

Episode 10: The Right to Education

The right to education is possibly the most widely recognised economic and social right. It is referred to by seven out of the nine core UN human rights treaties and has been protected under all of the regional human rights systems in one form or another. The right to education has historically enjoyed a very high level of acceptance as a right – even in countries which have generally been reluctant to recognise other economic and social rights.

But what do we mean by an 'education'? The right to education isn't just a right to any old education. Article 13 of the International Covenant on Economic, Social and Cultural Rights, provides that education should be directed towards 'the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms'. Article 29 of the Convention on the Rights of the Child sets out further goals for children's education. These include development of respect for human rights and fundamental freedoms, the natural environment, the child's parents and cultural identity, language and values. All of this means that an education that covers literacy and numeracy but also results in the perpetuation of gender stereotypes, disablist or racist views is not an 'education' for the purposes of international human rights law.

The right to education consists of both entitlements and freedoms. Let's start with the freedoms or liberties aspect. The Covenant and the Convention on the Rights of the Child provide parents and others caring for the child with a right to choose schools other than those established by public authorities, and to ensure the religious and moral education of their children in conformity with their parental convictions. Both treaties also specify that

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individuals and bodies have the liberty to establish and direct educational institutions. But these liberties aren't unlimited: they are subject to the requirement that the education given in such institutions must conform to the minimum standards prescribed by the State.

We'll now turn to the entitlements that the right to education gives rise to. Like all economic and social rights, states are obliged to progressively realise the right to education to the maximum extent of their available resources. Articles 13 and 14 of the Covenant and Article 28 of the Convention on the Rights of the Child set out specific measures that states must take. And I want to discuss some of the more important of these now

First, everyone has the right to free, compulsory primary education. However, states are also obliged to ensure that secondary education in its different forms, including technical and vocational secondary education, is made generally available and accessible to everyone by every appropriate means. This should be done in particular through the progressive introduction of free education and, in the case of children, the offer of financial assistance in case of need.

Higher education must be made available to all on the basis of capacity by every appropriate means – again, particularly by the introduction of free education. This doesn't require states to make university or vocational or technical education free of charge immediately but it does set a goal which States should move towards. Of course, for many people education stops much earlier: and when it comes to people who haven't received or completed their full primary education, the Covenant makes clear that fundamental or basic education for those people must be encouraged or intensified as far as possible. Such basic education is generally understood to correspond to primary and lower secondary education

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The Committee on the Rights of the Child has identified a range of factors that affect children's ability to remain in school. These include fees and associated costs of education – for instance, the expense of uniforms or school trips. Other factors are family poverty, a lack of adequate social schemes and pressure on children to contribute to family income through work. The Committee has also flagged a lack of adequate and safe sanitation facilities for girls – and, of course, bullying. Addressing these issues is necessary if states are to satisfy their obligation to encourage regular attendance at schools and the reduction of drop-out rates. Where a factor has an especially severe impact on specific groups – for instance bullying of LGBTI or minority children – then a failure to address that factor will also amount to a failure to prevent discrimination in the enjoyment of the right to education.

Everyone has the right to available, accessible, acceptable and adaptable education. Availability of education requires that functioning educational institutions and programmes are available in sufficient quantity. For education to be accessible, educational institutions and programmes have to be accessible to everyone. They must be in safe physical reach at a reasonably convenient geographic location or accessible via modern technology. To be economically accessible, education has to be affordable to all. Acceptable education requires that the form and substance of education, including curricula and teaching methods, are relevant, culturally appropriate and of good quality to students and, in appropriate cases, parents. Linking back to our earlier discussion, acceptable education should also meet the educational objectives set out by the two treaties and such minimum educational standards as may be approved by the State. Finally education has to be adaptable in the sense of being flexible enough to adapt to the needs of changing societies

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and communities and to respond to the needs of students in their diverse social and cultural settings.

When it comes to school discipline, the Convention on the Rights to Child provides that states must ensure that discipline is administered in a manner consistent with the child's dignity. This doesn't just mean that governments must prohibit physical punishment in educational contexts – it requires the banning of practices like public humiliation.

There is a growing understanding of the role that children themselves have to play in contributing to their education – at the individual, classroom, school and national policy levels. For instance, through school councils and child-focused consultations. This reflects the fact that, under Article 12 of the Convention on the Rights of the Child, children have the right to express their views on decisions relating to their education and to have those views be given due weight in accordance with their age and maturity. This right also applies to disabled children who must be given opportunities for supported decision-making in order to facilitate their active participation in decisions about their education. Indeed, reflecting the particular challenges disabled children face in the education context, Article 24 of the UN Convention on the Rights of Persons with Disabilities makes clear that every disabled person has a right to inclusive education. Amongst other things this obliges states to ensure an inclusive education system at all levels. This will require the provision of accessible learning environments, individual support and reasonable accommodation.

I want to finish by mentioning a topic that is a controversial issue in many countries: sex education. Education has a key role to play in terms of children's sexual and reproductive health rights. And the Committee on the Rights of the Child has made clear when discussing

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the right of adolescents that age-appropriate, comprehensive and inclusive sexual and reproductive health education must be part of the mandatory school curriculum. This education must be based on scientific evidence and human rights standards, and developed with adolescents. Where children don't receive that education, states are failing to satisfy the right to education.