



# General Assembly

Distr.: General  
19 June 2019

English only

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## Human Rights Council

Forty-first session

24 June–12 July 2019

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by International Organization for the Right to Education and Freedom of Education (OIDEL), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 June 2019]

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\* Issued as received, in the language(s) of submission only.



## **Clarifications from a Human Rights perspective of the report “The implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education”**

This year the Special Rapporteur on the right to Education presents a report on “The implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education”. This report aims to tackle the problem of privatization, pursuing the action of the Former Special Rapporteur Kishore Singh ([A/69/402](#), [A/HRC/29/30](#), [A/70/342](#)). OIDEL celebrates the fact that the Special Rapporteur on the Right to Education focuses on this topic. On this regard, initiatives such as the Human Rights Guiding Principles are essential to safeguard the essential content of the right to education, including the freedom approach of the right to education. OIDEL acknowledges the efforts of the Special Rapporteur on this regard and aims with this written statement to raise some questions that would be interesting to clarify in order to clarify some of the given guiding principles.

These are certain the main problematic points of this report that we consider that will need some clarifications:

### **Variety of private schools**

It does not make a distinction of for-profit and non-for-profit (par.14-15). As the former Special Rapporteur Kishore Singh mentioned on this report the phenomenon of privatization does not concern non-state actors, such as religious institutions, non-governmental organizations, community-based groups, foundations or trusts (par.1 A/HRC/29/30). Not making the distinction between for-profit schools and non-for-profit can lead to a scenario in which certain schools that are not part of the problem which can be unfairly treated.

This is specially critical when we think of education as a cultural right for cultural, religious and national minorities (par. 55 E/C.12/GC/21).

### **Definition of public schools**

When the document refers to public schools it provides a definition which is very wide and vague and potentially includes most of the non-profit non-governmental schools (par. 41-42).

*“(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”*. This could be problematic, especially in light with the examples provided by the report (par.42) because in certain states some non-governmental non-profit schools could be recognized as public, while in other states not. The problem is that this recognition will depend on the government discretion. Some clarification would be necessary; otherwise it could create situations of unfairness.

A good example is the case of faith-based schools in England and Spain, even-though that both institutions have the same relation with the state in terms on management and funding English faith based schools are considered public while Spanish ones are considered private.

### **Lack of legal ground concerning public-private partnerships**

The report should reconsider its position concerning public-private partnerships in the provision of education. The report recalls that the Target 17 of the Sustainable Development Goal 17 encourages public-private partnerships (par. 55). However, the report

concludes that these partnerships cannot focus on school provisions (par.56). Similar provisions of the Abidjan Principles (principle 64) have weak legal support. The report, in its turn, of the Special Rapporteur supports this statement only by referring to the recommendation of the Committee on the Rights of the Child to Brazil. The legal base of the report in this regard is not only weak, but, in addition, it has to be understood in the concrete context of Brazil (par.57). This is especially problematic as it could have a negative effect on agreed binding norms of international law concerning the rights of parents and the rights of non-governmental schools. In addition, this can be specially problematic in order communities with a low income can benefit of an inclusive education provided by schools not managed by the government.

### **Severe limitations to public funding of private schools**

The report points out that the right to education prohibits nullification of the liberty to choose and establish private educational institutions (par.33) Also it recalls the obligations of the states to respect the liberty of parents to choose for their children schools other than those established by public authorities and to ensure the religious and moral education of their children in conformity with their own convictions as it is established in the international treaties (par.27). Nevertheless, it aims to limit various forms of public funding of non-governmental schools, in a way that can nullify the liberty to choose and establish private educational institutions and preserve such liberty as a privilege of high-income families.

In this regard, the report of the Special Rapporteur acknowledges part of the Abidjan principles concerning the substantive requirements of funding of public-private partnerships (par.61). The report points out that “*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”*.

This paragraph could pose several threats for human rights:

- First, it could limit the liberty to choose and to establish private educational institutions to those families and institutions with enough economical resources. Freedom of education cannot be limited by the income of the families.
- Second, the statement that funding of non-governmental schools can only be a time-bound measure and is only applicable to those cases in which the state can demonstrate that public education system cannot cater for certain categories of learners, is not based on any human rights law.
- Third, this paragraph ignores national legislation of many states and the established judicial practice, including the jurisprudence of different Constitutional Courts (French Constitutional Court 23 Nov. 1977 and Spanish Court 5/1982 and 77/1985).
- Fourth, it goes against the recent Resolutions of the EU (such as the European Parliament resolution of 12 June 2018 on modernisation of education in the EU (2017/2224(INI) which states that “*with regard to increasing inclusiveness and ensuring freedom of educational choice, the provision of adequate financial support for schools of all categories and levels, both state schools and not-for-profit private schools, provided the curriculum offered is based on the principles enshrined in the Charter of Fundamental Rights of the European Union and complies with the legal systems and rules and regulations regarding the quality of education and the use of such funds in force in the Member State concerned*”).

- Fifth, this paragraph of the report may put at risk the allocation of public funds to non-governmental schools that will now depend on the states' discretion and will be limited to those cases in which they consider that they are incapable to fulfil certain obligations. This approach does not have a solid legal footing in international human rights law and could jeopardize the rights of many families, especially representatives of non-mainstream culture.
- Sixth, when the report refers to the paragraph 65 it refers to any public-private partnership (PPP); nevertheless, the Abidjan principles in the article 65 do not make any reference to PPP, but to "any potential funding to an eligible instructional educational institution". There are important nuanced differences between these two and which could lead to confusing and unfair scenarios.

Not all public-private partnerships in the field of education have been bad. Likewise, not all private schools are profit-oriented and disregard human rights. Actually, many of them have served to increase social cohesion and to enhance democracy and human rights in the national context.

This report, as well as the Abidjan Principles, are essential and a cornerstone to deal with the problem of privatization. Nevertheless, without the clarification of the mentioned points this could lead to a scenario in which parents, civil society organizations, specially those traditionally discriminated, will have more problems to choose and education culturally inclusive.

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