



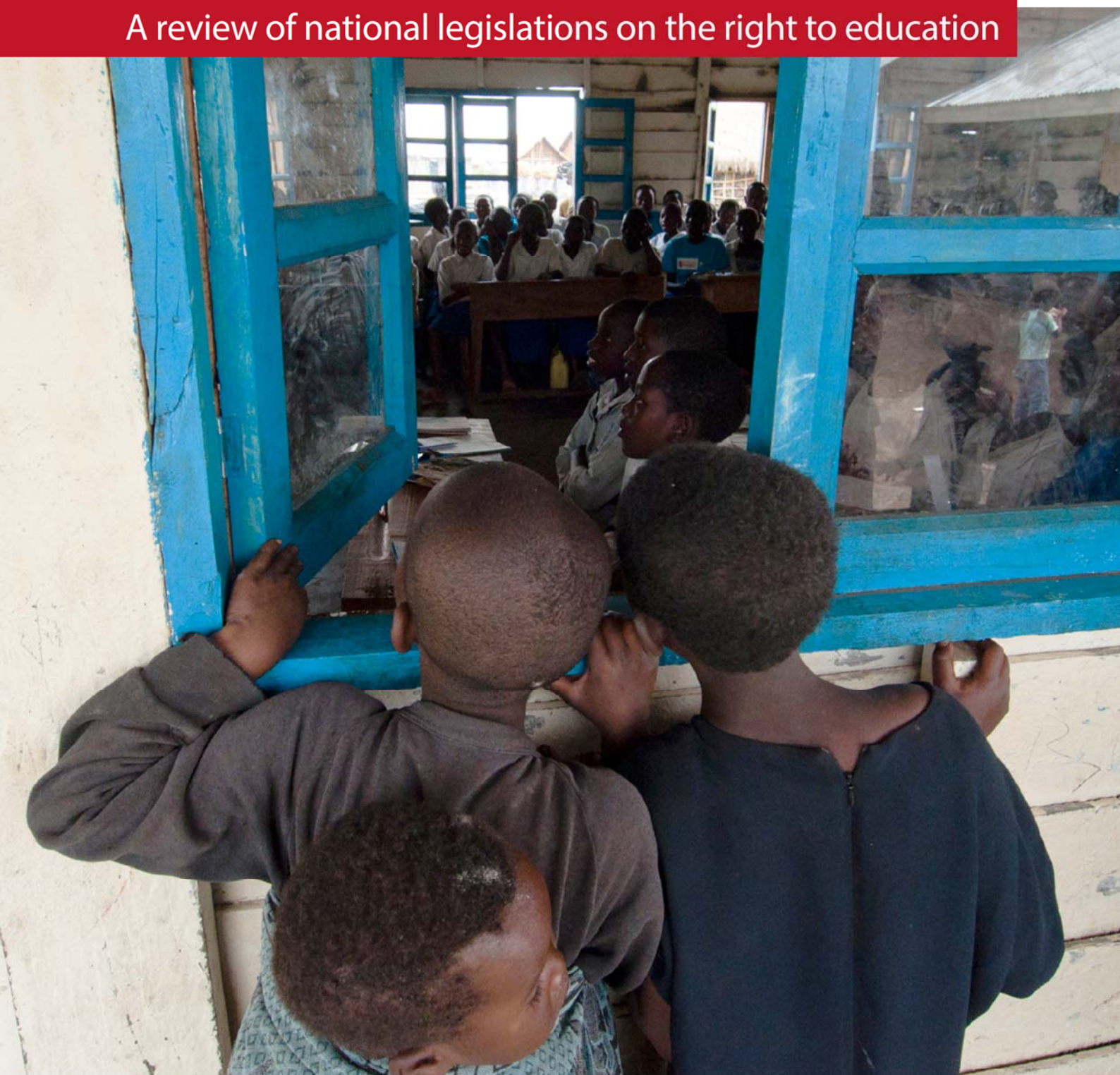
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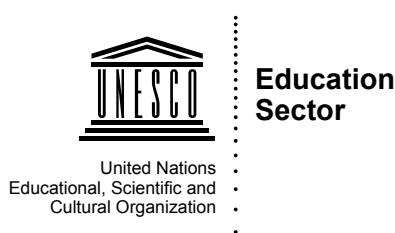
Operationalizing Sustainable Development Goal 4

A review of national legislations on the right to education



UNESCO Education Sector

Education is UNESCO's top priority because it is a basic human right and the foundation on which to build peace and drive sustainable development. UNESCO is the United Nations' specialized agency for education and the Education Sector provides global and regional leadership in education, strengthens national education systems and responds to contemporary global challenges through education with a special focus on gender equality and Africa.



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.



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Introduction

Context and approach

Education is a fundamental human right, which forms an integral part of UNESCO's mission. International human rights law extensively develops the right to education and numerous political commitments have reaffirmed its centrality. The current education agenda, SDG4-Education 2030, was framed with the right to education at its core, and the objective of leaving no one behind. The universal commitment to the objectives of SDG4 should now translate into concrete national level action, notably through appropriate legislative reforms supporting the right to education.

Although SDG4 does not in itself establish legal obligations for countries, it calls for a comprehensive and holistic approach to education, including the adoption of legislative measures.¹ This provides a vital opportunity to further link policy and legal reforms and to ensure practice evolves accordingly. Legal gaps resulting from incomplete national legal frameworks can be detrimental to the efforts made towards achieving SDG4 and securing the right to education for all.

While governments bear the main responsibility for making progress towards SDG4, one of UNESCO's key responsibilities, as mandated by Education 2030 Framework for Action, is to provide capacity development to countries undergoing this process. As a response, UNESCO's Capacity Development for Education Programme (CapED) launched an SDG4 pilot programme initially in 10 Least Developed Countries (LDCs) to help operationalize SDG4 at country level. The Programme focuses on reviewing three different dimensions, all central to making progress towards SDG4. The first relates to legislation on the right to education as a means to inform future debate on legal reforms, the second to reviewing education policies and plans in light of SDG4 commitments and the third on improving national monitoring data and information systems to better track progress towards national education priorities including SDG4.

As part of this wider CapED pilot programme this paper examines the instrumental role that legislation on the right to education can play in view of achieving the SDG4 targets in LDCs. It does it by reviewing national legal frameworks relating to the right to education in 11 countries, suggesting some lessons of global interest, both for policy-making and normative work.

Scope, areas of focus and limitations

This paper is an analytical synthesis, drawing on the findings of the 11 country reports, namely Afghanistan, Bangladesh, Cambodia, Democratic Republic of the Congo (DRC), Haiti, Madagascar, Mali, Mozambique, Myanmar, Nepal and Senegal.

It presents the current state of national laws and suggests areas of legal reforms to support progress towards SDG4. The analysis and recommendations formulated for each country demonstrate that reinforcing the national legal framework - if fully implemented - will lay important foundations for SDG4 in securing the right to education. This synthesis highlights common trends, while acknowledging the various degrees of development of national legal frameworks.

The reports use a rights-based approach and exclusively focus on SDG4 targets 4.1, 4.2 and 4.5. These three targets were chosen as there is an international consensus on the direct implications of these targets, as reflected in the Framework for Action and Incheon Declaration.²

The absence of legal provisions may severely compromise their achievement. National legal implications arising from the Framework for Action are clear when it comes to ensuring 12 years of free education, of which at least nine years are compulsory (target 4.1), introducing one year of free and compulsory pre-primary education (target 4.2) and eliminating all forms of discrimination (target 4.5). This does not mean that the other targets would not also have legal implications, but there is currently no common agreement at the international level on these implications in order to cover the right to education comprehensively (encompassing aspects relating to other levels and forms of education, financing, governance, private provision, etc.). An analytical framework was developed with a list of legal implications derived from each individual target. Table 1 summarizes those implications.

¹ Education 2030 Framework for Action, para. 17, 34 and 37: <http://unesdoc.unesco.org/images/0024/002456/245656E.pdf>

² <http://unesdoc.unesco.org/images/0024/002456/245656e.pdf>

Table 1: Key legal implications of SDG4 targets 4.1, 4.2 and 4.5

SDG4 target	Corresponding legal implications at national level (indicative)
<p>Target 4.1</p> <p>‘By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes’</p>	<p>Free and compulsory education</p> <ul style="list-style-type: none"> Set the legal duration of free education: 12 years of free primary and secondary education, publicly funded Adopt measures to prevent schools from charging fees Set the legal duration of compulsory education: at least 9 years <p>Non-discrimination and equity</p> <ul style="list-style-type: none"> Ensure that national laws reflect the principles of non-discrimination, equity and equality of opportunities in education <p>Quality</p> <ul style="list-style-type: none"> Ensure the quality of primary and secondary education by adopting legal provisions or regulations on standards and norms relating to the quality <p>Children’s rights and school attendance</p> <ul style="list-style-type: none"> Prohibit child labour and child marriage as they interfere with school attendance Undertake the necessary legal reforms to ensure that the ages of admission to work, of marriage and of the end of compulsory education are fully aligned in the domestic legislation Adopt legal provisions or regulations to encourage regular school attendance and reduce school dropouts
<p>Target 4.2</p> <p>‘By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education’</p>	<p>Duration of pre-primary education</p> <ul style="list-style-type: none"> Set the legal duration: at least one year of free and compulsory pre-primary education <p>Quality</p> <ul style="list-style-type: none"> Ensure the quality of pre-primary education by adopting legal provisions or regulations on the providers of early childhood education services
<p>Target 4.5</p> <p>‘By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations’</p>	<p>Non-discrimination</p> <ul style="list-style-type: none"> Ensure that national laws guarantee the principles of non-discrimination, equity, inclusion and gender equality in education and ensure equality of opportunities in education (including through positive measures) <p>Prohibition of violence and harmful practices</p> <ul style="list-style-type: none"> Prohibit all forms of violence (all forms of gender-based and sexual violence and harassment) and discrimination in school Prohibit child labour and child marriage as they interfere with school attendance Ensure that restrictions to the right to education of pregnant girls and young mothers (such as expulsions from school) are prohibited and that they are offered opportunities to continue their education, and eliminate all harmful practices detrimental to girls’ and women’s education <p>Vulnerable groups and minorities</p> <ul style="list-style-type: none"> Remove all legal obstacles that keep vulnerable children and youth out of education Adopt provisions guaranteeing the right to education for persons with disabilities based on an inclusive approach Adopt provisions guaranteeing the right to education for indigenous peoples (when relevant) Ensure that other domestic laws that have an impact on education (i.e. legislation on the rights of the child, on the rights of persons with disabilities, on indigenous peoples) adopt an inclusive and equitable approach and ensure that they are consistent with the legislation on education Ensure the domestic legislation does not contain provisions that restrict/prevent refugees and internally displaced persons (IDPs) to access education <p>Conflict situations (when relevant)</p> <ul style="list-style-type: none"> Guarantee a safe learning environment in conflict situations including the protection of school infrastructures (prohibition for military forces to target, attack and/or occupy school infrastructures) Prohibit the recruitment of child soldiers

The country reports elaborate on the many ways in which the national normative framework supports the targets and to what extent instrumental elements are missing.

A significant limitation of the country reports stems from the fact that they were based solely on official texts and information publicly available in English or French at the time of writing. Therefore, it may well be that not all existing measures are included; in particular, any recent legal changes that were not accessible to the public at the time of writing may not have been accounted for.

The contribution provides an overview of how the right to education is framed in the LDCs' national law and to what extent these countries commit to international human rights in their normative frameworks. Constitutions, laws and international commitments can be seen as the foundation for a legal enforcement of the right to education.

National law and the right to education

To achieve SDG4, legal frameworks need to be consistent with the new standards established by the Education 2030 Framework for Action. Therefore, national normative frameworks should reflect the agenda's rights-based approach and recognize education as a fundamental human right.

Yet, the review of the national frameworks in these 11 countries reveals that a restricted approach to the right to education prevails. In the majority of countries, the national law does not guarantee education as a fully enforceable human right. This could compromise progress towards SDG4. Where it has been included in the Constitution, the right to education is often defined in a limited manner. This is a substantial issue as the Constitution is the supreme legal norm of a country, setting fundamental principles and overriding other national laws. Where announced (for instance in Mali and Senegal), constitutional reforms are valuable opportunities to develop detailed provisions on education and to adopt a rights-based and inclusive approach to education.

Equally important is the adoption of human rights laws that relate to the right to education, such as laws on children's rights or anti-discrimination laws. In many countries, human rights-related bills are reported to be under consideration, however, their adoption is subject to long delays. Bills need to be reviewed to ensure overall consistency and adoption should be expedited.

National commitment to international human rights

The new 2030 Agenda, including SDG4, is closely linked to international law and human rights standards. The 'Transforming our world' resolution, which establishes the 2030 Agenda for Sustainable Development, reaffirms the commitment to international law and emphasizes that '... the Agenda is to be implemented in a manner that is consistent with the rights and obligations of states under international law'³

When legal reforms are carried out there is always an opportunity to bring legal provisions further in line with international human rights standards. Most countries have made steps towards ratifying international instruments relating to human rights.⁴ Since 2010, 23 new ratifications have been recorded, as a comparative reading of the level of ratification of a selection of relevant treaties shows (see the detailed table in annex). This significant number of new ratifications in a short period is not exclusively driven by a few countries or by a specific region of the world. Instead, it reflects a strong and global momentum of countries adhering to international human rights standards. This commitment to international legal norms is positively welcomed in the context of SDG4, as it can contribute to stimulating legal and policy reforms.

However, the issue of ratification cannot be approached in an isolated manner, without addressing the closely related issue of reservations. A reservation is a unilateral statement made by a country to exclude or modify the legal effect of certain provisions of a treaty. In other terms, when ratifying a treaty, a country may have the possibility of choosing not to entirely commit to the treaty.

³ Para. 18. Resolution accessible at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>

⁴ Relevant treaties cover different issues directly or indirectly connected to the right to education, such as non-discrimination, the rights of girls and women, of vulnerable groups, and the protection of children's rights.

Table 2: Overview of new ratifications to international treaties connected to the three targets since 2010 (extended table available in annex)⁵

Country	Year	International treaties
Afghanistan	2010	• Convention against Discrimination in Education
	2010	• ILO Minimum Age Convention
	2012	• Convention on the Rights of Persons with Disabilities
	2012	• Optional Protocol to the Convention on the Rights of Persons with Disabilities
Bangladesh	2011	• Convention on Migrant Workers
Cambodia	2010	• Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
	2012	• Convention on the Rights of Persons with Disabilities
DRC	2015	• Convention on the Rights of Persons with Disabilities
	2015	• Optional Protocol to the Convention on the Rights of Persons with Disabilities
Haiti	2013	• International Covenant on Economic, Social and Cultural Rights
	2014	• Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
Madagascar	2015	• Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
	2015	• Convention on Migrant Workers
	2015	• Convention on the Rights of Persons with Disabilities
Mozambique	2012	• Convention on the Rights of Persons with Disabilities
	2012	• Optional Protocol to the Convention on the Rights of Persons with Disabilities
	2013	• Convention on Migrant Workers
Myanmar	2011	• Convention on the Rights of Persons with Disabilities
	2012	• Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
	2013	• Worst Forms of Child Labour Convention
Nepal	2010	• Convention on the Rights of Persons with Disabilities
	2010	• Optional Protocol to the Convention on the Rights of Persons with Disabilities
Senegal	2010	• Convention on the Rights of Persons with Disabilities

Reservations expressed by several countries under review might be seen to oppose political commitments taken under SDG4. For instance, in 1970, Madagascar entered a reservation regarding the International Covenant on Economic, Social and Cultural Rights, and more particularly concerning the obligation to make primary education free and compulsory.⁶ By doing so, Madagascar expressed its decision not to be fully bound by this provision and '[...] reserve[d] the right to postpone [its] application [...]'. To date, the reservation is still applicable. This may be seen as inconsistent with the global commitment under SDG4 to 'ensure that all girls and boys complete free, equitable and quality primary and secondary education [...]' (target 4.1). Similarly, this is not in line with other legal commitments taken by the country when ratifying the Convention against Discrimination in Education to 'make primary education free and compulsory [...]'.⁷

National commitments to SDG4 may require countries to review the reservations related to SDG4. This is a necessary step to ensure overall consistency of the national legal framework with international standards.

⁵ Source: UNESCO, ILO and OHCHR, 2017. Note: the significant number of new ratifications to the Convention on the Rights of Persons with Disabilities (and to its Optional Protocol) can partly be explained by its recent year of adoption, 2006. Furthermore, countries such as Mali do not appear in the table, since they had already ratified a large number of treaties in the past; now, they can only ratify the treaties to which they have not been party to.

⁶ The full reservation reads "The Government of Madagascar states that it reserves the right to postpone the application of article 13, paragraph 2, of the Covenant, more particularly in so far as relates to primary education, since, while the Malagasy Government fully accepts the principles embodied in the said paragraph and undertakes to take the necessary steps to apply them in their entirety at the earliest possible date, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage". It can be accessed at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en (Last consulted on 28 August 2017).

⁷ Madagascar ratified the Convention in 1964. See: <http://www.unesco.org/eri/la/convention.asp?KO=12949&language=E&order=alpha>

Enshrining free and compulsory education for all by law

Target 4.1: 'by 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes'

As set forth by the Incheon Declaration and further detailed by the Framework for Action, this target implies that countries adopt 12 years of free primary and secondary education, of which at least nine years are compulsory. The legal implication of this target is clear: it should translate into the adoption of legislation guaranteeing free and compulsory education. Without a legal guarantee, the prohibition of school fees and the implementation of the obligation for all to attend school would be impractical.

Bearing in mind that part of SDG4 is to leave no one behind, it is crucial that these laws are in place and enforced. It is also important to ensure that free and compulsory education go hand in hand, since education cannot be made obligatory if school fees are needed for admission. While this objective can be implemented in a progressive manner or in successive stages, this universal standard is the overall objective to be achieved by 2030.

For the moment, the review of national laws shows that most countries do not meet the requirement of legislating concerning free and compulsory education. Table 3 summarizes the number of years of free and compulsory education, as guaranteed in the legal frameworks of the 11 countries.

A number of challenges explain why the requirement of free and compulsory education is not enshrined into legislation. The first significant legal challenge for countries is the absence of a legislation enacting constitutional provisions relating to education, leaving an important legal gap and hindering the full implementation of the right to education and progress towards SDG4. This may apply to a wide range of issues, but such an absence is particularly problematic in relation to the provision of free and compulsory education. This situation may notably occur when the national constitution enshrines the principle of free and compulsory education in general terms, leaving the responsibility to the law to determine the conditions of its implementation. In a few countries, such as Haiti, legislative efforts have not led to the adoption of a global legislation on education, and, as a result, the existing legal framework is fragmented and not in line with international standards. The Constitution and education-related legislation need to align. In cases where they outline different provisions, they need to be amended.

One striking example of how meaningful legal change can be achieved comes from DRC. A new education law in 2014 abolished a previous law, which made parents contribute to school fees.⁸ Now, eight years of free education is explicitly enshrined by law. Although challenges may arise when enforcing free education, the adoption of this legal norm is in itself a substantial achievement paving the way for major change. DRC could now take stock of this progress and consider an extension to 12 years, in line with target 4.1.

The adoption of a clear and prescriptive legal framework is critical. In the absence of clear prescriptions, the enforcement of the right to education is not duly sustained. Mozambique, for example, has adopted relatively weak legal provisions and refers to compulsory education in elusive terms (such as *'the progressive introduction of compulsory education'*).⁹ This wording does not clearly impose the compulsory requirement, nor is it specifying the legal duration.

⁸ Loi-cadre n° 14/004 du 11 février 2014 de l'enseignement national, accessible at: <http://www.unesco.org/education/edurights/media/docs/9c127aaff6ff0258fe7d6de4ad38b60190674d39.pdf>; and Loi-cadre n° 86-0005 du 22 septembre 1986 (abolished), accessible at: <http://www.unesco.org/education/edurights/media/docs/e3d40817a518c05d904dfa7184b67aaf4e9fac36.pdf>

⁹ Unofficial translation.

Table 3: Overview of the number of years of free and compulsory education guaranteed in national legal frameworks

Country	Free Education	Compulsory Education	Additional comments	Completion rates in education 2010-2015 ¹⁰		
				Primary	Lower Secondary	Upper Secondary
Afghanistan	12 years	9 years	As provided in the Constitution (2014) and law (2008). Meets standards but ambiguous wording of the legal provisions on the age of enrolment.	41%	23%	14%
Bangladesh	Not specified	5 years	In Constitution (revised in 2011), general principle of 'extending free and compulsory education'. Yet, the law (1990) only guarantees compulsory education at primary level.	80%	55%	19%
Cambodia	9 years	Not clearly specified	The law (2007) does not explicitly state 'compulsory' – grounds for specifying 9 years (only implicit).	72%	41%	21%
DRC	8 years	6 years	New law in 2014 abolished the previous law (1986) which made parents contribute to school fees.	69%	53%	26%
Haiti	Not specified	6 years	General principle of free education in the Constitution. 6-year free public education specified by circular. New law (2017) to regulate school fees. Revision of the Constitution (2011) waived sanctions for non-respect of compulsory schooling.	44%	32%	12%
Madagascar	Not specified	5 years	Duration of free education not explicitly specified (only as a general principle) in 2008 Law. New Sector Plan (2017) aims at extending free and compulsory to 9 years.
Mali	Not specified	9 years	Duration of compulsory education only specified by decree. General principle of free education but no duration specified.	42%	17%	11%
Mozambique	Not clearly specified	Not clearly specified	Education law (1992) does not specify durations. Law on children's rights (2008) includes indicative durations but more as general guidance for national policy.	42%	15%	7%
Myanmar	5 years	5 years	The first level of basic education (primary education) free and compulsory by law (2015); planned expansion to other levels.	81%	44%	15%
Nepal	12 years	8 years	Durations specified by the Constitution as recently revised (2015). Education Act (amended in 2016) not fully aligned but steps taken to prepare a new legislation.	75%	60%	...
Senegal	11 years	11 years	Specified by law since 2004. Legal duration of free education close to target 4.1; duration of compulsory education beyond minimum standards.	50%	21%	9%

Clear and prescriptive frameworks also imply that no exceptions or exemptions to general principles are made. In Bangladesh, the Primary Education Compulsory Act of 1990 includes a series of exceptions that can be legally invoked for not complying with the obligation to enrol children.¹¹ As stipulated by the law "justified reasons" include circumstances or conditions such as "the non-availability of a school within 2 km", mental disabilities or "any other unavoidable reason".¹² Since reasons are defined in a vague manner, they are subject to interpretation, thus weakening law enforcement. Furthermore, the listing of exceptions automatically weakens the principle of compulsory education for all.

¹⁰ Source: Global Education Monitoring Report, 2017. Data is from the most recent year in the period.

¹¹ Article 3 reads "(2) The guardian of any child dwelling permanently in a area where primary education is obligatory shall, *in the absence of justified reasons*, get his child admitted for the purpose of receiving primary education in a primary education institute of the said area in the vicinity of his place of residence" (emphasis added). Bangladesh Primary Education Compulsory Act of 1990, accessible at: <http://www.unesco.org/education/edurights/media/docs/0e6f9aa0e03e0d9797f6364e39a17461fae14727.pdf>

¹² Ibid., Article 3 (3).

Clear and prescriptive frameworks may also imply strengthening regulations of schools, including schools run by non-governmental actors. This issue was recently raised in the case concerning Senegal before the African Committee of Experts on the Rights and Welfare of the Child. The African Committee oversees the implementation of the African Charter on the Rights and Welfare of the Child, and considers complaints about violations of the rights contained in the Charter.¹³ In a decision published in May 2015,¹⁴ the African Committee found Senegal in violation of Article 11 of the African Charter relating to the right to education. The Committee concluded that Senegal failed to provide free and compulsory education for all children, notably *talibés* children sent by their parents to the *daaras* (Qur'anic schools). According to the Committee, 'the government must enforce its own laws to protect *talibés* from this abuse and ensure that the education received in daaras equip these children with a well-rounded education and does not allow forced begging'.

This issue leads to the equally important need to ensure that recent policy developments regarding free and compulsory education are appropriately reflected in the legislation because it is the only way to consolidate the progress made. For instance, in several countries, such as Madagascar, recent policy developments make an effort to extend free and compulsory education. Such major policy developments are valuable opportunities to revise and update the legislation and to sustain efforts in moving closer to target 4.1.

Another noteworthy development is the reference to quality education in national law. For instance, Cambodia guarantees by law the 'right to access qualitative education' and Madagascar has included in its law the State's mission to provide a quality education. Although quality aspects are more frequently addressed by decrees or regulations, such mention of quality education is a positive way of expressing that access must go hand in hand with quality standards and that it constitutes a long-term priority for the country, less subject to policy changes.

The adoption of a legislation implementing the principles set by the Constitution regarding education, as well as clear and prescriptive legal frameworks, is key to achieving standards set under SDG4 target 4.1. Efforts to provide universal access to primary and secondary education are also needed at the pre-primary level, to ensure children are prepared for primary education.

¹³ African Charter on the Rights and Welfare of the Child, accessible at : <http://www.achpr.org/instruments/child/>; and more information about the African Committee of Experts on the Rights and Welfare of the Child at: <http://www.acerwc.org/>

¹⁴ Available on IHRDA (Outil Analytique de la Jurisprudence Africaine des Droits Humains) website: <http://caselaw.ihrda.org/doc/003.12/> (Last accessed on 5 September 2017).

Setting legal foundations for pre-primary education

Target 4.2: 'by 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education'

While international human rights law does not clearly articulate a right to early childhood care and education (ECCE), it does recognise its importance.¹⁵ The United Nations Committee on the Rights of the Child recalls that 'early childhood is a critical period for realizing children's rights' and 'interprets the right to education during early childhood as beginning at birth and closely linked to young children's right to maximum development'.¹⁶ As research and evidence show, quality early education programmes hold the potential to have a positive impact on young children's successful transition to primary school, their educational progress and their long-term social adjustment.¹⁷ In this perspective, the Committee highlights that the goal is to 'empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence' and that this must be achieved in ways that are child-centred, child-friendly and reflect the rights and inherent dignity of the child.¹⁸

This is relevant in the context of the education agenda. SDG4 target 4.2 expresses a commitment to equal access to quality early childhood development, care, and pre-primary education. The Framework for Action clearly operationalizes this target through the introduction of at least one year of free and compulsory pre-primary education.

However, the review shows a general under-development of national legal norms at this level across countries, compared to primary and secondary education. Research on legal provisions at this initial level was more complicated, since there is no common practice as table 4 reveals: some countries may choose to dedicate a piece of legislation to it, while others prefer incorporating pre-primary-related provisions into a single education act, covering all levels. The review also shows that, with the exception of Afghanistan, no legal grounds on free and compulsory pre-primary education could be identified in these countries. This does not mean that the provision of pre-primary education is necessarily under-developed – for some, pre-primary education was even reported to be provided on a universal basis – but that only a few of them have established explicit legal provisions to ensure it is provided on a compulsory and/or free basis.

This might be explained by the considerable attention paid to primary and secondary levels during the past decades as the core elements of basic education, implicitly excluding ECCE from that core provision. In seven countries under review, some legal norms defining the organisation of system for pre-primary education exist, yet without the recommended introduction of at least one-year of free and compulsory pre-primary education being enshrined as such.¹⁹ Clearly, countries are at a turning point: with increased research-based evidence pointing to the strategic importance of ECCE for development, it comes as no surprise that there is an international trend towards expanding the core provision to include ECCE, followed by a need to update the legislation accordingly. Nepal provides an interesting example of the legal recognition of the importance of this initial level of education. In 2015, the country introduced the right to formative child development and participation for every child in the Constitution. This recent legal development also reflects the remarkable progress achieved in participation rates in pre-school learning, and can prove decisive to harness efforts to reach target 4.2.

Despite the lack of legal norms on free and compulsory pre-primary education, it is interesting to note that the 11 countries ratified the Convention on the Rights of the Child (CRC). Therefore, all of them committed to respecting its four general principles: non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child; and to guaranteeing the child's right to education (Article 28 and 29).

¹⁵ See the General Comment No. 7 on 'Implementing Child Rights in Early Childhood', United Nations Committee on the Rights of the Child, 2005. Though General Comments are not of themselves legally binding documents, they are widely regarded as useful contributions to the understanding of human rights instruments.

¹⁶ General Comment No. 7 on 'Implementing child rights in early childhood', op. cit., para. 6 and 28.

¹⁷ General Comment No. 7 on 'Implementing child rights in early childhood', op. cit., para. 30.

¹⁸ General Comment No. 1 on 'The aims of education (Article 29)', United Nations Committee on the Rights of the Child, 2001, para. 2.

¹⁹ Education 2030 Framework for Action, para. 12.

Since implementing the CRC also means implementing rights in early childhood, countries are recommended to formulate and promote laws, policies and programmes required to attain children's rights during this phase of life.

Setting legal foundations for early childhood care and education, including through the introduction of at least one year of free and compulsory pre-primary education, will be fundamental to the implementation of child rights in early childhood and to have a positive impact on young children's transition to primary school. Yet, across all levels of education, progress towards achieving SDG4 will be hampered if discriminatory measures persist.

Table 4: Overview of the provisions on early childhood care and education in national legal frameworks

Country	Free and/or compulsory education	General legal norms concerning preschool education	Additional comments	Participation rate in organized learning (one year before official primary entry age), for both sexes ²⁰
Afghanistan	By law, pre-school education made free in public institution	Law (2008) specifies ages of enrollment at preschool level	By law, education is free from pre-primary to 14th grade	...
Bangladesh	Not specified	No information available	National Education Policy (2010): pre-primary education made integral part of primary education. Commitment to introducing one-year pre-primary.	31% (data for school year ending in 2015)
Cambodia	Not specified	Law only declares early childhood education as preparatory study level	No further information available	12% (data for school year ending in 2012)
DRC	Not specified	By law, preschool level organized in a cycle of 3 years	No further information available	4% (data for school year ending in 2014)
Haiti	Not specified	Under Constitution, the State and local authorities are in charge of preschool and kindergarten	No legislation implementing the Constitution could be found	...
Madagascar	Not specified	Preschool organized in a cycle of 3 levels including 3 years of pre-primary education	Several decrees specify the organization of the system of preschool education	18% (data for school year ending in 2015)
Mali	Not specified	No information available	No further information available	4% (data for school year ending in 2015)
Mozambique	Not specified	No information available	The National Strategy for the Integral Development of Pre-School Children (2012-21) defines general norms of pre-school education; several decrees define the organization of preschool education	...
Myanmar	Not clearly specified	No information available	The NEL (2014, lastly revised 2015) defines the organization of ECCE. Preschool education available for children aged 3-5. Kindergarten (for children aged 5) regarded as the base level of primary education	...
Nepal	Not clearly specified	Constitutional right to formative child development and child participation. Law specifies levels of education.	Some ambiguity in the law (basic education defined as covering ECD up to Grade 8; but as per the Constitution, basic education is free and compulsory)	84% (data for school year ending in 2016)
Senegal	Not specified	Preschool education system defined by law and decrees	No further information available	15% (data for school year ending in 2015)

²⁰ Source: Global Education Monitoring Report, 2017.

Repealing discriminatory provisions and strengthening legal protection for girls and women and vulnerable groups

Target 4.5: 'By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations'

Target 4.5 addresses issues that are traditionally covered by a diverse set of domestic laws, not limited to education, but also dealing with children's rights, the rights of persons with disabilities, violence against girls and women, and minority rights, to name but a few. This is a reminder of how important it is to have a legal framework for education properly aligned with all the legal regulations promoting human rights and fighting all forms of discrimination; and this applies even more strongly for target 4.5 than for any other target. Legal implications of this target should therefore be analysed in a holistic and cross-cutting perspective, paying particular attention to other specific laws that interact with the education legislation.

A wide set of issues could have been discussed in this section but the scope of this analysis will focus on only those issues where legal texts across the 11 countries are readily available. Namely, the coverage of non-discrimination in national laws, legal action against gender-based discrimination, child labour and child marriage, the situation of persons with disabilities, the right to education in conflict situations and special protection for other vulnerable groups.²¹

Non-discrimination and commitments to international human rights law

'The Transforming our world' Resolution highlights the fundamental principle of non-discrimination by emphasizing the responsibilities of all States '... to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.'²² Achieving SDG4 requires particular consideration to prevent and eliminate all forms of discrimination. This is very clear when it comes to ensuring free compulsory education to all boys and girls and to eliminating disparities in education (SDG4 targets 4.1, 4.2 and 4.5).

The review reveals that the majority of countries proscribe several forms of discrimination.²³ In Bangladesh, the Constitution bans discrimination based on religion, race, caste, sex or place of birth; in Mali, the Education Law specifically outlaws discrimination in education based on sex, social background, race and religion. Nepal adopted a different approach, providing a detailed and open list of prohibited grounds, which includes discrimination based on background, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language, geographical region, ideology or any other such grounds. Like Nepal, it is recommended that the definition include a non-exhaustive list of grounds (for instance, specifying 'other status' or 'other grounds' at the end of the list) in order to cover grounds that are not explicitly mentioned and ultimately, to offer greater legal protection against discrimination. Consistency across national legal orders is equally important, since the reports show instances of discrepancies between the national constitution, spelling out a general anti-discrimination principle, and the education law limiting non-discrimination only in specific cases. This may create confusion surrounding the legal norm that applies, with the possibility that the less protective legal norm applies.

²¹ Specific national provisions relating to other vulnerable groups, including but not limited to refugees, minority groups and indigenous peoples are not covered by this analysis.

²² 'Transforming our world' Resolution, para. 19.

²³ In the context of this paper, prohibited discrimination does not cover the distinctions that are, in general terms, reasonable and imposed for an objective and legitimate purpose, for instance, differential treatment to correct discrimination in fact (such as affirmative action).

International human rights instruments provide useful guidance on the key requirements for prohibiting discrimination.²⁴ The ratification of UNESCO's Convention against Discrimination in Education²⁵ – recognized by UNESCO's Governing Bodies as a cornerstone of the Education 2030 agenda – should be regarded as a priority for countries. Out of the 11 countries under review, only four ratified it.

Table 5: Status of ratification of UNESCO Convention against Discrimination in Education

Country	UNESCO Convention against Discrimination in Education (1960)
Afghanistan	●
Bangladesh	—
Cambodia	—
DRC	—
Haiti	—
Madagascar	●
Mali	●
Mozambique	—
Myanmar	—
Nepal	—
Senegal	●

Legend: ● indicates that the country ratified the treaty, and
— indicates that the country has not (yet) ratified the treaty

Linkages with SDG4 target 4.5 are clear with regard to non-discrimination, as the Convention calls upon countries to eliminate and prevent any form of discrimination at all types and levels of education and to promote equality of opportunity and treatment through specific and positive measures. The ratification of the Convention by Bangladesh, Cambodia, Democratic Republic of the Congo, Haiti, Mozambique, Myanmar and Nepal would provide them with a supportive legal environment for all efforts engaged towards providing and ensuring 'inclusive and equitable quality education and lifelong learning opportunities for all'.

Addressing gender-based discrimination and exclusion

Although establishing a general prohibition of discrimination is particularly important, it is also essential to protect groups that are at a higher risk of facing discrimination and exclusion, notably girls and women. Despite progress, girls and women continue to be discriminated against in accessing education and within education systems and to be denied equal educational opportunities. Closing gender gaps in education and achieving gender equality is fundamental for the success of SDG4, which is why gender equality is a major focus of target 4.5.

The most recent data shows that across the globe only 66% of countries have achieved gender parity in primary education, 45% in lower secondary and 25% in upper secondary.²⁶ Discriminatory gender norms, school-related gender-based violence, child marriage and pregnancy are some of the major obstacles to girls' and women's education worldwide. Data shows that gender disparities remain pronounced.

The reports reveal that Afghanistan and DRC guarantee non-discrimination and equality to all citizens, but do not explicitly prohibit discrimination based on sex or gender. This is an important gap. In Myanmar, progress has been made to repeal and amend all laws that discriminate against women. However, the revision and enactment of several laws relating to gender equality is not finalized, including an anti-discrimination bill and a bill on the prevention of violence against and protection of women. Across countries, a major problem is the absence of a clear legislative timetable for the adoption of bills having an impact on the right of women and non-discrimination. An interesting example comes from Bangladesh in coping with this delayed adoption of bills. In a landmark decision in 2009, Bangladesh's Supreme Court established a set of directives on sexual harassment.²⁷ Noting the gap created by the lack of a law on sexual harassment, the High Court decided that these guidelines would serve as 'law' until the legislation was enacted.

Some practice affecting girls and women and compromising their education are also deeply rooted in traditional attitudes and beliefs. Facing the forced isolation of women during menstruation, particularly in remote areas, Nepal has recently outlawed this practice and introduced jail sentences and fines for those who encourage it.²⁸ This banishment of women to huts or animal sheds during menstruation, also called "monthly exile", has grave consequences for women's health, safety and education, resulting in premature interruption of schooling among girls.²⁹

²⁴ See, for instance, the nine core international human rights instruments (<http://www.ohchr.org/Documents/Publications/CoreTreatiesen.pdf>) and UNESCO's Convention against Discrimination in Education (<http://en.unesco.org/themes/right-to-education/convention-against-discrimination>).

²⁵ http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html and <http://en.unesco.org/themes/right-to-education/convention-against-discrimination>

²⁶ Global Education Monitoring Report, 2017.

²⁷ Accessible on the website of the Supreme Court: http://www.supremecourt.gov.bd/resources/documents/276907_Writ_Petition_5916_08.pdf (Consulted on 19 January 2017).

²⁸ This law was reported to be adopted in August 2017. The information is not yet accessible on governmental websites, but was widely disseminated by the local and international media.

²⁹ See <http://www.unwomen.org/en/news/stories/2017/4/feature-abolishing-chaupadi-breaking-the-stigma-of-menstruation-in-rural-nepal> and http://www.ohchr.org/Documents/Issues/Water/ContributionsStigma/others/field_bulletin_-_issue1_april_2011_-_chaupadi_in_far-west.pdf (Consulted on 25 October 2017).

Table 6: Gender disparity in school completion

Country	Gender disparity in completion rate 2010-2015 ³⁰		
	Primary	Lower secondary	Upper secondary
	Gender Parity Index (F/M)	Gender Parity Index (F/M)	Gender Parity Index (F/M)
Afghanistan	0.5	0.33	0.27
Bangladesh	1.13	1.03	0.82
Cambodia	1.14	0.96	0.97
DRC	0.93	0.84	0.7
Haiti	1.24	1.17	0.66
Madagascar
Mali	0.83	0.56	0.43
Mozambique	0.9	0.66	0.6
Myanmar	1.06	1.12	1.52
Nepal	0.91	0.83	...
Senegal	1.03	0.62	0.62

More dramatically, this practice has led to the deaths of several teenage girls and women in the past few years, which triggered the introduction of this new law.³¹ This shows a positive commitment to eliminating this traditional harmful practice and to protecting women's rights, including their right to education. To sustain these efforts, legislative action must be accompanied with appropriate awareness-raising and educational activities.

Another frequent area of gender-based discrimination is the existence of regulations limiting educational opportunities for pregnant girls. This is the case in Mozambique, where a regulation issued in 2003 by the Ministry of Education prohibits pregnant girls from attending day classes, requiring them to be transferred to night-time schools, therefore, making them face severe restrictions in their access to education.³² Although Mozambique was specifically recommended by a UN human rights body and the Special Rapporteur on extreme poverty and human rights to review this order,³³ to date no legal action has been undertaken by the country. Positive developments occurred in Senegal, which was facing a similar situation until it repealed the regulation banning teenage girls from continuing their education.³⁴ This progress could be seen as a good example of legal action for countries facing similar situations.

³⁰ Source: Global Education Monitoring Report, 2017. Data are for the most recent year available in the period specified. The Gender Parity Index (GPI) measures progress towards gender parity in education participation and/or learning opportunities available for girls in relation to those available to boys. GPI equal to 1 indicates parity between females and males. A value less than 1 indicates a disparity in favour of boys and a value greater than 1 indicates a disparity in favour of girls. More information available here: <http://uis.unesco.org/en/glossary-term/gender-parity-index-gpi>

³¹ These dramatic incidents could not be confirmed through official websites but were largely reported by the media.

³² Despacho 39/GM/2003. Report of the Special Rapporteur on extreme poverty and human rights (A/HRC/26/28/Add.1), 4 June 2014, paragraph 37, accessible at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_28_Add_1_ENG.doc (Last consulted on 5 September 2017).

³³ Report of the Working Group on the Universal Periodic Review (A/HRC/17/16), 28 March 2011, Recommendation No 90.27, accessible at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MZindex.aspx> (Last consulted on 5 September 2017); Report of the Special Rapporteur on extreme poverty and human rights on her Mission to Mozambique, op. cit., para 37.

³⁴ Senegal Report submitted within the framework of the Seventh Consultation of Member States on the implementation of UNESCO Convention against Discrimination in Education, 2006, p. 14. Accessible on UNESCO Global Database on the Right to Education: <http://www.unesco.org/education/edurights/index.php?action=countries&lng=en> and Lettre circulaire n° 004379 du Ministère de l'éducation du 11 octobre 2007, p. 12, accessible at: http://www.education.gouv.sn/root-fr/upload_pieces/Tome%204%20Gestion%20de%20l%E2%80%99environnement%20scolaire,%20C3%A9quit%C3%A9%20de%20genre,%20communication%20et%20partenariat.pdf (Last consulted on 5 September 2017).

The case of the alignment of ages for compulsory education, age of marriage and employment

A lack of consistency within national legal frameworks appears clearly from the 11 reports. One striking example – holding serious consequences – is the frequent misalignment of the legislation when it comes to the different minimum ages set by law concerning employment, marriage and education. The legal minimum age for marriage and for employment is rarely aligned with the age of completion of compulsory education, weakening the full enforcement of the obligation to attend school. In other terms, such loopholes may give legal cover to child marriage and child labour, which are considered as harmful practices and violations of children’s rights, with detrimental and lasting consequences on their education. Legal action is critically needed to lift these obstacles to the right to education that would otherwise undermine efforts towards achieving SDG4.

Almost all countries under review are facing records of early marriage, with four of them being amongst the ten countries with the highest rates of child marriage in the world (Bangladesh, Mali, Mozambique and Madagascar).³⁵ Yet, in the case of Africa, regional treaties explicitly ban child marriage and prescribe countries to adopt relevant legislation incorporating these provisions.³⁶ Except DRC, all the African countries under review (Madagascar, Mali, Mozambique and Senegal) have ratified at least one of these two treaties and, therefore, are legally bound to apply them. National laws have to be carefully reviewed and adequately amended to repeal any contradictory provision. Loopholes allowing for child marriage (for example, with consent of parents) and a lower minimum age for women than for men are both problematic.

Even where some positive legal developments have been achieved, particular attention is needed to sustain them. Indeed, far from being set in stone, laws may be subject to regression. For instance, recent attempts to introduce amendments to the law on child marriage, allowing it ‘in special cases’, have been recorded in Bangladesh reportedly to counter the social marginalization of pregnant girls in their communities.

Table 7: Prevalence of early pregnancies in the 11 countries

Country	Age-specific fertility rate (births per 1,000 women aged 15 to 19) ³⁷
Afghanistan	60
Bangladesh	81
Cambodia	54
DRC	121
Haiti	37
Madagascar	109
Mali	170
Mozambique	126
Myanmar	15
Nepal	69
Senegal	70

Table 8: Prevalence of early marriages in the 11 countries

Country	Percentage of women aged 15 to 19 who are currently married, 2010-2015 ³⁸
Afghanistan	20%*
Bangladesh	34%
Cambodia	10%*
DRC	21%*
Haiti	12%*
Madagascar	...
Mali	43%*
Mozambique	37%*
Myanmar	13%
Nepal	24%*
Senegal	25%

* Includes consensual unions

³⁵ Global, regional and national estimates available at: <http://www.girlsnotbrides.org/where-does-it-happen/>; and A profile of child marriage in Africa, UNICEF, 2015, accessible at: <https://data.unicef.org/resources/a-profile-of-child-marriage-in-africa/>

³⁶ African Charter on the Rights and Welfare of the Child and Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, see respectively <http://www.achpr.org/instruments/child/> and <http://www.achpr.org/instruments/women-protocol/>

³⁷ The fertility indicators are from the United Nations Population Division estimates, revision 2015 (United Nations, 2015). They are based on the median variant and refer to the period 2015-2020. Source: Global Education Monitoring Report, 2017.

³⁸ Data are for the most recent year available in the period specified. Source: United Nations Department of Economic and Social Affairs, Population Division: World Marriage Data 2015.

Right to inclusive education for persons with disabilities

Target 4.5 makes explicit reference to persons with disabilities, who are traditionally more vulnerable to discrimination and exclusion from education. Significant progress has been made by countries in committing to respect the rights of persons with disabilities. One of the most remarkable achievements is the wide ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006.³⁹ The 11 countries ratified this Convention, therefore expressing their commitment to comply with its standards, including on inclusive education for persons with disabilities and their right to be protected from discrimination.

This is a very positive legal commitment from the countries, and following the ratification of the Convention, many countries across the globe have adopted specific legislation on the rights of persons with disabilities. Yet, for the 11 countries under review, laws on the rights of persons with disabilities when they exist, do not necessarily translate to a rights-based and inclusive approach to the education of persons with disabilities, as recommended by the Framework for Action and the CRPD.⁴⁰ Sometimes the law does not even recognize the right to education, promotes the establishment of a separate school system for persons with disabilities, and does not define the sharing of responsibility to fully implement the provisions.

This issue requires even more attention in the case of countries like Haiti and Nepal. Further to the recent earthquakes, a growing part of the society is now living with disabilities. In both countries, laws have been adopted on the rights of persons with disabilities, but without fully ensuring their right to inclusive and equitable education. As phrased in the legislation, they may either face restrictions on the basis of their disability (i.e. whether physical, intellectual, etc.) or have only opportunities to access special schools. Legal basis for prohibiting discrimination on the grounds of disability are also too limited to provide full legal protection.

Protecting the right to education in conflict situations

Education in conflict situations is another area of focus of the Framework for Action⁴¹ that holds legal implications, particularly in relation to the recruitment and use of children during conflict, attacks targeting schools and education personnel, and use of school buildings for military purposes. The recruitment or use of children as soldiers and attacks against schools are two of the six grave violations affecting children the most in times of war identified by the UN Security Council.⁴²

The last report of the UN Secretary-General on Children and Armed Conflict (2016) documented incidents during 2015 including the recruitment or use of children as soldiers and attacks against schools in four out of the 11 countries under review: Afghanistan, DRC, Mali and Myanmar.⁴³ International human rights law declares 18 as the minimum legal age for the recruitment and use of children in hostilities. Under the age of 15, it is prohibited under international humanitarian law and is defined as a war crime by the International Criminal Court.⁴⁴

Particular attention is needed to identify whether a ban on the recruitment and use of children as soldiers exists, as well as a prohibition of the use of school buildings for military purposes. Generally, the review shows that national legal and regulatory frameworks often lack such prohibitions, although progress has been achieved in recent years.

Progress is seen in Afghanistan, with a recent presidential decree criminalizing underage recruitment by the Afghan National Defence and Security Forces. However, a general prohibition on child recruitment and use in the Child Law is still lacking.⁴⁵ In Madagascar, a specific decree concerning child labour was adopted in 2007, which prohibits all forms of forced labour for children, including forced recruitment of children in armed conflicts. This provides protective regulatory provisions, although it does not clearly enshrine the general prohibition of recruitment of children by armed groups to reflect international standards.⁴⁶

³⁹ Country-specific and treaty-specific information relating to ratification available online at : <http://indicators.ohchr.org/>

⁴⁰ See notably Article 24 of the UN Convention on the Rights of Persons with Disabilities, accessible at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

⁴¹ As underlined by the Education 2030 Framework for Action, "Stakeholders should make every effort to ensure that education institutions are protected as zones of peace, free from violence, including school-related gender-based violence. [...] Schools and educational institutions – and the routes to and from them – must be free from attack, forced recruitment, kidnapping and sexual violence. [...]" (para. 27).

⁴² The six grave violations identified and condemned by the United Nations Security Council include: the killing and maiming of children; the recruitment or use of children as soldiers; sexual violence against children; abduction of children; attacks against schools or hospitals; and denial of humanitarian access for children. See: <https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/>

⁴³ Report of the UN Secretary-General on Children and Armed Conflict (A/70/836-S/2016/306), 2016.

⁴⁴ <https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/child-soldiers/>

⁴⁵ Report of the UN Secretary-General on Children and Armed Conflict (A/70/836-S/2016/306), 2016, para. 31 and 32.

⁴⁶ As it stands, the decree provides that 'children should under no circumstances be not compulsorily recruited into the armed forces' (unofficial translation). A more prescriptive wording (using 'shall' for instance) could be suggested to ensure it holds a solid legal force.

Indeed, as provided in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified by Madagascar, the compulsory recruitment of under-18s is prohibited and adequate safeguards must accompany voluntary recruitment before the age of 18. In September 2015, Myanmar made headway with the signature of the Optional Protocol. By ratifying this Myanmar would consent to be bound by the treaty. In regard to the protection of schools, DRC has issued a ministerial directive in 2013 prohibiting the practice of using schools for military purposes.⁴⁷

Protecting the right to education for other specific vulnerable groups

The specific discrimination and marginalization experienced by some particularly vulnerable groups has led some countries to adopt specific legislation to protect their rights, including their right to education. The clear focus of target 4.5 on protecting vulnerable groups can translate in legal action targeting these groups.

The reports illustrate examples in establishing specific legal protection for vulnerable groups. For instance, Madagascar enacted a law in 2006 protecting persons living with HIV/AIDS.⁴⁸ The law contains several articles stipulating that no child can be denied access to education, excluded or discriminated against based on alleged or confirmed HIV status.⁴⁹ Of particular interest is the prohibition of carrying HIV testing for medical examination for admission or scholarship.⁵⁰ This is a positive legal development to combat discrimination based on HIV status and to fully protect the right to education. DRC adopted similar legal provisions in 2008, prohibiting any expulsion or denial of admission in educational institutions on the grounds of alleged or confirmed HIV status, adding that such institutions also have the duty to preserve the confidentiality of this information.⁵¹

Persons with albinism are another group that is deeply affected by rooted stigma, discrimination and violence.⁵² This is mainly due to the fact that 'the physical appearance of persons with albinism is object of erroneous beliefs and myths influenced by superstition, which foster their marginalization and social exclusion'.⁵³ All documented attacks against persons with albinism took place in sub-Saharan Africa,⁵⁴ and a significant number in Mozambique. Initiatives and measures, including at the legislative and regulatory level, are ways to combat discrimination and ensure this vulnerable group has an equal access to education and adequate protection against harmful practices.

Repealing discriminatory provisions across national laws and adopting more protective legal standards to overcome harmful practices and the marginalization of vulnerable groups will be decisive for the success of the SDG agenda. In this context, investing in the law reform process can provide a powerful impetus for the adoption of comprehensive, consistent and coherent laws, contributing to ensuring that no one is left behind. As the Incheon Declaration and the Framework for Action reiterates, "No education target should be considered met unless met by all".⁵⁵

⁴⁷ Report of the UN Secretary-General on Children and Armed Conflict (A/70/836-S/2016/306), 2016, para. 50.

⁴⁸ Loi n°2005-040 du 20 février 2006 sur la lutte contre le VIH/SIDA et la protection des droits des personnes vivant avec le VIH/SIDA (J.O n°3029 du 15 mai 2006, p.2784), accessible at: http://hivhealthclearinghouse.unesco.org/sites/default/files/resources/iiep_madagascar_loi_lutte_contre_sida_2006.pdf (Last accessed on 5 September 2017).

⁴⁹ Articles 37, 39 and 40.

⁵⁰ Article 40.

⁵¹ Loi n° 08/011 du 14 juillet 2008 portant protection des droits des personnes vivant avec le VIH/SIDA et des personnes affectées, accessible at: <http://www.leganet.cd/Legislation/Droit%20Public/SANTE/L.08.011.14.07.2008.htm> (Last accessed on 5 September 2017).

⁵² Persons with albinism face multiple and intersecting forms of discrimination, including, but not limited to, discrimination based on colour, discrimination based on disability, special needs in terms of access to education and enjoyment of the highest standards of health, and harmful traditional practices. See: <http://www.ohchr.org/EN/Issues/Albinism/Pages/IEAlbinism.aspx>

⁵³ Ibid.

⁵⁴ Report of the Independent Expert on the enjoyment of human rights by persons with albinism: a preliminary survey on the root causes of attacks and discrimination against persons with albinism (A/71/255), 29 July 2016, para. 37, accessible at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/241/46/PDF/N1624146.pdf?OpenElement> (Last accessed on 5 September 2017).

⁵⁵ Incheon Declaration and the Framework for Action, op. cit., para. 7 and 13.

Conclusion

Legal frameworks are not static and unchangeable texts; rather, they accompany the evolution of countries' needs and enshrine fundamental principles applicable to all. A supportive legal framework is paramount to lay down the conditions for the delivery and sustainability of inclusive and equitable quality education for all.

It appears clearly that, in the specific case of SDG4 targets 4.1, 4.2 and 4.5, the absence of legal provisions may severely impede their achievement. The imperative need to 'leave no one behind' from the Incheon Declaration and the Framework for Action leads to the corresponding obligation to ensure that the law is applicable to all and shall be enforced.

To that end, and based on the country reviews, a recommended line of action for countries is to ensure that a more comprehensive and holistic approach to the right to education is adopted in drafting laws. Guaranteeing education as a fully enforceable human right, defining non-discrimination in a non-limitative manner, and ensuring that laws are consistent and properly aligned (especially in the case of compulsory education, labour and marriage) appear as key areas for legal action. Ongoing reforms are immediate opportunities to improve national legal frameworks and upgrade guarantees relating to the three targets. In parallel, efforts need to be made to contribute to developing national legal frameworks and carry out future legal reforms.

It is also crucial that legal reforms be carried out in the perspective of providing adequate protection for particularly vulnerable groups, such as girls and women, pregnant students and teenage mothers, child soldiers, child labourers or students with disabilities, to name but a few. Discriminatory measures, which often affect the most vulnerable, such as regulations expelling pregnant girls from general schools, need to be reviewed and repealed to ensure all boys and all girls can have access to equal educational opportunities.

Although it may take a long time to change practices and overcome stereotypes, a change in the legislation is a necessary starting point to recognize discrimination as illegal. In other terms, legal reform is necessary but not sufficient. Laws alone are not enough to guarantee the full enjoyment of the right to education without discrimination. Their articulation with implementation measures, as well as their full enforcement are paramount. Public awareness-raising campaigns and training programmes for law-enforcement officials and judges are equally important to create lasting change in attitudes and social norms.

Annex :

Status of ratification to international human rights treaties

This table summarizes the key provisions of the main international treaties setting fundamental standards in relation to SDG4 targets 4.1, 4.2 and 4.5. Since these treaties become legally binding for the States that ratify them, they provide a strong normative framework in the context of the new Sustainable Development agenda. Encouraging countries to ratify these treaties will reinforce their commitment to achieving greater levels of human rights guarantees, and to 'ensure inclusive and equitable quality education and promote lifelong learning opportunities for all'. For more details on the years of ratification, as well as ratification to regional treaties, please refer to the individual reports.

Legend:

- the country ratified the treaty
- the country has not (yet) ratified the treaty
- ® the country entered a reservation. Reservations are unilateral statements made by States Parties to exclude or modify the legal effect of certain provisions of a treaty

Treaty	Key aspects in relation to SDG4 targets 4.1, 4.2 and 4.5			Afghanistan	Bangladesh	Cambodia	DRC	Haiti	Madagascar	Mali	Mozambique	Myanmar	Nepal	Senegal
Geneva Conventions (1949)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	●	●	●	●
	Under the 4th Geneva Convention, applicable during international armed conflicts, an occupying power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.													
Additional Protocols	Under Additional Protocol II (Protection of Victims of Non-International Armed Conflicts), it is a “fundamental guarantee” that children receive an education, in keeping with the wishes of their parents.			●	●	●	●	●	●	●	●	—	—	●
Convention Relating to the Status of Refugees (1951)	Common relevance to targets 4.1, 4.2 and 4.5			●	—	●	●	●	●	●	●	—	—	●
	The Convention lays down basic minimum standards for the treatment of refugees, without prejudice to States granting more favourable treatment.													
	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5											
	<ul style="list-style-type: none"> Same treatment as is accorded to nationals with respect to elementary education. 		<ul style="list-style-type: none"> States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. For the other levels and fields, not less favourable treatment as is accorded to aliens generally. 											
UNESCO Convention Against Discrimination in Education (1960)	Common relevance to targets 4.1, 4.2 and 4.5			●	—	—	—	—	●	●	—	—	—	●
	The Convention calls upon States to eliminate and prevent any form of discrimination at all types and levels of education and to promote equality of opportunity and of treatment.													
	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5											
	<p>States Parties to:</p> <ul style="list-style-type: none"> make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; assure compliance by all with the obligation to attend school; ensure equal standards of quality of education in public educational institutions. 		<p>States undertake to:</p> <ul style="list-style-type: none"> abrogate/discontinue any statutory provisions, administrative instructions and administrative practices involving discrimination in education; ensure no discrimination in access to education; promote equality of opportunity and of treatment; make primary education free and compulsory; secondary education generally available and accessible to all; higher education accessible to all on the basis of individual capacity; encourage the education of those who have not completed primary education. 											

Treaty	Key aspects in relation to SDG4 targets 4.1, 4.2 and 4.5			Afghanistan	Bangladesh	Cambodia	DRC	Haiti	Madagascar	Mali	Mozambique	Myanmar	Nepal	Senegal
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	●	—	●	●
	States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.			®							®			
International Covenant on Economic, Social and Cultural Rights (1966)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	—	—	●	●
	The Covenant guarantees the right of everyone to education and children and young persons should be protected from economic and social exploitation. The principle of equal right of men and women also applies to the right to education.								®					
	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5											
	Governments shall make:	• Right of everyone to the enjoyment of the highest attainable standard of physical and mental health. • States shall take steps towards the healthy development of the child.	Governments shall make:											
	<ul style="list-style-type: none"> Primary education compulsory and available free to all; Secondary education in its different forms generally available and accessible to all (progressive introduction of free education). 		<ul style="list-style-type: none"> Primary education compulsory and available free to all; secondary education generally available and accessible to all; higher education equally accessible to all, on the basis of capacity; fundamental education encouraged for those who have not received primary education. 											
Optional Protocol to the ICESCR (2008)	This treaty establishes an international complaints procedure for violations of the rights contained in the Covenant.			—	—	—	—	—	—	—	—	—	—	—
International Covenant on Civil and Political Rights (1966)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	●	—	●	●
	The Covenant guarantees the principle of equality before the law. The law shall prohibit all forms of discrimination. Every child shall have, without any discrimination, the right to measures of protection as are required by his status as a minor, on the part of his family, society and the State.				®									
ILO Convention n° 138 concerning Minimum Age for Admission to Employment (1973)	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5	●	—	●	●	●	●	●	●	—	●	●
	<ul style="list-style-type: none"> In principle, the minimum age for admission to employment or work shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years (exceptions depending on specific circumstances or nature of the work/employment). 													

Treaty	Key aspects in relation to SDG4 targets 4.1, 4.2 and 4.5			Afghanistan	Bangladesh	Cambodia	DRC	Haiti	Madagascar	Mali	Mozambique	Myanmar	Nepal	Senegal
Convention on the Elimination of All Forms of Discrimination against Women (1979)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	●	●	●	●
	States shall embody the principle of the equality of men and women in their national constitutions or appropriate legislation and prohibit legally all discrimination against women; and take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.				®						®			
	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5											
Optional Protocol to the CEDAW (2000)	This treaty establishes an international complaints procedure for violations of the rights contained in the Convention.			-	●	●	-	-	-	●	●	-	●	●

Treaty	Key aspects in relation to SDG4 targets 4.1, 4.2 and 4.5			Afghanistan	Bangladesh	Cambodia	DRC	Haiti	Madagascar	Mali	Mozambique	Myanmar	Nepal	Senegal
Convention on the Rights of the Child (1989)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	●	●	●	●
	All children have the right to education on the basis of equal opportunity. Non-discrimination, primary consideration for the best interests of the child and respect for the views of the child are among the core principles set by the Convention.				®									
	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5											
States Parties shall progressively: <ul style="list-style-type: none"> Make primary education compulsory and available free to all; Make secondary education, including general and vocational education, available and accessible to every child, with the introduction of free education; Take measures to encourage regular attendance at schools and the reduction of drop-out rates; Child labour: children's work should not jeopardize any of their other rights, including the right to education. Right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education. 	<ul style="list-style-type: none"> Governments should ensure that children survive and develop healthily. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. 	<ul style="list-style-type: none"> All children have the right to education on the basis of equal opportunity. Right to primary education; secondary education to be made available and accessible to every child; higher education to be made accessible to all on the basis of capacity; educational and vocational information and guidance to be made available and accessible to all. Children must be protected from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Refugee children have all the rights set by the Convention, including the right to education. Children with disabilities have the right to special care and support, as well as all the rights set by the Convention, including education. 												
Optional Protocol to the CRC on the involvement of children in armed conflict (2002)	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5	●	●	●	●	–	●	●	●	–	●	●
			<ul style="list-style-type: none"> 18 as the age for direct participation in armed conflict and ban on compulsory recruitment under 18. 											
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (2002)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	●	●	●	●
	States Parties shall prohibit the sale of children, child prostitution and child pornography.													
Optional Protocol to the CRC on a communications procedure (2014)	This treaty establishes an international complaints procedure for violations of the rights contained in the Convention and its Protocols.			–	–	–	–	–	–	–	–	–	–	–

Treaty	Key aspects in relation to SDG4 targets 4.1, 4.2 and 4.5			Afghanistan	Bangladesh	Cambodia	DRC	Haiti	Madagascar	Mali	Mozambique	Myanmar	Nepal	Senegal
ILO Convention n° 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5	–	–	–	–	–	–	–	–	–	●	–
			<ul style="list-style-type: none"> Measures shall be taken to ensure that Indigenous and Tribal Peoples have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community. 											
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	Common relevance to targets 4.1, 4.2 and 4.5			–	●	–	–	–	●	●	●	–	–	●
	Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to schools, including public preschool institutions, shall not be refused or limited because of the irregular situation (stay or employment) of either parent or because of the irregularity of the child's stay in the country.													
ILO Convention n° 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	●	●	●	●
	State Parties shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency (covering also slavery, the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict).													
	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5											
	<ul style="list-style-type: none"> Member States to take measures to ensure access to free basic education. 		Member States to take measures to: <ul style="list-style-type: none"> prevent the engagement of children in the worst forms of child labour; provide assistance for the removal of children from the worst forms of child labour; ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; identify and reach out to children at special risk and take account of the special situation of girls. 											

Treaty	Key aspects in relation to SDG4 targets 4.1, 4.2 and 4.5			Afghanistan	Bangladesh	Cambodia	DRC	Haiti	Madagascar	Mali	Mozambique	Myanmar	Nepal	Senegal
Convention on the Rights of Persons with Disabilities (2006)	Common relevance to targets 4.1, 4.2 and 4.5			●	●	●	●	●	●	●	●	●	●	●
	States Parties undertake to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention, including the right to education; to protect persons with disabilities from all forms of exploitation, violence and abuse; to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.													
	Specific relevance to target 4.1	Specific relevance to target 4.2	Specific relevance to target 4.5											
Optional Protocol to the CRPD (2008)	This treaty establishes an international complaints procedure for violations of the rights contained in the Convention.			●	●	-	●	●	-	●	●	-	●	-

Notes

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Education
Sector

United Nations
Educational, Scientific and
Cultural Organization

Capacity Development for Education Programme

Operationalizing Sustainable Development Goal 4

A review of national legislations on the right to education

As part of a wider Capacity Development for Education (CapED) Programme on operationalizing SDG4 at the country level, this paper examines the instrumental role that legislation on the right to education can play in view of achieving the SDG4 targets in Least Developed Countries.

It does it by reviewing national legal frameworks relating to the right to education in 11 countries, suggesting some lessons of global interest, both for policy-making and normative work.

The CapED Programme is generously supported by:

