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# Children's Rights to, in and through Education: Challenges and Opportunities

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## Introduction

Since the *United Nations Convention on the Rights of the Child* was adopted in 1989 (hereafter the 'Convention' or 'UNCRC'), the issue of children's rights has been widely dispersed across the social sphere. The new socio-legal status given to the child, as the holder of inalienable and enforceable human rights, pervades the education field generally and the school in particular (Moody, 2014). Educational stakeholders encounter these issues on a number of levels, whether working to guarantee all children with free access to quality education, or defining the framework conditions which allow children to develop their cognitive, life and emotional skills to their full potential. The key issue is ensuring that by the end of the educational process all individuals have become socially and professionally integrated and can exercise their rights to full citizenship on the local, national and global levels.

The right to education is seen as being both a right in itself and a means of realising all rights of the child. Consequently, the obligations in the Convention examined here are the signatory States' undertakings to make primary education compulsory and available free to all (UNCRC, 1989, Art. 28), to appropriately and actively make the Convention's principles and provisions widely known to adults and children (UNCRC, 1989, Art. 42), while also promoting human rights, fundamental freedoms, equality of sexes, tolerance among peoples and cultural diversity (UNCRC, 1989, Art. 29). It is broadly understood that these legal provisions are the foundations of the right to education and of children's rights

education, and school is one of the first vectors. However, many children or categories of children do not have access to quality education, meaning these approaches have very little or no impact on them. Others attend schools whose administration or practices are incompatible with the basic principles of children's rights, denying children the ability to have, far less experience them. Advocates for education and children's rights therefore argue that a solution must be found to create for children a 'threat-free space' guaranteeing the right to education. This ideal space could represent a safe haven in which children's rights are fully respected and implemented and where they can learn to exercise, apply and experiment with these rights, through trial and error, in a social setting representative of real-world diversity.

This article seeks to examine the rhetorical question of how to achieve such a goal, exploring the multidimensional relationships between children's rights, educational opportunities and social justice, while addressing the related practical implications. This ultimate goal may seem unrealistic given the various realities and challenges encountered in the field, or even idealistic considering the criticism raised by scholars and practitioners, in particular concerning the "educationalisation" of childhood, notably throughout the schooling process (see Depaepe, 1989; Reynaert, Bouverne-de Bie and Vandeveld, 2009) and its normalising dimensions. Still, well aware of these limits and in line with Walzer (1983), this contribution considers that the field of education can be one of justice (re)distribution (also see Sabbagh and Schmitt, 2016). Therefore, examining the realisation of rights in education is not merely regarded as performing an uncritical analysis of a dated and culturally biased legal document: the UNCRC. Indeed, it could become a means for exploring which individual, social and global opportunities does the field of education hold and contribute to a multidimensional understanding of social justice, beyond legal treaties and by way of a more philosophical understanding of rights.

The approach proposed is more descriptive (concerned with what *is*) than prescriptive (concerned with what *ought to be*), although through the prism of the concepts of diversity, participation and social transformation it strives to conceptualise what kind of social project the full realisation of rights in education could support to achieve. Precisely, the objective is to give a clear picture of the right of the child *to, in and through* education – according to the well-established categorisation of rights related issues in education (see Verhellen, 1993; Quennerstedt and Moody, 2020). The main obstacles to access to education around the world are

1 Expression used by J. Lévinc, quoted by Meirieu (2002, p. 40).

first identified on a global level, without entering into national or local considerations that lie beyond the scope of this article. The issue of producing an inclusive, rights-infused environment in schools is then examined, working towards a description of an ideal goal and putting aside, for the sake of the exercise, the challenge and contradictions of the progressive realisation of rights. Finally, the transformative dimension of education and rights-education as educational opportunities and greater social justice are discussed.

### **Right and access to education**

The UNCRC recognises the child's right *to* education, specifically urging the States Parties to “make primary education compulsory and available free to all” (1989, Art. 28, para. 1) and make other forms of education (secondary, vocational and higher education) “accessible to all” (1989, Art. 28, paras. 2-4). It is not the first instrument of international law to guarantee this right; it was previously seen with the establishment in 1948 of the *Universal Declaration of Human Rights* (UDHR) by the newly-formed United Nations Organisation (UNO), guaranteeing free and compulsory education and accessibility on the basis of merit (Art. 26, para. 1)<sup>2</sup>. However, the near-universal acceptance of the UNCRC (ratified by all member States, except the United States of America), its restrictive nature (a declaration does not carry the force of law) and particular focus on children as a target population for early instruction created an unprecedented lever for action on implementing the right to education.

Since the 1990s, the international community has also adopted several declarations (*Declaration of Jomtien* (1990), *Dakar* (2000), *Incheon* (2015)) and action programmes (*Education for all, Millennium Development Goals, Education 2030*) to ensure that all children have access to compulsory quality education and have the possibility of completing it. While these instruments have improved access to education from a legal perspective and raised the visibility of the political and social obstacles, weaknesses persist with a direct effect on implementing the right to education, and on research conducted in this area.

These instruments have kept close to the initial definition of the right first seen in the UHRD and later in the UNCRC, which McCowan described as a “strange hotchpotch” (2010, p. 511). The right to education has always been a paradox, very specific on some aspects – e.g. education must be free – or the institution responsible for teaching children – e.g. school – and yet very indirect on others like the preferred structure,

2 For background on the right to education, see Moody (2016).

processes or contents. The controversial aspects of the right to education are still unresolved, such as the equivalence between education and schooling (Reynaert et al., 2010) and the discretion of parents in the education they choose for their children (see Curren, 2009). Moreover, a research synthesis shows these issues have received little research attention, and that researchers' interest has recently been decreasing (Quennerstedt and Moody, 2020). Finally, the principle of the progressive realisation of the right to education – aimed at encouraging States to strive towards its gradual implementation if all aspects cannot reasonably be reached at the outset – can also lead some governments to put little resources into fulfilling it. This article does not aim to clarify the definition of the right to education, or propose exit routes from these controversies, but awareness of these debates and the critical study of certain observations will help highlight how diversity, participation and social transformation are integral to addressing – fulfilling – children's education rights.

In the field, monitoring reports on the programmes above indicate that despite the progress made, many school-age children and adolescents around the world do not attend school at all. The 2018 edition of the *Global Education Monitoring Report* shows that, in 2015, 264 million children of primary or secondary school age were not enrolled in school (9% of 6-11 years old, 16% of 12-14 years old, 37% of 15-17 years old). Noting that school enrolment does not necessarily lead to regular attendance or completion, the authors of the 2015 *Education for All Global Education Monitoring Report* also include school attendance and dropout figures: “in 32 countries, mostly in sub-Saharan Africa, at least 20% of children enrolled in primary school are not likely to reach the last grade” (p. 75). The report also highlights that in OECD countries, 20% of young people drop out before completing their upper secondary schooling. These figures illustrate the difficulties in fully implementing children's right to education and guaranteeing access to free quality education.

Aside from producing a clear definition, one issue behind these enrolment, attendance and dropout rates is discrimination: certain categories of children and particular nations or world regions are highly over-represented (see Miles and Singal, 2010). For example, only 66% of countries have reached gender parity in elementary grades and 45% at secondary level (lower cycle). Further, gender parity is most likely to be achieved in the richest countries (*Education for All Global Education Monitoring Report*, 2015). The possibility of children accessing a quality education therefore varies considerably depending on criteria which have little to do with their actual capacity to learn – namely gender, citizenship, migrant status, disability status, socio-economic status, sexual orientation, ethnic

background, family language, religion and imprisonment – and there is evidence for this worldwide (see Tomasevski, 2003). By placing the focus on education for all, the instruments described above have sometimes led to categories of marginalised or disadvantaged children being ignored.

This observation is one of the starting points for this special issue and leads us to examine the injustices suffered by children around the world: differences in the global distribution of opportunities for education produce inequalities in opportunity, now a difficult if not impossible distribution of justice. From a critical sociological perspective, Benton (1993) described it as follows: “if the socioeconomic inequalities are preventing individuals in practice from acquiring the necessary skills or resources to exercise rights, they become simply formal and ineffective” (p. 118). The reality is that there are many consequences of children and adolescents failing to attend school – individual, social, medical and financial – and these have been documented (see Tomasevski, 2003). Here, we will see that violating the right to education ultimately leads to the violation of all rights (non-discrimination, development, freedom of expression etc.) and, within the scope of this article, of the right of every child to be properly informed of their rights and to learn how to exercise them in a suitable educational setting. The possibility for out-of-school children to exercise their rights in both the public and private spheres is put at risk from a very early age, compromising their individual potential to develop and improve their quality of life (UNESCO, 1990) and ultimately affecting social structures and processes (Sabbagh and Schmitt, 2016).

### **Respecting and implementing the rights of the child in education**

Educators face challenges on a daily basis: respecting and implementing the rights of the child in schools, promoting the rights of all, and considering settings which are conducive to implementing and learning about rights. Whether children are marginalised or disadvantaged, victims of violence or teaching practices ill-suited to their needs, children's rights mean that the suitability of all levels of the teaching institution – as the main education provider – can be called into question.

#### *School for all?*

Respecting children's rights in school carries many challenges. In addition to the problems some experience to access a quality education system, children may face discrimination at school, which leads to drop-out or failure (see the figures in point 2). Some categories of children are therefore far more likely to be discriminated against in their schooling due to a lack of facilities or appropriately trained staff, or to exclusionary

policies and practices. Many children with characteristics like a disability or learning difficulties, disadvantaged social background, experiencing poverty, or from a migrant family are at greater risk of having their specific rights inadequately considered by the school, even in countries which declare themselves as having inclusion policies, as defined in the *Salamanca Statement*, “education for all” (UNESCO, 1994).

It is reported, for example, that children with disabilities or learning difficulties are victims of rights violations at school. Aggregate data from *Disability Rights Promotion International Individual Monitoring Projects* (Bolivia, Canada (Toronto and Quebec), India and the Philippines)<sup>3</sup> show that students with disabilities experience a lack of autonomy, erosion of dignity, discrimination and inequality, exclusion and inaccessibility, disrespect for difference in school (Rioux and Pinto, 2010; also see Miles and Singal, 2010). In the decision-making process, Lundy and Kilpatrick (2006) show that in Ireland assessments do not make sufficient consideration of pupils with disabilities, and there tend to be very few opportunities for these children to give their views on decisions affecting them.

When they can access education, the children of migrants, asylum seekers or ethnic minorities are also impacted by non-inclusive or ethnocentric practices. In Switzerland, as children are assessed in the teaching language or in reference to the host culture, they are at greater risk of encountering problems at school (Sanchez-Mazas and Changkakoti, 2017; also see Haenni Hoti et al., 2015). In Germany, pupils from a migrant background are more likely to be disadvantaged (55% among first-generation migrants and 42% among the second generation (*Authoring Group Educational Reporting*, 2016)). Education research has long recorded the high proportion of these children in special classes or schools: in Iceland, a child from a migrant background has on average a 20% probability of needing specialised support, regardless of discrimination or disadvantage due to his or her origin (also see Sahrai, 2015).

The challenge in such cases is to go beyond the issue of access, as “tackling exclusion requires halting and reversing exclusionary policies and practices, not only countering their effects”, according to Tomasevski (2006, p. 44). A complete paradigm change in schools is needed to implement and reaffirm the rights of the child: difference should not be seen as

3 All data provided in this paper are chosen according to their accessibility and scientific relevance. When possible, aggregated data are chosen to provide a broader overview of the issue at stake. If such data are unavailable, data from specific, randomly chosen, nations or regions, and confirmed by at least another source, are presented. Yet most studies focus on Western countries or regions since most of the published scientific research is conducted there (see Quennerstedt and Moody, 2020).

a handicap to be overcome, rather that the diversity of the attending children can become a resource for the entire school community (Lafortune and Gaudet, 2000; Sliwka, 2010). The concept of the inclusive school is based on:

The premise that diversity is the norm and that to ensure equity for everyone, schools must adapt to the realities and needs of the pupils, not the reverse. It advises 'starting with the needs' and rights of pupils in order to adjust the services or practices of an institution so that all pupils can succeed. (Potvin, 2014, p. 102, translation by the author)

In her plea for education to be adapted to children, Tomasevski mentions their "right to be regarded as different" (2006, p. 21) and, we can add, to be respected and valued as such. Such a call does not have to lead to a relativistic position. All differences cannot be valued in the same way in school: for instance, attitudes threatening the school's functioning or the common-good should be channelled and controlled.

In addition, reaffirming the rights of the child on a day-to-day basis, tackling deep-seated discrimination in the education system and striving to ensure that every schoolchild can find their place means addressing all of the other threats to children's rights, such as bullying, school violence, civil rights violations etc.

### *Children's rights at school*

There are genuine challenges in creating the above-mentioned 'threat-free space', to promote as described hereafter the minimum conditions in which children can calmly engage in their day-to-day learning and reach their full potential. Using education to promote the spirit of human rights, fundamental freedoms and equality of sexes, tolerance among peoples and cultural diversity is another obligation of the Convention's States parties (1989, Art. 29, paras. 2 and 4) and it is referenced in several international instruments (most recently in *United Nations Declaration on Human Rights Education and Training* (UNDHRET), 2011). There is also a legal and academic consensus that promoting this spirit of openness and inclusion in the educational sphere leads it to develop through both the learning *content* and *processes* (Brantefors, Quennerstedt and Tarman, 2016; Gerber, 2017; Thelander, 2016). If pupils are expected to acquire skills *about* the standards, principles and values of children's rights, and human rights in general, then the States must also provide the schooling conditions to guarantee the rights of the learners and teachers *through* learning and teaching, giving them the means to exercise their own rights,

and respect and defend those of others (learn *for*) (Bajaj, 2017; Flowers, 2004; Struthers, 2015; Tibbitts, 2005).

Let us now examine the issues involved in respecting children's rights at school and in education, highlighted by Miles and Singal as follows:

The 'value added' nature of inclusive education is not only in its raising of issues of quality of education and placement, but more importantly it brings to the forefront issues about social justice. Inclusive education provides an opportunity for society to examine critically its social institutions and structures. (2010, p. 12)

Framework conditions can be used to create a positive school climate in which everyone's rights are respected, and to provide a structure for reflecting on a quality school. The notion of 'school climate' is based on a subjective experience of academic and institutional life, and applies to the entire educational community. This experience is determined by analysing life and learning background, the well-being of all actors (pupils, teachers etc.), the resources in place to create good conditions universally (Debarbieux, 2015; Janosz, Georges, and Parent, 1998). For prosocial interpersonal relationships to flourish, the school needs for example to take a systematic, effective and permanent approach to tackling discrimination and bullying, suffered by 5% to 15% of pupils, and whose short- and long-term consequences for individuals and the school community are widely documented (Debarbieux, 2011; Moody, et al., 2013; Rigby, 2003; Schoeler et al., 2018). The resulting sense of justice and security helps children learn about their rights at school by respecting and implementing them. Another example is the elimination of all forms of violence towards children (UNCRC, 1989, Art. 19) in the school setting, whether abuse (psychological, physical or sexual violence) or 'educational' violence, with the purpose of 'correcting' and 'remediating' any behaviour which deviates from the norm (Shumba, 2003)<sup>4</sup>.

A school's pedagogical practices are also questioned when the desire to implement children's rights at school emerges. As a subject of the law, a social actor and not merely a receptacle of knowledge, the child welcomes active learning methods and/or critical pedagogies; learners go on to become agents of their own learning and participate fully in school life (Louviot, 2020). The knowledge and skills they acquire become meaningful and can be applied to personal plans and/or pressing societal issues (Louviot, Moody and Darbellay, 2019). In the big picture, school is where

4 For a critique of some rights-respecting programmes which do not genuinely promote rights in education but more 'good behaviour' and pupil obedience, see especially Trivers and Starkey (2012).



the foundations of citizenship are formed and laid. Meaningfulness, interest and active involvement are all elements producing a genuine sense of belonging to the school community, to a knowledge community, and to society as a whole – the society which children are destined to inhabit and contribute to as subjects of the law. Children's rights support and shape the learning process to allow the development of skills for the 21<sup>st</sup> century world, amongst which creativity and critical thinking (Darbellay, 2019).

Lastly, implementing the rights of each child, either in the school setting or through teaching practices, allows a sense of justice to emerge (Covell, 2013). When a child grows in a respectful, positive environment, he or she learns the basis of living together, justice distribution and social cohesion. He or she can then know, recognise and implement the rights of the individual, ensuring equal dignity for all and understanding the scope of human rights by exercising their own and respecting others' (Moody, in press).

### **The transformative aim of children's rights**

If the initial intention of human rights education, and thereby children's rights education, was "promoting understanding, tolerance and friendship between all nations and all racial or religious groups" (UHRD, 1948, Art. 26, para. 2)<sup>5</sup>, nowadays the focus has shifted onto the processes of empowerment, emancipation and even transformation. Rights *through* education and more specifically rights education now aims to promote a just society and reduce inequalities by ensuring that learners become agents of change to transform the system: "activists for human rights through the process of HRE (Human Rights Education) by sharing information with others and actively working to defend human rights" (Bajaj and DasGupta, 2017, p. 5; also see Tibbitts, 2015).

Considering human rights education as emancipating is ambitious. One approach is to see it as a way of surpassing the declarative, non-reflexive approaches which sometimes form the basis of this type of teaching: namely, developing knowledge about standards, their content and the mechanisms to enforce them, without challenging them (Keet, 2012; also see Reynaert, Bouverne-deBie and Vandeveld, 2010; Snauwaert, 2019). Alternatively, this view can be considered as going beyond education, and exercising one's rights in a protected, fictitious setting: namely school. It is essential for children that their rights are respected by and within school – as the only social institution solely reserved for them – while also allowing them to experience the educational mechanisms designed to develop

5 Also see the 1993 *United Nations Vienna Declaration*, which was a "watershed moment for HRE" (Bajaj and DasGupta, 2018, p. 3).

their skills in democratic debate. The challenge of rights education lies in putting words into action, in going beyond the notion of “exercising”, rather bringing children’s rights to life by practising them here and now so that children can activate their transformative power, developing as individuals and going on to improve society now and in the future (Rinaldi, Moody and Darbellay, 2020; Tibbitts, 2005).

This however is where we see the paradox of the desire to drive change. If the first step is emancipation through one’s rights, the transformative aim that this carries is likely to seriously question the frame of reference through which we develop (Mezirow, 1997), as well as social structures and processes. Transformative education is based on the desire to drive change by studying the belief values and systems of individuals as well as their attitudes and behaviours. Action needs to be taken on tensions in the groups, and convention defied. It also requires the capacity to identify the complex, global issues affecting many players and to develop solution strategies. Learners must be able to reflect critically and personally so as to identify discriminatory situations and, if they are aware of their rights and understand justice redistribution principles, they will know how to tackle such situations.

Can school meet this challenge and is it the most appropriate institution to do so? How can it bring urgency to the need for change, give lessons which develop knowledge and skills leading to change, and make space to implement and strengthen the imagined changes? What are the pedagogical and methodological requirements of such ambitions? And, most of all, are schools and society ready to embrace such fundamental changes and transformations?

## **Conclusion**

Children’s rights to, in and through education incorporate many challenges in terms of both implementation and the pedagogical and social change opportunities they bring. On one hand, ensuring access to quality education and effectively removing exclusionary practices are still global concerns when ensuring that all children are entitled, as subjects of the law, to acquire knowledge and skills, regardless of characteristics like gender, citizenship, migrant status, disability status, socio-economic status, sexual orientation, ethnic background, family language, religion and imprisonment. Moreover, it should be noted that little research is carried out on this priority issue. On the other hand, effectively implementing the rights of the child – protecting against discrimination and violence, creating a calm climate for learning and development, participatory pedagogies and structures etc. – all within an educational establishment

pervaded with the social issues of today's globalised world, remains a major challenge for 21<sup>st</sup> century educators. Further, most research on the topic remains focused on describing the current situation, offering few solutions to move towards effective transformative education.

This does not take into account the opportunities for the educational institution to be a bastion of children's human rights promotion and defence: enabling children to become true agents of change capable of responding to the challenges of our diverse, globalised world in a reasoned, enlightened and democratic way, while respecting the rights of all, for greater social justice. This presents a new set of questions for researchers and practitioners: how can these ambitions transcend cultural differences? How can educators be best trained to manage projects of this nature, which methods and instruments are at their disposal? Transforming the world of today and tomorrow is both a challenge and an opportunity faced by education and children's rights and presented to, by and for children, who have never needed their rights more.

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