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**Promotion and protection of all human rights, civil,
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including the right to development**

Right to education: the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education

Report of the Special Rapporteur on the right to education*

Summary

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, 35/2 and 38/9.

In the report, the Special Rapporteur examines the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education.

She presents to the Human Rights Council and States Members of the United Nations the Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education, and recommends their full implementation.

She recalls that international human rights law requires States to provide free, quality, public education. Depending on their nature and aims, private actors may contribute to the realization of the right to education and offer educational alternatives, thus enhancing, for example, respect for cultural diversity. However, the persistent underfunding of public education and the rapid and unregulated growth in the involvement of private, in particular commercial, actors in education, threaten the implementation of the right to education for all and Sustainable Development Goal 4.

The report contains observations and recommendations on the obligation of States to fund and provide public education and provides some concrete suggestions and solutions. It draws on the Abidjan Principles, in particular with regard to the obligation to regulate private actors involved in education, public-private partnerships and the role of donors and civil society.

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I. Introduction

1. The present report is presented pursuant to Human Rights Council resolutions 8/4, 35/2 and 38/9. In it, the Special Rapporteur on the right to education examines the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education.

2. The Special Rapporteur chose this topic as an expression of concern about the persistent underfunding of public education and the rapid growth of the involvement of private, in particular commercial, actors in education, which threaten the implementation of the right to education for all and Sustainable Development Goal 4. She pursues the reflection undertaken by her predecessor on this topic, moving to issues of implementation and solutions, in the context of Sustainable Development Goal 4.

3. She draws the attention of the Human Rights Council and of Member States to the Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education, which were adopted in February 2019. The principles provide a landmark consolidation of the norms and jurisprudence on the right to education and an innovative reference tool for States and other stakeholders to explore concrete solutions to implement this right in a changing context.

II. Sustainable Development Goal 4 and the right to education

4. As part of the 2030 Agenda for Sustainable Development, the Education 2030 Agenda, contributes to moving forward the full realization of the right to education, as millions are still denied the right to education and the worst forms of discrimination still affect marginalized people and communities. In addition to Sustainable Development Goal 4, which seeks to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, States adopted the Education 2030 Framework for Action, which details its implementation.¹

5. The Special Rapporteur recalls the importance of implementing Sustainable Development Goal 4 in accordance with human rights, which is not only a State obligation but also essential to tackle educational inequalities effectively, guarantee both access and quality education and ensure accountability. The Human Rights Council, in resolution 38/9, linked the obligations of States related to the right to education with their political commitments under the 2030 Agenda for Sustainable Development and more precisely with Sustainable Development Goal 4.² The General Assembly itself has emphasized that the 2030 Agenda for Sustainable Development is to be implemented in a manner consistent with the rights and obligations of States under international law.³ Numerous stakeholders have also adopted this approach, in particular the human rights treaty bodies (See, for example, CRC/C/COD/CO/3-5 and CEDAW/C/NER/CO/3-4), as well as the United Nations Educational, Scientific and Cultural Organization (UNESCO), which recognized the Convention against Discrimination in Education as the cornerstone of Sustainable Development Goal 4 and education-related targets across the other Sustainable Development Goals.

6. Education is a human right legally recognized by States in numerous human rights treaties and in national constitutions. The political goals set through Sustainable Development Goal 4 should be considered as a means of implementing that right: “The fact that States commit both politically and legally to education does not mean that measures taken to comply with the realization of either are mutually exclusive. Rather, these commitments aggregate and interact with each other, requiring States to ensure that efforts

¹ See Education 2030: Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4 (2015).

² See paras. 2 (a) and (e), 3 and 8.

³ See General Assembly resolution 70/1, para. 18.

taken to achieve SDG4-Education 2030 and the broader 2030 Agenda are human rights compliant.”⁴

7. An essential condition for meeting Sustainable Development Goal 4 targets is for States to allocate the maximum of their available resources to ensuring free, quality, public education for all, as required by international human rights law. The Special Rapporteur is concerned that for the moment, the review of national laws in the context of the implementation of Sustainable Development Goal 4 shows that most countries do not meet the requirement of legislation concerning free and compulsory education.⁵ She also recalls that literacy should be universally accessible and freely available.

III. Implementation of Sustainable Development Goal 4 and realization of the right to education in the context of the growth in private actors in education

8. The last two decades have seen a significant increase in the scale and scope of private actors in education at the primary and secondary levels. Those changes are rapidly transforming education systems, including fragile systems in developing countries. It is important to emphasize the scale of the changes at stake and the impact this has on the implementation of Sustainable Development Goal 4 and of the right to education.

9. In the Global Education Monitoring Report for 2017/18, it is estimated that by 2021 one in every four primary school pupils in sub-Saharan Africa will be attending private schools.⁶ By way of illustration of the sheer scale of this trend, in Kenya, according to official statistics, the number of private schools rose from 385 in 1998 to 8,917 in 2013, an increase of 2,216 per cent. Over the same period, the number of public primary schools in Kenya rose from 16,971 in 1998, to 21,205 in 2013, an increase of 24.9 per cent. The share of private schools has thus increased from 2 per cent in 1998 to 30 per cent in 2013, an increase of 15 times in just 15 years.⁷ This dramatic increase has raised concern from human rights treaty bodies. For example, the Committee on Economic, Social and Cultural Rights expressed concern that “inadequacies in the public schooling system have led to the proliferation of so-called ‘low-cost private schools’ which has led to segregation or discriminatory access to education particularly for disadvantaged and marginalized children” (E/C.12/KEN/CO/2-5, para. 57).⁸

10. Similarly, according to official government statistics, in Morocco, the percentage of private enrolment at the primary level has more than tripled in less than 15 years from 4 per cent in 1999 to 14 per cent in 2013.⁹ A coalition of organizations has calculated that, without taking into account the acceleration in the growth in private education since 2005, if private schools continue growing after 2013 at the same pace as during the years 2000 to 2013, the proportion of primary school students in the private sector could reach 30 per cent by 2023, 52 per cent by 2030, and 97 per cent by 2038. In response, the Committee on Economic, Social and Cultural Rights emphasized its concern “about the spread of private education, which could lead to a form of segregation, with good quality education restricted to those who can pay for private, elite schooling”. It urged Morocco to “ensure that the significant increase in private education does not lead to growing inequality in access to good quality education” (E/C.12/MAR/CO/4, paras. 47–48).

⁴ See UNESCO and Right to Education Initiative, *Right to Education Handbook* (2019), p. 163.

⁵ UNESCO, “Operationalizing Sustainable Development Goal 4: a review of national legislations on the right to education” (2017), p. 8.

⁶ UNESCO, *Global Education Monitoring Report 2017/18*, p. 47.

⁷ Kenya National Bureau of Statistics, *economic surveys 2002–2014*, available from <https://www.knbs.or.ke/publications/>.

⁸ See also CRC/C/KEN/CO/3-5, paras. 57–58.

⁹ See Coalition Marocaine pour l’Education Pour Tous and others, report to the pre-sessional working group for the fifty-fifth session of the Committee on Economic, Social and Cultural Rights, para. 11.

11. In the United States of America, charter schools are publicly funded but privately managed schools that are authorized to operate by a charter or contract with the respective state. Such schools are tuition-free and considered part of the state school system, although they are often reportedly exempt from following certain public regulations.¹⁰ The proportion of public schools becoming charter schools increased from 2 to 7 per cent between 2000 and 2015 and in some districts charter schools enrol up to 93 per cent of primary and secondary learners.¹¹

12. There have been massive, unprecedented changes in the structure of education systems, whereby private actors have taken a stronger role in all countries, whether low-income, middle-income or rich. Those changes create a phenomenon of privatization in and of education. Such rapid, uncontrolled changes may potentially affect many elements of the right to education and Sustainable Development Goal 4. For instance, a large increase in fee-charging private providers threatens the obligation and the objective to deliver “free” and “equitable” quality primary and secondary education for all, as well as equality between girls and boys. In a number of United Nations reports, Human Rights Council resolutions on the right to education, treaty body recommendations and observations from the African Commission on Human and Peoples’ Rights concerns have been raised about the impact of the rapid growth in private schools in terms of educational content, quality, segregation and social inequalities.¹²

13. Private provision of education is highly diverse and “may be for-profit or charitable, fee charging or free, driven by companies and entrepreneurs or by communities and non-governmental organisations, formal or informal, supported by the State or totally independent.”¹³ Types of private actors in education include high-fee private schools; low-cost profit-making schools targeting poor households; commercial private school chains; community and faith-based schools; and charter schools.¹⁴ In a draft private sector engagement strategy paper for the period 2019–2022, the Global Partnership for Education distinguishes between for-profit and not-for-profit schools. For-profit schools may be majority internationally or nationally owned network operators, or nationally owned single proprietor schools. Not-for-profit schools include schools run by non-governmental organizations (NGOs) and faith-based schools. Each of those types is further broken down between those charging and not charging fees (generally under a public-private partnership arrangement in the for-profit schools).

14. Attempts to distinguish the most problematic forms of private involvement in education have often focused on separating for-profit and not-for-profit institutions. However, the boundary between the two is thin. An organization can, for instance, be registered as not for profit but pay hefty salaries to its founder or director. There have been cases where for-profit schools have attempted to circumvent legislation limiting or forbidding profits by registering as not for profit, but leasing land or material, or buying services, from another for-profit arm. There have also been debates as to when a school is making a profit, versus seeking profits (but not actually making them yet), or what constitutes profit, whether before or after certain forms of investment. Equally, a small organization operating in an informal settlement may be formally registered as for profit, as

¹⁰ See Kevin Murray and others, “At what cost? The charter school model and the human right to education” (November 2014), p. 6. See also Antoni Verger, Mauro Moschetti and Clara Fontdevila, “Unpacking PPPs’ effects on education: what research on vouchers, charters and subsidies tells us”, forthcoming in 2019 and available from www.abidjanprinciples.org/en/background/overview.

¹¹ See National Alliance for Public Charter Schools, “A growing movement: America’s largest public charter school communities” (October 2017).

¹² See, for example, A/69/402, A/HRC/29/30 and A/70/342. See also statements by human rights bodies on private education actors, available from www.gi-escr.org/concluding-observations-private-education.

¹³ Sylvain Aubry and Zizipho Zondani, “Learning the lesson: why the EU should defend an alternative model to the privatisation of education”, in *Progressive Lab for Sustainable Development: from Vision to Action*, Conny Reuter and Ernst Stetter, eds. (Brussels, Foundation for European Progressives Studies and others, 2017).

¹⁴ See David Archer, “Rights-based responses to non-state education provision: a tentative typology and some critical reflections” (Action Aid, 2016).

that is the only status available, but be operated, for instance, by and for the community without actually extracting any profit.

15. Profit-making in education raises issues when considering the realization of the right to education and Sustainable Development Goal 4. A for-profit school may seek to maximize profits through high fees or to cut costs through reducing the most expensive parts of the curriculum, expelling learners that need the most support, or not properly maintaining school premises. For instance, studies in Kenya have alleged that schools operated by for-profit provider Bridge International Academies often have poor-quality infrastructure to the extent that it constitutes a violation of health and safety standards.¹⁵ When the Ministry of Education in Uganda reportedly resolved to shut Bridge schools in the country, one reason provided was that poor hygiene and sanitation put the life and safety of the schoolchildren in danger.¹⁶

16. Another way to classify private institutions is to establish whether they are commercial in nature or orientation, making the learner a consumer and education a consumer good.¹⁷ The 2016 Appeal by Francophone civil society against the commercialization of education defined them as “educational institutions for which one of the primary goals (although not the only goal) is to trade education services and to protect their own interest rather than serving the public interest. They view education as a commodity, which results in a willingness to expand their activities and their model by competing with other institutions, increasing their turnover, or growing their profits.”¹⁸ Crucially, commercial institutions are defined by their commercial interest and orientation, rather than their formal legal structure. They are contrasted with institutions that fulfil a public service mission, which echoes general comment No. 24 (1994) of the Committee on Economic, Social and Cultural Rights on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, requiring that States impose “public service obligations” on private providers of essential services (para. 21).

17. States have increasingly used the concept of commercialization. In its resolutions 29/7, 32/22, 35/2 and 38/9 on the right to education, the Human Rights Council called on States to address any negative impact of the commercialization of education. In 2018, the European Parliament insisted that the European Union and its member States “must not use ODA to support private, commercial educational establishments, which do not uphold the Union’s principles and values”.¹⁹ In the 2016 Antananarivo Declaration, the International Organisation of La Francophonie also expressed concern about the development of academic and educational establishments with a commercial purpose.²⁰ Equally, in its strategy for education, professional training and integration in developing countries for the period 2017–2021, the French Ministry of Foreign Affairs and International Development committed to preventing the risk of commercialization of education.²¹

¹⁵ See complaint to the International Finance Corporation Compliance Advisor Ombudsman by the East African Centre for Human Rights (2018), available at <http://eachrights.or.ke/wp-content/uploads/2018/04/CAO-Complaint-EACHRights-16-April-18-Public-1.pdf>.

¹⁶ See Global Initiative for Economic, Social and Cultural Rights, “Uganda to close the largest chain of commercial private schools over non-respect of basic education standards” (2016), available at www.gi-esqr.org/latest-news/groundbreaking-news-uganda-to-close-the-largest-chain-of-commercial-private-schools-over-non-respect-of-basic-education-standards/.

¹⁷ See *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, Ian Macpherson, Susan Robertson and Geoffrey Walford, eds., ch. 1, (Oxford, Symposium Books Limited, 2014).

¹⁸ Available at <http://nevendezpasleducation.org/wp-content/uploads/2017/07/Appeal-eng.-against-commercialisation.pdf>.

¹⁹ See European Parliament resolution 2018/2081 (INI) on EU development assistance in the field of education (13 November 2018), para. 12.

²⁰ See www.francophonie.org/IMG/pdf/som_xvi_decl_antananarivo_vf.pdf, para. 39.

²¹ See www.diplomatie.gouv.fr/IMG/pdf/20170314_strategie_efi_2017-2021_mise_en_page_2_cle8c6f77.pdf, p. 17.

18. That approach helps to distinguish private providers of education that are focused on their own interests, and thus raise particular human rights concerns, from other private actors that may play a very important role in supporting the realization of the right to education and Sustainable Development Goal 4.

19. Commercial school chains are particularly worrying in that respect. Bridge International Academies is one emblematic reported example: a for-profit commercial chain of over 500 nursery and primary schools, operating both independently (in India, Kenya and Uganda) and in partnership with Governments (in Liberia and Nigeria). It aims to operate at an unprecedented scale by reaching 10 million children across Africa and Asia.²² The company receives funding from both private and public investors, including the International Finance Corporation (IFC), the CDC Group (formerly the Commonwealth Development Corporation), the Overseas Private Investment Corporation and indirectly through the European Investment Bank, among others.²³

20. Although they purport to support the realization of Sustainable Development Goal 4, the Bridge Academies operations in several countries reportedly exclude the poor and marginalized, undermine labour rights, freedom of expression, the rule of law and minimum educational standards, and have a negative impact on education quality, equity and social cohesion.²⁴ In a complaint filed with the IFC Compliance Advisor Ombudsman against the IFC investment in Bridge, a group of parents and teachers in Kenya raised their concerns about the substandard infrastructure and education provided in its schools and their continued operation in contravention of State regulations and minimum standards.²⁵ Governments, unions, civil society and various treaty bodies have repeatedly highlighted those concerns.²⁶ During its review of Kenya, the African Commission for Human and Peoples' Rights expressed concern about the "lack of monitoring and effective regulation of private school chains, such as Bridge International Academies, that register as non-formal schools, whereas they appear to offer formal education".²⁷ Referring to the financial support of the United Kingdom of Great Britain and Northern Ireland for schools such as the Bridge Academies, the Committee on Economic, Social and Cultural Rights expressed concern that such support could have contributed to "undermining the quality of free public education and created segregation and discrimination among pupils and students" (E/C.12/GBR/CO/6, para. 14). In response to the shortcomings of the Bridge operations, the Governments of Kenya and Uganda have taken steps to enforce compliance, including by ordering the closure of schools that pose a danger to pupils and prosecuting Bridge for such infractions.²⁸

21. Commercial school chains thus threaten not only to impair the realization of the right to education, but also to damage democracy, social cohesion and stability in developing countries (see A/HRC/29/30, para. 39).

²² See "Zuckerberg-backed startup seeks to shake up African education", Wall Street Journal (13 March 2015), available at www.wsj.com/articles/startup-aims-to-provide-a-bridge-to-education-1426275737.

²³ Global Initiative for Economic, Social and Cultural Rights, list of known investors in Bridge International Academies (2018), available from www.gi-escr.org/publications/brief-on-bridge-international-academies-investors.

²⁴ See "Civil society call on investors to cease support to Bridge International Academies" (August 2017), available from www.gi-escr.org/publications/august-2017-civil-society-call-on-investors-to-cease-support-to-bridge-international-academies.

²⁵ See www.cao-ombudsman.org/cases/case_detail.aspx?id=1272.

²⁶ See, for example, www.newvision.co.ug/new_vision/news/1471272/enforcement-standard-operating-procedure-sop-private-schools-school-charges-uganda; www.unite4education.org/about/a-global-response-to-education-commercialisation/; www.gi-escr.org/publications/august-2017-civil-society-call-on-investors-to-cease-support-to-bridge-international-academies; and www.gi-escr.org/concluding-observations-private-education.

²⁷ "Concluding observations and recommendations on the 8th–11th periodic report of the Republic of Kenya, 2008–2014", para. 37.

²⁸ See <http://globalinitiative-escr.org/wp-content/uploads/2017/03/170323-Update-on-legal-cases-involving-BIA-Kenya-Uganda-Final-v5.pdf>.

22. In addition to the diversity of types of private schools, there has been a growing tendency in the last decade to develop public-private partnerships in education. Such partnerships are generally differentiated between charter schools; vouchers, which are subsidies for learners choosing their schools; and subsidies to private schools.²⁹

23. While an attractive way to fund education or improve educational governance, public-private partnerships raise major concerns for the realization of human rights. In 2016, Liberia created a significant outcry when the Government announced a plan to outsource its public pre-primary and primary schools to Bridge International Academies. The previous Special Rapporteur on the right to education considered that “such arrangements are a blatant violation of Liberia’s international obligations under the right to education, and have no justification under Liberia’s constitution”.³⁰ The government plan was scaled down to a three-year pilot programme with additional private providers. In an evaluation of the programme comparing the public-private partnership schools with standard public schools, it was reported that the public-private partnership was financially unsustainable. In the case of the Bridge schools, it led to the mass firing of teachers, the mass expulsion of children and the spending of much larger sums of money than any other school taking part in the pilot, with limited learning gains.³¹

24. It is important to mention the role of development aid and assistance in relation to this issue. A key driving factor behind the growth of private actors in education has been the support of multilateral and bilateral donors for various forms of private schooling in developing countries. It is reported that bilateral donors, such as the United Kingdom and the United States, as well as multilateral donors such as the World Bank, among others,³² have indirectly or directly funded private schooling in the last decade, which in some instances has raised particular concerns, including by treaty bodies.³³

25. The Special Rapporteur notes with concern the emergence of multiple education funds, some of which use tools such as public-private partnerships and debt. She particularly expresses concern about the focus by the Education Outcomes Fund on supporting private providers of education in Africa and the Middle East. Given the risks that privatization poses for the realization of the right to education, the already existing massive and uncontrolled growth of private providers in many developing countries and the lack of capacity of many States to effectively regulate them, this represents an unprecedented risk for the realization of the right to education and could gravely undermine the achievement of Sustainable Development Goal 4.³⁴

²⁹ See Antoni Verger, Mauro Moschetti and Clara Fontdevila, “Unpacking PPPs’ effects on education: what research on vouchers, charters and subsidies tells us” (forthcoming).

³⁰ UN rights expert urges Liberia not to hand public education over to a private company, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18506.

³¹ Mauricio Romero, Justin Sandefur and Wayne Aaron Sandholtz, “Can a public-private partnership improve Liberia’s schools?” (2017).

³² See, for example, www.right-to-education.org/news/press-release-uk-fails-give-clear-response-yet-another-un-body-challenging-its-support; www.right-to-education.org/news/rte-supports-letter-calling-uk-government-halt-aid-funding-failing-private-schools-africa; and www.gi-escr.org/publications/brief-on-bridge-international-academies-investors.

³³ See, for example, www.right-to-education.org/news/world-bank-accepts-complaint-its-investment-bridge-international-academies and E/C.12/GBR/CO/6, para. 14.

³⁴ See “A critical response from the Global Campaign for Education on the Education Outcomes Fund for Africa and Middle East” (September 2018), available from www.campaignforeducation.org/docs/statements/GCE_STATEMENT_ON_EDUCATION_OUTCOMES_FUND_FINAL.pdf?utm_medium=Board&utm_source=Statement&utm_campaign=EOF&utm_term=EOF;statement;GCE&utm_content=Link_070918.

IV. Development of the normative framework on the right to education in the context of the ongoing privatization in education

26. In response to the changes in the educational context, created in particular by the preoccupying increase in private involvement in education and the questioning of the role of the State, the human rights framework needs to provide precise guidance. That is necessary, both for human rights to remain relevant to the evolving context and to avoid unregulated changes in education destroying 50 years of progress in the realization of the right to education, including the progress made in relation to Millennium Development Goal 2 and Sustainable Development Goal 4. The risk is that, if left unchecked, the increased involvement of private actors in education “cripples the universality of the right to education as well as the fundamental principles of human rights law by aggravating marginalization and exclusion in education and creating inequities in society” (A/69/402, para. 41).

27. As set out in international treaties, States have recognized the right of everyone to education without discrimination. They have committed to making primary, secondary and higher education available free to all as expeditiously as possible and to actively pursuing the development of a system of schools at all levels. Furthermore, States are to respect the liberty of parents to choose for their children schools other than those established by the public authorities, which conform to the minimum standards established by the State in accordance with international law, and to ensure the religious and moral education of their children in conformity with their own convictions. They must also protect the liberty of individuals and bodies to establish and direct such educational institutions.

28. Human rights law therefore sets up a delicate balance between the State obligation to deliver education and the freedom of private actors in the realization of the right to education. The liberty to choose schools other than those established by States contributes in particular to ensuring that education does not become an instrument of indoctrination in the hands of States and to ensuring respect for cultural diversity and cultural rights within the education system. When the human rights treaties were drafted, the intention was not to protect commercial interests in the area of education or to offer States a way to escape from their responsibilities through the implementation of austerity measures and neo-liberal policies.

29. The human rights framework has been protected and increasingly enriched in the last decades through the interpretation of courts and human rights mechanisms, progressively unpacking that balancing exercise and signalling the obligation of States to protect education systems against commercialization. United Nations and regional human rights treaty bodies, as well as national and regional courts, have repeatedly addressed the issue of the role of private actors in education.³⁵ They have expressed concern about the commercialization of education and underlined the crucial role of States in realizing the right to education. In particular, according to the Committee on Economic, Social and Cultural Rights, article 13 of the International Covenant on Economic, Social and Cultural Rights regards States as having the principal responsibility for the direct provision of education in most circumstances, and States have an enhanced obligation to fulfil (provide) the right to education.³⁶ The Committee on the Rights of the Child has stipulated that: “States must adopt specific measures that take account of the involvement of the private sector in service delivery to ensure the rights enumerated in the Convention are not compromised.”³⁷

³⁵ See www.gi-escr.org/concluding-observations-private-education and www.right-to-education.org/privatisation#section_view-default-5; and www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf.

³⁶ See general comment No. 13 (1999) on the right to education, para. 48.

³⁷ See general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, para. 34. See also Committee on the Rights of Persons with Disabilities, general comment No. 4 (2016) on the right to inclusive education, para. 76; Committee on the Elimination of

30. There are also an important number of national legislative measures that regulate the growing number of private educational institutions.³⁸

31. The mandate on the right to education, for its part, dedicated three reports in 2014 and 2015 related to the growth of private actors in education, expressing concern about the situation and warning that “it may not be an exaggeration to say that privatization is supplanting public education instead of supplementing it” (A/69/402, para. 38). Building on those reports, since 2015 the Human Rights Council has consistently called upon States to address the impact of private actors in education through resolutions adopted by consensus, with a significant number of States from all regional groups sponsoring them, signalling a broad agreement on the issue. In resolution 29/7, the Council urged States to put in place “a regulatory framework guided by international human rights obligations for education providers that establishes, inter alia, minimum norms and standards for the creation and operation of educational institutions”; and to support “research and awareness-raising activities to better understand the wide-ranging impact of the commercialization of education on the enjoyment of the right to education”. Crucially, it also recognized “the significant importance of public investment in education, to the maximum of available resources”. In resolution 32/22, the Council added that the regulatory framework should apply to education providers “operating independently or in partnership with States” and requested States to address “any negative impact of the commercialization of education and strengthen[s] access to appropriate remedies and reparation for victims of violations of the right to education”. It further urged all States to hold accountable education providers “whose practices have a negative impact on the enjoyment of the right to education. In resolutions 35/2 and 38/9, the Council maintained similar wording, specifying in resolution 38/9 that the regulatory framework should apply to all education providers.

32. Human rights therefore provide a solid framework of legally binding obligations with regard to the role of States and private actors that must guide the implementation of Sustainable Development Goal 4. The right to education can help to identify, prevent and, when necessary, demand accountability for practices, such as the growth of commercial school chains, that seriously threaten human rights and social cohesion. Other situations demand a careful assessment and the human rights framework possesses qualities that make it a particularly useful tool for policymakers: it is a legally binding framework almost universally ratified; it provides a basis for discussion beyond some of the entrenched ideological positions; and it allows assessments to be made with the necessary level of subtlety, flexibility and pragmatism.

33. The right to education unambiguously prohibits two extreme positions: the destruction of public education and the nullification of the liberty to choose and establish private educational institutions. Such situations would not be in conformity with human rights standards. Between those positions, there is a wide range of possibilities, where private and public actors may exist, which demand a careful assessment to determine how to fulfil the right to education.

V. The Abidjan Principles: a guiding tool to implement the Sustainable Development Goals in accordance with the obligation of States to provide public education and to regulate private involvement in education

34. On 13 February 2019, the Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education were

Discrimination against Women, general comment No. 36 (2017) on the right of girls and women to education, paras. 38–39, and Committee on Economic, Social and Cultural rights, general comment No. 24, para. 22.

³⁸ See Right to Education Project, *National Legislation on Private Provision of Education* (March 2016), available at www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_National_Legislation_on_Private_Provision_of_Education_All_Regions_2016.pdf.

adopted in Abidjan, following a three-year extensive participatory consultation and drafting process. This involved hundreds of stakeholders, including States, parents and civil society, teachers, the private sector and high-level experts from various backgrounds, including human rights lawyers, education specialists and practitioners, and affected communities from various geographic regions.³⁹ The Special Rapporteur engaged with the process to develop the Abidjan Principles from their inception to their adoption. At the date of finalizing the present report, 54 experts from around the world had signed the Abidjan Principles, of whom the majority were women and were from the Global South.

35. The outcome is the result of rigorous legal analysis that draws from legal literature and is informed by the reality reported by academic researchers, practitioners and communities. The Abidjan Principles are based on international standards, as interpreted by courts and human rights mechanisms. They constitute a significant new tool that States and other stakeholders should use for implementing the right to education. Consisting of 97 guiding principles, they are organized according to 10 overarching principles, which are annexed to the present report.⁴⁰ All the guiding principles are important and should be read together.

36. The Special Rapporteur sets out below how the Abidjan Principles apply to four topics that are particularly relevant in the current context and for the implementation of Sustainable Development Goal 4.

A. Obligation of States to fund and provide public education

37. The question as to whether States have an obligation to provide public education has long been debated. Guiding principle 29 states that: “States must respect, protect and fulfil the right to free, quality, public education.”

38. That position reaffirms the interpretation provided by human rights mechanisms in recent decades. For instance, the Committee on Economic, Social and Cultural Rights recommended that Kenya “take all the measures necessary to strengthen its public education sector” (E/C.12/KEN/CO/2-5, para. 58). National courts and regional human rights courts have regularly taken a similar position.⁴¹ That reflects what appears to be the consensus at the international level. As mentioned above, the Human Rights Council has consistently passed resolutions recognizing the significant importance of investment in public education, to the maximum of available resources. The public dimension is also central to the reaffirmation by States in the Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4 that “education is a public good”.

39. That position is supported by the wording of relevant legal provisions that assume, and therefore require, that States provide public education. For example, the freedom of parents to choose for their children schools other than those established by the public authorities makes clear that there must also be public education, namely “schools established by the public authorities”. If there were no such schools, then the choice of parents would not be a choice, but a necessity.⁴²

40. The Special Rapporteur further notes that public education is, as a practice, the main form of delivery of education in a large majority of States and often constitutionally protected.⁴³ Public education has historically been the main way through which developed

³⁹ On the process leading to the adoption of the Abidjan Principles, see www.abidjanprinciples.org/en/background/overview.

⁴⁰ See www.abidjanprinciples.org/en/principles/overview.

⁴¹ See for example, in the United States, *Brown v. Board of Education of Topeka* (1954) 347 U.S. 483 at 493 (1954); European Court of Human Rights, *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (application Nos. 5095/71, 5920/72, 5926/72), judgment of 7 December 1976, para. 52; and *Folgerø and others v. Norway* (application No. 15472/02), judgment of 29 June 2007, para. 84.

⁴² Jacqueline Mowbray, “Is there a right to public education?”, forthcoming and available from www.abidjanprinciples.org/en/background/overview.

⁴³ The Law Library of Congress, “Constitutional right to an education in selected countries” (2016).

countries have reached full literacy and numeracy, and developed modern economies. It would be unfair to deny the right to a quality, public education to everyone else.

41. Guiding Principle 2 indicates that a learning institution is public if it meets three cumulative criteria, meaning it is:

- (a) Recognized by the State as a public educational institution;
- (b) Effectively controlled and managed by a State organ or genuine representatives of the population they serve;
- (c) Not at the service of any commercial or other exploitative interest that undermines learners' right to education.

42. That potentially leaves room for an emerging form of collective organization of education to qualify as public education, provided the State accepts it. For instance, traditional forms of community schools, such as the *Harambee* schools developed in Kenya after decolonization and which were eventually integrated into the public education system,⁴⁴ or some indigenous schools may be regarded as public schools. Such models must however be "genuine", in the sense that they are not co-opted by any private interest or used by the State as a way to avoid its responsibility.

43. Guiding Principle 29 specifies that States must provide free public education "of the highest attainable quality ... as effectively and expeditiously as possible, to the maximum of their available resources". That means that realizing the right to public education requires a constant effort to improve it and look for the best approach. Education governance is an art that should be celebrated as such.

44. Guiding Principle 42 recalls that "States have an immediate obligation to take all measures to address ineffective governance, the lack of transparency, the lack of accountability, or corruption that may affect the delivery of quality public education." Given the number of tools available for meeting this guiding principle, failure in public education is not an acceptable excuse for privatization of education, which would be impairing the realization of the right to education. In accordance with Guiding Principle 44, lack of will must be distinguished from the lack of capacity of States.

45. To be effective, public education must be adequately funded. States must prioritize the allocation of the maximum of their available resources to free, public education of the highest attainable quality (Guiding Principle 34). Crucially, resources involve financial and non-financial resources, as well as domestic resources, which must be prioritized, and resources from international assistance and cooperation (Guiding Principle 16). The Guiding Principles also restate the wide range of measures States must consider for mobilizing resources, including taxation and the elimination of tax evasion and avoidance.

B. Obligation to regulate private actors

46. The Abidjan Principles restate unambiguously the obligation of States to respect the liberty of parents or legal guardians to choose for their children an educational institution other than a public educational institution (Guiding Principle 47). Nevertheless, that liberty is not unlimited and human rights law explicitly requires States to frame it through adequate regulations.

47. Limitations to that liberty, in accordance with article 4 of the International Covenant on Economic, Social and Cultural Rights, may only be acceptable if they are determined by law only insofar as they are compatible with the nature of that liberty and solely for the purpose of promoting the general welfare in a democratic society and any other human rights (Guiding Principle 48). Equally, minimum standards in education "must not be used

⁴⁴ See Eldah Nyamoita Onsomu and others, *Community Schools in Kenya. Case Study on Community Participation in Funding and Managing Schools*, (Paris, International Institute for Educational Planning, 2004).

for any purpose inconsistent with the obligation to respect, protect and fulfil the right to education” (Guiding Principle 54).

48. The use of regulations, for instance, as a disguised way of refusing to open educational institutions that may be critical of the Government (or of ideologies supported by the State), or of shutting them down, or as a way of denying minorities or indigenous groups obtaining an education that meets their cultural rights, violates human rights. For example, concern was expressed when the Government of Hungary changed legislation to the effect that made it impossible for the Central European University to continue its operations in the country, creating undue interference with academic freedom and independence.⁴⁵

49. Guiding Principle 52 recalls that: “States should impose public service obligations on private actors involved in education to ensure that such private actors contribute to the realisation of the right to education.” That is aligned with general comment No. 24 of the Committee on Economic, Social and Cultural Rights (para. 21). Irrespective of whether the provider is public or private, education remains a public service that plays a particular role in the fabric of society, social cohesion, democracy and the realization of other human rights. State regulations must ensure that where private educational institutions operate, they live up to those standards.

50. The impact of private educational institutions on the right to education is too often assessed at the school level on a narrow set of indicators. Each school is assessed separately and compared with other schools. However, adverse human rights impacts of the development of private schools, for instance, with regard to segregation, often appear at the systemic level when looking at the cumulative impact of a large number of private institutions on the whole range of human rights.⁴⁶

51. Guiding principle 55 establishes a checklist of what is implied in the regulation of private actors. The checklist draws from State practice in countries around the world, such as Algeria, Japan and Singapore, as reported, for example, by the previous Special Rapporteur (see A/HRC/29/30, paras. 83–85).

52. Similarly, as quality should improve in public education, Guiding Principle 56 outlines the obligation of States to increase progressively the requirements of minimum standards for education. That may be particularly relevant for contexts where the State has had historically low standards, for instance to allow the formalization of private schools that have historically operated informally.

53. The standards in the Alternative Provision of Basic Education and Training programme in Kenya offer an interesting illustration. According to information received, the standards make it easier for informal schools to register with the Ministry of Education. They are intended “to integrate the [non-formal] education and training institutions into the mainstream programme” and facilitate the registration of institutions that are established “for the provision of basic education or vocational training to children and youth who, due to difficult circumstances, are unable to access public or private schools in informal settlements and other hard to reach areas”.⁴⁷ However, such standards should include clear plans to rapidly increase the requirements on such schools to meet the standards of other schools, a point that is still unclear in the policy. The Special Rapporteur also warns that such regulations may be misused by commercial actors, which may seek to register under the Alternative Provision Standards in Kenya and to use such regulations to increase their profits and gain market share rather than to formalize historical informal provision.

⁴⁵ See letter from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Permanent Representative of Hungary, dated 11 April 2017 (HUN 1/2017).

⁴⁶ See Martin Carnoy and Patrick McEwan, “Does privatization improve education? The case of Chile’s national voucher plan” (2003).

⁴⁷ See Ministry of Education, Science and Technology, “Registration guidelines for alternative provision of basic education and training” (2015), available at https://doj19z5hov92o.cloudfront.net/sites/default/files/media/resource/alternative_provision_of_basic_education_and_training_apbet_opti_on_2_cover.pdf, pp. 8 and 9.

C. Public-private partnerships

54. Public-private partnerships in education are probably one of the most controversial and sensitive topics. The Abidjan Principles set out a useful compilation of existing standards that can help to navigate the issue.

55. Target 17 of Sustainable Development Goal 17 may be read as encouraging public-private partnerships. However, the wording of the target is broad, demanding that stakeholders “encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships”. “Public-private” is thus only one type of partnership among others.

56. An important forthcoming study recalls that public-private partnership programmes tend to be analysed in generic terms, without necessarily taking into account the importance of their design variables in mediating policy impact.⁴⁸ Other forms of partnerships in education, such as alternative partnership approaches to those focusing on the private provision of schooling, could be explored without undermining equity and social cohesion. In the study, the authors emphasize that there are many forms of partnerships in education still to explore, which, in contrast to public-private partnerships oriented towards school competition and segmentation, can contribute to strengthening educational systems and guarantee the right to quality education for all. Such partnerships could be established with a broad range of actors, such as universities and educational research centres, community organizations and local or international NGOs. Instead of focusing on school provision, the partnerships could focus on the promotion of teacher training, capacity-building at the public administration level, support services for schools or family engagement in education.

57. Overall, the study shows that empirical research on educational public-private partnerships appears to find more negative than positive effects on a variety of dimensions ranging from student achievement to family satisfaction. In the case of market-based public-private partnerships, particularly negative evidence relates to human rights impacts, such as segregation. Even a report commissioned by Ark Education Partnerships Group, an organization running a network of 38 schools in the United Kingdom under a public-private partnership arrangement, found that current evidence “does not allow us to draw strong and universal conclusions about the impact of PPPs on learning outcomes”.⁴⁹

58. The Abidjan Principles recall that: “States must prioritise the funding and provision of free, quality, public education” (Guiding Principle 64). That is based on the practice of treaty bodies, such as the Committee on the Rights of the Child, which recommended, for instance, that Brazil “strictly prioritiz[e] the public education sector in the distribution of public funds” (CRC/C/BRA/CO/2-4, para. 76). Furthermore, “the right to education does not entail an obligation for the State to fund private instructional educational institutions” (Guiding Principle 64), as also stated by the Committee on Economic, Social and Cultural rights.⁵⁰

59. The Abidjan Principles further detail conditions under which States may still fund private actors and list the type of actors that may be eligible for funding. Importantly, institutions that are “commercially-orientated or pursue other commercial benefits, or excessive personal gains” should generally not receive funding. As underlined by the previous Special Rapporteur, “A differentiated approach to public-private partnerships is necessary to distinguish partners with for-profit business interests in education from those who are committed to a social interest in education, especially those with a genuine philanthropic spirit” (A/70/342, para. 125). That approach also corresponds to the view, for example, of the Committee on the Rights of the Child, which recommended that Haiti guarantee that public-private partnerships “do not serve private interests or entail any form of commercialization of education” (CRC/C/HTI/CO/2-3, para. 59).

⁴⁸ Antoni Verger, Mauro Moschetti and Clara Fontdevila, “Unpacking PPPs’ effects on education: what research on vouchers, charters and subsidies tells us” (forthcoming).

⁴⁹ *Public-Private Partnerships in Education in Developing Countries: a Rigorous Review of the Evidence* (2017).

⁵⁰ See general comment No. 13, para. 54.

60. When considering the provision of resources to eligible private institutions, the Abidjan Principles list substantive, procedural and operational requirements that States must strictly observe.

61. Substantive requirements (Guiding Principle 65) indicate in particular that any public-private partnership must be a “time-bound measure that the State can publicly demonstrate to be the only effective option to advance the realisation of the right to education”. It must also meet one of the following four objectives:

(a) Ensure short-term access to education where public education is unable to do so;

(b) Ensure respect for cultural diversity and the realization of cultural rights, which is particularly relevant, for instance, for minorities and indigenous peoples;

(c) Facilitate the integration within the public education system of private institutions (which has been a common model in Europe, for instance in Belgium and the Netherlands);

(d) Pilot a pedagogical approach.

62. These four options give States the necessary flexibility to respond pragmatically to particular cases, while keeping to the principles of the realization of the right to education. The requirement that public-private partnerships must be a time-bound measure means that States should periodically reassess all options to advance the realization of the right to education, while fully respecting and promoting cultural diversity. Furthermore, as specified by the Committee on Economic, Social and Cultural Rights in its general comment No. 13 (1999) on the right to education, “if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination on any of the prohibited grounds” (para. 54).

63. Procedural requirements (Guiding Principle 66) demand, in particular, that “the State assesses and publicly demonstrates its capacity and intent to continuously monitor and regulate the private instructional educational institution’s ability to meet the applicable standards”. In that respect, however: “One of the ironies of the move to promote public-private partnerships is that most of their proponents at least pay lip service to the need for countries entering into them to have a strong domestic institutional capacity to create, manage and evaluate them. Yet this is precisely the capacity that is so often lacking in such contexts” (A/73/396, para. 80).

64. As part of their operational requirements, States should ensure, among other things, “that all private instructional educational institutions receiving public funding make all proprietary data and material that can help to improve the education system, available without a licence within a reasonable time defined by law to the relevant public authorities” (Guiding Principle 72). Too often, States, in particular those among the poorest, contract private partners to support them, but rather than being empowered through that partnership become dependent on a private and generally foreign entity. Such relationships create or entrench unbalanced power relationships and cannot be accepted as a means to realizing the right to education.

65. The Special Rapporteur is concerned that public-private partnerships are currently being developed in education without the necessary safeguards outlined above. She calls in particular on the Governments of Ghana and Sierra Leone, which are reportedly developing public-private partnerships in the field of education, to consider carefully the concerns outlined above, learn from the challenges of education experiments in other countries, such as Liberia, and meet substantive, procedural and operational requirements.⁵¹

⁵¹ See, for example, <https://ghanaguardian.com/moe-calls-teacher-unions-a-bluff-set-to-kick-start-gps-policy-in-september>.

D. Role of donors

66. States remain responsible for their conduct when they participate in or transfer their competencies to an international organization (Guiding Principle 22). They must take all reasonable steps to ensure that the relevant organization behaves consistently with its international human rights obligations, for example through closely monitoring the conduct of the organization, and through their votes and the policies they promote within the organization. For instance, States that are partners in the Global Partnership for Education have an obligation to ensure that the Partnership does not act in violation of their own human rights obligations.

67. When providing international assistance and cooperation for education, States must prioritize support for free, quality, public pre-primary, primary and secondary education for all, especially vulnerable, disadvantaged and marginalized groups, moving as rapidly as possible towards free, quality education in public educational institutions at other levels (Guiding Principle 38). That does not mean that private educational institutions may never be supported, in particular non-profit institutions in emergency contexts, but States and international organizations may only fund private actors in a manner consistent with human rights, in particular by not funding commercial providers of education.

68. The Special Rapporteur is encouraged by the adoption in November 2018 by the European Parliament of resolution 2018/2081 (INI) on EU development assistance in the field of education, whereby funding to commercial schools is banned, and by the latest draft of the private sector engagement strategy of the Global Partnership for Education. The Partnership is a multi-stakeholder partnership and funding platform that aims to strengthen education systems in developing countries. Its upcoming private sector strategy, which will be considered for adoption at its Board meeting in June 2019, mentions human rights, including the Abidjan Principles, as one of its foundational principles. According to the draft strategy, the Partnership will not fund commercial actors directly or indirectly but focus its funding on public education.

69. Guiding Principle 63 states that: “Where necessary for the realisation of the right to education, international assistance and cooperation for education should also aim to strengthen the regulation of private instructional educational institutions in accordance with the recipient States’ human rights obligations.” Reportedly, there have been some opportunities missed by technical partners to reinforce national systems of regulation, such as in the latest grant of the World Bank and the Global Partnership for Education to Haiti, which supported a parallel regulatory and monitoring system for the private sector, rather than building up government capacities.⁵²

70. Donors have a responsibility to redress any negative impact they may have caused on the right to education. For instance, it has been argued that World Bank structural adjustment programmes in the 1980s and 1990s, and the policy of introducing fees has had a damaging effect on public education.⁵³

E. Civil society and stakeholder engagement

71. Civil society has a central role to play in supporting the right to education. It can help States to address corruption, identify demands from the population and design solutions and policy reform. Civil society can also help States by providing independent outside monitoring. Such monitoring should not be seen as adversarial by States, but

⁵² See Global Initiative for Social and Economic Rights and Sciences Po Law School Clinic, “Misusing influence: France’s failure to prevent international organisations’ support to privatisation and violations of the right to education in Haiti”, alternative report to the Committee on Economic Social and Cultural Rights, fifty-eighth session, available at <http://globalinitiative-escr.org/wp-content/uploads/2016/06/CESCR-Report-on-France-ETOs-and-private-education-May-2016.pdf>.

⁵³ Macleans A. Geo-Jaja and Garth Mangum, “Structural adjustment as an inadvertent enemy of human development in Africa”, *Journal of Black Studies*, vol. 32, No. 1 (September 2001).

considered as a tool to achieve their obligation to conduct impartial monitoring (Guiding Principle 83).

72. However, the Special Rapporteur is concerned about the increasing repression of civil society and the shrinking civil society space, which also affects advocacy on issues relating to the right to education. That not only often breaches human rights, but also renders the implementation of the right to education and Sustainable Development Goal 4 less effective and encourages corruption and ineffective governance, which in turn risks reducing the funds available to education from domestic sources and from donors.

73. Support to private actors in education and public-private partnerships is often justified as a means of addressing ineffective governance and corruption. However, there is no other way to increase transparency and accountability in education but to have a vibrant civil society able to independently monitor and dialogue with the authorities. If States, donors and technical partners are serious about addressing corruption, they should support and fund civil society, rather than resorting to privatization and funding commercial schools, which is often used as a way to crush teaching unions and is accompanied by opaque deals and even greater risks of corruption.

VI. Conclusions and recommendations

74. **As underlined in the Abidjan Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education, international human rights law requires States to provide quality, public education. While room is left for private actors to offer educational alternatives, States are required to regulate private involvement in education strictly by making sure that the right to education is not undermined. States must ensure that private education conforms to educational standards; that its existence does not jeopardize the role of the State as educational guarantor; that it is not exploited to increase inequality or injustice; and that the recipients of private education are its principal beneficiaries. States are also required to reinforce public education systems and not to segment them by generating material inequalities.**

75. **Efforts made towards the realization of Sustainable Development Goal 4 and other Sustainable Development Goals must be made accordingly. States must respect, protect and fulfil the right to education at all times and cannot relinquish their responsibilities in any circumstances.**

76. **Where private actors are involved in education, the human rights framework remains equally relevant and legally binding on States. While some private actors may play a positive role, support the State in developing quality, public education and help to fulfil the right to education, others, in particular commercial actors, constitute serious threats to the right to education. They risk contributing to inequalities on a large scale, undermining education progress and affecting peace and stability, the democratic space and social cohesion, particularly in developing countries.**

77. **The Special Rapporteur recommends that States use the Abidjan Guiding Principles as a useful guiding tool in this respect. The Principles respond to the Human Rights Council, which welcomed “the development by experts of guiding principles and tools for States to implement the right to education” in its resolution 38/9.**

78. **The Special Rapporteur calls upon States to review their laws, policies and practices in accordance with the Abidjan Principles and to pilot projects for their implementation. She hopes that the Human Rights Council will endorse the Abidjan Principles and that some States, such as Côte d’Ivoire, will lead the way in implementing them, as recommended in her report on her visit to that country (A/HRC/38/32/Add.1).**

79. **The Special Rapporteur also makes the following observations and recommendations, which reflect the Abidjan Guiding Principles and its 10 overarching Principles (annexed to the present report).**

Meeting the obligation to provide free, quality, public education under Sustainable Development Goal 4

80. The right to education requires States to deliver free, quality, public education for everyone. The commitment of States under Sustainable Development Goal 4 to “ensure the provision of 12 years of free, publicly funded, equitable quality primary and secondary education” must be understood to require free, publicly funded, quality public education.⁵⁴

81. States should significantly increase their funding for public education. While appearing attractive on the face of it, private funding linked to private provision of education to fill the funding gap is not sustainable and poses major risks. Public funding must meet not only the targets set out in the Education 2030 Framework for Action, such as 20 per cent of the budget for education, but also reflect the obligation to provide the maximum available resources for education. In some cases, this may mean a larger amount of funding, in particular in contexts where there are large untapped resources and the needs in public education are high.

82. States should address the determinants of access to quality public education, as recalled in Guiding Principle 33. That requires the adoption of effective measures to respect, protect and fulfil other rights, such as the rights to work, social security, food, housing, health and water and sanitation. In particular, desegregating housing policies should be implemented, in accordance with the right to housing, and the allocation of space for public schools should be planned. Such plans for the development of public schooling must be made public.

Monitoring of and research on private actors

83. States, as they develop and implement regulations, should identify and distinguish private educational instructional institutions according to their actual operations, and not only their formal status. More research is needed on this issue, but the Special Rapporteur considers that the concept of commercial educational institutions provides a solid starting point, which should make it possible to identify trends and challenges.

84. It is important that States consider and assess the short and long-term systemic impact of private institutions, and pass regulations that respond to such systemic impacts. Such assessments should not narrowly focus on quantitative, measurable, outcomes, such as test results, but include quantitative assessments on a broad range of indicators, including in particular indicators to measure the realization of the rights to equality and non-discrimination at a systemic level.

Regulation of private actors

85. All States should develop and implement adequate regulations for the involvement of private actors, in line with the Abidjan Principles. Guiding Principle 55 establishes a checklist for such regulations and the Special Rapporteur encourages States to review their regulatory framework against it.

86. Where private educational institutions do not comply with applicable standards and regulations, States must require them to do so in the shortest possible time. States should encourage compliance through measures such as providing appropriate advice and offering support tools and management assistance, or, if non-compliance persists, by enforcing penalties. Where private educational institutions are unable or unwilling to comply with such measures, States should close those institutions, following due process, as recalled in Guiding Principle 60, and having ensured that there is continued enjoyment of the right to education for all affected learners.

87. The Special Rapporteur encourages States that have adopted particular regulations aimed at facilitating the integration of non-formal schools into

⁵⁴ See 2030 Incheon Declaration and Framework for Action, preamble, para. 6.

mainstream public education to set a timeline for the continuous improvement of such standards and the formalization of the schools concerned within a short time.

88. The Special Rapporteur encourages States to provide the necessary resources to enforce their education regulations, in particular for commercial actors. Donor States must absolutely refrain from intervening in any way to defend such commercial actors, including those based on their territory, at the expense of the right to education.

Accountability and remedies

89. In implementing the Abidjan Principles, States should be mindful of setting an accountability framework that is aligned with human rights, in accordance with Overarching Principle 7. There must be judicial and non-judicial complaint mechanisms for both public education and private involvement in education.

90. Effective monitoring mechanisms must be in place and must be adequately resourced to assess both the impact of each institution and the systemic effect of private instructional educational institutions in the short and long term, looking at the actual and potential impact on the right to education (Guiding Principle 85). Monitoring should not be a mere procedural exercise. The results must be made public and used by all relevant government entities, including the authorities at the relevant level and the Ministry of Finance, to reform policies.

Private-public partnerships

91. The Special Rapporteur considers that Sustainable Development Goal 17 should be implemented in accordance with the specificities of each of the areas of the Sustainable Development Goals. With regard to education, the Special Rapporteur emphasizes that public-private partnerships in education that focus on involving private actors for service delivery have empirically largely failed, in particular in fragile countries. States must prioritize the funding and provision of free, quality, public education and may only fund private instructional educational institutions if they comply with human rights and observe all the substantive, procedural and operative requirements required by human rights law, as explained in overarching Principle 5.

92. Should States need additional financial or technical support, the Special Rapporteur recommends that instead of focusing on school provision, States consider partnerships that focus on the promotion of teacher training, capacity-building at the public administration level, support services for schools, or family engagement in education. Such partnerships should take place with non-commercial actors, such as universities and education research centres, community organizations and local or international NGOs.

93. Where partnerships include the provision of private resources to public institutions, such partnerships should meet the criteria set out in Guiding Principles 39–41. While private resources, whether financial or technical, providing support to Governments appears to be a positive step, it also carries the risk that private actors unduly influence the education curriculum and governance.

94. States should ban commercial advertising and marketing in public and private instructional educational institutions and ensure that curricula and pedagogical methods and practices are not influenced by commercial interests (Guiding Principle 59).

Donors and partners

95. Public money that is allocated through international cooperation should be exclusively used to build and strengthen free, quality and inclusive public education systems, in consultation with the rights holders concerned and in partnership with the recipient country. Member States and multilateral institutions, such as the Global

Partnership for Education, must not use their resources on any commercial actors, be it for core services or for commercial investors, impact investors or banks.

96. The Special Rapporteur strongly recommends that States providing international cooperation funds do not provide resources to international and regional financial institutions and investors that finance commercial providers of education or that foster the growth of private education, such as the Education Outcomes Fund. States should review the policies of institutions such as the International Development Association and the Global Partnership for Education, to ensure they are aligned with their own human rights obligations before considering providing them with funding. If alignment is not the case, States should seek policy change or developments before providing funding, or consider other forms of funding that are in line with their human rights obligations.

97. Rather than resorting to privatization to circumvent challenged public education systems that largely result from past policies, donors should consider how they can participate to sustainably rebuild the public education system, in accordance with Overarching Principle 6.

98. The Special Rapporteur urges all actors, States, donors and multilateral institutions, to collaborate actively with all components of civil society, including teaching and other education staff unions, in monitoring and designing education policies. She emphasizes that collaboration with civil society is the best means to achieve sustainable accountability and transparency in education, rather than the involvement of private commercial actors, which involves significant risks, including of corruption.

Implementation of the Abidjan Principles

99. The Special Rapporteur hopes that multilateral institutions, in particular UNESCO and its agency for policy planning, the International Institute for Educational Planning, will take a leading role in spearheading the implementation of the Abidjan Principles. She calls on UNESCO to put the Abidjan Principles at the core of its communication, programming, technical assistance and training activities, and on the United Nations Children's Fund (UNICEF) to integrate them into its programmes, in particular in the implementation of its new strategy for the period 2019–2030. Regional institutions should consider how to use this tool to support the implementation of the right to education in a concrete manner.

100. Human rights bodies and courts should use the Abidjan Principles to inform their reviews, in order to undertake specific analysis and make specific recommendations on the right to education.

101. Academic institutions and researchers have a central role to play within all areas of education policy. The Abidjan Principles can form a basis for developing indicators for researchers to assess the impact of education policies. That would help to ensure that assessments such as, for instance, randomized control trials, which too often focus on a narrow set of indicators, such as a limited number of learning outcomes, take a more comprehensive and more useful perspective, and allow the realization of the right to education to be assessed in concrete ways.

Annex

The 10 overarching Principles

1. The Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education are made up of 97 Guiding Principles. In addition to these, 10 overarching Principles provide an overview and summary of the Guiding Principles. The 10 Principles should be read in conjunction with the Guiding Principles, and were adopted as a whole with the full Abidjan Principles.

Principle 1

2. States must respect, protect, and fulfil the right to education of everyone within their jurisdiction in accordance with the rights to equality and non-discrimination.

Principle 2

3. States must provide free, public education of the highest attainable quality to everyone within their jurisdiction as effectively and expeditiously as possible, to the maximum of their available resources.

Principle 3

4. States must respect the liberty of parents or legal guardians to choose for their children an educational institution other than a public educational institution, and the liberty of individuals and bodies to establish and direct private educational institutions, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human rights law.

Principle 4

5. States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education where private actors are involved in the provision of education.

Principle 5

6. States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, of land concessions, international assistance and cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements.

Principle 6

7. International assistance and cooperation, where provided, must reinforce the building of free, quality, public education systems, and refrain from supporting, directly or indirectly, private educational institutions in a manner that is inconsistent with human rights.

Principle 7

8. States must put in place adequate mechanisms to ensure they are accountable for their obligations to respect, protect, and fulfil the right to education, including their obligations in the context of the involvement of private actors in education.

Principle 8

9. States must regularly monitor compliance of public and private institutions with the right to education and ensure all public policies and practices related to this right comply with human rights principles.

Principle 9

10. States must ensure access to an effective remedy for violations of the right to education and for any human rights abuses by a private actor involved in education.

Principle 10

11. States should guarantee the effective implementation of these Guiding Principles by all appropriate means, including where necessary by adopting and enforcing the required legal and budgetary reforms.
