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BACKGROUND PAPER

LEARNING

to realize education's promise

ACHIEVING SDG4 THROUGH A HUMAN RIGHTS BASED APPROACH TO EDUCATION

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**Achieving SDG4
through a
Human Rights Based Approach to Education**

A Background Paper for World Development Report 2018

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List of acronyms

ACHPR – African Commission on Human and Peoples’ Rights
CEDAW – Convention on the Elimination of all Forms of Discrimination Against Women
CERD – Convention on the Elimination of All Forms of Racial Discrimination
CRC – Convention on the Rights of the Child
CRPD – Convention on the Rights of Persons with Disabilities
CSOs – Civil Society Organisations
EFA – Education for All
ESCR – Economic, Social and Cultural Rights
GCE – Global Campaign for Education
GCPEA – Global Coalition to Protect Education from Attack
GDP – Gross Domestic Product
GNP – Gross National Product
GPE – Global Partnership for Education
HRBA – Human Rights-Based Approach
HRBA-E – Human Rights-Based Approach to Education
ICESCR – International Covenant on Economic, Social and Cultural Rights
IDS – Institute of Development Studies, University of Sussex
IFFEd – International Financing Facility for Education
IFFIm – International Finance Facility for Immunization
IIEP – International Institute for Education Planning
MDGs – Millennium Development Goals
NGO – Non-Governmental Organisation
ODA – Overseas Development Assistance
OECD – Organisation for Economic Co-operation and Development
OHCHR – Office High Commissioner for Human Rights
RTE – Right to Education Project
SDGs – Sustainable Development Goals
SDG4 – Sustainable Development Goal 4 on education
UDHR – Universal Declaration of Human Rights
UN – United Nations
UNICEF – United Nations International Children’s Emergency Fund
UNESCO – United Nations Educational, Scientific and Cultural Organization
UNESCO GEM – Global Education Monitoring report (formally known as the GMR)
UNESCO GMR – Global Monitoring Report for EFA
UIS – UNESCO Institute of Statistics
WB – World Bank

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Introduction

Quality education is a critical dimension for the achievement of sustainable development. Goal 4 of the new sustainable development agenda recognises this and makes a renewed commitment to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all by 2030 (UN, 2015). The Education 2030 agenda also recognizes that sustainable development goal 4 (SDG4) is “[...] rights-based and inspired by a humanistic vision of education and development, based on the principles of human rights [...] shared responsibility and accountability.” (UNESCO, 2015, p.6). The renewed political commitment set out in SDG4 is an opportunity to ensure strong coherence between education policy and the right to education first articulated more than 70 years ago.

This paper presents the results of a desk-based study on a human rights-based approach to education (HRBA-E) in the context of SDG4. It explores the ways in which such an approach can guide policy, planning, and the delivery of education in observance with agreed international frameworks providing for the right to education. The paper argues that the human rights conventions on the right to education are not passive instruments designed to remain only at the level of discourse but, as legal obligations, require action from the State and should be central in the development of education services, including in the context of large scale displacement and crisis. This paper outlines the legally binding commitments of the right to education. It considers how these can be applied practically through a human rights-based approach to education (HRBA-E) to address the continuing barriers to access and completion of quality education and learning.

A HRBA-E is a conceptual and practical framework to translate into action the standards set out in the right to education. It aims to ensure that education systems and services are coherent with, and do not undermine, the legal obligations to respect, protect, and fulfill these conventions. It provides direction on operationalizing the standards set out in the international conventions that deal with the right to education to address issues at the center of debate in SDG4, such as quality, learning, equity, financing, as well as the public and private provision of education. It is an approach that helps to fulfil states’ obligations, actively addressing discrimination and encouraging targeted action for the poorest and most vulnerable children. The paper presents evidence that suggests a HRBA-E can enable more equitable and efficient education systems, concluding that adopting a HRBA-E creates a greater potential for the achievement of SDG4.

The paper is structured in four sections that examine: (1) the promise of education and the scale of unfulfilled obligations; (2) the conceptual roots of a human-rights approach and its application to education; (3) how a HRBA-E is central to issues critical for the achievement of SDG4, such as learning, equity and financing; and (4) the issue of accountability: the World Bank and human rights, final reflections on a HRBA-E and SDG4.

As a desk based study this paper is constrained in its scope. Further research in this area using primary data and cases studies could offer more in-depth evidence and assessment to further illustrate and evaluate this type of approach.

Section 1: The Promise of Education

1.1 The Promise of Education: a Driving Force for Development

Globally, one in every ten people live in extreme poverty, facing a daily struggle to survive with limited opportunities to escape the social and economic deprivations that may have affected their families for generations. The sustainable development agenda renews the commitment of governments and their partners to transform the world economically, socially, and environmentally, for lasting and significant change that has both people and the planet at its center. Respect for human rights—including the right to education—and equality are fundamental to the vision of a sustainable future, where everyone has the opportunity to realize their full potential and no one is left behind (UN, 2015).

Education is one of the 17 sustainable development goals (SDGs) and governments, with their international partners, have made a commitment to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” (Sustainable Development Goal 4 – SDG4). Education is a public good, valued universally by people around the world regardless of socio-economic or cultural background, and by governments of all political persuasions. It is a major driving force for development: no country has achieved development without universalising education and no country has universalised education without meeting its obligations to ensure free, quality, inclusive education for all. Without quality, equitable, and inclusive education low and middle income countries will struggle to reach greater development and developed countries will fail to address long-standing inequality within their population.

Quality education is an end in itself, enriching knowledge and enhancing the capacity to analyze and understand a broad range of topics, and is the means to more inclusive and sustainable societies. From health outcomes to economic prosperity, access to and completion of equitable, quality education can help transform the lives of individuals and their countries (UNESCO, 2014).

Recent data shows that “a good education” is the highest priority for people regardless of age, sex, level of existing education, or where the person lives (MyWorld Analytics, 2015). Even in the most challenging situations of conflict and displacement, education is the top priority for affected populations (ODI, 2016), with Save the Children finding that “99% of children in crisis situations see education as a priority” (Save the Children UK, 2015, p.1). The value these children—and others—place on education is well founded. Quality education makes an important contribution to an individual’s income, health and more active participation in society, with benefits that reach beyond the individual to their families, community and country.

The evidence is clear, participation in quality education increases an individual’s prospect to gain higher wages and can help break inter-generational cycles of poverty, and increases in average education levels of a population create growth in a country’s GDP (UNESCO, 2014). The promise that education offers is enormous: “If all students in low income countries left school with basic reading skills, 171 million people could be lifted out of poverty, which would be equivalent to a 12% cut in world poverty” (UNESCO, 2010). The value of education cannot and should not, however, be limited to monetary value alone—quality (rights based) education is a key mechanism to support the realization of other human rights. It reduces child and maternal mortality, facilitates healthier lives, and can translate into more active participation in political life of one’s country, increasing electoral turnout (UNESCO, 2014). It can help build more tolerant societies (Ibid) and reduces the risk of conflict (World Bank, 2005).

Through the ratification of one or more international human rights treaties all States have made a legal commitment to provide free, quality, inclusive education for all (Aubry and Dorsi, 2016). For all children, including those growing up in poverty, conflict, or other fragile context or marginalized communities, quality education offers hope: hope of a better future where they can develop to their full potential. The promise of education, however, is more than just hope, it is every child’s right, enshrined in international law and translated into obligations that require States to respect, protect, and fulfil this right without discrimination.

1.2 The Right to Education: Respect, Protect, and Fulfil

The right to education was first articulated almost 70 years ago in the Universal Declaration of Human Rights (UDHR). Although the UDHR itself is not a legally binding document, it set a common standard for all people and countries, outlining a set of fundamental human rights to be fulfilled and protected universally without discrimination. Among its provisions, Article 26 of the UDHR declared that “[e]veryone has the right to education”, and that education “be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms” (UN, 1948). Subsequent human rights conventions, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the UN Convention of the Rights of the Child (CRC), make the universal right to education a legally binding obligation

on those States who have signed and ratified these treaties. Article 13 of the ICESCR reaffirms the commitment that everyone has the right to education without discrimination, and it sets out more specific details about the provisions of education at different levels. It establishes that primary education should be free and compulsory and that secondary education should be “made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education” (Article 13 (b), ICESCR). Article 13 also makes recommendations on the progressive introduction of free higher education based on capacity, and promotes fundamental education for people who have not completed primary education. The CRC stresses that education should enable a child to develop to their fullest potential, promote human rights and fundamental freedoms, and that it should prepare “the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin” (Article 29 (d) CRC). Central to all international human rights treaties is the principle of non-discrimination. Each person is equal to the next, all rights apply equally, and no one should suffer discrimination on the basis of their ethnicity, gender, sexual orientation, because of disabilities, their religion, nationality, language, or wealth. A number of conventions, namely the International Convention on the Elimination of All Forms of Racial Discrimination (1969), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979), and the Convention on the Rights of Persons with Disabilities (CRPD, 2008) deal specifically with discrimination. UNESCO established the first binding obligation relating to education in its Convention against Discrimination in Education in 1960, which clearly sets out the principle of non-discrimination and equality of opportunity in education and to which all its Member States are accountable. These conventions also confer obligations on States with regard to education, reinforcing the need for governments to take ongoing and proactive action to address discrimination in education access, completion, and learning.

The provisions on the right to education international law are robust and long-standing, establishing both the access to as well as the aims of education. The ICESCR determines that “education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” (Article 13, 1 ICESCR) The ICESCR, the CRC, and other human rights treaties also clearly establish that education shall be directed at developing respect for human rights and fundamental freedoms. This aspect of the right to education was given increased visibility by the UN General Assembly, which launched a Decade for Human Rights Education, which ran from 1995-2004, and the subsequent World Programme for Human Rights Education (2005-ongoing) (UN, 2014).

In addition to human rights law, humanitarian law also provides protection of the right to education. The IV Geneva Convention Relative to the Protection of Civilian Person in Times of War (UN, 1949) prohibits the targeting of civilians and what are classified as ‘civilian objects’, which includes schools and hospitals (UN, 2013). In fact, “[t]he deliberate targeting or destruction of schools or hospitals (or other civilian objects) may amount to grave breaches of the law of armed conflict.” (Ibid, p. 19). The same convention mentions education in six of its articles, for example it determines that education is “facilitated in all circumstances” (Article 24) and that the “education of children and young people shall be ensured; they shall be allowed to attend schools” (Article 94) (Red Cross, 2017). The Convention Relating to the Status of Refugees adopted in 1951, protects the right to education, affirming that refugees be treated equally to nationals of the host country in respect to elementary education, and as favorable as possible for other levels of education, including the remission of fees and recognition of previous studies (i.e. school certificates, diplomas, degrees). This protection for refugee children and the obligation to provide them with assistance, to have their rights upheld is times of crisis also reaffirmed in the CRC (Article 22).

The protection of attacks against schools, which as mentioned above are classified as ‘civilian objects’, was further strengthened in 2011 with the UN Security Council Resolution 1998 that added attacks on schools and hospitals as a trigger for listing countries in the annexes of the Secretary-General’s Annual Report on Children and Armed Conflict. The one exception to this protection is when schools are deemed to be used for military

purposes, whereby their status as a civilian object is no longer considered valid. The ‘Safe School Declaration’, launched by the Government of Norway in 2015 (GCPEA 2015), has (at the time of writing) 64 signatories (GCPEA, 2017), and signals political commitment to the ‘Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict’ (GCPEA 2014) ensuring schools remain protected as ‘civilian objects’.

In addition to international human rights treaties, regional human rights systems add strength to the protection of human rights, with additional consideration of “regional customs, values, culture and practice”. Furthermore, 183 countries have legal provisions for compulsory education and 166 legal provisions for free education (UIS infographic, 2015). The legal provision for education, whether through the ratification of international treaties, regional systems, and/or national frameworks, is incredibly strong. In fact, “[a]ll States in the world ratified at least one treaty protecting the right to education” (Aubry and Dorsi, 2016, p.3).

The right to education is universally recognized and there should be no excuse for lack of action to ensure its progressive realization. The Declaration on the Right to Development specifically calls on states to “eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights” (UN, 1986, Article 6 (3)). Too often, however, State obligations and guarantees on the right to education are not translated into policy or delivery of education services on the ground, this violates their legal commitments and has devastating consequences not only for the individuals concerned but also for the country’s own growth and development. A HRBA-E brings rights to the center of any global, national, or local discussion and offers a path to the fulfillment of this right to education for all.

1.3 The Unfulfilled Promise of Education

Since the turn of the century important progress has been made in the realization of the right to education, with the number of out-of-school primary school children declining by 42% between 2000 and 2012 (UIS, 2015, p.13). This has been driven in large part by global policy initiatives such as the Millennium Development Goals (MDGs) and Education for All (EFA). While they may not be the only factor, the MDG goal on education and the EFA movement, are credited with propelling progress, with an additional 34 million children entering primary school between 2000-2015 than would have done so if previous trends had continued, and there are also 30% more young people enrolled in secondary school globally than compared to 1999. Some positive movement has also been made in achieving gender parity in education, with 63% of countries achieving gender parity at primary level, however, indicators on gender parity get progressively worse the higher up the education system with only 46% of countries achieving gender parity at lower secondary level and only a minority of 23% achieving gender parity at upper secondary (UNESCO, 2016). Despite positive trends, the enjoyment of the right to education remains a distant dream for many children. Each day an estimated 263 million children and youth are denied an education (UNESCO, 2016). This is a human rights violation on a massive scale against children, and it is the most vulnerable of these—the poorest children, disabled children, girls, other minority groups—who are most likely to miss out on an education, with the vast majority unlikely to ever set foot in a classroom.

Conflict and fragile political contexts are creating increased pressures on access to quality education, with a global total of 65.3 million people displaced worldwide (UNHCR, 2016), with estimates that there were 31.1 million new internal displacements by conflict, violence, and disasters in 2016 alone—equivalent of one person forced to flee their home every second (IDMC, 2017). The impact of conflict, fragility, and displacement on education are enormous, an estimated “75 million children aged 3-18 years living in 35 crisis-affected countries are in the most desperate need of educational support.” (ODI, 2016, p.10) For refugee children the picture is bleak, with only half enrolled in primary school and less than 25% enrolled in secondary school (Ibid). Girls are most severely impacted, “being 2.5 times more likely to be out of school than boys in countries affected by conflict.” (Ibid, p.10).

The challenges of ensuring the right to education in situations of humanitarian crisis, with the breakdown or weakening of education systems, is further impacted by more sinister actions, when in some instances state forces and non-state armed groups deliberately attack education. These deliberate targeted attacks which number in the thousands, include “bombing, shelling or burning of schools or universities, or the killing, injury, kidnapping, abduction or arbitrary arrest of students, teachers and academics” (GCPEA, 2014, p.41). These attacks constitute a grave violation of human rights and humanitarian law, according to which civilians and civilian objects, including schools, are protected.

The legacy of past—and ongoing—failures in fulfilling the right to education is evidenced by the 758 million youth and adults who still do not have basic literacy skills. The scale of adult illiteracy has huge ramifications for other rights, and particular the right of women, who account for two-thirds of illiterate adults.¹ Adult illiteracy is a human rights violation because the “enjoyment of the right to fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons.” (CESCR, 1999). These figures are not only the result of lack of access but also reflect a crisis in learning, with significant numbers of children who are in school not reaching minimum standards by grade 4. This learning crisis (discussed in more detail in section 3) is estimated to affect at least 250 million children (UNESCO, 2014).

The right to education was first articulated in 1948 and yet, as the table from UNESCO shows, it will not be until 2086 that universal access to primary school will be achieved (for girls), while projections for lower and upper secondary level are for beyond 2100.

TABLE 1

Projected completion rates (2015, 2030 and 2050) and year of achieving 95%-97% completion rates

	Primary				Lower secondary				Upper secondary			
	Low income	Lower middle income	Upper middle income	Low & middle income	Low income	Lower middle income	Upper middle income	Low & middle income	Low income	Lower middle income	Upper middle income	Low & middle income
2015 (%)	64	85	96	84	39	68	86	67	18	39	50	38
2030 (%)	76	92	98	89	50	80	92	76	26	52	63	50
2050 (%)	87	96	99	94	66	90	96	85	38	70	78	63
95%	2073	2042	2010	2053	after 2100	2067	2044	2086	after 2100	after 2100	2094	after 2100
97%	2085	2054	2021	2066	after 2100	2079	2056	2100	after 2100	after 2100	after 2100	after 2100

(UNESCO, 2015e, p.3)

It is shocking that almost 70 years since the Universal Declaration of Human Rights first set out the right to education, current projections suggest some children will have to wait another 70 years before even their universal right to primary education is achieved. There can be no legitimate reason why children and young people are still being denied their right to education other than it is simply not being given the political priority and investment required. The speed of progress on fulfilling the right to both primary and secondary education is already disgracefully slow, and governments and their international partners, such as the World Bank, must make a new and concerted effort to ensure education is universal.

If the commitments made in SDG4, and the long-standing obligations on the right to education, are not fulfilled, those children who are out of school or in poor quality education will learn only one lesson: that those with power make promises they do not keep.

Governments should not view the fulfillment of the right to education as a burden but as an asset. A more explicit focus on the provisions of right to education can aid the formation of a robust education policy, ensure greater equity through planning, and strengthen the quality of delivery. A HRBA-E as described below has the

potential to help create more effective interventions in support of equity in access, completion, and learning at all levels.

Section 2: Making Human Rights Central in Development and Education

2.1 What is a Human Rights-Based Approach?

In the late 1990s and early 2000s approaches to development began to take a more explicit and systematic account of human rights frameworks, in what has become known as human rights-based approach (HRBA). What this meant was rather than viewing human rights frameworks as something abstract or only as a background narrative, human rights should in fact be guiding decision-making and action. This approach largely gained prominence through a global dialogue and reflection, that has its roots in the Declaration on the Right to Development (1986), along with the Vienna Declaration and Programme of Action (1993), which stated clearly that all UN activities, including its international cooperation, should be concerned with the promotion and protection of human rights. The HRBA was further propelled by reforms within the UN, which sought to incorporate human rights frameworks across all UN decision-making processes (UN, 2003, para. 144). This approach proposed a move away from development as charity with passive recipients receiving services, to an understanding of development within the framework of rights-holders claiming that duty-bearers meet their obligations. Prior to the emergence of a HRBA model, development was seen as responding to need without necessarily addressing where failings in the systems had occurred.

Human rights treaties set standards that States, which are party to them, must act on. What this means in practice is that States have:

- to respect: not to interfere with the exercise of a right;
- to protect: to ensure others do not interfere, primarily through effective regulation and remedies;
- and to fulfil: including to promote rights, facilitate access to rights, and provide for those unable to provide for themselves. (Amnesty International, 2005, p.19).

In essence, a HRBA is “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights” (UN, HRBA portal, 2017). Using a HRBA makes visible the categories of those with an obligation to ensure rights—the duty-bearers—and those who are entitled to enjoy these rights—the rights-holders. A HRBA “automatically raises questions about the actions and accountability of duty-bearers” (Boesen and Martin, 2007), bringing the possibility of a stronger voice for rights-holders to demand change. This recognition of the need for participation of rights-holders built on the influential work of Amartya Sen, which argued that “achievement of development is thoroughly dependent on the free agency of people.” (Sen, 1999, p. 4)

For rights-holders using a HRBA provides a powerful platform for accountability. The Office of the UN High Commissioner for Human Rights noted that accountability was the most important aspect of the HRBA (UN, 2002). Human rights frameworks provide clear standards to which governments are legally accountable, as well as strengthen the ability of rights-bearers and those supporting them to focus on government lack of prioritization of rights and to call for increased or targeted action.² A HRBA-E offers examples of where and how operationalizing the right to education can potentially make the most difference and can thus help bring more effective and equitable change.

² Accountability remains a central theme for education and the UNESCO Global Education Monitoring will publish a major report on accountability for SDG4 in 2017.

2.2 From Theory to Practice: the Core Principles of a HRBA-E

The integration of human rights as a guiding principal for development perhaps finds greatest synergy in relation to education. The symbiotic relationship between human rights and education, and education and human rights, is a relationship that the late Katerina Tomasevski, former UN Special Rapporteur on the Right to Education, described as “a mutually defining process, each essential to the enhancement of the other”. Tomasevski’s rationale is that “national and local education systems should be based on international human rights treaties and, on the other hand, schools and the curriculum should contribute to the understanding and enjoyment of human rights for all” (Tomasevski, 2004, p. ii). The concept of a HRBA-E is one where the right to education is reflected in and through education. It is a system-wide approach, where the principles of human rights are visible and articulated into practice at each stage of the policy, planning, and delivery of education services.

A useful starting point to more fully understand how human rights obligations can translate into concrete policy and planning considerations is the 4A’s framework developed by Katerina Tomasevski, which outlines the explicit obligations of governments to make education “available, accessible, acceptable, and adaptable.” (Tomasevski, 2001). These categories relate directly to the explicit obligations of States, either as consequence of ratifying international human rights treaties, or through their own constitutional guarantees and domestic law. Awareness of the legal obligations and what these mean is an important starting point for both rights-holders and duty-bearers, the latter of which include ministers, planners, regional and local authorities, and so on. In practical terms this would mean that to meet its obligations on availability a government³ would have to ensure there are enough “schools matching school-aged children (number, diversity)” (Ibid, p. 12), and require the government to take action to ensure there are sufficient teachers, which would mean consideration of teacher numbers and training (Ibid). To meet the standards set in the international human rights treaties governments must also ensure the removal of any “legal and administrative barriers”, including “financial obstacles” and undertake the “identification and elimination of discriminatory denials of access and obstacles to compulsory schooling (fees, distance, schedule)” (Ibid). The Right to Education Project provides a helpful summary of the 4-As scheme:

- **Availability** – that education is free and government-funded and that there is adequate infrastructure and trained teachers able to support education delivery.
- **Accessibility** – that the system is non-discriminatory and accessible to all, and that positive steps are taken to include the most marginalized.
- **Acceptability** – that the content of education is relevant, non-discriminatory and culturally appropriate, and of quality; that the school itself is safe and teachers are professional.
- **Adaptability** – that education can evolve with the changing needs of society and contribute to challenging inequalities, such as gender discrimination, and that it can be adapted locally to suit specific contexts (Right to Education Project, 2017).⁴

Rather than seeing the provisions of the right to education and their obligations under that framework as something to use only in the discourse of policy narratives, governments and their international partners should take those provisions and obligations as a means to align multiple and complex demands and actions to streamline and strengthen education systems. Delivering on the promise of education requires a focus on the right to education, not in the background but as the foreground, driving policy formation, planning, and delivery of education services, from central government through to the classroom. Adopting a HRBA requires system-

³ The government as the principle arm of the State which will plan and manage education, although other parts of the State such as the legislature and judiciary and civil society also have a role.

⁴ In May 2017, the right to Education Project changed its name to the Right to Education Initiative.

level change, with the analysis of the right to education as a core reference throughout each stage and non-discrimination as a guiding principle.

Realizing the right to education through HRBA may sound complicated, however, basing education policy—whether local, national, or global—on existing legal obligations to which all States have agreed helps focus efforts in a clear direction. That is not to say implementing such an approach will not meet ideological resistance from some quarters, however, in many cases this type of approach is already in place (although not necessarily named) and makes practical sense. A HRBA-E will not bring immediate solutions, overcoming the challenges facing education will take time and require systematic reforms and sustained investment. However, as UNICEF claims, there is both an intrinsic and instrumental rationale for using a HRBA, as it is morally and legally the correct thing to do and because it leads to better and more sustainable outcomes (UNICEF, 2016). Human Rights principals are not abstract theoretical concepts but easily operationalized and should be integrated and reflected in the policy, planning, and delivery of services by governments, as well as their international partners, including the World Bank. A HRBA-E offers a holistic approach to operationalize the right to education, respecting normative instruments that embed the planning and delivery of education in the principals of **LEARN**:⁵

- Legal standards of the right to education guide implementation;
- Empowering children through quality rights-based learning;
- Accountability of duty-bearers to fulfill their obligations for education is upheld;
- Respect for the participation of rights-holders in their own education is constant;
- Non-Discrimination for all children to ensure equitable, inclusive learning is central.

Attention to these principles from those involved in providing education services at all levels—from local to, national, to international partners—will enable greater equity and participation, more relevant learning outcomes and stronger accountability and help achieve the targets of SDG4 more efficiently and effectively. Education is “the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.” (Art 13 (2) (d) ICESCR), and “has a central role in disrupting the IGT of poverty, inequality, and disempowerment” (Bivens *et al.*, 2009, p. 97). However, lack of equitable access and poor quality delivery means millions of children are still denied their right to education, with significant consequences for their lives, as well as their future families and their country’s development (UNHRBA Portal, 2017)

2.3 Implementing the Right to Education

A HRBA-E is a useful tool that brings practical implications for priority setting and programming and can be applied to identify “root causes of development problems and systemic patterns of discrimination” and to define what interventions may be needed and help support the capacity of both duty bearers and rights holders (UNHRBA Portal, 2017). This starts from the assessment of needs, to the setting of policy, though to what actually happens in the schools and classroom based on “the claims of human rights in education and the corresponding obligations of governments, as well as the immediate, underlying and structural causes of the non-realization of rights.” (UNICEF/UNESCO, 2007, p. 13). It also requires an assessment of the ability of rights-holders to claim their rights and an assessment of capacity-building interventions to support the State’s ability to fulfill these where needed. Monitoring and evaluation of both educational processes and education outcomes should also be guided by human rights standards and principles (Ibid). In other words, a HRBA-E means bringing an explicit and systematic account of the right to education in all aspects of education—policy, planning and delivery—and the areas underpinning them, such as budget allocations and qualified teachers. The added value of a HRBA-E is that it establishes the scope of legal entitlement providing a framework for

⁵ This formation of core HRBA-E principals is adapted from the PANEL principals (Scottish Human Right Commission)

planning services and assessing progress accordingly, moving the process from rights in principle (i.e. set out in a document or statement) to rights in practice (that these rights are actually ensured and enjoyed).

A HRBA-E can help determine government action, for example, having identified which children are being discriminatively denied their right to education, specific policies can be formulated to remedy the rights violations—this starts with education policy. The UNESCO International Institute for Education Planning (IIEP) works with ministries of education, including in fragile and conflict affected countries, to build resilience and social cohesion into education systems. As a starting point their guidelines ask decisions-makers if: “[N]ational policies reflect international commitments to equal educational opportunities [. . .] as required by the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and other international instruments?” (IIEP, 2015, p. 9). Where international policies do not reflect international commitments to equal educational opportunities, then they should be reviewed to include clear references to the right to education set out in the different international conventions. Each aspect of the policy should respect human rights obligations and principles and where necessary the policy should be expanded and/or refocused to ensure that it is robust in its adherence to these standards. Education sector reviews should apply the right to education to guide improvements, for example the sector plan should include clear objectives to prevent and address any existing discrimination against marginalized groups, such as girls or disabled children. Likewise, the policy should emphasize the participation of rights holders and their representatives, such as formalizing a role for parent’s groups or civil society participation.

The inclusion of human rights should not stop at the level of policy statements, a rights-based approach must permeate each stage of the process, with the policy statements on rights guiding planning and delivery. Planning education systems and delivery is a complex activity, it involves both supply and demand side factors. Identifying where schools are needed per number of school-age students is a common practice, however, rather than planning being focused on school enrolment rates alone, an expanded vision of planning is required to meet children’s rights. This would take into account

educational quality and process (the resources to which children have access) and educational outcomes (what competencies and capabilities are acquired and how they are valued). [...] Systematically planned inputs [...] that anticipates where schools and teachers are needed and ensures that the availability of learning materials keeps pace with the numbers of children enrolled. (Lewin, 2015, p 29)

This type of extended planning can help negate non-enrolment or school dropout due to poor-quality education that is not perceived to be relevant, especially given the high opportunity costs associated with a child going to school in low-income households (Ibid). It also fits more closely with a HRBA to compatible with the 4As framework. Children, their parents, and their community need to know that not only is there a school in place but the education is relevant, otherwise it is no different to sending the sick to hospital only to give them the wrong medicine (Banda, 2008). A HRBA-E has participation as a core principle, and while this may seem burdensome, engaging rights-holders in policy development and planning will help overcome barriers and build awareness of the benefits of education, as well as bringing forward local concerns or issues.

For example, in conflict and other contexts even if school are available and free, it may not be safe for girls to travel to school or attend school due to risks of sexual violence (Amnesty International, 2008). Simply ensuring school places are available would not be sufficient, they need to be accessible, acceptable, and adaptable to all and education policy based on a HRBA would need to give clear direction on this. A HRBA-E makes explicit the barriers that restrict groups of children attending school and/or why they do not stay in school, and directs the best action to address them. The Global Partnership for Education (GPE) guidelines for Education Sector Plans also emphasize that a holistic rights-based approach, which should include “coherence among subsectors, with a specific attention to the levels attached to recognized education rights” (GPE et al, 2015, p.9). GPE’s engagement of different stakeholders through its Local Education Groups (LEGs) is a way for rights-holders’

voices to be included in education sector planning, by bringing ministries of education together with national civil society groups, teachers unions, donors, international NGOs, and other government ministries.

Article 13 ICESCR states that “the development of a system of schools at all levels shall be actively pursued” and that these schools should be physically accessible with sanitation facilities for both sexes, with safe drinking water and other necessities (UN, 1999, p. 199). The SDG4 Means of Implementation Target (A) is in line with these rights, and commits States to “Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, nonviolent, inclusive and effective learning environments for all” (SDG4) and those with decision-making powers must keep both their political and legal commitments in mind as in their planning and resource allocations. A HRBA-E approach not only includes the State actors working directly in the education sector but other sectors such as the finance and health departments, as these sectors will impact directly on the education system.⁶ Applying a HRBA means changes at each level of the education system, with policy makers, planners, curriculum developers, teacher trainers, and others maintaining a focus on the provisions and standards of the right to education and ensuring human rights standards are incorporated into their area of responsibility. Education Management Information System (EMIS) are another important tool to monitor progress on the right to education and identify where action is needed to help those groups who are being systematically denied their rights. The information they provide will make it easier to hold governments to account.

The following list of questions might act as a check when applying a HRBA-E at systems level (N.B. this is for illustrative purposes only and is not intended as a fully functional tool):

Area of intervention	HRBA-E checklist
Policy	<p>Does the policy reflect human rights treaties ratified by the State that guarantee the right to education? Is there a legal regulatory framework that guarantees the right to education and is the related guidance accessible?</p> <p>Is data from rights-based sector analysis guiding the formation of strategies and programmes?</p> <p>Does the policy take account of current disparities and include targeted measures to support the needs of underserved groups (e.g. girls/disabled children)? Does it include specific objectives to prevent future discrimination?</p> <p>Does the policy reflect children rights more broadly to ensure child protection/safe learning environments/codes of conduct for educational personnel to support child rights (throughout child’s life cycle from pre-primary to upper secondary and beyond)?</p> <p>Does the policy provide a space for consultation and input from rights-holders (or their representatives) and accountability measures?</p>
Planning	<p>Does planning address current needs and trends using a rights-based analysis that includes input from rights-holders? Does this analysis go beyond access to ensure equity, quality, etc.?</p> <p>Do numbers and distribution of qualified teachers match need (including specialised teachers for children with special educational needs; teacher with language skills for minority linguistic groups/female teachers, etc.)?</p> <p>Does planning include context specific analysis of potential vulnerabilities (conflict, disasters, displacement) and include strategies to mitigate these and build resilience in the education system at all levels?</p>
Budget	<p>Does the budget match need? Is the allocation of funds equitably distributed? Are additional targeted allocations available to meet needs and ensure equity for currently underserved areas and marginalized children?</p> <p>Does the budgetary framework support decisions based on equity and quality?</p>

⁶ The list of sectors is obviously much more extensive and these are given as examples only.

	Where there is a shortfall, is there a detailed plan for progressive universalization of education from pre-primary to upper secondary? Are external funds being used to address disparities with support directed at most underserved areas/groups in a managed plan for progressive universalization?
Curriculum development	Does the curriculum provide the opportunity for children to develop a wide range of knowledge that supports cognitive and socio-emotional aspects of development and support critical thinking? Does the curriculum include human rights education/global citizenship education? Does the curriculum foster non-discrimination and promote social cohesion? Does the curriculum support relevant skill development that reflects input from rights-holders? Is the curriculum relevant to the social, cultural, environmental, economic, and linguistic context of learners? Is the curriculum structured to allowed participation and the construction of knowledge by rights-holders?
Learning resources	Are learning resources free from discrimination and stereotypes? Do they reflect diversity in gender, ethnicity, class or caste, sexual orientation, religion, etc.? Do they promote conflict resolution and build tolerance?
Initial Teacher Training (ITT) and Continuing Professional Development (CPD)	Are sufficient places for quality ITT available to ensure overall numbers of qualified teachers? Does the policy for ITT selection reflect the diversity and needs of learning population (e.g. female teachers, specialist teachers to support children with special educational needs, teachers with relevant language skills for any minority groups)? Does ITT/CPD include human rights awareness and education? Does ITT/CPD support skills development for child-centred pedagogies to ensure children's right to participation?

The obligations flowing from a HRBA-E give a clear focus on these interrelated core aspects of the right to education at a systems level through to local delivery. The right to education should permeate throughout the system, including in the organization of the school. This includes the way the school is managed, its relationship with parents and the local community, as well as, importantly, how children are treated and taught.

Applying a HRBA-E means concern for access, as well quality and respect in the learning environment, schools should be child friendly and healthy places, where the right to participation is respected, and where learning and assessment are also rights-based (UNESCO/UNICEF 2007, p.28). Guidance on HRBA-E at a school level is found in many international programs such as is UNICEF's Child-Friendly Schools or Amnesty International's Human Rights-Friendly Schools (to name a few). They offer important insights and lessons for involving different stakeholders. Findings from the UK and Canada, for example, highlighted the importance of training teachers to increase human rights culture in school. It also found that parents can sometimes feel uneasy due to misunderstanding of rights, and that it is important to show that children learn about their own rights, as well as how to respect the rights of others (UNICEF, 2014). The norms, values, and customs that make up the culture of the school, including how it is managed, are an important aspect of a HRBA-E. The ethos of the school, including communication and respect between staff, parents, and pupils should reflect the principles outlined above (see page 9). School governing bodies or school management committees are common in the majority of countries, however, the extent to which they are democratic and involve diverse members of the local community can vary. Respecting the views of rights-holders, their parents, and members of the local community is a priority for HRBA-E: "[a]n empowered SMC can enhance education quality at local level. If it is well grounded and representative it will enhance local ownership of education, making the right to, and rights in education a reality." (GCE 2010). A 10-point charter 'Promoting Rights in Schools' provides a useful framework to ensure a HRBA-E at school level. These include: no charges for education, safety of

children on route to school and in school; the need for proper sanitary facilities; participation in decision making processes; and transparent and effective monitoring system and accountability (ActionAid and RTE Project, 2011).

A HRBA-E goes beyond discourse and operationalizes the right to education through each level and aspect of education, ensuring compliance with legal obligations and at the same time bringing a strong equity focus. It supports the right **to** education, as well as rights **in** and **through** education. Applying a HRBA-E helps reduce factors that cause children to miss school, drop out, or fail to learn, creating more inclusive, safe and relevant education that is “therefore not only cost-effective and economically beneficial but also more sustainable.” (UNESCO, 2007, 12). A HRBA adds value to development processes—including education—by increasing: legitimacy; empowerment and participation; coherence across sectors through clarity in establishing standards; relevance; impact and sustainability; and accountability (Amnesty International, 2005).

Section 3: HRBA-E and SDG4

The 2030 sustainable development agenda offers a vision of social and economic transformation rooted in respect for universal human rights. In fact the 2030 agenda and human right instruments are “are tied together in a mutually reinforcing way: human rights offer a legally-binding framework as well as guidance for the implementation of the 2030 Agenda” (Danish Human Institute).⁷ This is also the case for SDG4 and as the Education 2030 Framework for Action makes clear “[t]he principles informing this Framework are drawn from international instruments and agreements” (UNESCO, 2015, p. 7).⁸ Given the centrality of the right to education in the formation of the Education 2030 Framework, applying the same standards in its implementation makes moral and practical sense.

While a HRBA-E is not a panacea for all the problems facing education systems around the world it can provide an important synergy between legal rights and political commitments and make the path to progressive universalism more effective. By highlighting the standards of the right to education and the role of duty-bearers and rights-holders, a HRBA-E can shine new light on issues that are central to the achievement of SDG4, as the following illustrates.

3.1 Quality Education: a Human Right

The Education 2030 agenda has brought a renewed focus on the quality of education recognizing that access alone is not enough and that children need to learn the knowledge, skills, and values that equip children for life in the 21st century. Without access to quality education children will not reach their full potential and their country will not achieve sustainable development. Quality education is also a human right and the Committee of the Rights of Child in their General Comment Number 1 notes that:

Article 29 (1) not only adds to the right to education recognized in article 28 a **qualitative** dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centered, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates. (Committee Rights of the Child, 2001, emphasis added)

⁷ The guide links each SDG target with the corresponding rights, see: <http://sdg.humanrights.dk/>

⁸ The framework lists: Article 26 of the Universal Declaration of Human Rights, the Convention against Discrimination in Education, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Rights of Persons with Disabilities [xii], the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Refugees and the UN General Assembly Resolution on the Right to Education in Emergency Situations.

The Education 2030 Framework for Action makes clear the need for “strengthening inputs, processes, and evaluation of outcomes and mechanisms to measure progress.” (UNESCO, 2015b, p.8). Ultimately only quality inputs will lead to quality outcomes and duty-bearers must stay attuned to the foundations that enable quality education and learning. A HRBA-E, by highlighting the legal standards that should be met in regard to inputs, process, and outcomes, can support the effective action to ensure no child is left behind.

The recipe for quality education and learning involves many different inputs, including but is not limited to: what children learn; the experience in the classroom, including right-based participatory pedagogy; if there are adequate numbers of trained teachers; if children understand the language they are taught in; if they have access to teaching and learning material that promotes diversity; and if the school environment is safe and free from violence or attack.

While all of the above are important, as the McKinsey report (2007) made clear: “The quality of an education system cannot exceed the quality of its teachers.” (p.13) There is significant evidence proving that teachers are key to improving education quality and learning outcomes (UIS, 2016). Globally, however, there is a huge shortage of qualified teachers and it is estimated that: “In the next 14 years, countries must recruit 68.8 million teachers to provide every child with primary and secondary education” (UIS, 2016). This will require increasing funding for teacher training and retention, through domestic sources and through increased levels of external support from donors, including the World Bank. The Third Addis Ababa Action Agenda on the financing for development commits to the upgrading of school facilities and increasing the percentage of qualified teachers, including through international cooperation (UN, 2015).

In order to make education available and accessible (as described in the 4As framework above) States need to address teacher training, recruitment, and also teachers labor rights (Tomasevski, 2001). This is reinforced in SDG4, Target (c), which calls for a major increase in the number of qualified teachers, with support through international cooperation for teacher training in developing countries (target c, is another of the means of implementation targets). It is not quantity of teachers that will ensure quality education, they must also be qualified and able to adapt to the needs of all students. Article 24.4 CRPD determines that “States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or braille, [...] the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.” The representational role of teachers is also important for securing gender parity in education. Countries with more female primary teachers are more likely to have higher enrolment rates for girls in secondary schools. Unfortunately, in some countries, less than 25% of primary teachers are female. The rights of teachers should be upheld and their contribution recognized as they are a fundamental condition for quality education. Article 13.2.e of ICESCR demands that “the material condition of teaching staff shall be continuously improved”, and the 1966 ILO/UNESCO ‘Recommendation Concerning the Status of Teachers’ is an additional normative framework that elaborates standards on a variety of issues relating to teachers’ professional development, including the social, ethical, and material concerns of teachers.

Teachers also have a key role in respecting and promoting the rights of learners by promoting non-discrimination and ensuring children’s rights are respected in the teaching process and wider school environment. Teachers are, however, ordinary people and consciously or unconsciously, they may at times reflect existing social prejudices and even discriminate against certain groups of children. To address this, both initial teacher training and ongoing professional development should contain training on human rights. The World Programme for Human Rights Education recognizes the importance and responsibility of teaching and other education staff in the transmission of “human rights values, skills, attitudes, motivation and practices, both in the performance of their professional responsibilities and in their function as role models.” (UNGA 2014, p.8).

Good quality rights-based initial teacher training and on-going professional development that encourages reflection on human rights values and behavior can help mitigate the frequency of any behaviors that fail to

protect and respect children’s rights. There are some teachers who take advantage of their position and abuse children, sometimes demanding bribes or even sexual favors for grades. Although these teachers are the minority, schools, as well as local and national education authorities, must take strong measures to ensure teachers meet a code of conduct that protects children and, where necessary, take criminal proceedings. Supporting teachers—and other staff—to understand rights and reflect them in their practice is central to a HRBA to SDG4 and in doing so will create safer environments and enhance learning.

While teachers arguably have the greatest impact on a child’s education experience and attainment, the whole school environment and practices are also fundamental to ensuring quality. A school or classroom environment where children face discrimination or violence violates that child’s fundamental rights. This includes corporal punishment as Article 29.2 of the CRC that obliges “all appropriate measures” to ensure that school discipline is administered in a manner consistent with the child’s human dignity. The way in which children are treated in schools should respect and reflect human rights standards: a HRBA-E places children rights at the center of school practice, as well as empowering them to take an active part in the school community and beyond. This is not only a moral and legal obligation but also makes economic sense as rights respecting schools and classrooms can reduce dropout rates and enable children to learn more effectively (see section on quality and learning below).

Human rights education is also a vital component of quality education and clearly articulated as a fundamental aspect of education. Too frequently it is seen as an add-on, rather than a core part of quality education. The SDG4.7, includes a specific call for learners to acquire knowledge on human rights, which while positive, needs to be given a higher focus and priority, given it is a legally binding obligation for education to contribute to understanding of human rights and fundamental freedoms. To support the wider SDGs goals, a strong focus on all children learning about their rights, needs to be reflected within global and national indicator frameworks to sure it is given the attention by governments and international actors alike.

Quality education cannot be measured in learning outcomes alone, it must also be measured by the experience children have in the classroom, by the participation of rights-holders and their families in the educational process to make it inclusive and relevant. A HRBA-E provides a robust guide to ensuring quality and to delivering strong and diverse learning outcomes.

3.2 Addressing the Learning Crisis through an HRBA to SDG4

In 2013, the UNESCO GMR highlighted the global crisis in learning, estimating that 250 million children were not learning even the basics, in some cases even after 4 years of school (UNESCO, 2013). The cost of this learning crisis is high “not only for the future ambitions of children, but also for the current finances of governments. The cost of 250 million children not learning the basics is equivalent to US\$129 billion, or 10% of global spending on primary education” (UNESCO GMR, 2014). The research on the crisis facing learning led to a reflection that the MGD targets of universal primary access had come at the expense of quality and led to a strong focus on learning in the debates leading up the final iteration of SDG4.

While learning is at heart education, some critics were concerned that the discourse on learning in the run up to the final iteration of SDG4 focused primarily on outcomes, and was dislocated from the inputs and processes that enable learning to take place (McLean, 2014). A concern that stemmed partly from the distinctions in understanding of quality between different education traditions, with some giving more focus to outcomes (i.e. behaviorist) and others on processes (i.e. humanist) (UNESCO GMR, 2005, p.32). The former often associated with a more utilitarian approach to education with a narrow set of outcomes and the latter a more rights-based approach, concerned with process as well as diverse outcomes. Basic skills such as literacy and numeracy are without doubt foundational, however, for education to be rights-based then it must promote critical thinking, participation, understanding of human rights and skills linked to (global) citizenship. UNESCO’s work in 2013 was key in reinstating the purpose of learning—in its broad sense—at the heart of quality education. These

ideas were developed in the work of the Learning Metrics task force that identified seven key domains of learning that are considered necessary to succeed in school and life: 1) Physical well-being; 2) Social and emotional competencies; 3) Culture and the arts; 4) Literacy and communication; 5) Learning approaches and cognition; 6) Numeracy and mathematics; 7) Science and technology (LMTF, 2013). The final targets of SDG4 appear to strike a balance and include diverse learning outcomes, however, concern remains that the centrality given to indicator SDG4.1 in the global indicator framework risks undermining the ambition of the goal itself and could negatively impact on the equity and quality of education (Moriarty, 2016). One concern is that a focus on outcomes remains very strong and as such could undermine the quality of education processes by skewing the teaching towards testing. The case has been made for some time that what is needed is for “all children everywhere to participate in learning that is inclusive, relevant, and democratic.” (Barret, 2011).

Participatory pedagogical processes—that might be considered by some as a radical shift from standard practice—can lead to more cost-efficient education and better learning outcomes. The Escuela Nueva, for example, which has received wide recognition for its innovative and successful model of education, including from the World Bank, with evidence that it delivers better learning outcomes and is more cost efficient (Moriarty and Oswald, 2009). This model of education, which is highly participatory and puts rights-holders at the center in the classroom, was also found to impact positively on what some consider the foundation subjects of literacy and math (Psacharopoulos *et al.*, 1993; McEwan, 1998, cited in Kline, 2002). In fact,

diverse learning goals may seem disparate, but are actually synergistic—by encouraging active participation and emphasizing critical thinking, children’s acquisition of basic literacy and math can be promoted at the same time they are gaining necessary skills for the 21st century. (UNESCO, 2013, p.4)

Pedagogical practice must build inclusion for all children, including those with special education needs. Article 24.2 of the CRPD is clear that States should ensure “children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability”. It goes on to instruct State parties to ensure the “use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.” A HRBA-E is concerned with all aspects of education, this also includes the curriculum, which can subtly or less subtly reinforce negative stereotypes and lead to discrimination and exclusion. Teaching and learning resources also need to be reviewed from a rights-based perspective and revised as necessary as the “canonical character of the information selected for and presented in textbooks gives them central significance in academic, political and educational respects” (Georg Eckert Institute, 2017).

While there is a widespread understanding of the above and it may seem common sense, in practice these standards are not always applied. Attention to what and how children learn is central to a HRBA-E and, as the evidence shows, brings significant benefit, leading to better learning outcomes and a more cost-effective and efficient achievement of SDG4.

Child-centered teaching and learning are vital aspects of rights-respecting, quality education. The experience that children have in the classroom is a lesson for present and later life, quality rights education sets the foundations of active citizenship, supporting critical thinking and the ability to question and build knowledge. The Brazilian educator and philosopher, Paulo Freire has challenged the notion that education is neutral, he argued that learners should be centre stage and active in the learning process, as opposed to traditional model so ‘banking’ education, whereby learners just received knowledge. (Freire, 1972). The goal of education, for Freire is to recognise we are all “subjects” of our own lives, rather than “objects’ in the world of others. Freire compels us to rethink the purpose of education, which he identifies as conveying a set of beliefs and values, functioning to maintain a particular set of power relations, and the economic and political systems that underpin them. Freire talks about learners developing critical consciousness and through this ability to critically engage with knowledge and society, in this sense right-based education empowers learners to be transforms their lives and

the wider society. A HRBA-E is concerned with the right to and in education and also supporting rights in wider society:

A rights-based approach to education that embodies human rights education empowers children and other stakeholders and represents a major building block in efforts to achieve social transformation towards rights-respecting societies and social justice. (UNESCO 2007, p.12).

A HRBA approach that encourages participation will enable children to become active citizens, socially, politically, and economically. Understanding rights and experiencing rights in practice in the classroom and wider school is critical for the sustainable societies proposed in the 2030 agenda.

3.3 HRBA-E: Shining a Light on Equity

Of the millions of children who are not in school, it is children from the poorest families, disabled children, children living in conflict, girls, and other minority groups who are most affected. Rarely is this exclusion as a result of lack of technical know-how (although capacity constraints do exist), it is discrimination and a lack of priority leading to a massive failure to respect these children's right to education. A HRBA-E can help shine a light on the continuing barriers to equitable, quality education promoting non-discrimination as a guiding principle in assessment of needs, policy development, planning, and delivery of education.

Non-discrimination requires the identification of why and how marginalized groups are being denied their right to education and taking proactive, targeted measure to combat this. This might include, for example, community based awareness programs to strengthen understanding that education is a right for all and the benefits it can bring. It might mean donors working with governments to build their capacity to identify to reach children marginalized children, for example, supporting the teachers to work with children with physical disabilities through specialized teaching and learning resources. A HRBA-E often means just doing what should be obvious, however, this is not always the case and too often the most marginalized groups continue to get left behind. Globally, for example, more girls are out of school than boys and in some contexts the difference is extreme. This is not only morally unjustified, it is a failure to meet legal obligations and is undermining development. The impact of girls' education is well documented—from reduction in child mortality to decreased risk of HIV infection (UNESCO, 2013). Lack of education for girls can mean some countries losing as much as \$1 billion a year—simply by not educating girls equally to boys (GPE, 2015). Fulfilling a girls' right to education should, therefore, be seen as positive and beneficial for governments. Governments can take a range of actions to increase girls access to and completion of quality education. This might mean addressing cultural beliefs that prevent girls going to school or practices, such as early marriage, that also have a huge impact on girls' education.

It is not only cultural barriers that prevent girls or other marginalized groups, such as disabled children or children from linguistic or ethnic minorities accessing education: school fees, poor quality education, inadequate infrastructure, or a lack of female teachers, all reduce the incentive of parents with very limited resources to send their children to school.

In the planning and allocation of resources, policy makers should introduce measures that support specific measures for groups that are currently left behind through a roadmap for converting equity principles into measurable targets (Watkins, 2013), this would involve “stepping stone” targets (Malala Fund, 2016). The most marginalized groups might vary from context to context and a human rights-based analysis of education can help shine a light on groups that face discrimination. The Incheon Declaration and Framework for Action promised that no target will be considered met unless met for all (2015) and a HRBA-E is an important tool to address continuing discrimination. While a HRBA-E will not overcome these barriers immediately, it can help direct government action to deliver more equitable education systems, leading to a better chance of achieving SDG4 and, in so doing, create greater prospects for development more generally.

3.4 The Cost of Quality: Financing the Right to Education

The promise that education holds for sustainable development is enormous, with wide reaching benefits for human well-being and dignity, for social cohesion and peace, and for the protection of the planet. If the evidence on these indicators is not sufficient to convince politicians, then the economic arguments will be persuasive. Quality education and learning increases individual earnings, reduces economic inequality and promotes economic growth. Without sustainable finance, it will not be possible to meet SDG4, and the ability of duty-bearers to respect, protect, and fulfill the right to education will be limited. The financing of education is therefore a human rights issue. States have obligations to act both immediately and progressively to fulfill the right to education. They must show they are making every effort to meet their obligations, even where financial resources are constrained. In its General Comment 1, the Committee of the Rights of the Child makes it clear that “resource constraints cannot provide a justification for a State party’s failure to take any, or enough, of the measures that are required” (CRC, General Comment 1, paragraph 28). Furthermore, the clause of progressive realization of rights cannot be used as an opt-out from action: “In relation to article 13, paragraphs (2) (b) to (d), a State party has an immediate obligation ‘to take steps’ (art. 2, para. 1) towards the realization of secondary, higher and fundamental education for all those within its jurisdiction.” (UN, 1999, p. 125). These legal obligations bring the full weight of a rights based approach and set clear parameters for the actions of governments concerning the funding of education. The Third International Conference on Financing for Development promised to scale up investments and international cooperation to allow children to complete equitable, inclusive, and quality pre-primary, primary, and secondary education free of charge. It also encouraged countries, where possible, to set nationally appropriate spending targets for education in accordance with internationally recognized benchmarks of between at least 4% to 6% of GDP, and/or to allocate at least 15% to 20% of public expenditure to education (UN, 2015). The Education 2030 Framework for Action, which was adopted unanimously by all UNESCO Member States makes clear the role of “governments to provide equitable financing commensurate with national educational priorities, needs, and capacities to advance the progressive realization of the right to education.” (UNESCO, 2015b, p. 67).

The Framework of Action suggests that in order to increase public spending on education, countries will need to increase their tax base, which in many developing countries is far below recommended levels (UNESCO, 2015b). A shift towards a progressive taxation system will be needed, where the wealthiest—large companies, including multinationals—contribute to services that support the poorest, such as public education. This would generate significant amounts of money that could be spent on education, in some countries the money lost through unpaid tax by corporations is double the annual education budget and in others it would be sufficient to fund training to fill the primary school teacher gap, to provide children with textbooks and build thousands of new classrooms (GCE, 2013). In addition to increasing tax revenues, and directing increased funding to education, the Education 2030 Framework for Action also recommends that improved governance and accountability—which a rights-based approach can support—should be implemented to ensure greater efficiency and effective use of existing resources in the education system. In accordance with a rights-based approach it also suggests prioritizing those most in need. This would require governments to make phased implementable plans that start with the most marginalized groups that are furthest away from realizing their right to education.

To fully fund the right to education will require a substantial investment in education, in the policy paper ‘Pricing the right to education: The cost of reaching new targets by 2030’ (UNESCO GEM, 2015e), UNESCO projects that the financing gap—between what is available from domestic resources and the amount necessary to reach the new education targets—as being an average of \$US39 billion per year between 2015 and 2030, with the largest gap in low income countries where it constitutes 42% of annual total costs (Ibid, p.1). This gap will need to be filled by external support until a time when domestic resources increase sufficiently to match need. Article 28.3 of the CRC calls on States party to the convention to “promote and encourage international cooperation in matters relating to education” and the CRC “encourage[s] international cooperation both in general terms (arts. 4 and 45 of the Convention) and in relation to education (art. 28 (3))” (CRC, General Comment 1, paragraph 28). The CRC is clear that State Parties providing development cooperation should ensure that their programmes are designed so as to take full account of the principles contained in article 29 (1) (Ibid).

There are only two countries which have not ratified the UN CRC,⁹ every other country is therefore bound by the articles of the convention and, therefore, have a commitment to supporting the right to education through international cooperation. Aid to education has, however, fallen since 2010, with the figures from 2014 showing an 8% decline. Education's share of total aid (excluding debt relief) fell from 10.2% in 2010 to 9.5% in 2013 and 8.2% in 2014 (UNESCO GEM, 2016). Figures on humanitarian aid also show the same low investment in education, accounting for only 1.9% in 2016, despite the UN calling for having a target of at least 4%. These figures highlight the fact, that despite the known impact that increased access to quality education has for development, donors are not prioritizing education in any contexts, and as such failing not only to meet their policy promises but also ignoring their obligations under human rights law.

The Education 2030 Framework for Action—agreed on by all of UNESCO's Member States including donor governments—highlights the importance that donor governments meet their commitments related to Overseas Development Assistance (ODA) of 0.7 per cent GNP (UNESCO, 2015b, p. 67). If these commitments were met, and at least 10% was directed to aid basic education, there would be a substantial reduction in the education financing gap. Multilateral donors increased their aid to education by 10% and now account for 29% of total aid to education, up from 25% in 2013—this includes the 42% (US\$480 million) increase in disbursements by the World Bank (Ibid). Despite these more positive examples, if investment in education remains at current levels the violation of the right to education will continue on a massive scale up to and beyond the 2030 SDG4 deadline. The Education Commission,¹⁰ estimates that “if investments trends in education continue more than 800 million of the world's 1.6 billion young people will lack the skills necessary for employment (Education Commission Briefing, 2017, p.1). The Education Commission has suggested governments need to increase their domestic spending on education, and has called for an increase on ODA spent on education to 15%. It is also proposing the creation of a new International Financing Facility for Education (IFFEd), which, along with increased domestic investments and increased ODA to education, could help bridge the current the global shortfalls. Increases in financing must go hand in hand with equitable allocation targeting the most marginalized. Any increases in resources from existing or new sources must be coherent with and support national obligations to respect, protect, and fulfil the right to education.

While there is no overnight solution, adequate and sustained financing by governments from domestic sources and revitalized support from the international donor community will facilitate the path to fulfilling the right to education, and enable education to play its catalytic role as a driver for equitable and sustainable development. The challenge of fully financing universal access and completion of equitable quality education is a human rights imperative: without it the opportunities for children will be greatly limited, especially those from the poorest and most marginalized groups. Countries will also face limitations: low and lower middle-income countries will find it harder to lift themselves up and middle- and high-income countries will continue to face social inequality, hindering their national capacity and fueling tension. While the cost of financing education is high, the benefits that come from universal access to free quality education make the investment worthwhile.

3.5 Public Vs Private: The Right to Education and the Private Sector

The role of the State is central to ensuring quality education for all. In all circumstances the State remains the primary duty-bearer for the right to education, with an obligation to provide free, inclusive, quality primary and secondary education (as well as foundational and tertiary education). Under international human rights law, parents also have responsibilities. For example, they must recognize and support the right to education of all their children; they should allow children the time to go to school and not keep them out of school to carry out domestic or other labor; and they should ensure their children are prepared for school, attend, and arrive on time ready to study (UNESCO, 2007). Parents and children also have the freedom to chose an alternative school to the public schools provided by the State, and Article 13 of the ICESCR provides for the right of

⁹ The United States and South Sudan are the two countries which have not adopted the CRC.

¹⁰ The 'International Commission on Financing Global Education Opportunity'

individuals to establish and direct educational institutions. The State, then, need not be (and rarely is) the sole provider of education. Non-state provision of education includes religious or community schools, schools run by CSOs/NGOs and other philanthropic organizations, as well as fee-paying schools (traditionally for high-income groups). These can and do work in harmony alongside public education, although while other providers may exist, the Committee on ESCR, in their General Comment 13 notes: “The obligation to pursue actively the ‘development of a system of schools at all levels’ reinforces the principal responsibility of States parties to ensure the direct provision of the right to education in most circumstances.” (UN,1999, p.125).

Over the last decade or so there has been an increasing expansion in new private providers of education, giving rise to the question of how this impacts on rights-holders and the role of the State as the primary duty-bearer. This increased growth began more than a decade ago and, as far back as 2002, attention has been drawn to the role of the non-state provision of education, with questions concerning its quality and impact on equity:

The provision of low quality private education for the poor is not serving their needs, but rather using up their scarce resources with limited benefits. The recent evidence implies that there is a need for tightening of regulation of the private sector, whose motives are not always obvious, to ensure that education provided is of an acceptable standard. [...] While it is undeniable that the non-state sector has played, and will continue to play a role in education, this should not be seen as an alternative to the state’s role in providing for social needs. (Rose, 2002, p. 16)

From a rights-based perspective the obligation of the State as primary duty-bearer is clear alongside its responsibility for ensuring that any non-State providers of education respect and protect the right to education, including the clause of non-discrimination. The actions of private providers of education must in no way undermine the State’s obligations to respect, protect, and fulfil the right to education.

A new brand of for-profit private schools—often referred to as low-fee private schools—are putting themselves forward as a solution to fulfilling the right to education, however, with little evidence this is a feasible and from a rights-based perspective it raises much concern. There is also limited robust evidence to suggest that private providers can replace the State or that it would be desirable for them to do so. A rigorous review of literature on ‘The role and impact of private schools in developing countries’ (Day *et al.*, 2014) found that the strongest evidence concerned improved teaching in private schools, with moderate evidence of better learning outcomes. The review raised concerns over equity, with some evidence that boys are more likely to be enrolled in private schools, although this was context specific. The summary findings pointed to a “sizeable evidence base” indicating that the poorest families could not afford private school, and if they could, it was the result of other welfare sacrifices; given this, sustaining attendance over the years would be very difficult. Overall the evidence from the review suggested that most claims about the benefits and potential of private schools are weakly evidenced, however, the framing of the assumptions used in the review have been criticised (Tooley and Longfield, 2015). A HRBA-E can bring a clear and legally based framework for the assessment of the role of private providers. Aubury and Dorsi (2016) assert that human rights law and standards can provide a normative framework to assess the role of private actors in education, especially given all countries in the world are party to one or more international treaties protecting the right to education.

If governments openly hand over provision of education to private providers, or purposefully neglect their obligations in order for private providers to fill the void, this would constitute a failure in their responsibilities under law. There are some high-profile examples where government acquiescence appears to promote private provision instead of public education. One such example is Uganda, where both the UN and the African Commission on Human and Peoples’ Rights (ACHPR) have expressed concerns. The ACHPR have noted that:

The increase in the establishment of private schools, which has been encouraged by the Government, allegedly raises the concern of the Government gradually releasing itself from the

obligation to provide quality public education, which could result in discrimination against children from low-income household. (ACHPR, 2015, p.12)

Any measures by a State that appear to be a deliberate withdrawal from their obligations under the right to education could be viewed as being in contradiction to the Principle of Non-Retrogression. When applied to the right to education this would require States to prove the measures have been introduced only after careful consideration of all alternatives, and are justified only by the “totality of the rights provided for in the Covenant and in the context of the full use of the State party’s maximum available resources.” (Moumné and Saudemont, 2015, p.7). Donors also have a responsibility to bolster national capacity and accountability to enable States to meet their obligations according to the right to education. In some instances, donors have faced criticisms for their apparent promotion of private providers. This includes the World Bank who have been challenged for their support of the chain of low-fee private schools—Bridge International Academies (BIA)—in which the bank had invested 10 million dollars, even while it had no planned investments in public education systems in the same countries, namely Kenya and Uganda (RTE, 2014).

The Special rapporteur on the Right to Education, argues that “governments should ensure that private providers only supplement public education, the provision of which is the Government’s responsibility, rather than supplant it”, and that States should not “disinvest in public education by relying on private providers” (UN, para. 96). The Special Rapporteur on the Right to Education reports that both UNESCO and the International Organization of la Francophonie have expressed concern with sweeping privatization in education reducing education to a commodity (UN, 2015). The same report makes the following observation:

Education is instrumental in promoting development, social justice and other human rights [...] Low fee private schools not only constrain social justice in education, favouring access for some over others, but also social justice through education as their *raison d’être* is monetizing access to education. This aggravates inequality through the structural exclusion of certain groups, entrenching a neoliberal vision of society (UN, 2015).

Suggesting that private provision can address either out-of-school challenges or the learning crisis ignores the underfunding and lack of prioritization that has besieged public education for many years (GCE, 2016). Another concern is that increased private provision could in fact lead to decreased spending on public education, which in turn could lead to more private provision and more support from external donors who may consider private providers a better option—in other words, a vicious circle of privatization (Moumné and Saudemont, 2015). Moumné and Saudemont note that an expansion of private provision in education and a decline in public funding has been seen in some countries such as the Philippines, India, and Bangladesh, however, in other cases such as Morocco and Chile, this has not been the case. They suggest that firm conclusions cannot be made at this time. Nevertheless, this scenario is a concern from a rights-based perspective and should be carefully monitored. As the Global Campaign for Education (GCE) points out: “No country—possibly aside from the city state of Singapore—has ever achieved universal participation in basic education by relying on the private sector. Indeed, such achievements have always depended on government action and the building of a public education system.” (GCE, 2016, p10).

While non-state providers will continue to have a role in the provision of education, the actions of non-state providers must respect the fundamental principles set out in the right to education and not replace the state as the primary provider of education. The role of the State is, and should remain, central to the fulfillment of the right to education and any support of private provision should not undermine public education. A HRBA-E highlights and supports the role of States in this role and it is only through quality public education that equitable education and lifelong learning can be achieved.

3.6 The Right to Education Cannot Wait

International law protects the rights of children to an education in times of peace and in times of conflict. Even so, millions of children are missing out on school because of conflict, a major cause being the lack of political will to respect, protect, and fulfill the right to education. For children living through conflict and other emergencies, quality education is a ray of light in an otherwise dark and stressful time.

The impact of conflict on education is severe and 30% of all out of school children and adolescents live in countries affected by conflict. In Syria, one out of every three schools are out of use, damaged, or destroyed, being used to shelter displaced families, or being used for military purposes. In 2016, at least 87 attacks on schools and education personnel were recorded and more than 255 children were killed while at school or near school (Watt, 2017). Ending impunity for attacks on schools and upholding the rights of displaced and refugee children is essential. For children who have been displaced and fled across borders their situation also remains dire, only half of refugee children of primary age are in school, with this figure dropping to a quarter for secondary education (UNHCR, 2016). In some refugee hosting countries, the numbers are even lower: “In Turkey—host to the largest number of refugees in the world—including nearly 3 million Syrians—just 13 percent of secondary-school-age refugee children attend school. In Cameroon, 6 percent do: in Pakistan and Lebanon, just 5 percent.” (Khawaja *et al*, 2016). By bringing a HRBA-E to situations of conflict, governments, the UN, donors, and other actors can provide a safe space and the continuity of learning that will enable children to cope with the crisis and build resilience and skills for the future.

While humanitarian emergency contexts do bring severe challenges, children who live through them, whether in their own country or as refugees, still need and have a right to education, this is universal and inalienable and cannot be disregarded because of the context of where a child lives. The UN Special Rapporteur on the Right to Education noted the lack of attention given to education by humanitarian actors and “relative absence of clear programmatic principles, indicators, or funding.” (UN, 2008, p.7). The report reaffirmed that: “As parties to human rights treaties, States have an obligation to respect, protect and fulfill the right to education, whether or not an emergency situation prevails. In addition, the right to education inheres in each person regardless of legal status, whether refugee, child soldier or internally displaced person.” (UN, 2008, p.10). Too frequently, however, humanitarian responses still see education as a secondary concern and this is reflected in the extremely low proportion of total humanitarian aid invested in education, which was only 1.4% of total humanitarian aid in 2016 (UNOCHA FTS, 2016).

The barriers to quality education for children and youth affected by emergencies is due in great part to a lack of prioritization and chronic lack of underfunding. Rights are indivisible and interrelated and there should be no hierarchy of which rights a child should enjoy, just as children should have access to food, healthcare, and shelter, children also have a right to education from the first phase of a humanitarian response. Education offers immediate protection and support for children caught up in conflict; it can save and transform lives. The Committee on the Rights of the Child has stressed that:

In situations of emergency, the child’s need to enjoy his/her right to education is reinforced by the fact that it is a protection measure, as well as a relief measure and a life saving measure that provides physical, psychosocial, and cognitive protection. Education mitigates the psychosocial impact of conflicts and disasters by giving a sense of normalcy, stability, structure and hope for the future. (Committee on Rights of the Child, 2008, p.8)

Governments, host countries, donors, the UN and civil society organizations need to respect human rights and humanitarian law and ensure that a HRBA is brought to education at all times. The right to education of children living through conflict or displaced by conflict, does now have higher profile following the launch of new initiative called ‘Education Cannot Wait’ in 2016. This fund is designed to address the chronic neglect of education in emergency contexts. however, the fund has only received US\$113.4 million of US\$153 million target

set for Year 1, suggesting that the right to education for children in humanitarian contexts is being neglected, reducing the possibility of achieving SDG4

A HRBA-E in humanitarian emergencies can offer practical guidance for program design, as this tool from UNICEF illustrates:

Checklist for Rights-Based Considerations in Programme Design
<ul style="list-style-type: none">• <i>Non-discrimination</i>: Have discriminatory practices been identified (within the affected community, and within the response itself) and have measures been put in place to overcome them?• <i>Accountability</i>: Have accountability systems between all players, and in all directions, including complaints and response mechanisms, been established in the framework of the humanitarian and/or transition programmes?• <i>Transparency</i>: Do crisis-affected populations have easy access to information about humanitarian and transition programmes which enables them to participate in and shape them?• <i>Participation</i>: Have mechanisms been established to facilitate the active participation of different crisis-affected population groups in the assessment, design, implementation, monitoring, and evaluation of humanitarian and transition programmes?• <i>Capacity-Building</i>: Do humanitarian and transition programmes include targeted efforts to build the capacity of rights holders to claim their rights and duty bearers to fulfil their obligations? Does this strategy include building the capacity of partners and counterparts to operate according to a rights-based model?• <i>Local ownership</i>: Are measures in place to promote local ownership (by crisis-affected populations and local authorities) of humanitarian and transition programmes?• <i>Sustainability</i>: Are programmes designed with an exit-strategy in mind, to ensure their sustainability over the medium- and long-term, including in the shift from humanitarian to post-crisis transition?• <i>Advocacy</i>: Has a humanitarian/transition advocacy strategy been developed, taking into considerations the different approaches to advocacy in politically sensitive and insecure contexts? (UNICEF, 2012)

This type of practical, rights based check list can help ensure that the education response in emergencies is equitable, reflects the needs of the affected population and is sustainable. The Inter-Agency Network for Education in Emergencies Minimum Standards, for example, calls for the rights of learners to be “upheld and addressed through curricula, instruction and assessment, while also highlighting the need to include human rights education and education for peace and citizenship in formal and non-formal settings.” (INEE 2010, p. 2).

A HRBA-E acknowledges that a child’s right remains regardless of contexts and it is this explicit application of rights that make a difference to the experience of children living through conflict and crisis, from preventing or overcoming the toxic stress young children suffer to helping adolescents find new skills and believe in a future. SDG4 calls for equal access to all levels of education, including for children in vulnerable situations, and there is no doubt that children living through conflict or other humanitarian emergencies are in very vulnerable situations. Quality rights-based education can protect children even in the midst of conflict and crisis, it can protect their development and learning and protect their future opportunities. Without education, the children of Syria—where more than half are missing and out of school—and the children of multiple other conflicts or emergencies have little hope. Education is their hope and it is also their right. A HRBA-E to SDG4 can ensure these children are not left behind.

Section 4: Meeting the Promise of Education through HRBA-E

4.1 Leveraging Accountability through HRBA-E

The strength of a HRBA-E is that by stressing legitimacy and accountability it validates calls for the State to act, leveraging additional political pressure to provide education based on a legal obligation. Where a legitimate legal claim exists—as in the right to education—it follows that someone holds responsibility for fulfilling that right or, at a minimum, respecting and projecting it. In the case of education, this responsibility lies primarily with the State.

Primary education, for example, is free and compulsory and governments have an obligation to meet their commitments immediately. Article 14 of the ICESCR instructs that each State party that had not secured “compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years” (UN, 1966). Of course, the 61 million primary-school-aged children still not in class show that governments obviously do not always meet their obligations; however knowledge is power, and a first step in holding governments to account. Awareness of what human rights are is important for rights-holders to be able to demand accountability of those in power, and a HRBA-E can be an effective tool in challenging the status quo. Giving a voice to rights-holders is a core tenet of a HRBA and is key to holding governments to account in education: “Politicians can ignore poor public services if they believe that voters cannot penalize them for poor performance” (World Bank, 2004, p. 88). However, when rights-holders have information and hold governments publicly accountable it changes the equation. This can be useful in overcoming some of the political economy constraints faced by education, and leads to change that might otherwise not occur. That is not to say that simply applying a rights-based approach will immediately result in changing policy, and weakness with this approach includes the often dense or vague language of human rights, which can leave room for interpretation (Katsui, 2008). Another weakness is the failure of human-rights frameworks to provide ready-made benchmarks against which the credibility of State efforts can be measured (Watkins cited in UNICEF, 2014). The lack of determined criteria by which to measure effort can make it challenging to hold governments to account, nevertheless, rights-holders, with support from civil society organizations and international actors, can bring effective pressure to bear on governments, and influence policy and actions. Local, national, regional and international non-governmental organizations and coalitions working with and on the behalf of rights-holders have been powerful actors in holding governments and their international partners to account through a HRBA-E. A review of civil society engagement in the Education for All movement between 2000-2015 highlighted how, through holding governments to account, “civil society has made an important contribution in its drive for faster and more equitable progress towards EFA. Importantly, civil society has kept the message that education is a fundamental human right at the center of the debate” (UNESCO 2015). A human rights-based approach can create a virtuous cycle: strengthening the knowledge and empowerment of rights holders to demand accountability of their government, and in so doing enabling future generations greater opportunities to access quality education with relevant learning outcomes, which will in turn empower those learners.

In all and any circumstance, what is clear is that governments cannot simply opt out of their obligations. All children have the right to free public education from primary to secondary, and where there is strong participation of rights holders—which a HRBA can support—the possibility for accountability, and for overcoming the constraints of political economy, will be far greater. The constraints of political economy affecting education are undoubtedly complex, as rigorous reviews of the literature have suggested (Kingdon *et al*, 2014; Novelli *et al*, 2014). “[E]ducation does not exist in isolation from broader social issues and processes, which affect policy interventions and shape content and outcomes” (Novelli *et al*, 2014, p.2), and it would be an oversimplification to suggest a HRBA alone would be sufficient to address all the challenges. It is possible to assume that the participation of rights-holders and an increase in public accountability can lead to positive changes for education and in turn for wider society, and the literature shows “that aggregate public education spending increases with a shift towards democracy or openness.” (Kingdon *et al*, 2014, p.56).

If a government claims in its policy statements or in political messaging to be committed to the right to education but is not allocating resources in line with recognized benchmarks, the credibility of their actions can be challenged, especially if there is no notable change or progress. In education there are accepted international and regional benchmarks that call for the allocation of at least 4 – 6% of Gross Domestic Product and/or at least 15 – 20% of total public expenditure to education (UNESCO, 2015). Allocation of resources should be in line or seen to be moving progressively towards this. Understanding that the term ‘progressively’ is not an excuse for inaction, but in fact requires that “State parties have a specific and continuing obligation ‘to move as expeditiously and effectively as possible’, towards the full realization of article 13” (General Comment 13 on the ICESCR, paragraph 44), can strengthen the legitimate call for increased investments in education. This accountability can be taken further by ensuring governments are taking steps outside of education itself to look at other fiscal policies that might impact the availability of domestic funds for education. For example, where taxation is either weak or inequitable there is a strong call for increases in domestic tax revenue to ensure a larger source of domestic funds becomes available. A HRBA, through reference to the legal obligations that the State has signed up to in committing to the right to education, makes these wider claims legitimate avenues to hold the government of the day accountable.

Other actors must also do nothing to undermine the enjoyment of the right to education for any individuals or group through their actions. This applies to both local and global non-governmental organizations, as well as the business community. In the case of businesses, the Committee on the Rights of the Child in their General Comment 16 (UN, 2013) and Guiding Principles on ‘Business and Human Rights (UN, 2011) also makes clear that no actions by companies should undermine human rights. For education, these guiding principles are important given the growing trend of increasing private provision in developing contexts (as discussed above).

Where all else fails, human rights provide for the possibility of legal recourse. The UN Special Rapporteur on the Right to Education in his 2012 annual report cited the finding that “The essential element [of a right] is the legal power bestowed upon the [individual] by the legal order to bring about, by a law suit, the execution of a sanction as a reaction against the non-fulfilment of the obligation.” (UN, 2012). He goes on to say that if this right is denied or violated then the individual has legal recourse to action, and that courts across numerous geographical regions have upheld the right to education in its various dimensions. As the Special Rapporteur explains, regional courts such as the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples’ Rights were established for the enforcement of regional treaties and rights.

The justiciability of the right to education is an important tool in a human rights-based approach. However, while this is a strength, it is not necessarily easily implementable. Recourse to justice through human rights mechanisms tends to be via individual mechanisms, which can be challenging both in terms of the ability of marginalized individuals to pursue claims as “most poor people have little access to the institutions that might enforce their rights and that the interface between different legal systems governing their access to entitlements makes the process of recognizing and claiming rights complex” (Cornwall and Nyamu-Musembi, 2004, p.1418). With support from local or national NGOs this route can, however, be available:

Defensoria Pública in São Paulo (Brazil) provides legal support to poor citizens whose right to education has been violated, even as the Public Prosecutors in São Paulo (Brazil) take up such violations with public authorities, as well as in courts for the enforcement. The National Commission for Protection of Child Rights in India [. . .] examining a large number of complaints regarding imposition of fee for primary education when the education should be free of cost, the findings of the Commission led to parents having fee payments reimbursed through subsequent court actions. (UN 2013, p. 11)

While taking legal action may be one route to accountability, the simple act of sharing knowledge of rights creates more empowered individuals and communities. This is a core aspect of a HRBA supporting the participation of rights-holders in decision-making processes, placing people at the center of the development process, where empowerment and participation do not come only as the end result but as part of that process. This is important as it has long been shown that poverty is multidimensional, reflected not only in a lack of material goods or services but also through situations of powerlessness, of the ability for one's voice to be heard (Narayan et al., 2000). Human rights-based approaches are strongly rooted in the practice and approaches of grassroots political and social movements, who have demanded participation in decisions that affect their lives: a shift from clientelism to active citizenship (IDS, 2003).

International human rights law establishes that States must take all appropriate legislative, administrative, and other measures for the implementation of rights in regard to economic, social, and cultural rights, such as the right to education: "States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation." (CRC, Article 4). Article 2 of the ICESCR also calls on all States party to the convention to take both economic and technical steps—individually, and through international assistance and co-operation—to the maximum of their available resources. It is, therefore, important that States and their international partners respect obligations which are legally binding, and that all their actions are directed to supporting this.

Where the State is systematically failing to fulfill, protect, or respect the right to education there is also legitimate scope for international organizations to act collectively to ensure a child's right to education is not denied, as set out in the Declaration on the Right to Development. The World Development Report 2004 described a long and short route to accountability. In this vein, the argument would be that where governments cannot or will not act on public interest or demands then "there may be few options for poor communities but to develop mechanisms for getting services some other way" (World Bank 2004, p. 65). An example might be the provision of education in times of conflict or fragility, where the capacity of the State is diminished. International organizations might also intervene in the case of a county being unwilling or unable to provide education due to a lack of financial resources or lack of capacity to meet its obligations. International aid agencies frequently have conditions relating to accountability and transparency, however, these may not be sufficient incentives for recipient governments to fully comply (CFBT 2011). In such circumstances, international aid agencies would need to consider alternative mechanisms that allow children to go to school, while also strengthening national systems for the longer term. Any such mechanism would, however, need to "respond to needs and opportunities through both short- and long-run accountability routes" (Save the Children, 2008, p17). This encourages and supports State accountability while also ensuring children are not missing out on school as has too often been the case in conflict-affected fragile States.

International actors, including donors and IFIs therefore have an important role in strengthening government accountability and capacity, while also supporting measures to ensure immediate access to free, quality, and inclusive education in line with human rights obligations.

4.2 The World Bank and HRBA

The right to education is primarily the responsibility of the child's home State. However, as we have seen above, it is also incumbent on international development partners, such as the World Bank, to play their role in protecting, respecting, and fulfilling the right to education. Support for education in other States through international cooperation is set out in the CRC Article 4 and Article 28(3). This means that the policy and actions of international actors should be consistent, and have as their ultimate objective the fulfillment of human rights (UN, 1993). Translating this into practical and operational terms means:

- that development policies and programs have the fulfillment of human rights as their core objective;
- that human rights principles and standards should guide all development cooperation;

- and that this approach should strengthen the capacity of rights-holders to claim their rights, and of duty-bearers to meet their obligations (UN, 2006).

The Right to Education Project points out that according to international law, International Financial Institutions, including the World Bank should give “greater attention to the protection of the right to education in their policies, credit agreements, structural adjustment programs, and measures taken in response to the debt crisis”.

Although the World Bank might arguably see itself as contributing to human rights through its activities, it has faced criticisms for being too slow to adopt a HRBA (Cornwall *et al*, 2005), with its critics suggesting it did not wish to be held accountable under the international human rights framework (Piron, 2005) and has simply adopted a “[rh]etorical-formulaic incorporation” of a HRBA (Uvin, 2007, p. 599), in which rights language has been appropriated without following through in its application. A more recent review of whether human rights were reflected in the World Bank’s education policy concluded that they were not (Menashy, 2013); rather, it was claimed that “the placement of discourse on rights within documents denotes the inclusion as either an afterthought, or window-dressing, for it is clear from a broad analysis inclusive of several documents that a rights-based approach is not dealt with in a serious manner” (Ibid, p. 754). The same research suggested this omission requires serious interrogation given the leading role the World Bank plays in funding education, especially in the Global South (Ibid).

That is not to say that the World Bank has ignored human rights; however, inclusion of human rights still remains largely absent in the World Bank’s core documents. It is the case that very limited mention of human rights has featured in previous editions of the World Bank’s World Development Report, and there is only minimal reference to human rights conventions in the World Bank’s current education strategy (World Bank, 2012). The World Bank’s explanation is that “human rights have traditionally been seen as political, and therefore outside of its mandate because of the political prohibitions contained in its Articles of Agreement” (World Bank and OECD, 2016, p. 16). This explanation does not, however, hold up under scrutiny given both the universal nature of human rights, and the wide ratification of human rights conventions by governments in all regions of the world.

Fully embracing a HRBA in education will create greater synergy between the World Bank’s policy statements and actions, ensuring there is no disconnect between how the World Bank works and its public commitment as a convener of SDG4.

4.3 Conclusion

The positive impact of quality education is undeniable. It changes individual lives, the lives of their families and communities, and is the key to sustainable development: no country has ever achieved development without universalizing education. Overcoming the challenges and current barriers facing education will take time and require systematic reforms and efforts over a prolonged period. Rather than view the right to education as a rhetorical tool to make policy statements sound inclusive, this paper has outlined how this right can be operationalized to build more equitable and effective education systems leading to strong learning outcomes. The right to education should play a guiding role for the achievement of SDG4, not only because every government has made a legally-binding obligation to provide universal education, but also because it makes moral and practical sense, delivering stronger learning outcomes that are more cost effective.

The current state of education globally, with 263 million children and adolescents still out-of-school and millions more not learning, along with a staggering 758 million adults living without functional literacy, is a global scandal. Business as usual will not deliver on SDG4 and all those involved in the planning and delivery of education, including international actors such as the World Bank, should reflect on past failings, as well as successes. The repeated delays in fulfilling the universal right to education and meeting global policy promises

on education suggests that the international community is failing to learn the basics: that political will and adequate investment can deliver on the right to free, equitable, inclusive, quality education, leading to substantial and sustainable improvements in the three spheres of the sustainable development agenda—economic, social, and environmental. The LEARN principles of a HRBA-E (repeated from above), provide the criteria to ensure SDG4 is realized. These are:

- Legal standards of the right to education guide implementation;
- Empowering children through quality rights-based learning;
- Accountability of duty-bearers to fulfill their obligations for education is upheld;
- Respect for the participation of rights-holders in their own education is constant;
- Non-Discrimination for all children to ensure equitable, inclusive learning is central.

This paper has sought to illustrate how the right to education can and should guide each and every step of the education process—from policy, planning, and school management, to pedagogy, learning and financing—to help address current barriers. This is entirely feasible. For example, the achievement of greater gender parity in education is the result of a rights-based approach to tackling discrimination. What a HRBA-E does is keep the focus of policy makers on where action is most needed in order to fulfill State obligations to protect, respect and/or fulfill the right to education. This is true in times of peace or when delivering education in emergency contexts. A HRBA-E can aid State-actors, such as civil servants working at national, regional, and local levels, to strengthen the application of legal rights throughout the system. It can also support teachers and schools in ensuring that rights guide their practice.

There are of course challenges in applying a HRBA. These range from a distorted perception that human rights are part of political ideology; or that the fulfillment of rights is too costly; or that participation is too cumbersome to be practical; to a simple lack of information and awareness that rights exists; or that poverty can only be addressed through economic growth. For education, the latter has been a considerable problem, with governments too focused on the human capital outcomes of education, tending to approach the planning and implementation of education services through an instrumental, economic approach, without due focus on a rights-based approach. This is misguided, as a HRBA-E supports more cost-effective fulfillment of quality education and learning.

The vision of free, equitable, quality education that delivers on a diverse set of learning outcomes is not a utopian ideal proposed by people who do not understand the political reality and economic constraints, it is a globally recognized and legally binding commitment. What is more, evidence suggests that rights-based education, which encourages active participation and empowerment, not only generates more social cohesion but also enhances cognitive development (Bivens et al, 2008; Moriarty and Oswald, 2009). A HRBA approach to SDG4 is the most effective intervention to build learning and enable the promise of education to be a reality for all.

Through the ratification of one or more international human rights conventions, all countries have committed to the right to education, meaning that the standards provided for by the right to education have unanimous support. While a HRBA-E is not without tensions or challenges—and is certainly not a magic solution—it does offer a clear and practical path to the progressive universalization of free, equitable, inclusive education, and must have a central place in delivering SDG4. The Right to Education is an end, and also a means by which to achieve that end through a HRBA-E, as this paper has sought to highlight. A HRBA-E, as noted above supports the right **to** education, rights **in** education and rights **through** education, and to reflect the sentiment expressed by of Nelson Mandela, this type of rights-based “education *is* the most powerful weapon which you can use to change the world”.

This paper has suggested how the right to education can be applied practically and should be integrated and reflected in the policy, planning, and delivery of educational services by governments and their international partners, including the World Bank.

The new sustainable development agenda commits to radical transformation to improve the lives of all people, with a promise to leave no one behind. However, committing promises to paper is meaningless unless the political will for immediate and sustained action and financial investment go hand-in-hand. It is not a cliché to say education holds the key to a better future. Without education, the vision for transforming our world that 193 countries, the UN, the World Bank and others committed to in 2015, will not be achieved. A rights-based approach is the best hope to achieve SDG4 and deliver on the promise of education.

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