



Education Financing Laws:

**Promises and Shortfalls for Securing the Right to
Education for All**

**A comparative analysis from
Argentina, Australia, Brazil, India, Indonesia, Italy, Japan, Nigeria,
the United Kingdom and the United States**

**Policy Briefing Series
Vol 1: Education Financing Laws
March 2020**

Acknowledgments

This paper was written by Luis Eduardo Perez Murcia with the information and support generously provided by a large number of GCE Members. The GCE Secretariat wishes to thank them all for their valuable contribution. GCE is also grateful to Vernor Munoz Villalobos and Maryline Mangenot for their insightful comments to a preliminary version of this paper.

Name	Organisation
Adeleke Damian-Mary A	Civil Society Action Coalition on Education For All (CSACEFA), Nigeria
Aditi Banerjee Noopur, R.K Rai	National Coalition for Education (NCE), India
Alberto Croce	CADE, Campaña Argentina por el Derecho a la Educación, Grupo de Financiamiento Educativo
Andressa Pellanda	Brazilian Campaign for the Right to Education, Education Policy Coordinator
Carolyn Johnstone	Australian Coalition for Education and Development (ACED)
Dara Adriana Dewirini Anggraeni	Network for Education Watch Indonesia
Ema Jackson, Emanuele Russo	Send My Friend to School, Campaign Manager Coalizione Italiana delle Campagna Globale per l'Educazione (CGE Italia)
Jennifer Rigg, Shruti Nallappa, Katherine Loos	Global Campaign for Education-US
Jose Marcelino de Rezende Pinto	FFCLRP - Faculdade de Filosofia, Ciências e Letras de Ribeirão Preto
Matildah Mwamba Rosa Silva Tisha Verma Takafumi Miyake Nelisiwe Nhlabatsi Dlamini	ANCEFA Anglophone Programme Officer ANCEFA Lusophone, Programme Officer Save the Children, Education Policy and Advocacy Adviser Japan NGO Network for Education (JNNE), Secretary General Swaziland Network Campaign on Education for All (SWANCEFA), The Kingdom of Eswatini

Table of Contents

Acknowledgments	2
1. Introduction	4
2. Analytical framework	5
3. Methods and data	6
4. Analysis and findings	7
<i>Level of analysis 1: Context and structure of the education financing laws</i>	7
<i>Level of analysis 2: Distribution of resources between different education levels</i>	12
<i>Level of analysis 3: Distribution of resources between different types of education</i>	16
<i>Level of analysis 4: Financing education laws, equity and inclusion</i>	16
<i>Level of analysis 5: Financing education laws and quality</i>	21
5. Conclusions and recommendations	24
Recommendations for governments	27
Recommendations for civil society organisations	27
References	28

1. Introduction

Adequate financing is key for everyone to fully enjoy their right to education. Local and international actors systematically refer to this challenge when discussing education policies. During the 2019 High-Level Political Forum, for example, both governments presenting voluntary national reviews and civil society organisations submitting spotlight reports acknowledged the importance of financial resources allocation to achieve sustainable development goal 4 by 2030.

Governmental and non-governmental reports provide a general picture of the size of the budget required to attend the educational needs of those enrolled in the education systems but rarely estimate the resources required to secure the right to education for those excluded, especially people living in rural and remote areas, and those on the move because of conflicts or climate change-related emergencies.

This policy briefing describes the role of education financing laws to secure the resources required at local and national levels to effectively protect and guarantee the right to education of those already enrolled in the education systems and those who are excluded. The briefing also explores the extent to which those laws include specific rules related to the use of the financial resources considering the needs of those most excluded or at greater risk of being excluded.

This briefing is organised in 5 sections as follows:

- Section 1 - provides an introduction;
- Section 2 - provides a conceptual framework against which the empirical findings of the report are analysed;
- Section 3 - discusses the methodological approach adopted for information and data collection. It also provides details of the sources of the data used for the empirical analysis and their limitations;
- Section 4 - describes and examines the empirical material against the analytical framework developed in Section 2 and discusses the briefing findings.

- The briefing concludes with Section 5 - which provides specific recommendations to make education financing laws an effective policy instrument to deliver the right to education at national and local levels.

2. Analytical framework

The Incheon Framework for Action and the 2030 Sustainable Development Goal (SDG) agenda recommends that at least 15-20% of national budgets should be spent on education, to allow sufficient financial resources to achieve the SDG 4 targets: ensuring lifelong learning (early childhood development, primary, secondary and higher education, and adult education); ensuring inclusion and non-discrimination; ensuring educational quality and providing qualified teachers.

Based on these considerations, SDG 4 frames our analysis of the education financing laws. For those countries which have adopted education financing laws, this briefing discusses how the financial resources are distributed between different levels of education (early childhood education, primary, secondary, high-school, and higher education) and types of education (formal and informal). The briefing also discusses if the laws include any consideration regarding equity/inclusion and quality.

The **4S-framework** is used to discuss the extent the law is consistent with the Education 2030 Incheon Framework for Action: the **Share** of national budgets they spend on education; the **Size** of their budgets; the **Sensitivity** of their public spending on education, and the **Scrutiny** of their education budgets¹. More specifically, the briefing examines how the finance education laws in those countries include specific measures to increase the **size** and **share** of their budgets for education and secure both **sensitivity** of budget allocation and **scrutiny** of spending.

¹ The 4S scheme was jointly proposed by GCE-Action Aid and IE. See <https://www.campaignforeducation.org/en/2016/03/29/financing-matters-a-toolkit-on-domestic-financing-for-education-global-campaign-for-education-education-international-and-actionaid-2016/>

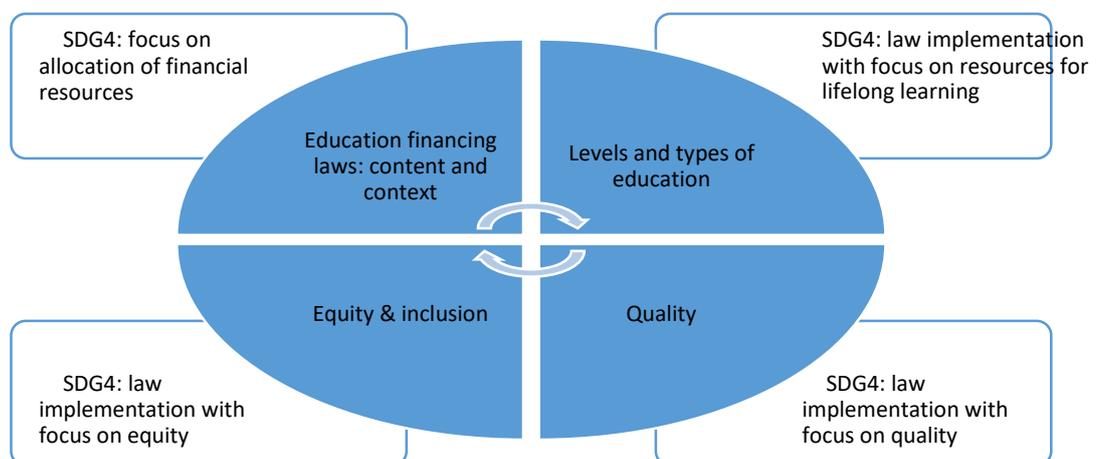
For the purposes of this briefing, the term ‘education financing law’ denotes any piece of legislation formally introduced by governments with the aim to either allocate financial resources for education or introducing financing mechanisms to implement education policies. In most of the countries under analysis, these laws provide a mandatory framework for education planning. However, as discussed below, this does not mean that the financial resources established by law are allocated.

3. Methods and data

A case study approach is used to examine whether and how a targeted group of countries from different regions of the world have adopted and implemented education financing laws. The selection of the case studies was guided by levels of income and the possibility to establish close collaboration with local and regional coalitions who supported the collection of data. GCE Membership in Argentina, Australia, Brazil, Eswatini, Gambia, India, Italy, Japan, Nigeria, United Kingdom and United States supported this initiative and generously provided information related to financing education laws and some of the critical barriers for their implementation.

In line with the analytical framework discussed in the previous section, GCE members were invited to provide information on the following four aspects that inform the analysis of this policy briefing (Diagram 1).

Diagram 1: Linking the analytical framework and data collection



In addition to the information reported by national coalitions, the analysis of the education financing laws draws on secondary sources including policy and academic reports for the eleven countries under analysis.

4. Analysis and findings

This section discusses the context and structure of the education financing laws and the process of implementation. Special consideration is given to the following aspects: distribution of the financial resources between levels and types of education; and legal considerations of the law implementation in terms of promoting equity, inclusion and quality.

Level of analysis 1: Context and structure of the education financing laws

Argentina education financing law is a very paradigmatic case because there is no consensus regarding if the law is still in force or not. Interviews with local specialists suggest that one of the critical tensions is related to the fact that the time for implementation of the law has expired (2010) but some civil society organisations, including CADE, make the claim that it is still in force because the goals established in the law have not been achieved.

In **Brazil**, there are four pieces of law directly or indirectly related to education financing: Law 11.494/2007 regulates the provision of funds for maintenance and development of basic education and valorisation of professionals working in the education sector; Law 11.738/2008 establishes the salary for professional educators working on basic education; Law 12.858/2013 establishes that 75% of oil royalties and 50% of the pre-salt social fund should be invested in education²; and Law 13.005/2014

² The pre-salt social fund is a social fund created in Brazil to invest pre-salt petroleum revenues. The funds come for the exploration of the so-called Brazilian pre-salt oil region, which is an oil reserve trapped below a layer of salt. See Machado E Silva, Isabela Morbach & Medeiros Costa, Hirdan Katarina de, 2019. "Brazilian Social

- National Education Plan 2014-2024, estimates the financial resources required to guarantee quality education per student.

The above-mentioned laws in Brazil establish three main sources of financial resources for education: revenue from taxes of the Union, the States, the Federal Districts and the Municipalities; revenue from constitutional transfers and other transfers (the Federal Constitution requires that the Union invests at least 18% of the resources for education and that the States, the Federal District and the Municipalities invest 25%); and revenue from social contribution of education salary and other social contributions.

The National Education Plan 2014-2024 stipulates that the share of the education budget should represent at least 10% of GDP and recommends a gradual increment of the budget during the timeframe of the law.

Despite the law, though, implementation still lags behind: after five years of the National Education Plan (NEP) being in force, only one aspect, out of hundreds, has been fully implemented. The Brazilian Campaign expressed particular concern on the lack of implementation of the Cost of Initial Quality Education per Student mechanism of quality, federative justice and funding. This is largely related to the imposition, since 2016, of a policy of economic austerity embodied in Constitutional Amendment 95, which puts a ceiling on social investment, including education, until year 2036. According to the national coalition and CLADE, this amendment is against the legal dispositions established in the NEP and has prevented the possibility of making progress towards achieving SDG4 in Brazil.

Seven special rapporteurs and experts of the United Nations, have drawn the attention of the Brazilian Federal Government on the negative impacts of budget cuts and austerity measures implemented since 2014 in various human rights, including the right to education. The document shows that several of the tax decisions taken as a result of

Funds: The lessons learned from the Norway fund experience," Energy Policy, Elsevier, vol. 129(C), pages 161-167.

the Constitutional Amendment 95/2016, also known as the "Ceiling of Expenses", disproportionately affect those individuals who are already victims of discrimination or who live in the most vulnerable situations³. Furthermore, the recommendations of the Universal Periodic Review (UPR) of 2017 pointed to the need for adequate investments for the implementation of the NEP⁴ and the Interamerican Human rights Commission questioned the Brazil's austerity policy imposed by Amendment 95, pointing to the principle of non-retrogression in human rights⁵.

In the **United Kingdom**, there are also several laws related to financing education: The Education Reform Act 1988, amended by the Further and Higher Education Act 1992 and the Education Act 1996; the 1996 Act lays on the explicit core duty of the government to ensure education for all children. Other relevant Acts include the Local Government Act 2003; the Education Act 2005; the Education and Inspections Act 2006; the Academies Act 2010; and the Children and Families Act 2014⁶.

The several pieces of legislation related to financing education establish two main financial mechanisms: The School Funding Regulations set out the way money is distributed through the system – namely the process of how money is passed to local authorities, and how this process is regulated. The National Funding Formula for Schools and High Needs set out the details of how funding is distributed through the formulae, including changes to the formulae for 2019 to 2020⁷. The legislation referred to above covers schools, early years, further education and higher education⁸.

³ <https://www.ohchr.org/Documents/Issues/Development/IEDebt/OL-BRA-4-2018.pdf>

⁴ <http://campanha.org.br/direitos-humanos/relatorio-da-revisao-periodica-universal-da-onu-e-publicado-e-paises-fazem-32-recomendacoes-a-politicas-de-educacao/>

⁵ <http://campanha.org.br/direitos-humanos/pec-55-do-teto-de-gastos-presidente-da-comissao-interamericana-de-direitos-humanos-da-oea-aponta-para-violacao-do-principio-de-nao-retrocesso-e-de-alocacao-progressiva-de-recursos-para-os-direitos-s/>

⁶ <http://www.legislation.gov.uk/ukxi/2018/10/contents/made>

⁷ High needs funding is funding for children and young people with special educational needs or disabilities who need extra support at school, college or alternative provision settings. The central school services block is funding that local authorities use to provide services for all schools.

⁸ In the UK, the term further education refers to any study after secondary education that is not part of higher education. Courses range from basic English and maths to Higher National Diplomas (HNDs). See <https://www.gov.uk/further-education-courses>

In the **United States**, appropriations to the federal Department of Education are included in the national budget. The Every Student Succeeds Act (ESSA) is the national education law and longstanding commitment to equal opportunity for all students, authorising grants for elementary and secondary school programs for children of low-income families; school library resources, textbooks and other instructional materials; supplemental education centres and services; education research; and professional development for teachers. Education is primarily a state and local school district responsibility; therefore, a substantial majority of public-school funding comes from local property taxes, state, and private sources.

In **Indonesia**, the education financing law (Law No. 20 of 2003) establishes that the education budget should be allocated a minimum of 20% of the total national budget. The national budget for education is complemented with local budgets at province and district levels. Indonesia's National Coalition for Education reported that the law also included a reference on public-private partnership for education but that strategy has not been implemented.

The fact that about 60-75% of the education budget in Indonesia is allocated for teacher salary considerably restricts the allocation of resources for improving infrastructure, teaching training or the implementation of scholarships for the most excluded groups within the country. Besides these financial restrictions, Indonesia's National Coalition for Education raised concern for the low commitment of the local government to allocate 20% of the budget to the education sector. This is a critical aspect all around the country because the national government's role in education is being reduced to policy design and all the responsibilities for implementation are in local governments.

In **Japan**, the country's Basic Education Law was enforced in 1947. Further laws, such as the School Education Law, the Compulsory Education Financing Act and other education related laws have been developed in line with the Basic Education Law over the last six decades. Japan has one of the oldest laws in financing education and development economists have given special value to Japanese legal reforms to

financing education for their contribution to post war reconstruction of the nation and the country's economic performance and social investment (Sen, 2000).

The law establishes that the State is responsible for 50% of teacher's salary and school's facilities construction and 100% of the investment required for textbooks. The remaining 50% of salary and construction costs are funded by local governments. Most of the financial resources come from taxation and government bonds.

In **Italy**, '*La Buona Scuola*' law 'Good School' (Law 107/2015) provides additional funding for education. Besides the resources established by the government general budget, this law provides an additional funding of 3 billion euros for education: from 52 to 55 billion euro. The law also establishes resources for personnel recruitment (over 10,000 teachers have been hired between 2016 and 2019), schools' daily operation and the introduction of digital technologies and modern laboratories.

Following a constitutional reform in 2001, Italian regions have more autonomy in the allocation of financial resources. Most resources for education come from regional taxation to individuals and companies, the Ministry of Education national budget, and profit of services rendered to public administrations.

Although the law is generally well received amongst education specialists because of its commitment to increase public funding for education, there is concern regarding the increasing role of private actors in funding education. The Italian Coalition for Education has raised attention on the need to publicly reflect on the long-term impacts of private actors sponsoring schools. A critical issue is that schools that receive more funding from private actors can be classified as level A and those in relatively low-income areas may be classified as level B because their lower opportunities to raise funding from non-governmental actors. The Italian Campaign has also raised the issue

that private funding for schools may led to less autonomy for teaching and education policies influenced by the private actors' expectations⁹.

In **Australia**, financing mechanisms for education are largely developed in the Australia Education Act 2013¹⁰ and the Higher Education Support Act (HESA) 2003. The first law establishes grants of financial assistance to States and Territories and sets out funding mechanisms payable by the Commonwealth to States and Territories under this Act. The HESA law establishes the Commonwealth Grant Scheme (CGS), which provides funding to higher education providers to help subsidise students' tuition costs; the Higher Education Loan Program (HELP) arrangements which provide income contingent loans to help students meet their study costs; and, other grants available to higher education providers.

In **Nigeria**, the Universal Basic Education Act and Education Tax Act (Chapter E4 Laws of the Federation of Nigeria 2004) set regulations for financing education in the country. Specifically, those acts establish criteria for providing public funds to secure an uninterrupted access to 9-years of free and compulsory basic education.

Level of analysis 2: Distribution of resources between different education levels

In terms of the financial resources allocated for education, they vary depending on the different levels of education (early childhood education, primary, secondary, high-school, and higher education).

In **Argentina**, for example, resources for primary and secondary education come mainly from the national budget. Local municipalities are responsible for providing additional funding that is primarily invested in salaries. In the case of higher education,

⁹ Italian Campaign for Education (2019). Response to GCE Financing education laws' call for collaboration.

¹⁰ The Act commenced on 1 January 2014 and was last amended on 23 June 2017 to give effect to the Quality Schools package, with changes to funding arrangements commencing from 1 January 2018. See Australian Coalition for Education and Development (ACED), (2019). Response to GCE education financing law's call for support.

the allocation of resources entirely depends on the government national budget. Most resources are invested in public universities but some resources can be allocated to private universities under the figure of subsidies. In terms of early childhood education, the law does not include any specific prerogative. The Argentinian government promised to build about 3,000 nursery schools but only 50 were built by early 2019¹¹.

In terms of the share of the budget, the Argentinian law establishes that 6% of the GDP and 23% of the national budget should be allocated to financing education. However, this figure changes over time, depending on the tax base for every financial year and the investments required for other sectors. One of the critical concerns of civil society organisations is that resources allocated to improved salaries conditions in the education sector are running out.

In the **United Kingdom**, the latest figure shows that only 4.3% of the global domestic product is spent on education¹². Funding for financial year 2018 to 2019 shows that schools are entitled to receive the following funding for each pupil registered as eligible for free school meals (FSM) at any point in the last 6 years: £1,320 for pupils in reception to year 6 and £935 for pupils in year 7 to year 11¹³. Public schools are expected to receive £2,300 for any pupil identified in the January 2018 school census or the alternative provision census¹⁴.

A comprehensive report developed by the Institute for Fiscal Studies (2019) has shown that since 2010, the amount of per student spending in England's schools has fallen by 8%. The study reveals "[] there have been cuts of 8% in real terms between 2009–10 and 2018–19. Reversing these cuts would cost £4.7 billion a year by 2022–23" (Farquharson & Sibieta, 2019). In order to alleviate the cash shortage, school leaders in some areas of the country have relied on parents' financial assistance. The financial

¹¹ CADE, Grupo de Financiamiento Educativo.

¹² See Save the Children and Send My Friend to School (2019). Response to GCE Financing education laws' call for collaboration. See also table 4.4. at <https://www.gov.uk/government/statistics/public-expenditure-statistical-analyses-2018>.

¹³ By 12 December 2019, the exchange rate for an American dollar is 0,75 Sterling Pounds.

¹⁴ <https://www.gov.uk/guidance/school-census>

resources for school's shortage have led to deterioration of school facilities in many counties and an increment in the pupil-teacher ratio. "Whilst primary school teacher numbers have risen by 11% since 2010, pupil numbers have grown by 17%. In secondary schools, teacher numbers have fallen by 20,000 or by just under 10% between 2010 and 2018" (Farquharson & Sibieta, 2019).

In **Brazil**, all education levels are financed by the law. However, as stated in the previous section, ongoing austerity policies are creating additional barriers for the enjoyment of the right to education. The Brazilian Campaign for the Right to Education (2018) suggests that the allocation of resources according to the law – especially in relation to the estimated Cost of Initial Quality Education per Student and Cost of Quality Education per Student (CAQi/CAQ), would allow the country to make a significant progress in terms of quality and equality. The Brazilian Campaign for the Right to Education stresses that the CAQi/CAQ is a federative justice mechanism and suggests that its effective implementation would improve accountability of the investment in education and social control on this matter. The lack of political will and the Constitutional Amendment 95 however remain critical challenges to implement and regulate the mechanism.

Additionally, there is a significant gap in the implementation of the National Salary of Education Professionals: only 14 out of the 26 states and federal districts comply with the law (Brazilian Campaign for the Right to Education, 2018).

In **India**, the financing education law 'Right of Children to Free and Compulsory Education Act 2009' only funds pre-primary early childhood education and development and elementary education. In addition to the resources established by this law, the government establishes a surcharge on taxes of 2% for elementary education and a surcharge of 1% for higher and technical education. The rest of the spending in education is supported by the National Government (65%) and 35% by the state government.

Although the government has promised to spend 6% of GDP on education, the India's National Coalition for Education reported that only around 3.8% of the GDP was invested in education in 2017.

In **Indonesia**, the law establishes financial mechanisms for primary and secondary school. Resources for high school depend on province government policy and resources available at the provincial level.

Financing education laws in **Japan** and **Italy** cover all levels of education. In **Japan**, however, only primary and lower-secondary education are compulsory and free of charge. Upper secondary education is not compulsory and thus it is not free of charge. Overall, there are different financial mechanisms to subsidize education in Japan. Different laws establish different fees for students depending on factors such as level of education, student living conditions, and nationality. Private schools are also granted with governmental funding.

In **Australia**, the states and territories provide the majority of public funding for government schools, including primary and secondary education, with the Australian Government providing supplementary assistance. Similarly, the Australian government provides the majority of public funding for Higher Education, while states and territories are the main funders of Technical and Further Education. Moreover, the Australian government provides the majority of public funding for non-government schools, which is supplemented by states and territories.

In **Nigeria**, the financing education laws include financial resources for six years of primary education, three years of junior secondary education and early childhood care development education. The country's financial laws also dedicate resources to reduce school dropout and to support literacy and numeracy programmes for adults.

Level of analysis 3: Distribution of resources between different types of education

In **Argentina**, non-formal education has little funding. The Ministry of Education allocates most of the resources to formal education and some non-formal education initiatives can be found by the Development or Culture ministries. In countries such as **Australia, Brazil, India, Italy** and the **United Kingdom**, only formal education is financed by law. In the **United States**, vocational training programs are funded by federal programs¹⁵.

Indonesia invests less than 1% of the total resources allocated for education in non-formal education. This is a considerable concern amongst those social groups who have little opportunities to go to university and whose opportunities for acquiring technical skills to get jobs largely depend on vocational training.

The notions of formal and non-formal education work slightly differently in **Japan**. Formal education covers all educational activities in public and private schools, including vocational training. They all are conducive to academic titles and are granted government financial resources by law. The idea of non-formal education in Japan is primarily related to the role of families, friends, communities, the place work and even media in education. In general, every form of human interaction is understood as an opportunity for learning and considered non-formal. Therefore t, only formal education is granted with governmental funding¹⁶.

Level of analysis 4: Financing education laws, equity and inclusion

Equity and inclusion are two of the most critical challenges in terms of education funding and education financing laws in the countries studied are rarely inclusive-sensitive though mechanisms exist to provide greater equity. With some exceptions,

¹⁵ See for example The Workforce Innovation and Opportunity Act, 2014.

¹⁶ Japan NGO Network for Education (JNNE), (2019). Response to GCE Financing education laws' call for collaboration.

education financing laws do not include specific financial resources to promote equity and inclusion and it increases the risk of specific social groups, including girls and women, migrants and refugees, and people with disabilities, to be excluded.

In **Argentina**, for example, there are no specific rules for resources allocation for students with special needs and they are often amongst the most affected when financial resources for education are reduced.

In **Brazil**, the National Education Plan establishes several inclusion mechanisms, including the allocation of financial resources to make all schools inclusive. The Brazilian Campaign for Education stressed that significant challenges should be addressed to make progress on equity and equality. One of the most significant is related to the promotion of gender equality education given the fact that terms such as "gender" and "sexual orientation" have been removed from initial drafts of the National Education Plan and the recently adopted National Common Curricular Base. A critical implication of this is that educational campaigns to protect the right to education of students who do not show conformity with heteronormative understanding of human sexuality do not receive public funding.

The lack of protection of the rights of students with diverse sexual orientation and gender identity has been recently addressed by the UN Special Rapporteur on the Right to Education, Koumbou Boly Barry, David Kaye, Special Rapporteur for the Promotion and Protection of the Right to Freedom of Opinion and Expression; and Ahmed Shaheed, Special Rapporteur on Freedom of Religion and Belief. All of them have encouraged the Brazilian government to adopt the necessary steps to ensure the internal laws comply with international human rights law related to equality and non-discrimination¹⁷.

¹⁷ <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OLBrazileducation.pdf> see also <http://campanha.org.br/direitos-humanos/revisao-periodica-universal-onu-paises-de-todos-os-continentes-recomendaram-ao-brasil-tomar-medidas-contras-violencias-e-discriminacoes-de-genero-e-orientacao-sexual-2/>

In the **United Kingdom**, there are funding factors relating to financial difficulties (deprivation), special educational needs and English as an additional language (for non-English speakers). The Pupil Premium provides additional funding for publicly funded schools in England¹⁸. Its intention is to support students from disadvantaged families - with and without disabilities -, to perform better, and close the gap between them and their peers. Pupil premium funding is available to schools maintained by the local authority, academies and free schools. Amongst the former, funding is delivered to schools for children with special educational needs or disabilities and pupil referral units (PRUs), for children who cannot attend mainstream school. Concerning the latter, the funding covers academies for children with special educational needs or disabilities, alternative provision (AP) academies, for children who cannot go to a mainstream school, voluntary-sector AP, with local authority agreement, and non-maintained special schools (NMSS), for children with special educational needs as approved by the Secretary of State for Education under section 342 of the Education Act 1992.

In the **United States**, the balance of taxpayer investment at the state and local level and federal programs aims to assure sustainable funding. However, reliance on taxpayer funding derived from local property taxes results in inequality among school systems in different areas. The responsibility for kindergarten through twelfth grade education rests with the states under the US Constitution. Under the 14th Amendment when a state provides public education, it must also provide equal access to education. The Individuals with Disabilities Act (IDEA) requires schools to provide appropriate educational services designed to meet the individual needs of students with disabilities. Provision of Individualized Education Plans (IEPs) and teaching in the Least Restrictive Environment (LRE) are some examples. It is also important to highlight that ESSA (Every Student Succeeds Act) has a focus on inclusion.

In **India**, the financing education law includes some considerations regarding equity and inclusion. Children of scheduled tribes, scheduled caste, minority groups, and

¹⁸ <https://www.gov.uk/guidance/pupil-premium-information-for-schools-and-alternative-provision-settings>

students with disabilities can be granted with special scholarship. In recent years, scholarship schemes for girls have been implemented in some regions.

In **Indonesia**, the law includes some mechanisms to protect and guarantee the right to education for students with low access to school. The programme, which is called Indonesia smart card, helps students with low income to enrol into the next academic level. During the enrolment period, children with disabilities are entitled to affirmative measures to register into school.

In **Japan**, financing education laws include several dispositions regarding the protection of the right to education for those living in vulnerable situations. Scholarships are granted for example for people with disabilities, minority groups, students living in remote areas and those living in poor financial conditions. '*Buraku*' people, for example, who are often considered an outcast social group in Japan, are entitled to a specific programme of scholarships and other affirmative actions. The scholarships cover from primary to higher education. Those who live in remote islands and mountainous areas are also targeted for affirmative actions, including financial resources to improve school facilities. Considering that in remote areas of Japan the ratio of students per class is considerably lower than in highly densely populated areas, laws establish special financial mechanisms to allow those areas a much higher investment per pupil.

There are however significant barriers for foreign students enjoying their right to education in Japan. Permanently settled foreign students in Japan are not entitled to the benefits established by Japanese education laws and there are concerns amongst Japan human rights organisations regarding the right to education for those with migratory background. Japan NGO Network for Education (JNNE), for example, has been campaigning for the right of those permanently living foreign students in the country to be entitled to all the benefits of education laws. Foreign students in Japan are entitled to access to public schools free of charge but are charged for uniforms and school materials. JNNE also campaigns for foreign students to access opportunities for

education in their mother tongue and financial support for learning Japanese as a foreign language.

A closer examination of whether the impossibility of foreign students and foreign schools applying for public funding is contrary to international human rights law deserves attention. The international covenant on economic, social and cultural rights (art. 2) allows developing countries to determine to what extent they would guarantee the economic rights recognized in the Covenant to non-nationals but Japan is not a developing country.

Concerning equity, in **Italy** the law includes financial resources to promote inclusive education for students with disabilities and integration of foreign students to the education system. There are also financial resources for teacher training, including a wide range of topics such as teaching in multicultural environments. This is an aspect that contributes to the integration of migrants and refugees to mainstream schools.

In **Australia**, inclusion and equity are explicitly considered in financing laws. At the primary and secondary level, the school funding model is built on a base amount per school student with disadvantage loading for: students with disability, low English language proficiency students, Aboriginal and Torres Strait Islander students, socio-educational disadvantage, schools in regional and remote locations, smaller-sized schools. In terms of higher education, HESA includes special provision for students with disabilities, an Indigenous Support program and grants to higher education institutions to support students from low socioeconomic status backgrounds.

Nonetheless, the Australian Coalition for Education and Development (ACED) has raised concern with regards the negative impacts of the 2017 amendments to the Australian Education Act on inclusion. Those amendments prescribe what proportion of the Schooling Resource Standard (SRS) the Commonwealth will fund for government and non-government schools. The proportions (20% of the SRS for public schools and 80% for private schools) are fixed and will apply from 2023 onwards

regardless of the needs of students or the available level of funding and resources from other sources. ACED (2019) stresses that this fixed distribution of funding will only exacerbate the inequity in school resourcing in Australia. In addition, the Australian Education Act 2013 includes capital funding for non-government schools but no capital funding for government schools, despite the higher need for investment in the government sector. All government school funding from the Commonwealth is directed towards the 20% SRS target while non-government schools will receive an estimated \$1.9 billion over the next decade¹⁹.

Level of analysis 5: Financing education laws and quality

The extent education financing laws address issues regarding quality is very contested in most of the countries under analysis.

As mentioned above, the 2014 Brazilian National Education Plan outlines 20 goals to be deployed in 254 strategies aiming to guarantee access to quality education. Among the multiple strategies, the Cost of Initial Quality Education per Student (CAQi) and Cost of Quality Education per Student (CAQ) aims to ensure that all Brazilian schools have adequate infrastructure and training of professionals so that students can progress in learning and have ensured their right to quality education.

The CAQi is envisioned as the minimum starting point for ensuring quality education, while the CAQ proposes a progressive effort to reach a level of quality more similar to that of countries offering high quality educational standards. Thus, once implemented, the CAQi would be progressively readjusted until it reaches the value of the CAQ. The deadline for defining this second indicator, by NEP, expired in 2017. However, the Ministry of Education (MEC) did not develop a proposal for the CAQ.

¹⁹ See Australian Coalition for Education and Development (ACED), (2019). Response to GCE education financing law's call for support.

The proposal to implement a Cost of Quality Education per Student is a breakthrough: instead of starting from what is available in the budget, it comes from quality inputs to calculate how much is needed to ensure quality public education. However, with the delays in complying with the NEP and without an official commission dedicated to the subject, there is yet no timeline to implement the Cost of Quality Education per Student. By December 2018, Brazil invested three to five times less in basic education than the minimum foreseen by the CAQi/CAQ mechanisms. The Brazilian Campaign for Education stresses that the country is falling far short of offering the right to education for all and, therefore, is campaigning for the government to speed the implementation of the law.

In the **United Kingdom**, the government's perspective suggests that the financing education mechanisms are intended to improve quality by incentivising schools to raise standards and narrow gaps. However, NASWUT's perspective suggests that this currently is not being achieved and the funding formula is falling short of its intention²⁰. Likewise, the National Education Union's perspective on this is that the law does not include consideration regarding quality because "we do not have a needs-led funding system which seeks to fund education according to agreed benchmarks of good practice such as low-class size, appropriate workload and appropriate pay levels"²¹.

In the **United States**, the Every Student Succeeds Act (ESSA) requires that all students be taught to "high academic standards" that will prepare them to succeed in college and careers. Among the specific mechanisms included in the ESSA we can highlight: evidence-based and place-based interventions developed by local leaders and educators; and the sharing of vital information with educators, families, students, and communities through annual statewide assessments that measure students' progress toward those high standards²².

²⁰ The NASUWT is a trade union representing teachers, including headteachers, throughout the United Kingdom. See <https://www.nasuwt.org.uk/about-nasuwt.html>

²¹ <https://neu.org.uk/>

²² <https://www.ed.gov/essa>

In **India**, the law includes financial resources for teachers' training, including training materials. The law also establishes specific rules in terms of number of days of schooling and number of hours of teaching.

In **Indonesia**, the law establishes educational standards and financing mechanisms for teachers' training, improvement of school facilities and infrastructure, and school management.

In **Japan**, financing education laws include several considerations regarding financing quality education. One of the most significant is related to the social recognition of the teacher's profession. Accordingly, and by law, public school teachers are granted with higher salaries than any other general government official and teachers granted with the right to receive in-service training. There are also specific financial resources allocated for school libraries. The policy on this matter aims to equip all schools with sufficient numbers and categories of books according to the level of education and school size. This policy is complemented with the financial resources allocated to free textbooks for all students at compulsory education levels.

Considering that Japan is a country often affected by earthquakes, financial resources to improve quality are also invested in making schools and students quake resilient. By 2018, 99% of all 30,000 public primary and lower secondary schools were made quake resilient.

There are however serious problems that a quality education policy must address in the context of Japan: to begin with, non-cognitive skills, such as those required to exert global citizenship, do not receive enough attention in education policy. Tests for gaining access to schools only focus on cognitive skills and thus, non-cognitive skills are often left behind. Moreover, the Japan NGO Network for Education has raised the issue of stress and frustration amongst students as a result of strict rules and regulations at schools and the increasing cases of violence amongst students and school punishment by teachers.

In **Italy**, the law includes financing to enhance quality education. Amongst others, the law provides funding for developing digital plans in schools, including computational skills and responsible use of social media; sciences laboratories; extra-curricular sport and artistic initiatives, especially during school holidays; and development of employability skills to facilitate the school – work transition.

In **Australia**, the 2003 Act establishes that from year 2018, the government's investment in schools will be tied to the implementation of quality reforms and their impact on student achievement. ACED (2019) has shown concern in terms of the measures of quality to be used and what this might mean for disadvantaged schools²³.

5. Conclusions and recommendations

Financial barriers are the heart of the challenges to effectively protect and fulfil the right to education. All the countries under analysis have either financing education laws or legal regulations for financing education but none of them have yet effectively invested the maximum of their resources available to the protection of the right to education; and some have even adopted regressive financial measures which limit the right to free quality education for all.

Financing education laws are very uncommon but national education laws or national education plans often include specific funding provisions. In most cases under analysis, there is more than one law. In Japan, for example, there are laws related to the teacher profession with legal dispositions around funding, laws related to book provision and tuition fees, amongst others, and all of them include considerations about funding.

Most laws under analysis contain general financing clauses but the allocation of resources depends on yearly budget exercises. Indeed, in most countries under analysis,

²³ See Australian Coalition for Education and Development (ACED), (2019). Response to GCE education financing law's call for support.

laws do not include prerogatives in terms of financial sustainability. In some cases, the allocation of resources for education is shaped by economic crisis and austerity policies.

Most laws do not include specific targets in terms of the **share** of national budgets that governments spend on education or the **size** of such budgets. In fact, in countries such as Argentina, Brazil, India, Indonesia and Swaziland the size and share of budgets are falling considerably short to the countries fulfilling the right to education to their respective populations. What is more, the cases under analysis suggest that this is a common problem in low-income and middle-income countries but also a considerable source of concern for civil society organisations in many wealthy nations, the cases of the UK and Australia being just two examples.

Furthermore, laws tend to focus the allocation of resources on primary and secondary education. Significant gaps were identified for early childhood education and higher education. Similarly, most laws only prescribe resources for formal education. Resources for non-formal education often depend on not-for-profit private initiatives, mainly charities and NGOs.

Some of the laws contain general references to financing education for traditionally excluded groups, including minority groups, targeted castes, and people with disabilities. However, only a few laws establish specific financial mechanisms or targets to secure the right to education for those groups. Furthermore, there are no specific financial measures in any of the laws under analysis to respond to the education needs of migrants, displaced people, refugees and asylum seekers.

Overall, regarding equity and inclusion, laws tend to acknowledge the need that governments spend their education budgets with a greater **sensitivity** to equity, gender equality, and inclusion. However, most of the laws under analysis lack a clear reference to the need to spend financial resources with this sensitivity. In this regard, many civil society organizations are calling for governments to adopt financial measures to maximise revenue available for investment in education and address inequality through

building progressive and expanded domestic systems of taxation, reviewing tax and royalty agreements in the natural resource sector, closing loopholes which enable tax avoidance and evasion by the private sector and developing other forms of progressive taxation on wealth, property, land, trade and excise.

In terms of quality, and with notable exceptions, there are no specific financial mechanisms to improve education quality. Laws often include reference to the regulation of days at school and hours of teaching, and some include references to teacher training. None of the laws included special financial mechanisms to improve the factors associated with learning or to improve the school environment and teaching at schools with low performance. More generally, there is the need for financing education laws to establish formal mechanisms for the **scrutiny** of public spending in education. This means opportunities for families and community members, including civil society organisations, to participate fully and follow the use of public funding in education.

Finally, the analysis provided in this paper suggests that financing education laws provide a general framework for planning education policies. Laws help policymakers to have a much clearer picture of the financial possibilities to address local challenges in terms of education. They also facilitate the participation of civil society organisations in terms of demanding the investment of the resources stipulated by law and, when needed, to campaign for law reforms. In terms of the students themselves and their families, having a financing education law brings them the possibility to demand the application of the law when their right to education is affected. However, the power of education financing laws to secure the right to education cannot be taken for granted. The law is only a tool and cannot be seen as a panacea. Having a financing education law does mean that governments are neither giving priority to investment in education nor that they effectively allocate the resources established by law.

Recommendations for governments

To increase the government's commitment to increase the **Share** of national budgets they spend on education; the **Size** of their budgets; the **Sensitivity** of their public spending on education, and the **Scrutiny** of their education budgets.

To allocate the resources established in financing education laws and national education plans and to increase the size and share of budget for financing public education.

To invest financial resources taking into account the needs of those members of society who are already excluded from education systems or at risk of being left behind, including people with disabilities.

To secure financial resources for all levels of education, including early childhood education, education for adults and higher education.

To secure financial resources for formal and non-formal education and to establish specific financial arrangements to improve the quality of education in public schools.

Recommendations for civil society organisations

Civil society organisations are encouraged to use the 4-S frame as a tool for following up the implementation of financing education laws in context where laws have been already promulgated. The 4-S frame can also be a useful tool in contexts where the design of a financing education law is being discussed. This may serve as a tool to call the attention of governments and policymakers of including specific measures to secure that the share and size of budgets attend the specific needs of the country in terms of education and respect international funding standards. It also may serve to highlight the need to secure funding for those most in need (sensitivity of the budget) and to open spaces for public discussion on the allocation and use of education budgets (scrutiny).

References

Brazil

<http://www.congressoalacip2017.org/arquivo/downloadpublic2?q=YToyOntzOjY6InBhcmFtcyI7czoNToiYT0xOntzOjEwOiJJRF9BUiFVSZPjIjtzOjQ6IjI3NTYiO30iO3M6MT0iaCI7czozMjoiZmFhMWFhZWE3MTFhNDZjNzI3NGQ1NzhjNWRIYWNjYj0iO30%3D>

<http://campanha.org.br/plano-nacional-de-educacao/depois-de-4-anos-de-vigencia-do-plano-nacional-de-educacao-dentre-os-dispositivos-com-prazo-entre-2014-e-2018-somente-um-foi-cumprido-integralmente-e-30-parcialmente/>

<http://campanha.org.br/custo-aluno-qualidade/comunicado-06-sam-2018-quanto-custa-a-educacao-publica-de-qualidade-no-brasil/>

<http://www.custoalunoqualidade.org.br/pdf/quanto-custa-a-educacao-publica-de-qualidade-no-brasil.pdf>

<http://campanha.org.br/fundeb/e-preciso-determinar-claramente-a-responsabilidade-solidaria-da-uniao-por-exemplo-pela-falta-de-custeio-para-matriculas-em-creche-defende-daniel-cara-coordenador-geral-da-campanha-em-audienci/>

<https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OLBrazilEducation.pdf>

<https://www.ohchr.org/Documents/Issues/Development/IEDebt/OL-BRA-4-2018.pdf>

<http://campanha.org.br/direitos-humanos/relatorio-da-revisao-periodica-universal-da-onu-e-publicado-e-paises-fazem-32-recomendacoes-a-politicas-de-educacao/>

<http://campanha.org.br/direitos-humanos/revisao-periodica-universal-onu-paises-de-todos-os-continentes-recomendaram-ao-brasil-tomar-medidas-contras-violencias-e-discriminacoes-de-genero-e-orientacao-sexual-2/>

<http://campanha.org.br/direitos-humanos/comissao-interamericana-de-direitos-humanos-cidh-oea-reitera-importancia-da-educacao-para-igualdade-de-genero-em-audiencia-com-instituto-de-desenvolvimento-e-direitos-humanos-e-campanha-nacional-pel/>

<http://campanha.org.br/direitos-humanos/pec-55-do-teto-de-gastos-presidente-da-comissao-interamericana-de-direitos-humanos-da-oea-aponta-para-violacao-do-principio-de-nao-retrocesso-e-de-alocacao-progressiva-de-recursos-para-os-direitos-s/>

India

<https://www.thehindu.com/opinion/op-ed/an-education-act-with-more-wrongs-than-rights/article3687858.ece>

<http://nisaindia.org/media/criticism-rte-right-education-act>

<https://blogs.timesofindia.indiatimes.com/toi-edit-page/schooling-without-learning-how-the-rte-act-destroys-private-schools-and-destroys-standards-in-public-schools/>

<https://www.livemint.com/Politics/v0Dubg2B7JsVqhKf0LhjAM/Education-spending-by-govt-fails-to-keep-pace-with-allocatio.html>

Indonesia

<http://www.anggaran.depkeu.go.id/content/Publikasi/bidang%20pendidikan/improving%20quality%20of%20spending.pdf>

<https://www.lowyinstitute.org/publications/beyond-access-making-indonesia-s-education-system-work>

<https://en.tempo.co/read/news/2018/02/09/056915624/Sri-Mulyani-Big-Budget-on-Education-but-Lacking-in-Quality>

<http://www.thejakartapost.com/news/2017/03/25/indonesian-education-index-lower-than-philippines-ethiopia.html>

https://drive.google.com/file/d/1_qbGiwj5xVm_KLaCTCax4nC1zMLiuwqF/view?usp=sharing

United Kingdom

<http://www.legislation.gov.uk/uksi/2018/10/contents/made>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/648533/national_funding_formula_for_schools_and_high_needs-Exec_summary.pdf

<https://www.gov.uk/guidance/pupil-premium-information-for-schools-and-alternative-provision-settings>

<https://neu.org.uk/>

<https://www.nasuwt.org.uk/about-nasuwt.html>

<https://schoolcuts.org.uk>

Farquharson, C., and Sibieta, L. (2019). 2019 annual report on education spending in England: schools. Institute for Fiscal Studies, London.

United States

<https://www.ed.gov/essa>

<https://www2.ed.gov/about/overview/fed/role.html>

<https://sites.ed.gov/idea/about-idea/>

<http://www.nea.org/>

<https://www.aft.org/>

<https://www.concordlawschool.edu/blog/constitutional-law/14th-amendment-protects-rights-education/>

<https://projects.propublica.org/represent/bills/category/education>

Japan

National Institute for Educational Policy Research: <http://www.nier.go.jp/English/educationjapan/index.html>

Citizens' SDGs report of Japan, <https://drive.google.com/file/d/0BxbtK2dVB113NkM5cFdpMjNTTEk/view>

Italy

<http://www.istruzione.it/allegati/2017/note%20integrative%202017.pdf>

<http://www.miur.gov.it/sistema-educativo-di-istruzione-e-formazione>

Australia

<https://www.legislation.gov.au/Details/C2018C00012>

<https://www.legislation.gov.au/Series/C2004A01234>

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/5512.0Main%20Features42016-17?opendocument&tabname=Summary&prodno=5512.0&issue=2016-17&num=&view=>