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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Report of the Special Rapporteur on the right to education  
on governance and the right to education\*****Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the right to education, prepared pursuant to Council resolutions 8/4 and 35/2.

In the present report, the Special Rapporteur examines how the right to education, and the commitments made under the Sustainable Development Goals, provide guidance for governance in national education systems. She considers how the right to education should be mainstreamed into education governance. Governance in this context can be thought to include the laws, policies, institutions, administrative procedures and practices, monitoring and accountability mechanisms, and judicial procedures that are related to education. A rights-based approach should be adopted to ensure not only that non-discrimination and equitable access for all are mainstreamed, but also that learners who have been the hardest to reach, including members of vulnerable groups, are prioritized, even if such decisions run counter to the traditional emphasis on efficiency.

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\* The present document was submitted late to reflect the most recent developments.



## Report of the Special Rapporteur on the right to education on governance and the right to education

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## I. Introduction

1. The present report is presented pursuant to Human Rights Council resolutions 8/4 and 35/2. In the report, the Special Rapporteur examines how the right to education, and the commitments made under the Sustainable Development Goals, provide guidance for national education governance systems.
2. In her first report to the General Assembly (A/72/496), the Special Rapporteur addressed the importance of equity and inclusion in education. She focused on the need to eliminate discrimination and to promote equity and inclusion, which is at the heart of a rights-based approach to education. In the present report, the Special Rapporteur builds on that premise by considering how the right to education should be mainstreamed into education governance. Governance in this context can be thought to include the laws, policies, institutions, administrative procedures and practices, monitoring and accountability mechanisms, and judicial procedures that are related to education. A human rights-based approach should be applied in all areas, not only to ensure that non-discrimination and equitable access for all are mainstreamed, but also to ensure that learners who have been the hardest to reach, including members of vulnerable groups, are prioritized, even if such decisions run counter to the traditional emphasis on economic efficiency.
3. The important political commitments made under the Sustainable Development Goals and the Incheon Declaration — Education 2030: Towards inclusive and equitable quality education and lifelong learning for all should be implemented within a governance framework that provides national authorities with clear guidance on how to develop and implement laws and policies that are consistent with national obligations resulting from binding international treaties.
4. Decentralization can be a useful mechanism in bringing education closer to the needs of all learners. It can present an opportunity to implement rights-based reforms, ensuring greater participation, transparency and accountability and promoting inclusive, equitable and non-discriminatory education.
5. In the present report, the Special Rapporteur, after summarizing her activities undertaken during the reporting period, examines how a viable model can be established for the application by States and education stakeholders of a rights-based approach to education governance.

## II. Activities undertaken by the Special Rapporteur

6. During the reporting period, the Special Rapporteur presented her report on inclusion, equity and the right to education to the General Assembly (A/72/496).
7. The Special Rapporteur participated in a number of public events on education and continued collaborating with States, international organizations and non-governmental organizations.
8. From 4 to 11 December 2017, the Special Rapporteur carried out a country mission to Côte d'Ivoire (see A/HRC/38/32/Add.1). She met with stakeholders and visited educational institutions in Abidjan, Bouake and Yamoussoukro.
9. On 26 October 2017, the Special Rapporteur participated in an online discussion hosted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to mark the online launch of the youth version of the Global Education Monitoring Report.
10. The Special Rapporteur also participated via webcast in the UNESCO digital launch of the youth version of the Global Education Monitoring Report on 12 December 2017.
11. From 1 to 2 February 2018, the Special Rapporteur attended the Global Partnership for Education Financing Conference in Dakar.

12. On 22 March 2018, the Special Rapporteur gave a video presentation at the Save Syrian Schools side event held during the thirty-seventh session of the Human Rights Council.

13. From 25 to 29 March, the Special Rapporteur attended the sixty-second annual conference of the Comparative and International Education Society in Mexico City, which focused on the remapping of global education. As a member of a panel on the privatization of education in the francophone countries, she made a presentation on the issue of States' obligations under international human rights law.

### **III. Governance in education**

14. The concept of education governance is broad, encompassing anything that relates to the running or regulation of the education system. In the present report, the Special Rapporteur does not seek to define this term, nor are her recommendations limited to any particular aspect of governance. Rather, she encourages States to consider the right to education in all aspects of education governance.

15. For the purposes of the present report, governance includes, but is not limited to, the laws, policies, institutions, administrative procedures and practices, monitoring and accountability mechanisms, and judicial procedures relating to the education system. Some scholars have differentiated governance from management, but for the purposes of the present report that distinction is not relevant. Human rights considerations apply to all government activities in the area of education. Whether those activities are carried out by a government minister, a school principal or a teacher, the State obligation to respect, protect and fulfil the right to education applies equally.

16. The present report therefore provides thoughts and considerations on how the right to education should be incorporated into the governance of education systems.

### **IV. A rights-based approach to education governance**

17. Governance, in the broader sense of the word, has historically been associated with improving efficiency, particularly as it relates to economic growth. In the context of education, good governance might have focused on bringing as many learners as possible into schools, as reflected by the Millennium Development Goals, which emphasized increasing enrolment as a sign of improved access.

18. That prioritization, however, has allowed States to favour those who were the least expensive, and easiest, to educate. Furthermore, political prioritization has allowed Governments to favour their voters and political allies at the expense of disenfranchised people who were not important to the next political election; the poor, girls, persons with disabilities, minority groups and other vulnerable people became lost in aggregated statistics.

19. These concerns were observed as the Millennium Development Goals were concluded. The Sustainable Development Goals and Education 2030 Agenda have addressed the issue by recognizing and embracing human rights as a fundamental, underlying feature of development and by drawing up targets and indicators for each goal that reflect human rights standards.

20. Human rights are legally enforceable entitlements, which is the key factor that differentiates a rights-based approach from a development-based approach. By giving rights to people, and holding States accountable for the realization of those rights, a rights-based approach makes education an enforceable right that stakeholders can claim. This becomes most apparent when those who are marginalized or otherwise left behind are considered. Without the right to education, they can be ignored while more privileged students in urban areas enjoy access to better educational opportunities.

21. A human rights-based approach includes non-discrimination as a core principle. In education, this principle ensures that all learners and other stakeholders are treated

equitably; this differs from being treated “equally”, as equal treatment will not always be equitable (see A/72/496). For example, students living in remote areas who are living with disabilities or who are part of a linguistic minority may require additional financial support or accommodations according to their needs in order to learn and succeed.

22. By ensuring that every child is provided with the conditions necessary to learn and succeed, societies become more tolerant and successful. Inequalities are reduced and people are able to achieve their full potential.

### **A. A global governance framework**

23. According to the concept of national sovereignty, the highest form of governance is national. Only to the extent that States agree to surrender some parts of their sovereignty through regional and international treaties can there be said to be a global governance framework. Such a framework can be said to be composed of the legal obligations arising from international human rights treaties, such as the Convention on the Rights of the Child, which has been adopted by every State Member of the United Nations but one. These obligations and commitments create a framework that should be incorporated into national laws and policies, and should provide guidance for institutions, administrative procedures and practices, and monitoring, accountability and judicial mechanisms.

24. The Special Rapporteur also believes that the commitments made under the Sustainable Development Goals should be considered equally relevant, and that national governance systems should not be in conflict with them. In particular, they serve as guidance for national education authorities on how the right to education should be realized, and should contribute to the progressive realization of that right.

### **B. International legal obligations relating to the right to education**

25. Responsibility for implementing the right to education lies first and foremost with the State. States must respect, protect and fulfil this right. The obligation to respect requires the State to avoid measures that hinder or prevent the enjoyment of the right to education. To protect is to ensure that third parties do not interfere with right to education, usually through regulation and legal guarantees. The obligation to fulfil the right requires States to take positive steps to enable individuals and communities to enjoy the right to education, and to take appropriate measures to ensure its full realization.

26. When considering what is implied by the right to education, reference is made firstly to the international treaties that have been ratified or incorporated by States.

27. In 1948, the Universal Declaration of Human Rights was adopted and set a common standard for all people and countries, outlining a set of fundamental human rights to be fulfilled and protected universally without discrimination. Among its provisions, article 26 declared that everyone should have the right to education, and that education should be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

28. The Universal Declaration of Human Rights established a framework that was codified in subsequent human rights conventions, such as the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child. These and others make the implementation of the universal right to education a legally binding obligation on States that have signed and ratified them.

29. Article 13 of the International Covenant on Economic, Social, and Cultural Rights reaffirms the commitment to ensure that everyone has the right to education without discrimination, and sets out more specific details about the provisions of education at different levels. It states that primary education should be free and compulsory, and that secondary education should be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education. Article 13 also makes recommendations on the progressive introduction of free higher

education on the basis of capacity, and promotes fundamental education for persons who have not completed primary education.

30. The Convention on the Rights of the Child stresses that education should enable a child to develop to their fullest potential, promote human rights and fundamental freedoms, and prepare the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin (art. 29 (d)).

31. Central to all international human rights treaties is the principle of non-discrimination. Each person is equal to the next, all rights apply equally, and no one should suffer discrimination on the basis of their ethnicity, gender, sexual orientation, disability, religion, nationality, language or wealth.

32. A number of conventions, namely the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, expand on issues relating to discrimination.

33. UNESCO established the first binding obligation relating to education in 1960 in its Convention against Discrimination in Education, which clearly sets out the principle of non-discrimination and equality of opportunity in education, to which all of its States parties are committed. The other abovementioned conventions also place obligations on States with regard to education, reaffirming the need for Governments to take ongoing and proactive action to address discrimination in the areas of access to education, the completion of education, and learning.

### **C. International political commitments**

34. In addition to legally binding commitments, some States pledge to work towards various political pronouncements that commit them to working towards achieving certain education-related goals. From 2000 to 2015, States committed to the Millennium Development Goals, which served as a framework to measure progress towards certain education targets. The subsequent adoption of the Sustainable Development Goals, which specify targets and indicators for each goal, has created a new framework that provides clear and specific guidance to States.

35. The political commitments made under the Sustainable Development Goals and the Education 2030 Agenda are linked to the 2015 Incheon Declaration and framework for action. Sustainable Development Goal 4 calls upon States to ensure inclusive and equitable quality education and to promote lifelong learning opportunities for all. In addition to guaranteeing universal, free, quality primary education for all, the right also covers secondary education, as stated under in target 4.1.

36. The Sustainable Development Goals are highly consistent with human rights obligations and reaffirm the importance of human rights. They reaffirm the Charter of the United Nations, the Universal Declaration of Human Rights, international human rights treaties and other instruments, including the Declaration on the Right to Development. In particular, they emphasize the importance of realizing the human rights of all, and the responsibilities of all States to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

37. The 2030 Agenda for Sustainable Development is to be implemented in a manner that is consistent with the obligations of States under international law, which makes clear that legal human rights obligations guide its implementation.

38. The Incheon Declaration calls for a human rights-based and humanistic approach, based on the principles of human rights and dignity, social justice, peace, inclusion and protection, and reflecting the cultural, linguistic and ethnic diversity of people.

39. The Declaration includes a commitment to establish legal and policy frameworks that promote accountability and transparency, as well as participatory governance and

coordinated partnerships at all levels and across sectors, and to uphold the right to participation of all stakeholders.

#### **D. Available, accessible, acceptable and adaptable: the 4-A scheme**

40. The first Special Rapporteur on the right to education created the “4-A” scheme to guide legislators, policymakers and educators on the implementation of the right to education. It provides general guidance on the principles that should be applied to promote the right to education in national actions. It holds that education must be available, accessible, acceptable and adaptable. Education that is free, with adequate infrastructure and trained teachers, is available. To be accessible, education must be non-discriminatory and open to everyone, with positive measures to include marginalized students. The content of education must be relevant, non-discriminatory, culturally appropriate, and of good quality in order to be acceptable. Finally, education is adaptable when it evolves with the changing needs of society, contributes to challenging inequalities and can be continually adapted locally to suit specific context (A/HRC/35/24, para. 20). The methodology was endorsed by the Committee on Economic, Social and Cultural Rights in its general comment No. 13 (1999) on the right to education.

### **V. Human rights norms and values**

41. Human rights-based education must also embrace the norms and values that underlie human rights. Governance mechanisms must reflect the norms and values set out in the Charter of the United Nations, human rights treaties and international commitments, including the Sustainable Development Goals. Governance is not exercised in a vacuum, and is often confronted by competing interests. It is crucial that laws, policies and mechanisms be grounded in human rights values to ensure that accountability and adjudicative mechanisms are guided to find solutions that prioritize the right to education over other interests.

42. International organizations should continue to advocate for a humanistic vision of education. The UNESCO Constitution seeks to use education to promote the “ideals of humanity” and foster the “intellectual and moral solidarity” of humankind. UNESCO, the United Nations Children’s Fund (UNICEF) and the Office of the United Nations High Commissioner for Human Rights should continue to promote the ethical and normative values in the Charter and human rights instruments. The 2030 Agenda calls upon States to reflect the values of the Charter, including peace, dialogue and international cooperation.

43. Education should therefore not focus merely on the production of “human capital” in the form of a skilled labour force. All stakeholders in education should advocate for the inclusion of human rights norms and values in governance mechanisms and structures.

### **VI. Key attributes of good governance**

44. In addition to these specific obligations, general attributes of good governance are reflected in human rights resolutions, including Commission on Human Rights resolution 2000/64. These principles underlie a rights-based approach to developing governance systems that will promote the realization of the right to education.

#### **A. Access to information**

45. Access to information is essential to enable people to exercise their human rights. Without relevant, timely and accurate information, rights holders cannot know which services they are entitled to, what the associated costs are (if any) or which complaint mechanisms they can use to seek redress when their right to education is violated.

46. The foundation of this is a law on access to information that covers all aspects of education governance, including decision-making procedures for school admissions, teacher selection and other areas of concern for education-related stakeholders.

47. Access to information also requires proactive efforts to make information public and easily available, for example by posting it on websites or community bulletin boards. Information relating to scholarships may be shared selectively by some schools, leaving many parents unaware of the possibility to apply.

48. Access to information is particularly important in the context of human rights education. Learners and parents must be educated on what their rights and entitlements are in relation to the right to education. For example, information on the right to free, compulsory primary education should be widely shared by the Government, the media and civil society. While school fees are clearly a violation of that right, a debate should also be held around whether the cost of school uniforms, books and transportation to school should be progressively covered by the State.

## **B. Transparency**

49. Transparency is closely related to access to information and accountability. Governance processes must be transparent in order for the public to hold actors accountable. Transparency must apply to financial and budgetary matters, decision-making bodies, administrative and recruitment mechanisms, and other administrative processes.

50. Governments should ensure that the education system is transparent at all levels, including by regularly publishing education data and indicators, particularly those required by the Sustainable Development Goals; teaching-related and other employment opportunities; and the criteria, processes and procedures used to ensure fair, equitable access to higher levels of education when universal enrolment is not available. This is particularly important when secondary and tertiary education are not yet open to all interested students.

51. Establishing legislation on freedom of information is necessary to ensure transparency in government processes. States must also proactively publish the decisions and meeting minutes of all decision-making bodies. UNESCO has identified 10 examples of ways to improve transparency at the school level, including the establishment of a legal right and practical mechanism allowing parents to access school data and a legal grievance redressal mechanism for parents and communities.<sup>1</sup>

52. Budgetary and financial information must be published in a timely fashion. Many areas of corruption, including the payment of salaries to absent or non-existent teachers, the misuse of school fees and overall mismanagement, can be monitored by the public and addressed by the legal system if such information is made available.

53. Information and communications technology can be an important tool to promote transparency. States should make every effort to digitize administrative processes and to make use of the Internet to promptly publish all laws, policies and data. At the school level, websites can be used creatively to report on teacher attendance, school performance or other information.

## **C. Participation**

54. Participation is a core element of the right to education. Governance should reflect the voice of citizens at all levels. Student and teacher strikes and violence against student groups around the world demonstrate the urgent need to engage in dialogue. Consultations and genuine participation in governance processes are crucial mechanisms to ensure that the needs of learners are better reflected in education governance mechanisms.

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<sup>1</sup> See [www.iiep.unesco.org/en/10-ways-promote-transparency-and-accountability-education-4307](http://www.iiep.unesco.org/en/10-ways-promote-transparency-and-accountability-education-4307).



55. It is equally important to ensure that the outcomes of public consultations are addressed and incorporated in actions and decisions taken by the Government. Consultation processes that do not take into account the concerns of stakeholders are not only a waste of time and resources but also undermine trust in governance systems.

56. Participation must be inclusive. This may require proactive efforts to heed the voices of traditionally excluded or marginalized groups. Poverty and language barriers may prevent such groups from participating, and other possible solutions might include engagement with civil society actors and community groups.

57. Informed participation requires Governments to share information relevant to the issue at hand. Information must be accessible and understandable and enable stakeholders to engage on the topic. The media and civil society can be important partners in this regard.

58. It is extremely important that the impact of stakeholder engagement be identified and reported. Lessons learned, policy changes and amendments to service delivery should be shared in order to legitimize the mechanism and encourage ongoing engagement. Consultation processes must be shown to be not merely “window dressing”, but rather a sincere effort to incorporate public feedback into the education system.

59. Parliamentary systems must ensure that legislation takes into account not only the views of members of parliament, but also the concerns of the general public. Where necessary, additional outreach activities should be undertaken, particularly in relation to social groups that are underperforming in the education system. Most notably, poor and poorly educated persons are often either unaware of how to engage in governance systems, or otherwise too concerned with survival to do so. These are the people who are most in need, and so their needs should be identified and prioritized.

60. One important consideration is that participation should not be based on majority rule. The right to education relates in particular to creating the conditions that will enable all learners to succeed. In that regard, participation is a crucial mechanism by which the needs of all can be solicited. However, decision-making that does not seek to protect minority groups and individuals risks ignoring the needs of certain people.

#### **D. Accountability**

61. Accountability is the cornerstone of a human rights-based approach, as reflected in targets 16.3, 16.6, 16.7 and 16.10 of the Sustainable Development Goals. Accountability mechanisms allow rights holders to hold education actors to account not only for their obligations pertaining to the right to education but also for their wider obligations under national legislation and policies.

62. Without such mechanisms, there are no means by which errors or acts of wrongdoing can be addressed to ensure that they will not recur. It is important to recognize that accountability is not only about sanctioning mistakes; it is equally important in order to prevent future violations by identifying remedies for governance actions that are not respecting human rights. Accountability mechanisms allow the public to draw attention to failures that should be addressed, thus enabling Governments to improve their performance.

63. Human rights standards make it possible to delineate the respective responsibilities of different actors in the development process. States should explicitly align Sustainable Development Goals frameworks with human rights standards in a manner that takes into account their specific international treaty obligations and the indivisibility and interdependence of all human rights. If human development commitments are framed in terms of the human rights duties underpinning them, accountability for the goals becomes a matter of legal obligation rather than charity or discretion.

64. Accountability is intended to improve the ability of Governments to respond to the needs of the people they serve. When government activities are anchored in human rights, they create an incentive for Governments to help those who have been left behind. This serves as an important counterbalance to forces within societies that may seek to benefit some groups over others. The more empowered such mechanisms are, the more States can

insulate themselves from political pressures that may push them to violate the right of some people to education.

65. Accountability mechanisms also improve public participation in governance. They create meaningful ways for the public to participate in decision-making, thereby encouraging persons in authority to take into account the concerns and demands of marginalized and poorer groups in society. They also empower those groups, encouraging them to engage, thereby strengthening policymaking and the delivery of services.

66. Accountability mechanisms can range from voluntary to compulsory. The Sustainable Development Goals call upon States to establish information disclosure, monitoring and reporting mechanisms. Information is then reported, allowing Governments to compare themselves to their counterparts. Such voluntary processes, however, create minimal incentives for State actors to respond to violations or to improve their delivery of services.

67. A human rights-based approach, in contrast, requires mechanisms that compel State actors to respect their human rights obligations. While emphasis is placed on the progressive realization of the right to education, some aspects of the right are subject to immediate implementation, including the fulfilment of the obligation not to allow discrimination in any form and the requirement to ensure equal access to higher levels of education. It is important to recognize that, although courts and other bodies cannot compel Governments to increase spending on education, they can and must insist that the rights of all learners be equally respected in the context of existing spending. It is then up to the individual Government to decide whether it wishes to spend additional amounts on addressing violations, or to reallocate existing spending.

68. Accountability mechanisms must operate promptly, fairly and transparently. They must be able to assess claims of violations, determine responsibility and provide remedies to those who have suffered wrongful treatment. From a governance perspective, it is particularly important that these mechanisms feed into legislative and policy streams, and that systemic and structural issues be identified wherever possible.

69. National accountability mechanisms should also coordinate with international human rights mechanisms, including the treaty bodies, the universal periodic review and the Special Rapporteur on the right to education, and provide information about each of them to the public, particularly civil society actors.

## **VII. Decentralizing governance**

70. Decentralization, deconcentration and devolution are all ways by which resources and responsibility may be transferred to administrative bodies that are closer to the learner. Decentralization is an important mechanism for applying human rights principles to the education system, particularly by improving participation, transparency and accountability. It can also ensure that education is more equitable, inclusive and responsive to local learner needs by empowering local communities to adjust the delivery of education to meet local demands. This is particularly important for minorities, girls, the poor and people living in rural areas, and marginalized communities that may otherwise be ignored in centralized systems.

### **A. Types of decentralization**

71. Decentralization involves the transfer of authority and resources from the national Government to lower levels of government, whether regional or municipal. By bringing decision-making closer to the learner, it is possible to improve the responsiveness of education providers to local needs.

72. Devolution is a form of decentralization that entails the transfer of powers to lower levels of government. Typically, education responsibilities are transferred to governments at the regional or local levels. In federal States, education authority may be devolved to regions, with national standards ensured by a central Government. However, without

further devolution to the local level, many of the benefits of participation may not be realized.

73. Devolution to the local level involves empowering municipal authorities, or special-purpose school authorities such as school boards, districts or management committees, charter bodies, specially created corporations or some combination thereof. Participatory organizations, such as parents' associations and teachers' unions can also be empowered with limited areas of responsibility and authority.

74. Deconcentration involves the dispersal of authority from a single point to multiple locations, without necessarily establishing any hierarchy. Often applied in unitary States, this system allows for education-related government departments to be set up in multiple locations. However, while this form of decentralization may ensure that authority is not concentrated in a single location, many of the benefits of local empowerment are not necessarily achieved here.

## **B. Human rights benefits of decentralization**

75. Decentralization has the aim of bringing resources and decision-making closer to parents and learners. Though decisions relating to decentralization might be motivated by the need to improve efficiency or political concerns, decision makers engaged in reforms should also consider whether such changes help to ensure learners' right to education; how decentralization can make education more available, accessible, acceptable and adaptable; whether it will help the education system meet Sustainable Development Goal 4 and its targets and indicators; and whether it will improve transparency, participation and accountability.

76. There are a number of areas where decentralization may help to realize the right to education. For example, in countries with geographical, ethnic, linguistic or cultural differences, a single, centralized curriculum and education system may not be ideal. Minority groups may wish to have greater influence in the education system in order to increase the role of local languages or otherwise ensure that local values and traditions are better reflected. In some countries, geographically remote areas may not be adequately served by centralized education systems, which may be focused on the needs of large urban areas.

## **C. Challenges and required conditions**

77. Decentralization requires local governments to have human rights-based mechanisms in place to ensure that reforms serve to improve participation, transparency and accountability, while focusing the education system on the rights of the learner. This may be perceived as being contrary to the interests of existing authority structures, including local governments, school administrations or teachers' unions. These concerns can be addressed through consultations and engagement among all stakeholders. Parental engagement, and local mechanisms to address alleged violations of the right to education, are necessary to ensure that policymaking is not captured by local elites or particular groups. Strong accountability mechanisms are needed to ensure that learning meets national standards and that financial decisions are not subject to corruption.

78. Civil society and the media play an important role in promoting transparency and informing stakeholders about any potential violations of the right to education. Capacity-building and public information campaigns may first be required by these actors so that they can support the monitoring and oversight of the system at the local level.

## **D. Capacity-building**

79. The devolution of responsibility and authority should be accompanied by the provision of additional training to and support for local authorities, teachers, parents, civil society and local media. In addition to providing human rights training to educate all

stakeholders on the right to education, capacity-building must strengthen the financial and administrative skills relating to devolved authority and responsibilities. Technical support, particularly in the areas of transparency, accountability and participation, is needed, especially when the requirement to prioritize the needs of the learner disrupts existing practices. Parents, teachers' unions, civil society and the media must be trained to act as advocates for human rights and as monitors to ensure accountable behaviour by all stakeholders.

80. Stakeholders must understand how the right to education is implemented and be aware of everyone's respective roles and responsibilities. When organizing education according to the principle of the primacy of the rights of the learner and acting in the best interests of the child, training will be required to ensure that this model is implemented. That process could involve eliminating corporal punishment, improving teacher/student interactions and informing and teaching students and parents about their rights and ways to enforce them.

81. Interested States should engage with international organizations, including UNESCO and UNICEF, to develop human rights-based capacity-building programmes. Sustainable Development Goal 17 specifically calls for capacity-building support for national plans to implement sustainable development plans. It is imperative that donors, international financial institutions and aid agencies provide both technical and financial support to any State seeking to implement human rights-based reforms.

## **VIII. Human rights-based management**

82. The implementation of governance structures is as important as their design. It is important to ensure that stakeholders are convinced of the value of a rights-based approach, to ensure that they work to realize the rights of learners in the face of competing demands.

83. School leadership and management should be empowered to be more responsible for realizing learners' right to education in a participatory, transparent and accountable fashion. Leadership must be inclusive and reflect the interests of all stakeholders, with a view to providing equitable, non-discriminatory education for learners. The prevalence of student and teacher strikes should be seen as evidence that education governance structures are not sufficiently inclusive and responsive.

84. The devolution of greater responsibility, authority and autonomy to localities and schools provides an opportunity to implement rights-based reforms. Recognizing the limits of local capacity, the education system should progressively implement devolution according to local ability to meet the challenges that arise from devolution. Early engagement with school management bodies, teachers, civil society and parents' associations is needed to ensure that all stakeholders are able to collaborate when implementing the new governance structure.

85. Education budget management must be able to deal with conflicts arising from competing interests, not only among government ministries, but also within the education ministry itself. In decentralized systems, competition between each level of authority is also a challenge. A rights-based approach, focused on the rights of learners and characterized by participation, transparency and accountability, can create a principled framework to reduce the ability of those seeking to profit from the system to divert resources for their personal gain.

86. Mechanisms for procuring infrastructure, textbooks and school supplies are an area of particular concern. National transparency and accountability mechanisms and standards must be applied to protect the rights of all stakeholders and to limit opportunities for corruption. These should include time-based delivery standards to prevent decision makers from delaying procurement processes in the hope of extracting personal benefit.

87. To ensure that local governance is transparent and participatory, municipal and local education authorities will often require additional training and support. This support should be extended to parent committees, teachers' unions and civil society actors to ensure that they are able to understand publicly disclosed information and can hold local education

authorities to account. Prompt access to financial and decision-making records by all stakeholders will ensure that decisions and actions are taken transparently and in a participatory fashion.

88. A rights-based approach to education budgets should also include budgetary protection measures in national legislation. One possibility would be to include a minimum funding requirement for the national education budget; for example, no less than 20 per cent of the total budget or 4 per cent of gross domestic product. Such a commitment would allow for the long-term planning needed in education.

## **IX. Monitoring and data collection**

89. Indicators relating to the right to education must be developed by Governments in accordance with national education legislation, policies and objectives. They should reflect treaty obligations relating to the right to education, but also take into account the targets and indicators of the Sustainable Development Goals.

90. National education management information systems must be able to collect information relating to all areas of education. Such data must be detailed and disaggregated in order to evaluate whether the target populations, including girls and women or persons in vulnerable situations, are adequately taken into account and how they are performing. Such data are the first indicator of whether education systems are meeting national objectives, human rights obligations and the Sustainable Development Goals.

91. Rights-based governance must also measure respect for the right to education throughout the education system. Education ministries must establish indicators and metrics that collect information not only regarding learning achievements, but also regarding human rights indicators, including the inclusion of persons with disabilities, equitable outcomes for learners from minority or vulnerable groups, and the mainstreaming of participation, transparency and accountability into all processes and mechanisms.

92. In addition to adopting data-driven approaches, there is a need to ensure that governance structures facilitate the consideration of qualitative data arising from consultations and participatory engagement. For example, complaints made to an accountability mechanism, such as the national human rights institution, may highlight the need for changes to national policies, different practices by school management or additional efforts to reach marginalized people. Each of these issues requires a different response and should not be addressed in isolation. When monitoring has identified underperforming areas, evaluations and other qualitative measures should be included in policies in order to ensure prompt action to determine the underlying causes.

93. Technical assistance and international cooperation is available from UNESCO and the international community. Donors should encourage and generously support States that aim to implement rights-based reforms to governance structures.

## **X. Justiciability and governance**

94. Having established the right to education in national education laws and policies, and taken measures to ensure that all stakeholders are informed about their duties and responsibilities, steps should be taken to ensure that there are effective, accessible mechanisms available to address alleged violations.

### **A. Quasi-judicial mechanisms**

95. Participatory governance systems must include accessible, free or inexpensive mechanisms to allow students, parents and other stakeholders to address alleged violations of their rights. These may range from regular parent-teacher meetings to school boards and appeal bodies, to national human rights institutions. Without locally-available, free mechanisms, the right to education may be denied to the poor and most vulnerable.

96. It is equally important that education outreach exercises be conducted in collaboration with civil society organizations and the media in order to inform the public about their human rights and how they can have access to grievance and redress mechanisms.

## **B. Courts**

97. Guidance must be provided to the judiciary and legal profession on how alleged violations of the right to education should be adjudicated. According to a previous mandate holder, the right to education is fully justiciable, including in common-law jurisdictions (see A/HRC/23/35). The Special Rapporteur also emphasized the importance of providing guidance to lawyers and the judiciary on how human rights should be adjudicated, and provided numerous examples of the growing body of jurisprudence on the right to education.

## **C. Anti-corruption mechanisms**

98. The establishment of a transparent, participatory education system, with disaggregated data freely available, will be an effective means of reducing potential corruption. A rights-based system will allow stakeholders to track education budgets and monitor education results. Disaggregated data will allow States, civil society and others to identify groups that are in need of support and assist in identifying potential remedial measures.

99. Ombudspersons and ethics offices are valuable tools for identifying corrupt or abusive actions provided that they are fully independent of government. Whistle-blower protections play an important role in protecting witnesses to alleged violations. Such mechanisms should be empowered to review alleged violations — for example, to address recruitment procedures, teacher conduct or admission decisions.

## **D. Training and capacity-building**

100. Violations of the right to education are not always intentional or the result of neglect; in many cases, stakeholders are simply unaware of the role that the right plays in the education system. Resources should be dedicated to educating all stakeholders about the rights, responsibilities and obligations that arise from the right to education. This is equally important for public workers in ministries or schools and for civil society and the media, who have an important role to play in informing the public. Parents and learners who are aware of their rights are vital partners for States in ensuring the progressive improvement of a rights-based system.

# **XI. Rights-based governance and solidarity**

101. Once Governments commit to implementing a rights-based approach to education governance systems, significant, ongoing reforms will be required. Existing governance structures often reflect outdated approaches to education, and many States would benefit from support in evaluating and reforming national laws, policies and mechanisms.

102. The emerging global jurisprudence with regard to the justiciability of the right to education will require lawyers and judges to be trained. Education ministries may require guidance on how to apply a rights-based approach to education policies and programmes. National oversight bodies must establish indicators and monitoring practices that are rights-based. Accountability mechanisms should be established and staffed with qualified professionals.

103. Sustainable Development Goal 17 calls upon States to revitalize the global partnership for sustainable development, to allow for the achievement of all goals by all States. The Special Rapporteur calls upon States to pay particular attention to supporting

efforts by Governments to adopt a rights-based approach to national education systems, recognizing that such reforms will affect numerous stakeholders, and ultimately all levels of society. Without targeted assistance, it is unlikely that such reforms will be fully implemented by 2030.

104. Lastly, the repeated international commitment to raise official development assistance to 0.7 per cent of gross national income should be met. States that are not currently meeting that target should identify how they will progressively do so.

## **XII. Privatization**

105. The trend towards privatization in education is cause for concern. Private schools shift the cost of education from Governments to families and are often selective when enrolling students. This is problematic when such selections undermine human rights. For example, as children from a poor background or vulnerable groups often lack the family support necessary to do as well as other students, they can be excluded and find themselves in a public system from which the best-performing students and teachers have been removed.

106. Privatization legislation should therefore include the obligations arising from the right to education, and policies should ensure that education in private institutions contributes to the Sustainable Development Goals. Obligations regarding participation, transparency, monitoring and accountability should all apply.

## **XIII. Conclusions and recommendations**

107. **The governance of the education system establishes the norms and rules by which all activities relating to education are implemented. Through the adoption of a rights-based approach to education governance, these standards will ensure that education is provided in an equitable, high-quality manner to all, without discrimination.**

108. **A rights-based approach to governance also ensures that all education activities are based on the principles of participation, transparency and accountability. Exclusion from governance has led to strikes and protests, and the needs of the most vulnerable have been ignored. Influence over education priorities by powerful political elements in society are best controlled through the application of the principles discussed by the Special Rapporteur in the present report, thereby creating a system with checks and balances in place to ensure that education benefits all people.**

109. **The legal obligations arising from human rights treaties should form the basis of national legislation and legal systems. The norms and practices under the Sustainable Development Goals provide specific guidance on how national education systems should be implemented. The guidance provided by the 4-A scheme sheds further light on how rights-based education practices should be designed.**

110. **In the light of the above, and taking into consideration the opportunities and challenges relating to education governance, the Special Rapporteur makes the recommendations below.**

### **Human rights-based approach**

111. **Every State Member of the United Nations but one has ratified one or more of the international treaties that provide for the right to education. Global consensus around the Sustainable Development Goals and the 2030 Agenda for Sustainable Development reaffirms the global commitment to promoting a human rights-based approach to education. All States should review their education-related governance systems, including all laws, policies, institutions, administrative procedures and practices, monitoring and accountability mechanisms, and judicial procedures, to ensure that they are consistent with the right to education and the Sustainable Development Goals.**

112. A human rights-based approach should be applied to education programming. The 4-A scheme is an important framework that can be applied to education programming to ensure that the right to education is promoted.

113. States should prioritize participatory forms of governance to ensure that the voices of all stakeholders are heard.

#### **Participation**

114. Dialogue should be fostered and a participatory space created to address the underlying issues that lead to demonstrations and strikes by students and violence against them. Participatory mechanisms should be created at all levels of governance, from national laws and policymaking to individual school management.

115. Teachers and teachers' unions should have official roles in the governance mechanism, and must be empowered to provide input into reforms and policies.

116. Particular emphasis should be placed on including the perspectives of women, young people and vulnerable groups in laws, policies and governance mechanisms.

#### **Transparency**

117. States should ensure that all aspects of governance structures, mechanisms and processes are implemented transparently and publicized. Laws, policies and practices should be published and accessible, and the administrative records of administrative and adjudicatory bodies should be recorded and made available to the public.

#### **Accountability and justiciability**

118. Having first ensured that governance structures adopt a rights-based approach to their operations, States should establish accountability mechanisms for actors at every level of the education system, and ensure that the right to education is made justiciable under national legislation. Administrative and legal accountability mechanisms should be established both to address violations of the right to education, and to prevent them in the future.

#### **Norms and values**

119. Governance mechanisms should be based on and promote human rights principles and be consistent with the values reflected in the Sustainable Development Goals and other international commitments.

#### **Capacity-building and training**

120. States should ensure that all actors and stakeholders in education governance systems receive human rights training appropriate to their requirements, not only in the case of national education and training programmes, but also for existing professionals. Recognizing the significant cost and time requirements, a plan should be established for progressive implementation, and regular and ongoing public information campaigns should be conducted in cooperation with civil society and the media.

#### **International solidarity**

121. States, international organizations, donors and aid agencies should encourage States to implement human rights-based reforms to governance systems, and should provide technical and financial support for such efforts.

122. States should hold themselves and each other to account for their international aid commitments, including by fulfilling pledges to raise official development assistance to 0.7 per cent of gross national income.



**Privatization**

123. States should regulate the privatization of education to ensure that it remains rights-based and complies with the State's obligations. Any such school must operate according to the same rights-based governance frameworks as State schools.

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