

## Towards Justiciability of the Right to Education

From a little girl banned from going to school in rural Afghanistan to university students demonstrating in Switzerland against the extension of the Covid pass requirement to universities, the issue of the right to education has come to the forefront of public debate in the last few months. Among the rights guaranteed by the Universal Declaration of Human Rights, the right to education (Article 26) is not ordinarily the one that generates the most discussion. However, recent events have brought this issue back into the spotlight and have demonstrated once again the vital importance of this right.

As a reminder, the right to education entails (in a nutshell)<sup>1</sup>:

- free, compulsory and universal Primary education;
- generally available, accessible to all and progressively free Secondary education, including technical and vocational;
- higher education, accessible to all on the basis of individual capacity and progressively free;
- freedom of choice.

The right to education is often seen as enabling access to all other human rights in addition to being one of the most powerful instruments for lifting people out of poverty. Education is also closely linked to gender equality.

While significant progress has been made in this area in the last few decades, recent crises, whether security or health-related, have highlighted the fragility of these achievements. In particular, the COVID-19 pandemic, causing the greatest disruption to education systems in history, has had a profound impact on the right to education worldwide<sup>2</sup>. As it is often the case, girls and women have been particularly affected. School closures have made them more vulnerable to child marriage, early pregnancy and gender-based violence, making them less likely to pursue their education<sup>3</sup>.

Much of the work in this field needs to be done on a political level, through funding and raising awareness of the importance of receiving a comprehensive education. In an area of interest to the legal practitioner, however, justiciability of the right to education may also contribute to guarantee access to education. Indeed, where rights are justiciable, courts can ensure that the state is held accountable for its actions, in accordance with international, regional and national human rights obligations. The full realization of the right to education requires it to be effectively implemented at national level through constitutional provisions, legislation and policies<sup>4</sup>.

At the international level, however, the justiciability of economic, social and cultural rights, unlike civil and political rights, is still underdeveloped. The recent entry into force of complaints procedures for the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) is nevertheless a step in the right direction. Alongside national judicial

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<sup>1</sup> UNESCO, What you need to know about the right to education, 2020: <https://en.unesco.org/news/what-you-need-know-about-right-education>.

<sup>2</sup> United Nations, Policy Brief: Education during COVID-19 and beyond, 2020: [https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/08/sg\\_policy\\_brief\\_covid-19\\_and\\_education\\_august\\_2020.pdf](https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/08/sg_policy_brief_covid-19_and_education_august_2020.pdf).

<sup>3</sup> UNESCO, Factsheet on girl's education (#HerEducationOurFuture: keeping girls in the picture during and after the COVID-19 crisis; the latest facts on gender equality in education), 2021: <https://unesdoc.unesco.org/ark:/48223/pf0000375707.locale=en>.

<sup>4</sup> Right to Education Initiative, Justiciability: <https://www.right-to-education.org/issue-page/justiciability>.

systems, regional Human Rights systems also provide an important source of right to education case-law and ensure that states are held accountable.

In this judicial context, legal professionals, and among them lawyers, have an important role to play and can help to progress towards non-discriminatory access to education, by contributing to clearly define what the right to education encompasses and to concretize the obligations of states in this regard.