Learning InEquality
Using equality law to tackle barriers to primary education for out-of-school children

Executive Summary
The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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Despite the longstanding and continued pledges of governments to tackle the issue of out-of-school children, an estimated 61 million children of primary school age are currently out of school. Commonly cited data regarding the demographic of out-of-school children shows that this group is made up disproportionately of children from disadvantaged groups – girls, children with disabilities, ethnic and racial minority children, children from linguistic minorities, refugee children and the socio-economically disadvantaged – indicating that this phenomenon is closely connected to issues of discrimination and inequality.

Whilst the importance of equality and inclusion in tackling out-of-school children is now widely recognised, the extent to which discrimination, in all its forms, contributes to the denial of primary education, and the potential for the rights to equality and non-discrimination to offer solutions, are currently underexplored.

Learning InEquality seeks to fill this gap in existing education discourse by:

- identifying the ways in which inequality and discrimination underpin children’s lack of access to and completion of primary education, through illuminating the discriminatory nature of the barriers and challenges children face in this context; and
- exploring ways in which strategies or approaches grounded in the legal framework on equality and non-discrimination – referred to as “equality law approaches” – may be used to tackle this problem of out-of-school children.

Research Methodology

The research methodology for the full report was determined by the Equal Rights Trust (the Trust), in consultation with a seven-member Expert Advisory Committee. The research itself consisted of three key aspects:

1. desk-based research was undertaken by a team of researchers at the Trust;
2. country-specific research and case studies were collated through consultation with the Trust’s local partner organisations and networks; and
3. input was sought from key informants working on equality and non-discrimination in primary education.

The draft report was subject to a validation process, with feedback sought from the Expert Advisory Committee and other expert contributors at a one-day conference in London.

Scope and Limitations

Given the considerable literature that already exists regarding access to primary education and the issue of out-of-school children, and the gap in such literature identified by the Trust, the scope of the report and its potential limitations were clearly delineated at the outset.

- Firstly, in order to understand how the law on equality and non-discrimination are relevant to the issue of out-of-school children, it was necessary to look beyond issues of access and consider the circumstances surrounding drop-out rates and retention.
- Secondly, issues of quality in education were only addressed insofar as they influence failure to enrol and drop-out rates.

1 Please refer to the full-length report, Learning InEquality: Using Equality Law to Tackle Barriers to Primary Education for Out-Of-School Children, for detailed references and bibliography.
Disparities in primary education
The effect of discrimination and inequality

There are currently an estimated 61 million out-of-school children of primary school age

61 million is equivalent to the population of Italy

GENDER
Girls of primary school age are more likely never to attend school than boys

53% of all children out of primary school are girls

There are 4 million more girls out of primary education than boys

MINORITIES
Fifty percent of the world’s out of school children live in communities where the language of the schooling is rarely, if ever, used at home

DISABILITY
The gap in primary completion rates between children with and without disabilities

10%

In some countries, a child with a disability is twice as likely never to enrol in school than a child without a disability

REFUGEES

50% of refugee children are out-of-school

Refugee children are five times more likely to be out of school than non-refugee children

POVERTY
There is a strong association between poverty and education

The primary out-of-school rate is

19% in low-income countries

3% in high-income countries

Children in rural areas are in general more disadvantaged.

The primary out-of-school rate in low-income countries

36% in rural areas

16% in urban areas

The primary out-of-school rate in lower-middle income countries

22% in rural areas

13% in urban areas
Thirdly, the report is limited to the issue of the discriminatory denial of primary education and, as such, it does not consider the circumstances surrounding children who do not attend/complete secondary education and/or who fail to transition from primary to secondary education.

Finally, the report does not comprehensively address individual instances and patterns of discrimination in every country; rather, it is intended to provide a high-level, overarching framework of analysis regarding the way in which discrimination and inequality contribute to the problem of out-of-school children.

Structure

The full report is divided into five substantive parts:

• **Chapter 1** introduces and sets out the relevant legal framework on equality and non-discrimination in primary education.
• **Chapter 2** considers why an equality law approach should be central to efforts to tackle the issue of out-of-school.
• **Chapter 3** contains an in-depth exploration of the key discriminatory barriers and challenges that inhibit children’s access to and/or completion of primary education.
• **Chapter 4** focuses in on strategies for civil society intervention, looking in particular at equality law approaches to advocacy and strategic litigation.
• **Chapter 5** contains some conclusions and an overview of the key implications of the report’s findings for key stakeholders.
The rights to equality and non-discrimination are protected in all of the core international and regional human rights treaties, which oblige states to refrain from discriminating against certain groups of individuals, and to respect, protect, promote and fulfil the right to equality.

The right to primary education is specifically provided for in Article 13(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which provides that “[p]rimary education shall be compulsory and available free to all” – and has also been guaranteed and elaborated upon by other international and regional instruments. Under ICESCR, states must ensure enjoyment of the right to a free primary education on a non-discriminatory basis.

In addition, there are specific instruments protecting the right to equality and non-discrimination in primary education:

- The United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education has the express aims of proscribing any form of discrimination in education and promoting equality of opportunity and treatment in education.
- Provisions guaranteeing the equal enjoyment of the right to education can be found in a number of international human rights treaties and instruments aimed at protecting vulnerable or marginalised groups, including: the United Nations Convention on the Rights of the Child (UNCRC); the Convention on
Learning InEquality uses the Declaration of Principles on Equality\(^2\) (the Declaration) as the conceptual framework for its analysis of the barriers and challenges that influence children’s ability to access and/or complete primary education, and its discussion regarding the use of equality law approaches to tackling the issue of out-of-school children.

### Conceptual Framework

The Declaration is a statement of best practice based on concepts and jurisprudence developed in international, regional and national contexts, which promotes a unified approach to equality and non-discrimination. It was initially signed by 128 equality law experts, and has subsequently been endorsed by thousands of experts and activists on equality and human rights from around the world.

Under the Declaration, the **right to equality** is understood as “the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life”.

The **right to non-discrimination** is a free-standing right, subsumed within the right to equality.

The Declaration identifies an extensive list of grounds on which discrimination must be prohibited, drawing together the characteristics protected under the international and regional instruments discussed above. These are referred to in the report as “protected characteristics”.

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The rights to equality and non-discrimination

THE RIGHT TO EQUALITY
The right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life.

POSITIVE ACTION REQUIRED
States must take legislative, administrative and policy measures to overcome past disadvantages and accelerate progress towards equality for a particular group.

THE RIGHT TO NON-DISCRIMINATION
A free-standing fundamental right, subsumed within the right to equality.

ALL GROUNDS
- Disability
- Race
- Gender
- Other

ALL FORMS OF DISCRIMINATION
- Direct discrimination
- Indirect discrimination
- Harrassment
- Failure to make reasonable accommodation

ALL REGULATED AREAS OF LIFE
- Education
- Work
- Healthcare
- Private life
DISCRIMINATION must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.

The right to non-discrimination encompasses four prohibited forms of discrimination:

- **Direct discrimination** “occurs when for a reason related to one or more prohibited grounds, a person or group of persons is treated less favourably than another person or another group of persons or, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria”.

- **Indirect discrimination** “occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary”.

- **Harassment** may constitute discrimination “when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment”.

For example: The laws of Country A require all children to provide residential papers in order to enrol in primary school. Children belonging to a nomadic ethnic minority group in Country A do not have residential papers due to their nomadic lifestyle, and are therefore denied entry to primary schools. This is **indirect discrimination** on the grounds of ethnicity as, whilst the requirement to provide residential papers applies to all children, it places children from the nomadic ethnic minority group at a particular disadvantage compared with other children. This discriminatory treatment may be justified if it can be shown that the requirement to provide residential papers is justified by a legitimate aim, and that the means of achieving that aim are appropriate and necessary.

For example: The laws of Country A provide that non-national children are only permitted to enrol in government-run primary schools if they are nationals of Countries B or C. A refugee child from Country X is denied entry to a government-run primary school in Country A. This is **direct discrimination** on the grounds of nationality, since the refugee child from Country X is being treated less favourably than children who are nationals of Countries A, B and C.

For example: Lower caste children attend classes alongside upper caste children, and are taught by upper caste teachers. The lower caste children are subject to verbal abuse from the upper caste teachers and children, who frequently call them “untouchable”, “dirty” and “stupid”. This verbal abuse constitutes **harassment**: it is unwanted conduct related to the lower caste children’s descent, which has the effect of violating their dignity and of creating a degrading, humiliating and offensive environment.

3 Ibid., Principle 5.
4 Ibid.
5 Ibid.
• The right to be free from discrimination also implies a right to reasonable accommodation “for different capabilities of individuals related to one or more prohibited grounds”. A failure to provide reasonable accommodation constitutes discrimination.

In order to be effective, the right to equality may require states to take positive action measures (also known as affirmative action, or special measures) in order to remove disadvantage caused to particular groups by underlying structural inequalities.6

For example: Child A is visually impaired and requests her school to make certain accommodations in order to enable her to participate in class on an equal basis with other children. These accommodations include making adjustments to the classroom lighting, and providing reading and other classroom materials in an accessible format. When determining whether these accommodations are “reasonable”, consideration will be given to whether they impose a disproportionate or undue burden on the duty bearer, be that the education authority and/or individual school in question.

For example: Children belonging to a minority language group in Country Z have been historically disadvantaged in primary education, since classes are taught in the official state language which they do not understand. As a result, these children have low rates of primary school completion. Country Z must take positive action to redress the historic disadvantage faced by these children, which may include investing in a bilingual education programme, and/or ensuring the recruitment and training of teachers who are able to speak both the minority and official language.

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6 Ibid., Principle 3.
There are a number of conceptual and practical reasons why an equality law approach should be central to efforts to tackle the issue of out-of-school children.

1. Links between Equality and Education

Equality and education are inextricably linked: inequality in education plays a clear role in perpetuating social inequalities and socio-economic disadvantage, which themselves correlate with patterns of historical discrimination against marginalised groups.

Given the relationship between education, socio-economic disadvantage and historical patterns of discrimination, it is unsurprising that education is fundamental to alleviating the poverty and marginalisation suffered by groups that face entrenched and systemic forms of discrimination. However, in order for education to have a transformative and empowering effect for marginalised groups, it is imperative that the rights to equality and non-discrimination in education are guaranteed.

2. Equality Law is Key to Achieving the Development Agenda

The issue of out-of-school children is a development issue, and adopting an equality law approach in relation to the issue of out-of-school children is a necessity if the development agenda is to be achieved.

Not only is equality explicitly central to the achievement of a number of the Sustainable Development Goals (SDGs), the SDGs require an equality law approach to be adopted, with Target 16B of SDG16 requiring the promotion and enforcement of non-discriminatory laws and policies for sustainable development, and the promotion of the rule of law.

The recognition of the necessity of the rule of law and, in particular non-discriminatory laws and policies, in the SDGs is important in two key respects:

- An equality law approach is a human-rights based approach which emphasises the importance of education for all. As such, an equality law approach moves away from instrumentalist or utilitarian arguments for inclusive education, thus contributing to the goal of ensuring that no child is “left behind” in education.
- Equality law – unlike the SDGs themselves, which are merely aspirational – entails binding legal obligations for states, providing a means through which individuals can enforce their rights and hold states accountable for failures to respect, protect and fulfil the rights to equality and non-discrimination.

3. Legal and Rhetorical Force of the Rights to Equality and Non-Discrimination

The rights to equality and non-discrimination may have stronger legal and rhetorical force than the right to education.

The rights to equality and non-discrimination are more likely to be justiciable in domestic courts than the right to education: whilst the right to education is justiciable in around half of states, many jurisdictions have progressive equality legislation prohibiting discrimination in the provision of public services such as education. Reliance on equality legislation to advance the right to education also has certain specific advantages, including the potential for claims to be brought against non-state actors.
Interactions between equality law and the Sustainable Development Goals

**LEAVE NO ONE BEHIND**
A well-implemented equality framework is essential to the realisation of the Sustainable Development Goals

**Sustainable Development Goals**

**GOAL 4 QUALITY EDUCATION**
Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

- Enables children to challenge discriminatory school policies and practices, such as school-based violence and harassment
- Requires state investment and policies in education to be non-discriminatory in purpose or effect
- Requires positive action aimed at securing the equal participation of all children in education

**GOAL 10 REDUCED INEQUALITIES**
Reduce inequality within and among countries

- Ensures legal prohibition of discrimination and guarantees equality of opportunity
- Provides a basis for identifying and repealing discriminatory laws and policies
- Outlaws discrimination on the basis of socio-economic disadvantage
- Provides the legal framework to enable the social, economic and political participation of all

**GOAL 16 PEACE, JUSTICE & STRONG INSTITUTIONS**
Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

- Enables individuals to challenge inequality and discrimination in the courts
- Mandates positive action measures where historical underrepresentation of groups in decision-making
- Meets the requirement to promote and enforce non-discriminatory laws and policies for sustainable development
In addition, the language of equality and fairness carries strong rhetorical force, and can be extremely powerful in communicating and achieving consensus around controversial issues. Arguments regarding the need to tackle inequality and discrimination in education may have greater resonance – and thus greater effect in achieving change – particularly in countries where equality and non-discrimination hold a prominent place on the political agenda or within public opinion.

4. Importance of Equality Law in Guiding the Allocation of State Resources

Equality law can play an instrumental role in guiding the allocation of state resources in favour of increasing free access to primary education for all children.

States frequently defend failures to fulfil their obligations in respect of the right to education by citing budgetary constraints. However, there is a strong argument to be made that state investment in education is, in many cases, not inhibited by an absolute lack of resources, but rather suffers from inequality in the allocation of resources.

An equality law framework provides some useful direction on how states should allocate their resources in order to ensure that all children enjoy their right to a free primary education: it requires states not to discriminate between different groups of children in the way they invest in primary education, and requires that they ensure sufficient funds are dedicated towards accommodating the needs of different learners.

In certain instances, the equality law framework may also require more resources to be directed towards the education of certain children than towards others, in order to ensure the equal participation in education of children from historically disadvantaged groups.

5. Examination of Intersecting Vulnerabilities

The unified framework on equality set out in the Declaration allows full consideration and analysis of the complex and multi-faceted reasons why children are out of primary education. This framework acknowledges that discrimination must be addressed holistically if it is to be challenged effectively, thus illuminating the relevance of inequality and discrimination as a pervasive and cross-cutting issue.

The unified framework on equality also enables an examination of the extent to which multiple discrimination influences children’s enrolment and completion of primary education, and offers scope for considering the link between protected characteristics and factors such as conflict and poverty in inhibiting children’s access to and completion of primary education.

Finally, the unified framework requires that all manifestations of inequality and discrimination in primary education be considered and tackled as a matter of state concern, and provides the legal architecture with which multi-level barriers to education can be analysed and challenged.
Multiple discrimination leading to cumulative disadvantage

In Guatemala, for example, **54% of indigenous girls** are enrolled in school at the age of 7, as compared to 71% of indigenous boys and 75% of non-indigenous children. **GIRLS FROM ETHNIC MINORITIES** are more likely to be excluded from education than ethnic minority boys.

**GIRLS WITH DISABILITIES** are less likely than boys with disabilities to complete primary education. 50.6% of boys with disabilities complete primary school, as compared to **41.7% of girls with disabilities**.
This Chapter analyses the way in which many of the barriers and challenges children face in accessing or completing primary education are manifestations of discrimination or grounded in substantive inequality.

It should be noted at the outset that this exercise entails a number of challenges:

- There are difficulties in drawing direct causal links between discriminatory barriers and enrolment or drop-out rates, given the complex and multi-faceted nature of the circumstances affecting school attendance.
- These difficulties are compounded by insufficiencies in the available data, including a lack of data disaggregated by reference to all protected characteristics.
- Existing research and data do not necessarily rely on common definitions of the protected characteristics under consideration in this Chapter (such as disability), meaning that the definitions contained in relevant human rights treaties have been used for consistency.
- The discussion of the violations of the rights to equality and non-discrimination discussed in this Chapter are illustrative only, given that the exact type of discrimination at play in any given case will depend on a careful consideration of the specific facts and local context.

PATTERNS OF DISCRIMINATION

The direct and indirect costs of schooling

School Fees and other Costs

The obligation to ensure that primary education is free for all is unequivocal under ICE-SCR, and includes the elimination of both direct costs (such as school fees) and some indirect costs (such as requirements to wear expensive uniforms).

The failure by states to eliminate the direct and indirect costs of schooling has a disproportionate impact on children from low socio-economic backgrounds, and thus appears to be prima facie indirectly discriminatory on the grounds of socio-economic disadvantage: there is considerable evidence that many schools continue to charge fees and other indirect costs associated with schooling, due to the poor enforcement of laws prohibiting the charging of such costs. Research indicates that
these costs have a significant impact on children’s enrolment and drop-out rates.

Trends towards the privatisation of education in recent years, including through the establishment of “low-fee” private schools, can entrench the discrimination faced by children from low socio-economic backgrounds.

Children with disabilities and children from ethnic or racial minorities may experience multiple discrimination as a result of states’ failure to eliminate the direct and indirect costs of schooling, given that children from these marginalised groups tend to be overrepresented amongst the poor. Where a family is struggling to cover the costs associated with schooling, this can also disproportionately affect girls as a result of negative social or cultural perceptions regarding the value of girls’ education.

Children with disabilities can also face direct discrimination where they are required to pay additional fees or costs in order to attend primary school.

**Child Work and Child Labour**

Given that many children provide a source of labour or income to their families, families may incur an indirect “opportunity cost” if their children attend primary school, as they potentially lose the opportunity of realising this labour or income. The International Labour Organisation has noted that child labour can lead to children dropping out of school or completing primary education late. This has a prejudicial impact on children of low socio-economic status, thus appearing to be prima facie indirectly discriminatory on the grounds of socio-economic disadvantage.
GEOGRAPHICAL INACCESSIBILITY OF SCHOOLS IN RURAL PAKISTAN

“When sons go to schools that are far away we don’t get worried, but for our daughter we get worried.” (woman, Southern Punjab)

Research undertaken in rural Pakistan indicates that geographical inaccessibility of primary schools is a key reason for children failing to attend or complete primary education. The lack of geographically accessible schools appears to disproportionately prejudice girls, as there are around twice as many boys’ schools as girls’ schools in rural areas, and is thus discriminatory on the grounds of gender.

This disparity in the availability of girls’ schools and boys’ schools in rural areas combines with other issues of systemic gender inequality – including girls’ increased vulnerability to harassment and sexual violence – to hinder their attendance at primary school. There is evidence that girls are more likely to attend school where there is an all-girls school in the village and that “enrolment drops off sharply with each 500-metre increase in distance from the closest school admitting girls”, with “this ‘distance penalty’ account[ing] for 60% of the gender gap in enrolments”.

Gender disparities in primary education in Pakistan

<table>
<thead>
<tr>
<th></th>
<th>Girls</th>
<th>Boys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pakistan as a whole</td>
<td>30%</td>
<td>22%</td>
</tr>
<tr>
<td>Rural areas of Pakistan</td>
<td>36%</td>
<td>26%</td>
</tr>
</tbody>
</table>

Child labour also has a **gendered dimension**, with the work undertaken by girls and boys often being divided according to societal gender norms.

**Geographical inaccessibility of schools**

In many areas, primary schools are not within safe physical reach for children, thus contributing to low enrolment and attendance rates. Research suggests that this has a **discriminatory impact**, with children who share certain identity characteristics – *girls*, children from particular *ethnic, religious or social groups*, as well as children with *disabilities* – being particularly disadvantaged by the need to travel long distances to primary school.

The geographical inaccessibility of schools may arise as a result of the fact that a state has allocated its resources towards the establishment of schools unequally; where this unequal allocation of state resources is related to one or more protected characteristics (such as ethnicity or religion) this may amount to **direct discrimination**.

Where the failure to ensure that schools are geographically accessible has a prejudicial effect on children with certain protected characteristics (such as children from particular ethnic, religious or social groups, girls, or children with disabilities), and where such failure cannot be objectively justified, this may amount to **indirect discrimination**.

Children belonging to nomadic communities may also face difficulties in physically accessing primary schools, arising directly from the fact that they do not live in one fixed area; states may be required to make **reasonable accommodation** by ensuring that primary education is provided in a way that is adapted to their mobile lifestyle.

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**Refugee children out of school**

The majority of Syrian refugees are hosted in *Turkey, Lebanon* and *Jordan*, although significant numbers of Syrian refugee children cannot attend school: 63% are out of school in Turkey, 80% in Lebanon, and 45% in Jordan.\(^8\)

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Enrolment requirements and procedures

Documentation requirements

As regards documentation requirements, there is clear evidence that requirements to submit certain documents as a condition of school enrolment (such as a birth certificate or proof of residence) puts children from ethnic minorities (including indigenous and Roma children), children with disabilities, children from low socio-economic backgrounds (including street children), and non-nationals (including migrants, refugees, asylum seekers and stateless children) at a particular disadvantage. If there is no objective justification for these requirements, they may be indirectly discriminatory. Where the seemingly neutral policy is applied in such a way as to purposefully withhold access to education from certain children on the basis of their membership of a certain group, it may be directly discriminatory.

Testing and assessment procedures

Testing and assessment procedures may result in children with disabilities being segregated into so-called “special schools”, a practice which is directly discriminatory. There is also evidence that children from ethnic and racial minorities are at risk of being diverted into special schools, which can amount to indirect discrimination. The disproportionate placement of Roma children in special schools in the Czech Republic and Hungary has been considered by the European Court of Human Rights, which found the practice to amount to
indirect discrimination on the grounds of ethnic origin.

Uniform requirements

Requirements to comply with a strict uniform policy may also be indirectly discriminatory on the grounds of religion or belief, where the policy effectively prevents children from wearing items of clothing or symbols that are worn for religious or cultural reasons. There are examples of children being threatened with exclusion from primary school on the grounds that their wearing of a religious symbol or clothing is in breach of the school’s uniform policy. The question of whether this amounts to indirect discrimination can be particularly thorny where the wearing of the item in question is alleged not to be a “compulsory” requirement of the child’s religion or culture.

Inadequacy of physical and human resources

The inadequacy of physical and human resources within schools – including the inadequacy of school buildings and classrooms, poor sanitation facilities, and a lack of skilled teachers – contributes to children being out of primary education. This is often attributable to a failure on the part of the state to allocate sufficient resources towards quality school facilities and resources.

Such a failure may amount to direct discrimination where a state has invested unequally in school infrastructure, and where the unequal allocation of state resources is related to one or more protected characteristics, such as ethnicity or race. In such circumstances, this inequality in state investment means that children
DIRECT DISCRIMINATION IN SCHOOL INFRASTRUCTURE IN ISRAEL

Research indicates that many Arab and Bedouin children are denied access to quality primary education in Israel, which puts these children at increased risk of dropping out of school and means that they complete fewer years of schooling than Jewish children.

These disparities appear to be related to directly discriminatory governmental policies which have historically treated the Arab sector less favourably than other sectors (notably the orthodox Jewish, Druze and Circassian sectors), with official state data from 2004 indicating that the Israeli government provided three times as much funding to Jewish students as to Arab pupils, despite the fact that Arab children account for 25% of all children in Israel.

The Israeli Supreme Court found that the government’s policy for determining budgetary allowances in education discriminated against Arab towns and villages. Despite the introduction of new legislation in 2009, which appeared to indicate a more equitable division of resources in Israel, concerns regarding discrimination in the funding of schools remain. For example, in 2017, the education budget for Arab schools in East Jerusalem was 18 million shekels, whereas the Jewish secular sector in the city received 54 million shekels, and the ultra-Orthodox Jewish schools were endowed with 37.4 million.

Research also indicates that children from certain ethnic or racial groups can suffer disproportionately from poorly resourced schools, and that, for example, a lack of investment in sanitation facilities and skilled teachers can have a particular impact on girls’ school attendance and drop-out rates.

School infrastructure is often inadequate to ensure the inclusion of children with disabilities, with barriers to physical access being indirectly discriminatory.

Schools also often fail to make physical and human resources available which accommodate the needs of children with disabilities, with such failure to provide reasonable accommodation amounting to discrimination on the grounds of disability. The difficulties faced by children with disabilities in relation to school infrastructure are often exacerbated in conflict and other humanitarian crises.

Issues surrounding language, curricula and other educational materials

In many contexts, the form and substance of education perpetuates discrimination and exclusion through being taught in a language that is inaccessible to some children, and through school curricula and other teaching materials being inflexible, irrelevant to, or disrespectful of the needs of particular children.

As far as language is concerned, certain children – in particular, children from ethnic and linguistic minorities – may suffer indirect discrimination on the grounds of language where the state’s policy regarding the language of instruction means they are unreasonably disadvantaged or excluded from participating in primary education on an equal basis with other children.

Research also indicates that language barriers intersect with gender inequalities to exacerbate disadvantage and exclusion, such that...
girls suffer **multiple discrimination** on the grounds of **language** and **gender**.

The question of whether a state’s language policy amounts to unlawful indirect discrimination will depend heavily on an assessment of whether its impact on minorities can be justified as **proportionate**; there is significant evidence of the way in which language barriers impact upon children’s ability to participate in primary education, and, conversely, of the pedagogical benefits (including reducing dropout rates) in providing mother-tongue based bilingual education in the early years of schooling.

The failure to provide **reasonable accommodation** by ensuring that education is delivered in the most appropriate language and mode of communication can impact on enrolment and drop-out rates of children with **disabilities**.

Research also indicates that, in some contexts, the **discriminatory content of school curricula** and **educational materials** can impact on children’s school attendance and drop-out rates. Where these materials treat or portray children who share certain protected characteristics – such as **ethnicity**, or **gender** – less favourably than other children, this can amount to unlawful **direct discrimination**. There are examples of school curricula and resources being overtly denigrating of minorities, and of influencing girls’ school retention rates through perpetuating discrimination and stereotypical gendered assumptions regarding women and men.
Failures to ensure that school curricula and education materials provide reasonable accommodation for children with disabilities can also affect school attendance and drop-out rates.

**School-based violence, bullying and harassment**

School-based violence, bullying and harassment are prevalent in a number of primary education settings across the world, with the nature of the violence ranging from systemic sexual violence and abuse perpetrated by teachers, to in-school fighting between classmates.

Research indicates that such violence and harassment can affect children’s attendance at school, and thus contribute to drop-out rates, as well as causing serious psychological harm. Where such conduct relates to a protected characteristic – such as gender, ethnicity, or disability – it can amount to unlawful direct discrimination and/or harassment.

**School-related sexual violence** is a serious issue in a number of countries. There is evidence that girls are more susceptible to such sexual violence than boys and, whilst this is more prevalent in secondary school settings, such violence still occurs in primary schools, leading to absenteeism and drop-outs. **Girls with disabilities** can be particularly vulnerable to sexual violence in schools. Research also indicates that the incidence of sexual violence in and around schools is exacerbated in conflict settings.

Corporal punishment in schools remains prevalent, despite the fact that it has been widely prohibited, with evidence suggesting that children who are subject to such punishment are more likely to drop out of school. Research suggests that children who share certain protected characteristics are more vulnerable to experiencing corporal punishment than other children: **boys** are likely to experience more and harsher forms of corporal punishment than girls, and **lower caste children** and children from **racial and ethnic minorities** are disproportionately targeted for punishment. Children with disabilities are also at greater risk of being victims of corporal or other forms of cruel and degrading punishment.

In addition to experiencing physical violence, many marginalised children are subject to psychological violence, harassment, bullying and other degrading treatment by their teachers and fellow classmates, including through teachers’ classroom attitudes and teaching methods, which can affect their school attendance and increase their vulnerability to drop out.

There is ample evidence of such conduct being discriminatory, including on the grounds of

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10 Ibid.
**HARASSMENT AND VERBAL ABUSE OF MUHAMASHEEN CHILDREN IN YEMEN**

“I was forced to leave by one of my teachers. He would kick me out of class saying that because I was Muhamasheen I did not deserve to study with white people. My white classmates would avoid sitting next to me and refuse to play with me. (…) I was the best behaved one in my class. I never hit anyone or caused any problems. (…) I hate school, I hate the discrimination and the marginalisation I faced there. The teacher expelled me because he said I said a bad word, but I didn’t. He said to me, ‘You don’t belong here, you Khadim [Servant]’ (…) I was 5 years old.”

Equal Rights Trust interview with Abdullah, Taiz Province, Yemen, 13 December 2016
THE DUTY TO TAKE POSITIVE ACTION

The issues described in this Chapter not only engage the right to non-discrimination, they also engage the broader right to equality. In order to be effective, the right to equality requires states to take positive action to overcome the past disadvantage faced by historically marginalised groups and to accelerate progress towards equal participation in education.

Many of the examples of discrimination discussed above are linked to historic and systemic discrimination. For example, the barriers to education faced by children with disabilities often stem from systemic societal discrimination: there remains a high degree of societal stigma surrounding disability, meaning that the discrimination faced by children with disabilities is deeply rooted and widespread. In order to enable their equal participation in primary education, it is imperative that positive action is taken by states to remedy the negative stereotypes and stigmatisation that underlies the marginalisation faced by children with disabilities.

Positive action requires states to take legislative, administrative and policy measures to remove the disadvantage caused to particular groups by systemic inequalities. What measures are necessary and appropriate will vary depending on the context. However, examples of measures which may be necessary in primary education contexts include:

- addressing the disadvantage faced by children from non-dominant or minority language groups by introducing mother-tongue bilingual education programmes, and recruiting and training teachers who are able to speak both the minority/non-dominant and official language, including teachers from the non-dominant or minority language groups;
- ensuring that curricula and teaching materials promote equality of all children; and
- taking steps to improve school governance systems in order to prevent and deter discriminatory violence and harassment.

Positive action measures to address systemic inequalities on the grounds of characteristics such as gender, race, ethnicity, language and disability will not be sufficient to ensure equal participation in primary education for all children unless measures are also taken to redress the socio-economic disparities that feed so centrally into many of the barriers discussed in this Chapter. As such, in order to ensure that children from lower socio-economic backgrounds are able to participate in primary education on an equal basis with other children, measures to alleviate poverty should be central to any action taken to eliminate inequalities in primary school attendance and completion.
The effects of bilingual education programmes in Cambodia

In Cambodia there are around 200,000 indigenous persons speaking approximately 25 different minority languages.

Two-thirds of whom live in rural Mondulkiri and Ratanakiri provinces.

HISTORIC POSITION

Evidence indicates that children belonging to these indigenous groups have historically been left behind in primary education. Statistics from 2000 show:

- 50% of children in Mondulkiri province were out of primary school, as compared to 7% in Phnom Penh – the capital.
- Only 19% of children from Ratanakiri and 25% of children from Mondulkiri completed primary education as compared to 71% of children from Phnom Penh.

AFTER MOTHER-TONGUE EDUCATION

Comparing statistics from 2000 and 2014:

- 28% of children from Mondulkiri and Ratanakiri are out of primary school a decrease of around 22% since 2000.
- 57% of children from Mondulkiri and Ratanakiri now complete primary education an increase of around 35% since 2000.
This Chapter explores strategies for civil society intervention to tackle the issue of out-of-school children in accordance with the Trust’s Theory of Change.

According to this Theory, and as demonstrated in this report, discrimination and inequality impede children’s access to and completion of primary education. It follows that improved enjoyment of the rights to equality and non-discrimination in education will enhance children’s access to and completion of primary education. In order to improve enjoyment of the rights to equality and non-discrimination in education, it is necessary to have effective laws and policies that promote equality and prohibit all forms of discrimination, and for such laws and policies to be effectively implemented and enforced. There are a number of strategies that can be employed by a large variety of change actors to this end; however, this Chapter focuses on advocacy and strategic litigation strategies for civil society.

Whilst advocacy and strategic litigation are discussed separately in order to allow for an analysis of the specific considerations that arise in relation to each, it is crucial to consider these strategies as symbiotic rather than separate. Furthermore, these are, of course, not the only strategies for intervention that can be employed by civil society; instead, they should be seen as complementary to other tools and strategies, such as the use of data, campaigning to change public opinion and direct action.

Advocacy

This section is intended to assist civil society actors advocating to tackle the issue of out-of-school children to apply approaches that are grounded in the rights to equality and non-discrimination. Such approaches are referred to as “equality law approaches”.

The application of an equality law approach to advocate on the issue of out-of-school children has two elements:

- Such an approach is necessary if state actors involved in the provision of education and the formulation of education policies and legislation are to reach all of those out of primary school, since the policies and laws themselves must be grounded in equality law.
- There may be strategic advantages to applying an equality approach in advocacy for increased access to primary education, in terms of the way in which an approach can influence the messaging and framing of the issues, the identification of key stakeholders, and the fora in which those key stakeholders can be engaged.

There is thus both a need and an opportunity for advocacy regarding out-of-school children to be grounded in equality law.

Developing an advocacy strategy

The Trust’s approach to the development of an advocacy strategy is to conduct a context analysis by answering a number of questions.

Advocates must start by determining what their overall objective is. After that, there are a number of further questions to be considered: who has the power to influence the achievement of the objective; who and what influences the decision-makers; what the political, policy and legislative, media, civil society, public, and international climate context is in which advocacy is taking place; and which theory/theories of change are to be adopted (such as taking advantage of policy windows or levers, or effectuating change through appropriate messaging and framing of the issues).
The Problem

Discrimination and inequality impede children’s access to and completion of primary education.

The Solution

Improved enjoyment of the rights to equality and non-discrimination in education will enhance children’s access to and completion of primary education.

In order to improve enjoyment of the rights to equality and non-discrimination in education, it is necessary to have effective laws and policies that promote equality and prohibit all forms of discrimination, and for such laws and policies to be effectively implemented and enforced.

Potential Strategies

- Advocacy
- Strategic Litigation
- Monitoring
- Direct Action
- Campaigning
- Financing

Civil Society

Theory of change strategies for civil society intervention
In shaping a national advocacy strategy that is based on an equality law approach, the above questions must be considered through an equality law lens:

- In considering how an equality law approach influences the identification and formulation of objectives and outcomes, advocates must bear in mind that the substance of any policy or legislative reforms sought must comply with states’ obligations regarding equality and non-discrimination.
- Where an equality law approach is adopted, this will likely identify decision-makers and stakeholders that hold power or influence in respect of equality and non-discrimination and who would otherwise be overlooked, such as state entities other than Departments of Education, and National Human Rights Institutions.
- The adoption of an equality law approach may mean that new policy windows can be identified, such as proposed reforms or strategies in relation to historically disadvantaged groups, or the development of a state’s National Human Rights Action Plan.
- Advocates may find that an equality law approach leads to the identification of new levers that can be used to exert pressure on the government, such as UN level reviews by Treaty Bodies, or the goals set out in the post-2015 development agenda.
- An equality law approach may carry advantages when it comes to the messaging and framing of the issues, since the language of equality and fairness can be extremely powerful in communicating and achieving consensus around controversial issues.
- An effective advocacy campaign needs to be evidence-based, and advocates should ensure that any evidence presented in support of the arguments being made in the advocacy campaign is collected in accordance with equality law principles.
- An equality law approach to advocacy may present opportunities for collaboration between stakeholders that would not otherwise have considered themselves to be “allies”.

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Whilst the above considerations are by no means exhaustive, they should provide inspiration for advocates who are considering how any advocacy campaign aimed at tackling the issue of out-of-school children can maximise the chances of reaching all those out of primary education.

**International and Regional Advocacy**

In addition to influencing national advocacy strategies, an equality law approach also opens up a range of *international and regional advocacy opportunities* for civil society actors, which may reinforce, support and strengthen domestic advocacy campaigns.

International advocacy opportunities include:

- **Engagement with Treaty Bodies**: Treaty bodies are supervisory bodies tasked with reviewing states’ compliance with their treaty obligations through the State Reporting process, and with elaborating on the scope, content and interpretation of the rights contained within the relevant treaty through issuing General Comments or Recommendations. Adopting an equality law approach means that advocates can engage with the full range of treaty bodies concerned with the rights to equality and non-discrimination.

- **Engagement with the Universal Periodic Review Process (UPR)**: The UPR is an oversight mechanism of the UN Human Rights Council which assesses the extent to which states respect the obligations set out in all human rights treaties to which a state is party. Civil society actors have the opportunity to engage in various stages of the review process and, through adopting an equality law approach in their interventions, can highlight states’ failures to fulfil their obligations under all treaties in which the rights to equality and non-discrimination are protected.

There are also a number of opportunities for civil society to engage in advocacy at the *regional level*; these include the following:

- **Inter-American Commission on Human Rights (IACHR)**: Civil society actors can engage with the IACHR through various mechanisms in order to exert pressure on national governments, including participating in thematic hearings, and submitting information to various thematic rapporteurs. Adopting an equality law approach provides opportunities to engage with a broader range of thematic rapporteurs who are charged with considering the situation of groups, communities and peoples that are at risk of human rights violation due to issues of historic discrimination.

- **African Commission on Human and Peoples’ Rights**: Civil society actors may engage with the Commission through submitting Shadow Reports under the Commission’s periodic review process and through various “subsidiary mechanisms”, including those focussing on marginalised groups.

- **EU and Council of Europe**: There are a number of ways for advocates to influence state policy and practice through engaging with different EU institutions, such as the European Commission. The Council of Europe also contains various mechanisms under its human rights mandate which provide opportunities for civil society advocacy and engagement, including the thematic work of the Commissioner for Human Rights.

- **ASEAN Intergovernmental Commission on Human Rights (AICHR)**: Civil society organisations and institutions can apply for consultative status with the AICHR, allowing them to provide information regarding human rights violations to the AICHR.
STRATEGIC LITIGATION

As with advocacy, there is no single, authoritative definition of “strategic litigation”: in this report, it is understood as synonymous with “public interest litigation”, meaning legal action that has the **aim of creating a broader societal transformation to the benefit of the marginalised within society.**

In the context of out-of-school children, strategic litigation can be used to ensure that the rights to equality and non-discrimination are respected, protected and fulfilled by the state in law and policy, and thus improve enjoyment of the rights to equality and non-discrimination in education.

There are a number of issues to be considered by any civil society actor thinking about embarking on strategic litigation. Given that claims based on the rights to equality and non-discrimination are available, applied and interpreted in varying ways across different jurisdictions, the discussion below is intended to provide general guidance and inspiration for litigators in developing strategies that are tailored to their own legal and factual contexts. In all cases, where the civil society actors themselves are not lawyers, and in some cases where they are, it will be necessary to gather an appropriately qualified and expert legal team to litigate the case. In any instance, lawyers will need to
be heavily consulted in respect of most of the steps which follow.

Is litigation appropriate?

The first question to consider is whether it is appropriate in all of the circumstances to pursue strategic litigation, taking account of: the time- and resource-intensive nature of litigation; external factors, such as the broader political context; and the interrelation between litigation and other potential strategies for achieving change, such as advocacy.

Mapping out your objectives

Achieving positive social change through strategic litigation is complex, and litigators must be careful only to take on a case that they consider will best advance their wider objectives.

Unlike in broader legal services, the objective will not necessarily be to “win” the case and, indeed, traditional notions of winning and losing a case may be misleading. For example, where a case is “won”, change will not necessarily occur unless the court’s judgment is effectively implemented; on the other hand, an unsuccessful claim may nevertheless prompt the government to take action.

When setting objectives, litigators must also think beyond the judgment stage and consider what will be required in terms of an implementation strategy.

Identifying a forum

Actors must identify an available “forum” for bringing a claim based on the rights to equality and/or non-discrimination, meaning the place where the case or complaint will be heard and decided. This could include bodies or courts at the domestic, regional and international levels.

In choosing a forum, litigators must consider whether the forum is legally available, meaning that the claimant must have standing to bring a claim, and the rules governing the forum must enable an equality and/or discrimination claim to be brought. They must also consider whether the forum is practically appropriate, considering factors such as the applicable rules of evidence, the costs of litigating in the forum, and the remedies available.

Claimants

A suitable claimant may need to be identified and selected, taking into consideration whether an individual or collective complaint would be more appropriate, and whether the claim could and should be brought by a representative organisation.

In a claim based on the right to equality, potential claimants will include children who have not received equal protection and benefits of laws relating to the provision of primary education.

In a claim based on the right to non-discrimination, it is necessary to consider the extent to which the potential claimant or group of claimants’ complaints relate to one or more protected characteristics:

- Where a potential claimant possesses a number of protected characteristics, actors should consider whether to argue the case based on “traditionally” recognised grounds (such as sex), on less accepted grounds (such as socio-economic disadvantage) or on both.
- Relying on a “traditional” ground, such as sex or race, will allow actors to draw upon existing jurisprudence (both national and international)
- Claims brought on grounds that are less well-recognised at the national level may be more challenging, but may serve an important purpose in progressively developing the law.

Claims

The claim itself must be formulated.

- When bringing a claim for non-discrimination, claimants will generally have to show less favourable treatment because of a protected characteristic (direct discrimi-
nation); a particular disadvantage resulting from a neutral criterion, rule, policy, or practice (indirect discrimination); a failure to make reasonable accommodation; or harassment.

- In some jurisdictions it is also possible to claim that the state has violated a person’s right to equality by failing to take positive action.

Illustratively, claims may be brought to:

1. **challenge discriminatory policies and practice in education**, such as in the US cases of *Plyler v. Doe* (which concerned the exclusion of undocumented children of Mexican origin from schools in Smith County, Texas) and *Antoine et al. v Winner School District* (which concerned the claim that the disciplinary policy in schools in Winner School District, South Dakota discriminated against Native American students)

2. **challenge discrimination or inequality in state policies regarding the provision of school resources**, such as in the cases litigated in South Africa combating disparities in the provision of school resources that were grounded in racial discrimination (including *Madzodzo and Others v. Minister of Basic Education* and *Others and Minister of Basic Education v Basic Education for All*)
3. **challenge discrimination or inequality in state policies regarding investment in the education of specific groups**, such as in the South African case of *Western Cape Forum for Intellectual Disability v. Government of the Republic of South Africa and Another* (2010)

4. **ensure that states implement the right to equality by taking positive action to secure the equal participation of all children in education**, such as in the Colombian case *Decision T-025 of 2004* (which concerned access to education for internally displaced children) and the Sri Lankan case of *de Soyza and de Silva (Minor) v Minister of Education and ors* (in which the court emphasised the need to take measures to eliminate discrimination against persons living with HIV/AIDS, including in education).

**Respondents**

Careful consideration should be given to choosing the most appropriate respondent.

- Often this will be a **state actor**, since the state is the primary duty-bearer responsible and accountable for fulfilling the rights to equality and non-discrimination.
- However, given the interlinking nature of the many discriminatory barriers to primary education, there may be a number of potential respondents aside from the national government and ministry for education, including the **state treasury** and **ministries for transport, social affairs and health**.
- Depending on the applicable national law, **non-state actors** (including private school providers) may also be held accountable for breaches of the rights to equality and non-discrimination.

**Evidence and proof**

The precise procedural and evidential rules applicable in a case will depend on the forum; however, there are certain considerations that are often relevant in discrimination and equality cases.

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**Facts**: This case challenged the failure by the Western Cape government to provide children with intellectual disabilities with appropriate and adequate education: the state allocated more funding to children with a “moderate intellectual disability” than to children who were classified as having a “severe and profound intellectual disability”. The only education available for children with profound intellectual disabilities was at “special care centres” operated by NGOs, and there were insufficient centres to cater for the educational needs of all such children. Those children who were unable to access a special care centre consequently received no education at all. The claimants argued *(inter alia)* that this breached these children’s right to equality.

**Outcome**: The High Court held that the respondents were infringing the right to equality of the affected children, finding that these children had been “singled out for manifestly less favourable treatment than others”. The Court also rejected the respondents’ justification regarding the insufficiency of state resources, noting that they had failed to explain why the available funds were allocated in such a manner that the affected children were “cut out of the picture entirely”. The Court ordered the respondents to take reasonable measures to give effect to the rights of severely and profoundly intellectually disabled children in the Western Cape, including ensuring that every such child had affordable access to basic education of an adequate quality; giving adequate funds to the NGOs providing education at the special care centres; providing appropriate transport for the children to attend such centres; enabling the staff of such centres to receive proper training and pay; and making provision for training persons to provide education for profoundly intellectually disabled children.
**Firstly**, the burden of proof is usually such that the claimant must provide some evidence of discrimination (a *prima facie* case) which the respondent(s) must then rebut.

**Secondly**, litigators may need to be resourceful in gathering evidence for claims, including through taking steps pre-litigation such as submitting questionnaires or freedom of information requests.

### Remedies

The remedies available in any given case will be context dependent. However, when determining the remedies to be sought from the court, actors should consider how they might seek both to achieve *wider social transformation* and *compensate* the claimant(s); the legal and political *limitations* on the power of the court to award certain remedies; and the respondent’s record in *implementing* remedies previously awarded.

Remedies may include:

- **legislative remedies**, which can potentially have a far-reaching impact;
- **structural injunctions**, which direct a government or administrative body to take particular steps towards reform and are therefore often considered to be particularly ‘coercive’ in nature;
- **financial compensation**, including pecuniary and non-pecuniary damages; and
- **declaratory orders**, which involve a declaration that there has been a violation of the right in question.

If a case is **settled out of court**, this may provide an opportunity to **negotiate remedies** that are more extensive than would be ordered by the court.

### Implementation strategies

In order for change to be achieved, any remedies awarded by the court or agreed out of court must be **effectively implemented**.

Actors should ensure that their litigation strategy includes an **advocacy component**, with a particular emphasis on follow-up advocacy to ensure *compliance* with the court judgment or settlement.

This may involve engagement with grassroots actors, local and international media, parliamentarians and legislators, the national human rights institution and international stakeholders (such as international organisations and donors).

### Other possibilities for involvement in strategic litigation

NGOs and other interested parties can play an important and influential role in cases, even if they are not involved in initiating them.

In many forums, interested third parties may be permitted to intervene in the case through submitting a **third party intervention** or **amicus curiae brief**, thus giving the opportunity to draw the court’s attention to arguments or information that the parties may not have presented, including relevant comparative jurisprudence.
Learning InEquality demonstrates the extent to which discrimination and inequality impede children’s access to and completion of primary education, and thus contribute to children being out of school.

As evidenced in Chapter 3, the discriminatory barriers that children face in accessing and/or completing primary education are many and various. These range from the failure to eliminate the direct and indirect costs of schooling, the geographical inaccessibility of schools and enrolment requirements and procedures, to inadequacy of physical and human resources within schools, problems with language, curricula and other educational materials, and discriminatory violence, bullying and harassment.

The report has also shown the conceptual and practical reasons why equality law should be used to tackle the issue of out-of-school children. These include the fact that:

- there is a clear relationship between education, historical patterns of discrimination, and socio-economic disadvantage;
- the rights to equality and non-discrimination can potentially have strong legal and rhetorical force;
- equality law can play a crucial role in guiding the allocation of state resources to benefit the most disadvantaged; and
- the issue of out-of-school children is a development issue, and equality law is central to the fulfilment of the development agenda set out in the Sustainable Development Goals (SDGs).

Implications for States

The findings of Learning InEquality have a number of implications for states. The state is the primary duty-bearer of binding human rights obligations, and has a duty to respect, protect and fulfil the equal right to education for all without discrimination. States have also committed to inclusive education by supporting the SDGs, and so have both political commitments and legal obligations.

If states are to meet their obligations (both legal and political), it is not sufficient for them to take general measures aimed at ensuring universal access to and enjoyment of education. Rather, states must take specific and targeted measures to eliminate discrimination and ensure equality in education. This requires the identification and removal of discriminatory barriers which prevent certain children from accessing education, as well as the taking of positive action to correct historic and systemic inequalities which keep certain children from attending school.

Implications for international education stakeholders

Given the serious gap between obligation and reality in respect of ensuring that no primary school child is out of school, it is necessary for all relevant stakeholders and actors – including civil society, international human rights and development actors, education providers, international organisations and donors – to take action to put the findings of Learning InEquality into practice by integrating an equality law approach into all education-related work. This has particular implications in four key areas.
**IMPLICATIONS FOR INTERNATIONAL EDUCATION STAKEHOLDERS:**

1. **Education programme financing**: Those financing education programming should ensure that they adopt an equality law approach in their funding decisions in order to ensure that funding for education programming is both targeted and effective.

2. **Education policy**: In order for the right of all children to a free primary education to be realised, it is necessary for those involved in the formulation of education policy – at both the domestic and international levels – to adopt an equality law approach to the formulation of education policy.

3. **Technical support to domestic actors**: International actors should look to support domestic state and civil society actors in their efforts to implement an equality law approach, by providing not only financial but technical assistance.

4. **Other international programmes**: There is a need to integrate thinking about equal education into other areas of tangential programming, such as the eradication of child labour, access to water and healthcare, and the provision of humanitarian aid.

The overarching conclusion of **Learning InEquity** is that if the goal of “Education for All” is to be achieved, an equality law approach is an essential part of the effort: only by adopting an equality law approach to education can we move from learning inequality, to equality in learning.
The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. The Trust focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

There has long been a global commitment – in the context of both international human rights law and development goals – to “education for all”, and to universal primary education in particular. Yet in 2017, an estimated 61 million children of primary school age are out of school. This group is made up disproportionately of children from disadvantaged groups – girls, children with disabilities, ethnic and racial minority children, refugee children and the socio-economically disadvantaged.

Learning InEquality explores how both current and past patterns of discrimination lead to children being out of school. It analyses existing data from across the world to explore and map the various ways in which direct and indirect discrimination, harassment and failure to make reasonable accommodation restrict access to education for certain children, and identifies government failures to rectify the issue through positive action measures. From the direct and indirect costs of schooling to discriminatory bullying and harassment, there are multiple discriminatory barriers to primary education to address.

The report provides more than a diagnosis. It also proposes a solution, illustrating how the adoption of an “equality law approach” to education is both necessary to achieve the goal of education for all and how such an approach can be strategically beneficial for those working to ensure children can access school. With a focus on advocacy and strategic litigation interventions, the report explains how an equality law approach can lead to the identification and removal of the discriminatory barriers which lead to certain children being out of school.

The report demonstrates how governments, civil society actors and all those with a stake in education, can and should integrate an equality law approach into their efforts to increase educational participation.

In so doing, the report aims to demonstrate how we can move from learning inequality, to equality in learning.