Right to higher education

Unpacking the international normative framework in light of current trends and challenges

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The Global Education 2030 Agenda

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

Unpacking the right to higher education

Higher education is too often dissociated from the right to education. In many countries tuition fees are on the rise, and only the privileged have access to, or succeed in completing, higher education, making it difficult to argue that there is an actual right to higher education to be enforced. However, international human rights law is clear: the right to education includes the obligation of states to ensure that higher education is made accessible to all based on capacity. In addition, states have an obligation to progressively introduce free higher education, an obligation which is yet to be implemented globally.

Confronted with drastic changes worldwide in terms of rising inequalities, human movement, growing digitalization and the effects of the COVID-19 pandemic, it is high time to clarify existing obligations as well as what aspects of the right to higher education might require further explanation considering new contexts and challenges.

Despite a 100% increase in the number of university students in the past 20 years, huge inequalities remain

This publication aims to help guide policy-makers, civil society and the international education community, to fully enforce the right to higher education and ensure that the human-rights based approach is placed at the heart of the higher education debate.

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"Since wars begin in the minds of men and women it is in the minds of men and women that the defences of peace must be constructed"

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Acknowledgements

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1   https://www.unesco.org/en/education/higher-education/2022-world-conference
2   https://www.iesalc.unesco.org/en/the-right-to-higher-education/

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Key takeaways and findings

▶ **Access to higher education:**

– **Equality and non-discrimination principles:** The right to non-discrimination and equality are fundamental human rights principles which apply to higher education and must be protected in national legal frameworks. States must remove all barriers in accessing higher education for all disadvantaged, marginalized and vulnerable groups, including by addressing intersectionality, adopting affirmative action, providing guidance and counseling services, and monitoring higher education by collecting disaggregated data.

– **Introducing free higher education:** States have an obligation to make higher education progressively free by taking steps to adopt and implement a national educational strategy. In any case, higher education should be affordable, and while this deserves further clarification, it includes reducing direct and indirect financial barriers.

– **Rethinking capacity:** Higher education should be made equally accessible on the basis of capacity, but what this means needs to be re-evaluated due to the unequal distribution of educational opportunities from early years as well as embedded direct and indirect discrimination in education and lack of cultural capital faced by the disadvantaged, marginalized and vulnerable.

– **Multiple forms and pathways to higher education:** Higher education must have flexible curricula and delivery systems, ensure flexible learning pathways to higher education. Online and distance learning expand higher education opportunities, but measures need to be taken to ensure access for all, including disadvantaged, marginalized and vulnerable students.

▶ **Inclusion in higher education:** There needs to be a shift from focusing only on access to also consider completion of studies and the transition to the labour market to ensure effective inclusion by, inter alia, ensuring access to tutoring and mentorship programmes, ridding pedagogy and curriculum of bias, ensuring flexibility in transferring to another course, encouraging social integration and commitment, financial measures, etc.

▶ **Quality higher education:** Quality is intrinsically part of the right to higher education and as such, higher education must conform to approved minimum educational standards. This includes strengthening academic freedom and institutional autonomy, quality assurance systems, ensuring teaching personnel are adequately trained and qualified, and ensuring the safeguards for online higher education.

▶ **Human movement and international recognition of qualifications:** States have reduced barriers to higher education, but there is a need to further strengthen recognition of qualifications and also develop comparable and compatible qualifications, by removing academic mobility obstacles, including for refugees. Further clarifying the right to higher education of climate displaced people is also necessary.

▶ **System-level governance and financing of higher education:** A system-wide approach should be adopted to ensure concerted efforts in realizing the right to higher education to ensure the interconnectedness of higher education with other levels of education. States also have an obligation to allocate the maximum available resources to finance higher education, including through cost-effective and efficient approaches, combatting corruption, mismanagement and tax evasion.

Introduction

There is an indisputable right to higher education: international human rights law provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and, in particular, by the progressive introduction of free education. If there is no requirement for higher education to be universally accessible, states must ensure that higher education is equally accessible on the basis of 'capacity', with no discrimination.

Global trends in higher education show that access has increased in all regions of the world over the past two decades. The gross enrolment ratio for tertiary education gradually increased from 19% in 2000 to reach an impressive 40% in 2020 (UIS data). Yet, while there are increasing participation rates in all regions, there remain significant disparities among different groups. Indirect discrimination (laws, policies or practices which appear neutral, but have a discriminatory effect when implemented) and systemic discrimination (behaviours, policies or practices that create, contribute or perpetuate, often without intent, disadvantage for specific groups) continue to limit access to higher education. Students do not have the same opportunities in accessing and receiving quality higher education due to their class, gender, ethnicity and/or geographic location. Some privileged groups are overrepresented in higher education systems, while underprivileged groups face numerous discriminations (Ibid.).

The cost of higher education for students and their families is a major barrier to higher education, leaving the poorest students behind. According to the latest UNESCO Global Education Report, 'the wealth gap in access to tertiary education is high in much of the world. Analysis of data from the World Inequality Database on education shows the median gap in tertiary attendance between the richest and poorest quintiles is 21 percentage points' (UNESCO GEM, 2021, p. 168). This financial barrier has a major impact in perpetuating inequalities in society. Indeed, education is key for economically challenged students who come from vulnerable, marginalized and disadvantaged groups to climb the social ladder and change their situations. Yet they either cannot afford the direct and indirect fees or face an important loan debt that impacts their future life. This trend is aggravated by a decrease in public funding to higher education enabling the offer of grants or free access for the most deprived students, and the increase of privatization, often associated with high tuition fees.

While states have adopted laws, policies and other measures to implement the right to higher education at national level, for instance through the establishment of quotas for vulnerable, marginalized and disadvantaged groups, differentiated measures for admission to higher education, and the development of financial support or the recognition of qualifications facilitating mobility, they have also moved away from existing obligations established by international human rights law. This has notably occurred through increased tuition fees and the failure to mitigate the increase of indirect costs such as accommodation, transportation, and incidental living costs – thus diminishing the international recognition that higher education is a human right.

The COVID-19 pandemic in 2020, with the closure of universities that ensued, not only suddenly disrupted the education of more than 220 million tertiary students (UNESCO, 2021a) but also exacerbated pre-existing inequalities, notably widening the gaps between the richest and the poorest. It also transformed the higher education landscape with the move to online studies, which, while they have allowed the learning continuity, have also negatively impacted mental health (Girard, I. 2021) and academic performance, and widened the digital divide due to limited access to high-speed connectivity and high-quality technology (Block, J., 2010), all of which in turn affect job prospects.

Besides the increased reliance on digital technology and rising inequalities, higher education faces other challenges in today's world, including ensuring the relevancy and quality of its provision; addressing the increase in human movement accentuated by the effects of climate change, which has led to obstacles in the recognition of diplomas; as well as threats to academic freedom and institutional autonomy.

With the adoption of the Education 2030 Agenda a renewed focus has been given to lifelong learning, which set specific commitments to ensuring equal access to higher education and adopted a more holistic approach to education through SDG 4 Target 4.3. In view of the challenges and evolving contexts, there is a need to further recontextualize the right to higher education and bring greater clarity to the legal obligations defined in international human rights law, to effectively ensure its full implementation at country level.

This publication, aimed at policy-makers, parliamentarians, civil society and the international education community, has **three objectives**:

1) To foster knowledge on what the right to higher education concretely entails
2) To unpack the obligations and principles and analyze trends in light of the evolving right to education framework and global challenges
3) Provide guidance to enforce the right to higher education particularly in light of the fast-paced changes the world is facing

Structured around three sections, **section 1** provides an overview of international human rights instruments at international and regional levels and showcases compliance with international obligations and commitments both and national and international levels. In **section 2**, by presenting the existing rights and obligations in regard to higher education, the publication delves into the global trends and challenges at all stages of higher education with a view to further clarify states' obligations to fully ensure equity in higher education. The analysis builds on country measures taken to domestically implement higher education as well as existing case law and UN observations from the previous section. Key takeaways and findings are gathered at the end of each section. Drawing on the findings and the analysis, **section 3** provides concluding considerations and presents possible guidance for actions both at national and international levels from a human rights-based approach.

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Definitions

Displaced person: 'an individual forced to move from his or her locality or environment and occupational activities to another locality or environment' (UNESCO, 2019b)

Formal education: 'Education that is institutionalized, intentional and planned through public organizations and recognized private bodies and, in their totality, make up the formal education system of a country. Formal education programmes are thus recognized as such by the relevant national educational authorities or equivalent, e.g. any other institution in co-operation with the national or sub-national educational authorities.' (UNESCO UIS, 2012)

Higher education: 'all types of study programmes or sets of courses of study at the post-secondary level which are recognized by the competent authorities of a State Party, or of a constituent unit thereof, as belonging to its higher-education system' (UNESCO, 2019b)

Higher education institution: 'an establishment providing higher education and recognized by a competent authority of a State Party, or of a constituent unit thereof, as belonging to its higher-education system' (UNESCO, 2019b)

Prior learning: 'the experience, knowledge, skills, attitudes and competencies which an individual has acquired as a result of formal, non-formal, or informal learning, assessed against a given set of learning outcomes, objectives, or standards' (UNESCO, 2019b)

Partial studies: 'any part of a higher education programme which has been evaluated and, while not a complete programme in itself, represents a significant acquisition of knowledge, skills, attitudes and competencies (UNESCO, 2019b)

Qualification:

▶ **Higher education qualification:** 'any degree, diploma, certificate, or award issued by a competent authority and attesting the successful completion of a higher education programme or the validation of prior learning, where applicable' (UNESCO, 2019b)

▶ **Qualification giving access to higher education:** 'any degree, diploma, certificate, or award issued by a competent authority and attesting the successful completion of an education programme or the validation of prior learning, where applicable, and giving the holder of the qualification the right to be considered for admission to higher education' (UNESCO, 2019b)

Quality assurance: 'an ongoing process by which the quality of a higher-education system, institution, or programme is assessed by the competent authority/authorities to assure stakeholders that acceptable educational standards are continuously being maintained and enhanced (UNESCO, 2019b)

Recognition: 'a formal acknowledgment by a competent recognition authority of the validity and academic level of a foreign education qualification, of partial studies, or of prior learning for the purpose of providing an applicant with outcomes including, but not limited to:
(a) the right to apply for admission to higher education; and/or
(b) the possibility to seek employment opportunities' (UNESCO, 2019a)

Secondary education: Composed of lower secondary and upper secondary. The aim of the former is 'to lay the foundation for lifelong learning and human development upon which education systems may then expand further educational opportunities'. While upper secondary education is 'typically designed to complete secondary education in preparation for tertiary education or provide skills relevant to employment, or both.' (UNESCO UIS, 2012)

Tertiary education: 'Tertiary education builds on secondary education, providing learning activities in specialised fields of education. It aims at learning at a high level of complexity and specialisation. Tertiary education includes what is commonly understood as academic education but also includes advanced vocational or professional education' (UNESCO UIS, 2012)

Section 1
International human rights framework and national compliance

1.1 International human rights framework

This section offers an overview of human rights instruments that provide for the right to higher education.[1] It presents the main international and regional state obligations and rights that exist, highlighting the human rights dimension of higher education.

The section presents both international and regional instruments showing the wide geographical recognition of the right to higher education. Some provisions are included in general human rights instruments, (e.g. International Covenant on Economic, Social and Cultural Rights) or in specific ones related to a particular group, (e.g. Convention for the Elimination of All Discrimination against Women) or to a particular topic, (e.g. UNESCO Global Convention on the Recognition of Qualifications concerning Higher Education). The focus is given to legally binding instruments such as Conventions, Protocols and Charters which are subject to ratification, however, prominent Recommendations and Declarations, which while not legally binding, apply to all states and constitute an important political commitment to higher education[2].

The detailed explanations of the provisions and related state obligations will be developed in sections 2 and 3.

1.1.1 General international instruments

The right to higher education is recognized under international human rights law. The Universal Declaration of Human Rights adopted in 1948, states that 'higher education shall be equally accessible to all on the basis of merit' (Article 26). The UNESCO Convention against Discrimination in Education, adopted in 1960, establishes that 'the States Parties (...) undertake (...) to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular (...) to make higher education accessible

to all on the basis of individual capacity' (Article 4). The International Covenant on Economic, Social and Cultural Rights, adopted in 1966, goes further stating that 'Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education' (Article 13(2)(c)).

1.1.2 Specific international instruments

The right to higher education is also guaranteed by treaties focusing on specific groups. The Convention on the Rights of the Child, adopted in 1989, and which only applies to children up to 18 years old, provides that states shall 'make higher education accessible to all on the basis of capacity by every appropriate means' (Article 28(1)(c)). The Convention on the Elimination of all Forms of Discriminations against Women, adopted in 1979, is entirely dedicated to women by considering their specific needs and circumstances. Article 10, which is dedicated to the right to education states that 'States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: a. The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training'. The Convention on the Rights of Persons with Disabilities (2006) further establishes that 'States Parties shall ensure that persons with disabilities are able to access general

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1   For the full provisions, please visit the website: Right to Education Initiative, Right to education and higher education. Available at: https://www.right-to-education.org/resource/international-instruments-right-higher-education (accessed in November 2021).

2   For more information on the different types of instruments see also Chapter 2 of: UNESCO and RTE. 2019. Right to education handbook. For UNESCO instruments, both the implementation of Conventions and Recommendations are regularly monitored.

tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, states parties shall ensure that reasonable accommodation is provided to persons with disabilities' (Article 24(5)).

In 2019, the first United Nations treaty in higher education of a global scope was adopted by UNESCO Member States: the Global Convention on the Recognition of Qualifications concerning Higher Education, which aims to facilitate international academic mobility and promote the right of individuals to have their higher education qualifications evaluated in a fair, transparent and non-discriminatory manner. The Convention also has specific provisions on promoting the recognition of refugees' qualifications, even in cases where documentary evidence is lacking.

It comes nearly three decades after the adoption of the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education (1993), whose aim was to promote inter-regional cooperation on the recognition of studies and qualifications. In addition, there is the ILO/UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997), dedicated to this professional group.

1.1.3 Regional instruments

UNESCO conventions

At the regional level, in the 1970s UNESCO Member States adopted five regional conventions and one inter-regional convention to promote the recognition of higher education qualifications and cooperation within regions. These include the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean (1974); the International Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States bordering on the Mediterranean (1976); the Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab States (1978); the Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region (1979); the Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States (1981); and the Regional Convention on the Recognition of Studies, Diplomas, and Degrees in Higher Education in Asia and the Pacific (1983).

The changing landscape of higher education, brought on by growing enrolment, student mobility and the diversity of provision, led UNESCO Member States to revise the five regional conventions, adopting five 'second generation' conventions. These include the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, known as the 'Lisbon Convention' (1997); the Revised Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education, known as the 'Tokyo Convention' (2011); the Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States, known as the 'Addis Convention' (2014); the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean, known as the 'Buenos Aires Convention' (2019); as well as the Revised Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab States (2022).

African region

The African Charter on the Rights and Welfare of the Child (1990), establishes that states 'shall take all appropriate measures with a view to achieving the full realisation of [the right to education] and shall in particular c. make higher education accessible to all on the basis of capacity and ability by every appropriate means' (Article 11(c)). The African Youth Charter (2006) goes further in its article on youth participation (Article 11) establishing that states shall 'institute measures to professionalize youth work and introduce relevant training programmes in higher education and other such training institutions' in order 'to promote active youth participation in society' (Article 11(f)). Under its Article 13 on education and skills Development, the African Youth Charter establishes that states shall 'make higher education equally accessible to all including establishing distance learning centers of excellence' (Article 13(4)(f)) and 'introduce scholarship and bursary programmes to encourage entry into (…) higher education outstanding youth from disadvantaged communities, especially young girls' (Article 13(l)).

American region

The Additional Protocol to the American Convention on Human Rights, also called the Protocol of San Salvador (1998) established that states 'recognise that in order to achieve the full exercise of the right to education: (…) c. higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education' (Article 13(c)).

Asian region

In the Asian context, the non-binding ASEAN Human Rights Declaration (1992) states in its Article 31(1) that 'higher education shall be equally accessible to all on the basis of merit'.

European region

At the European level, the Revised European Social Charter of the Council of Europe (1996) established in its Article 10(1) on 'the right to vocational training' that 'with a view to ensuring the effective exercise of the right to vocational training, the Parties undertake 1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organizations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude.'

The European Charter for Regional or Minority Languages of the Council of Europe (1992), under its part III on 'Measures to promote the use of regional or minority languages in public life' establishes (Article 8(e)) that States undertake 'i. to make available university and higher education in regional or minority languages; ii. to provide facilities for the study of these languages as university and higher education subjects; iii. If, by reason of the role of the State in relation to higher education institutions, sub-paragraphs i and ii cannot be applied, to encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects'.

The European Convention on the Legal Status of Migrants Workers (1977) specifies in its Article 14(1) on 'Pretraining - schooling - Linguistic training - Vocational training and retraining' that 'migrant workers and members of their families officially admitted to the territory of a Contracting Party shall be entitled, on the same basis and under the same conditions as national workers, to general education and vocational training and retraining and shall be granted access to higher education according to the general regulations governing admission to respective institutions in the receiving State.'

In 2007, the Council of Europe adopted the non-binding Recommendation on the public responsibility for higher education and research stating in its Article 7 that 'public authorities have: exclusive responsibility for the framework within which higher education and research is conducted; leading responsibility for ensuring effective equal opportunities to higher education for all citizens, as well as ensuring that basic research remains a public good; substantial responsibility for financing higher education and research, the provision of higher education and research, as well as for stimulating and facilitating financing and provision by other sources within the framework developed by public authorities.'

1.1.4 SDG4-Education 2030 – a new impetus for the right to higher education

With the UN Millennium Declaration, signed by UN Member States in 2000, the Millennium Development Goals (MDGs) were adopted, committing states to take measures to combat poverty, illiteracy, environmental degradation, hunger and more by 2015. MDG 2 specifically aimed to improve global education by 'ensur(ing) that by 2015, children everywhere — boys and girls alike —will be able to complete a full course of primary schooling' (UN, 2013). While progress was certainly made between 2000 and 2015, with net enrolment ratios rising and the number of out-of-school children falling, there were still significant gaps in development that remained, including the fact that MDG 2 was narrow in scope and a stand-alone educational objective addressing only primary education.

As a result, the UN re-imagined the MDGs with the aim of highlighting the interlinkages between the development goals and the interconnectivity of social, cultural, and environmental dimensions - ultimately adopting the 2030 Agenda for Sustainable Development. Unlike the MDGs, the Sustainable Development Goals (SDGs) acknowledge that education cannot be a stand-alone pursuit, is an integral part of all forms of development, and can aid in the pursuit of other SDGs.

SDG 4, which is dedicated to education, moves beyond MDG 2, as besides achieving universal primary education it aims to provide lifelong learning opportunities for all, including higher education. More specifically, its Target 4.3 requires that Member States should strive to: 'By 2030, ensure equal access for all women and

men to affordable and quality technical, vocational and tertiary education, including university'. By adopting the SDG 4 Education 2030 agenda, the international community has therefore shown its renewed commitment to higher education.

Furthermore, higher education plays a major role in contributing to the achievement of all SDGs by, for example, contributing to ending poverty (SDG 1); improving health and well-being (SDG 3); achieving gender equality (SDG 5); enhancing decent work and economic growth (SDG 8); promoting responsible consumption and production (SDG 12); combatting

climate change (SDG 13); and promoting peace, justice and strong institutions (SDG 16).

The SDG 4 – Education 2030 agenda is also grounded in human rights, largely aligning the political commitments to the content of the right to education. While states committed to ensuring the 'affordability' of technical vocational and tertiary education by 2030, it is important to highlight that states have a legal obligation to make these levels of education progressively free. In cases whereby due to financial constraints, states are unable to provide free education, measures to ensure its affordability must be taken (see **section 2.5**).

1.2   Compliance with national and international law

When ratifying international human rights instruments, states are legally bound to implement the provisions contained therein. Ensuring accountability at national and international levels is therefore essential if the legal provisions, including on the right to higher education, are to be enforced. In this section, an overview of existing case law at national level and the country observations formulated by the UN treaty bodies is provided to showcase some of the implementation challenges that have been raised regarding this right, as well as the related decisions and recommendations.

1.2.1   Case law at national level

Judicial mechanisms, such as courts and tribunals, have an essential role in ensuring compliance with national and international law. Ensuring that rights holders can take their claim before an independent and impartial body makes it possible for the right to higher education to be enforced. Justiciability allows for legal accountability, sanctions for violations and transgression, and remedial actions when appropriate. It is therefore important that states put in place the conditions to ensure that the justice system is accessible, independent and efficient.

In this regard, across several states, the enabling judicial conditions have led to issues related to the right to higher education to be brought to court. For instance, in 1995, a case was brought to the Supreme Court of South Africa, Motala and another v University of Natal (1995 (3) BCLR 374 (D); 1995 SACLR LEXIS 256)[3], by the parents of an Indian highly gifted student who was refused admission to medical school in application of an affirmative action policy which favoured African applicants. They requested an order directing the school to admit her on the grounds of the guarantee of equal access to educational

institutions established by the Constitution. The Court judged that a differentiation can be made between different categories of black people (African, 'Coloured' and Indians) as part of affirmative action policies, with Africans being preferred to other designated groups. The Court held:

> The contention by counsel for the applicants appears to be based upon the premise that there were no degrees of 'disadvantage'. While there is no doubt whatsoever that the Indian group was decidedly disadvantaged by the apartheid system, the evidence before me establishes clearly that the degree of disadvantage to which African pupils were subjected under the [Apartheid] system of education was significantly greater than that suffered by their Indian counterparts. I do not consider that a selection system which compensates for this discrepancy runs counter to the provisions of [the equality provision of the Interim Constitution].

In the Asian region, case *Mohini Jain v Karnataka*, (1992 AIR 1858)[4] was brought to the Supreme Court of India, challenging a notification issued by the Karnataka government that permitted private medical colleges to charge higher fees to students who were not allocated 'government seats'. The Court held that the charging of a 'capitation fee' by the private educational institutions violated the right to education, as implied from the right to life and human dignity, and the right to equal protection of the law. In the absence of an express constitutional right, the Court interpreted a right to education as a necessary condition for fulfilment of the right to life under Article 21 of the Indian Constitution. In addition, the Court held that private institutions, acting as agents of the State, have a duty to ensure equal access to, and non-discrimination in the delivery of, higher education.

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3   See the summary available at: https://www.right-to-education.org/resource/motala-and-another-v-university-natal-supreme-court-south-africa-1995

4   See the summary available at https://www.right-to-education.org/resource/mohini-jain-v-karnataka-supreme-court-india-1992

In Europe, the French Constitutional Court was seized in 2019,[5] by student unions and associations in response to public higher education tuition fees concerning international students from outside of the European Union. The plaintiffs argued that under paragraph 13 of the preamble of the French Constitution, public higher education should be equally accessible to all and free. In its Decision n° 2019-809 QPC of 11 October 2019 on higher education tuition fees in public universities, the Constitutional Court found that modest tuition fees in public higher education are appropriate and depending on the financial capacity of students, do not go against the principle of equal access to education and the principle of free higher education. The right to education should ensure that access to higher education is financially possible for every student. Thus, limited tuition fees can be set by legislators under the control of the judicial system. Therefore, the Court states that the right to education of international students to access the French public higher education system was not violated.

1.2.2 Overview of the UN treaty bodies concerns and recommendations

The UN treaty bodies are committees of independent experts which monitor states parties' compliance with the obligations set out in the core international human rights treaties. Seven of the ten treaty bodies are competent to monitor the right to education either comprehensively or focusing on specific aspects. The treaty bodies periodically examine state party reports on the measures taken to implement the treaty as well as reports submitted by civil society. Based on the reports and constructive dialogue with the state party, they issue their Concluding Observations and formulate recommendations on what the state should do to comply with the obligations laid out in the treaty. States are expected to address the Concluding Observations and implement the recommendations. Through this reporting mechanism, the implementation of the right to higher education at national level can be monitored.

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5   Summary available at: https://www.right-to-education.org/resource/decision-higher-education-tuition-fees-public-universities-constitutional-court-france-2019

Across the different UN treaty bodies, the Concluding Observations mainly refer to higher education in their section on the right to education[6]. Over the period 2016-2021, the Committees have highlighted the disparities in access to higher education for disadvantaged, vulnerable and marginalized groups, particularly minorities such as Roma and migrants (Committee on the Rights of the Child (CRC), Committee on Economic, Social and Cultural Rights (CESCR), Committee on Civil and Political Rights (CCPR)), women and girls (Committee on the Elimination of Discrimination against Women (CEDAW)), and persons with disabilities (Committee on the Rights of Persons with Disabilities (CRPD)). This is evidenced by their underrepresentation in higher education establishments.

The Committees stress challenges at different levels: at the application and enrolment phase, during the studies, and in the transition to the labour market. They raise concerns about the underrepresentation of certain groups as well as discriminations issues, both in access to higher education and in some fields of study. They question the contents of education, noting they are not always adapted to the labour markets and leave students without jobs. They recommend the adoption of targeted and positive measures, stressing the need to allocate sufficient budget for the implementation of the right to higher education.

The Concluding Observations over 2016-2021, show that in some countries (Barbuda, Costa Rica, France, Republic of Korea, Romania and Saint Vincent and the Grenadines and the United Kingdom), there are no effective measures to ensure equal access to students from different social and economic backgrounds. In others (Australia, Bhutan, Eritrea, Kiribati, Latvia, New Zealand, Qatar, Senegal and Turkey), they show that women have more difficulties enrolling in programmes and receiving higher education. In some nations, they also face issues accessing certain fields of study generally attributed to men (Germany, Haiti, Montenegro, Romania, Singapore, Sweden and Ukraine). In others, persons with disabilities struggle to access higher education (Latvia, Lithuania, Oman and Sudan), including technical and vocational education - with students sent to special schools. They also point to the lack of teacher training (UAE) and the challenges in accessing buildings and adapted learning material (Albania, Cuba, Greece, Luxembourg, Montenegro, Panama and Philippines).

The period of the studies itself is marked by high dropout rates, especially for students coming from disadvantaged economic and social backgrounds (migrants, Roma, Bahai, Maori and Pasifika students) and women. The Committees therefore recommend states to adopt specific measures to ensure inclusion in higher education, by offering scholarships to students who cannot afford education, setting quotas for certain communities and women and providing universities with more resources to support the integration of the under-represented groups in higher education institutions.

The Committees underline that receiving higher education does not necessarily ensure the transition to the labour market (e.g. Lebanon) and recommend

Figure 1

Share of Concluding Observations among UN treaty bodies which relate to the right to higher education, for the period 2016-2021

CRPD 18%
CEDAW 49%
CCPR 3%
CESCR 14%
CCR 16%

Data source: Right to Education Initiative's calculations based on the Concluding Observations of UN treaty bodies from 2016 to 2021

6   See the reference table here: https://www.right-to-education.org/resource/un-treaty-bodies-concluding-observations-higher-education-2016-2021

states to strengthen their vocational training programmes and to develop curricula that fit the labour market needs.

While some issues seem to be present in most of the countries, the data presented does not give a full picture of the state of implementation of the right to higher education worldwide, as the Concluding Observations which refer to this level of education mainly concern Europe. For instance, the Concluding Observations on the CESCR between 2016 and 2021 mention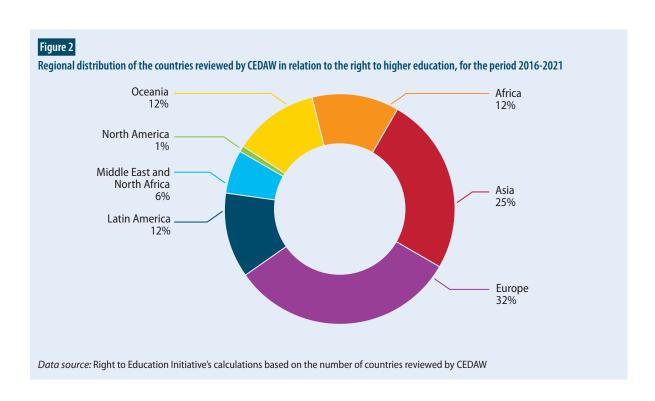ed the right to higher education in European countries nearly three times more than any other region. The main issue in Europe is the underrepresentation of vulnerable, disadvantaged and marginalized groups (i.e. Roma and migrants). The Latin American region also faces the same issues (Costa Rica and Dominican Republic), but the review scale is more limited (only mentioned three times). Some highlight the difficulty in transitioning from higher education to the labour market (Lebanon and Slovakia).

While the CRC mentions the right to higher education almost equally across Africa, Europe, and Latin America, the recommendations mainly concern discrimination and its impacts on limiting access to higher education for students from vulnerable, marginalized and disadvantaged backgrounds (migrants and Roma). Armed conflict is brought up as a driver behind the same phenomenon (Central African Republic and Niger). Higher education stops being accessible when the institutions are used by the armed forces, as they become unsafe places and can be a target for attack.

The CEDAW refers to the right to higher education the most (see Figure 1) and in this regard, Asian and European countries are mentioned at least twice as much as any other continent (Figure 2). CEDAW highlights that women are often under-represented in higher education institutions (North Macedonia (former Yugoslav Republic of Macedonia), Laos, New Zealand, Turkmenistan, Fiji and Luxembourg) and while this is improving in some countries, they are still globally under-represented in fields of study traditionally attributed to men (Cabo Verde, Cyprus, Qatar and Seychelles). The Committee also raised concerns about the underrepresentation of women in leadership positions at universities. Pregnant women and girls have additional struggles when it comes to access to higher education.

The CRPD brings up higher education issues mainly in the geographical context of Europe. It is mentioned at least five times more than in any other region. The Committee is concerned about physical access to higher education and recommends setting up the infrastructures to make reasonable accommodation a reality (Armenia and Chile). The Committee also brings up the need for teacher training for delivering knowledge to students with disabilities (UAE) which in some cases adds up to access issues (Lithuania, Portugal and Serbia) as presented by other Committees. The need for sufficient budget allocation to implement these policies has also been stressed by the CRPD.

Figure 2

Regional distribution of the countries reviewed by CEDAW in relation to the right to higher education, for the period 2016-2021

Oceania 12%
North America 1%
Middle East and North Africa 6%
Latin America 12%
Africa 12%
Asia 25%
Europe 32%

Data source: Right to Education Initiative's calculations based on the number of countries reviewed by CEDAW

Section 2

Applying the right to higher education in light of current trends, challenges and the evolving education context

The following section aims to unpack the rights and obligations regarding higher education as laid out in international human rights law. Human rights provisions were not conceived to be theoretical or even ideological, but as having meaningful content which can, and must, be translated very concretely in national frameworks. Domestic implementation therefore requires states to lay the foundation and conditions for the delivery and sustainability of free, inclusive, equitable and quality education by establishing strong national legal and policy frameworks,[7] including on the right to higher education. Without concrete national measures, states do not comply with the ratified international human rights instruments nor respect the political commitments made to the SDG4-Education 2030 agenda.

As the right to education is not static, the section reflects on how to apply the existing framework to today's context, by taking into account trends, current and persistent challenges, analyzing concrete country examples[8] and referring to the UN observations and national case law presented in the previous section. While the international human rights framework is not updated regularly, in light of the global reflection on the evolving right to education[9] this publication touches upon areas that may require further clarification in normative instruments.

Before focusing on the specific components of the right to higher education, an important framework was developed to interpret the right to education by the former UN Special Rapporteur on the right to education, Katarina Tomaševski: the 4As framework. This framework, embedded in human rights principles, provides the lens through which the analysis is elaborated.

The 4As Framework as applied to higher education

The 4As framework was used by the Committee on Economic, Social and Cultural Rights (CESCR), in General Comment No. 13 on the right to education to elaborate the 'essential features' of all types and levels of education, including higher education. The Committee recalls that 'higher education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels' (para. 17).

As a reminder, according to paragraph 6, it means that:

(...) education in all its forms and at all levels [including higher education] shall exhibit the following interrelated and essential features:

(a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the state party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from

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7   For guidance on implementing the right to education, see: Strengthening the right to education in national frameworks: https://unesdoc.unesco.org/ark:/48223/pf0000375352/PDF/375352eng.pdf.multi

8   Unless indicated otherwise, the examples provided in this section are based on first-hand sources (national laws and policies) or on the state reports submitted for the 10th consultation on the Convention and Recommendation against Discrimination in Education. The state reports can be found on the UNESCO Observatory on the Right to Education [online]. Available at: http://www.unesco.org/education/edurights/ (accessed on 01/03/2022).

9   For more information see here: https://www.unesco.org/en/education/right-education/evolving (accessed on 03/05/2022).

the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

(b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the state party. Accessibility has three overlapping dimensions:

(i) Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;

(ii) Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme);

(iii) Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of Article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", states parties are required to progressively introduce free secondary and higher education;

(c) Acceptability - the forms and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required(...) and such minimum educational standards as may be approved by the State (...);

(d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

2.1   Access to higher education

The obligation to make higher education equally accessible to all on the basis of capacity and to guarantee non-discrimination are enshrined in both the UNESCO Convention against Discrimination in Education (Article 4) and the International Covenant on Economic, Social and Cultural Rights (Article 13(2)(e)). The latter instrument further adds that higher education should be made progressively free. However, implementing these obligations is challenging and students across the globe continue to face important barriers in accessing higher education. This section aims to examine accessibility in light of these obligations: equality and non-discrimination, free higher education and access on the basis of merit and capacity. Finally, to ensure access to all, the section analyses the multiple forms and pathways to higher education.

2.1.1 Equality and non-discrimination principles

The right to equality and non-discrimination are fundamental human rights principles which are explicitly applied to higher education. Guaranteeing these principles reflects the minimum core obligation of states[10] which must be immediately realized. These principles are particularly important in higher education, which is experiencing increased inequality in access to this level of education, with a gross enrolment ratio of only

38% (UIS) and large differences between countries and regions. In this section, besides providing an overview of how the two principles apply to higher education in general, specific challenges, measures and guidance are presented in subsections, notably focusing on vulnerable, marginalized and disadvantaged groups.

In interpreting the legal provisions, the CESCR provides clear guidance regarding these principles. Firstly, legislation which discriminates against either an individual or a group, on any of the prohibited grounds, or the failure to address de facto discrimination, is a violation of the right to education (CESCR, 1999, **para. 59**). Second, the CESCR stresses that 'the prohibition against discrimination (...) is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination' (para. 31). The Committee further explains that temporary measures aimed at achieving 'equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination (…), so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved' (para. 32). Finally, the Committee explains the principle of non-discrimination applies

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10   Minimum core obligations are laid out to ensure the satisfaction of, at the very least, minimum essential levels of the right to education. More information on other minimum core obligations see Chapter 4: UNESCO and RTE. 2019. Right to education handbook.

to all people of school age, including non-nationals, and irrespective of their legal status (para. 34).

In this regard, countries have introduced legal measures to ensure that discrimination in higher education is proscribed. Proscribing discrimination in law does not translate to the eradication of discrimination as de facto it may persist, however, it allows for the court to adjudicate on cases and thus advances the justiciability of the right to education.

While some countries have general legislation proscribing discrimination which also applies to higher education, several states have specific laws dedicated to higher education which allow for a more explicit application of the law. For example, in Andorra the law 14/2018 on higher education provides under Article 21(2) that 'Students have the right: (a) To enjoy equal opportunities and to be free from any form of discrimination' (unofficial translation). The Framework Law on Higher Education in Bosnia and Herzegovina also emphasizes that higher education is based on respect for human rights and civil liberties, including the prohibition of all forms of discrimination. This law defines that access to higher education will not be limited, directly or indirectly, on any real or presumed basis, including, inter alia, gender, race, sexual orientation, physical or other disability, marital status, skin colour, language, religion, political or other opinion and national, ethnic or social origin. In the Republic of Korea, the Framework Act on Education stipulates that the state, local governments, and founders or managers of schools or institutions for social education shall not practice discrimination when providing education, such as restriction of or exclusion from participation or benefits on the grounds of gender.

Having looked at equality and non-discrimination from a general perspective, there is a need to look at the specific challenges encountered by each vulnerable, marginalized and disadvantaged group, the measures taken to overcome them as well as issues that are transversal to all groups. This section concludes with some cross-cutting solutions.

Gender equality

Globally there has been a rapid increase in women's enrolment in higher education, which has tripled between 1995 and 2018 (UNESCO IESALC, 2021*c*). Regardless of encouraging statistics on women's access to higher education, girls and women, despite constituting half of the population, continue to require special attention as they face considerable hurdles in realizing their human rights, including the right to higher education. At the international level, **section 1.1** presents the key human rights instrument related to women: the Convention on

the Elimination of all Forms of Discriminations against Women (1979). It articulates specific obligations related to ensuring equality between men and women in higher education (Article 10(a)). On the basis of this Convention, the Committee on the Elimination of Discriminations against Women (CEDAW) has formulated a number of recommendations for states to eliminate discrimination against women in relation to higher education in its General Recommendation No. 36 on the right of girls and women to education (2017*a*):

▶ 'Increase women's professional mobility in institutions of higher learning by providing grants and/or scholarships to enable them to acquire advanced postgraduate degrees and introduce incentives/schemes to retain them;

▶ Strengthen efforts to increase the number of females in leadership positions at all levels of education especially university professors in all fields, through the use of measures, including temporary special measures (…);

▶ Establish targets, within a given timeline, to ensure parity in Higher Education positions at senior positions, professorships and as Chancellors and Vice-Chancellors in Universities;

▶ Establish policies and establish quotas for women's equal representation on higher education governing bodies such as senates, councils and on research bodies.' (para. 75)

Generally, and where data is available, women are overrepresented in tertiary education (UNESCO IESALC, 2021*c*), yet for some countries gender equality remains a challenge. In India, for example, women constituted only around 40% of the total student enrolments in higher education in 2015 (Thakur, J., 2021). The lack of access to higher education for girls is also true in countries such as Pakistan (CEDAW, 2020*a*), Cambodia (CEDAW, 2019*a*) and North Macedonia (former Yugoslav Republic of Macedonia, CEDAW, 2018*b*).

Among the most prominent challenges faced by women in higher education are the obstacles encountered when seeking to occupy key academic positions in universities, to be involved with relevant research and to take leadership roles (UNESCO IESALC, 2021*c*). As noted by the CEDAW, 'several factors account for the under-representation of women in leadership and decision-making positions at all levels of education' including 'limited access to education, especially opportunities for higher education for those teaching at the lower levels' (CEDAW, 2017*a*, para. 74). In addition, there are also concerns related to recruitment, retainment, and promotion of women in universities (UNESCO IESALC, 2021*c*). In this regard, in Cameroon women represented only 23.44% of all academic staff in tertiary education (UIS data, 2018). In its Concluding Observations, the CEDAW noted with concern the significant difference

in the percentage of men and women holding leadership positions in higher educational institutions (Malaysia, 2018*c*; Micronesia, 2017*b* and Belarus, 2016).
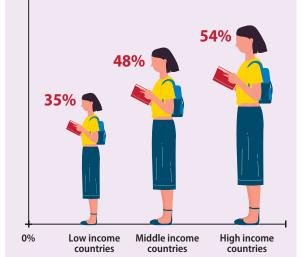
Another issue raised by the Committee is the fact that girls lack access to non-traditional fields of study, including science, technology, engineering and mathematics, such as in Afghanistan (CEDAW, 2020*b*), Bosnia and Herzegovina (CEDAW, 2019*b*), Seychelles (CEDAW, 2019*c*) and the United Kingdom (CEDAW, 2019*d*). Cultural structure and stereotypes have helped identify careers as female or male, therefore increasing the gap. In over two-thirds of countries, less than a quarter of the students of engineering, manufacturing and construction or ICT are female (UNESCO IESALC, 2021*c*). Pregnancy is another issue which limits women's access to higher education and their pursuit of studies (CEDAW, Australia, 2018*a*).

To address these issues, in its Concluding Observations the CEDAW calls on states to take measures to encourage girls' enrolment and to ensure that women and girls have the same level of access to higher education as men and boys (Afghanistan, 2020*b*). The Committee also encourages their enrolment through orientation programmes and career counselling in secondary and higher education (Cambodia, 2019*a*) and recommends the adoption of measures that allow pregnant women to complete higher education while restoring access to childcare subsidies for women who are not employed (Australia, 2018*a*).

Other measures include combating stereotypes; defining quotas for students belonging to vulnerable, marginalized and disadvantaged groups; expanding scholarships and cash transfers; collecting and sharing data on female participation in higher education; implementing diversity policies and programmes to increase women's full participation – as well as measures to prevent and respond to violence against women; adopting initiatives and programmes to help students make informed choices, free of gender bias, about their future fields of study and careers; and also developing strategies to enhance female participation in traditionally male-dominated careers (UNESCO IESALC, 2021*c*). In this regard, in Macao (China) the Tertiary Institution Gender Equality Promotion Board was established in 2015, comprising ten tertiary education institutions aimed at improving the campus mechanisms/policies on gender equality and on the prevention of sexual harassment. In Colombia, focus groups enable the identification of inputs for the design of the strategy to work with Higher Education Institutions and the population in rural areas to train women in non-traditional careers.

Interesting measures have been developed to close the gender gap in higher education, including special universities designed for disadvantaged groups such as women's universities (UNECO GEM, 2017). In Australia, the Royal Melbourne Institute of Technology developed an engineering programme for ten-year-old female students with the aim to address the issue at an early age (OECD, 2014). In a similar vein, in Belgium, the University of Ghent acts to recruit more female professors to balance the underrepresentation of women as faculty members (OECD, 2014). At the regional level, the EU also started an initiative (SAGE: Systemic Action for Gender Equality) to increase women's participation in research in order to promote gender equality. It aims to tear down barriers to women's recruitment, retention and career progression in research.

Figure 3

Women's enrolment in higher education by country income classification

Women made up **54%** of higher education students in high income countries, but only **35%** in low income countries in 2014

Source: Adapted from UNESCO GEM Report. 2017. World Education Blog: *Governments are struggling to keep pace with the fast growth of students in higher education*.
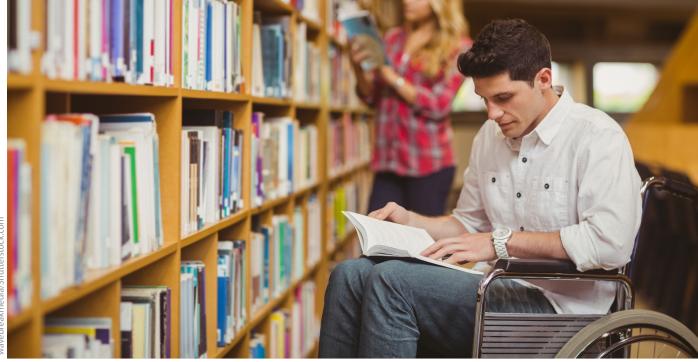
Students with disabilities

Section 1.1 refers to the Convention on the Rights of Persons with Disabilities (2006) which establishes that states are to ensure that people with disabilities are able to access tertiary education on an equal basis to others (Article 24(5)). The Committee on the Rights of Persons with Disabilities (CRPD) offers an authoritative interpretation in its General Comment No. 4 on the right to inclusive education (2016). It recalls that states have an obligation to realize the right to education of persons with disabilities by ensuring an inclusive education system at all levels, including tertiary education (para. 8) and that access to tertiary education should be ensured without discrimination and on an equal basis with others (para. 37). The Committee further adds that 'attitudinal, physical, linguistic, communication, financial, legal and other barriers to education (...) must be identified and removed in order to ensure equal access. Reasonable accommodation must be provided to ensure that persons with disabilities do not face discrimination. States should [also] consider taking affirmative action measures in tertiary education in favour of learners with disabilities' (para. 37).

In some countries, people with disabilities face many challenges in accessing and receiving quality higher education resulting in only a very low percentage of enrolment (Fedulova, I. et al., 2019 and HRW, 2013). In others, such as the United Kingdom, the enrolment of students with disabilities in higher education increased by 47% between 2014/15 and 2019/20, representing 17.3% of the total of all students (Hubble, S. and Bolton, P., n. d.). Regarding the transition from secondary to higher education, in its Concluding Observations, the Committee on the Rights of the Child (CRC) notes that teaching provided in integrated classes and special schools may limit the access of children with disabilities to mainstream higher education and vocational training (Switzerland, 2021*a*), while noting at the same time, in the case of Slovakia (2016*b*), that irrespective of their intellectual abilities, children with disabilities tend to be directed towards vocational training as opposed to higher education studies. In some cases, 'there is restricted access to certain fields of study and professional degrees for students with particular disabilities' (Portugal, CRPD, 2016*b*, para. 47).

Other barriers raised by the Committee highlight the difficulties persons with disabilities face in accessing facilities and information (Sri Lanka, CESCR, 2017 and Slovenia, CRPD, 2018*b*) such as inclusive environments, buildings, educational material, services, equipment, information and communication technologies (Greece, CRPD, 2019*a*). Among the reported issues are the 'the low quality of education provided and inadequate curriculum content used' (South Africa, CRC, 2016*c*, para. 45) as well as the lack of support for students with disabilities (France, CRPD, 2021 and Sudan, CRPD, 2018*c*). As a result, disabled students are less likely to continue their studies, graduate with a good degree and progress into a highly skilled job or further study as highlighted in England (Office for Students, 2019).

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In order to address these issues, the CRPD recommended in its Concluding Observations that countries should adopt legislative, administrative and financial measures to ensure the right to higher education of students with disabilities (Turkey, CRPD, 2019*c*; The Philippines, CRPD, 2018*a*; Latvia, CRPD, 2017*a* and Luxemburg, CRPD, 2017*b*), including measures guaranteeing support (Poland, CRPD, 2019). States must also prevent the exclusion of segregation of persons with disabilities from the general education system by providing reasonable accommodation and developing support systems and accessible learning environments (CRPD, 2016*a*). In Norway, for instance, a student support system provides additional grants when the disability causes delays in study progress, and in Croatia there are possibilities of direct admission to universities, direct accommodation in student dormitories and scholarships for students with disabilities (UNESCO, 2015*b*).

Further good practices can be found in Australia and Turkey. In Australia, the Disability Support Programme provides funding to eligible higher education providers to assist with the high costs incurred in providing educational support and equipment to domestic students with a disability with high-cost needs. Funding is also provided to encourage providers to implement strategies to attract and support students with disabilities. In Turkey, with the central placement system in higher education institutions, candidates with disabilities in higher education are supported by ÖSYM (Center of Assessment, Selection and Placement) exam applications. For candidates with disabilities, during the exam process, opportunities such as giving additional time, taking the exam in a private hall and reader/marker assistance are provided.

Minorities

Ethnic, linguistic, religious and national minorities remain generally under-represented in higher education compared to their proportion in the population as a whole. For instance, in the United States of America, according to the American Council on Higher Education (Ryu, M., 2009), white students represent 63.5% of all higher education students, while Hispanic students were 11% and American Indian 1.1%. In Mexico, less than 1% of the indigenous population was attending higher education, and in South Africa in 2013, approximately a sixth of Africans and 'Coloureds' were attending higher education compared to more than a half of Whites (UNESCO GEM and UNESCO IIEP, 2017). In the USA, the failure of flagship universities of some states to enrol minority students from their state in their programmes, has been reported (Lumpkin, L. et al., 2021).

In recent years, the UN treaty bodies raised particular concerns in their Concluding Observations about the underrepresentation of the Roma minority (for example in Czechia and Lithuania (CCPR, 2019 and 2021, respectively), in Ukraine (CESCR, 2021) and in Portugal (CRC, 2019*b*), the persistence of disparities in the enjoyment of the right to education of Māori-speaking students in New Zealand (CESCR, 2018), the challenges faced by children of Haitian descent in the Dominican Republic (CESCR, 2016*b*), of African descent in Portugal (CRC, 2019*b*), as well as by indigenous children in Panama (CRC, 2018).

To foster equity and improve equal access to higher education, including for minorities, states can adopt different strategies: from general non-discrimination laws and policies to more targeted measures such as affirmative action. For example, some countries have set policies that provide special access to under-represented groups, such as numerical quotas, bonuses on admission scores, need-based scholarships or outreach programmes, although these types of policies usually cause controversies where they are implemented (UNESCO GEM and UNESCO IIEP, 2017). Another strategy adopted by some states, such as Australia, Mexico and New Zealand, is the establishment of universities for ethnic minorities as they constitute an environment culturally more familiar to them and are often controlled and managed by them (Ibid.). Registered higher education providers in Australia are also required to give specific consideration to the recruitment, admission, participation and completion of Aboriginal and Torres Strait Islander peoples. They are further required to monitor participation, progress and completion by identified student subgroups, the findings of which are to be used to inform admission policies and improvement of teaching and support strategies for these subgroups.

Armenia also implements measures with regard to minority groups. Those admitted to state higher education institutions holding affiliation to national minorities avail of the privileges defined by the law including the right to a discount on the tuition fee in the prescribed manner, are provided with state educational allowances, and participate, according to their preferences and in the prescribed manner, in inter-higher education institution and intra-higher education institution exchange processes.

Geographical barriers

Students from rural areas have more difficulties accessing higher education than those living in urban areas. Besides the general guidance on non-discrimination and equality of the CESCR specifically regarding geographic locations, the Committee states that the allocation of funding to education should not lead to disparities in the quality of the education provided depending on the different geographic locations, as this may constitute discrimination (CESCR, 1999, para. 35).

The CRC has raised the issue regarding access in rural areas in several countries (Romania, 2021*b* and Bulgaria, 2016*a*), particularly as regards girls (Bhutan, 2017*a*) and vulnerable groups (Serbia, 2017*b*). In France, a study led by students and published in 2019 (RTE, 2019) shows that one of the most widespread inequalities in the French higher education system is linked to students' geographical origins. Public higher education systems are built in a way whereby the places offered to students are highly dependent on where students come from. Depending on the type of studies chosen by students, their chances of entering university may increase or decrease with regard to where they live and/or come from, and their high school background. For instance, eight out of ten polytechnic students at the best French engineering school come from the same ten high schools, and six of them are located at or near France's capital, Paris (Peltier, C. 2019). More generally, most high-quality higher education institutions are in big cities. Students living far from universities have less chances of enrolment and face indirect fees of higher education such as the cost of moving and lodging. The report underlines the fact that the fees and indirect costs of higher education create an additional barrier to the realization of the right to higher education.

Financial capability to support indirect costs becomes a selection criterion for students aspiring to higher education. A person may choose a specific school because they cannot afford the indirect costs of living in a big city. Thus, territorial and socioeconomic inequalities are interconnected and reinforce each other: territorial inequalities increase the socioeconomic segregation of students. In Argentina, due to the centralization of higher education institutions in big urban areas, only students from middle and high socio-economic sectors can cover the transportation costs from rural areas (Segurado, A. et al., 2016). The lack of higher education institutions outside big urban areas creates inequalities between students from rural and urban areas (Ibid.), as well as between poor and rich households (UNESCO GEM, 2021). In Mexico,

> 66 **territorial inequalities increase the socioeconomic segregation of students** 99

research shows that indigenous communities, who are located far away from higher education institutions (mainly in Mexico City), cannot finance the costs related to transportation, accommodation and food needed to study in big urban areas (Carnoy, M. et al., 2002). In Egypt, the centralization of universities in big cities also limits the inclusivity of higher education. Women and girls are especially impacted by the polarization of higher education establishments in the country (Albadawy, A., 2012).

States can address this issue by ensuring a better distribution of higher education institutions across the country and a more equitable distribution of financial resources between prestigious institutions, often based in big urban areas, and other higher educational institutions. In Argentina for instance, a project was developed in 2000 to decentralize the Provincial University of South West in order to increase access to higher education in small and medium districts (Segurado, A. et al. 2016). Higher education institutions were established far away from big urban areas allowing students from low-income families and with lower education levels to access higher education. In addition, states should take into account the distance between higher educational institutions and the place of origin when providing scholarships, grants or any kind of financial aid for students. They should also collect data on the place of origin of students to formulate, monitor and evaluate policies aiming to address geographical barriers in accessing higher education. The offer of online courses can also be a way to address geographical barriers, although it also has limitations due to unequal connectivity.
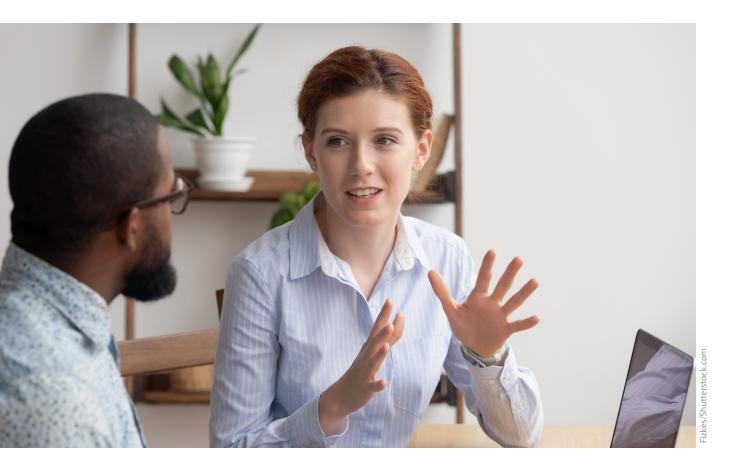
Lack of data and guidance and counselling services

A multi-layered lack of information creates significant issues at various levels. Firstly, on a statistical basis, there is a lack of sufficient data in some countries to understand the trends and patterns of enrolment and completion of higher education programmes. If the patterns are not clear, it becomes more difficult to find suitable remedies. Studies carried out on diversity, equity and inclusion in higher education institutions in Europe show gaps in the systematic collection of data of underrepresentation in higher education (Claeys-Kulik, A.-L. et al., 2019). Yet, monitoring inequalities and discriminations is an obligation of the state. The CESCR makes it clear that 'States must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination' (CESCR, 1999, para. 37).

Data must therefore be systematically collected and disaggregated by the prohibited grounds of discrimination to inform policy-making and ensure measures are effective for the target group. This includes gathering data on girls and women, national, ethnic and linguistic minorities, indigenous people, people with disabilities, refugees, migrants and LGBTQI, among others. In this regard, the Australian National Disability Coordination Officer Program seeks to identify the systemic gaps and barriers that exist for people with disabilities in making the transition to tertiary education with the aim of informing public policy development in areas affecting the education and employment of people with disability. Similarly, in the Republic of Korea, to improve educational conditions, an assessment of the real situation regarding the educational welfare of university students with disabilities, covering admissions but also teaching/learning and facilities.

Secondly, minority and disadvantaged students are less likely to have access to information, support and guidance to navigate admission processes that would enable them to enrol onto their higher education programme of choice (Claeys-Kulik, A.-L.et al., 2019; Wyness, 2017 as cited in OECD, 2019*a* and Brown, M. et al., 2016). In this regard, lack of proper guidance may lead to students erroneously believing that they do not qualify for highly selective institutions or have 'perceptions about social exclusivity deriving perhaps from a lack of social confidence' (Harris, M., 2010, p. 25). As a result, according to the OECD, 'Upper secondary students from disadvantaged backgrounds are (…) less likely even to aspire to attend higher education.' (OECD, 2015). Information about labour market prospects can also be lacking or inaccurate. To address this reality, Romania adopted measures to enhance student access and participation, including for disadvantaged or

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under-represented groups, by increasing the transparency of information and providing guidance on educational opportunities and outcomes as a basis for choosing educational paths.

Quality information, advice and guidance which is free from stigma, stereotypes or any other bias, not only encourages enrolment but also supports appropriate academic choices to be made, especially if provided long before the potential student begins applying to university. It is also important to recognize the diverse roles that parents, peers, schools and universities all play in breaking down barriers and misconceptions and ensuring that the choices made are suited to the individual's needs, interests and career goals (see also **section 2.2**).

Cross-cutting solutions

While in the previous sections a focus is given to specific challenges and barriers, along with possible corresponding measures taken to overcome these, some solutions are transversal and can address challenges faced by several vulnerable, marginalized and disadvantaged groups. Consequently, some states resort to affirmative action or positive discrimination to guarantee that a certain number of higher education places are destined for these groups, particularly those who are historically under-privileged. For example, in Botswana, an affirmative action criterion is used to reach out to vulnerable, marginalized and disadvantaged members of society such as Orphans and Vulnerable Children (OVC), Rural Area Dwellers (RADs) and students with Special Educational Needs (SEN). Higher education candidates who score five points lower than the minimum standard for government sponsorship are supported. Under General Comment No. 20 of the CESCR, positive discrimination measures are allowed until substantive equality has been sustainably achieved. In exceptional cases, positive discrimination measures may be of permanent character (such as linguistic support) (para. 9). Such measures create opportunities for people who otherwise would not have them, thereby reducing disparities and promoting diversity, particularly in cases of severe social disadvantage due to historic discrimination and unequal treatment. Affirmative measures generally look beyond academic achievement and use either a baseline or percentage quotas or add on bonus points for belonging to the target group (Martin, M. et al., 2017).

Another country example can be found in Brazil, which through the Law n° 12.711 (amended by Law n°13.409 of 2016), requires all federal institutions of higher education and federal institutions of technical education to reserve

50% of their admissions for students that have attended their entire secondary education in public school, taking into account specific proportions for low-income family students, self-declared black, 'pardos'[11], and indigenous individuals, as well as persons with disabilities. Regarding related case law, the 1995 case of the Supreme Court of South Africa, *Motala and another v University of Natal*, detailed in **section 1.2.1**, is an example where a national court ruled in favour of the preferential treatment given to African pupils in accessing a medical school as part of affirmative action policies. Despite Indians equally belonging to the category of black people, the degree of disadvantage faced by African pupils under the apartheid system was significantly greater than that suffered by their Indian counterparts.

However, affirmative action does not offer a foolproof solution and can amount to unfair discrimination. While affirmative action can make it easier to enrol and access higher education at first, it may be limited in its impact as people from vulnerable, marginalized and disadvantaged backgrounds are not necessarily prepared for higher education, may not know how to use resources available to them on campus and can face growing financial restraints with increasing annual fees. In this regard, affirmative action measures need to factor in concerns which 'include whether targeted students are academically prepared or instead mismatched to elite universities, and whether the programmes target the students that really need it the most or rather benefit privileged minorities who may have gone to college anyway' (UNESCO GEM and UNESCO IIEP, 2017, p. 6). Affirmative action laws and policies must be supported with the provision of continued academic and socio-emotional support to ensure that there is the same equity in completion rates as there is in opportunity and access (see also **section 2.2**). Furthermore, quotas or special admissions procedures for vulnerable, marginalized and disadvantaged groups are not always extended to non-state providers which in some countries enrol the majority of students (UNESCO GEM, 2021).

Finally, it is important to highlight that while certain measures should target specific groups, there is a need to pay attention to intersectionality and therefore cater to those who experience cumulative barriers and face multiple forms of discrimination. Their experiences are specific to the compounded inequity they face by occupying more than one category of disadvantage. To achieve social justice, policy measures need to go beyond 'traditional' vulnerable, marginalized and disadvantaged groups.

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11   The term is used in the official census categories in Brazil to refer to people who identify themselves as mixed-race individuals.

Key takeaways and findings

Equality and non-discrimination in higher education

▶ The right to non-discrimination and equality are fundamental human rights principles which apply to higher education and must be protected in national legal frameworks.

▶ Gender equality: Enrolment rates have considerably increased, but globally, girls and women face numerous challenges. States need to ensure orientation programmes and career counselling, ensure access to childcare, prevent and combat violence against women and enhance female participation in non-traditional fields of study.

▶ Students with disabilities: Faced with many obstacles, enrolment rates are generally very low. Students are often directed to vocational training rather than higher education, meet with restricted access to certain fields of study and lack adequate facilities and information. Support systems need to be reinforced, institutions made more accessible and reasonable accommodation provided.

▶ Minorities: Generally under-represented, there is a need for multiple strategies from non-discrimination laws and policies to establishing universities for minorities groups which provide a more familiar and culturally appropriate environment.

▶ Geographical barriers: Students from rural areas also encounter significant challenges in accessing higher education due to the lack of quality higher education institutions in rural areas, and the burden of indirect costs related to relocation. States should ensure a better distribution and funding of higher education institutions across the country and take into account place of origin in providing financial support.

▶ Monitoring education is a state obligation. States need to systematically collect data on higher education which is disaggregated by grounds of discrimination.

▶ Vulnerable, marginalized and disadvantaged students must have access to quality information, support and guidance free from bias, stigma and stereotypes, to navigate admission processes.

▶ Affirmative action/positive discrimination measures can look beyond academic achievement and promote diversity and reduce disparities, while factoring concerns of student preparedness and targeting those students who need it most.

▶ Attention needs to be given to intersectionality by catering to the specific experiences of compounded inequity faced by those occupying more than one category of disadvantage.

2.1.2 Introducing free higher education

The International Covenant on Economic, Social and Cultural Rights (1966) provides that higher education shall be made progressively free (Article 13(2)(c)). Free education is an important part of the process to ensure equal access to higher education. As recalled by the CESCR in its General Comment No. 13 (1999), the obligations of states in relation to primary, secondary, higher and fundamental education are not identical; while the prioritization of compulsory, free primary education is an immediate state obligation, secondary and higher education is to be made progressively free (para. 51). However, states have an immediate obligation to *take steps* towards the realization of higher education and, at a minimum, are required to adopt and implement a national educational strategy which includes the provision of higher education (CESCR, 1999, para. 52 and CEDAW, 2017*a*, para. 10). This includes taking steps to progressively introduce free higher education. This strategy should include mechanisms, such as indicators and benchmarks on the right to education, through which progress can be closely monitored (CESCR, 1999, para. 52).

The CESCR considers that the adoption and implementation of a national education strategy which includes provision for higher education is the minimum core obligation of states, meaning that it must be met in order to ensure the satisfaction of, at the very least, minimum essential levels 'of "the most basic forms of education"' (para. 57). The Committee adds that the failure to take deliberate, concrete and targeted measures towards the progressive realization of higher education is a violation of the right to education (para. 59).

Free higher education

Among the countries that comply with international human rights obligations and offer free higher education is Finland. Not only is higher education free but student meals are also subsidized by the state in student restaurants, and financial aid is offered. Argentina, France, Germany and Norway also are among the states that offer free higher education or at a very low cost. In Chile, a reform made higher education completely free of charge for low- and medium-income students. With regards to France, the 2019 case presented in **section 1.2.1**, is of particular relevance, as the French Constitutional Court found that the modest tuition fees in public higher education were appropriate

and depending on the financial capacity of students, do not go against the principle of equal access to education and the principle of free higher education. In the USA, New Mexico recently announced it is embarking on a plan to make higher education tuition-free for all state residents including adults enrolled in part-time education, regardless of family income and immigration status (Romero, S, 2022). The new State law, which is to take effect in July 2022, allocates almost 1% of state budget to covering the fees at public colleges and universities and community and tribal colleges.

Yet, as noted by Gayardon, A. (2018*b*), the definition of free higher education is intricate. In her analysis of free higher education, country examples (such as the Russian Federation which constitutionally guarantees free higher education on a competitive basis) are presented where public universities have a dual track system, whereby one track is based on merit and charges no tuition fees to high achieving students while the other does, requiring other students to pay tuition for the same education. This allows the state to avoid bearing the cost of the increasing demand as the number of free tracks depends on the annual government budget.

However, using merit-based criteria to limit access to free higher education raises concerns over equal opportunities, particularly for the most vulnerable, marginalized and disadvantaged students (see section 2.1.3). Therefore, in understanding and evaluating the extent to which education is free, Gayardon, A. (Ibid.) encourages consideration of certain questions:

▶ Which institutions are included in the free tuition policy: public/private, universities/vocational institutions, all degrees or only first degrees, etc.

▶ What is paid for: tuition fees only or maintenance also, and to what extent.

▶ If, when, and how tuition fees are paid for. Although the concept of free tuition prevents any financial repayment, there can be requirements from the government that students need to fulfil — including public sector work, for instance.' (p. 32)

An additional question is that of the delivery of higher education. Does free higher education include only that provided in person, or online education too? This is particularly relevant when considering how seemingly free online courses have commercial advertisements and obtain data which can have monetary value (see **section 2.3**).

Reflecting upon such questions would allow better enforcement of free higher education, if a consensus could be articulated around the core criteria that need to be respected for states to comply with their human right obligation to progressively introduce free higher education.

Direct costs

In many countries, rather than higher education becoming progressively free, the prevailing trend has been an increase in tuition fees (Boucq, I., 2016). This has been widely contested by higher education students who have carried out demonstrations around the world (Moulin, L., 2015)[12]. These obstacles do not affect all groups equally, as evidenced by a lower enrolment rate and higher dropout rate of students from disadvantaged and marginalized groups (Coles, A., 2020). In Australia, for instance, data shows that socio-economically disadvantaged students are more likely to abandon their studies and never re-enroll than those who come from a more advantaged background, because of the financial strains of higher education (Andrew H., et al., 2017). In France, according to the National Observatory of Student Life, in 2016 32.4% of enrolled students were children of parents with socially valued positions, while only 2.3% of students had parents from an agricultural profession (Tenret, E. et al., 2016). In Honduras, students from disadvantaged socio-economic backgrounds also suffer similar challenges, often having to contribute to

Figure 4

Percentage of the poorest that complete higher education

Only **1%** of the poorest complete at least 4 years of higher education

Source: Adapted from UNESCO GEM Report. 2017. World Education Blog: *Governments are struggling to keep pace with the fast growth of students in higher education*.

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12   See also the #feesmustfall movement: https://twitter.com/hashtag/feesmustfall [Accessed on 26/01/22]

the household's finances by working instead of pursuing higher education aspirations (FIH 360, 2017).

Most higher education institutions require application fees – with no guarantee of admission – as well as enrolment fees and regular semestrial or annual tuition fees. Students who fail to duly make these payments are deprived of accessing and finishing their degrees. In addition, as noted by McCowan, T. (2012), '[d]ifferential fee levels (relating to differences of quality or prestige) also undermine the requirement for access on the basis of merit or capacity' (p. 5, see also **section 2.1.3**).

To cover these costs, some states offer student loans. For example, Australia's Higher Education Loan Program (HELP) provides loans to students studying approved higher education courses. The scheme allows students to defer the costs of tuition until their taxable income reaches a certain level at which repayments commence. While such income-contingent loans aim to alleviate the financial burden, student loans generally have catastrophic effects for students and families across the world. In the USA, nearly one-third of all American students now have to go into debt to get through college,

and the average student loan debt reached a record high of $38,792 in 2020 (Kurt, D., 2022). While the total student loan debt reached an unprecedented level of about $1.7 trillion in 2021 (FRED Economic data, 2022), students carry the cost of debt for years and many default on repayment. In the USA, 14% of the seven million borrowers are in default, and student debt has increased by 107% in a decade (Hess, J., 2020).

Those from low-socioeconomic status backgrounds have a greater risk of accruing student loan debt burdens that exceed the national average compared to high-socioeconomic status counterparts (Houle, J., 2014), while more students, even from the middle class, have to contract loans to be able to afford a degree (Hess, J., 2020).

Hidden and indirect costs

Hidden costs or indirect costs also affect access to higher education. This is also true for countries where higher education is made entirely free, as indirect costs can be even higher than countries charging tuition fees at a low cost (Gayardon, A., 2018*b*). A study carried out in the USA analyzed indirect higher education costs standing in the way of a more inclusive higher education across 800 universities, collecting data from over 150 students. These include but are not limited to accommodation, food, books, and supplies and activities necessary to maintain a healthy life balance. Fifty-one per cent of students surveyed reported they paid more for indirect expenses than they anticipated, creating hidden hurdles to their college success. For many students, these additional costs far exceed the cost of tuition and fees, and they are unaware of them until they start classes (Coles, A. 2020). Accommodation costs are typically amongst the highest indirect costs. In France, for instance, housing is the main student expense, representing 54% of an average student's budget (RTE, 2020). This trend was aggravated by the COVID-19 pandemic (Girard, I. et al., 2021). In 2016, the Committee on Economic, Social and Cultural Rights (CESCR) recommended France ensure that indirect costs associated with school attendance at tertiary level do not reduce the accessibility of education for persons from disadvantaged households (CESCR, 2016*a*). Furthermore, as presented in **section 1.2.1**, national jurisdiction has also raised issues regarding higher education fees. For example, the Supreme Court of India, in the case *Mohini Jain v Karnataka* of 1992, held that the charging of a 'capitation fee' by the private educational institutions violated the right to education.

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Overcoming financial barriers to higher education

In order to address these issues, it is key that states allocate sufficient budget to higher education. While specific measures to progressively extend free education to higher education levels are required, as governments across the world face financial constraints which prevent fully funding higher education, and ensuring free higher education should not come at the expense of its quality (see **section 2.5**), states should introduce legal guarantees to ensure the affordability of higher education. In this regard, the CESCR stated that in making higher education progressively free, education should be affordable to all (CESCR, 1999, para. 6). However, what constitutes affordable education deserves further explanation to facilitate better understanding of what this means in practice. According to UNESCO GEM and UNESCO IIEP (2017), this may mean offering a combination of low tuition fees, need-based scholarships and income contingent loans to address the quality–affordability gap.

As noted by OECD (2016), a well-developed student financial support system is vital to ensuring equity and widening access to tertiary education. A popular measure is that of subsidized tuition costs or scholarships. Estonia offers needs-based support for less privileged families through a monthly study allowance on the condition that students follow full-time studies and complete at least 75% of the curriculum. PhD students who also meet the requirements are also eligible for a doctoral allowance, and students engaged in teacher training can also apply for a special study allowance. The Government of Andorra grants scholarships to nationals and foreigners to pursue higher education in Andorra and even abroad, considering the limited offer of higher education

institutions in Andorra itself. The scholarships are awarded taking into account a set of criteria related to the personal and family situation of the student, their economic and financial situation and their academic record.

Innovative stopgap supports such as emergency aid programmes and on-campus social service centres can help students navigate unexpected financial challenges (Coles, A. 2020). Furthermore, any loans and grants should be income-adjusted and 'their repayment after completion based on a fair, reasonable and closely monitored State-wide system' (UNESCO, 2020a). The government must guarantee that transactions are conducted on a fair and transparent basis and institutions must be accountable in this regard.

Finally, measures should be taken to reduce the burden of indirect expenses such as subsidizing public transportation, replacing textbooks with Open Education Resources, establishing on-campus food pantries and partnering with local housing authorities to provide subsidized apartments. In Brunei, for example, apart from tuition fees borne by the government, scholarships may also include bursaries for accommodation, books, food and personal spending, as well as complementary medical treatment at any Brunei Government hospital. Travel expenses to and from the scholar's country of origin are also borne by the Brunei Government. More research needs to be conducted on indirect costs, with particular attention paid to good practices regarding setting indirect cost budgets and how to best account for the varying needs of individual students (Kelchen, R., 2015). In addition, students should be provided with upfront information to properly calculate costs like housing, transportation, food, laptops and other supplies (Coles, A. 2020).

Key takeaways and findings

Introducing free higher education

▶ States have an obligation to make higher education progressively free.

▶ States have an immediate obligation to take steps towards the realization of higher education by adopting and implementing a national educational strategy which includes the provision of free higher education.

▶ Clarifying the core criteria of what free higher education constitutes would allow it to be better enforced.

▶ States need to allocate sufficient funding to ensure equal access. However, as introducing free higher education is progressive, states must ensure it is affordable, including through legal measures. These include subsidized tuition, scholarships

and a reduction in the burden of indirect expense, which can help in reaching the most vulnerable, marginalized and disadvantaged. Nevertheless, providing clearer guidance on what constitutes affordable higher education merits further clarification.

▶ Financial barriers include tuition fees, enrolment fees and application fees, but also indirect fees (accommodation, food, books and supplies) which disproportionately affect the most vulnerable, marginalized and disadvantaged. These barriers include student loans, which can have crippling effects on students.

▶ States should put measures in place to increase transparency regarding the indirect costs of higher education.

2.1.3 Rethinking capacity

The very nature of higher education as elaborated in international law is based on selectivity. Unlike the lower levels of education which are 'generally available' or universal, higher education is, according to the international normative framework to be 'equally accessible to all on the basis of 'merit' (Universal Declaration of Human Rights (1948)) or 'capacity' (Convention against Discrimination in Education (1960) and International Covenant on Economic, Social and Cultural Rights (1966)). The right to higher education recognizes that 'not all people will want or be suitable to taking up the opportunity. Rights are freedoms and not obligations (although they will entail duties towards others).' (McCowan, T., 2012, p. 11).

The notion of merit was introduced to protect the right of individuals to higher education, to avoid unjustified criteria being used to refuse access and therefore lead to discrimination (UNESCO, 2020a). The human rights conventions adopted subsequently replaced the word 'merit' for 'capacity'. The term deserves special consideration in order to be implemented in the spirit intended by the international normative frameworks. However, international human rights norms allow for quite a broad interpretation of what 'capacity' concretely means, which the CESCR in its General Comment No. 13 explains that it is to be assessed according to 'relevant expertise and experience' (CESCR, 1999, para. 19).

At the regional level, it is interesting to note that the African Charter on the Rights and Welfare of the Child (1990) adds that higher education is to be accessible to all on the basis not only of capacity, but also ability (Article 11(c)). This addition would seem to further limit the enjoyment of this right, which according to Gose, M. (2002), is due to the 'heavy financial burdens that a system of higher education establishes'.

Some guidance is provided with regards to people with disabilities by the Committee on the Rights of Persons with Disabilities (CRPD). In reference to 'the core features of inclusive education', in its General Comment No. 4 (2016), the Committee indicates that 'Learners with disabilities receive the support to ensure the effective transition from learning at school to (...) tertiary education, and finally to work.' Stressing that 'Learners' capacities and confidence are developed and learners receive reasonable accommodation, are treated with equality in assessments and examination procedures, and their capacities and attainments are certified on an equal basis with others.' (para. 12**(g)**).

More generally, meritocracy and capacity require further dissection and a re-examination to overcome the role that higher education can play in perpetuating inequalities, particularly considering the rapid expansion of higher education and the underrepresentation of vulnerable, marginalized and disadvantaged groups. The section therefore presents the challenges in ensuring equitable access, and offers some consideration on rethinking merit and capacity by taking into account the potential to succeed.

Challenges to equitable access

Higher education institutions in many countries use a selective admission procedure based on criteria such as average grades, entry exams, essays, aptitude tests, interviews and work experience which may constitute a barrier for students from vulnerable and disadvantaged backgrounds. The rationale for the selection process may be linked to limited places due to financial constraints or to filter for students who have a higher likelihood to complete their studies (OECD, 2018a). For example, in Egypt, enrolment in government universities and institutes takes place through the Coordination Office, the criterion of which is the comparison between students on the basis of total scores at the secondary level, while taking into account the list of preferences of the student. In some colleges, the admission is conditional upon sitting an aptitude test or an interview as well as having the right grades.

Due to an unfair distribution of educational opportunities right from the early years and embedded direct and indirect discrimination in education, academic results, work experience and the ability to pass entry exams of vulnerable, marginalized and disadvantaged students are markedly impacted (see also **section 2.3**). In addition, the more selective the process, the lower the participation of students from vulnerable, marginalized and disadvantaged groups, as a study in the United Kingdom revealed (Harris M., 2010).

Some countries have centralized admission processes, allowing students to prepare for one application and have access to a large number of higher education programmes. For example, in New Zealand learners need to meet the University Entrance (UE), the minimum standard for entrance to a New Zealand university. If the University Entrance requirements are not met, the student can apply for Discretionary Entrance which allows for an admission into a specific course of study. Some courses also require specific criteria.

While standardised processes are a common practice for student selection, this may require adaptation to cater to the diverse backgrounds as, by not factoring in the criterion of equity, they tend to reproduce privilege. In addition, there is a non negligible correlation between socio-economic status and educational attainment, as those students who come from a wealthy background are more likely to attend higher education institutions. High socio-economic status children benefit from a cultural capital of tastes, behaviours and dispositions from their parents which have direct repercussions on their success at school and therefore their pursuit of higher education (Warikoo, N., 2014). Evidence has shown that these advantages, which are *disadvantages* for vulnerable, disadvantaged and marginalized groups, are reversible with a well-designed policy interventions based on equity and considering quality as an indivisible factor.

Some states have chosen to allow those who have completed secondary education to directly enter higher education without any other prerequisites. For example, in Belgium, there is an automatic admission for each graduate of upper secondary education into the institution and programme of their choice. The only admission examinations are centrally organized for regulated professions such as medical and dentistry studies and locally organized tests for visual and performing arts education, as well as a physical aptitude test for nautical education. For teacher education, a non-binding orientation test is organized for first year students at the start of their studies to give an indication of the preparedness of the student to succeed and/or to spot possible deficiencies to be remediated. Similarly, in Argentina, the law affirms that all those who have passed

the secondary level may enter higher education, freely and unrestrictedly. An exception is made for those who are over 25 as if they do not meet this entry condition they may be admitted provided that they demonstrate, through the established evaluations, that they have the preparation or work experience in accordance with the studies they intend to begin, as well as sufficient aptitudes and knowledge to satisfactorily complete them (Law on higher education Nº 24.521, Article 7). They must also complement their studies with professional and vocational levelling and orientation processes established by each institution of higher education, but in no case must they have a selective, excluding or discriminatory character. It should be noted that while a country may adopt a general non-selective admission process to the higher education system as a whole, specific institutions may still maintain a strict selection policy.

Interesting examples can also be drawn from the USA and Chile, which adopted specific policies for those students who excelled in their education. In the USA since 1997, students graduating from Texas State schools with grade point averages in the top 10% can continue to study at state universities automatically (UNESCO, 2019*c*). In Chile, the Program for Effective Accompaniment and Access to Higher Education (PACE) offers direct access to higher education to academically outstanding high school students who have graduated from the schools with the highest educational vulnerability index in each of the communes of the national territory (Ibid.). However, their effectiveness needs to be evaluated in light of the equity measures implemented in previous levels of education but also measures taken during the higher education studies (see **section 2.5**).

> 66 Due to an unfair distribution of educational opportunities right from early years and an embedded direct and indirect discrimination in education, the academic results, work experience and the ability to pass entry exams of vulnerable, marginalized and disadvantaged students are markedly impacted 99

Expanding access to students with the potential to succeed

In a UNESCO report, it is recognized that '[t]alent is equally distributed across the population, in all groups, regardless of their characteristics' (UNESCO, 2020*a*, p. 3, see also: UNESCO 2019*b*). It further adds that 'it is possible to find students with the potential to succeed in higher education in all contexts.' Since talents are equally distributed, young people with the potential to succeed are studying in every secondary school in the world. The notion of 'potential to succeed' recognizes that the educational attainment of those coming from vulnerable, marginalized and disadvantaged groups does not do justice to their ability, potential and study effort. Today 'students with the potential to succeed' belonging to these different groups are not playing on a level playing field. In light of this, how can we rethink merit by taking into account the potential to succeed to avoid holding everyone to the same high standards based on standardized requirements? This question is particularly relevant if education is to be a strong driver for social justice.

As explained by Boliver, V. et al. (2021), adopting meritocratic criteria based on the equity of opportunity model could level the playing field. This allows for consideration of the socioeconomic circumstances and can address the systemic disadvantages faced by vulnerable, marginalized and disadvantaged groups to enhance diversity, rather than assigning limited places to the most highly qualified candidates irrespective of their background. Such a model allows for differential treatment of individuals with the aim to ensure greater distributive fairness, through a more proportionate allocation of university places at the group level. Concretely, selection processes should place fairer constraints on the meritocratic selection criteria, by considering prior learning of the individual while taking into account 'knowledge about the extent to which individuals have enjoyed equality of opportunity to have their abilities and efforts cultivated and rewarded' (Clayton, M., 2012, as cited in Boliver, V. et al., 2021, p. 9). Such measures that consider 'merit in context' are therefore an imperative for social justice and allow better 'distribution of opportunities'. This would result in preferential admission for those pertaining to vulnerable, marginalized and disadvantaged groups over those who are equally qualified, or lowering entry requirements for these groups.

Such procedures, which consider the student's potential to succeed if accompanied by effective student support during studies (see following **section 2.2**) will avoid setting up the student to fail. In addition, admission procedures, when taken at the institutional level rather than at the national level through centralized examinations, can more easily consider individual circumstances (UNESCO GEM and UNESCO IIEP, 2017).

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66 State measures to ensure that all forms of education provided meet government-approved standards are essential to ensure equality of opportunities for all 99

Alternatively, in pursuit of universal enrolment, some countries such as the previously discussed Argentina and Belgium allow for all to pursue their higher education without any selection process, apart from the condition that their secondary education has been successfully completed. A mixed procedure is also used in some countries depending on the number of applicants. In Denmark, such a procedure allows for open admission if the number of applicants is lower than the number of places but applies the selection process if the number is higher (OECD, 2018*a*). While a European study found that countries with fewest academic barriers to access higher education had more equitable outcomes by social background measured using the highest educational attainment of graduates' parents (European Commission, 2017*b*), interpretative caution is required. Treating everyone equally does not allow the specific situations encountered by vulnerable, marginalized and disadvantaged groups prior to entering higher education

to be catered to, nor does it automatically translate to higher graduation rates, as the next section will discuss. Furthermore, it is essential that the quality of education provided does not diminish. Universal enrolment or open admission procedures could lead to larger class sizes, which therefore necessitate additional funding if the same quality is to be maintained. In addition, while generally access to higher education may be open to all, a few prestigious institutions - often expensive ones - may continue to adopt highly selective entry processes, which pose issues with regard to equality and job prospects.

The successful completion of secondary education remains a standard prerequisite for higher education. As McCowan (2012) argues, '[a] minimum level of academic preparation is necessary in order to gain meaningful access to the study made available in universities' (p. 12). Yet, many vulnerable, marginalized and disadvantaged groups are unable to achieve such a level of education due to systemic barriers. Higher education institutions will therefore also need to better account for non-traditional educational trajectories and pathways (UNESCO, 2021*b* and see following section) as well as provide student support to obtain the necessary preparation (McCowan, T., 2012).

While for other factors affecting access clearer guidance can be found in existing interpretations by UN treaty bodies and existing practices, regarding merit and capacity the guidance is less evident. Redefining what constitutes capacity in international human rights law could help clarify state obligations and allow for the principles of inclusion and non-discrimination to be enforced more effectively.

Key takeaways and findings

Rethinking capacity

▶ Legally binding instruments require states to guarantee equal access to higher education 'on the basis of capacity'. The CESCR explains it is to be assessed according to relevant expertise and experience.

▶ Unequal distribution of educational opportunities from early years, and embedded direct and indirect discrimination in education and lack of cultural capital mean that student 'capacity' as evaluated prior to entering higher education is skewed.

▶ Standardized entrance exams tend to reproduce privilege as they do not factor in equity.

▶ Some states choose to ensure direct access to higher education without any prerequisites other than the completion of secondary studies, but their effectiveness depend on the equity measures

implemented in previous levels of education as well as measures taken during the higher education studies.

▶ Students with the potential to succeed can be found in all contexts, therefore there is a need to level the playing field by taking into account socioeconomic circumstances and by addressing the systemic disadvantages faced by vulnerable, marginalized and disadvantaged groups to enhance diversity.

▶ State measures need to better account for non-traditional educational trajectories and pathways in accessing higher education.

▶ There is a need to re-evaluate what constitutes capacity in international human rights law to further clarify state obligations and allow for the principles of inclusion and non-discrimination to be enforced more effectively.

2.1.4 Multiple forms and pathways to higher education

Higher education is a highly diverse sector, with a variety of higher education institutions, programmes and studies as well as delivery modes. This requires systems to offer more flexible learning pathways. In this regard, General Comment No. 13 of the CESCR notes that 'If higher education is to respond to the needs of students in different social and cultural settings, it must have flexible curricula and varied delivery systems, such as distance learning; in practice, therefore, both secondary and higher education have to be available "in different forms"' adding that 'TVE forms an integral component of all levels of education, including higher education' (para. 18).

To strengthen equity and lifelong learning, education systems also need to support flexible learning pathways, as recognized by the Education 2030 Agenda. According to this agenda, flexible learning pathways include measures that allow for entry and re-entry at all ages and throughout the education levels, strengthen linkages between formal and non-formal education, and allow for the recognition, validation, and accreditation of knowledge and skills acquired through non-formal and informal education. Regarding this last aspect, the UNESCO Global Convention as well as the regional conventions on higher education establish that states should recognize partial studies and prior learning, thereby reinforcing the need to adopt a flexible approach to learning pathways. Chile, for example, supports flexibility through common admissions, which works to ensure equitable access of students from lower socio-economic backgrounds and preparatory programmes. This facilitates articulation between upper secondary and higher education, among other measures (UNESCO IIEP, 2021).

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Such measures can better meet the needs of the individual in the specific situation in which they find themselves and in consequence enhance access, equity and inclusion. For instance, a student who completes secondary education may choose to not pursue higher education for multiple reasons, however, the option to enter at a later stage in life should be maintained (McCowan, T., 2012). Enhancing access includes putting in place measures that recognize previous learning achievements of students, whether these took place at school, at work, or through leisure activities. Learners should have the flexibility to transfer from one course to another or have the opportunity to enrol in higher education irrespective of the type of secondary school they attended (Martin, M. et al., 2020). Integrating flexible learning pathways also requires changes at the institutional level (see **section 2.5**).

In the following discussions, special attention is given to online learning which is gaining ground in the higher education sphere.

Online and distance learning

Today's higher education institutions have at their disposal a critical tool that was not available a few decades ago: internet and digital technology. Since the early 2000s, digital higher education has been a novel, alternative method to accessing higher education and has seen rapidly increasing demand. In the autumn of 2003, 1.9 million students were studying online, and at that time estimates predicted that the annual growth rate of online enrolments would exceed 20% (Moloney, J. and Oakley, B., 2010). While access to higher education continued to grow steadily through the early 2000s, the global COVID-19 pandemic has brought unparalleled international attention to the advantages of digital education, as nearly all students enrolled in higher education across the world transitioned to online learning and experienced first-hand how accessible digital higher education is.

One of the most prominent barriers to accessing traditional university is tuition, as the price of traditional, campus-based universities can be considerable. Digital technology is changing this landscape, as more and more universities offer blended learning opportunities and full degrees that are completely online, which cost on average significantly less than traditional, in person higher education (Krakoff, S., 2021). Even outside of formal higher education that is offered online, individuals now have a wide range of access to both formal and informal digital higher education, such as through Massive Online Open Classes (MOOCs), which are free, open to all, online courses offered by higher education institutions. Teaching, learning and research materials, known as Open Educational Resources (OERs), are also readily available in the public domain in any medium,

including digitally. Released under open license, they can be accessed, used, reused and redistributed with no restrictions allowing the improvement of learning outcomes and overall accessibility of higher education (UNESCO et al., 2011).

In addition, digital higher education requires no physical mobility and permits individuals to receive higher education from their residence of choice, which notably reduces the financial burden linked to accommodation costs and in turn improves overall access to higher education. Single mothers, for example, and those who wish to maintain their employment, are also finding themselves with greater opportunities to pursue higher education via online learning due to the temporal flexibility digital higher education provides (Maas, S., 2017).

While vulnerable, marginalized and disadvantaged groups are finding themselves with more learning opportunities notably due to the great reduction in fees and expenses of online higher education, there is a serious risk that it creates a two-speed system whereby campus-based universities offer quality higher education to the privileged, while vulnerable, marginalized and disadvantaged students pursue an online education which may be of lower quality (see **section 2.3**). In addition, the underfunding of higher education, which results in elevated tuition fees (see **section 2.5**), should be addressed for online higher education to be a true choice for the individual, rather than the only option. All vulnerable, marginalized and disadvantaged groups, including those encountering financial difficulties, should be able to pursue quality assured higher education either in person or online. The face-to-face experience of international students goes far beyond the classes they receive; it also plays a role in intercultural experiences that bring richness to their

training. It is, therefore, necessary to support these students to achieve physical mobility for their international courses as much as possible.

While the growing availability of quality online courses can increase overall access to higher education, such availability and accessibility depend on one critical factor: connectivity and technology. Yet high-speed connectivity and high-quality technology come at a cost, creating a digital divide that leaves the lower-income individuals behind while the more financially capable are able to fully take advantage of the benefits digital higher education has to offer (Block, J., 2010). Students living in remote or rural areas also experience difficulties in taking advantage of digital education due to insufficient or unstable internet connections and, in addition, not all students can benefit from a calm environment, a necessary condition for students to study from home (Girard, I. et al., 2021*a*).

Not only is this digital divide exacerbating existing inequities within countries, but it is also worsening inequality across regions. While households with internet access in Europe rose to 90% by 2019 (Eurostat, 2020), leaving only 10% of European households without connectivity, 82% of students in sub-Saharan Africa have no internet access and many are without the proper digital tools needed for online learning. Globally, 2.9 billion people are still offline (ITU, 2021) and only 48% of women globally are connected to the internet (ITU, 2020). Certainly, the ever-growing supply of digital higher education is helping increase access to higher education globally, yet regional variations in internet availability and technological provisions render certain populations unable to access this newly available supply, and can increase inequalities. This barrier needs to be addressed.

Key takeaways and findings

Multiple forms and pathways to higher education

▶ Higher education must have flexible curricula and delivery systems to meet the different social and cultural settings and include technical vocational education.

▶ States should also ensure flexible learning pathways to higher education, (i.e. flexible entry and re-entry, linkages between formal and non-formal education, recognition, validation, and accreditation of knowledge and skills acquired through non-formal and informal education).

▶ Online and distance learning expands higher education opportunities, particularly due to their significantly reduced or even inexistant fees, and do not require physical mobility and allow for more temporal flexibility.

▶ There is a risk of a two-tier system, with vulnerable, marginalized and disadvantaged students pursuing online education of lower quality. There is also a risk of a growing digital divide, as access to technology and connectivity is unequally distributed to the detriment of those living in remote and rural areas, and lower-income individuals.

▶ States need to ensure that students have the freedom to choose between online or in person higher education (rather than being limited to the former due to the lack of access/financial constraints), and to enhance access to connectivity and technological devices.

2.2 Inclusion in higher education

Eliminating barriers to enter into higher education is only the first step to ensuring inclusion and a more just society. There is a need to transform the academic system to ensure that the focus is not only on access but also on the completion of studies and the transition to the labour market. Once the hurdles of access have been overcome, vulnerable, marginalized and disadvantaged groups need to be equipped with the necessary guidance, skills and knowledge to follow through with their courses and graduate, as students from disadvantaged backgrounds are more likely to dropout (OECD, 2015).

Inclusion is closely intertwined with non-discrimination and equality principles (**section 2.1**) but also quality education (**section 2.3**). Referring to people with disabilities, international human rights law recognizes the obligation of states to ensure an inclusive education system at all levels (Convention on the Rights of People with Disabilities, Article 24). However, beyond this legally binding instrument, inclusion in education has gained international recognition through the SDG4-Education 2030 agenda, which is grounded in the principle of inclusion. Inclusion can therefore be understood as 'a process that helps to overcome barriers limiting the presence, participation and achievement of learners' (UNESCO, 2017*b*).

Worldwide, countries struggle to ensure that students entering higher education complete their studies. In the USA, about half of the students enrolled in higher education programmes dropout before graduation, and the highest proportion of these students are from a socially and economically disadvantaged background or belong to a minority group (Sawhill, I., 2013). Such considerations

equally apply to open-access institutions. While they seemingly ensure a more equitable admission procedure, if students do not have the necessary skills and knowledge required the completion of studies may be unequal (OECD, 2019*a*). In addition, the COVID-19 pandemic put an additional strain on higher education. UNESCO projected that tertiary education was likely to experience higher dropout rates than any other level, with a 3.5% decline in enrolment resulting in 7.9 million fewer students (UNESCO, 2020*d*).

Academic performance is a predominant factor in ensuring that students do not dropout but complete their studies. In higher education, this is often dependent on students' previous educational experiences, which for those students pertaining to vulnerable, marginalized and disadvantaged groups is more likely to be of poor quality (Thomas, L. et al., 2002). Besides adopting a sector-wide and holistic approach to higher education, which is elaborated in **section 2.5**, for true inclusion policy measures aimed at increasing the successful completion need to be taken. This could include, for example, providing extra educational resources, offering tutoring classes and additional courses, and setting up mentorship programmes (OECD, 2015).

According to a research report by Thomas, L. et al. (2002), measures also could include ridding pedagogy and the curriculum of bias, allowing for the development of new subjects that interest under-represented groups, introducing higher education expectations and information about student services, employment and careers education and offering supportive ways to deal with students who

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" ensure that the focus is not only on access but also on the completion of studies and the transition to the labour market "

are falling behind (summer revision courses, alternative actions to withdrawal such as transfer, changing courses, etc.). Regarding the latter, 'flexibility to transfer between different study programmes and institutions, and receiving guidance in this process, can help students to move to higher levels of education and therefore attain better outcomes, both in the short term and in the long term' (Martin, M. et al., 2020, p. 10). Decolonization of higher education is also being extensively discussed in addition to the need to break down patriarchal cultures, to ensure student empowerment, validation and inclusion. For foreign students, intensive language classes are beneficial and assist in study completion.

Faculty and staff play an important role in supporting students and should be trained on inclusion to adapt their teaching practices appropriately. In addition, the degree of their approachability, through their contact information, office hours, and other opportunities of interaction, can positively impact student success and retention (Hanover Research, 2014). Similarly, student-centred guidance and counselling services which cater to the personal circumstances of the individual should be offered (as covered in **section 2.1.1**). Such services should cover transitions into, through and out of higher education and include timely and accurate information,

a wide range of support services and activities that enhance learning (UNESCO, 2002).

All support should also be extended to non-traditional students, such as those who are over the average entry age or part-time students.

Beyond direct academic support, encouraging social integration and commitment is also a factor in retention rates (Hanover Research, 2014 and Thomas, L. et al., 2002). By joining an association, society or organization, students are less likely to leave as they bond with others to achieve a common goal. Encouraging and investing in diverse social activities and interactions in higher education contributes to the positive educational environment required for student retention. Social engagement for people with disabilities is also important as it leads to the development of a sense of belonging, resulting in greater student retention (Rath, V. 2020). Armenia, for example, arranges for leisure activities at a low price to enhance student wellbeing which thereby improves student retention and academic performance. Additionally, Armenian State higher education institutions provide free of charge holiday tickets to socially disadvantaged students having shown high academic performance.

Higher education costs, as mentioned in **section 2.1.2**, include direct but also substantial indirect costs, such as accommodation, transport, living expenses and educational material (laptops, books, etc.). Introducing measures that alleviate the financial burden on students is an important lever to reduce inequalities, and a combination of need-based grants and loans can improve persistence through graduation (UNESCO GEM and UNESCO IIEP, 2017). Financial measures can also compensate for employment, allowing students to be fully dedicated to their studies.

Key takeaways and findings

Inclusion in higher education

▶ Inclusion, which applies to higher education, is closely intertwined with non-discrimination, equality and quality principles, and requires overcoming barriers which limit the presence, participation and achievement of students.

▶ There needs to be a shift from focusing only on access to also address completion of studies and the transition to the labour market to ensure effective inclusion.

▶ Policy measures need to support the successful completion of higher education by:
  – Providing extra educational resources

  – Offering tutoring classes and mentorship programmes
  – Ridding pedagogy and curriculum of bias
  – Allowing for new subjects that interest under-represented groups
  – Offering student-centred guidance and counselling services
  – Providing supportive ways to deal with students who are failing
  – Allowing flexibility in student transfers
  – Training faculty and staff on inclusion
  – Encouraging social integration and commitment
  – Providing financial measures

2.3   Quality higher education

Quality is part and parcel of the right to education, and therefore the right to higher education. Quality acts as a protective factor in a socially unbalanced playing field, where education plays a vital role as an equalizer. Therefore, quality and equity cannot be considered and approached separately. That is why quality is intrinsically part of the right to education.

The UNESCO Convention against Discrimination in Education (1960) is the first legally binding instrument to refer to this notion by defining education as '*all types and levels of education*, and includes access to education, the *standard and quality* of education, and the conditions under which it is given' [emphasis added] (Article 1(2)). Yet, defining what constitutes 'quality' higher education remains somewhat vague, particularly because ensuring quality education is a 'dynamic concept that changes and evolves with time as well as the social, economic, and environmental context' (UNESCO, 2005*b*, p.1). Nevertheless, the 4As framework presented in the introduction to **section 2** gives some guidance on how to ensure quality education, notably with regard to 'acceptability' whereby 'the form and substance of education, including curricula teaching methods have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents. This is subject to the educational objectives required by article 13 (1)[13] and such minimum educational standards as may be approved by the State' (CESCR, 1999, para. 6).

Specifically on higher education, the World Declaration on Higher Education for the Twenty-first Century: Vision and Action, adopted in 1998, recognized that the mission of higher education is to educate, to train and to undertake

> ❝ There should not be a trade-off between efficiency/quality and equity/inclusion ❞

research. However, while the declaration is still very pertinent today, given the radical changes our world has experienced in the last decade there is a need to renew its mission and address the challenge in finding a balance between responding to the economic demands and the 'humanistic formation, the critical spirit, [and] the ethics' (Ruiz Bravo López cited in UNESCO, 2021*a*, p. 32).

Beyond the traditional role of higher education, higher education institutions need to support personal development, social engagement, contribute to society's needs and produce more social benefits, by contributing to national and regional development (UNESCO, 2020*a*) in relation to the public good function of higher education (see section 2.5). The Futures of Education Report recently launched by UNESCO's International Commission also points out that universities and higher education institutions must be active in every aspect of building a new social contract for education (UNESCO 2021*b*).

In addition, aside from social and economic development, the recent UNESCO publication on the futures of higher education highlights further purposes that should be better reflected in higher education: it should promote the well-being of the earth and connect the higher education ecosystem (UNESCO IESALC, 2021*b*). Regarding the former, research should address global challenges to provide informed evidence to ensure the sustainability of the planet which is beneficial for humanity. Higher education institutions should also take a holistic approach and interconnect with the diverse historical, social, political, and cultural contexts, but also with other levels of education. Indeed, education must be understood as a continuum, from early childhood and throughout life. Higher education is a part of lifelong learning, and is both influenced by and influences other levels of education. This reinforces the importance of quality education from the earliest years (see **section 2.5**).

Decent work, which is encapsulated in SDG8, is also closely related to higher education as it permits unparalleled access to the most well-paid and most fulfilling forms of employment (McCowan, T., 2012). However, as noted by the European Commission, demands for competences in the labour market are constantly evolving and there is therefore a need to invest in lifelong learning and to reflect the need to continuously learn in student teaching (European Commission, 2019).

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13   Article 13(1): 'The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree 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.'

Aside from digital skills, which are analyzed further on in this section, multidisciplinary and interdisciplinary solutions and tackling future skills mismatches are also required.

A collective effort between teaching personnel, students and institutional management is important to improve the quality of learning, teaching and research, and ensure that students acquire relevant skills and competences (European Commission, 2019). Ensuring horizontality is also key, which McCowan, T. (2016), explains is ensuring even prestige across the system and consistently high quality higher education, while not precluding 'diversity in relation to ethos, specialisation, size of institution, distribution of taught courses, research focus and so forth' (p.14). If not addressed, this leads to stratification of higher education whereby disadvantaged students enrol in institutions of lower quality and/or prestige.

Additionally, and as mentioned previously, quality is closely intertwined with inclusion. Therefore, higher education institutions need to adopt a comprehensive approach that includes adapting teaching and assessment, ensuring teaching personnel and support workers are better trained on inclusion, increasing teaching personnel diversity, and ensuring measures that support students during their studies as detailed in **section 2.2**. Furthermore, diversity also needs to be ensured as it allows for a more intellectual stimulating environment for the whole academic community (UNESCO, 2020*a*).

The following discussions analyse certain factors that need to be taken into consideration when ensuring quality higher education. These relate to massification policies, academic freedom and institutional autonomy, quality assurance mechanisms, the teaching profession, and finally, online learning, which deserves special attention in light of current trends.

Massification policies as a challenge to ensuring quality

The growth in higher education enrolment rates, while allowing for a democratisation of higher education, is not without concerns. The increase of students may lead to a decline in the quality of education and an exacerbation of inequalities in the type of institutions into which different groups enter (UNESCO, 2020*a*). In this regard, '[t here should not be a trade-off between efficiency/quality and equity/inclusion' (UNESCO, 2020*a*, p.6). Indeed, 'we can only consider the right to have been realised if quality is of an acceptable level' (McCowan, T. 2012, p.12). Having students from all contexts and social groups in higher education benefits the entire education system, and society at large. However, the rapid expansion of higher education and the use of open access admission has led to issues regarding the quality of the education provided (McCowan, T., 2012). Furthermore, increased demand has also led to a diversification of non-state providers which have grown in number, size and scope, raising questions of quality and accountability. The quality of studies across higher educational institutions needs to be guaranteed and strengthened in order provide equal quality educational opportunities irrespective of social origin.

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Academic freedom and institutional autonomy

Quality higher education can only be achieved if there is academic freedom and institutional autonomy. In its General Comment No. 13 (1999), the CESCR emphasizes the importance of academic freedom of staff and students, stressing that 'staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom' (para. 38) and that denying such a freedom is a violation of the right to education (para. 59). This requires the autonomy of institutions of higher education, which is explained as follows: 'autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public accountability, especially in respect of funding provided by the state. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible' (para. 40). The ILO/UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) also reiterates the importance of institutional autonomy and adds 'Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source' (para. 19).

Many countries have introduced legal provisions that guarantee these two principles. At the European level, Article 13 of the EU Charter of Fundamental Rights states that 'Academic freedom shall be respected'. In implementing this treaty, Latvia's law on Institutions of Higher Education of 1995 requires the autonomy of higher education institutions (section 4) and academic freedom to be ensured in higher education institutions and provides details on freedom of study, freedom of research, and freedom of teaching (section 6). Beyond laws, states have also adopted policies to implement these principles. For example, in India, the Ministry of Human Resource Development adopted the National Education Policy (NEP) in 2020 which seeks to transform the higher education sector and places significant focus on institutional autonomy.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recently published a report precisely addressing academic freedom. The report begins by highlighting that 'teachers, scholars, students and others who work in such pursuits – academics and their institutions – continue to face social harassment and state repression. They face harassment and repression for their research, the questions that they pursue, the points that they raise in or out of the classroom or journals, the forums that they provide for peaceful assembly and protest and the evidence and ideas and methodologies that they bring to bear on public policy – or simply for

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the stature that their academic work has given them in society' (2020, para. 2). Limitations on institutional autonomy and academic freedom are often imposed due to political agendas (para. 37, but also due to interference with the selection, appointment and dismissal of leadership and professors (para. 39).

The recommendations provided by the UN Special Rapporteur include that states should ensure that their legislation does not limit the exercise of academic freedom and institutional autonomy. Such principles needed to be protected against interference in freedom of opinion and expression. While state funding and grant opportunities are important, states must avoid 'use of tools of coercion, such as funding cuts, prosecution or denial of tax benefits, in order to pressure academic institutions to carry out or to avoid certain kinds of research' (para. 56(b)).

Quality assurance systems

To pursue academic quality, a system of quality assurance needs to be implemented by developing a strong legal framework that specifies the role of internal and external quality assurance systems, as well as providing that institutions elaborate their internal quality assurance strategy or policy (European Commission, 2019). In this regard the ILO/UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997), states that 'higher education institutions, individually or collectively, should design and implement appropriate systems of accountability, including quality assurance mechanisms to achieve the above goals, without harming institutional autonomy or academic freedom' (para. 24). Indeed, evaluation processes are essential to ensure accountability. Yet, such systems have gained their share of criticism regarding their bureaucratic and time-consuming approach.

A recent UNESCO IIEP publication notes the importance of more flexible approaches to functioning, for example by reducing the number of external reviews, privileging quality and reducing cost (Martin, M. et al., 2021). The report further highlights the need for technology-based approaches to increase efficiency, and also the importance of quality assurance for new and alternative providers, including MOOCs. Stronger support for quality in teaching and learning was also highlighted, with a greater emphasis on learning outcomes and their ties with national qualification frameworks. Societal impact and engagement with community, industry and government needs to be embedded in quality assurance processes to reinforce stakeholders' trust in higher education and benefit society. Finally, quality assurance

systems need to adapt to the fast-evolving job market to ensure the relevancy of qualifications.

Teaching profession

The ILO/UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997), while not legally binding, establishes clear norms and standards regarding teachers and research personnel in higher education. These notably address professionalism, requiring 'expert knowledge and specialized skills acquired and maintained through rigorous and lifelong study and research' (para. III.6), individual rights and freedoms with respect to carrying out research work 'without any interference, or any suppression, (…) and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics' (para. VI.A.29, see also following part), and terms and conditions of employment, employment security and appraisal.

Adequately qualified teachers at school and higher education levels are essential in providing effective teaching. With increasing higher education enrolment rates, an increase in the number of higher education teacher graduates is required. At the EU level, for example, there has been little or no pedagogical training for higher education teachers and investment for their continuous professional development remains low (European Commission, 2017*a*). In the same vein, and affecting teaching personnel diversity, job insecurity, poor conditions (including exclusion from paid leave entitlements and social protection), insufficient recognition by tenured peers, and disassociation from institutional governance and academic decision-making permeate in higher education, with obvious negative repercussions on the quality of teaching (UNESCO, 2020*a*).

By promoting equity in higher education staff, through quotas and targeted hiring measures, readjusting disparities in salaries and benefits, eliminating discrimination in tenure and promotion, promoting STEM subjects for women along with increased social dialogue, the quality of teaching can be significantly improved (ILO, 2018).

The increased attention brought to teachers and teachers' issues by the COVID-19 pandemic should be leveraged to enhance efforts towards improving their training and qualifications, the attractiveness of a career in the teaching profession as well as to advocate for increased financing for improving teacher education and teaching environments.

Changes in teaching and learning approaches through online learning

While university teaching personnel have for decades developed increasingly strong methodologies for providing meaningful learning experiences in a traditional, in-person setting, digital education presents challenges and the need to change approaches to traditional teaching methods.

One necessary change in teaching approaches is the switch from reliance on direct personal interactions, e.g. discussions and presentations, to material-based learning such as using readings, videos, exercises, images, and audio (Rapanta, C. et al., 2020). Changes are also needed to pedagogical applications, innovating platforms, methods and evaluation systems (UNESCO, 2020*a*). In this regard, an increase in the use of OERs have allowed for pedagogical innovation in higher education and further encouraged individualized study, thereby improving the quality of teaching and learning (UNESCO et al., 2011). Adaptive learning technology, which provides personalized learning depending on information gathered on the learner's performance, has also gained interest globally. Yet, this is not without concerns with regard to data protection, privacy and equality of opportunity which require putting adequate safeguards in place. Indeed, states must ensure that all forms of education, including online higher education, meet government-approved standards.

There are growing concerns regarding the misuse of data, including those from learners. Insufficient regulation regarding data protection, privacy, ownership and governance specifically with regards to education have raised questions concerning learners' data protection and privacy. Non-state actors now have easy access to and control over digital educational records, with sometimes limited leeway with regard to learners' refusal to provide data. As noted by the UN Special Rapporteur on the right to privacy (2021) 'usage of that technology requires accountability, meaningful consent, purpose limitation, data minimization, transparency and security safeguards' (para. 109). Developments in this area need to be embarked upon to address the fragility of digital learning spaces.

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The switch in teaching methods towards a materials-based format means that students are also required to adapt their approach. As opposed to regular, physical interaction with the instructor, students must adopt a different type of time management and routine, in addition to developing a much stronger sense of autonomy and discipline despite distractions. To address such changes, teaching digitally requires a different approach. Teaching personnel need to be able to diversify their teaching methods and continuously update their knowledge and skills (UNESCO, 2020a). Engagement will also be improved if professors encourage the asking of questions, actively listen to their students' concerns, provide clear rationales and explanations, focus on timely, personalized, and accurate feedback for both questions and evaluations, adjust activity design according to students' observations, and give students the opportunity to co-design learning activities and their learning environment (Rapanta, C. et al., 2020).

While the anxiety many higher education students reported during the COVID-19 crisis and the subsequent switch to online learning revolved around concerns over health and family, restrictive measures, loss of jobs and anxiety regarding the future, the crisis prompted urgent examinations into the effects of online learning on student well-being. Results indicated a large number of higher education students had anxiety over decreased social interaction, concerns about academic performance, and difficulty concentrating (Wang X. et al, 2020 and UNESCO, 2020b). It is clear that the involuntary thrust into online learning as a result of the pandemic has serious consequences on student wellbeing and consequently academic performance. Studies worldwide have shown that the COVID-19 crisis has increased the risks for students' mental health (Girard, I. et al., 2021b).

Beyond the pandemic, and more generally, purely online learning may have negative effects on physical and mental wellbeing, which are closely interlinked. While regular breaks from looking at a screen are highly recommended, often online courses last for significantly long periods of time, leading to eye strain, and in turn causing headaches, anxiety, and fatigue. Outside of physical health, mental health is also affected by purely online learning, as social interactions and contact help maintain good mental health (OECD, 2021a). Students may also need more time to assimilate and understand information with repercussions on the total workload (RTE, 2021). In addition, the virtual classroom precludes students from campus experiences that reinforce social bonds. One key element to consider with the proliferation of digital higher education, despite its many advantages, will be to ensure there is recourse for students suffering from physical or mental setbacks.

Key takeaways and findings

Quality higher education

- ► Quality is intrinsically part of the right to higher education, yet as a dynamic concept, its definition remains somewhat vague. Nevertheless, the form and substance of higher education must be acceptable, be subject to the educational objectives and conform to approved minimum educational standards.

- ► Higher education needs to renew its mission, develop competences required by the labour market, address current challenges, and be active in shaping a new social contract for education.

- ► Increasing access should not come at the cost of a decrease in the quality of higher education.

- ► Academic freedom and institutional autonomy need to be further strengthened and protected against interference in freedom of opinion and expression, as well as in human resources.

- ► Quality assurance systems, which are essential to ensuring accountability and should not harm institutional autonomy or academic freedom, should be more flexible.

- ► Ensuring teaching personnel are adequately trained and qualified has evident repercussions on the quality of higher education. Similarly, diversity, job security and conditions, recognition and disassociation from institutional governance and academic decision-making require special attention.

- ► Online learning has challenged teacher and learning approaches, allowing for more personalized learning and pedagogical innovation. However, states need to ensure the respect for government-approved standards in all forms of higher education provision, including online, and envisage measures to ensure data protection and privacy, equality opportunities and student wellbeing.

2.4 Human movement and international recognition of qualifications

All students across the globe should have better access to higher education. In a world which is increasingly globalized, students should be able to continue their studies in a higher education institution through academic mobility without facing hurdles. The UNESCO Global Convention on the Recognition of Qualifications concerning Higher Education (2019) establishes an important framework in this regard. It is implemented in complementarity with the 'second generation' regional recognitions mentioned in **section 1.1.3** on regional instruments. While the latter promote recognition, mobility and inter-university cooperation within regions, the Global Convention does this among regions. To enhance academic mobility, the Global Convention sets eight principles for the recognition of qualifications concerning higher education in its Article 3:

▶ Individuals have the right to have their qualifications assessed for the purpose of applying for admission to higher education studies or seeking employment opportunities.

▶ Recognition of qualification should be transparent, fair, timely and non-discriminatory in accordance with the rules and regulations of each state party, and should be affordable.

▶ Recognition decisions are based on trust, clear criteria, and fair, transparent and non-discriminatory procedures, and underline the fundamental importance of equitable access to higher education as a public good which may lead to employment opportunities.

▶ Recognition decisions are based on appropriate, reliable, accessible and up-to-date information on higher-education systems, institutions, programmes and quality assurance mechanisms which has been provided through the competent authorities of the states parties, official national information centres, or similar entities.

▶ Recognition decisions are made with due respect for the diversity of higher-education systems worldwide.

▶ Competent recognition authorities undertaking recognition assessments shall do so in good faith, giving clear reasons for decisions, and have mechanisms for appealing recognition decisions.

▶ Applicants seeking recognition of their qualifications provide adequate and accurate information and documentation on their achieved qualifications in good faith, and have the right to appeal.

▶ States parties commit to adopting measures to eradicate all forms of fraudulent practices regarding higher education qualifications by encouraging the use of contemporary technologies and networking activities among states parties.

The Convention further sets the obligations of states regarding the recognition of qualifications giving access to higher education (Article 4), the recognition of higher-education qualifications (Article 5) and the recognition of partial studies and prior learning (Article 6). The conventions on higher education also establish states' obligations regarding the implementation structures and cooperation between states parties to facilitate their effective implementation.

Globally, some six million students are pursuing their higher education abroad, compared to two million in 2000 (UIS) and this number is expected to double in the next ten years (UNESCO, 2020*c*). This increased academic mobility is spurred by the democratization of travel, rising wealth in emerging economies (allowing for students to seek educational opportunities abroad), technology development (facilitating communication and contact through internet and social media), cultural factors (such as English being a common working and teaching language), and also the lack of local education capacities which have not evolved at the pace required by the growing demand (OECD, 2019*b*). In addition, countries have also reduced barriers that hindered access to national higher education institutions, including by providing scholarships, and introduced policies that facilitate the settlement of international students once studies have been completed.

In this context, the international recognition of diplomas and qualifications is crucial to allow for the pursuit of studies or employment in the new country on an equal footing as nationals, thereby enhancing social justice. Academic mobility is important to allow students to expand their knowledge and learning experience and be exposed to a different culture and language. Furthermore, mobility is not always a choice. Those who are subject to forced migration and displacement often have limited access to certifications and qualifications, causing them to be confronted with even greater obstacles.

Developing compatible and comparable qualifications is essential to facilitate knowledge sharing and circulation, and international research cooperation in higher education. The recognition of qualifications also allows for greater access to education as individuals have the choice to begin or continue studies in higher education. Among European states, the European Credit Transfer and Accumulation System (ECTS) is a tool of the European Higher Education Area which allows students to move between countries and to have their academic qualifications and study periods abroad recognized. ECTS credits represent learning based on defined

learning outcomes and their associated workload to allow for a greater comparability and comprehension. Beyond Europe, the New Zealand Qualifications Authority (NZQA) assesses overseas tertiary and vocational upper-secondary qualifications to determine if they can be recognized in New Zealand and compared to a level and qualification type on the NZQF. Finally, beyond facilitating academic mobility, 'exchange between higher education institutions, enhances the quality assurance of study programmes and the quality and reliability of qualifications, which are recognized by the competent authority of a foreign country' (UNESCO, 2020c, p. 11).

With the adoption of UNESCO's Global Convention on the Recognition of Qualifications concerning Higher Education, countries have renewed their commitment to making higher education more accessible to all. Nevertheless, accessing foreign higher education institutions as well as obtaining the recognition of qualifications abroad persist as global challenges.

Among the main obstacles to academic mobility is the lack of awareness within the country of residence regarding the recognition of qualifications, whereby the language, national system and recognition processes may be difficult to comprehend (RTE, n. d.). Even without these difficulties, the criteria for accreditation, visa obtention, the time-consuming application process and direct and indirect fees (for translation and application fees, for example) constitute added barriers.

Measures to counteract these challenges are essential to enhance inclusion and equal access. For example, in Egypt, in coordination with the Ministry of Foreign Affairs and Ministry of Interior, the Ministry of Higher Education has worked to facilitate entry, residence and study visas for foreign students. An additional measure that can be taken is by offering financial support. Australia, for example, provides loans through its Higher Education Loan Program (HELP) to students studying approved higher education courses, allowing them to defer the costs of tuition until their taxable income reaches a certain level at which repayments commence. Recognition of prior learning is also a critical means to allow learners from diverse backgrounds to pursue their educational journey into higher education.

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Refugees and displaced persons

Refugees, asylum-seekers, migrants, and displaced persons further encounter specific hurdles due to the precarity of their situation. In addition to the aforementioned challenges, these groups of people often lack the finances to afford higher education and many, in fleeing violent conflict or sudden disasters, are unable to keep proof or records of their previous educational qualifications with them, and therefore risk higher education institutions denying them entry due to a lack of documentary credentials. Even if the barriers of financial resources and qualifications are addressed, many refugees accessing higher education will still have to overcome language barriers, xenophobia, discrimination, and trauma (UNESCO, 2017*a*). As a result, they end up re-entering the education system or accepting jobs for which they are overqualified (RTE, n. d.).

Given such challenges, it is not surprising that only 5% of refugees have access to higher education (UNHCR, 2021). In comparison, enrolment figures for primary and secondary education are 68% and 34%, respectively (UNHCR, 2021). Nevertheless, developing policies to ensure the right to higher education for refugees and displaced persons will be key in promoting post-conflict reconstruction, and social, economic and gender equality. For the host community, increasing access to higher education for refugees and displaced persons can increase

the richness of the academic community, the labour market and enhance social cohesion. Ultimately, the inclusion of these groups in higher education creates the 'critical link between learning and earning' (UNHCR, n. d.).

Recognizing the challenges in international cooperation that lie ahead, various international treaties, compacts and instruments have been developed with the aim of ensuring the right to education for refugees, beginning with the 1951 Convention relating to the Status of Refugees which states that refugees should have treatment as favourable as possible with respect to higher education. However, certain displaced persons, and more specifically, persons displaced internally or internationally as a result of climate change or natural disasters, are not considered 'refugees' under the definition in the 1951 Convention and therefore are not guaranteed the same protections regarding education stipulated therein. This may require expanding the right to education, and right to higher education, to explicitly apply to climate-displaced persons.[14]

Other international instruments, notably the Kampala Convention and the Global Compact for Safe, Orderly, and Regular Migration (2018), do call upon states to ensure the right to education for displaced persons generally, but focus specifically on children's right to education and make no mention of higher education. One of the only international instruments that addresses access to higher education for both refugees and displaced persons is UNESCO's Global Convention on the Recognition of Qualifications concerning Higher Education (2019), which calls on all parties to develop a fair system to assess whether they 'fulfil the relevant requirements for access to higher education, to further higher education programmes, or to the seeking of employment opportunities, including in cases where partial studies, prior learning, or qualifications acquired in another country cannot be proven by documentary evidence' (Article 7).

Similar provisions, including on the recognition of qualifications held by refugees and displaced persons, are also embedded in the 'second generation' regional recognition conventions. To better prepare national authorities for assessing qualifications of refugees arriving in the wake of the 2015 refugee crisis, in 2017 the Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, known as the 'Lisbon Convention', adopted a Recommendation on Recognition of Qualifications Held by Refugees, Displaced Persons and Persons in a Refugee-like Situation, containing general principles for assessing such qualifications.

Source: Social media pack created by UNESCO for World Refugee Day 2021

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14   More information can be found in the following publication: UNESCO. 2020. *The impact of climate displacement on the right to education.* Available at: https://unesdoc.unesco.org/ark:/48223/pf0000374966

In addition, the UNESCO Qualifications Passport for Refugees and Vulnerable Migrants (UQP) serves as a modern universal tool to facilitate mobility for refugees and vulnerable migrants in higher education, even in cases where documentary evidence is lacking. It draws from the experiences and methodology of the European Qualifications Passport (EQPR) and is one of UNESCO's contributions to the Global Compacts on Refugees and Migration.

In ensuring access to refugees, states have been taking measures to ensure implementation of the aforementioned international instruments. For example, in Belgium since the 1990s the Flemish Community of Belgium has had specific legislation on refugee students in relation to access to higher education and financial support during their studies. As a supplementary measure at the level of the Government administration, extra staff for the National Academic Recognition Centre were appointed and specific training was organized to accommodate the increase of academic recognition files introduced by refugees. In partnership with the UNHCR, the Ethiopian government offers free scholarship opportunities to refugees of Eritrean origin at various Ethiopian public universities (UNHCR, 2018b in Tamrat, W. et al., 2019). Peru has introduced efforts to facilitate the recognition of qualifications of Venezuelan migrants and refugees. Through its National Superintendence of University Education (SUNEDU), the cost of the recognition procedure is reduced by half and a more flexible approach is adopted regarding the Hague apostille requirement for professional degrees

and degree certificates, as long as the information on the degree awarded can be corroborated in the Venezuelan database (UNESCO, 2020e).

A final example can be found in Germany. The Standing Conference (KMK) adopted joint decisions with the purpose of integrating refugees in the higher education sector. In 2015, it agreed on a common procedure for applicants who, due to their situation, were unable to provide original or certified copies of the higher education entrance qualifications obtained in their home country. The procedure is based on determining the applicants' personal premises on the basis of refugee and legal residence status, checking the credibility of their school and academic career, and conducting an examination and/or assessment procedure. In addition, various efforts are being made by the Länder and/or individual higher education institutions to facilitate access to higher education for refugees, for example by offering scholarships, counselling and orientation services, study preparation programmes and German language classes.

The barriers to higher education for refugees and displaced persons are many. While ensuring their right to higher education will entail a multi-faceted approach, one critical first step Member States can take is ratifying the 2019 UNESCO Global Convention and recognition conventions relevant for their region, while simultaneously elaborating national and regional strategies to eliminate practical, de facto barriers — ultimately ensuring the most rapid progress possible for these populations.

Key takeaways and findings

Human movement and international recognition of qualifications

▶ The UNESCO Global Convention and the regional conventions provide a solid framework to enhance academic mobility.

▶ Today, some 6 million students are pursuing their higher education abroad, compared to 2 million in 2000 (UIS). This number is expected to double in the next ten years.

▶ While states have reduced barriers to higher education, the recognition of qualifications should be strengthened alongside the development of comparable and compatible qualifications. This includes ratifying and implementing UNESCO's Global Convention on the Recognition of Qualifications concerning Higher Education as well as UNESCO's regional recognition conventions.

▶ Academic mobility obstacles persist in understanding the language, national systems and recognition processes in the country of residence.

▶ Mobility is not always a choice: forced migration and displacement cause many to encounter important barriers to higher education due to lack of certifications and qualifications, lack of financial resources, languages barriers, xenophobia, discrimination and trauma. Only 5% of refugees have access to higher education.

▶ There is a need to better protect the right to higher education of climate displaced persons in the international human rights framework.

2.5 System-level governance and financing of higher education

The view that education is a public good was first recognized at the international level by UNESCO in the 1996 Delors report, and was further applied to higher education in the Second UNESCO World Conference on Higher Education in 2009. This view is contested, as public goods are described as non-excludable (no one can be barred from benefits) and non-rival (can be consumed without depletion). Higher education does not necessarily meet the criteria as it has private benefits which make it excludable and due to limited places, is rivalrous (Gayardon, A., 2018*b*). Proponents of higher education as a public good seek to recognize that individuals enrolled in higher education benefit society and the international community and not just the individual (UNESCO IIEP, 2018). Furthermore, safeguarding the public interest of education, including the public funding for quality education, has been particularly important to reaffirm the role of the state as the main duty-bearer. Specifically, at higher education levels, 'the concept of public goods (…) has mainly centred on issues of funding and on the function of higher education institutions, rather than on questions of delivery and ownership' (Locatelli, R., 2018, p. 5). This is notably due to the exponential expansion of private provision of higher education in the past decades. In this context, society, the state and the market need to be reconciled to ensure social justice in economic and social development (Morgan, W. et al, 2015).

While issues in relation to funding and public provision will be covered subsequently, another important role of the state is monitoring and regulation to ensure equitable access to quality higher education institutions. Without a strong regulatory system, fraudulent practices are free to proliferate with devastating effects on students. In this regard, states should therefore adopt a strong and comprehensive legal framework which clarifies rights, entitlements, recognition requirements, establishment of relevant supervisory bodies and the functioning of quality assurance mechanisms. Besides student protection, through monitoring mechanisms accurate information is collected and disseminated both for potential student decision-making as well as to inform public policy. In addition, by monitoring the financial results of for-profit providers, governments can withdraw incentives or tax exemptions granted in the case of excessive profits (Bjarnason, S. et al., 2009).

In this regard, it is important to recall that states have a legal obligation to monitor the right to education, to identify and take measures to redress any discrimination (CESCR, 1999) as well as more generally to monitor the extent of the realization (or non-realization) of the right to higher education (CESCR, 1990). Institutional audits, including quality assurance systems (see **section 2.3**), or regular qualitative reporting mechanisms are necessary to monitor the effectiveness of the measures taken in bringing about equity, equality of opportunities, social justice and human rights (UNESCO GEM and UNESCO IIEP, 2017). Monitoring mechanisms also need to be implemented through a consultative and inclusive process to ensure transparency and government accountability (Locatelli, R., 2018).

In addition, since the adoption of the SDG4 - Education 2030 Agenda, there has been a shift in ensuring a holistic and lifelong learning approach to education. The UNESCO report, 'Reimagining our futures together: a new social contract for education', specifically sheds light on the interconnectedness of higher education with primary and secondary education, as well as adult and non-formal education (UNESCO, 2021*b*). Many of the challenges related to student academic achievement and inequality in higher education are dependent on the educational path beforehand (OECD, 2015). Taking a sector-wide and lifelong learning approach to higher education is therefore essential. This includes developing, strengthening and expanding the links between higher education institutions and secondary schools to better understand the learning needs and trajectories of students before completion and during their transition to higher education (OFFA, 2010, cited by UNESCO, 2020*a*). For example, university libraries and research facilities can be made accessible to secondary school students, while 'expertise of professors should be readily on-call for local schools' (UNESCO, 2021*b*, p. 112). Such an approach improves inclusion (European Commission, 2019) and should also be extended to lifelong learning institutes to reinforce the right to lifelong learning.

Evidence shows that through a combination of measures adopted by governments, higher education institutions and secondary education institutions favour fairness in access. As highlighted by Dubet, F. (2011), we need to ensure that the whole education system, in all its levels, takes 'equity measures' from the beginning, starting in early childhood care and education (ECCE), to accompany education policies with equity policies during the educational trajectory. In addition, universities working with secondary institutions should be able to understand the needs of students, contribute early on to designing measures that prepare them to access higher education, and then build on their success. Measures adopted at the time of access, when combined with measures taken in secondary education (such as introductory programmes), can favour the access of students with potential to succeed and thus improve the equal distribution of opportunities.

In addition, strengthening compulsory education as well as access to quality ECCE can also have a positive impact in determining the learner's educational pathway. Similarly, ensuring the quality of the education provided prior to higher education can equip students who wish to pursue their education with the skills and knowledge required.

SDG 4 – Education 2030 also recognizes the benefits of flexible learning pathways (see **section 2.1.4**). While due to expansion and diversification the nature of higher education systems is complex, 'a mix of policy frameworks, policy instruments, and targeted policy measures to support alternative entry routes and opportunities for transfer can promote flexible learning pathways in higher education' (Martin, M. et al., 2020, p. 8). Ideally, guided by a national regulatory or policy framework for flexible learning, this requires coordination between all stakeholders at all levels, from policy-makers and leaders of education institutions to teaching staff, employers, and students.

More generally, higher education should not be addressed in isolation and should be conceptualized within an 'ecosystem in which its purposes, missions, connections, institutions, traditions, and resources are shaped by and in turn influence the historical, social, political, and cultural contexts in which [higher education institutions] are based' (UNESCO IESALC, 2021*a*, p. 19). Furthermore, education policies at all educational levels must include equity policies and work in tandem with policies designed in other social ministries to establish broader social protection systems, as highlighted in the UN report (2018*b*). Thus, social justice needs 'integrated' policies to combat the structural inequity existing in many countries. Education alone cannot solve this inequity. In parallel, higher education policy measures and objectives should reflect this holistic, system-wide approach, allowing for sustainable equity in higher education.

Financing higher education

Human rights obligations in relation to financing are too often dissociated from higher education. Under international law, states have the obligation to use the maximum of their available resources towards the full realization of the right to education (Article 2 of the International Covenant on Economic, Social and Cultural Rights and Article 4 of the Convention on the Right of the Child). While states must prioritize the lower levels of education, they still have the obligation to progressively realize the right to higher education. Allocating the maximum available resources should include both domestic and international resources (CESCR, 1999).

In addition, the CESCR also offers guidance with regard to a reduction in state funding of the education sector. It states that '[t]here is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education (...). If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to 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' (CESCR, 1999, para. 45). While not legally binding, the Abidjan Principles on the human rights obligations of states to provide public education and to regulate private involvement in education[15], also provide guidance on education financing and state that 'in situations of limited resources, States must prioritize the continued provision of quality, public education' (para. 37).

In order to allocate the maximum of their available resources to education, the Education 2030 Framework for Action recommends that states commit at least 4 - 6% of Gross Domestic Product and/or at least 15 - 20% of total public expenditure to education (UNESCO, 2015*a*, para. 105). It also emphasizes the importance of strengthening domestic resource mobilization through widening of the tax base (ending harmful tax incentives), preventing tax evasion, and strengthening the ability of states to collect tax (para. 106).

Despite the legal obligation to progressively introduce free higher education and the more recent political commitment to financing education, worldwide public expenditures have declined prompting a more market-driven approach which seeks funding stability through the private sector, which can generate its own revenue (UNESCO, 2020*a*). This trend is also linked to the massification of higher education leading to a spike in demand, causing governments to be unable to sustain the costs and rely on the private sector to absorb the demand (Gayardon, A., 2018*b*). On average, private sources account for around one-third of expenditure on tertiary educational institutions (OECD, 2021*b*). Between 2015 and 2017 public expenditure in tertiary education as a share of GDP decreased on average by 5.1% across OECD countries, with Chile, the United Kingdom, the United States and Australia representing the countries with most private investments in higher education (OECD, 2020). As a result, higher education institutions are forced to 'cut staffing, rely on precarious workers and/or compete for international students' (UNESCO IESALC, 2021*a*, p. 18).
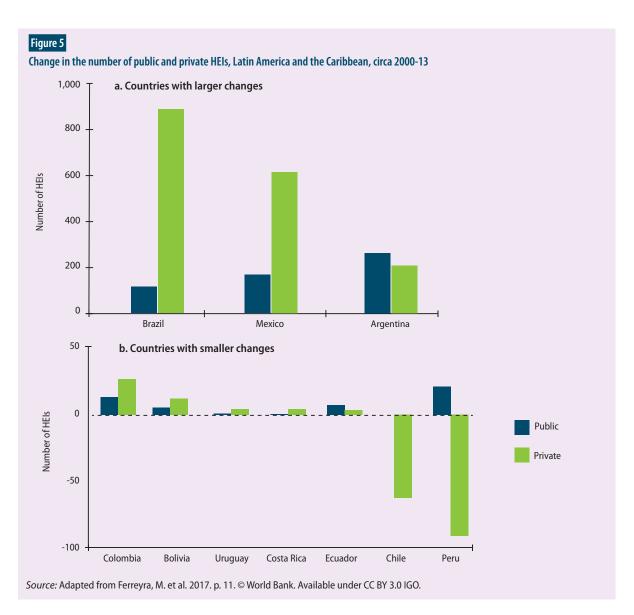
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15   The Abidjan Principles aim to compile and unpack existing legal obligations regarding the delivery of education, and in particular the role and limitations of private actors in the provision of education.

In the Latin America and the Caribbean region, it is the private sector that propelled the rapid expansion of higher education in the 2000*s*: the market share of private higher education institutions in the region rose from 43% to 50% between the early 2000*s* and 2013, with Brazil, Mexico and Argentina being the countries with the most important increase in numbers of private higher education institutions (Ferreyra, M., 2017). This is despite higher education being tuition-free in the public sector.

Budget allocation to higher education is a political decision. Due to an increased pressure to reduce taxes and alleviate the cost of public budgets, more and more countries are shifting the burden of higher education costs from the government to students (Chamie, J., 2017). Higher education is increasingly seen as an investment leading to private and public yields, but not necessarily as a social priority. Funding politics are then designed to target sectors

of higher education showing the higher rates of return with for example a selective system of scholarship.

Simultaneously, efforts to decentralize the public management of higher education have prompted the development of private institutions. The Institute for Higher Education Policy has highlighted the fact that privatization pushes institutions to operate in a market-oriented manner to respond to consumer demands (Holzhacker, D et al., 2009), sometimes threatening traditional academic culture and even quality of education. Furthermore, even more than other levels of education, the boundaries between state and non-state provision are particularly blurry in higher education (for instance, due to the outsourcing of services to the private sector) and differ across contexts (UNESCO IIEP, 2018). This adds an additional complexity to the understanding of free higher education and the role of the state, a debate which has been largely

Figure 5

Change in the number of public and private HEIs, Latin America and the Caribbean, circa 2000-13

Source: Adapted from Ferreyra, M. et al. 2017. p. 11. © World Bank. Available under CC BY 3.0 IGO.

discussed in regard to education more generally.[16] Moreover, the privatization of higher education leads to increasing costs even though according to international law, it should be progressively free. The cost of higher education varies a lot between countries: while free in 40 countries worldwide such as Germany and Brazil[17], it can reach thousands of dollars in the United States, where the average 2016 college graduate student loan debt amounts to US$37,000 (Chamie, J., 2017). The effects of the pandemic also continue to weigh heavily on the financing of higher education, as less than 1% of Covid-19 stimulus packages in low- and middle-income countries was allocated to education overall (UNESCO, 2021*c*).

Ensuring public funding of higher education through tuition-free (or low tuition) higher education (see **section 2.1.2**) is therefore essential not only to abide by international human rights law, but also to ensure that the costs do not constitute a barrier. Finding the equilibrium between quality, access and costs is challenging, as budgetary constraints have repercussions either on the number of students that can enrol free of charge or the quality of the education (Daniel et al., 2009, as cited in Gayardon, A., 2018*b*). Nevertheless, states need to be wary of claiming a lack of resources and should ensure that steps are taken to allocate the maximum amount available, including by seeking resources from the international community. Domestically, this may require combating corruption, mismanagement and tax evasion (McCowan, T., 2012). Ensuring a cost-effective and efficient approach to financing is also necessary, which as stated in a UNESCO report (2020*a*) 'may include adjusting public funding in terms of changes in student numbers and economic growth (total GDP); linking funding to institutional performance; funding centres of excellence supported by several higher education institutions collectively, among others. Policies should always strive to design a fair distribution of resources' (p. 8).

Ensuring public funding is also closely related to safeguarding education as a public good, which should be protected from commercialisation. The for-profit sector therefore requires regulation as there may be a conflict of interest in opposing to contribute to equity of access (McCowan T., 2015 as cited in UNESCO, 2020*a*).

Finally, for an efficient funding system to be established, there needs to be political will and commitment to provide long-term investments to higher education, which requires stressing states' legal obligation to the progressive realization of free higher education.

Key takeaways and findings

System-level governance and financing of higher education

▶ Higher education, as a public good, reaffirms the role of the state which includes financing, functioning, delivery and ownership of higher education.

▶ A strong and comprehensive legal framework is required to clarify rights, entitlements, recognition requirements, establishment of relevant supervisory bodies and the functioning of quality assurance mechanisms.

▶ States have a legal obligation to monitor the right to higher education as well as the extent of its realization. Such monitoring mechanisms must be implemented through a consultative and inclusive process.

▶ A system-wide approach should be adopted to ensure concerted efforts in realizing the right to higher education, by ensuring collaboration among different ministries.

▶ States should ensure the interconnectedness of higher education with primary and secondary education, as well as adult and non-formal education, through a sector and system-wide and lifelong learning approach and the strengthening of equity measures right from early years.

▶ Coordination between all stakeholders at all levels and a clear regulatory and policy framework can ensure flexible learning pathways.

▶ States have an obligation to allocate the maximum available resources (both domestic and international) to finance education, including the progressive realization of free higher education. However, worldwide public expenditure has declined.

▶ Budget allocation to funding higher education is a political decision, which requires ensuring a cost-effective and efficient approach to financing but also combating corruption, mismanagement and tax evasion.

▶ States need to ensure the regulation of the for-profit sector as there may be a conflict of interest in opposing to contribute to equity of access.

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16   See for example the GEM Report 2021/2: *Non-state actors in education: Who chooses? Who loses?* Available at: https://unesdoc.unesco.org/ark:/48223/pf0000379875

17   Although the grand majority of students are enrolled in private institutions which charge fees.

Section 3
Concluding considerations and guidance for action

The world has come long way from the limiting of educational opportunities to primary and secondary education. Since the adoption of the SDG4-Education 2030 agenda, there has been a clear commitment worldwide to adopt a lifelong learning approach to education, whereby learning starts at birth and continues right through life. Higher education is therefore an integral part of the educational opportunities that should be universally guaranteed.

The expansion in the provision and demand for higher education opportunities calls for the state to play a greater role in ensuring equitable enjoyment of the right to higher education in terms of access, pursuit and completion. Based on the findings of this publication, states and policy-makers may be encouraged to consider taking or reinforcing the following measures, which, to be truly effective, need to be addressed in conjunction:

1. Adopt a system-wide, equity-based, lifelong learning approach

Higher education needs to be placed within the wider public policy system to allow for effective reforms. This also includes ensuring the interconnectedness with other levels and forms of education to allow for learners to be adequately prepared prior to entering higher education and for it to cater to the varied needs and demands. The earlier measures are taken to redress inequalities, the fairer the distribution of opportunities and more equitable the access to higher education will be. This includes enhancing access right from early childhood. In addition, flexible learning pathways need to be strengthened to widen access and improve equity.

More generally, public policies on higher education should be elaborated by ensuring the wide-ranging and collective participation of all stakeholders. Finally, mechanisms to monitor the implementation and enforcement of the right to higher education (including by collecting disaggregated data) should be in place to ensure accountability.

2. Translate policy objectives into law

Higher education deserves better attention in legal texts by guaranteeing the principle of equality of opportunity and of conditions, non-discrimination and, when possible, even free quality higher education. Legal frameworks need to clarify the rights, entitlements, recognition requirements, establishment

of relevant supervisory bodies and the functioning of quality assurance mechanisms in order for higher education providers to operate in a human-rights compliant manner.

3. Allocate sufficient and sustained funding

While the realization of higher education can be progressive, it is essential states allocate the maximum of their available resources to education with a dedicated budget for higher education sufficient to make the right to education a reality, particularly for the most marginalized students. States must ensure they make a continued effort to move toward a full realization of the right to education by progressively increasing the share of the budget allocated to higher education, taking into account the number of students.

4. Focus on vulnerable, marginalized and disadvantaged groups

Priority should be given to the vulnerable, marginalized and disadvantaged groups who face challenges in accessing and completing higher education due to the populations they belong to and/or for lack of resources. Guidance and counselling services also need to be made available to all. While they stand to benefit every learner, they are particularly essential for these population groups due to their disadvantage in accessing quality information, support and guidance. In addition, affirmative action and financial resources are measures states should adopt to ensure their inclusion in higher education. Safeguards should be put in place to ensure that for-profit providers are regulated and do not exacerbate inequality – expansion of higher education should not come at any cost.

5. Enhance the quality of education and higher education provision

Ensuring quality education is an important factor as it favours equity during the whole educational trajectory. Horizontality is key to guarantee the provision of high quality higher education across and within institutions and to ensure equal prestige. In relation to the public good function of higher education, a flexible and adaptable approach should be adopted to respond to the needs of not only the employment market, but of society as a whole, while adopting a holistic and interconnected approach with the diverse historical, social, political, and cultural contexts. Teacher training, including pedagogical training, and teaching personnel conditions and diversity merit close attention.

6. Ensure higher education policies go beyond access and factor in the completion of studies and the transition to the labour market

States should take measures that support students that go beyond entry into higher education, including academic support, guidance and counselling, transfer flexibility and measures to enhance social integration. Teaching and the curriculum also need to reflect an inclusive approach, and teaching personnel should be not only trained in inclusion but also remain at the disposal of students. Collecting data on the entry of graduates into the labour market should be part of the monitoring measures.

7. Facilitate recognition of international qualifications

States should ratify and fully implement the provisions of the UNESCO Global Convention on the Recognition of Qualifications concerning Higher Education (2019) and the 'second generation' regional recognition conventions pertaining to their region to ensure individuals' rights to have their qualifications assessed through a fair, transparent and non-discriminatory manner, offering avenues for further study or employment. In this regard, special attention should be given specifically to refugees and displaced persons, but also more generally to enhancing awareness of the processes for the recognition of qualifications and ensuring that these are straightforward.

8. Implement safeguards for online learning and close the digital divide

States have the responsibility to ensure the quality of education, including higher education programmes online. In doing so, adequate privacy and protection must be ensured, teaching and learning practices should be adapted to ensure their effectiveness, and student support should be provided. Efforts to enhance access to the internet and technological equipment should also be made while ensuring that the digitalization of education complements in-person higher education and does not replace it.

Beyond national level actions, at the international level:

9. Further clarify the existing international human rights framework in light of current and future evolutions in higher education, as part of the overall evolving right to education agenda.

Recognizing the importance of implementing existing human rights law, as well as the shortcomings across the world in this area, and bringing greater clarity to the rights and obligations could better ensure the enforcement of the right to higher education. Reflections on the notion of 'merit' and 'capacity', 'progressive introduction of free education' and 'equally accessible to all', may deserve further attention.

As the population grows and more and more students enrol in higher education, there is a need to give a new impetus to higher education to not only ensure the provision of socially, culturally and economically relevant education provision, but also to reframe it in the context of the international human rights framework whereby everyone has the right to higher education. States need to take action to ensure that higher education is available, accessible, acceptable and adaptable. By embedding equity measures in the education system, higher education can better promote social justice as it creates more opportunities for those who were traditionally excluded from this level of education. Recognizing the role of higher education from a lifelong perspective will further allow governments to elaborate policies that allow for greater interconnection with other levels and types of education as well as with the wider ecosystem.

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Right to higher education

Unpacking the international normative framework in light of current trends and challenges

The right to higher education is well-established in international human rights law. It requires states to progressively introduce free higher education and ensure that all have access on the basis of capacity. Yet, access to education is unequal from the very early years, which together with deep-rooted discrimination in education as well as differences in upbringing, often result in unfair admission procedures when reaching higher education. Drastic changes worldwide, due to rising inequalities, human movement, growing digitalization and the effects of the COVID-19 pandemic, are further challenging how this right can be concretely implemented.

This publication seeks to bring clarity not only to existing obligations and rights, but also to unravel what aspects of the right to higher education might require further explanation in light of new contexts and challenges. It provides policy recommendations to guide states in their endeavour to ensure effective equal opportunities to higher education for all.