

Conceptualizing the Right of Children to Adaptable Education

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Abstract

The contention put forward here is that a conceptualization of the right to adaptable education, derived from international human rights law, may be a key factor in interpreting and reviving the notion of multiculturalism in education. We will begin by analyzing two interrelated dimensions of the right to adaptable education: adaptability to the children's circles of cultural affiliations and adaptability to the children's preferences. We will continue by describing the need to balance between the right to adaptable education and other features of the right to education - available education, accessible education and acceptable education - as well as with parental rights and social interests. We will conclude by suggesting that the right to adaptable education, as it is defined by international human rights law, can be employed both as a safeguard against denying children educational rights by using the pretext of multiculturalism and as a means for furnishing the notion of multiculturalism with honed, multilayered relevance.

Keywords

education; children; culture; human rights; international law

1. Introduction

Multiculturalism has failed, announced David Cameron, Britain's Prime Minister, in a speech he gave at the Munich Security Conference on December 2010. UK needed, he argued, a stronger national identity, to prevent people turning to all kinds of extremism (BBC, 2011). Cameron specifically mentioned a need for tougher stance on groups promoting Islamist extremism, and elaborated:

Let's properly judge these organizations: Do they believe in universal human rights - including for women and people of other faiths? Do they believe in equality of all before

the law? Do they believe in democracy and the right of people to elect their own government? Do they encourage integration or separatism? These are the sorts of questions we need to ask. Fail these tests and the presumption should be not to engage with organizations. (Ibid.)

A few months earlier, on October 2010, Germany's Chancellor, Angela Merkel, addressed the same issue at a gathering of younger members of her conservative Christian Democratic Union. She said:

At the beginning of the 60s our country called the foreign workers to come to Germany and now they live in our country. We kidded ourselves a while, we said: "They won't stay, sometime they will be gone", but this isn't reality'... And of course, the approach [to build] a multicultural [society] and to live side-by-side and to enjoy each other... has failed, utterly failed. (BBC, 2010)

As the heated waves of comments and debates following these articulations suggest, some of the public policies that were based on the concept of "multiculturalism" became a source of societal rift. Among the many opposing views and arguments that are being expressed in regard to multiculturalism, one point seems to be in consensus: education is the key issue when dealing with multiculturalism. It can shape the future of multicultural societies. While education can promote segregation, separatism and isolation, it can also advance tolerance, human rights consciousness, and respectful recognition of different cultural heritages. How can the ship of education wisely navigate in an ocean of conflicting interests and mounting fears and suspicions of different segments of populations? The contention put forward here is that a conceptualization of the right to adaptable education, derived from international human rights law, may be a key factor in interpreting and reviving the notion of multiculturalism in education.

The right to education is a relatively new concept in international human rights law. Though it is historically linked to the struggle against child labor, it became associated to a much wider range of ideological and moral principles (Tomasevski, 2005, 74). Today, the right to education is recognized by various international instruments.² Generally, the international human rights law guarantees four features of the right to education, which were defined by the UN Committee on Economic, Social and Cultural Rights:³ availability of

¹) Merkel's words interestingly resonate the famous aphorism, coined by the Swiss Author Max Frisch decades ago: "We asked for workers, and human beings came."

²) See, e.g. Universal Declaration of Human Rights, Article 26; International Covenant on Economic, Social and Cultural Rights, Articles 13-14; Convention on the Right of the Child, Articles 28-29; Convention against Discrimination in Education, Article 5(1); World Declaration on Education for All. For the protection of the right to education by regional legal instruments, see Beiter, 2006, 155-224.

³) See UN Committee on Economic, Social and Cultural Rights, 1999, para. 6. For further elaboration see Tomasevski, 2001, 11.

functioning educational institutions and programs; accessibility of educational institutions and programs to all, without discrimination; acceptability of the form and substance of education; and adaptability of education to the needs of changing societies and communities, and to the needs of students within their diverse social and cultural settings.

Hereinafter, we will suggest a conceptualization of the adaptability feature of the right to education in international human rights law. The UN Committee on Economic, Social and Cultural Rights, which set down the four features of the right to education, did not delineate these features in detail. Our aim is to propose a theoretical analysis of the adaptability feature and possible contexts for its application. Relying on the international human rights instruments, we would like to put forward that the right to adaptable education in these instruments is constituted by two interrelated dimensions: adaptability to the children's circles of cultural affiliations and adaptability to the children's preferences. We will continue by describing the need to balance between the right to adaptable education and other features of the right to education - available education, accessible education and acceptable education - as well as with parental rights and social interests. Finally, we will suggest that the right to adaptable education, as it is defined by international human rights law, can be employed as a safeguard against denying children educational rights by using the pretext of multiculturalism. We will also contend that the provisions which delineate the right to education in international human rights law should be adopted as a standard for intervention in illiberal educational practices.

2. Delineating the Right to Adaptable Education in International Human Right Law

Our proposed conceptualization of the right to adaptable education is based on two interrelated dimensions: adaptability to the children's circles of cultural affiliations and adaptability to the children's preferences. The right to adaptable education may include other aspects as well, which may be embedded in national legislation or regional human rights instruments. We chose to focus on the dimensions that are articulated by the international instruments in order to illustrate the general contour of the right to adaptable education, which gained widespread acceptance in the world community.

Figure 1 refers to the proposed conceptualization of the right to adaptable education.

As the figure presents, the right to adaptable education includes several circles, denoting the personal preferences of the children, and their various cultural affiliations. The figure depicts the interrelationships between the circles of adaptability – the children are part of their families, which belong to

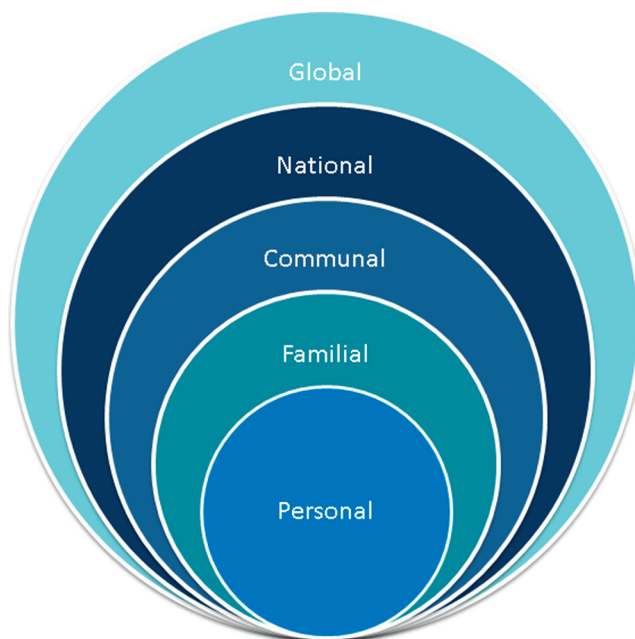


Figure 1 Conceptualization of the right to adaptable education.

communities, which are part of a nation, which is a part of the world. Each child has his or hers own circles of adaptability, which sometimes may include more than one nation, ethnic origin or race.

2.1. Adaptability to the Children's Circles of Cultural Affiliations

The Convention on the Rights of the Child provides that education shall be directed towards “the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own” (Article 29(1)(c)). The Convention on the Rights of the Child thus formulates the adaptability feature by mentioning several circles of belonging; some of them denote the children’s family and community and others are national and international. The Convention on the Rights of the Child also guarantees the adaptability of the right to education by protecting the right of a child who belongs to ethnic, religious or linguistic minorities or persons of indigenous origin “to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”, in community with other members of his or her group

(Article 30).⁴ The International Covenant on Economic, Social and Cultural Rights does not mention the adaptability feature as one of the aims of education (Article 13(1)). However, the provision that guarantees that secondary education shall be made generally available and accessible to all, relates to secondary education “in its different forms” (Article 13(2)(b)), thereby recognizing that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings (The UN Committee on Economic, Social and Cultural Rights, 1999, para. 12).

The adaptability of education to the children's cultural affiliations is part of the children's right to culture, which is perceived by some scholars as linked to other human rights such as the freedom of association, freedom of religion, freedom of consciousness, and freedom of expression (Sapir, 1999-2000, 625-640; Walzer, 1997, 9). Realizing the right to culture is essential for developing the children's identity (Spring, 2000, 135; Rawls, 1999, 166), and provides them with a sense of belonging and emotional security (Halstead, 2003, 273). It also enables children to express themselves meaningfully, in ways fashioned by social practices (Raz, 1990), and choose their own path in life from a range of valuable options (Kymlicka, 1995, 83).⁵

Some philosophers argue that cultures are so intermingled that there is no practical way to say where one culture ends and another begins.⁶ As Martha Nussbaum puts it, each of us dwells in two communities - the local community of our birth and the community of human argument and aspiration (Nussbaum, 1994, 7).⁷ The “cosmopolitan self”, according to Jeremy Waldron, lives in a kaleidoscope of cultures. He or she may live in San Francisco and be of Irish ancestry; he or she does not take his or her identity to be compromised when he or she learns Spanish, eats Chinese, wears clothes made in Korea, listens to arias by Verdi sung by a Maori princess on Japanese equipment, follows Ukrainian politics, and practices Buddhist meditation techniques (1995, 85). The cosmopolitan may live all his or her life in one city and maintain the same citizenship throughout, “but he refuses to think of himself as defined by his location or his ancestry or his citizenship or his language” (Ibid.). Based on this image of the self, Waldron criticizes the assumption that

⁴) These dimensions of the right to adaptable education receive additional emphasis when indigenous children are at stake. See Declaration on the Rights of Indigenous Peoples, Article 15(1).

⁵) Kymlicka asserts that our societal culture not only provides us with the possibility to make choices amongst various options but also makes them meaningful to us. For him, cultures are valuable, not in and of themselves, but because it is only through having access to a societal culture that people have access to a range of meaningful options (1995).

⁶) See, e.g. Waldron, 1995, 109-110.

⁷) Cited *ibid.*, 23.

what everyone needs a single, coherent culture to give shape and meaning to his life (Ibid., 108).

Indeed, human beings belong to various cultural groups. The boundaries between the groups are often blurred or fluid (Mautner, 2011). This is especially evident in regard to children in Western countries, who often conduct substantial part of their social lives through the Internet. As noted above, the right to adaptable education is shaped by the perception that people do not belong to one single culture. However, this perception does not imply that people are necessarily "cosmopolitan". As Menachem Mautner indicates, cultural groups have different roles in the lives of individuals who are affiliated to them. With some groups people identify more than with others (Ibid.). Adaptability to the children's various circles of affiliations requires sensitivity to this point.

2.2 *Adaptability to the Children's Preferences*

According to our contention, adaptability of education to the needs of children requires a process that takes into account the children's views. This process is delineated by the Convention on the Rights of the Child, which guarantees "to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child" and that "the views of the child being given due weight in accordance with the age and maturity of the child" (Article 12(1)). Other provisions in the Convention on the Rights of the Child which entail the adaptability of education to the children's preferences guarantee the children's freedom of thought, conscience and religion (Article 14(1)) and freedom of expression (Article 13).

A review of researches that explored different practices of pupil's participation in schools indicates that pupils possess unique knowledge and perspectives about their rights that adults cannot fully replicate (Mitra & Gross, 2009, 523-524). Moreover, as John Smyth puts it, when pupils "feel their lives, experiences, cultures, and aspirations are ignored, trivialized, or denigrated by school and the curriculum, they develop a hostility to the institution of schooling" (Smyth, 2006, 279). In such cases, pupils might actively exercise "their right to resist" by choosing to "not learn" (Ibid., 282). Therefore, Smyth writes, it is a considerable challenge to construct spaces fitting the aspirations of young people (Ibid.). This dimension of the right to adaptable education requires attentiveness to shifts in zeitgeist in light of the rapid changes that characterize the children's preferences. For example, the ubiquitous use of social networks such as Facebook and Tweeter could and should be harnessed to educational practices.

Attentiveness to personal preferences demands mechanisms that allow pupils to influence their educational environment.⁸ Gerison Lansdown suggests three possible such mechanisms. The first is consultative processes, in which adults initiate channels for obtaining information from children. Through that information legislation, policies or services can be improved. The second is participative initiatives, where the aim is to strengthen processes of democracy, create opportunities for children to understand and apply democratic principles, or involve children in the development of services and policies that impact on them. The third is promoting self advocacy, where the aim is to empower children to identify and fulfill their own goals and initiatives (Lansdown, 2000, 16).⁹ A comparable categorization was suggested by Dana L. Mitra and Steven Jay Gross, who portrays a "pyramid of student voice", which begins at the bottom with the most common form of "being heard", goes on with the level of "collaborating with adults", and ends with the final level at the top of the pyramid - "building capacity for leadership" (Mitra & Gross, 2009, 523-524).¹⁰ As these categorizations manifest, the children's right to participate may be realized in various ways, which range from "voice" to different forms of "choice", and evolves as they grow up.¹¹

As mentioned, the adaptability of education to the children's preferences and the adaptability of education to the children's cultural affiliations are

⁸) Michael Fielding describes various mechanisms of student's participation which range from the familiar engagement with social and interpersonal matters (e.g. prefects, buddying, mentoring, coaching, and traditional school councils), through more innovative, often student-led developments (e.g. school ambassadors, student-led learning walks, lead learners, student leaders, students as co-researchers and lead researchers, and more radical forms of student council), to a burgeoning range of ways in which professional perceptions about the suitability and performance of staff are significantly informed by student perspectives and judgements (e.g. students as observers, students on staff appointment panels, students as governors/school board members, student focus groups and surveys, and students as key informants in the processes of external inspection and accountability). See Fielding, 2006, 299-313.

⁹) See also John, 2001, 136.

¹⁰) At the final level, students can share in the leadership of the student voice initiative and also serve as a source of criticism and protest in schools (Mitra & Gross, 2009, 524).

¹¹) "The evolving capacities" principle, which shapes the children's right to participate according to their age and maturity (The Convention on the Rights of the Child, Article 12(1)), should not serve as a mean for preventing participation rights from young children. In 2006, the Norwegian parliament inserted a new section to the Kindergarten Act which ensures that children in kindergartens "will have the right to express their views on the day-to-day activities of the kindergarten ... will regularly be given the opportunity to take an active part in planning and assessing the activities of the kindergarten" and that "[t]he children's views will be given due weight according to their age and maturity" (Norwegian Ministry of Education and Research, 2006. Cited in Bae, 2010, 205-206). This amendment resulted in empirical researches that develop tools for its implementation. For a review, see *ibid*. See also De Jong, Eklundh & Lutz, 2009.

interrelated. Cultures are dynamic and evolve constantly. Human beings continuously produce cultural contents and import cultural contents from other cultures (Mautner, 2008, 617-618). To be deemed adaptable, education thus requires an unremitting attention to the changing cultural contents;¹² a process in which children should be meaningful agents.

3. The Limits of the Right to Adaptable Education

The right to adaptable education does not emblem a clear-cut concept, and is not free from ambiguity. One complexity is the need to achieve a balance between the feature of adaptability and other features of the right to education - available education, accessible education and acceptable education. Additionally, the right to education is to be balanced with other human rights and social interests.

3.1. *The Right to Adaptable Education and Other Features of the Right to Education*

One set of limits to the right to adaptable education is embedded in the way the right to education is defined. For example, the right to available education of children who study in public schools requires availability of functioning educational institutions and programmes in sufficient quantity within the jurisdiction of the State (The Committee on Economic, Social and Cultural Rights, 1999, para. 6). The UN Committee on Economic, Social and Cultural Rights indicates that the functionality of the educational institutions and programmes includes, inter alia, buildings, sanitation facilities for sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on (Ibid.). Thus, when the State allocates considerable funds to small private religious schools, which are designated to meet the demand of specific religious affiliations, it fulfils certain aspects of the right to adaptable education of the children who study in these schools, but the price might be undermining the right to available education of the children who study in public schools.¹³

¹² The World Declaration on Education for All states that "[e]very person - child, youth and adult - shall be able to benefit from educational opportunities designed to meet their basic learning needs" and that "the scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time" (Article I(1)).

¹³ In Israel, for example, provisions that were enacted recently obligate the State and the local authorities to allocate recognized non-official schools at least 75% of the funds that they allocate official schools (National Education Act, 1953, Article 11A; National Education (Recognized

Another kind of conflict might arise between the right to adaptable education and the right to accessible education, which one of its components is non-discrimination.¹⁴ This conflict is often raised in regard to admission policies of schools that have a certain religious or cultural character. The Convention against Discrimination in Education determines that the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians shall not be deemed to constitute discrimination, "if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities" (Article 2(b)). Yet, it is sometimes difficult to pinpoint the line that separates between lawful distinction and wrongful discrimination.¹⁵ When such cases arise, the courts seem to struggle with the tension between the legal definitions of discrimination and the norms of religious communities.¹⁶

The right to adaptable education might also affect the right to acceptable "form and substance" of education, especially when the State exempts certain religious or cultural communities from generally applicable education laws. This is the case when British Traveller pupils are allowed not to attend school during a large part of the school year,¹⁷ when Israeli ultra-Orthodox pupils are allowed not to study a basic core-curriculum,¹⁸ and when Amish American children are allowed not to attend high-school.¹⁹

Institutions) Regulations, 1953, Regulation 9). These provisions were intended to ensure the funds of ultra-Orthodox schools. They were not complemented with a raise of the Ministry of Education's budget. Hence, the same "cake" is divided between more schools. The funds that are allocated to recognized non-official schools, which their number is increasing steadily, reduce the limited funds of official schools.

¹⁴) See The Committee on Economic, Social and Cultural Rights, 1999, para. 6.

¹⁵) See, e.g. *R (on the application of E) (Respondent) v Governing Body of JFS and the Admissions Appeal Panel of JFS and others (Appellants)*, 2009 (a British case); *Noa'r Kahalacha Association v. The Ministry of Education*, 2009 (an Israeli case); *Doe v. Kamehameha*, 2006 (an American case).

¹⁶) See Weiler, 2010.

¹⁷) In the United Kingdom, children whose parents are "Travellers" are exempted from the regular school attendance requirements. According to section 444(6) of the Education Act, 1996, parents who can establish that they are engaged in a trade or business of such a nature that requires them to travel from place to place will not be guilty of an offence according to the Education Act if their children have made at least 200 sessions per year (out of the required 380 sessions). This exemption applies to "Travellers" - a commonly accepted term that embraces members of a variety of nomadic groups. See Tyler, 2005, x.

¹⁸) In Israel, secondary Ultra-Orthodox schools for boys are exempted from curricula requirements. The Culturally Unique Educational Institutions Act 2008 allows these schools to teach only religious studies, providing they are not opposed to the values of Israel as a Jewish and democratic State (Article 2(b)(1)). See Perry-Hazan, 2011).

¹⁹) In the United States, the Amish community is exempted from the compulsory school attendance laws after the eighth Grade. This exemption was granted in 1972 in the *Wisconsin v. Yoder* case, 1972, and was not challenged again. Scholars criticized the majority opinion in *Yoder* for

3.2. *The Right to Adaptable Education and Parental Rights*

The children's right to adaptable education complements in many aspects their parents' right to raise them as they see fit. As mentioned, education should be adapted, *inter alia*, to the children's family and communal traditions. However, when parents aim to isolate their children from wider circles of affiliation, their rights might conflict with the children's right to adaptable education. A similar conflict occurs when parents prevent their children from participating in the shaping of their educational environment and choosing between different educational options according to their age and maturity.²⁰

3.3. *The Right to Adaptable Education and Social Interests*

The right to adaptable education may influence social interests, especially those that are related to social unity.²¹ Political theorists do not agree as to the basis for social unity in multicultural states. In his influential "Multicultural Citizenship", Will Kymlicka summarizes several approaches (1995). According to the first approach, social unity depends on shared values. John Rawls, for example, claims that the source of unity in modern societies is a shared conception of justice. According to Rawls, public agreement on questions of political and social justice supports ties of civic friendship and secures the bonds of association in a divided and pluralistic society (1980, 540). Another approach emphasizes the idea of a shared identity. Kymlicka argues that in nation-states a shared identity derives from the commonality of history, language, and maybe religion, while in multicultural states, the basis for a shared identity often seems to be pride in certain historical achievements (1995, 188). A third approach suggests that the basis of social unity in multicultural states is, in Charles Taylor's words, a respect for "deep diversity" (Taylor, 1991, 53).

There is no doubt that education plays a significant role in creating shared values, shared identity, and a respect for "deep diversity". Therefore, it is often claimed that education that is too culturally-centric might hinder the social unity in multicultural states, and consequently weaken the democratic regime. It seems, however, that the presented conceptualization of the right to adaptable education as reflecting multiple affiliations - some of them are national and global - has the potential to promote social unity.

failing to pay sufficient attention to the rights of the Amish children. *See, e.g.* Biedrzycki, 2006; Reich, 2002.

²⁰⁾ On the conflicts between children's rights and parental rights *see* Freeman, 2007, 16.

²¹⁾ In the British context, *see* Allen & West, 2009. *See also* Home Office, 2001.

4. Conclusion: The Future of the Right to Adaptable Education

Multicultural theories usually dwell in the realm of political theory. Typically, they offer somewhat abstract suggestions for dealing with non-liberal groups that live within the liberal state. Some of these suggestions focus on education policy,²² and others offer broader theories, in which education policy is part of wider arrangements.²³ In a recent article Menachem Mautner suggests to proceed beyond the familiar liberal approaches that deal with multiculturalism and use standards derived from international human rights law (2008, 625-634). He contends that the doctrine of human rights has two major advantages which are absent from other approaches. First, it enjoys world-wide acceptance (*Ibid.*, 629). Second, its standards are much more lucid than intangible political theories. Even if the first layer of the human rights doctrine is somewhat vague and general, it is continuously supplemented by an additional layer embodying the decisions of international and national tribunals (*Ibid.*, 626, 630-631).

Indeed, the question of the universality of human rights is controversial (*Ibid.*, 626-630), and there is no doubt that their application carries different implications for liberal and illiberal cultures (Freeman, 2004). Notwithstanding, the human rights doctrine constitutes the most substantial attempt to create global standards, applicable to all human beings, no matter what their gender, race or social belonging is, as having intrinsic moral value (Mautner, 2008, 626, 629). This is especially significant in regard to the right to education, which enjoys a constitutional status in 140 countries (Rabin, 2007, 266). We contend that the international concept of the right to education may serve as a standard for intervention in non-liberal educational practices that exist in multicultural states. As elaborated above, the human right to education takes into account cultural differences. The children's cultural affiliations constitute a vital element in their right to adaptable education. Yet, as we suggested, certain cultural affiliations cannot serve as a mean for justifying the isolation of children from other cultural affiliations, for silencing their voice, or for derogating other features of their right to education. In other words, the right to education as it is defined by international human rights law can serve as a safeguard against denying children full educational rights by using the pretext of multiculturalism.

Surely, the proposed conceptualization of the right to adaptable education is not a "magic formula". It raises many ideological and practical questions. How can the right to adaptable education be implemented in a heterogynous

²²) See, *e.g.* Guttman, 1999; Macedo, 2000; Callan, 1997; Reich, 2002; Stolzenberg, 1993; Appiah, 2003; MackMullen, 2007.

²³) See, *e.g.* Rawls, 1993; Barry, 2001; Kymlicka, 1995; Galston, 2002; Kukathas, 1992; Levy, 2000.

class? Does it require an “adapted” teacher? Which subjects should be defined as adaptable?²⁴ Does adaptability of certain subjects, such as history, literature or arts, justify a unification of other subjects, such as civic studies? Does the right to adaptable education dictate a need to adapt the curricula to the gender of the child?²⁵ Additionally, there is not an assured process in which a state can reach a proper balance between the right to adaptable education, other features of the right to education, parental rights and social interests. States have developed their own approaches for conducting these intricate balances, which are embedded in their laws and jurisprudence, and depend on their specific circumstances. Yet, our assertion is that the right to education as defined in international human rights law, and as interpreted in international and national tribunals, is a sound enough basic framework which will prove to be firmer than abstract theories.

The challenge many multicultural societies face is indeed complicated. We hope that the proposed analysis of the right to adaptable education will assist conceptualizing the nature of the right of education, and reaching an agreed basis that will guarantee the realization of the right of children from each and every background to receive available, accessible, acceptable and adaptable education.

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²⁴) The role of history and literature studies in the realization of the right to adaptable education is more obvious than the role of science or mathematics studies.

²⁵) The Convention on the Right of the Child does not mention adaptability to gender. However, the right to equal educational opportunities (The Convention on the Right of the Child, Article 28(1)) requires an elimination of gender inequalities in education that can be attributed to lack of adaptability of the curriculum or the teaching methods. This question was researched and discussed at length. For a comprehensive literature review, see Buchmann, DiPrete & McDaniel, 2008. See also Forgasz *et al.*, 2010; McDaniel, 2010; TWIST: Towards Women in Science & Technology.

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