The Right to Education in the 21st Century
Background paper for the international seminar on the evolving right to education

As a contribution to the Human Rights Day 2021, UNESCO is holding an International Seminar to foster a global dialogue around the evolving dimensions of the right to education. This document serves as a background paper for the discussions.
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**The Global Education 2030 Agenda**

UNESCO, as the United Nations’ specialized agency for education, is entrusted to lead and coordinate the Education 2030 Agenda, which is part of a global movement to eradicate poverty through 17 Sustainable Development Goals by 2030. Education, essential to achieve all of these goals, has its own dedicated Goal 4, which aims to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.” The Education 2030 Framework for Action provides guidance for the implementation of this ambitious goal and commitments.

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‘A right is not what someone gives you; it’s what no one can take from you.’

— Ramsey Clark —

Education is a human right. A right that no one can take from you. This is not a slogan, or an ideal, but an established right that has a solid normative framework in international law, established first in the Universal Declaration of Human Rights (‘UDHR’, 1948) and further articulated in the UNESCO Convention against Discrimination in Education (‘1960 Convention’). Concrete principles and legally binding obligations give shape to Member States’ commitment to the right to education and its translation into national-level action.

Despite well-established rights, duties and life-changing progress for many over recent decades, there are still children, youths and adults in every corner of the globe that are facing major challenges to the full realization of their right to education today. Sustainable Development Goal 4 (‘SDG4’) goes some way to redefine priorities for education in the 21st century, but even in the six years since the inception of the SDGs, the world has undergone rapid changes. Acceleration in digital and remote learning, the COVID-19 pandemic and a growing recognition of the threats of climate change, polarization and fraying democracy will alter life as we know it – the evolving role of the right to education in these contexts requires some consideration.

This document seeks to open a discussion as to how the international normative framework could be reviewed and which rights and obligations might be evolving. Although the right to education, as it has been developed by the international framework and related interpretations, is comprehensive, its scope potentially needs to be broadened across three major axes to ensure greater enforcement through national level action. First, acceptance of the lifelong learning perspective has redefined education as continuing from birth through to old age, and occurring in diverse settings, including digital spaces. Right to education provisions currently ensure the greatest protection for the traditional levels and modalities of education - does the international framework adequately recognize this shift to lifelong learning? What rights must be clarified in the digital sphere with regard to data protection, teacher training, inclusivity and regulation of non-State actors?

Second, the concept of inclusion is placing higher demands on education systems to systematically take all forms of difference into account and ensure that all learners have equal opportunities. Existing non-discrimination and quality provisions have not been entirely successful in producing equality and equity in education. Is the flexibility and adaptability that is now required of inclusive education supported in the current provisions?

Third, the increasing recognition of the complete interrelatedness of rights, with the right to education supported by and supportive of, rights to health, information, childhood, gender equality, privacy, information, and culture. How could we review the right to education framework afresh to ensure its harmonization with other rights? These three axes run throughout the document and provide a lens through which to review the current right to education provisions and their ongoing relevance in a 21st century world.
The right to education is not static. Although the international legal framework is infrequently updated, UN and other right to education stakeholders must constantly interpret and apply human rights norms in such a way that reflects the realities of diverse and ever-changing societies. The right to education must be interpreted in an intersectoral manner, recognizing the ways that it supports—and is supported by— a wide range of other rights, which also are redefined and updated to reflect modern norms.

In recent years it has become clear that it is time to take stock, reflect and open a collaborative discussion as to the potential expansion of the right to education in light of emerging challenges, as well as existing barriers to the right to education that remain pervasive.

In 2020, we celebrated the 60th anniversary of the UNESCO Convention against Discrimination in Education (‘1960 Convention’) during the height of the COVID-19 pandemic. The virus created widespread disruption and a radical transformation in the way that education is conceived and delivered. As we begin the monumental job of recovery in education, there is an opportunity to consider the ways that education is evolving and the possibility of reviewing the content of the right to education to better meet the challenges of this new era.

This background document has been informed by a ‘Global Conversation’. Written contributions have been welcomed during this consultative process via an online platform and a complementary online survey. Over 310 contributions were received, from educators, education specialists, NGOs, experts from international organizations, as well as learners and other interested parties from the public.

The ideas within this document will build on the work being undertaken by the UNESCO Futures of Education Initiative, which recently launched its report to reimagine education through a new social contract.

The themes covered herein are also supported by the findings from the latest 1960 Convention and Recommendation Consultation (the ‘10th Consultation’). These consultations on the Convention and Recommendation give Member States the opportunity to report on national measures taken to implement the instruments as well as on education challenges. They provide an important monitoring function, illuminating common trends but also showing where the scope of the right to education has been extended in laws and constitutions, suggesting that it might be time to rethink the evolving dimensions of the right to education.
Section 1. The right to education as developed in the international human rights framework

1.1. State legal obligations

The right to education and its various aspects are legally guaranteed for all by the international human rights legal instruments that ratifying countries are to comply with. The 1960 Convention is the first instrument to define the concrete obligations required for the realization of this right and the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’, 1966) builds upon the obligations laid out.

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

Overview of the main principles of right to education:

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

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

◊ **Respect**: to ensure that the measures taken do not hinder or prevent the enjoyment of the right to education,
◊ **Protect**: to take measures to prevent that third parties do not interfere with the right to education and
◊ **Fulfill**: to take positive measures that fully realize the right to education.
States can be held accountable for violations or deprivations of this right. In addition, the fulfilment of the right to education can be assessed using the ‘4 As framework’, which asserts that for education to be a meaningful right it must be available, accessible, acceptable and adaptable.\(^2\)

### 1.2. Other international commitments

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

The most recent global agenda is the Sustainable Development Agenda adopted in 2015. To achieve SDG4, the primary goal related to education, the Education 2030 Framework for Action was developed. The Agenda explicitly calls for legal guarantees of at least twelve years of free, and nine years of compulsory, primary and secondary education and additionally one year of free and compulsory pre-primary education. The Agenda addresses ways to ensure the inclusion of all people and is centred on the concept of lifelong learning to effectively realize the right of everyone to education, from birth throughout life. It is important to note, the Education 2030 Framework for Action is time-bound and the limit to achieve SDG4 is 2030.

Numerous other soft law instruments cover components of the right to education and will be referred to below as they are relevant to each subsection.

### 1.3. Ensuring a holistic approach to education rights

As we collectively enter this process of redefining, reconceptualizing and potentially expanding the scope of the right to education, it is important to take a holistic approach. At its core, it is now recognized that education must be of good quality and should take a lifelong learning approach. New demands are being placed on education systems which must be built upon a foundation of strong infrastructure, pedagogies, teachers and materials to fulfil education’s principal aims.

This holistic view of education, with an explicit focus on equity, inclusion, quality and learning outcomes requires a system-wide approach. Ministries must work in a cross-sectoral manner – it is envisaged that the Ministry of Education will collaborate with Ministries of Health, Work, Children, Women and Inclusivity, among others, to elaborate policies and laws which work in tandem towards the fulfilment of a wide network of interacting rights. Just as the right to education is indispensable for the fulfilment of other rights, such as the right to work, or the right to gender equality, it is also intrinsically interdependent with the protection of other rights such as the rights of the child and the burgeoning right to information.

It is also paramount that States perform good monitoring practices of the education system to ensure its efficiency and effectiveness. The Global Conversation demonstrated that, while many

\(^2\) For more information, see Chapter 3 of the Right to education handbook (UNESCO, 2019). Accessible at: [https://unesdoc.unesco.org/ark:/48223/pf0000366556](https://unesdoc.unesco.org/ark:/48223/pf0000366556).
accept that their national constitutions and laws reflect and uphold the principles of the right to education, the State has not always been successful at the implementation stage. This implementation gap was perceived to be caused by a lack of funding, infrastructure or political will.

At this time, there are no international hard law provisions that enforce a duty in States to put into place monitoring mechanisms to assess the implementation of the right to education. However, Article 13(3) of the ICESCR provides for the need to establish minimum education standards in public and private institutions which implies that States should be capable of verifying that such institutions conform to the established standards.

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

There is also a clear need for States to revisit their responsibility to ensure that the education system is financed adequately, equitably and efficiently to realize the right to education. Article 2 (1) of the ICESCR requires States to take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means ...’. Extending the right to education is likely to have implementation costs, so financing must be at the heart of discussions. An explicit guideline for the financing of the education system was provided by the Framework for Action, committing States to allocate ‘at least 4% to 6% of gross domestic product (GDP) to education; and/ or allocat[e] at least 15% to 20% of public expenditure to education’ (para. 105).

The UNESCO Guidelines to strengthen the right to education in national frameworks (2021), provides States with a proposed template for this monitoring process, containing a clear guiding checklist of the indicators and data that must be collected and examined to evaluate the implementation of their duties under the right to education. States can also engage with UNESCO and other international organizations for support in revising and updating their education laws and policies.

**Points for discussion**

- Should there be a formal requirement in international law for States to collect and publicize data and implement effective governance and monitoring mechanisms to better ensure the quality of education for all?
- The Framework for Action commits States to allocate a certain percentage of GDP or public expenditure to education. Are these figures achievable? Should this commitment be made legally-binding or is it sufficient to oblige States to devote the maximum of their available resources as per the ICESCR?
Section 2. Reinforcing equality and inclusion

2.1. Shifting concepts

The concepts of equality and non-discrimination are central to the right to education, are at the foundation of the 1960 Convention and are echoed in Article 2 (2) of the ICESCR, Article 26 of the International Covenant on Civil and Political Rights (‘ICCPR’) and numerous other international human rights provisions. General Comment No. 20 and General Comment No. 13 of the ICESCR Committee further interpret the prohibition against discrimination, affirming that both direct and indirect forms of differential treatment amount to discrimination.

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

Despite their undisputed centrality to the right to education, the concepts of equality and non-discrimination continue to be cited as one of the most pervasive problems in national education systems. Responses to the Global Conversation sought to emphasize the need for truly inclusive education for all vulnerable or underprivileged groups. One of the most common concerns was for those in remote, rural or impoverished areas, where it was felt education all-too-often failed to reach. Around 45% of those that responded to the survey described non-discrimination and equality as ‘insufficiently guaranteed’ in their country.

Reading the written responses to the survey, a common interpretation was that ‘non-discrimination and equality are guaranteed in the law, but not necessarily in practice’, that ‘schools in low-income areas continuously underperform’, that ‘policies discriminate against minority groups’ and that certain groups such as migrants, indigenous peoples, and persons with disabilities are excluded from the education system in a multitude of different ways.

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

- No, they are all fully guaranteed 73
- Non-discrimination and equal... 130
- Primary education that is free... 99
- Secondary education, includin... 103
- Higher education, accessible t... 131
- Fundamental education for in... 98
- Educational freedom (public ... 74
- Equal quality of education th... 105
- Teacher training and their ade... 123
- Adequate fellowship system 88
- No opinion 11

Source: Graph taken from the recent survey on the evolving right to education, extracted from Google Forms, correct as of 18/11/2021.
Inclusion has emerged in the right to education vocabulary to support and strengthen the concepts of non-discrimination and equality. Inclusive education is based on the principle that all children should learn together, regardless of difference. While non-discrimination was the cornerstone of the 1960 Convention, SDG4 impels States to ‘Ensure inclusive and equitable quality education …’.

Shifting the focus to inclusion clearly mandates a positive obligation on States to put into action their non-discrimination and equality provisions. By taking difference into account, policy-makers can address the specific barriers that people face in their enjoyment of the right to education and take an individualized and flexible approach with curricula, pedagogies, learning spaces and curricular to ensure a genuinely participatory environment (UNESCO and Right to Education Initiative, 2019, p. 87).

Lao PDR provides a positive example of inclusive education policy. The national policy broadly defines inclusive education as removing all barriers to school enrolment and achievement, and uses capacity-building, awareness-raising and inclusion of women and girls, ethnic people and persons with disabilities in decision-making processes to help to reach excluded learners. Children that are out-of-school are tracked and activities for their re-entering are conducted (UNESCO, 2017).

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

**Points for discussion**
- How can national legal and policy frameworks better emphasize and address the concept of inclusion in the education system?
- How can the rights of all vulnerable or underprivileged groups be more explicitly and inclusively emphasized, including people on the move, as well as those living in remote, rural or impoverished areas, as well as those with disabilities?

**2.2. Gender equality**

Despite decades of striving towards gender equality in education, there remains considerable disparity in the treatment of girls and women, in relation to boys and men, in education systems. There is increasing recognition that LGBTI+ students are not protected in laws and policies, and face high levels of discrimination, exclusion, bullying and violence in education (Global Education Monitoring Report / UNESCO, 2021).

Girls and women face considerable barriers to their enjoyment of the right to education, and an entire treaty - CEDAW – was adopted to tackle the multiple pervasive forms of gender discrimination. The 1960 Convention is also explicit: sex-based discrimination must be eradicated and prevented. SDG4, under Target 4.5 calls for the elimination of gender disparities and makes specific mention of the effect of ‘gender-based violence, child marriage, early pregnancy and a heavy load of household chores’ on the enjoyment of young women and teens to education. Targeted action for boys, in contexts where they are disadvantaged, is also highlighted.

In the context of the 10th Consultation, some States described progressive steps that overcome not only prima facie examples of gender exclusionary practices, but also inherent stigmatization and bias that are mirrored in education and society. 49 countries (60%) reported adopting measures ensuring
gender parity in science, technology, engineering and mathematics (STEM) and technical and vocational training (TVET), for example the Advancing Women in STEM strategy unveiled by Australia in 2019 and in Germany, an annual ‘Girls’ Day’ promoting girls’ interest in STEM subjects and a ‘Boys’ Day’ for professions generally chosen by women.

The Global Conversation highlighted the continued need to address pregnancy, early marriage and young motherhood, with several responses specifically stating that these situational disadvantages were the main obstacle for girls and women in their country. In a recent UNESCO research project, Her Atlas, that monitors the right to education for girls in national frameworks, only 52 States of 194 were found to have laws that protected the right to education for pregnant or parenting girls and women, while 58 States actively restricted their right to education.


Points for discussion

- Are legal provisions that address gender equality and non-discrimination in a general manner sufficient to ensure inclusion of girls and women in education? Similarly, do LGBTI+ learners need explicit and specific protection in the international legal framework?
- Should there be specific and explicit protections around pregnancy, young motherhood and early marriage in the international normative framework relating to the right to education?

2.3. Persons with disabilities

Persons with disabilities are among the most marginalized groups of people and are regularly denied their right to education. The 1960 Convention does not explicitly refer to persons with disabilities, though it is founded upon the fundamental principle of equal opportunities. The 2006 Convention on
the Rights of Persons with Disabilities protects the right to education of persons with disabilities, without discrimination on the basis of equality of opportunity, and within an education system that is inclusive at all levels. The CRC specifically addresses the right to education of children with disabilities in Article 23. SDG4 Target 4.5 calls on States to ‘ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities ...’.

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

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

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

Points for discussion

- What role should special schools and units still play today in national education systems for persons with disabilities, and what support do States need to build inclusive mainstream education where all learners can be educated together?

2.4. Indigenous peoples and minority groups

Indigenous peoples and minority groups experience specific vulnerabilities in education and are often deprived of quality education due to their background or the cultural, linguistic or financial barriers that they face.

Minorities and indigenous peoples may avail of non-discrimination and equality clauses under the 1960 Convention and the ICESCR, although they are not specified groups, while under the CRC, indigenous peoples are given specific attention under Article 30 where it is stated that a ‘child (...) who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language’.

The UN Declaration on the Rights of Indigenous Peoples (2007) comprehensively promotes the rights of indigenous peoples, including their right to establish their own education systems and to ensure teaching in their own languages, in respect of their own cultures.

National minorities are given particular attention under Article 5(1)(c) of the 1960 Convention, where States have agreed on the importance of specifically recognizing the right of members of national minorities to carry out their own educational activities, including school maintenance and, depending
on the educational policy of the individual State, the use or teaching of their own language, provided certain quality and access standards are met. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), under Article 4 (3) protects minorities’ rights to learn their mother tongue or to receive instruction in their mother tongue.

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

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

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

**Points of discussion**

- **Should the provisions relating to education in the UN Declaration on the Rights of Indigenous peoples be made legally binding?**
- **Is the right to mother tongue-based multilingual education sufficiently protected in international human rights law? To what extent should States provide access to learning in the mother tongue of indigenous and minority groups?**
2.5. Refugees, migrants, internally displaced persons, and asylum-seekers

When people are displaced from their homes and communities, their right to education becomes at risk. Barriers to education are numerous and varied, but may include a lack of identity papers; lack of exam or course certificates; distance to school; cost of education; xenophobia and intolerance and language barriers and incompatible curricular, among others.\(^3\)

A range of international treaties protect these vulnerable groups right to education. The 1960 Convention prohibits different treatment based on ‘social origin’, ‘economic condition’ or ‘birth’ and requests States to offer ‘foreign nationals resident within their territory the same access to education as that given to their own nationals’ in Article 3. General Comment No. 20 (2009) of the ICESCR Committee clarifies that the Covenant rights apply to everyone, including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation in General Comment No. 13 (1999). Similar rights arise in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 30 and 45) and the Convention Relating to the Status of Refugees (Article 22). The Global Convention on the Recognition of Higher Education Qualifications was adopted by UNESCO in 2019 and aims to reduce the obstacles faced by displaced persons who require recognition of their qualifications to access higher education or continue their studies in another region or country.

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

Overall, the estimated number of international migrants has increased over the past five decades. 281 million people were living in a country other than their countries of birth in 2020, more than double the figure in 1990 and over three times the estimated number in 1970 (IOM, 2020). At the end of 2020, some 55 million people were living in internal displacement (IDMC). This number is set to rise exponentially as the effects of climate change cause devastating impacts across the globe.\(^4\) UNHCR (2021) estimates that close to half of all refugee children (47%) remain out of school.

It is heartening to see that many States have made impressive advancements in their education offering for refugees.

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\(^3\) For more information on the barriers to education faced by refugees, migrants and other displaced populations, see: UNESCO, 2019, *Enforcing the right to education for refugees*. Accessible at: [https://unesdoc.unesco.org/ark:/48223/pf0000366839](https://unesdoc.unesco.org/ark:/48223/pf0000366839).

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

However, there is still work to be done. The right to education of migrants and refugees is still not fully enshrined in many national legal frameworks and is often not comparable to the rights enjoyed by citizens. States must be guided by the strong network of protection proffered by the international instruments above and develop policies and programmes for migrants in line with the principals of the 4As framework.

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

### Points for discussion

- With an increasing network of international legal provisions and policy documents that frame the right to education for people on the move, what is needed to further support States in updating national legal frameworks and policies to be properly inclusive of migrants, refugees, IDPs and asylum-seekers?

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Source: Forthcoming UNESCO report on the 10th Consultation

<table>
<thead>
<tr>
<th>Measure</th>
<th>Percentage of Member States that have adopted specific measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inclusion in mainstream education</td>
<td>81%</td>
</tr>
<tr>
<td>Initiatives addressing discrimination and promoting cultural diversity and mutual acceptance</td>
<td>59%</td>
</tr>
<tr>
<td>Provision of language courses</td>
<td>52%</td>
</tr>
<tr>
<td>Specific training for educational staff</td>
<td>51%</td>
</tr>
<tr>
<td>Non-formal and/or alternative education programmes</td>
<td>47%</td>
</tr>
<tr>
<td>Accelerated learning programmes</td>
<td>41%</td>
</tr>
<tr>
<td>Financial support</td>
<td>38%</td>
</tr>
<tr>
<td>Alternative administrative procedure (placement tests, portfolio of evidence, etc.)</td>
<td>35%</td>
</tr>
<tr>
<td>Other innovative measures</td>
<td>11%</td>
</tr>
</tbody>
</table>

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2.6. Emergencies and protracted crises

*International normative framework*

International legal instruments that are relevant to the right to education are silent on the matter of education in emergency contexts and protracted crises, aside from the consensus that the right to education is a universal, inalienable right that applies to everyone, equally, at all times. The 4A’s framework requires that education should be ‘adaptable’, and this is especially true for those in emergency or crisis contexts. States might invoke the ICESCR limitation clause under Article 4 to limit the right to education, however remain bound by 5 minimum core obligations even during times of crisis:

- Ensuring the right of access to public educational institutions and programmes on a non-discriminatory basis
- Ensuring that education conforms to the aims of education
- Providing universal, free, and compulsory primary education
- Adopting and implementing a national educational strategy that includes provision for secondary, higher, and fundamental education
- Ensuring parental freedom of education without interference from the state or non-state actors and the liberty of non-state actors to establish and direct educational institutions, both being subject to conformity with ‘minimum educational standards’

Any limitation of the right to education under Article 4 of the ICESCR would have to be *necessary, reasonable, and proportionate*, and special attention should be paid to marginalized groups. It is also recommended that countries develop emergency education preparedness plans within national education systems globally, with a strong basis on the availability, accessibility, acceptability and adaptability framework (Special Rapporteur on the Right to Education, 2020).

The Education 2030 Framework for Action specifically refers to the obligations of States to ‘Address education in emergency situations’—‘Countries must, therefore institute measures to develop inclusive, responsive and resilient education systems to meet the needs of children, youth and adults in crisis contexts.’ International humanitarian law may also be relevant, ensuring that States protect civilian people and objects including schools, teachers and students from attack.5

*Multiplying vulnerabilities*

COVID-19 has shone a light on the need for education systems that are resilient, responsive and capable of providing continuity of education through times of crisis. No education system in the world was prepared for the widespread disruption that was caused by the pandemic which worsened existing inequalities and increased school dropouts. For children in poor or unsafe housing, caring for others, experiencing economic difficulties or hunger, or with parents that speak a different language to that used in school, remote learning was a challenge (Special Rapporteur on the Right to Education, 2020). However, global pandemics are not the only crisis that necessitates an emergency response: natural hazards, climate change, conflict and social unrest all create urgent challenges for States. In zones of conflict, schools are subject to attacks, learners experience trauma and their journey to school is often perilous, raising questions regarding accountability. Natural hazards also may lead to the destruction of schools, roads and impact teachers.

The UNESCO Guidelines to strengthen the right to education in national frameworks (2021) describe ways that the right to education should be guaranteed throughout times of crisis, with obvious attention to distance learning solutions, such as the provision of print-based learning materials, television and radio broadcasting or through online channels using social media or learning platforms. Individual monitoring, evaluation and student support should also be in place to ensure that no learner is being left behind. Most importantly, distance learning is a temporary measure, and in-person teaching should be reinstated as soon as possible. To do so, measures need to be put in place that go beyond the crisis itself and encompass quick recovery and concrete remedial measures, including coping mechanisms, to ensure the transition back to school in a safe, supportive and inclusive environment.

**Points for discussion**

- What specific international guarantees and safeguards should be foreseen to ensure the right to education is fully enforced in emergency contexts such as pandemics, natural hazards, conflicts, and climate disasters?

### 2.7. Human rights through education

#### Aims of education

The **overarching aims of education** have evolved over the past century. During the 20th century, education was principally aimed at supporting national citizenship and development efforts leading to a strong focus on the implementation of compulsory schooling for children and youth.

However, at the time of the drafting of the 1960 Convention, education was to be:

> ... directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace

The CRC set out the aims of education comprehensively in 1989 in Article 29, with a strong focus on global citizenship education, human rights education, the promotion of peace and respect for the nature. However, since the CRC came into force, ‘[w]idening social and economic inequality, climate change, biodiversity loss, resource use that exceeds planetary boundaries, democratic backsliding, disruptive technological automation, and violence’ have led us to a new juncture where we must reconsider whether the formulation of education’s aims in the international legal framework is still relevant and to what extent education today fulfils these aims (International Commission on the Futures of Education, 2021).

Interesting points were raised in the Global Conversation around the evolving responsibility of education to tackle and address **global inequalities, threats to democracy and civil unrest**. Education on **climate change and nature** was also considered an imperative function of a 21st century education system, and one respondent argued that ‘**more is needed in socio-emotional and values education**’.

Target 4.7 of SDG4 commits States to ensuring that all learners acquire the knowledge and skills needed to **promote sustainable development through human rights education**, as well as education
on global citizenship and sustainable lifestyles, among others. This target is measured by the extent to which human rights education is mainstreamed in education but in reality often treated as a minor subject in the school curriculum.

To fully incorporate and mainstream human rights, peace-building and global citizenship into education, it could be argued that the building of human qualities such as solidarity, compassion, ethics, and empathy needs to become a central objective in the design of pedagogies and curricula. This, in turn, will make education more inclusive by expanding understanding of other learners and educators.

The process has started for the revision of the 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms. A preliminary study on this update suggests new themes might include ‘student and community voice and participation’, ‘learning through the arts and culture’, ‘media information literacy’, the ‘promotion of gender equality through education’, and that a lifelong learning approach could enrich the Recommendation.

In addition, hate speech and more generally violent extremism affect every society and pose grave challenges to human rights. While there is no single, short-term response, education is nevertheless a key tool to prevent violent extremism. The International Convention on the Elimination of All Forms of Racial Discrimination (1966) which proscribes ideas or incitement to racial hatred, discrimination and/or violence (Article 4) and the ICCPR which proscribes advocacy of national, racial or religious hatred (Article 20(2)) offer the foundations, yet, in light of current challenges, the measures required by States in education deserve greater clarity.

Education for Health and Wellbeing

States are obligated to ensure good quality education and a conducive learning environment, though State obligations are somewhat vague.

The CRC in Article 19 (1) requires states to take all measures to protect children from: ‘all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse’. Yet, specifically regarding the education environment, the obligations are not explicit. Violence, including harassment, bullying and cyberbullying, gender-based violence and corporal punishment, can seriously compromise the realization of a child’s right to education. Besides, the scope of the CRC does not cover adults, who beyond secondary level, also experience violence in education.

To foster health and well-being, the right to comprehensive sexuality education (CSE) is another avenue that could be explored. CSE has many positive effects, including increasing knowledge about different aspects of sexuality, behaviours and risks of pregnancy or HIV and other STIs (UNESCO, 2018a). A human rights approach to CSE straddles the right to education and the right to health, has importance for gender equality and can be transformative and empowering for learners.

Points for discussion

- Is it timely or necessary to update the aims of education as outlined in the CRC and 1960 Convention considering current threats to justice, freedom, human rights and peace?
- How can education be shaped to foster respect of diversity, solidarity, compassion, ethics, and empathy? How can we measure these qualities?
• In light of the revision of the 1974 Recommendation, which provisions and guarantees new or existing, might benefit from having legally-binding status in international human rights law?

• How can the protection against bullying and violence be enhanced in education settings to ensure a conducive learning environment?

• Should comprehensive sexuality education be given a normative basis within the right to education framework?

Section 3. Ensuring learning throughout life

When the right to education was initially conceived and developed, the traditional levels of a formal education system – primary, secondary and tertiary – were understandably at the forefront of legislators’ minds. Education was largely equated to schooling. Even at the development of the Millennium Goals, MDG2 as the principal education goal focussed exclusively on achieving universal primary education. In the intervening years, there has been a major shift in our understanding and definition of education. By the time that the Sustainable Development Goals were drafted in 2015, SDG4 outlined as its mission statement to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’.

The right to education now takes a holistic and inclusive view, both by broadening our conception around what education is- learning generally, rather than formal schooling-, and around who it is for- people of all ages, not only children, while recognizing that schoolchildren learn outside of school walls, in family, society and/or through media. In other words, education is extended and enriched ‘in all times and spaces’ (International Commission on the Futures of Education, 2021). Opportunities as to formal, non-formal, informal and flexible learning pathways over a lifetime can have a truly transformative potential for individuals and special importance for vulnerable groups who may not have flourished in a traditional school environment.

3.1. Right to lifelong learning and its implications

The concept of lifelong learning does not simply mean learning that happens according to school curricula or before and after formal schooling, nor is it equated with skilling and re-skilling individuals for an ever-changing workforce. States should guarantee a ‘continuity of learning throughout life’. This can be supported by a diversity of learning modalities and environments and made accessible through open resources and technologies.

Opportunities for learning can be found in work, caretaking, leisure, artistic pursuits, cultural practices, sports, civic and community life, social action, infrastructure, digital and media engagement, for example. Education systems and schools need to review their curricula in a way to reflect on what schoolchildren can acquire and learn better in school or outside of school. A thoughtful response to the Global Conversation thoughtfully reflected on the lack of lifelong learning opportunities in their country and imaged the creation of ‘municipal hubs of knowledge and exchange’, providing a physical space dedicated to learning at every age and occasion.
Where education offerings are extended to have a pre-primary and post-secondary scope, it is important that ‘finances, resources and infrastructure’ keep up with demand to avoid legal provisions being void of practicality, as noted by one respondent to the Global Conversation. However, the primary challenge in making the leap from lifelong learning as before-and-after-school to lifelong learning as offering continuous opportunities for learning is that it is more difficult to build concrete rights, duties and obligations for law and policy-makers to enforce.

One angle is to focus the right to lifelong learning on vulnerable groups and its synergy with the concept of inclusion, recognizing that traditional, formal education may not be accessible to some. Particularly vulnerable groups such as migrants, refugees, older people, indigenous communities, rural populations, prisoners and people with disabilities may require properly accredited alternative non-formal and informal learning modalities to succeed.

Other aspects of a right to lifelong learning that should be significant are:
- the recognition, validation and accreditation of learning outcomes acquired in different contexts
- the free availability of educational resources and open technology both online and offline and in a wide variety of languages and for all ages, including the elderly (this may be thought of as an ‘education commons’).

These aspects of lifelong learning, alongside the extension of formal education to include universally accessible pre-primary and post-secondary considerations, must be effectively integrated into national legislation. Clearly articulated policies and a government structure dedicated to lifelong learning will ensure effective coordination. It is foreseeable that the mandate of education ministries and the role and responsibilities of the State may evolve alongside the human right dimension of lifelong learning.

Points for discussion
- Which levels and types of education or learning pathways and channels require clarifying the existing and/or establishing new State obligations?
- How to establish lifelong and life-wide learning opportunities in the right to education normative framework? What commitments should States make in their laws and policies?
- Who are the right-holders and who should be the duty bearers in the context of lifelong learning entitlements?

3.2. Youth and adult literacy

International normative framework

Adult literacy programmes have long been a priority for policy-makers and international instruments such as the CRC, the CEDAW and regional charters in Africa, the Americas and Arab States, pay special attention to eradicating illiteracy. The 1960 Convention and the ICESCR lay down the obligation of States regarding continuing education, of which literacy is part. The major normative base of youth and adult literacy is the UNESCO Recommendation on Adult Learning and Education adopted in 2015 which provides normative guidance in five areas of action: policy; governance; financing; participation, inclusion and equity; and quality.
SDG4, under Target 4.6 calls on States to ‘ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy’. The Framework for Action affirms that literacy is part of the right to education and cites the benefits of literacy, in particular for women, including greater participation in the labour market, delayed marriage, and improved child and family health and nutrition; in turn, helping to reduce poverty and expand life opportunities.

**Modern challenges to literacy**

Despite the crucial nature of literacy programmes, COVID-19 unfortunately had hugely negative repercussions. Adult literacy was absent from national education response plans and programmes that did exist were mainly suspended. COVID-19 has left illiterate individuals, those in the greatest need of education and the hardest hit from the social and economic impacts of the pandemic, without recourse to the education that they desperately need.

Literacy programmes and other non-formal education programmes lack regulation. Youth and adult literacy educators are one of the least supported groups of educators, they tend to face significant challenges from short-term contracts, lack of training opportunities, insufficient and irregular renumerations and limited career development prospects.

**Points of discussion**

- What training requirements and rights regarding the teaching profession in the non-formal sector, such as literacy educators, need to be further specified in the international normative framework?

**3.3. Early childhood care and education**

**A rights-based approach in early childhood**

There is increasing recognition that early childhood, defined by the CRC Committee as 0-8 years of age, is an absolutely critical development period. Small children undergo the most rapid stage of development, in terms of their maturing bodies and nervous systems, improving mobility and motor skills and increasing levels of communication, intellectual capacities and socio-emotional growth. There is a need to advocate for certain rights for this age group to ensure that this growth happens in an optimal environment to give them the best possible start to life. ECCE is known to play an imperative role in levelling the playing field somewhat, so disadvantaged children have a stronger start in life and enter primary education ready to learn.6

**Rights in early childhood**

The CRC committee, in General Comment No. 7 (2005), has clarified that the overarching rights of the Convention also apply to early childhood, namely, the principle of non-discrimination; the best interests of the child principle; the right to life, survival and development and the right to have his or her views taken into account and to be heard. Other legal provisions that the State is expected to adopt are a holistic combination of those relating to health, those related to care and education and

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rights relating to the family, among others. These interrelated rights require a cross-sectoral approach on the part of ministries.

**Rights of parents and guardians**

Rights in the field of ECCE go hand-in-hand with concerns about gender equality whereby in many countries, unpaid (and paid) childcare is predominantly undertaken by mothers. The CRC Committee has confirmed that State parties are to provide assistance to parents and guardians by developing institutions, facilities and services for the care of children and that working parents have the right to benefit from child-care services and facilities that they are eligible (Article 18). In early childhood, children’s rights are very much dependent on the well-being and resources available to those responsible for their care. Recognizing these interdependencies and the importance of giving both parents the opportunity to return to work after the birth of a child are a crucial aspect of policy and planning in early childhood.

**Pre-primary education**

Education in the early childhood period has known benefits. Educare, as this stage of education / care is sometimes dubbed, signals a shift towards integrated services and a multi-sectoral approach and acknowledges a wider role for parents, family and community as well as the contribution of organized programmes of early childhood education provided by the State, the community or civil society institutions.

The pre-primary level of ECCE has gained momentum in recent years. Although not an explicit right in international law, General Comment No. 7 of the CRC Committee has interpreted ‘the right to education during early childhood as beginning at birth’ creating the foundation for the evolving inclusion of the pre-primary level as part of the wider right to education. Furthermore, to achieve SDG4 Target 4.2 states are to implement at least one year of free and compulsory pre-primary education in law and policy.

As can be seen in the graph below, an increasing number of States are realizing this as a right in their legal framework.
UNESCO is now at the forefront of a new initiative to strengthen early childhood services worldwide. The Global Partnership Strategy (GPS) for Early Childhood Care and Education has been developed through a webinar, technical meetings and a high-level session and is set to be launched in December 2021.

**Discussion Points**

- How to ensure that political commitment to ECCE is translated and reinforced in international human rights law, and consequently at national level to ensure access on an equal basis?
- What are the conditions required for ECCE in terms of workforce (to ensure it is highly qualified and gender-balanced), nutrition, facilities, play spaces, including access to green spaces, among others to ensure a child-centered and holistic approach?
- For the full realization of the right to education, certain societal issues need to be addressed. How can States ensure the shared responsibility of childcare? What support should be provided for parents with young children?

### 3.4. Tertiary education

**Fees and financing**

One of the most common concerns for many of the respondents to the Global Conversation was the expense of higher education in their country. This was true of both developed and developing countries – ‘university fees are a serious block to equitable access to quality education for the majority of the population which lives in poverty’, was one response, another reported ‘off-putting fees at university level for students from poorer backgrounds’.

As tertiary level education increasingly becomes a necessary precursor for a wide array of careers, these findings seem to go against the very heart of the 1960 Convention, by maintaining indirectly
discriminatory practices against vulnerable groups- such as those from poor backgrounds- but also migrants, refugees and minorities and so on. The ICESCR and the 1960 Convention require States to make higher education equally accessible to all on the basis of capacity (Article 13 (2) and Article 4 (a) respectively). The ICESCR calls on States to make higher education progressively free.

55 years since ratification of the ICESCR, 27 Member States (33% of those that reported) declared that their national higher education system is available free of charge in public universities in the context of the 10th Consultation. Some countries illustrated promising measures, such as Finland, where higher education is free, student meals are subsidized and financial aid offered. Argentina, Germany, France and Norway also are among the states that offer free higher education (or at a very low cost).

**Inequalities in tertiary education**

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

**Quality and relevance**

The quality and relevant of higher education requires some attention. Uniform quality assurance processes in higher education institutions can contribute to the better performance of institutions; lead to greater efficiency, transparency, accountability; produce better quality graduates; better mobilize public resources; increase cross-border provisions for accessing and assessing higher education.

**Admissions procedures**

When the right to higher education was conceived, its access was limited to those that were thought to have the ‘capacity’ or ‘merit’ to engage in the learning as per Article 13(2)(c) of the ICESCR. While such concepts of ‘merit’ and ‘capacity’ are in principle designed to prevent the use of unfair or discriminatory criteria when undergoing the selective process of admission to higher education, their use does not always address the existing social inequalities in between or among social groups.

The use of high school results, rank-in-class measures and standardized high-stakes tests does not compensate for systemic barriers that exist in vulnerable populations. These criteria reflect knowledge already gained, but not the ability to succeed going forward. The SDG-Education 2030 Steering Committee, in their publication Making Higher Education More Inclusive (2020), redefines the term ‘merit’ as ‘the potential to succeed’, making the criteria ‘merit in context’.

A positive example can be found at the University of British Columbia, where in 2019 a new, holistic approach to university admissions was introduced - opting to examine the entirety of one’s high school transcript to determine not only a static, median grade-point average, but whether the individual in question has challenged themselves or excelled in courses relevant to their study of choice (National Center on Education and the Economy, 2021).
Although provision of tertiary level TVET has been enhanced globally, quantity has often prevailed over quality. TVET has the dual purpose of preparing youth for work and continuing professional development, while also regarded as a crucial vehicle for social equity and inclusion (as well as sustainable development) in that it tends to reach parts of the population ordinarily excluded from general education.

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

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

**Points for discussion**

- What more can be done to make higher education progressively free or to advance modes of financial support available at tertiary level?
- What sort of mechanisms could be envisaged to ensure the right to tertiary education is inclusive and available to all? For example, monitoring and evaluation processes, provision of extra continuous funding support, re-evaluation of admissions policies?

**Section 4. Education delivery and online learner protection**

At the peak of the COVID-19 crisis, over 1.6 billion learners in more than 190 countries were out-of-school as classrooms closed their doors to slow down the spread of the virus. Two-thirds of an academic year was lost on average worldwide due to full or partial school closures. Even now, schooling continues to be disrupted for students for the second year running and an estimated 140 million young minds were unable to attend their first day of school in September 2021.7

The closure of schools worldwide led to a dramatic transformation in the way that education was delivered, with most countries moving to digital and remote learning modalities. By October 2020, 90% of 135 countries were using online platforms for remote learning (UNESCO, UNICEF and the World Bank, 2020).

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7 For more information, see: UNESCO, Global monitoring of school closures caused by COVID-19: an interactive map. Accessible at: [https://en.unesco.org/covid19/educationresponse#schoolclosures](https://en.unesco.org/covid19/educationresponse#schoolclosures).
As we consider the right to education in the context of remote learning modalities, it is important to carefully consider the form that new provisions should take, bearing in mind that legal provisions in the form of international treaties are relatively inflexible as to changing contexts.

### 4.1 Remote learning and digital inclusion

**Technology and increasing marginalization**

A large proportion of those that responded to the Global Conversation around the evolving right to education highlighted digital inclusion and connectivity as one of the key emerging challenges today, believing that COVID-19 has unfortunately broadened the digital divide in their home country.

6. Given the rapid evolution of education delivery, what are the new emerging challenges to the right to education? Please select all that apply.

![Graph showing responses to emerging education challenges](source: Graph taken from the recent survey on the evolving right to education, extracted from Google Forms, correct as of 18/11/2021.)

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

Digital technologies represent vast opportunities for learning, knowledge-sharing, connection and collaboration (Report of the Special Rapporteur on the Right to Education, 2016). The power of ICTs to complement and supplement formal schooling was highlighted in the Education 2030 Framework for Action and the Qingdao Declaration (2015).

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

Furthermore, barriers to digital education are not evenly geographically dispersed. Across the globe, 50 per cent of learners did not have access to a household computer, whereas in Sub-Saharan Africa, this figure was 89 per cent.8 Within countries, the urban-rural divide has undoubtably been intensified, as people in urban areas tend to have access to better quality internet, and those in remote areas are sometimes cut off entirely.

There is also a growing need for digital literacy. It is becoming clear that our concept of literacy might also need to encompass digital literacy skills, which are increasingly essential for education, work and training. Digital literacy does not mean just functional skills and technical know-how, but also encompasses ‘critical digital literacy’ – understanding the politics of digital society and digital economy, recognizing the motivations of actors in digital spaces and the way that technologies exert profound influence on people (International Commission on the Futures of Education, 2021).

**Interconnected rights**

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

Several respondents to the Global Conversation specified that, from their perspective, internet connectivity is now a ‘basic necessity’ or a ‘service component’ of the right to education. In 2016, the UN General Assembly (2016) passed a non-binding Resolution that ‘declared internet access a basic right’ and ‘an important tool to facilitate the promotion of the right to education’ but only went as far as to prevent governments from ‘taking away’ access, rather than guaranteeing it.

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

**Promising practices**

In 2007, Uruguay installed and maintained a computer infrastructure (laptops, digital contents, resources, programmes etc.) that reaches all elementary and public schools, with training and support for both students and teachers and adaptive systems and resources for persons with disabilities (UNESCO, 2018b). Egypt reported to the 10th Consultation the establishment of the Egyptian Knowledge Bank in 2015. The Bank is a large collection of online educational resources available free of charge to all Egyptians. Tablet computers are distributed free of charge to all first and second year secondary students.

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Some Guiding Frameworks

The CRC Committee, in recent General Comment No. 25, elaborated a number of legislative, administrative and other measures that States are should make to protect children in the digital environment, including equitable investment in technological infrastructure in learner settings, teaching digital literacy in schools and developing evidence-based policies and standards for schools to enhance educational benefits.

UNESCO, in partnership with Dubai Cares, are in the process of developing a Global Declaration on Connectivity for Education. The Declaration centers the most marginalized and aims to expand investments in digital education content, recognizing the need for pedagogical transformation.

Points for discussion

- How to ensure digital inclusion and digital literacy in a way that does not lead to or increase discrimination or inequalities in education?
- Should the concept and definition of literacy be expanded to include digital literacy?
- Is the right to connectivity and access to digital learning becoming constituent to the right to education? Is access to the internet now a basic prerequisite to fulfil the 4As of the right to education?

4.2 Learner’s online protection and privacy

The increasing digitalization and datafication of education raise pressing concerns linked to privacy and data protection. While AI, data-based analytics and other ICTs hold huge potential for the education sector and the creation of flexible lifelong learning pathways, they are also contributing to an increasing expanse of personal data processing.

Although the international legal, policy and regulatory frameworks enshrine a general right to privacy there is no explicit legal protection for personal data. Some believe that the protection of online data and surveillance should be recognized legally as a part of the existing right to privacy in international human rights law. Currently, data protection principles are instead the focus of regional or multilateral bodies and organizations such as the Global Privacy Assembly (GPA) to the European Union, the Council of Europe, the OECD and more recently the African Union and the Asia Pacific Economic Cooperation (APEC). At the national level, 128 States out of 194 have legislation on the topic of data protection and privacy (UNCATD).

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

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

Aside from a security breach, the threats inherent in the widespread collection of learners’ data are wide-ranging: the profiling of students; data used for non-educational and commercial purposes such as targeted advertising; a lack of transparency of algorithms and the bias and misinterpretations that can result; a lack of accountability and privacy intrusions where cameras and microphones are used in the private spaces of teachers and learners are just a few of the risks involved.9

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


Finally, a Recommendation on the Ethics of Artificial Intelligence has been adopted by UNESCO as a comprehensive global standard-setting instrument to provide AI with a strong ethical basis, though this instrument concerns AI exclusively and is not specific to education.

9 For more information on the threats to privacy and data protection in education, look out for the UNESCO publication, ‘Minding the data’, in coming months.
Although regulations do not need to be specific as to learners’ online activities, it is important to ensure that learners’ rights are effectively protected. This means that regulations can accommodate shifting and new technologies and can provide adequate legal protection around consent, data processing, data security and transparency and that, ideally, data protection authorities are established for enforcement.

**Points for discussion**

- **What sort of approach could adequately protect learners’ data and ensure their privacy in online education?**
- **Should the normative framework on the right to education contain binding provisions in this area, and if so, what might these provisions cover?**

### 4.3 The role of non-state actors

The right to education confers educational freedom regarding the provision of education by non-state actors in Articles 2(c) and 5(1)(b) of the 1960 Convention. Regardless, it is the State that has primary responsibility for the provision of the right to education.

Aside from an increasing number of commercial actors in private education, the shift to digital learning has led to a **rise in non-state education providers and a reliance on private technology providers**. In parallel, government education budgets and international development aid towards education have been drastically reduced, opening the door for greater private sector involvement. As part of their primary responsibility to respect, protect and fulfil the right to education, the Abidjan Principles (2019) elucidated that States must adopt and enforce effective regulatory measures to ensure the right to education where private actors are involved. This raises questions as to what form regulation of private education technology (‘EdTech’) companies might take.

Non-state actors have performed a **crucial role in maintaining access** to education during the crisis. Education management, infrastructure and delivery, curricular content and connectivity provided by private providers kept access to education open, as well as lines of communication between learners and teachers.

However, private providers taking more responsibility for the provision of education is not without **risks**. Privatization of education can lead to education of a low quality where it is not well-regulated and there may be a financial burden on parents and students. There are also concerns that public funding is being diverted to private interest, and that education stakeholders must monitor that education resources are used advancing the interests and capabilities of learners and be vigilant of corruption and the diversion of resources to advance private aims.

It is imperative that key decisions about digital technologies in education are made in the public sphere and that the private control of digital infrastructures and enclosure of the ‘digital knowledge commons’ is addressed. The increasing reliance on private services such as Google Scholar and Google Classroom is also a concern as they do not generate advertising revenue, so their continued existence is precarious and dependant on Google’s shifting priorities (International Commission on the Futures of Education, 2021, p. 124).
General Comment No. 25 (2021) of the CRC Committee recognized that the business sector now affects children’s rights directly and indirectly in the provision of services and products relating to the digital environment. States should put in place, monitor and enforce laws and regulations to prevent violations.

**Points for discussion**

- **How should the role of private actors in the form of technology companies be regulated in the context of education? How can it be ensured that private suppliers ‘supplement, rather than supplant’ the role of the State?**

4.4 **Teaching profession**

Responses to the Global Conversation highlighted concerns about teachers. Some responses shone a light on the mental health and well-being of teachers in an education system that was overstretched, even before the pandemic. Others noted a *lack of quality teachers ... because teachers are not paid with a good salary*, an urgent *need to address and expand capacity of teacher training institutes*, the lack of *comprehensive professional development system for teachers* and that teachers in higher education institutions *should get additional IT training*.

Similarly, 52 out of 57 States that responded to a UNESCO survey on the effects of COVID-19 on higher education indicated a **significant need for teacher training in online and distance learning** in order to overcome the challenges posed by the pandemic, followed by the need to develop guidelines, tools, and learning materials to further develop distance learning. Many teachers would not have been trained on delivering instruction remotely as part of their formal training. As students and teachers rely more and more on online sources, teachers also require critical digital skills to navigate the new knowledge landscape.

A survey carried out by Education International found that only 29 per cent of respondents found that Governments had provided adequate and sufficient support for teachers in the transition to digital learning (Education International, 2020). New and difficult demands on teachers may push good teachers to leave the profession, which would be another blow to education in the wake of COVID-19.

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

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

**Points for discussion**

- How have modern trends and challenges in education affected the teaching profession, and should the international normative framework be updated to take these aspects into account?
Conclusion

This background document raises many more questions than it will be possible to cover in the context of the International Seminar in December, but it has hopefully opened avenues of discussion that can be built upon over the coming months. It has questioned how we can better protect vulnerable groups, for example, through specific provisions that tackle their major barriers to education. Perhaps we need more explicit protection for pregnant girls and young mothers, or provisions that clarify State responsibilities in the right to education for the increasing numbers of people that are displaced and crossing borders. Clarification on rights during early childhood, post-secondary and into adulthood will affect all learners, but especially those that struggle in traditional levels of schooling.

COVID-19 and the shockwaves of the crisis continue to ripple through our countries, and the responsibility to build back better and create more sustainable, resilient and inclusive education systems signals a huge opportunity for change. But Covid-19 is not the only crisis that is looming: climate change and increasing polarization are also urgent concerns. This document has considered how the aims of education, as they are defined, might require a review and how the normative framework can ensure that today’s youths are armed with the tools and qualities to change the world for the better.

Opportunities in education are rapidly opening up for some learners, creating optimism. Worldwide, many more are experiencing the transformative value of tertiary education than ever before. Digital education and a wealth of online information (though also misinformation) is now reaching children and adults that might otherwise have had access to scant teaching and resources. This broadening of the scope of education is not yet reflected holistically in the international normative framework, nor the governance and monitoring systems in place. Personal data collection, inequities in access, concerns around quality and the rise in non-State actors are just a number of possible areas that might benefit from inclusion in the right to education agenda.

Most importantly, it is hoped that these questions can give rise to bilateral, regional and international cooperation that takes proactive and progressive action to review the existing provisions and ensure that they remain relevant. The right to education does not exist in a vacuum, but co-relates to many other rights, from rights to culture and health, to those of the children and the elderly. This work will therefore require a collaborative and comprehensive vision. On that note, as this process of collective reflection commences, we would like to thank you wholeheartedly for your time and participation in the International Seminar.

The education landscape looks immensely different to that of 1960, when the Convention against Discrimination in Education came into force. Primary enrollment is close to universal in most countries, many more girls are staying in formal education for the same length of time as boys – and longer in some countries – and the majority of States now enshrine the right to education in their constitutions and legislation: there is much to celebrate. Today, we must try to look ahead sixty years. We must imagine what the world might look like, and what will be needed of education. From there, the right to education will be the greatest tool to shape the future that we would like to see.
The references listed below are those that are directly cited in the Background Document. Many other sources were used to guide and inform the ideas found within.


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The Right to Education in the 21st Century

As a contribution to Human Rights Day 2021, UNESCO is holding an International Seminar to foster a global dialogue around the evolving dimensions of the right to education. This document serves as a background paper for the discussions.

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