

Analyzing education budgets through the lens of human rights: a two step process

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promoting mobilisation and legal accountability



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Introduction

Human rights standards should inform the process of developing education budgets and the content of the education budget. How the state decides how to invest resources in education is as important as what they are spent on. Human rights standards can provide questions for interrogating budgets. Budget analysis can help to quantify the steps that the state is taking to achieve progressively the full realisation of the right to education. Human rights standards on education include clear prioritisation which should be reflected in budget allocations. Monitoring and documenting budget allocation can therefore highlight human rights violations (a government's 'inappropriate' expenditure can actually be one of the causes of violations of the right to education).

A human rights based approach to education budgeting has a number of benefits:

- It is legitimized by the use of the law, and based on relations of rights holders and duty bearers which facilitates clarity on:
 - who has a right to what?
 - who has a duty to do what?
 - what are the consequences if what is required is not provided or is not there?
- Civil society organizations have the opportunity to:
 - legally challenge education policy and budgets;
 - improve transparency and accountability in education systems;
 - participate in and influence decision-making processes;
 - enhance awareness of education as a right.

There are two main ways in which human rights standards provide concrete guidance for analyzing education budgets: 1) assessing budget allocations against the human right to education; 2) assessing the process of budgeting for education against human rights standards.

1. Assessing budget allocations against the human right to education

A human rights-based approach is built on the existence of legal obligations of states. This entails 3 distinct but complementary stages of analysis.

Firstly, understanding education as a human right means holding states accountable for the realisation of their international human rights law obligations. These are found in a wide variety of international and regional conventions but can most straightforwardly be summarized in the 4A framework developed by Katarina Tomaševski, first UN Special Rapporteur on the right to education and founder of the Right to Education Project: Availability, Accessibility, Acceptability, Adaptability.

In the light of this framework, budget allocations can be systematically questioned and assessed. Below are some concrete examples:

➤ Availability

1. *Teachers and other educationalists*: adequate numbers of well trained teachers whose own human rights are realised, including freedom of association, collective bargaining, and their right to remuneration sufficient to secure for them and their family an adequate standard of living (c.f. Excessive investment in the Ministry of Education, buildings, cars, bureaucrats; South African Constitutional Court view on “contract teachers” and exclusion of non-citizens from being teachers; use of untrained teachers in community schools).

➤ Accessibility

1. *Economic accessibility*: free means free – from direct, indirect and opportunity cost (see UN CESCR General Comment 11).

2. *Compulsory*: ensuring education is compulsory up to the minimum age of employment is an element of core obligation on free and compulsory education. It removes the possibility of discrimination in education access from the private sphere. According to the CRC and ICESCR, the compulsory element of education should be seen as a duty of both states and parents: states must take steps to encourage attendance and reduce drop-out rates; parents have the primary responsibility to provide for the education of their child.

3. *Physical accessibility*: within safe physical access or else with free transportation.
4. *Non-discrimination*: addressing gender completion disparities, equally provided to internally displaced people, non-citizens etc. (not only opening the doors, but identifying barriers and adopting temporary special measures where needed).

➤ **Acceptability**

1. *Language of instruction*: it should progressively adapt to ensure inclusion and equality of achievement.
2. *Discipline* which is compatible with human dignity and no corporal punishment (budget allocation if necessary to review and replace existing disciplinary procedures and retrain teachers).
3. *Infrastructure* which is sufficient, safe and serviced (e.g. access to water and sanitation).
4. *Curriculum* and teaching materials which are good quality and content which is consistent with human rights aims and prioritises life skills essential for other human rights such as rights to health, food, work. (Reviewing textbooks which promote a one sided vision of history post-conflict, those which include unequal representations of women – “men as history makers, women as home makers”).

➤ **Adaptability**

1. *children with disabilities*: special educational needs and inclusion of children with disabilities.
2. *out of school children*: identifying and progressively including hard to reach children (street children, working children, etc.).

Secondly, the right to education is both a civil and political right, as well as an economic, social and cultural right. Under international human rights treaties states have obligations which must be realised immediately, and others which must be fully realised progressively, according to the maximum of available resources.

Consequently, a budget analysis of state action to realise the right to education should assess whether states are giving adequate budgetary priority to the realisation of their core or immediate obligations, and whether the resources allocated to other obligations are sufficient to ensure their progressive realisation.

Immediate (core) obligations which should be given the highest budgetary priority

- *Universal, free and compulsory education up to the minimum age of employment (15 or temporarily 14)*

A plan developed according to a HRBA to achieve universal free and compulsory education for all children, using the maximum available resources, including those from international assistance and cooperation (and there is a particular obligation on developed states to provide necessary international assistance to enable the realisation of this right – see CESCR General Comment 11).

The plan should include relevant elements of the 4As above.

- *Freedom of choice of education*

Permitting the establishment of schools which teach according to parents religious and philosophical convictions, subject to regulation of minimum standards.

- *Educational content consistent with human rights*

Budget to review gender discrimination in textbooks and ensure that the content is consistent with the aims of education in Article 29(1) of CRC.

- *Regulation*

Ensure minimum standards in all schools.

- *Steps for progressive realisation*

Take steps to achieve progressively full realisation of secondary education, increasingly free

Take steps to promote higher and fundamental education

Develop an educational strategy for progressive realisation of RTE including indicators and benchmarks

Thirdly, a rights-based approach allows assessing, measuring and monitoring education budget/financing by using rights-based indicators specifically designed for the right to education.

2. Assessing the process of budgeting for education against human rights standards

Understanding that human rights should shape the means as well as the outcome of policy and practice, it is helpful to link the 4A framework of the right to education with the Human Rights Based Approach model to look at the process of developing education law, policy and practice.

The PANEL model developed by Paul Hunt, Siddiq Osmani and Manfred Nowak for the UN Office of the High Commissioner for Human Rights, is drawn directly from the requirements of international human rights law. It requires states to ensure:

- **Participation** of everyone in decisions which affect their human rights (including the right to education): are all affected rights holders - children, parents, teachers, civil society - able to genuinely participate in education decision making? Is the information they need to participate available in a language and a form which enables participation? Are those who require support to participate given such support to enable participation (e.g. people with special educational needs)? Are people able to propose alternatives and have those genuinely considered? Does participation take place while all options are still open, to enable genuine participation as opposed to just “consultation”? It is possible to access the budget publicly?
- **Accountability** of duty bearers for the realisation of human rights (including the right to education): are there processes and mechanisms for addressing and redressing possible violations emerging from ‘inappropriate’ budget (e.g. Brazil, Costa Rica, Indonesia, Philippines constitutional provisions on educational budgets; or national human rights institutions)? Are there mechanisms in place to monitor the budget (by independent bodies)? Is the budgetary scrutiny in Parliament effective (e.g. more than Mps fighting for funds for their constituencies and actually scrutinising budget impact on rights delivery)?
- **Non-discrimination** and equality in the realisation of human rights: is the state fulfilling its obligations towards all rights-holders but also more specifically towards certain groups such as girls, disabled students, whilst also paying special attention to multiple exclusions?
- **Empowerment** of people to know their rights and how to claim them
- **Legality**: an explicit link to international human rights law and standards to inform and assess structural, process and outcome indicators.

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The Right to Education Project (www.right-to-education.org)

First established by the late Katarina Tomaševski (former UN Special Rapporteur on the Right to Education) and re-launched in 2008, the Right to Education Project is now an unprecedented collaborative initiative between ActionAid, Amnesty International and the Global Campaign for Education. Its rationale is based on the premise that education is a legal right with corresponding obligations for duty-bearers. Its main objective, therefore, is to promote advocacy, research, mobilisation and activism to demand compliance with human rights law. The Project pursues this goal by linking conceptual understandings of education with a hands-on approach to rights and by building bridges between different constituencies including human rights lawyers, education campaigners, academics and grassroots practitioners. These activities are carried out through four core strands: a comprehensive website, a high level international advisory panel, strategic research, and targeted support for legal action and social mobilisation.

Focus on budgets and indicators from a rights based perspective

Among other topics, the Right to Education Project is currently carrying out research on two issues that relate to government budgets:

- education budget/financing;
- the development of right to education indicators.