

Mandate of the Special Rapporteur on the right to education

**CALL FOR CONTRIBUTIONS:
THE RIGHT TO EDUCATION, ADVANCES AND CHALLENGES**

In her first report to the Human Rights Council, to be presented in June 2023, the Special Rapporteur on the right to education intends to undertake a review of the achievements of the mandate on the right to education over the last 25 years. Indeed, in 2023 the mandate will celebrate its 25th anniversary. The time has come to take stock of the advances the mandate has made in understanding the normative content of the right to education under international human rights law. It is also important to reassert and reassess the added value of an approach based on the human right to education in education matters.

In addition, in her report, the Special Rapporteur intends to identify the current main challenges to the right to education today and the crucial issues that deserve attention for the future.

Submissions should be sent electronically no later than **13 January 2023** to hrc-sr-education@un.org, using the email title: “Submission: the right to education”.

Please feel free to answer only the questions relevant to your work. Kindly limit your responses to **3,000 words** and attach annexes where necessary. Due to limited translation capacity, responses should be sent in a Word document, in English, French or Spanish. The document should include a clear reference to the submitting entity or person as well as paragraph numbers and be dated. Please also indicate if you have any objections regarding to your reply being posted on the OHCHR website.

Submitter: European Students’ Union (ESU)

Date of submission: 12/01/2023

I. Assessing the achievements made by the mandate of the Special Rapporteur on the right to education over the last 25 years

- 1. In your country, are education issues approached through the lens of the human right to education, and if so, with what challenges and results? In your view, what is the added value of such an approach in your work?**

1. The European Students' Union (ESU) is the organisation representing students at European level, therefore our answers will look at the European regional frameworks for cooperation in the area of higher education. ESU believes it is crucial to see the right to education as a human right, as mentioned for example in our [Social Dimension policy paper](#) or [ESU's vision on higher education policies](#).

2. Firstly, there is no binding legal instrument at regional level which would detail or even reiterate the qualification of the right to (higher) education as a human right. However, as the only type of tool used is soft law (e.g. recommendations, communiques), it would be even more expected that the European states agree to the same degree of commitment as in the Art. 13 of the International Covenant on Economic, Social and Cultural Rights ("Higher education shall be made equally accessible to all... in particular by the progressive introduction of free education"). Unfortunately, we haven't seen a trend into "the progressive introduction of free education" neither on policy commitment level, nor on the actual practice in the field.

3. As a principle, there has been progress into having a human-rights based approach to the right to education, which can also be stated by decoupling higher education from being seen exclusively as a preparation for the labour market in a commodifying perspective. In that regard, it has become almost a consensus, at least declarative, that the 4As (even though not presented as such) are central to higher education policy. Even if this may even come close to declaring or understanding the right to (higher) education as a human right per se, it stops short of explicitly declaring it. This can also be a consequence of the practical implications that are entailed by qualifying higher education as a human right, based on the legal regime.

4. In the European Higher Education Area the human rights-based approach to higher education has been mostly based on the availability and equal accessibility to higher education. Only in recent years has the EHEA started to work on the issue due to the developments in certain EHEA countries, which is mostly reflected in the 2020 Rome Ministerial Communiqué, where the Principles and Guidelines of Social Dimension in Higher Education were approved and student rights as a distinctive category were mentioned for the first time explicitly. Thus, the idea of a human rights approach towards higher education is still at an early stage and not far developed. A general problem of the "right to education" (as e.g. enshrined through the UDHR or the Charter of Fundamental Rights of the EU) is, that with regard to compulsory education it reaches further than with regard to HE. Thus higher education in many countries of the European Higher Education Area comes along with tuition fees as well as other direct and indirect costs of studying, making the pursuit of HE still inaccessible to many. In recent years more and more countries have started to also increase barriers for non-European (international) students. Furthermore, student rights are not enshrined and jurisdiction over student rights thus often is based on an individual case-by-case basis instead of being based on unshakeable principles as human rights. So while the discussions over HE and human rights have been emerging it is paralleled with contradictory actions by public authorities and sometimes even jurisdiction.

5. Despite this, the degree in which, de facto, the right to higher education is seen in a human rights based approach in the Bologna Process is still more pronounced than in the European Union's European Education Area. Despite having the right to education as the first right of the European Pillar of Social Rights, once the level of education rises from early education to school and to higher education, there is a decreasing focus on access.

2. How do you assess the 4 A's framework of availability, accessibility, acceptability and adaptability as conditions for realizing the right to education? Is such a framework integrated in legal and policy documents relating to education in your country, as well as used in practice? If not, what are the key obstacles? Should the framework be reviewed to include other dimensions? If so, which?

6. The 4 A's would cover many aspects of a right to HE on a very general basis. But the problem is, those terms are very much up to discussion and interpretation. For higher education it needs clearer standards and a common as well as narrower understanding of what these terms mean. Accessibility in HE must be equalized to the standard already set for compulsory education: to be free and not restricted by monetary means. Moreover, in many countries the understanding of accessibility is still locked in the paradigm of the first generation of international rights (negative rights or freedoms), with positive rights being limited to specific narrow issues (e.g. physical adaptability for students with disabilities).

7. On the acceptability condition, ensuring quality education is key for enabling the compliance with ensuring the right to education. Even though at European level there is a framework for understanding the concept of quality of education (through the European Standards and Guidelines in Quality Assurance), this is not used to enforce a human-rights based approach to the right to education, as it should be if we consider the quality of education as a right-condition to the general right to education. On a more theoretical scale, it is important to see these 4As not only as conditions, but as structured rights in themselves.

8. Furthermore, student rights in exercising the right to education are also nowhere protected by international law, neither through the United Nations/UNESCO nor through EHEA or the EU (except for the basic right to having access to education and in some instances through the freedom of choosing one's occupation, as well as derived rights). The framework should thus be supplemented through basic standards of student rights.

9. In terms of implementing the 4As in practice, there are several policy commitments and actions which tackle the issues mentioned by the 4As Framework at EHEA/EU level, even though the framework is not mentioned and the perspective does not stem from a human rights-based approach.

3. The human right to education entails States' obligations to respect, protect and fulfil the right to education in international human rights law. To what extent are these obligations clearly identified in your country's legislation and in practice?

10. Especially through the 2020 Rome Communiqué and the three Annexes but also some former EHEA Communiqués the role of students in higher education governance and protection of academia has been established. The problem is that the EHEA documents are not binding. Thus, all across Europe the rights of students are not protected and established to the extent that would be needed, as agreed upon by the member states. Apart from the lack of clearly established student rights in order to protect them, many countries due to political reasons also do not have established any or

sufficient frameworks for national unions of students, weakening student self-representation in HE governance and undermining a central prerequisite of students as status group in order to being able to protect and fulfill the right to education (and academic freedom!). Additionally, within the European Union higher education is not a shared competence, resulting in the EU being powerless regarding violations of member countries regarding higher education.

11. The most advanced system of legal protection is through the Council of Europe, both in terms of hard law and soft law. In terms of hard law, although phrased as a negative obligation in the Declaration, the jurisprudence of the European Court of Human Rights has been positive in terms of expanding the understanding and the correlative obligations of the parties in terms of fulfilling the obligation. The developments can be followed in the [Guide on Article 2 of the European Convention on Human Rights](#), published by the European Court of Human Rights. In general terms, we can see that the human-rights based approach has seen its most advanced conceptualisation framework within the work of the Council of Europe, despite the fact that the question of adding student rights hasn't been systematically tackled by the organisation through a soft/hard law instrument yet.

4. Has the right to free education been progressively implemented at all levels of education in your country, based in particular on article 26 of the Universal Declaration of Human Rights, articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, and article 28 of the Convention on the Rights of the Child? If yes, please provide examples. If not, please explain why not.

12. As stated above, higher education is exempted from the requirement of being free. Some countries in Europe nevertheless offer (at least to a certain extent) free higher education, though in recent years some of those countries have started to (re-)introduce hidden tuition fees or fees targeting certain student groups (esp. international students). Talks about introducing general tuition fees have been emerging and are getting stronger every year in many of those countries as well.

5. Is the right to education considered a justiciable right in your country and if so which aspects of that right? If so, please provide a short summary of emblematic cases.

13. For what regards the EU framework, [the Charter of Fundamental Rights of the European Union](#) recognises the right to education (art. 14). Despite the Charter having been given the same legal applicability of the EU Treaties, its scope is limited to the application of the EU law (art. 52): since education is a supportive EU competence (i.e. the EU has no legislative powers on it), the scope of applicability of art. 14 of the Charter is narrow, including its enforceability through the Court of Justice of the European Union (CJEU). The [CJEU judgement on the so-called 'Lex CEU' by Hungary](#) is considered both as a landmark of the enforceability of art. 14 of the Charter, but at the same time provides an example of the narrowness of its application. According to the Court, the Charter is applicable to this case due to the fact the specific provision of the Lex CEU falls within the scope of GATS, whose implementation falls under the EU law.

6. To what extent are the non-discrimination and equality principles respected in implementing the right to education in your country? Have past recommendations made by the Special Rapporteur on the right to education of

vulnerable and marginalized populations been taken into account? If so, can you list which ones?

14. The EHEA has been working on the social dimension in the previous years and is working on a monitoring system currently. As the [Eurydice](#) report on inclusivity in Higher Education in the EHEA shows, there are many areas which still are only met partially or not at all, especially the situation regarding staff training and institutional mission, community engagement and policy dialogue with stakeholders lacks in many countries. Also regarding flexibility, lifelong learning and mobility European countries only partially meet the criteria of social inclusion and equity. EHEA member countries vary a lot regarding the rights of vulnerable groups. Even in the EU the European Strategy for Rights of Persons with Disabilities has still not reached higher education institutions on the grassroot level sufficiently.

7. In countries where the Special Rapporteur has undertaken visits¹, have recommendations been implemented? If so, please list recommendations acted upon.
8. In countries to which the Special Rapporteur has sent communications (allegation letters, urgent appeals and other letters)², have measures been adopted to address the issues raised and ensure their non-recurrence? Please provide specifics.

II. Main challenges and crucial issues for the future

9. In your view, what are the main challenges in your country in implementing the right to education?

15. The main challenges lie in four aspects: 1) general lack of binding regulations on national and supranational governance levels, 2) lack of public authorities to sufficiently fund higher education, 3) lack of willingness of public authorities to safeguard the rights of academia and especially students 4) lack of monitoring, follow-up and accountability measures on fulfilling the obligations of international instruments.

16. Even though the EHEA member countries in Europe have agreed on many basic standards for HE governance, including the need for sufficient funding, to protect academic freedom and to enhance social policy in HE, when it comes down to the implementation all countries are deficient and many have regressed in recent years. Especially the space for student engagement in higher education governance is constantly under attack across Europe, paralleling the general shrinkage of civic space and engagement all around the world. When it comes down to it, students usually can only defend their rights on an individual basis through case by case lawsuits, since most countries do not provide for a collectivized student union approach to defend student rights (unlike workers' unions). Furthermore, a lack of clear standards and guidelines

¹ Algeria, Bhutan, Bosnia and Herzegovina, Botswana, Chile, China, Colombia, Ecuador, Fiji, Germany, Guatemala, Indonesia, Ivory Coast, Kazakhstan, Malaysia, Mexico, Mongolia, Morocco, Paraguay, Senegal, Seychelles, Tunisia, Türkiye, Uganda, United Kingdom and Northern Ireland, United States, Qatar.

[OHCHR | Country visits](#)

² [Communication search \(ohchr.org\)](#)

for student rights hinders students from being able to refer to binding or at least normative standard setting documents when going to court.

10. What are the crucial issues to address, nationally as well as internationally, to ensure the realization of the right to education?

17. States and especially public authorities need to be convinced to adhere to the very standards and principles they have obliged to keep up with. As a first step, promoting the 4As framework among the decision-makers and stakeholders and using it as a commonly agreed assessment tool to analyse the operationalisation of the right to education would be welcomed.

18. Generally, there is not a lot of awareness regarding the situation of higher education on the different levels of political (international) governance, even though academic freedom and student rights have been under attack in Europe.

19. In order to tackle these problems, the most sustainable way would be to codify certain higher education standards from a human rights perspective and, in addition, to codify student rights to strengthen student human rights in higher education. Access to education doesn't limit to the conditions regarding admission to education programmes but covers as well the right to progress in education and to complete studies. Otherwise, the right would lack finality, since the protection given by international law would be severely incomplete. ESU believes that without a list of rights that would reflect the broader right of access to education, the latter would actually lack substance and prove to be ineffective in the given protection. For example, ESU believes that access to education, quality of education and student participation must go hand in hand and reinforce each other.

20. In this context, it is our belief that a global (at least Recommendation on) Student Rights' Charter would represent the exact instrument necessary to ensure the right to education, by providing a minimum standard regarding student's activity. Regulating core principles and minimum rights for a social category at UN level wouldn't be a novelty, including in (higher) education. Examples would be UNESCO's Recommendation concerning the Status of Teachers (1966), as well as the Recommendation concerning the Status of Higher-education Teaching Personnel (1997). The students of Europe have worked out a [Student Rights Charter](#) that can serve as a starting point, even though this charter of course has a European bias and would need to be expanded and adjusted for an international charter. The advantages of the adoption of a document outlining student rights lie in an increased visibility of rights to students as those entitled to claim them, the boundage of public authorities and higher educations to respect, protect and fulfill them and the enabling of student right-holders to enforce their rights before competent administrative or judicial tribunals.

21. Additionally, the issue of commodification and underfunding of higher education needs to be addressed more ambitiously since this is one of the most pressing issues undermining higher education. . Furthermore, similar to other instruments, a system should be in place to have periodic reports from countries to the UN on how they implement the obligation to ensure the right to education as a human right at all levels, with stakeholders having the possibility to complement with alternative reviews.

You are invited to provide information only on the questions relevant to your work.