OVERCOMING INEQUALITIES IN EDUCATION: A RIGHT TO EDUCATION
PERSPECTIVE

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Introduction

Ensuring equalities of opportunity in education is one of the major issues being addressed in the context of the EFA. Concerns raised in the EFA Global Monitoring Report (2008) as well as those expressed in the Communiqué issued at the Seventh Meeting of the High-Level Group on Education for All (2007) call for action-oriented measures. Continuing challenges Member States face in ensuring full equality of opportunity in education are brought into limelight in the course of promoting UNESCO’s normative action in this respect.

Social and cultural barriers and unequal opportunities manifested in access to quality education remain one of the most serious difficulties of national educational policies. Even in countries where educational opportunities are in general widely available, inequalities remain in the ability of all social groups to fully avail themselves of such opportunities, giving rise to early drop-out from education and failure to obtain a useful qualification. Besides, language often constitutes a barrier to access to and equality of opportunity in education as regards possibilities of instruction in the mother tongue for the children belonging to minorities or indigenous communities.

Ensuring equality in educational opportunities in law and in fact for the children from differing socio-economic backgrounds, and those born with certain disadvantages, or who are marginalized is indeed a daunting challenge.

State Obligations and Normative Action for Equality of Opportunity in Education

In face of such challenges, of first and foremost importance is the need to intensify UNESCO’s normative action based on Constitutional mandate of the Organization, and on various normative instruments elaborated accordingly in the field of education. The Constitution of UNESCO reflects the belief of its founders in ensuring “full and equal opportunities for education for all.” UNESCO’s Member States have the constitutional obligation to ensure ‘full’ opportunities for education, so that no one remains deprived of it; they also have the constitutional obligation to ensure ‘equal’ opportunities so that there is no discrimination of any kind.

The fundamental principle of equality of educational opportunities, enshrined in UNESCO’s constitution, is expressed in the Convention against Discrimination in Education. Other instruments elaborated by UNESCO in the field of education which develop the right to education in its various dimensions, also reflect this principle.

1 The EFA Global Monitoring Report (2008), which highlights Equity, Quality and Financing as key areas states that “Education expansion does not necessarily translate into reduced inequality.” (p. 23).
2 At the Seventh Meeting of the High-Level Group on EFA (December 2007, Dakar, Senegal), the Ministers of Education “recognized that achieving the EFA goals means reaching those children, youths and adults, especially girls and women, who have hitherto been excluded from basic education opportunities.” See Communiqué ED/EFA/2007/ME/32, Paris, December 2007.
4 This Convention provides for the right to education comprehensively. The legal framework established by it is the cornerstone on which, the edifice of the right to education in its various dimensions was developed further in other instruments of UNESCO and the United Nations human rights treaties.
5 e.g. the Convention on Technical and Vocational Education (1989). The principle of equality of opportunity in education is reflected in various recommendations of UNESCO in the field of education, including the Recommendation concerning the Status of Teachers (1966) which provides that “it is fundamental right of every child to be provided with the fullest possible educational opportunities (…)”
Creating greater awareness about the normative bases of the equality of educational opportunities is important. Moreover, the advocacy for intensifying normative action for equality of opportunity in education is necessary; in such advocacy, considerations pertaining to obligations and responsibilities of Member States, and the need to fulfill them are of paramount importance. It must be emphasized that the right to education, like all human rights, imposes three levels of obligations on States parties: the obligation to respect, protect and fulfill. In turn, the obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide. Moreover, although the Dakar Framework for Action, adopted at the World Education Forum (2000) might not have the legal force of an international convention, it constitutes a strong moral force, based on political obligations, and can be interpreted as imposing legal obligations on signatories insofar as it is based on rights recognized in existing international instruments. The normative implications of the Dakar Framework for Action and the EFA deserve to be examined within the broader framework of the right to education for all – an area to which scant attention has been given.

More Effective Monitoring, with a Focus on EFA

Having regard to the State obligations mentioned above, the right to education and the application of the principle of equality of opportunity in education must be monitored more effectively. Member States must be encouraged to adopt effective domestic measures intended to secure education for all without discrimination or exclusion. The monitoring has assumed greater importance in view of the ‘new monitoring procedures’, adopted by UNESCO in October 2007. As a result, substantive measures are required to be taken, with a focus on EFA as a priority. There is need to ensure that the monitoring is mainstreamed in the EFA process. It should centre around the Convention against Discrimination in Education, which has been recognized by UNESCO’s Executive Board as a key pillar of the EFA, and its effective application can be a lever in pushing forward the EFA agenda, especially as regards the need to overcome inequalities in education.

UN System-Wide Concerted Measures

The significance of concerted action in monitoring the application of the principle of equality of opportunity in education in the constellation of the United Nations system must be duly recognized. The principle of equality of educational opportunities is an overarching principle – it is reflected in all United Nations human rights treaties and conventions, and is common to the work of all United Nations human rights treaties bodies. Given UNESCO’s principal role and responsibility within the United Nations system in the field of the right to education, it is incumbent upon the Organization to mobilize action by the United Nations system as a whole with a view to bring about de facto equality of educational opportunities. It is crucial to urge Governments to take concrete measure from a UN system-wide perspective to give practical

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6 177 EX/Decision 35 adopted by UNESCO’s Executive Board at its 177th session, and 34 C/Resolution 87, adopted by the General Conference at its 34th session in October 2007. As a result, UNESCO is required to monitor 11 Recommendations ‘as a priority’, of which 7 are in the field of education, and their monitoring has bearing on the equality of educational opportunities in education.

7 Decision taken by the Executive Board at its 171 session, (171 EX/Decision 28), UNESCO Paris.

shape to the fundamental principle of non-discrimination and of equality of educational opportunities.

**National Legal Systems and Equality of Opportunity in Education**

States have the responsibility to incorporate their obligations – legal and political – into domestic legal order. Therefore, an important question is: how these obligations are reflected in constitutions and in national legislation, and how they are further given concrete shape in policies and programmes. This is the yardstick for more effective implementation of the right to education for all and is a key consideration in promoting normative action at national level. Place accorded to the principle of equality of opportunity in education in national legal systems – in constitutions and in laws – is a determinant factor in national level action for overcoming the inequalities in education.

(i) Constitutional Guarantees

The right to education, equality of opportunity and equal access to education are guaranteed in the constitutions of many countries in all regions, and constitutional provisions in several African countries are especially noteworthy. For instance, the constitutions of Nigeria and of Tanzania provide for ‘equal and adequate’ opportunity in education, and can be cited as examples. The constitutions in several countries also provide for equal access to education. The Constitution of the Philippines provides that the State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all. (Art 14.1). In this respect, the Constitution of Brazil is noteworthy in providing that equal educational opportunities should not only permit the access of everyone to education but also enable all citizens to attain the highest level of education in accordance with their capacities. (Article 208.V of the Brazilian Constitution).

**Constitution is the supreme law of the land, and a comparative analysis of constitutional law and equality of opportunity in education, and sharing of national experiences with emphasis on EFA can be valuable** in strengthening the foundation of the principle of equal opportunity in education in national legal systems. This in turn needs to be linked with the evaluation and implementation of policies and programmes for EFA. Such an approach provides a novel perspective for placing national responsibility for EFA and ensuring equality of opportunity in education in terms of constitutional law. Activities aimed at expounding legal and policy questions, bearing in mind the cause of EFA, can reinforce the advocacy in order that States live up to their constitutional obligations. Research and studies in that perspective deserve to be encouraged and promoted with UNESCO’s support.

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9 The Constitution of the Federal Republic of Nigeria provides that “Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels” (Article 18 §1). Similarly, the Constitution of the United Republic of Tanzania provides that “The government shall endeavour to ensure that there are equal and adequate opportunities [...]”(Art. 11 §5).

10 As regards equal access to education, the Constitution of Liberia states that “The Republic shall [...] provide equal access to educational opportunities and facilities for all citizens [...]” (Article 6). The Constitution of Uganda provides “The State shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.” (Art. XVIII (ii). Similarly, Article 7 of Constitution of Ivory Coast stipulates that the State shall ensure that all citizens have equal access to education. Equal access to education is also enshrined in Article 53 of the Constitution of Algeria.
(ii) National Legislation and Equality of Opportunity in Education

Development and modernization of national legislation is important as the strategic objective for EFA (para. 13 of the Dakar Framework for Action). This has been recognized consistently by the High Level Group on EFA. In the technical assistance provided by UNESCO for this purpose, international normative framework and the questions related to the equality of opportunities in education are kept in forefront. This contributes to strengthening the foundations of the right to education and the equality of opportunity in education in national legal systems. Many countries have developed/modernized or amended national legislation in the spirit of EFA (for example, Lithuania, Indonesia, Liberia, Rwanda, Nigeria, Indonesia, Cambodia, Tunisia, Morocco, Russian Federation, China, Brazil, Mexico, Argentina, South Africa etc), and legislation is being developed in other countries such as Kenya, Azerbaijan, Afghanistan, Moldova, Peru, Cameroon etc. The process of developing/modernization of national legislation must be supported, so that EFA agenda is fully anchored in national laws.

As regards national legislation on the equality of opportunity in education, some recent developments are noteworthy: the Law of 11 February 2005 on Equality of Rights and Opportunities, Participation and Citizenship of Handicapped Persons (L’égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées) in France; the General Equality of Treatment Act of 2006 in Germany, which aims “to prevent or remove disadvantages due to race or ethnic background, gender, religion or philosophy, disability, age or sexual orientation” in employment and vocational training; the Prohibition of Discrimination Act of 2005 in Norway, which establishes a new Office, the Equality and Anti-Discrimination Ombud; the Equality Act of 2006 in the United Kingdom which establishes a Commission for Equality and Human Rights and for the first time requires public authorities “to take proactive steps in promoting equality of opportunity between men and women”; the Promotion of Equality and Prevention of Unfair Discrimination Act (RSA, 2000) in South Africa, which seeks to prevent or prohibit unfair discrimination etc. Regulatory frameworks for private educational institutions in order to ensure equality of educational opportunities and treatment have been developed in Bahrain, Grenada, Slovenia and Malawi. Besides, the National Commission for Minority Education Institutions Act (2004), recently established in India, is also noteworthy.

Considerations Pertaining to Enforcement and Justiciability

In considerations pertaining to inequalities in education in a right to education perspective, a question of critical importance is that of enforcement and justiciability, that is, how the international and constitutional obligations are given effect to, and what mechanisms exist for the individuals to claim the right to education as a fundamental human right? In case of violation of the right to education, and denial of the equality of opportunity, a citizen must be able to have legal recourse before the law courts or administrative tribunals on the basis of constitutional provisions on the right to education, or on the basis of international legal obligations. In South Africa, citizens discriminated against in education can challenge the government before the Constitutional Court. Moreover, in some countries (for example, in the Republic of Moldova),

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11 In this respect, the ruling by the U. S. Supreme Court in the Brown v. Board of Education which overturned the “separate but equal” doctrine, is a landmark. The Supreme Court emphatically declared that separate educational facilities for white and black children are “inherently unequal.” The right to equal educational opportunity in mixed race and mixed gender schools has since been codified by the Congress of the United States of America in the Equal Educational Opportunities Act. See Brown v. Board of Education, 347 U.S. 483, 74 S.Ct.686, 98 L.Ed.873 (1954), as cited in Education Law, Education Series, Chapter 4, ‘Students Rights’, Law Journal Press, New York, 2002.
overriding consideration is accorded to obligations under international conventions and treaties, which are deemed to be above national laws. An outstanding example of supremacy of international obligations is furnished by the rulings by the Supreme Court of India to the effect that the right to education, even though not mentioned in the Constitution of India, is a fundamental right, *inter alia*, in terms of India’s obligations under the International Covenant on Economic, Social and Cultural Rights. As a result, the constitution of India was amended in 2002 to provide for the right to education for every citizen, as a constitutional right.

The judiciary has an essential role in protecting and enforcing the *right to education as an entitlement*. A large number of decisions in several countries (notably in the U.S.A, India, South Africa, Colombia etc.) demonstrate how law courts have upheld the right to education and equality of opportunities in education. Some of these decisions explicitly mention the State obligations under the *Convention against Discrimination in Education*. Action aimed at reinforcing judicial and quasi-judicial mechanisms for safeguarding the *equality of opportunities in education* through administrative tribunals and national human rights institutions as well as by Ombudsperson, especially in the field of education, deserves to be encouraged. 12 Besides, the United Nations human rights treaty bodies and UNESCO’s Committee on Conventions and Recommendations (CR) play an important role by way of quasi-judicial mechanisms in protecting and enforcing the right to education and equality of educational opportunities.

**Ensuring de facto Equality of Educational Opportunities and Promotional Measures**

In countries facing severe resource constraints and caught in widespread poverty, inequalities in educational opportunity are often more pronounced and have led States to adopt different kinds of compensatory measures. Such promotional measures may be suitable in cases of longstanding or historical and persisting forms of discrimination. They are justifiable until full equality of treatment is reached, and must be taken in keeping with Article 3 and 4 of the UNESCO’s *Convention against Discrimination in Education* which covers “matter of school fees and the grant of scholarships or other forms of assistance to pupils”, and Article 13 of the *International Covenant on Economic, Social and Cultural Rights* which contains provisions for “an adequate fellowship system” among its provisions on the right to education. Such a system should enhance equality of educational access for individuals from disadvantaged and marginalized groups.

Some practical measures are significant to mention in terms of available experience: proactive policies for access to education, notably in rural areas, as well as financial aids for students from poor families by the way of bursaries and grants introduced by the government in Senegal and in Kenya; grants and loans offered for the provisions of teaching and learning materials and educational infrastructure in Tanzania under the Education Fund established by the Act No. 8 of 2001 for enhancing quality, access and equity of education at all levels; compensatory measures and quota system to provide educational opportunities in Brazil, especially for the Quilombola (descendents of runaway slaves from imperial and colonial times) since unequal conditions as regards their access to education is a major policy concern; institution of the Educational Priority Zones, based on the concept of positive discrimination to ensure prevention of school failure especially in schools in remote rural areas, and functional illiteracy in Cyprus, and extra measures taken to support specific areas which mainly involve schools in remote rural areas, 12 Mauritius has, for example, created an Ombudsperson office with powers to investigate any type of discrimination including educational discrimination, and educational institutions or individuals can appeal to the court or Ombudsperson in regard to instances of discrimination experienced. Austria established in 2005 a commission and ombudsperson charged with promoting the realization of the principle of equal treatment without discrimination.
schools with low socioeconomic status and education in the occupied areas of the island. Such measures deserve to be further promoted in line with the commitments by the Ministers at the Seventh Meeting of the High Level Group on EFA (2007) to take further measures in support of the poorest populations, such as school fee abolition and cash transfers, as well as policies to promote inclusion, recognizing that poverty and social exclusion remain the major barriers to achieving the EFA goals.

In many developing countries in South East Asia and in Africa, universal and free primary education is still far from being a reality.\textsuperscript{13} It is indeed imperative to ensure full compliance with immediate and core obligation of States for providing primary education free of charges. Even if primary or basic education were to be accessible free of cost, such access can not be universalized effectively unless much needed financial support, in the form of grants and bursaries, in addition to free text books and day school meals, is provided to the children from poor households who remain deprived of education, in particular those who are victims of extreme poverty.\textsuperscript{14} Such support is especially necessary in counteracting opportunity costs. Besides, offering language facilities in minority languages, while respecting one over-arching curriculum to all classes, irrespective of ethnicity, and providing mother-tongue based-multilingual education is an important issue in the context of equality of educational opportunities.

\textbf{Concluding Observations}

Actions aimed at overcoming inequalities in education are intertwined with the measures for doing away with growing ‘\textit{disparities in education’} – regional as well as those between rural and urban populations - as regards educational facilities in general, including the resource allocations. Fundamental changes are required in the distribution of educational resources, along with affirmative action and positive measures in favour of the socially and economically disadvantaged and marginalized groups and the children from poor households who remain deprived of basic education.

In a broader perspective, overcoming equalities in education necessarily implies emphasis on inclusive dimensions of the right to education. These dimensions are integral to the legal framework for the right to education, established by the instruments of UNESCO and of the United Nations. The right to education is an internationally recognized right. It is universal and does not admit of any discrimination or exclusion.\textsuperscript{15} It needs to be upheld more emphatically, and its all-inclusive dimensions must be brought into prominence in order that all those who remain deprived of it become its beneficiaries.

Governments must be urged to attach paramount importance to the realization of ‘\textit{full and equal opportunities for education for all’}; and to assume their responsibilities for fulfilling obligations – international as well as constitutional - and accordingly, create and expand educational opportunities, recognizing the need for equity, inclusion and social cohesion in today’s societies.


\textsuperscript{15} “Education must be accessible to all, especially the most vulnerable groups, in law and fact.” General Comment 13 on the Right to Education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. (E/C. 12/1999/10, 2 December 1999.)