. Students from wealthy backgrounds are more likely to access higher education institutions than those from poor economic classes²². In addition, educational institution designs play a part in perpetuating inequalities and deepening the social and economic divide. Two particular dimensions of this issue are the vertical stratification of higher education systems across the world and how we assess 'merit' or 'capacity'²³.

States have the immediate obligation to take measures to progressively introduce free higher education. This is key to address existing and persisting inequalities. Higher education has a

¹⁹ See also Rajakumari Michaelsamy and Delphine Dorsi. 2022. [Inclusion, investment and strengthening legal framework: Key takeaways from the UNESCO World Conference and Declaration on ECCE](#).

²⁰ See [Right to Education Initiative webpage on higher education](#).

²¹ See Delphine Dorsi and Juliana Lima. 2022. [A revolution for higher education: key takeaways from the UNESCO World Higher Education Conference](#)

²² See for instance the study we conducted in France with students from the Sciences Po Law Clinic and researchers. Right to Education Initiative and others. 2022. [Higher Education in France: A right threatened by increasing inequalities?](#)

²³ Ibid.

high cost. If not financed with public funds, the burden of the cost falls on students, creating serious concern about students' debt. The rise of tuition fees, both in public and private institutions, is unsustainable. Fees must be regulated and the current system of competition and selectivity based on international rankings rethought if we want to avoid higher education being a privilege only for those that can afford it²⁴.

The expansion in the provision and demand for higher education opportunities calls for the state to play a greater role in ensuring equitable enjoyment of the right to higher education in terms of access, pursuit and completion. Based on the findings of a report we co-published with UNESCO²⁵, States and policy-makers may be encouraged to consider taking or reinforcing the following measures, which, to be truly effective, need to be addressed in conjunction in order to ensure the realisation of the right to higher education:

1. Adopt a system-wide, equity-based, lifelong learning approach
2. Translate policy objectives into law
3. Allocate sufficient and sustained funding
4. Focus on vulnerable, marginalised and disadvantaged groups
5. Enhance the quality of education and higher education provision
6. Ensure higher education policies go beyond access and factor in the completion of studies and the transition to the labour market
7. Facilitate recognition of international qualifications
8. Implement safeguards for online learning and close the digital divide
9. Further clarify the existing international human rights framework in light of current and future evolutions in higher education, as part of the overall evolving right to education agenda.

3. Protecting public education and regulating the growth of commercialisation of education must be a priority

We are at a turning point in the privatisation and commercialisation of education. For years this issue has been building and has been under the close scrutiny of education actors, CSOs, and international experts. The last decades in particular have seen an important transformation of the education landscape with the growing involvement of non-State actors in education, including commercial schools and EdTech companies²⁶.

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, questioning states' responsibilities including extra-territorially²⁷. The UN Special Rapporteur on the right to education, UN Treaties

²⁴ Ibid.

²⁵ UNESCO and the Right to Education Initiative. 2022. [Right to Higher Education: Unpacking the international normative framework in light of current trends and challenges](#).

²⁶ See the Right to Education [Webpage on the privatisation](#)

²⁷ See for instance, Right to Education Initiative and others. 2015. [Alternative Report to the CRC: The UK's support of the growth of private education through its development aid: questioning its responsibilities as regards its human rights extraterritorial obligations](#). See also a joint press release published in July 2016: [The UK's financial support to low-cost private education in developing countries in contravention of human rights, says - again - UN experts](#). See

bodies and the UN Human Rights Council²⁸, among others²⁹, have stressed the need to regulate non-state 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, adopted in 2019, provide guidelines based on existing state obligations that can be a solid basis to reflect on the evolution of the right to education. They clearly recognise the right to public education based on a rigorous analysis of human rights law³⁰, stressing the central role of the state to guarantee the right to education for all and address persisting inequalities.

Despite this, the UNESCO GEM report 21/22 confirms 'Regulatory, monitoring and enforcement capacity tends to be low where the need is high'. According to this report, regulations tend to focus more on registration approval or licensing, teacher certification, and infrastructure, but less on quality or equity, fee setting, or supporting access of disadvantaged students.

In view of this, we reiterate the recommendation in section 8 made by [The Global Initiative for Economic, Social, and Cultural Rights \(GI-ESCR\)](#) and its partners in their submission to the UN Special Rapporteur on the Right to Education. The Special Rapporteur, in the exercise of her mandate, may urge states to implement them.

4. Ensuring the use of technology in education is in line with human rights

While the prevalence of technology in education settings was growing prior to the pandemic, the use and scope of education technology increased dramatically from 2020 onwards. Technology can offer potential benefits but presents significant concerns from a human rights perspective with regard to the best interest of the child³¹ and aggravating existing inequalities.

The right to privacy, the protection of data, and protection from surveillance in education should be recognised legally. The protection of children against potential online abuse must also be addressed. In addition, the impacts of excessive use of digital devices on the student's mental and physical health should be considered - such as lack of social skills, and addiction to online activity.

Educational technology also has the potential to aggravate existing inequalities between those with access to devices and reliable connectivity, and those without. The COVID-19 pandemic

also Right to Education Initiative and others. 2023. [Brief to the UN Committee on Economic, Social and Cultural Rights - 7th Review of UK Pre-sessional Working Group submission](#).

²⁸ See for instance, joint press release published in June 2017: [New UN resolution once again urges states to take action on the commercialisation of education](#).

²⁹ Such as the African Commission on People's and Human rights in its recent General Comment 7. See Right to Education Initiative. 2022. [RTE and partners welcome the African Commission's landmark General Comment on public services](#).

³⁰ Jaqueline Mowbray. [Is there a right to public education?](#) In Adamson and others. 2021. Realising the Abidjan Principles on the Right to Education. Elgar and Norrag.

³¹ See particularly Human Rights Watch. 2022. [Governments Harm Children's Rights in Online Learning](#) and UNESCO. 2022. [Minding the data: protecting learners' privacy and security](#).

which had an unprecedented effect on education worldwide exposed the digital among learners³².

We reiterate the recommendations made in paragraph 12 of the aforementioned [GI-ESCR and partners' submission](#). The Special Rapporteur, in the exercise of her mandate, may urge states to implement them.

5. Addressing climate change and environmental issues in and through education

Climate change has been prompting radical alterations to weather patterns for some years, with natural disasters destroying or irrevocably altering communities, disrupting the production of food, and leading to sharpened inequalities. The impacts of this change can already be seen in the steadily increasing numbers of individuals forced to [move both within and outside of their nations of origin](#). Forced movement can have multiple impacts on education; internally, it can lead to increased pressure on systems in regions less affected by the change. Those forced to move may face existing disadvantages or belong to marginalised communities³³.

Climate change and environmental issues should be taken into account in school organisation, with the aim to reduce the impacts of climate change, including as regards infrastructures, the use of energy or equipment for digital learning.

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 action toward protecting the planet. This also requires rejuvenating indigenous cultures, practices, and connections with the earth as part of the educational process.

In view of this, we also reiterate the recommendations in paragraph 16 made by [GI-ESCR](#) and partners. The Special Rapporteur, in the exercise of her mandate, may urge states to implement them.

³² See for instance Inès Girard, Fiona Vanston and Elodie Faïd. 2021. [Covid-19 and technical difficulties: the rise of inequalities in higher education. Right to Education Initiative's blog](#).

³³ See UNESCO. 2020. [The impact of climate displacement on the right to education](#).