

LEGAL GUARANTEES OF EDUCATIONAL ACCESS FOR MARGINALIZED GROUPS WITHIN SUBSTANTIVE EQUALITY.

**Rafadi Khan Khayru, Faris Maringan S., A. Riza Zainudin, Freditama Sandakila,
Nabila Kirara Sakti, Nesti Herennadia, Wiwin Wihartini**

Correspondence: rafadikhan.khayru@gmail.com

Universitas Sunan Giri Surabaya

ABSTRACT

Access to education for marginalized groups requires more than formal admission to educational institutions because structural disadvantages may prevent individuals from effectively using educational services. This article examines the legal construction of educational access for marginalized groups and the obligations and protection mechanisms required to secure substantive equality. The study employs doctrinal legal research by examining constitutional provisions, education legislation, international human rights obligations, disability law, and administrative protection mechanisms. The synthesis shows that the right to education encompasses availability, accessibility, acceptability, adaptability, non-discrimination, and meaningful participation. Equal treatment cannot always be achieved through identical rules because poverty, geographical isolation, disability, social exclusion, and other disadvantages may require differentiated measures. State obligations consequently include financing, accessible facilities, reasonable accommodation, individual support, inclusive institutional structures, complaint procedures, and remedies capable of correcting both individual harm and structural exclusion. Legal protection should therefore assess educational access according to whether learners can actually enter, participate in, benefit from, and complete education with dignity and on substantively equal terms.

Keywords: Right to education, marginalized groups, substantive equality, non-discrimination, educational access, inclusive education, legal protection.

INTRODUCTION

Education is a right directly connected to the development of human capacity, social participation, economic mobility, and the ability to exercise other rights. Formal recognition of the right to education does not yet guarantee that everyone has equal opportunity to enter, participate in, and complete the educational process. Economic barriers, geographic conditions, disability, discrimination, social identity, and limited services can create a gap between the existence of schools and a person's actual ability to obtain an education (Soto et al., 2023). Tomaševski (2006) explains human rights obligations in education through the framework of availability, accessibility, acceptability,

and adaptability. This framework shows that education that is institutionally available does not yet fulfill the right if it cannot be reached by individuals facing particular vulnerabilities. Legal protection therefore requires attention to learners' actual ability to enter the education system, obtain appropriate services, and undergo education free from discriminatory treatment (Ali et al., 2024).

The term marginalized groups is used analytically to refer to individuals or groups facing structural limitations in exercising the right to education due to poverty, hard-to-reach residence, disability, particular social status, cultural identity, or other conditions that place them at a disadvantaged position within the education system (Patrick, 2022). This definition is not intended to create a new legal category, since regulations may use more specific classifications for groups receiving particular protection or services. McCowan (2012) distinguishes the right to education from respect for human rights within the educational process. This distinction broadens the measure of protection. A person may be administratively recorded as a student yet still experience restriction if the learning environment contains discrimination, violence, humiliation, or rules that make participation difficult (Fajar et al., 2022). The right of access must therefore encompass both the entry point into education and the conditions that allow a person to keep learning with dignity.

Formal equal treatment also does not always produce equality in education. Policies applying identical requirements to all students can produce different outcomes when economic capacity, physical condition, language, geographic distance, and family resources are unequal (Lestari et al., 2024). A student with a disability may need changes to facilities or teaching methods, while a student from a remote area may require a different form of service provision than urban schools. Tikly and Barrett (2011) link the quality of education to social justice through the dimensions of inclusion, relevance, and democracy. This approach shows that assessing access cannot be done merely by counting the existence of learning places or the number of students admitted. The law needs to consider whether the education structure enables disadvantaged groups to obtain a quality learning process and the capacity to develop equally with other students.

A legal issue arises when educational barriers are regarded merely as a social or economic matter lying outside the scope of rights obligations. Transportation costs, inaccessible facilities, biased admission processes, limited facilities in remote areas, or the absence of learning support can carry normative consequences if they cause certain groups to systematically lose access to education (Banaszak, 2024). Tomaševski's (2006) framework places accessibility as one of the essential elements of the right to education and links it to the prohibition of discrimination as well as economic affordability. This understanding shifts legal assessment from the question of whether educational institutions exist toward the question of who is able to use those institutions. This shift in focus carries great significance for marginalized groups because barriers often emerge through rules or conditions that appear neutral. Legal protection must be able to recognize discriminatory effects and assess the positive obligations needed so that the

right to education can genuinely be exercised (Rojak et al., 2024).

The right to education also has a quality dimension. Opening access without guaranteeing quality can produce an unofficial separation between groups that obtain quality education and groups that receive only minimal services (Balsera et al., 2016). Tikly and Barrett (2011) show that discussions of educational justice must connect inclusion with the relevance and quality of the learning experience. Marginalized groups may be physically present in school yet obtain a lower educational benefit if the facilities, teaching staff, learning materials, or support available do not meet their needs. This difference shows that legal protection must avoid understanding access as mere administrative admission. The opportunity to enter an educational institution needs to be linked to the ability to follow instruction, receive fair assessment, use facilities, and complete education. This perspective makes service quality and adaptation to learners' needs part of the discussion on equality of access.

The next scholarly issue concerns the relationship between non-discrimination and special measures. Equality is often understood as a demand to give identical treatment to everyone. This understanding can become inadequate when differing circumstances mean that identical treatment actually preserves inequality. Providing accessible facilities, financial assistance, special education services, adjustments to the learning process, or affirmative action may appear to be differential treatment, but their purpose is to reduce existing inequality. McCowan (2012) shows that respect for rights within education has an intrinsic basis connected to a person's standing as a rights-holder. This framework provides grounds for assessing education policy based on its capacity to respect the dignity and participation of students. Legal equality must therefore be translated through measures that are responsive to differing circumstances, rather than through uniformity that turns a blind eye to vulnerability.

Much discussion on education treats the expansion of access as a matter of development policy, while legal approaches often stop at the statement that education is the right of every citizen. Neither approach has fully explained when a gap in access turns into a matter of rights fulfillment, and what action is demanded of the state. Tomaševski (2006) offers a framework for reading rights through availability, affordability, acceptability, and adaptability, while Tikly and Barrett (2011) emphasize the relationship between quality and social justice. The convergence of these two directions enables legal analysis that assesses access through real opportunity, service quality, learners' needs, and the state's capacity to correct structural inequality.

This study aims to build a legal understanding of educational access for marginalized groups through the relationship between the right to education, equality, non-discrimination, the state's positive obligations, accommodation, and protection mechanisms for when educational services cannot be used equally. The disparity in educational access for women in rural areas shows that educational barriers relate not only to the availability of institutions but also to the social and economic conditions that limit certain groups' ability to make optimal use of educational opportunities (Ramle &

Mardikaningsih, 2024). Two research questions are posed. First, how should the legal construction of the right to educational access for marginalized groups be understood in light of the principles of equality and non-discrimination? Second, what should the state's obligations and legal protection mechanisms be to guarantee educational access that marginalized groups can use on an equal basis?

METHODS

This normative study integrates national and international legal materials related to the right to education, non-discrimination, disability, and rights-recovery mechanisms. Based on the doctrinal framework concept of Hutchinson and Duncan (2012), this approach focuses on the synthesis and systematic understanding of legal rules and concepts. The process of examining primary legal materials refers to the reasoning model of McConville and Chui (2007), which links source identification, conceptual reading, and legal logic, while still taking into account hierarchy, scope of regulation, and the level of enforceability of the regulations.

An explicit distinction is drawn between general rights regulation and specific protection norms for particular groups. This differentiation approach ensures that the category of marginalized groups is not treated uniformly, but rather adjusted to the characteristics and level of normative protection of each subject. The analytical scheme is then carried out through the mapping and comparison of documents across four main focuses: guarantees of the basic right to education and the principle of equality; state obligations in providing inclusive public services; fulfillment of reasonable accommodation for persons with disabilities; and complaint and rights-recovery mechanisms.

The assessment of legal documents applies Bowen's (2009) document analysis method to examine the purpose, scope of subjects, legal obligations, and effectiveness of implementation mechanisms. All supporting academic literature was selected based on strict bibliographic verification criteria to strengthen the normative interpretation. All findings were formulated purely on the basis of textual synthesis of the existing structure of legal guarantees.

RESULTS AND DISCUSSION

Construction of the Right to Access to Education and Equality for Marginalized Groups

The constitutional basis for the right to education is found in Article 31(1) of the 1945 Constitution of the Republic of Indonesia, which states the right of every citizen to obtain an education. Article 31(2) links basic education to the obligation of citizens as well as the government's obligation to finance it. The subsequent provision mandates the establishment of a single national education system and sets education budget priorities.

This structure shows that education is positioned as a right that gives rise to an active duty for the state, not merely a freedom that is adequately protected through a prohibition on interference (Adiwijaya, 2022). The right to education requires schools, educators, financing, facilities, planning, and policies that enable citizens to use such services. For marginalized groups, the meaning of the constitutional guarantee lies in the obligation to build a system capable of reaching citizens who cannot obtain an education solely through uniform general service mechanisms (Patel, 2024).

The constitutional guarantee must be read together with the principle of equality and protection against discrimination. Access to education becomes a matter of equality when a particular identity or condition makes it harder for a person to enter or sustain participation in education. Formal equality may be satisfied when admission rules are written identically for everyone, yet the effect of such rules can differ when some prospective students lack transportation, the ability to pay additional fees, disability support facilities, or equal access to information (Agarwal, 2024). Legal assessment needs to consider the real effects of education governance, since the right is not fulfilled simply because the state avoids overt discrimination. Systemic obligations can arise when the design of services repeatedly causes certain groups to lose opportunities. The right to education within the constitutional framework is therefore closely tied to equal use of services, not merely to equal normative language in regulations.

Law Number 20 of 2003 on the National Education System provides a clearer elaboration of this principle. This law is in force and regulates the rights and obligations of citizens, the government, local governments, the community, and students. Article 4 requires that education be administered democratically, fairly, and without discrimination, upholding human rights. This provision makes non-discrimination a principle of the system's administration, not an additional provision that applies only when a dispute arises. This norm provides a basis for assessing admission procedures, learning services, facilities, discipline, evaluation, and various educational administrative actions. Treatment that disadvantages certain groups can be assessed against the goal of fair and non-discriminatory administration, even where a policy does not explicitly mention marginalized groups.

Article 5 of the National Education System Law shows that equality of rights is not translated through uniformity of service. The law recognizes the right of every citizen to obtain a quality education, while also giving attention to citizens with physical, emotional, mental, intellectual, or social impairments. The same provisions recognize special services for citizens in remote or underdeveloped areas as well as isolated indigenous communities. Article 32 then regulates special education and special-service education as forms of response to the circumstances of students and their environment. This structure carries conceptual significance for marginalized groups. National law recognizes that fulfilling rights equally may require different forms of service. The state cannot always make the majority education model the sole standard, because some citizens need adjustments or the provision of services designed to fit their circumstances.

This construction aligns with international obligations accepted through Law Number 11 of 2005 ratifying the International Covenant on Economic, Social and Cultural Rights. This ratification makes Indonesia a state party to the Covenant, which recognizes every person's right to education under Article 13. The Covenant links education to the full development of the human personality and dignity, and sets obligations that differ according to the level of education. Primary education must be compulsory and available free of charge, while access to secondary and higher education must be progressively developed in accordance with the Covenant's provisions. The status of this right within an international treaty broadens how national obligations are read, since access to education is tied to the obligation to take concrete steps toward the fulfillment of rights and to the prohibition of discrimination in the enjoyment of economic, social, and cultural rights.

The Committee on Economic, Social and Cultural Rights, through General Comment No. 13 of 1999, provides an interpretive framework highly useful for assessing access. The Committee sets out four interrelated elements: availability, accessibility, acceptability, and adaptability. Accessibility encompasses non-discrimination, physical accessibility, and economic accessibility, while adaptability requires education flexible enough to respond to the needs of students amid diverse social and cultural circumstances. This framework shows that marginalized groups may experience access violations through several channels at once. A school may be available yet too far away, unusable by persons with disabilities, may impose unaffordable costs, or may use a learning process that disregards students' circumstances. Assessing rights requires examining all these elements together.

Non-discrimination in the right to education is of immediate effect, since the state cannot postpone the elimination of discrimination on the ground that the fulfillment of social rights takes time. General Comment No. 13 places non-discriminatory access to public educational institutions and programs among the core obligations. The document also states that failure to repeal discriminatory regulations or to take action required by the Covenant can constitute a violation of the right to education. This provision provides a basis for distinguishing the progressive obligation to expand resources from the immediate obligation to guarantee non-discriminatory treatment. For marginalized groups, this distinction has practical significance. Budget constraints may affect the pace of facility development, but budgetary reasons cannot automatically justify rules that directly exclude people because of a protected identity or condition.

Equality of access also requires attention to direct and indirect costs. The right to government-funded basic education can lose its meaning if families still have to bear expenses that make it difficult to sustain a child's attendance. Transportation costs, equipment, technology, assistance needs, or distance from home can create unequal burdens among citizens (Safira et al., 2022). General Comment No. 13 places economic accessibility within accessibility and distinguishes the character of the obligation according to the level of education. National law also ties basic education to the government's financing obligation at the constitutional level. The relationship between

these two norms shows that the measure of fulfillment should not stop at the abolition of official fees. Policy needs to assess whether the remaining cost structure still creates a systematic barrier for groups in weaker economic conditions.

Physical access carries a similar meaning. The distance to school, transportation conditions, building form, and learning facilities determine whether a service that is administratively available can actually be used (Sukri & Indartono, 2020). For communities in remote areas, the obligation to provide education may require a service model adapted to geographic conditions. For persons with disabilities, physical access relates to the ability to enter spaces, obtain materials, communicate, and take part in learning activities. General Comment No. 13 even cites accessible geographic location and the use of technology as examples of the physical-access dimension. Recognition of special-service education in the National Education System Law reinforces the idea that education providers cannot always wait for students to adapt themselves to an existing service structure. In certain circumstances, it is the service that must change so that the right can still be used equally.

The elements of acceptability and adaptability add a quality dimension to access. Education that is available and enterable can still fail to fulfill the right if the materials, methods, environment, or form of service are not relevant or do not match students' needs. General Comment No. 13 requires that the form and substance of education be acceptable, relevant, culturally appropriate, and of good quality, while adaptability requires flexibility to the needs of communities and students. For indigenous communities or groups with particular social characteristics, this aspect protects students from an education model that, in practice, forces them to choose between school access and recognition of their identity. Equality in education must preserve every student's ability to learn without losing dignity or being marginalized from the learning process.

This construction of rights shows that the term marginalized groups need not become a single legal category for the law to offer protection. Regulations work through general principles and more specific categories. The principle of non-discrimination protects against unequal treatment, while provisions on special education and special services recognize the need for differentiated responses (Das & Alaknanda, 2024). International instruments add the measures of availability, accessibility, acceptability, and adaptability. This combination enables the law to assess marginalization through the effects a person actually experiences in using education. The focus is not merely on naming a group, but on the condition in which a person has fewer opportunities due to the structure of services, discrimination, or the system's inability to respond to their needs. This approach also prevents protection from becoming too narrow, since forms of marginalization can change along with social, economic, technological change, and patterns of education provision.

The right to access to education for marginalized groups is built through constitutional guarantees, the principle of fair and non-discriminatory education, recognition of the need for special services, and international obligations concerning the right to education (Singh

et al., 2025). Equality cannot be understood as applying identical treatment to every student. A more appropriate measure is a person's actual ability to obtain, participate in, and complete a quality education without discrimination. Availability, accessibility, acceptability, and adaptability become parameters that can be used to read the substance of this obligation. This framework shifts attention toward the system's capacity to correct structural disadvantage (Masnawati, 2021). The next question is how this principle is translated into positive obligations, accommodation, service governance, and legal mechanisms that can be used when marginalized groups continue to face restricted access.

tate Obligations and Protection Mechanisms for Equal Access to Education

State obligations toward marginalized groups need to move beyond the principle of prohibiting formal discrimination. Fredman (2016) explains substantive equality through four dimensions relating to redressing disadvantage, addressing stigma and stereotyping, enhancing participation, and accommodating difference and structural change. This framework is relevant to education because seemingly neutral rules can perpetuate disadvantage if institutions are designed around the capacities of the dominant group. Students experiencing poverty, disability, or social marginalization may need different support in order to have comparable opportunities. Legal obligations can therefore include positive measures that change facilities, procedures, financing, and forms of service delivery (Fredman, 2017). Differential treatment aimed at reducing disadvantage does not contradict equality when it is proportionally designed to make the right genuinely usable.

Protection for persons with disabilities provides the clearest example of the shift from formal equality toward substantive equality. Indonesia ratified the Convention on the Rights of Persons with Disabilities through Law Number 19 of 2011. Article 24 of the CRPD recognizes the right of persons with disabilities to education and obliges states parties to ensure an inclusive education system at all levels. This instrument links non-discrimination to the need to provide reasonable accommodation and the support required for a person to participate in the general education system. De Beco (2014) explains that the right to inclusive education under Article 24 entails demands broader than simply prohibiting the exclusion of children with disabilities from school. The education system needs to adapt itself so that students can participate alongside other students.

Law Number 8 of 2016 on Persons with Disabilities translates this direction into national law through the concepts of equal opportunity, accessibility, and reasonable accommodation. This regulation governs the respect, protection, and fulfillment of the rights of persons with disabilities in various fields, including education. Reasonable accommodation carries important meaning because equality is not achieved if education providers merely open enrollment without adjusting the facilities or processes that hinder participation. Such adjustments may relate to modes of communication, learning materials, time, physical facilities, assistive technology, support from particular personnel, or evaluation procedures according to relevant needs (Masfufah & Masnawati,

2023). This obligation shows how law can turn an abstract right into institutional action. Refusal of a needed accommodation should be assessed against legal obligation, not treated merely as an internal policy matter of the education unit.

Government Regulation Number 13 of 2020 specifically governs Reasonable Accommodation for Students with Disabilities. This regulation establishes students with disabilities as beneficiaries and regulates the forms and facilitation of accommodation in the administration of education. The status of this regulation makes clear that accessibility must be built into the process of administering education, rather than left to the ability of individuals or their families to seek their own adjustments. This shift in burden is a core element of substantive equality. If the entire burden of adaptation is placed on the student, institutions can continue to maintain a design that excludes certain people. The state and providers need to identify the types of support that can be given, provide resources, and establish procedures so that students' needs can be individually assessed without becoming a reason to deny access.

Regulation of the Minister of Education, Culture, Research, and Technology Number 48 of 2023 details the facilitation of Reasonable Accommodation and the establishment of Disability Service Units in formal early childhood education, basic education, secondary education, and higher education. Its provisions cover budget support, facilities and infrastructure, preparation of educators and education personnel, curriculum, human resources for Disability Service Units, reporting, supervision, monitoring, evaluation, and administrative sanctions. This model shows that the protection of rights requires institutional infrastructure (Munir & Rojak, 2023). Students should not have to depend on individual educators' goodwill to obtain adjustments. Responsibility needs to be institutionalized so that there are units, procedures, resources, and accountability mechanisms available when access needs arise.

The CRPD Committee, through General Comment No. 4 of 2016, explains that the right to inclusive education requires changes in culture, policy, and educational practice, and places inclusion as a central element in implementing Article 24. This interpretation helps distinguish inclusion from mere physical placement. A student may be in the same school as other students yet remain separated through materials, activities, facilities, or a learning process they cannot use. De Beco (2014) also places reasonable accommodation and individual support as part of the central question of inclusive education. This understanding can offer a broader lesson for protecting marginalized groups: access must be assessed through actual participation. A school that admits someone administratively still needs to assess whether its service structure allows that student to take part meaningfully.

Positive obligations are not limited to disability. Fredman's (2016) substantive-equality framework can be used to assess policies directed at students from poor families, remote areas, or stigmatized groups. The redistributive dimension requires attention to material disadvantage, while the recognition dimension addresses stereotyping and humiliation. The participation dimension requires the voice of affected groups, while the dimension of

structural change assesses whether institutions can adjust designs that produce exclusion. From this perspective, financial assistance is not sufficient if discrimination continues within the admission process. Building schools also does not resolve the problem if certain groups still face stigma or if the curriculum fails to respond to their needs. Legal protection requires a combination of material, procedural, and institutional measures matched to the form of disadvantage experienced.

National human rights law provides an additional avenue of protection when restrictions on education relate to discrimination or rights violations. Law Number 39 of 1999 on Human Rights is one instrument that establishes obligations to respect and protect rights and provides an institutional standing for the National Commission on Human Rights. The function of human rights institutions is relevant when education issues involve a pattern of discrimination that extends beyond an individual administrative dispute (Manullang et al., 2025). Human rights mechanisms can help determine whether a particular practice forms part of treatment that systematically disadvantages a group. This avenue does not replace education procedures, administrative objections, or the courts. Its value lies in its capacity to provide rights assessment, monitoring, mediation within its scope of authority, and recommendations for corrective action.

Access to education also relates to the quality of public services. When education is administered by public bodies or involves service functions subject to administrative standards, students and families have an interest in procedures that are transparent, non-discriminatory, accessible, and accountable. Law Number 37 of 2008 established the Ombudsman of the Republic of Indonesia as an institution that oversees the administration of public services and handles reports of alleged maladministration within its scope of authority. This avenue is relevant when restricted access arises from procedural irregularities, prolonged delays, abuse of authority, or other forms of maladministration. The existence of the Ombudsman shows that protection of the right to education can involve administrative law and service-oversight mechanisms, not merely discrimination claims.

Complaint mechanisms need to be built as close as possible to the education unit, since most access issues first arise at the service level (González et al., 2022). Schools, higher education institutions, education offices, and service units need procedures that explain where to submit an objection, the handling timeframe, who will examine it, data protection, and the possibility of escalating the matter to the next level (Hariani & Mardikaningsih, 2022). The Disability Service Unit regulated in Ministerial Regulation No. 48 of 2023 offers an example of institutionalizing a special-support function within the education structure. The same principle can be applied more broadly through channels that are easy for vulnerable groups to use. A mechanism that exists only on paper can lose its function if it can only be accessed through particular technology, complex language, high costs, or procedures that require administrative capacity that marginalized students and families do not have.

Remedies for access violations need to be tailored to the nature of the harm. In some cases, correction may take the form of readmitting a student, removing discriminatory requirements, providing reasonable accommodation, providing accessible facilities, adjusting evaluation procedures, or improving services. In other cases, a change in policy is needed so that the same harm is not experienced by other groups (Lyerly, 2024). Fredman (2016) emphasizes that substantive equality has a structural-change dimension, so remedies should not always be limited to individual compensation. If one admission procedure repeatedly excludes a certain group, resolving the matter for a single student does not remove the source of the inequality. Legal mechanisms need to be able to produce institutional learning and to connect the handling of individual cases with relevant systemic change.

Good protection also requires the participation of the groups receiving services. Access policies are often designed from the provider's point of view, so that administrative needs dominate over students' experience. Substantive equality places participation as one of the dimensions needed to prevent disadvantaged groups from remaining voiceless in policy formation. In disability education, this principle means students and persons with disabilities need to be involved in needs assessment, facility design, and service evaluation. A similar principle applies to remote communities, indigenous communities, and impoverished groups. Consultation helps the state identify barriers not visible through administrative data and can reduce the tendency to use a single service model for groups with different needs.

The state must guarantee access to education through a combination of negative and positive obligations. The prohibition of discrimination needs to be accompanied by the provision of accommodation, support, financing, facilities, usable procedures, and institutional change where service design produces exclusion. The disability framework shows the operational form of this obligation through inclusive education, Reasonable Accommodation, and Disability Service Units. Protection can be strengthened through human rights mechanisms, public-service oversight, internal complaints, and other legal avenues suited to the character of the violation. Equality of access is achieved when the law is able to correct individual harm while also repairing the structures that keep certain groups in a persistently disadvantaged position.

CONCLUSION

The right to education for marginalized groups is a right that demands more than administrative openness at schools or educational institutions. Its legal construction is formed through constitutional guarantees, the principle of non-discrimination, recognition of special education and special services, and international obligations concerning the right to education. Equality must be assessed through availability, accessibility, acceptability, adaptability, and the quality of services that students can

actually use. State obligations include positive measures to reduce structural disadvantage through financing, facilities, accommodation, individual support, institutionalized services, and complaint and remedy mechanisms. Adequate protection requires the ability to correct individual cases while also changing rules or practices that repeatedly produce exclusion. Equality in education is therefore oriented toward real opportunity for everyone to enter, participate in, and complete education with dignity.

The government needs to strengthen the mapping of access needs and link it to budget planning, facilities, support personnel, and easy-to-use complaint mechanisms. Education units need to conduct periodic audits of admission rules, facilities, learning, evaluation, and digital services to identify effects that disadvantage certain groups. Complaint-resolution mechanisms should produce recommendations for institutional improvement in addition to resolving individual cases. The participation of students and affected communities needs to be established as a standing element in the formulation and evaluation of education-access policy.

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