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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

### **Right to education\***

#### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly, in accordance with Human Rights Council resolutions 8/4, 17/3, and 26/17 the report of the Special Rapporteur on the right to education, Kishore Singh.

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\* Late submission.



## **Report of the Special Rapporteur on the right to education**

### *Summary*

The present report is submitted pursuant to Human Rights Council resolutions 8/4, 17/3 and 26/17. In the report, the Special Rapporteur on the right to education examines State responsibility in the face of the explosive growth of private education providers, from a right to education perspective. He emphasizes the need to preserve education as a public good, which must not be reduced to a profit-making business. He also underlines the importance of the principles of non-discrimination and equality of opportunity, as well as social justice and equity. States must develop a regulatory framework for all private providers of education, including sanctions for abusive practices. The Special Rapporteur highlights some additional key issues and concludes with recommendations.

## I. Introduction

1. The present report is submitted to the General Assembly pursuant to Human Rights Council resolutions 8/4, 17/3 and 26/17. In the report, the Special Rapporteur examines State responsibility in the face of the proliferation of private providers of education, with its repercussions on the principles and norms underlying the right to education. He demonstrates how privatization adversely affects the right to education, both as an entitlement and as empowerment. He emphasizes the need to preserve education as a public good and to ensure that it is not commercialized. The Special Rapporteur underlines the key importance of the principles of non-discrimination and equality of opportunity, as well as social justice and equity. States must regulate all private providers of education, as well as sanctions for abusive practices. State obligations to establish and maintain a transparent and effective system that monitors and controls private education providers require special emphasis. In that respect, Governments can be inspired by numerous court decisions and emerging jurisprudence. The Special Rapporteur highlights some key issues and concludes with recommendations.

2. During the reporting period, the Special Rapporteur undertook a mission to Seychelles. He reported on the mission to the Human Rights Council at its twenty-sixth session in June 2014.

3. On 16 June 2014, the Special Rapporteur presented to the Human Rights Council his thematic report on the assessment of students' educational attainment and the implementation of the right to education. In the report, he underlined that the fulfilment of State obligations in respect of the right to education is dependent upon how the education provided meets the essential objectives of the right to education, as shown by the educational attainments of students. He emphasized a human rights-based approach in national assessments of quality education.

4. The Special Rapporteur participated in a number of public events on education and continued collaborating with States, international organizations and non-governmental organizations.

5. On 15 August 2013, the Special Rapporteur addressed a joint meeting of the Permanent Committee on Education, Culture, Tourism and Human Resources and the Permanent Committee on Justice and Human Rights of the Pan-African Parliament and shared his experience, with a view to bringing African voices to the post-2015 development agenda. He also had a dialogue with the South African Human Rights Commission relating to the protection and promotion of the right to education.

6. On 21 August, the Special Rapporteur was a speaker at the International Forum on the Millennium Development Goals in the field of education. He also participated in the preparation of a corresponding post-2015 development strategy. The forum was held in Astana and was organized by the Ministry of Education and Science of Kazakhstan. On 23 August, the Special Rapporteur was a guest speaker at the launch of the International Decade for the Rapprochement of Cultures 2013-2022 in Astana.

7. On 18 and 19 September, the Special Rapporteur participated in a meeting of the Commonwealth Ministerial Working Group on the Post-2015 Development Framework for Education, as a follow-up to the Mauritius communiqué issued at the

eighteenth Conference of Commonwealth Ministers of Education, and shared his views on the central role of education.

8. On 24 September, the Special Rapporteur was a lead speaker at an event on the theme “Human right to education in the post-2015 development agenda”, hosted by the Global Campaign for Education, Open Society Foundations and several non-governmental organizations, at which he underlined the importance of the right to quality education for all.

9. On 4 October, the Special Rapporteur attended the launch of the campaign “Unite for quality education: better education for a better world” on the occasion of World Teachers’ Day, celebrated by Educational International, along with many other non-governmental organizations, in New York. On 28 October, he was a guest speaker in New York for the launch of the book *Ready to Learn? A Legal Resource for Realizing the Right to Education*, published by the Legal Resources Centre, South Africa.

10. On 7 November, the Special Rapporteur addressed the Education Commission of the thirty-seventh session of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris during the debate on education beyond 2015, emphasizing the importance of preserving education as a public good.

11. From 25 to 30 November, the Special Rapporteur attended a regional workshop on Education for All in Africa in Algiers hosted by the African Commission on Human and Peoples’ Rights. He addressed the opening session of the workshop on key challenges in realizing the Education for All agenda and the right to basic education.

12. On 3 December, the Special Rapporteur gave the opening address at a seminar organized by the University of Extremadura, Spain, in cooperation with the government of Extremadura and Collège Universitaire Henry Dunant, Geneva, aimed at encouraging reforms in the universities of the Maghreb by introducing a rights-based approach.

13. On 10 and 11 January 2014, the Special Rapporteur participated as an expert in a national education summit organized by the government of Gujarat, India, and addressed the opening session, highlighting the importance of the right to education in nation-building.

14. On 19 January, the Special Rapporteur addressed the regional forum on the protection of the right to education during insecurity and armed conflict in the Middle East and North Africa region. The forum, which was held in Doha, was organized by the United Nations Human Rights Training Centre.

15. On 21 February, the Special Rapporteur participated in an event in Paris organized by the International Organization of la Francophonie and UNESCO to celebrate International Mother Language Day, and addressed the audience on local language, global citizenship and the right to education.

16. On 3 and 4 March, the Special Rapporteur participated in an international conference on the enforcement of international human rights law through the mechanism of United Nations Special Rapporteurs organized by the Johns Hopkins School of Advanced International Studies, in collaboration with its centre at

Bologna, Italy, and spoke on the justiciability and enforcement of the right to education.

17. On 7 March, the Special Rapporteur was a guest speaker at an event organized by International Relations Consulting Network and Lobbying at the European Parliament in Brussels, where he spoke on the post-2015 development agenda and the right to an education perspective.

18. On 31 March, the Special Rapporteur participated in the Alliance2015 round table on education, which addressed the theme “Enhancing the impact of the European Union on education for global sustainable development” in Copenhagen.

19. On 16 and 17 April, the Special Rapporteur was a panellist at the briefing for delegates on the post-2015 development agenda, organized by the United Nations Institute for Training and Research (UNITAR) in New York. The briefing, in which he covered education in the post-2015 development agenda, was followed by a rich dialogue with participating delegates.

20. On 6 May, the Special Rapporteur gave the opening address at a colloquium on lifelong learning, organized by the Education Faculty, University Mohammed V, Rabat.

21. From 12 to 14 May, the Special Rapporteur participated in the Global Education Meeting on Education for All and the Post-2015 Development Agenda organized by UNESCO in cooperation with Oman, held in Muscat.

22. On 14 May, the Special Rapporteur participated in a briefing for delegates on the post-2015 development agenda organized by UNITAR, held in Geneva.

23. On 17 May, the Special Rapporteur made opening remarks on the role of global citizenship education from a global perspective within the United Nations system at an event on global citizenship education organized by UNESCO in collaboration with the Permanent Delegation of Austria to UNESCO.

24. On 11 June, the Special Rapporteur discussed the right to quality education, its justiciability and the right to education in the post-2015 development agenda with a group of professors and researchers at a colloquium organized for that purpose by the International Organization for the Right to Education and Freedom of Education in Geneva.

25. On 12 June, the Special Rapporteur participated in a side event and expert meeting on privatization in education organized by the Global Initiative for Economic, Social and Cultural Rights together with the Privatization in Education Research Initiative on the occasion of the twenty-sixth session of the Human Rights Council.

26. On 17 June, the Special Rapporteur participated in a parallel event on the right to education and skills development within the framework of the post-2015 agenda, organized by the Permanent Missions of Portugal and Qatar in collaboration with the non-governmental organizations platform on the right to education, at which he spoke on international and human rights law.

27. On 7 July, the Special Rapporteur gave a keynote speech in Geneva at the initiation of the process to establish a general recommendation on girls’ and women’s right to education, as established in article 10 of the Convention on the Elimination of All Forms of Discrimination against Women.

28. From 10 to 12 July, the Special Rapporteur participated in the fifty-sixth Conférence des ministres de l'éducation des Etats et gouvernements de la Francophonie on the theme "Inclusive and quality education for all in the Francophonie: challenges, priorities and perspectives in the post-2015 development agenda", where he spoke on preserving education as a public good and State responsibility in connection with privatizing education.

29. On 25 July, the Special Rapporteur participated as a panellist in a round table on freedom and democracy without violence, at which he also made the concluding remarks of the session on the philosophic foundations of human rights, organized by Collège Universitaire Henry Dunant, Geneva.

## II. Privatization in education: an overview

30. Education is a fundamental human right. Providing public education is the primary responsibility of States. Education can also be provided by non-States actors, including religious institutions,<sup>1</sup> non-governmental organizations, community-based groups,<sup>2</sup> trusts, enterprises and individual proprietors.

31. In the 1980s and 1990s, developing countries were compelled by the international financial institutions to initiate significant cuts under structural adjustments to their public services, including education.<sup>3</sup> International universal education targets in conjunction with economic liberalization policies have led to the push for an increase in private provision as a way to introduce market competition into the education space.

32. One can observe the explosive growth of privatized education, in particular for-profit education, taking advantage of the limitations of Government capacities to cope with rising demands on public education. Privatization is making its intrusion at all levels of education, and the phenomenon of education as an attractive business is assuming alarming proportions, with scant control by public authorities.

33. As stated in the concept note for the Commonwealth Ministerial Working Group on the Post-2015 Development Framework for Education (2013), the reconfiguration of public services within neoliberal globalization has placed education squarely in the headlamps of the private sector. For business, the

<sup>1</sup> The liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions is recognized in international human rights conventions. This should be subject to "such minimum educational standards as may be laid down or approved by the State" (art. 13 (3) of the International Covenant on Economic, Social and Cultural Rights). Such education is primarily not driven by profit or business considerations.

<sup>2</sup> A community can build or establish schools for basic education, assuming social responsibility in education; in some cases, these are taken over by the Government later on. The primary purpose is not business through education but to supplement Government efforts. There are also educational establishments for philanthropic purposes which, again, are business-driven but aimed at promoting education as a public good.

<sup>3</sup> All World Bank education sector strategies — starting in 1999 — have stressed the key role of the private sector in education, and the importance of private-sector investment saw increased prominence in the most recent education sector strategy 2020 released in 2011 (Emma Seery, *Working for the Many: Public Services Fight Inequality*, OXFAM Briefing Paper No. 182, (Oxford, Oxfam, 2014). Available from [www.oxfam.org](http://www.oxfam.org)).

education sector in Asia-Pacific Economic Cooperation countries, for example, represents a market worth of a relatively stable \$1,600 billion dollars within a wider volatile global market. The world's largest education multinational and largest testing company within this "industry", Pearson, made an income of \$7 billion in 2011 and the top 20 education multinationals are worth a combined \$36 billion. This represents only a foot in the door to the larger market and there is room for vigorous growth.<sup>4</sup>

34. A number of scholars have critically examined the neoliberal model of schooling, which is characterized by "State withdrawal in favour of privatization" with "market-anchored conceptions of schooling" and engineers and legitimizes a departure from decades of the welfare State.<sup>5</sup> Civil society organizations have also expressed concern about the profound impact of privatization in education globally as a key emerging issue regarding the realization of the right to education.<sup>6</sup>

35. Private providers find it lucrative to provide early childhood care and education, which has remained scantily covered by the public education system. In most developing countries, the public education system is rudimentary in this respect and private providers have an open market for catering to working families and the middle class.

36. One can observe the growth of private providers in the field of basic education, although such education is a core responsibility of Governments. Private education is being promoted owing to the lack of sufficient public provision of education or underperforming public schools. The emergence of low-fee private schools further undermines public schools.

37. Private higher education has become the fastest growing segment worldwide;<sup>7</sup> in many countries, private higher education institutions "represent the clear majority".<sup>8</sup> Sponsored by a range of entities such as individual proprietors or profit-seeking business interests, such institutions "involve new international branch campuses and foreign investment in and ownership of local institutions".<sup>8</sup> The new nomenclature for the heads of private higher institutions, namely "chief executive officer", reflects the perception that they are analogous to heads of business enterprises.

38. Soon, it may not be an exaggeration to say that privatization is supplanting public education instead of supplementing it.

<sup>4</sup> For a scholarly analysis of the issues involved, see Commonwealth Ministerial Working Group on the Post-2015 Development Framework for Education, meeting report of the Technical Meeting on Advocacy Strategy Development, held in London on 18 and 19 September 2013.

<sup>5</sup> See J. Zajda, ed., *Decentralization and Privatization in Education: the Role of the State* (Dordrecht, Springer, 2006).

<sup>6</sup> See Summary of events on privatization in education and the right to education organized by the Global Initiative for Economic, Social and Cultural Rights, together with the Privatization in Education Research Initiative, on the occasion of the twenty-sixth session of the Human Rights Council (Geneva, June 2014).

<sup>7</sup> See Philip G. Altbach and Daniel C. Levy, eds., *Global Perspectives on Higher Education: Private Higher Education: A Global Revolution* (Rotterdam, Sense Publishers, 2005).

<sup>8</sup> Kevin Kinser and others, *The Global Growth of Private Higher Education*, ASHE Higher Education Report, vol. 36, No. 3 (San Francisco, Wiley, 2010).

### III. Repercussions of privatization on the principles and norms underpinning the right to education

39. A recent study, with an in-depth analysis of issues relating to private actors in education in the past decade, demonstrates how education itself is being recast as a sector and increasingly opened up to profit-making and trade, as well as to agenda-setting by private, commercial interests. Privatization is penetrating into almost all aspects of the education endeavour, from the administrative apparatus to policymaking and from formal provision in education settings to out-of-school activities, such as private tutoring. This study provides insights into different forms of a private approach in education, the consequences for individuals and societies and stakes involved and shows how the learner is increasingly conceptualized as a consumer and education as a consumer good.<sup>9</sup>

40. Another document prepared by the UNESCO International Institute for Educational Planning and the International Organization of la Francophonie also highlights similar developments, expressing similar concerns about sweeping privatization in education reducing education to a commodity: “With diversification in the field of education, private providers — international or local — are more and more numerous. International consortiums have [become] specialized in ‘selling’ education. A number of local figures, including many teachers and even educational authorities, are creating schools for profit, turning to rather wealthy families with slogans extolling the quality [of the school] or are turning towards the disadvantaged public with altruistic slogans, which often hide the profit or political character of their endeavours. One can observe, above all, the emergence of a quasi-market phenomenon.”<sup>10</sup>

41. Privatization 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.

42. The Special Rapporteur considers that public policies should critically examine the repercussions of privatization in education, bearing in mind the principles and norms underpinning the right to education and the responsibility of States under human rights law.

#### A. Principle of non-discrimination

43. Non-discrimination is a general principle of universal importance in human rights law. The UNESCO Convention against Discrimination in Education, which establishes the right to education comprehensively, provides that the State can permit the establishment or maintenance of private educational institutions, “if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are

<sup>9</sup> Ian Macpherson, Susan Robertson and Geoffrey Walford, eds., *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia* (Oxford, Symposium Books, 2014).

<sup>10</sup> “La régulation du système éducatif: une obligation pour atteindre l’équité et améliorer la qualité”, paper prepared by the International Institute for Educational Planning of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Organization of the Francophonie and Wallonie Bruxelles, 2014.



conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level” (see article 2 (c)). Article 13 of the International Covenant on Economic, Social and Cultural Rights, which also lays down a comprehensive framework for the right to education, provides for “the liberty of individuals and bodies to establish and direct educational institutions”, provided the institutions conform to the educational objectives set out in article 13 (1) and to certain minimum standards (see article 13 (4)).

44. The UNESCO Convention against Discrimination in Education prohibits discrimination in education that is based upon, inter alia, “national or social origin”, “economic condition” or “birth” and has the purpose of nullifying or impairing equality of treatment in education. It provides that “Discrimination includes any distinction, exclusion, limitation or preference” (article 1). The Committee on Economic, Social and Cultural Rights has interpreted articles 2 (2) and 3 (relating to non-discrimination) of the International Covenant in the light of the UNESCO Convention.<sup>11</sup> The Special Rapporteur would like to specially mention that “social origin” and “property” are grounds on which discrimination is prohibited under the Convention on the Rights of the Child.<sup>12</sup> “Property” as a key element in capacity to pay is an impediment to universal access to education by every child.

45. Thus, access to private schools, based upon the capacity to pay fees, which in many cases can be exorbitant, flies into the face of prohibited grounds of discrimination based, notably, on “social origin”, “economic condition”, “birth” or “property” in international human rights conventions.

46. The increasing privatization of fee-paying, for-profit schools in Morocco, for example, entails discrimination and inequalities in education for disadvantaged children by creating a system that favours the “haves” over the “have-nots”, with the risk of developing a two-speed education system.<sup>13</sup> Besides, research shows that the scheme of “vouchers purported to provide economically disadvantaged parents the means to select a private school in fact promotes group differentiation”.<sup>14</sup>

47. Privatization in education also exacerbates discrimination against girls in gaining access to education. It is well known that families prioritize the education of boys over girls and that girls are less likely to be enrolled in private education owing to parents’ perceived return on the costs of educating girls compared to that of boys.

<sup>11</sup> General comment No. 13 (1999) on the right to education (article 13 of the International Covenant on Economic, Social and Cultural Rights), (E/2000/22-E/C.12/1999/11 and Corr.1, annex VI, paras. 31 and 33).

<sup>12</sup> The Convention on the Rights of the Child states that “State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parents or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (art. 2, para. 1).

<sup>13</sup> Global Initiative for Economic, Social and Cultural Rights, “Privatization in education in Morocco and the right to education: summary factsheet”, 2013. Available from <http://goo.gl/MTGua8>.

<sup>14</sup> Ian Macpherson, “Interrogating the private-school ‘promise’ of low-fee private schools” in *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, Ian Macpherson, Susan Robertson and Geoffrey Walford, eds. (Oxford, Symposium Books, 2014).

## B. Principle of equality of opportunity in education

48. Privatization in education favours access to education by the privileged. It throws overboard the fundamental principle of equality of opportunity in education, which is common to almost all international human rights treaties (see [A/HRC/17/29](#)). It is a key factor resulting in unprecedented disparities in access to education. Extreme inequality in education persists and, in some cases, has widened.<sup>15</sup> “The difference between the poor man’s school and the rich man’s school is becoming starker with each passing year.”<sup>16</sup> Inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with economic condition, wealth or property becoming the most important criterion for gaining access to education.

49. In this context, it is important to emphasize the State obligation to ensure that the liberty to provide education, set out in article 13 (4) of the International Covenant on Economic, Social and Cultural Rights, does not lead to extreme disparities in educational opportunity for some groups in society.<sup>17</sup> The Special Rapporteur would also like to recall the resolution on the right to education adopted by the Human Rights Council in 2011, in which the Council urged all States to give full effect to the right to education by, inter alia, promoting equality of opportunity in education in accordance with their human rights obligations (resolution 17/3).

## C. Principle of social justice and equity

50. In addition to being an entitlement, education is instrumental in “promoting development, social justice and other human rights”.<sup>18</sup> The principle of social justice, which is at the core of the global mission of the United Nations to promote development and human dignity, also underpins human rights. Social justice and equity are of perennial importance for bridging the widening gap between the rich and the poor and for making education an equalizing force and harnessing it for the common well-being.

51. This is crucial, since the low-fee private schools “not only constrain social justice in education, favouring access for some over others, but also social justice through education”, since their *raison d’être* is “monetizing access” to education.<sup>14</sup> This aggravates inequality through the structural exclusion of certain groups, entrenching a neoliberal vision of society at the cost of a humanitarian view of society where human capital is prioritized.

52. The Special Rapporteur considers it important to recall the outcome document of the United Nations Conference on Sustainable Development, entitled “The Future We Want” (General Assembly resolution [66/288](#), annex), in which the General Assembly underlined the importance of the right to education and expressed the

<sup>15</sup> UNESCO, *Education for All Global Monitoring Report 2013/4: Teaching and Learning: Achieving Quality for All* (Paris, UNESCO Publishing, 2014).

<sup>16</sup> Inaugural address by Atal Bihari Vajpayee, former Prime Minister of India at the third meeting of the High-Level Group on Education for All, held in New Delhi in 2003.

<sup>17</sup> General comment No. 13 (1999) on the right to education (article 13 of the Covenant) ([E/2000/22-E/C.12/1999/11](#) and Corr.1, annex VI, para. 30).

<sup>18</sup> Transparency International, *Global Corruption Report: Education* (Abingdon, Oxon, Routledge, 2013).

resolve of the international community to work for a “world that is just, equitable and inclusive”. Raising public debate on fundamental justice questions posed by forces of globalization<sup>19</sup> is laudable and deserves to be carried further, since this is critically important.

#### **D. Principle of preserving education as a public good**

53. Privatization has a profound adverse impact on education since it purports to “recast education not as a public or societal good grounded in democratic principles of justice and equal opportunity but as an individual, atomized and personalized private good ...”.<sup>14</sup>

54. The Special Rapporteur has been underlining the importance of preserving the social interest in education, while promoting the concept of education as a public good. This is invaluable in fostering the humanistic mission of education. It is also crucial for enhancing public investment in education. It provides a conceptual frame for regulating private providers of education so that the social interest in education is not sacrificed for the sake of private profit. “The State is the custodian of quality education as a public good”<sup>20</sup> and this must become a guiding factor in public policies vis-à-vis private providers. The State is both the guarantor and the regulator of education, which is a fundamental human right and a noble cause. Understanding the multifaceted role of the State in education is a precondition for critically analysing educational institutions and their responsibility for preserving education as a public good.<sup>21</sup>

### **IV. Regulating private providers: State responsibility**

55. The State is primarily responsible for providing education. Article 13 of the International Covenant clearly regards “States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the development of a system of schools at all levels shall be actively pursued” (art. 13 (2) (e)).<sup>22</sup> The State also has the obligation to safeguard the right to education in the case of its violation. “Violations of article 13 include the failure to take ‘deliberate, concrete and targeted’ measures towards the progressive realization of secondary, higher and fundamental education.”<sup>23</sup> Regulating private providers is one of the key challenges for public policy. Privatization flourishes when the State does not assume its role as the regulator of the education system, as the 2011 universal periodic review of Haiti showed. With limited Government capacity and a lack of availability of public school facilities, 92 per cent of

<sup>19</sup> For an insightful analysis, see Macpherson, Robertson and Geoffrey Walford, eds., *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, pp. 9-22 (see footnote 9 above).

<sup>20</sup> Final statement, entitled “Muscat Agreement”, adopted at the UNESCO Global Education for All Meeting, held in Muscat from 12 to 14 May 2014.

<sup>21</sup> As regards the role of the State in education, see J. Zajda, *Decentralization and Privatization in Education: the Role of the State* (see footnote 5 above).

<sup>22</sup> General comment No. 13 (1999) on the right to education (article 13 of the Covenant) (E/2000/22-E/C.12/1999/11 and Corr.1, annex VI, para. 48).

<sup>23</sup> General comment No. 13 (1999) on the right to education (article 13 of the Covenant) (E/2000/22-E/C.12/1999/11 and Corr.1, annex VI, para. 59).

education in Haiti had been taken over by the private sector (see [A/HRC/WG.6/12/HTI/3](#), para. 61).<sup>24</sup>

56. Legal framework or policy responses are inadequate or non-existent in private higher education, where demand-absorbing institutions representing mostly lower-level and lower-quality institutions cater to the surging demands for education, many of them acting much like for-profit organizations with “loosened government regulations” or “in a regulatory vacuum”.<sup>8</sup>

57. States must establish and maintain a transparent and effective system that monitors the right to education and regulates private providers. As the countries of the International Organization of the Francophonie have stated, the State is the legitimate authority that enjoys full prerogatives in respect of exercising a regulation covering all levels of the education system. Notably, the State must prescribe rules; define all levels and modalities of certification of students’ learning by legitimizing academic titles and diplomas; control and evaluate the activities of private providers; and sanction the private providers who do not respect the rules.<sup>25</sup>

58. States must develop national legislation accordingly. As an example, one can cite the Education Law (1995) of China, which provides that “Educational activities must conform with the public interest of the State and society” (article 8) and that “No organization or individual may operate a school or any other type of educational institution for profit” (article 25). Ecuador provides another example. The Constitution of Ecuador (2008), which ushered in a new model for the State (see [A/HRC/WG.6/13/ECU/1](#), para. 4), underscores that education shall respond to the public interest and shall not serve individual or corporate interests (article 28).

59. The practice of private tutoring in private and public schools has far-reaching implications for school education services and social inequalities. Yet, few Governments have satisfactory regulations in that regard. Private, for-profit tutorial companies should be treated as businesses rather than as educational institutions.

60. Regulations for tutoring companies are only beginning to catch up with those for schools, but are arguably almost as important.<sup>26</sup> Governments have a responsibility in that respect. As public figures, parliamentarians can play an important role in bringing to light violations of principles and norms of the right to education and abusive practices by private providers. Public policy issues can also be discussed by parliamentary committees or commissions on education, where they exist, to safeguard education as a public good and the social interest in education.

<sup>24</sup> See also “ActionAid calls on the Government of Haiti to improve the quality of education”, 28 May 2014. Available from [www.right-to-education.org/fr/node/320](http://www.right-to-education.org/fr/node/320).

<sup>25</sup> “Plaidoyer sur l’importance du rôle de l’Etat dans la régulation de la qualité et de l’équité de l’éducation”, Conférence des ministres de l’éducation des Etats et gouvernements de la Francophonie, 56e session, Abidjan, Côte d’Ivoire, 12 July 2014.

<sup>26</sup> Mark Bray and Ora Kwo, *Regulating Private Tutoring for Public Good: Policy Options for Supplementary Education in Asia*, CERC Monograph Series in Comparative and International Education and Development, No. 10 (Bangkok, UNESCO Asia and Pacific Regional Bureau for Education; Hong Kong, China, Comparative Education Research Centre, 2014).

## V. Some key issues requiring special attention

61. State responsibility vis-à-vis private providers relates to the negative impact of such providers on the right to education, both as an entitlement and as empowerment.

### A. Impact of privatization on the right to education as an entitlement

62. Entitlement to education in terms of universal access, especially to basic education, is an essential prerequisite for the exercise of the right to education.

63. One of the pernicious consequences of private education is that it undermines universal access to education, owing to the high costs associated with it. Private education is beyond the reach of the marginalized and the poor, who need education the most. Often, the criterion for admission to private institutions is not merit or capacity, but rather the ability to pay, irrespective of merit. This is in contravention of the basic norms set out in the Universal Declaration of Human Rights and international human rights conventions. Those who are wealthy can afford to obtain education in spite of their being less meritorious compared with those from lower economic strata.

64. The State must control the fee demanded by private providers. For instance, the Guidelines for private schools in Bhutan provide for a memorandum of understanding between the Department of School Education and the proprietor of the school pursuant to the Royal Government's policy on the establishment of private schools, requiring the private schools to fix and declare the yearly lump-sum school fees for a student for one academic year.

65. The provision of basic education free of cost is not only a core obligation of States, but also a moral imperative. Social protests against exorbitant fee increases in education, especially in privatized higher education, are well known. In 2011, Chile became a glaring example of sacrificing social interest in education in favour of privatization; protests against privatization demanding an end to for-profit educational institutions that involved high costs for students were violently suppressed by police forces, resulting in the killing of a student.<sup>27</sup>

66. Regarding basic education, the question is not whether it is available, but whether it is available free of cost.

67. Privatizing education aggravates growing disparities in access to education, further marginalizing the poor. Available experience shows that the voucher system to help children from poor households to gain access to fee-charging private schools has failed in quality education and the Special Rapporteur would like to support the proposition in the OXFAM briefing paper entitled "Working for the Many: Public Services Fight Inequality"<sup>28</sup> that it be discontinued. Similarly, user fees in education are counterproductive, since they take money out of the pockets of ordinary working families, bankrupting them when they need help the most and preventing them from sending their children to school.

<sup>27</sup> See statement by the Special Rapporteur, 11 September 2011.

<sup>28</sup> Emma Seery, *Working for the Many: Public Services Fight Inequality*, OXFAM Briefing Paper No. 182 (Oxford, Oxfam, 2014). Available from [www.oxfam.org](http://www.oxfam.org).

## B. Impact of privatization on the right to education as empowerment

68. Privatization in education also negatively affects the right to education as empowerment in terms of knowledge, values and skills acquired and their quality.

69. The phenomenon of low-fee private schools is projected as an affordable means of obtaining quality education. However, there is no evidence that “private schools do anything different to induce more learning than do public schools (...) many private schools do worse than public schools”.<sup>5</sup> An unregulated free market in higher education may lead to investments in the sector by low-quality providers. There have been instances in which fraudulent practices have come to light; for example, admission rules are relaxed, the evaluation process is distorted and examinations are faked in different ways.<sup>29</sup>

70. Quality in private schools is also compromised by lack of respect for the status of teachers. Many underqualified and underpaid teachers are employed by low-fee private schools, which are run by small and large enterprises. In addition, in some cases, teachers are employed on a temporary basis, with no career perspective; nor are they provided in-service training for professional development.

71. Such practices are in direct contravention of the UNESCO-International Labour Organization (ILO) recommendation on the status of teachers, which lays down a normative framework for the teaching profession and applies to both public and private teachers. These practices also reflect non-compliance by States with their obligation to establish and maintain “minimum educational standards” to which all private educational institutions established in accordance with article 13 (3) and (4) of the International Covenant are required to conform.<sup>30</sup> Such minimum standards are important, since privatization is propelled by business interests and vitiates the humanistic mission of education. The “cultural-valuational currency” it breeds is derogatory to the “moral worth” of the very poor, which further limits (if not excludes) their equal participation in society.<sup>14</sup>

## C. Raising the profile of education as a core public service and as a social responsibility

72. The State remains primarily responsible for education on account of international legal obligations and cannot divest itself of such responsibility. This is its core public service function. As the Supreme Court of the United States of America stated in the historic judgement in *Brown v. Board of Education* (1954), “Providing public schools ranks at the very apex of the function of a State” and “Education is perhaps the most important function of State and local governments”.<sup>31</sup> State obligations remain in the case of privatization of education.<sup>32</sup>

<sup>29</sup> Hallak and Poisson (2007), cited in John Fielden and N. V. Varghese, “Regulatory issues”, in *A New Dynamic: Private Higher Education*, Svava Bjarnason and others (Paris, UNESCO, 2009).

<sup>30</sup> General comment No. 13 (1999) on the right to education (article 13 of the Covenant) (E/2000/22-E/C.12/1999/11 and Corr.1, annex VI, para. 54).

<sup>31</sup> *Wisconsin v. Yoder*, 406 U.S.205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972), as cited in “Students’ Rights” in *Education Law*, Charles J. Russo and Ralph D. Mawdsley, eds., Education Series (New York, Law Journal Press, 2002).

<sup>32</sup> General comment No. 13 (1999) on the right to education (article 13 of the Covenant) (E/2000/22-E/C.12/1999/11 and Corr.1, annex VI, paras. 46-47).

The State cannot abandon its primary responsibility, above all in respect of free basic education of quality, to the advantage of private providers, who find the inadequacies of the public education system fertile ground for making money from the provision of education, reaping uncontrolled profits.

73. In a world where more than 1.2 billion people are victims of poverty and where the richest 1 per cent of the world's population owns 40 per cent of global assets whereas the bottom half of the world's population owns just 1 per cent of global wealth, prioritizing education as an essential public service is imperative to stop society from being tipped irrevocably into a world that caters only to the needs of the privileged few.<sup>28</sup> A universal approach to the provision of social services is essential to realizing their full potential as a component of transformative social policy.<sup>33</sup>

74. Regulating private providers is a State responsibility. As the International Commission on Education for the Twenty-First Century stated, policymakers must “face up squarely to their responsibilities. They cannot leave it to market forces or some kind of self-regulation to put things right when they go wrong”.<sup>34</sup>

#### **D. Privatization and public investment in education**

75. Privatization is correlated with shrinking public investment. It induces declining spending on public services, entailing a decrease in the education budget. The trend of decreasing budgetary allocations for education in different regions was highlighted by UNESCO at the Global Education for All Meeting held in Oman from 12 to 14 May 2014; the Special Rapporteur would like to urge Governments to reverse that trend.

76. Public investment in education is all the more important since education, of which both the individual and society are beneficiaries, is a foundation for human development. As the above-mentioned OXFAM briefing paper (see para. 66) has warned, “Developing countries are at the greatest risk of rocketing poverty and inequality due to stagnating public spending on public services”, including education, and “Austerity is a medicine that could kill the patient”.<sup>35</sup>

77. States have a responsibility under international human rights law to provide resources for the right to education.<sup>36</sup> Governments must devote maximum public

<sup>33</sup> Esuna Dugarova and Tom Lavers, “Social inclusion and the post-2015 sustainable development agenda”, paper prepared for United Nations Institute for Training and Research (UNITAR) briefing for delegates on the post-2015 development agenda and social inclusion (United Nations Research Institute for Social Development, April 2014).

<sup>34</sup> International Commission on Education for the Twenty-First Century, *Learning: The Treasure Within: Report to UNESCO of the International Commission on Education for the Twenty-First Century — Highlights* (Paris, UNESCO Publishing, 1996).

<sup>35</sup> “Governments must urgently reform tax systems and increase public spending on free public services to tackle inequality and prevent us from being tipped irrevocably into a world that works for the few, not the many.” Seery, *Working for the Many: Public Services Fight Inequality* (see footnote 28 above).

<sup>36</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States' parties obligations (art. 2, para. 1 of the International Covenant on Economic, Social and Cultural Rights) (E/1991/23, annex III); see also general comment No. 11 (1999) on plans of action for primary education (art. 14 of the Covenant) (E/2000/22-E/C.12/1999/11 and Corr.1, annex IV).



funds to education as a high development priority, as a matter of norm (see [A/66/269](#)). They must also mobilize maximum domestic resources for education on an enduring basis.<sup>37</sup>

### **E. Recognition of studies and qualification in private higher education institutions**

78. A large number of private providers operate in various technical areas, such as management, marketing, accountancy and communication, and award diplomas and degrees that are devoid of recognition in terms of equivalence or validity.

79. The recognition of studies and qualifications in cross-border higher education is a critical area for regulation. This phenomenon refers to the movement of people, projects, programmes and providers across political boundaries, including exchange and study programmes, international branch campuses, forms of distance education, joint degree programmes and direct or indirect foreign ownership or investment in domestic educational institutions.<sup>8</sup>

80. Online or correspondence providers often operate from locations with no controls at all and offer their own award, free from regulation. Public authorities must find ways of preventing underqualified or fraudulent providers from trading as universities and from issuing worthless qualifications when the providers are based overseas and operating via the Internet.<sup>38</sup>

## **VI. Private-public partnerships**

81. If the private sector is to be made a development partner with social interest in education, then public policies should foster contributions to education as a priority in terms of corporate social responsibility. It may be recalled that, in “The Future We Want”, the General Assembly recognized the importance of corporate social responsibility (see resolution [66/288](#), annex, para. 46). The Special Rapporteur noted such a trend in Seychelles. A 2 per cent education levy on all central taxes in India and efforts by Brazil to direct revenue from oil royalties to education are developments that show how investment in education can be enhanced.

82. In all types of partnerships with industry and the private sector, the overall responsibility of States remains. This also holds true in technical and vocational education institutions, which involve specific modalities of collaboration with enterprises and industry. In a modern market economy, new partnerships among Government, employers, professional associations, industry, employees and their representatives and local community and non-governmental organizations have become necessary in this field.

83. As in developed countries, Governments should lay down a legal framework for fostering institutionalized collaboration with enterprises and industry, since this is weak in developing countries. The rich experience available in developed countries, along with the legal framework in particular with respect to the dual

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<sup>37</sup> For example, by contribution of all stakeholders, as in the case of the Philippines.

<sup>38</sup> John Fielden and N. V. Varghese, “Regulatory issues”, in *A New Dynamic: Private Higher Education*, Svava Bjarnason and others (Paris, UNESCO, 2009).



system of apprenticeship training in schools and in enterprises based on an agreed framework, is most pertinent to the developing world for forging public-private partnerships (see [A/67/310](#)). The active engagement of enterprises and industry in creating and expanding ways for technical and vocational education institutions to cater to skill development requirements deserves particular consideration as a special modality.

## VII. Oversight and regulating mechanisms: sanctioning abusive practices by private providers

84. One of the most significant failures of States in the face of the privatization of education is lack of oversight and regulating mechanisms. A potential consequence of the lack of monitoring is that it can create or contribute to a culture that lacks accountability and encourages illegal or exploitative practices. In the absence of a regulatory framework, ill-informed and naive students can be duped by new private institutions that are universities only in name, having been established without credentials and recognition. If a school is not registered with the State, the State has no way to enforce minimum standards, which are set nationally and constitute conditions under which private providers must operate.

85. States have the obligation, under human rights law, to establish conditions and standards for private education providers and to maintain a transparent and effective system to monitor those standards,<sup>39</sup> with sanctions in case of abusive practices.

86. “The commercialization of education and its uncontrolled liberalization, open to all operators for lucrative purposes or objectives, are contrary to international commitments by States and national values and must be stopped and sanctioned.”<sup>25</sup>

87. Since education is a social responsibility involving parents, the community, teachers, students and other stakeholders, they can have recourse to complaints procedures and human rights protection mechanisms in cases of violation of the right to education, abusive practices and corruption by private providers. The Special Rapporteur would like to encourage a system that provides the possibility for any entity or individual to initiate legal action in the case of abusive practices by private providers as public-interest litigation.

88. As *Global Corruption Report: Education* has demonstrated, “From primary to higher education level, no part of the education cycle is immune to corruption.”<sup>18</sup> Corruption by private providers remains unscathed due to lack of financial regulations, scrutiny of their operations and control mechanisms. As a result, the provision of primary or basic education can be turned into a family business by running a school in a private house. In addition, in some cases, teachers in private schools are actually paid less than the amount the proprietors make them declare on

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<sup>39</sup> International Covenant on Economic, Social and Cultural Rights (art. 13, paras. 3-4); Convention on the Rights of the Child (art. 29, para. 2); Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education (article 13 of the Covenant); Committee on the Rights of the Child, general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights ([CRC/C/GC/16](#)); Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework ([A/HRC/17/31](#), annex).

paper. Private schools even engage teachers employed by public schools, which is not above board.

89. By definition, business is profit-oriented. Education is all the more attractive since it denotes a certain respectability, which can be projected to disguise business interests, fraudulent practices and corruption. The practice of private providers in India demanding huge donations as a contribution to, for example, school development, requires strict regulation and sanctions.

90. As regulators, States must sanction abusive practices by private education establishments. For instance, in 2008, the National Universities Commission in Nigeria ordered the closure of all local and foreign satellite campuses, which had mushroomed, making arrests or detaining the owners of unauthorized operations.<sup>40</sup> The Special Rapporteur has commended the decision of the President of Ecuador to close, after investigation and evaluation in 2012, in conformity with constitutional law and the Higher Education Act,<sup>41</sup> 14 universities that were devoid of quality and were engaging in education as business.

### **VIII. Role of the judiciary with respect to the justiciability of operations by private education providers**

91. Private providers of education are accountable to the State and to the public for their activities, as demonstrated by a large number of court rulings worldwide. The Supreme Court of Nepal determined that exorbitant fees charged by private providers of education are increasing social and economic disparity between working and middle classes. The Court issued a verdict demanding that educational authorities devise reform programmes to control private schools — regulating fees, prohibiting the sale of unregistered and overpriced textbooks and limiting the number of private schools obtaining accreditation.<sup>42</sup>

92. In another case, the Constitutional Court of South Africa found that the primary positive obligation with respect to the right to education rests upon the State and that there is no primary positive obligation on private actors to provide basic education, but instead, a negative obligation not to infringe students' right to education.<sup>43</sup> In a landmark decision, the Supreme Court of India ruled that when the Government grants recognition to private educational institutions, it creates an agency to fulfil its obligation to enable the citizens to enjoy the right to education. "Charging a capitation fee in consideration of admission to educational institutions is a patent denial of a citizen's right to education under the Constitution."<sup>44</sup>

93. Existing jurisprudence enables us to better understand obligations that the right to education imposes upon private providers. For example, the Constitutional

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<sup>40</sup> Okebukola (2008) cited in Fielden and Varghese, "Regulatory issues" (see footnote 38 above).

<sup>41</sup> Higher education institutions in Ecuador must be guided by, inter alia, the principles of social responsibility and accountability and established quality standards and accreditation procedures (see Higher Education Act, art. 89).

<sup>42</sup> Open Equal Free, <http://www.openequalfree.org/nepali-private-schools-banned-from-raising-fees/19112>.

<sup>43</sup> Constitutional Court of South Africa, *Governing Body of the Juma Masjid Primary School & Others v. Essay N.O. and Others*, Case CCT 29/10 (2011), especially para. 57.

<sup>44</sup> *Miss Mohini Jain v. State of Karnataka and Ors*, 1992.

Court of Colombia ruled in 1997 that excluding pupils from schools on an economic basis only violates their enjoyment of the right to education.<sup>45</sup> The Court also ruled that because of the fundamental character of the right to education, private schools are bound by specific obligations.<sup>46</sup>

94. Courts in the United States have also declared that school voucher funding is unconstitutional and that public money being used to pay private school tuition should instead be going to public schools.<sup>47</sup>

## **IX. Post-2015 development agenda and private providers of education**

95. There is growing recognition that market-centred approaches to development have exacerbated various forms of inequality and that the question of equality has not featured as prominently as it should on the international development agenda. Equality matters both for its intrinsic value as a human right and for instrumental reasons linked, for example, to economic growth and social cohesion.<sup>33</sup>

96. The Special Rapporteur would like to emphasize that in the post-2015 development agenda, education must be safeguarded as a public good. Drawing upon the adverse impact of privatization in education and the consequent growing disparities in education, Governments should ensure that private providers only supplement public education, the provision of which is the Government's responsibility, rather than supplant it. In the context of the post-2015 development agenda, it is important to ensure that States do not disinvest in public education by relying on private providers.

97. The existing disparities in education should not be aggravated by private providers catering to persons with means, to the detriment of the poor. Universal access to free, basic education for those excluded owing to poverty must be an overriding development concern. This access should be recognized as a key instrument for putting an end to the intergenerational transmission of poverty. It is imperative to create a global movement that urges all the Governments of the world to abide by the pledges made in the Millennium Declaration (2000) to ensure social justice and equity and to take seriously the task of regulating privatization in education in view of future pledges regarding the total eradication of poverty before 2030 and for the common well-being.

<sup>45</sup> Judgement C-560/97, Request to determine the unconstitutionality of article 203 (in part) of Law No. 115 of 1994.

<sup>46</sup> Colombian Constitutional Court, Case T-211/95, 12 May 1995. See also T-377/95, T-145/96, T-180/96, T-290/96, T-667/97 and T-580/98. See also Colombian Constitutional Court, Case T-065/93, 26 February 1993, cited in *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability* (Geneva, International Commission of Jurists, 2008).

<sup>47</sup> Ruling by Louisiana Supreme Court, May 2013. See [www.washingtonpost.com/blogs/answer-sheet/wp/2013/05/07/louisiana-supreme-court-rules-school-voucher-funding-unconstitutional/](http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/05/07/louisiana-supreme-court-rules-school-voucher-funding-unconstitutional/).

## **X. Conclusions and recommendations**

98. Education is a fundamental human right and a core obligation of States. The principal responsibility for the direct provision of education lies with Governments. However, there has been tremendous growth in private providers of education. Taking advantage of explosive demands on education and of insufficient public schools, privatization is making inroads in education at all levels. It often flourishes, with scant control by public authorities. This can have a crippling effect on the fundamental principle of equality of opportunity in education. Privatization often excludes marginalized groups, who are unable to pay, undermining the right of universal access to education. Some private providers inadequately respect the quality of education and undermine the status of teachers.

99. Privatization thus negatively affects the right to education both as an entitlement and as empowerment. Moreover, it depletes public investment in education as an essential public service. There is widespread concern about the negative effects of privatization in education in scholarly writings, by the intellectual community and civil society organizations, and by international organizations.

100. The Special Rapporteur considers that, driven by business interests, privatization by definition is detrimental to education as a public good and vitiates the humanistic mission of education. Abusive practices by private providers reflect the failure of States to adequately monitor and regulate privatized education. This calls for the strengthening of human rights mechanisms in order to effectively address and sanction violations of the right to education by private providers. In this, Governments can be inspired by numerous court decisions and emerging jurisprudence.

101. The Special Rapporteur would like to emphasize that the delegation by States of their obligation to provide education to for-profit providers may be contrary to their international obligations. The effects of privatization in education must receive foremost consideration in public policies, bearing in mind the principles and norms underpinning the right to education.

102. Bearing in mind the above and the issues highlighted in the present report, the Special Rapporteur would like to offer the recommendations below.

### **A. Primary responsibility of States for the provision of education**

103. States remain primarily responsible for providing education on account of their international legal obligations. They should not abandon their primary responsibility, above all for the provision of free and quality basic education, to the advantage of private providers, who find the inadequacies of public education fertile ground for making money from the provision of education, reaping uncontrolled profits. When privatization is permitted, States should fully assume their responsibility in compliance with their obligations under human rights law and ensure that private providers abide by the principles and norms underlying the right to education.

## **B. Comprehensive regulatory framework governing private providers of education**

104. States should develop a regulatory framework governing the privatization of education. Such a framework should be inspired by general principles of social justice and equity as well as by education as a public good, subjecting private providers to full accountability for their operations and to rigorous scrutiny. It should be comprehensive so as to apply to private education providers at all levels, from preschool through basic education to higher education, including cross-border higher education and online or correspondence providers. No private higher education institution should be allowed to operate without prior approval and recognition by competent public authorities.

105. The regulatory framework should expound the grounds on which discrimination in education is prohibited in international human rights conventions, as highlighted in the present report. It should also specify the duties and responsibilities of private providers vis-à-vis parents, the community and society at large.

106. States should put an end to market-driven education reforms that provide subsidies to private education. They should not allow or promote low-cost private schools and the provision of school vouchers, nor should they allow for-profit institutions in education, considering the propositions in the OXFAM briefing paper mentioned in paragraph 66 of the present report.

## **C. Monitoring and controlling private providers: a transparent and effective system**

107. States have the obligation under human rights law to establish conditions and standards for private education providers and to maintain a transparent and effective system to monitor those standards, with sanctions in case of non-adherence. Such monitoring should also include the teaching profession, in accordance with the norms laid down by the UNESCO-ILO recommendation on the status of teachers, which applies to all teachers in private and in public schools.

108. To that end, States should strengthen human rights control mechanisms to allow them to look into the negative impact of privatization and, especially, to ensure that private providers remain respectful of minimum standards in education and quality norms and that they are not allowed to charge exorbitant fees.

## **D. Controlling abusive practices by private providers**

109. Corruption by private providers remains unscathed owing to the lack of financial regulations, scrutiny of their operations and control mechanisms. Nationally designated authorities should undertake a full-scale investigation of fraudulent practices, including tax evasions by private providers, who reap

profits in the name of education. States should ensure that the financial operations of all private providers are regularly scrutinized.

110. Following the study “Corrupt schools, corrupt universities: what can be done?”,<sup>48</sup> the UNESCO International Institute for Educational Planning should undertake a full-scale investigation of corruption in private education institutions and fraudulent practices of private providers of education.

111. Governments should foster the possibility for any entity or individual to initiate legal action in the case of abusive practices by private providers as public-interest litigation.

#### **E. Revitalizing and enhancing the value of education as an essential public service**

112. Learning from the devastating impact of structural adjustments on education as an essential public service and in the face of the prevalent market ideology and privatization in education, countries must recognize the paramount importance of public investment in education as an essential obligation of the State and as a foundation for development. Instead of giving subsidies to private providers, Governments should provide the maximum possible resources to public education, with equity-driven initiatives to expand educational opportunities for the marginalized and the poor. A paradigm shift is required so that instead of providing financial support to private providers, States must regulate them. Under no circumstances should a State provide financial support to a private provider of education.

#### **F. Public-private partnerships and mobilizing investment in education as a social responsibility**

113. States should devise innovative mechanisms for mobilizing national resources for education as part of public-private partnerships. If the private sector is to be made a partner in development, then public policies should seek to harness corporate social responsibility in order to foster contributions to education as a social welfare priority. In all types of partnerships with industry and the private sector, the overall responsibility of States remains.

114. Education is a core public service function of the State. It is also a social responsibility, and when States encourage the private sector to be a partner in education development, it should ensure full respect for the public interest. Education is a public good. As a noble cause, it can generate social support and induce public contributions in a philanthropic spirit, if properly encouraged by policies of good governance in the education system. All those valuing education as a public good and a noble cause should be encouraged to contribute to the development of education in innovative ways, such as establishing a special trust fund for the purpose of maximizing national investment in education.

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<sup>48</sup> Jacques Hallak and Muriel Poisson, “Corrupt Schools, Corrupt Universities: What Can Be Done?” (Paris, International Institute for Educational Planning, 2007).

## **G. Making the education system an equalizing force**

115. The monitoring function of the State should be aimed at upholding the fundamental principles of non-discrimination and equality of opportunity in education in order to ensure that the liberty set out in international instruments to establish educational institutions does not lead to extreme disparities in educational opportunity for some groups in society.

116. A daunting challenge for public policymakers is to transform education systems into a force for equality. This should be of particular concern to education policy planners, who must address the tendency of privatized education to aggravate inequalities and marginalization in societies.

## **H. Preserving education as a public good and fostering the humanistic mission of education**

117. Education benefits both the individual and society and must be preserved as public good so that the social interest is protected against the commercial interests in privatized education. Public authorities should not allow private providers to vitiate the humanistic objectives of education.

118. At the 2015 Global Education for All Meeting, it would be propitious to build upon the final statement of the 2014 Meeting, which recognized that “the State is the custodian of quality education as a public good” and to develop that concept in its various dimensions, including the social responsibility of private providers of education.

119. The humanistic mission of education should be valued and preserved not only by the State but by all key players and stakeholders in education.

## **I. Reporting obligations of private providers**

120. It should be obligatory for all private providers to report regularly to designated public authorities on their financial operations, including the proceeds of profit and dividends. Such authorities should scrutinize their financial accounts, guided by the principle of the human right to education and of social responsibility in education. Information on the operations of private providers of education so scrutinized should be disseminated at large in the interest of the public.

121. No private school or educational establishment should be allowed to operate unless its credentials and standards are verified by designated public authorities.

## **J. Strengthening human rights control mechanisms**

122. In an endeavour to regulate private providers of education, Governments should strengthen existing human rights mechanisms or create special mechanisms, with a mandate to regularly oversee operations of private

providers. Such mechanisms should have *suo moto* investigatory power. Governments should implement recommendations made by such mechanisms.

123. Governments should also establish a mechanism to register and process any complaints received with respect to abusive practices by private providers of education and investigate all violations of the right to education.

#### **K. Fostering public-interest litigation**

124. The operations of private providers are justiciable. There are numerous court decisions to that effect. Public-interest litigation centred around breaches of the right to education and abusive practices by private providers must be promoted and supported in an endeavour to reinforce the justiciability of operations of private providers of education.

#### **L. Encouraging and supporting the role of the intellectual community and civil society organizations**

125. The intellectual community and civil society organizations should be encouraged to expose the negative effects of privatization in education, in particular in the areas of social justice and equity. Their advocacy work should promote greater awareness of the need to regulate private providers and the responsibility of the State to do so. Research, events and expert consultations on the effects of privatization on the exercise and enjoyment of the right to education should be encouraged and supported.

#### **M. The role of parliamentarians**

126. Parliamentarians, in particular members of education commissions or committees, should attach greater importance to the right to education, bearing in mind the concepts and principles outlined in the present report. Their advocacy for a regulatory framework for private providers of education through laws and policies would be very valuable.