

# Advance Unedited Version

Distr.: General  
18 June 2018

Original: English

---

## Human Rights Council

### Thirty-eighth session

18 June–6 July 2018

Agenda item 3

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

## **Report of the Special Rapporteur on the right to education: Governance and the right to education\***

### **Note by the Secretariat**

This report is presented pursuant to Human Rights Council resolutions 8/4 and 35/2. In it, the Special Rapporteur examines how the right to education, and the commitments made in the Sustainable Development Goals, provide guidance for governance in national education systems.

This report considers how the right to education must be mainstreamed into the governance in education. Governance in this context can be thought to include the laws, policies, institutions, administrative procedures and practices, monitoring and accountability mechanisms, and judicial procedures that are related to education. These must incorporate a rights-based approach to ensure not only that non-discrimination and equitable access for all are mainstreamed, but that learners who have been the hardest to reach, including members of vulnerable groups, are prioritized, even if such decisions are counter to the traditional emphasis on efficiency.

---

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

## **Report of the Special Rapporteur on the right to education: Governance and the right to education**

### Contents

	<i>Page</i>
I. Introduction .....	3
Activities undertaken by the Special Rapporteur .....	3
II. Governance in education .....	4
III. A rights-based approach to education governance .....	4
A. A global governance framework .....	5
B. International legal obligations under the right to education .....	5
C. International political commitments .....	6
D. Available, accessible, acceptable and adaptable, the 4 “A’s” .....	7
IV. Human rights norms and values .....	7
V. Key attributes of good governance .....	7
A. Access to information .....	8
B. Transparency .....	8
C. Participation .....	8
D. Accountability .....	9
VI. Decentralizing governance .....	10
A. Types of decentralization .....	10
B. Human rights benefits of decentralization .....	11
C. Challenges and required conditions .....	11
D. Capacity building .....	12
VII. Human rights-based management .....	12
VIII. Monitoring and data collection .....	13
IX. Justiciability and governance .....	13
A. Quasi-judicial mechanisms .....	13
B. Courts .....	14
C. Anti-corruption mechanisms .....	14
D. Training and capacity building .....	14
X. Rights-based governance and solidarity .....	14
XI. Privatization .....	15
XII. Conclusions and Recommendations .....	15
A. Recommendations .....	15

## I. Introduction

1. This report is presented pursuant to Human Rights Council resolutions 8/4 and 35/2. In it, the Special Rapporteur examines how the right to education, and the commitments made in the Sustainable Development Goals, provide guidance for national education governance systems.

2. In her first report to the General Assembly, the Special Rapporteur addressed the importance of equity and inclusion to education. The report focused on the need to eliminate discrimination, and to promote equity and inclusion in education, which is at the heart of a rights-based approach to education. This report builds on this premise by considering how the right to education must be mainstreamed into the governance in education. Governance in this context can be thought to include the laws, policies, institutions, administrative procedures and practices, monitoring and accountability mechanisms, and judicial procedures that are related to education. A human rights-based approach must be applied in all areas to not only ensure that non-discrimination and equitable access for all are mainstreamed, but further that learners who have been the hardest to reach, including members of vulnerable groups, are prioritized, even if such decisions are counter to traditional emphasis on economic efficiency.

3. The important political commitments made in the Sustainable Development Goals and the Incheon Declaration must be implemented through a governance framework that provides national authorities with clear guidance on how to develop and implement national laws and policies which meet national obligations deriving from the international legal commitments deriving from binding international treaties.

4. Decentralization can be a useful mechanism to bring education closer to the needs of all learners. Its implementation can be an opportunity to bring rights-based reforms by ensuring greater participation, transparency and accountability, as well as promoting inclusive, equitable and non-discriminatory education.

5. This report examines how a rights-based approach to education governance creates a viable structure for States and stakeholders to implement a rights-based approach to governance in education.

### A. Activities undertaken by the Special Rapporteur

6. During the reporting period, the Special Rapporteur presented her report on Inclusion, equity and the right to education (A/72/496) to the General Assembly at its seventy-second session.

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

8. From 4 to 11 December 2017 the Special Rapporteur carried out a country mission to the Ivory Coast. She met with stakeholders and visited educational institutions in Abidjan, Bouake and Yamoussoukro.

9. On 26 October 2017, the Rapporteur participated in an online discussion hosted by UNESCO to mark the launch of the 2017 Youth Report Online launch of the Global Education Monitoring Report.

10. The Special Rapporteur also participated via webcast in UNESCO's online/digital launch of the Global Education Monitoring Youth Report - Digital Launch, Tuesday December 12.

11. From 1 to 2 February 2018, the Special Rapporteur attended the Global Partnership for Education Financing Conference in Dakar, Senegal.

12. On March 22 the Rapporteur gave a video presentation at the Save Syrian Schools side event during the 37th session of the Human Rights Council in Geneva.

13. From 25 to 29 March, the Special Rapporteur attended the 62nd annual Conference of the Comparative and International Education Society, focusing on “Re-mapping Global Education” in Mexico City, Mexico. She sat on a panel on Privatization of education in the francophone countries, presenting on the issue of “States’ obligations under international human rights law”.

## **II. Governance in education**

14. The concept of “governance” is broad, encompassing anything which relates to ruling or controlling the education system. This report does not seek to define this term, nor are its recommendations limited to any particular aspect of governance. Rather, it encourages States to consider the right to education in all aspects related to governance in education.

15. For the purposes of this report, governance includes, but is not limited to, the laws, policies, institutions, administrative procedures and practices, monitoring and accountability mechanisms, and judicial procedures to address violations, as they relate to the education system. Some scholars have differentiated governance from management, but for the purposes of this report this distinction is not relevant. Human rights considerations apply to all aspects of government activity in the area of education. Whether carried out by a minister, a school principal, or a teacher, the obligations on the State to respect, protect and fulfil the right to education apply equally.

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

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

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

18. Yet this focus allowed States to prefer those who were least expensive, and easiest, to educate. Further, political prioritization allowed governments to favour their voters and political allies, at the expense of disenfranchised people who were not important to the next political election. The poor, girls, persons with disabilities, minority groups and other vulnerable people became lost in aggregated statistics.

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

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

21. A human rights-based approach includes non-discrimination as a core, underlying principle. In education, this principle seeks to ensure that all learners and other stakeholders are treated equitably. As described in the Rapporteur’s last report to the General Assembly (A/72/496), this differs from being treated “equally,” as equal treatment will not always be equitable. For example, students living in remote areas, who are living with disabilities, or who are part of a linguistic minority, may require additional financial support and accommodations in order to learn and succeed according to their needs.

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

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

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

24. Following this, the Rapporteur further believes that the commitments made under the Sustainable Development Goals should be considered equally relevant, and that national governance system should not conflict with these obligations. In particular, these commitments serve as guidance for national education authorities as to how the right to education should be realized, and they should form the part of the progressive realization of this right.

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

25. The implementation of the right to education lies first and foremost with the State. States must respect, protect and fulfil this right. Respect requires the State to avoid measures that hinder or prevent the enjoyment of the right to education. To protect the right is to ensure that third parties do not interfere with right to education (usually through regulation and legal guarantees). The obligation to fulfil is to take positive measures that enable and assist individuals and communities to enjoy the right to education and to provide appropriate measures towards the full realisation of the right to education.

26. When considering the content of the right to education, reference is first made to the international treaties which have been ratified or incorporated by States.

27. In 1948 the Universal Declaration of Human Rights was adopted, and set a common standard for all people and countries, outlining a set of fundamental human rights to be fulfilled and protected universally without discrimination. Among its provisions, Article 26 of the UDHR declared that “[e]veryone has the right to education”, and that education “be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”.

28. This declaration laid the framework which were codified in subsequent human rights conventions, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the UN Convention of the Rights of the Child (CRC). These and others make the universal right to education a legally binding obligation on the States which have signed and ratified these treaties.

29. Article 13(b) of the ICESCR reaffirms the commitment that everyone has the right to education without discrimination, and it sets out more specific details about the provisions of education at different levels. It establishes that primary education should be free and compulsory and that secondary education should be “made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.” Article 13 also makes recommendations on the progressive introduction of free higher education based on capacity, and promotes fundamental education for people who have not completed primary education.

30. The CRC stresses that education should enable a child to develop to their fullest potential, promote human rights and fundamental freedoms, and that it should prepare “the child for responsible life in a free society, in the spirit of understanding, peace, tolerance,

equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin" (Article 29 (d) CRC).

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

32. A number of conventions, namely the International Convention on the Elimination of All Forms of Racial Discrimination (1969), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979), and the Convention on the Rights of Persons with Disabilities (CRPD, 2008) expand on issues related to discrimination.

33. UNESCO established the first binding obligation relating to education in its Convention against Discrimination in Education in 1960, which clearly sets out the principle of non-discrimination and equality of opportunity in education and to which all its Member States are accountable. These conventions also confer obligations on States with regard to education, reinforcing the need for governments to take ongoing and proactive action to address discrimination in education access, completion, and learning.

### C. International political commitments

34. In addition to legally binding commitments, States engage in a number of political pronouncements that commit the country to working towards achieving certain education-related goals. From 2000-2015, States committed to the Millennium Development Goals, which served as a framework to measure progress towards improving certain education markers. Following this, the adoption of the Sustainable Development Goals, with targets and indicators for each goal, has created a new framework that provides clear and specific guidance to States.

35. The political commitments in the Sustainable Development Goals, and in the 2030 Education Agenda connected to the 2015 Incheon Declaration and Framework for Action. Sustainable Development Goal 4 calls on States to "ensure inclusive and equitable quality education and [to] promote lifelong learning opportunities for all."<sup>1</sup> In addition to guaranteeing universal, free, quality primary education for all, the right has been extended by Target 4.1 to providing secondary education as well.

36. The Sustainable Development Goals are highly consistent with human rights obligations, and reaffirms the importance of human rights.<sup>2</sup> They<sup>3</sup> reaffirm the UN Charter, the Universal Declaration of Human Rights, international human rights treaties<sup>4</sup> and other instruments, including the Declaration on the Right to Development.<sup>4</sup> Importantly, they emphasize the importance of "realize the human rights of all"<sup>5</sup> and "the responsibilities of all States... to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status."<sup>6</sup>

37. The Agenda is "to be implemented in a manner that is consistent with the... obligations of states under international law,"<sup>7</sup> which makes clear that legal human rights obligations guide its implementation.

<sup>1</sup> <http://www.un.org/sustainabledevelopment/education/>.

<sup>2</sup> Transforming Our World: The 2030 Agenda For Sustainable Development, A/Res/70/1, para 19.

<sup>3</sup> This analysis is taken from a summary prepared by the Office of the High Commissioner for Human Rights, available:

<http://www.ohchr.org/Documents/Issues/MDGs/Post2015/TransformingOurWorld.pdf>.

<sup>4</sup> Ibid., para 10.

<sup>5</sup> Ibid., preamble.

<sup>6</sup> Ibid., para 19.

<sup>7</sup> Ibid., para. 18.

38. The Incheon Declaration calls for a human rights-based and humanistic approach, based on the principles of human rights and dignity, social justice, peace, inclusion and protection, and reflecting the cultural, linguistic and ethnic diversity of people.<sup>8</sup>

39. It includes a commitment to establish legal and policy frameworks that promote accountability and transparency as well as participatory governance and coordinated partnerships at all levels and across sectors, and to uphold the right to participation of all stakeholders.<sup>9</sup>

#### **D. Available, accessible, acceptable and adaptable, the 4 “A”s**

40. The first Special Rapporteur on the right to education, Ms. Katarina Tomasevski, created a framework of the four “A”s to guide legislators, policy-makers and educators on the implementation of the right to education. This framework provides general guidance on the considerations that should be applied to promote the right to education in national actions. It holds that education must be available, accessible, acceptable and adaptable. Education that is free, with adequate infrastructure and trained teachers is Available. It must be non-discriminatory and open to everyone, with positive measures to include marginalised students, to be Accessible. The content of education must be relevant, non-discriminatory and culturally appropriate, and of quality to be Acceptable. Finally, education which evolves with the changing needs of society and contributes to challenging inequalities, which can be continually adapted locally to suit specific context, is Adaptable. This methodology was endorsed by the Committee on Economic, Social and Cultural Rights in their General Comment No. 13.

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

41. A human rights-based education must also include the norms and values which underlie human rights. Governance mechanisms must reflect the values and norms in the UN Charter, human rights treaties, and international commitments including the Sustainable Development Goals. Governance is not exercised in a vacuum, and it is often confronted by competing interests. It is crucial that laws, policies and mechanisms be grounded in human rights values to ensure that accountability and adjudicative mechanisms are guided to find solutions which promote the right to education over other interests.

42. International organizations should continue to advocate for a humanistic vision of education. UNESCO’s constitution seeks to use education to promote the “ideals of humanity” and fostering the “intellectual and moral solidarity” of humankind. UNESCO, UNICEF and OHCHR should continue to promote the ethical and normative values in the UN Charter and human rights instruments. The 2030 Agenda for Sustainable Development calls upon States to reflect the values of the UN Charter, including peace, dialogue and international cooperation.

43. It should therefore be clear that education should not only be focused on the production of “human capital,” in the form of a skilled labour force. All stakeholders in education should advocate for the inclusion of norms and values in governance mechanisms and structures.

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

44. In addition to these specific obligations, there are general attributes of good governance reflected in human rights resolutions.<sup>10</sup> These principles underlie a rights-based approach to developing governance systems which will promote the realization of the right to education.

<sup>8</sup> See <https://en.unesco.org/world-education-forum-2015/incheon-declaration>.

<sup>9</sup> Incheon Declaration, para.12.

<sup>10</sup> Resolution 2000/64 of the Human Rights Commission.

## A. Access to information

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

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

47. Access to information must also include proactively making information public and easily available, for example on a website or community bulletin boards. For example, information related to scholarships may only be shared selectively by some schools, leaving many parents unaware that they could be applied for.

48. Access to information is particularly important in relation to human rights education. Learners and parents must be educated on what their rights and entitlements are under the right to education. For example, the right to free, compulsory primary education should be widely shared by the government as well as the media and civil society. While school fees are clearly violations, a debate should also be raised around whether fees for school uniforms, books or transportation to school should be progressively provided by the State.

## B. Transparency

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

50. Governments should ensure the education system is transparent at all levels. This includes regularly publishing education data and indicators (particularly those required by the SDGs), publishing teacher and other employment opportunities, and the criteria, processes and procedures for fair, equitable access to higher levels of education when universal enrolment is not available. This is particularly important when secondary and tertiary education are not yet open to all interested students.

51. In addition to freedom of information legislation, States must ensure they are proactively publishing data and information, as well as meeting minutes for decision-making bodies. UNESCO has identified ten examples of how to improve transparency at the school level, including the establishment of a legal right, and practical mechanism, for parents to access school data, and a legal grievance redressal mechanism for parents and communities.<sup>11</sup>

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

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

## C. Participation

54. Participation is a core element of the right to education. Governance should reflect the voice of citizens at all levels. Student and teacher strikes, and violence against student groups around the world show the urgent need to engage in dialogue. Consultations and

<sup>11</sup> <http://www.iiep.unesco.org/en/10-ways-promote-transparency-and-accountability-education-4307>

genuine participation in governance processes are crucial mechanisms to ensure the needs of learners are better reflected in education governance mechanisms.

55. It is equally important to ensure that public consultations are addressed and incorporated. Consultations which do not take up the concerns of stakeholders not only waste time and resources, but they also diminish trust in the governance systems.

56. Participation must be inclusive. This may require positive efforts to include the voices of traditionally excluded or marginalized groups. Poverty and language barriers may prevent such groups from participating. Possible options may include engagement with civil society actors and community groups.

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

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

59. Parliamentary systems must ensure that in addition to hearing from parliamentarians, that public comment is available for all legislation. Where necessary, additional outreach activities should be undertaken, particularly in relation to groups in society which are underperforming in the education system. Most notably, the poor and poorly educated people are often either unaware of how to engage in governance systems, or otherwise too concerned with survival to do so. These are the people who are most in need, and so their needs should be sought and prioritized.

60. One important consideration is that participation should not be reduced to the rule of the majority. The right to education is particularly engaged in providing the conditions that will enable all learners to succeed. Thus, participation is a crucial mechanism by which the needs of all can be solicited. However, democratic decision-making, without consideration for the protection for minority groups and individuals, may choose to ignore the needs of others.

## **D. Accountability**

61. “Accountability” is the cornerstone of a human rights based approach.<sup>12</sup> Accountability mechanisms allow rights holders to hold education actors to account for their obligations arising not only from the right to education, but also from the wider obligations which arise from national legislation and policies.

62. Without such mechanisms, there are no means by which errors or wrongdoing can be addressed to ensure that they will not recur in the future. It is important to recognize that accountability is not only about sanctioning mistakes. It is equally important for preventing future violations by identifying remedies for governance mechanisms which are not complying with human rights. These mechanisms enable the public to bring attention to failures which require adjustments, enabling ever-improving performance by Governments.

63. First, human rights standards make it possible to delineate the respective responsibilities of different actors in the development process. States should explicitly align MDG frameworks with human rights standards in a manner that takes account of their specific existing international treaty obligations, and the indivisibility and interdependence of all human rights. If human development commitments are framed in terms of the human

---

<sup>12</sup> 7 UNGA. Resolution 70/1 (21 October 2015). (Doc. A/RES/70/1.) Target 16.3: ‘Promote the rule of law at the national and international levels and ensure equal access to justice for all,’ 16.6: ‘Develop effective, accountable and transparent institutions at all levels,’ 16.7: ‘Ensure responsive, inclusive, participatory and representative decision-making at all levels,’ and 16.10: ‘Ensure responsive, inclusive, participatory and representative decision-making at all levels.’

rights duties underpinning them, accountability for the goals becomes a matter of legal obligation, rather than charity or discretion.

64. Accountability is intended to improve the ability of Governments to respond to the needs of its people. By anchoring them in human rights, they create an incentive to help those who are being left behind. This serves as an important counter-balance to forces within societies that may seek to benefit some groups over others. The more empowered such mechanisms are, the more States can insulate themselves from political pressures which may be pressuring them to violate the right to education for some people.

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

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

67. A human rights-based approach, in contrast, requires mechanisms that can compel compliance from State actors when required by the obligations arising from human rights. While the right to education emphasizes progressive realization, there are aspects of the right that require immediate compliance, including the obligation not to allow for discrimination in any form, and the requirement to ensure equal opportunity for access to higher levels of education. It is important to recognize that although courts or other bodies cannot compel governments to increase spending on education, they can and must insist that within existing spending the rights of learners are equally respected. It is then up to Governments to decide if they wish to spend additional amounts to address violations, or to reallocate existing spending.

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

69. National accountability mechanisms should also coordinate with the international human rights mechanisms, including the Treaty Bodies, the Universal Periodic Review, and the Special Rapporteur on the right to education, and provide information about each of these bodies to the public, particularly civil society actors.

## **VI. Decentralising governance**

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

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

71. Decentralization involves the transfer of authority and resources from the national capital to lower levels of government, either regional or municipal. By bringing decision-

making and financial decisions closer to the learner it can improve the responsiveness of education providers to local needs.

72. Devolution is a form of decentralization that entails transferring powers to lower levels of government. Typically, education responsibilities are transferred to governments at the regional or local levels. In federal states, education authority may be devolved to regions, with national standards ensured by a central government. An intermediate step, without further devolution to the local level many of the benefits of participation may not be realized.

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

74. Finally, deconcentration involves the dispersal of authority from a single point to multiple locations, without necessarily establishing any hierarchy. Often applied in unitary states, this system allows for education ministry departments to be shared in multiple locations. However, while this form of decentralization may ensure authority is not concentrated in a single location, many of the benefits of local empowerment are not necessarily achieved here.

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

75. Decentralization is designed to bring resources and decision-making closer to the parents and learners. Though such decisions may be affected by ideas around improving efficiency or political concerns, decision-makers engaged in reforms must also consider whether such changes improve upon learners' right to education. How can decentralization make education more available, accessible, acceptable and adaptable? Will this help the education system meet Sustainable Development Goal 4 and its targets and indicators? Will it improve transparency, participation and accountability?

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

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

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

78. Civil society and the media play an important role in promoting transparency and informing parents and governments on any potential violations of the right to education. Capacity building and public information campaigns may first be needed for these actors, so that they can support the monitoring and oversight of the system at the local level.

## **D. Capacity building**

79. The devolution of responsibility and authority can only be done in connection with additional training and support for local authorities, teachers, parents, civil society and local media. In addition to human rights training to educate all stakeholders on the right to education, capacity-building must strengthen financial and administrative skills for any devolved authorities and responsibilities. Technical support, particularly in the areas of transparency, accountability and participation, are needed, especially when traditional ways of doing things are being upended by placing the needs of the learner first. Parents, teachers unions, civil society and media must be trained to act as advocates for human rights, and as monitors to ensure accountable behaviour by all stakeholders.

80. Implementation of a rights-based decentralization is best implemented with human rights training for local authorities as well as parents and teachers. Stakeholders must understand how the right to education is being implemented, and everyone's respective roles and responsibilities. By organizing education around the principles of the primacy of the rights of the learner, and by operating according to the best interests of the child, training will be required to ensure this model is being implemented. Examples may include eliminating corporal punishment, improving teacher/student interactions, informing and teaching students and parents about their rights and ways to enforce their rights.

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

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

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

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

84. The devolution of greater responsibility, authority and autonomy to localities and schools provide an opportunity for implementing rights-based reforms. Recognizing local capacity limits, the education system should progressively implement devolution according to local ability to meet these challenges. Early engagement with school management, teachers, civil society and parental associations is needed to ensure all stakeholders are able to collaborate in realizing the new governance structure.

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

86. Procurement mechanisms for infrastructure, textbooks and school supplies are an area of particular concern. National transparency and accountability mechanisms and standards must be applied to protect the rights of all stakeholders, and to limit opportunities for corruption. This should include time-based delivery standards to prevent decision-makers from delaying actions in the hope of extracting personal benefits from any process.

87. Municipal and local education actors will often require additional training and support to ensure they are able to meet transparency and accountability standards. This support should be extended to parent committees, teachers' unions, and civil society actors to harness local partners. Each stakeholder should have prompt access to financial and decision-making records to ensure decisions and actions are taken transparently, and in a participatory fashion.

88. A rights-based approach to education budgets should also include budgetary protections in national legislation. One possibility would be to include a minimum funding requirement for the national education budget, for example that it is not less than 20% of the total budget, or 4% of GDP. Such a commitment would allow for the long-term planning needed in education.

## **VIII. Monitoring and data collection**

89. Indicators related to the right to education must be developed by Governments in accordance with national education legislation, policies and objectives. These must incorporate the treaty obligations related to the right to education, but should also address the targets and indicators arising from the Sustainable Development Goals.

90. The national education management information systems must be able to collect information relating to all areas, in disaggregated form. This requires that data collection be detailed and disaggregated in order to evaluate whether the target populations, including girls and women, or members of groups in vulnerable situations are adequately included, and how they are performing. This data is the first indicator of whether education systems are meeting national objectives, human rights obligations, and SDG goals.

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

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

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

## **IX. Justiciability and governance**

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

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

95. Participatory governance systems must include accessible, free or inexpensive mechanisms to allow students, parents and other stakeholders to address alleged violations of their rights. This may range from regular parent-teacher meetings, to school boards and

appeal bodies, to national human rights institutions. Without locally-available, free mechanisms, the right to education may be denied to the poor and most vulnerable.

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

## **B. Courts**

97. Guidance must be provided to the judiciary and legal profession on how alleged violations of the right to education should be adjudicated. As reported by the former Special Rapporteur in his report A/HRC/23/35, the right to education is fully justiciable, including in common-law jurisdictions. His report also emphasizes the importance of providing guidance to lawyers and the judiciary on how human rights should be adjudicated, and provides numerous examples of the growing body of jurisprudence around the right to education.

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

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

99. Ombudspersons and ethics offices are valuable ways to identify corrupt or abusive actions, provided they are established with full independence from the government. Whistleblower protections play an important role in protecting witnesses to alleged violations. Such mechanisms should be empowered to review alleged violations, for example to address recruitment procedures, teacher conduct, or admission decisions.

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

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

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

101. Once Governments commit to beginning to implement a rights-based approach to education governance systems, significant, ongoing reforms are going to be required. Existing governance structures often reflect outdated approaches to education, and many States would benefit from support to assist in conducting evaluations and reforms of national laws, policies and mechanisms.

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

103. Sustainable development goal 17 calls upon States to revitalize the global partnership, to allow for the realization of all goals for all States. The Special Rapporteur calls upon

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

104. Finally, the long-repeated international commitment to have official development assistance reach 0.7% of gross national income should be met. States which are not currently meeting this level should identify how they will progressively achieve this level of commitment.

## **XI. Privatization**

105. The trend towards privatization in education must be viewed with concern. Private schools shift the cost of education from governments to parents, and often such schools are selective when choosing students. This is problematic when such selections undermine human rights. For example, when children from poor backgrounds, or from vulnerable groups often lack the support at home to do as well as other students, they can be excluded and left in a public system which has had the best-performing students and teachers removed. Any claims that exclusion is based on merit must identify if in fact it is leading to structural discrimination.

106. Privatization legislation must therefore be careful to include the same obligations arising under the right to education, and policies must ensure that education in private institutions contribute to the Sustainable Development Goals. The same obligations regarding participation, transparency, monitoring and accountability must also apply.

## **XII. Conclusions and Recommendations**

107. The governance of the education system establish the norms and rules by which all activities related to education are implemented. By incorporating a rights-based approach, these standards will ensure that education is provided in an equitable, high quality way for all, without discrimination.

108. A rights-based approach to governance also ensures that participation, transparency and accountability are the pillars that underlie all education activities. Exclusion from governance has led to strikes and protests, and the needs of the most vulnerable being ignored. The capture of education priorities by powerful political influences in society can best be checked by applying the principles discussed in this report, thereby creating a system with the checks and balances to ensure education will benefit all.

109. The legal obligations of human rights treaties should form the basis of national legislation and legal systems. The universal consensus around the norms and practices in the Sustainable Development Goals provide specific guidance on how national education systems should be guided. The guidance provided by the four “A”s shed further light on how rights-based education practices should be designed.

### **A. Recommendations**

**110. In the light of the above, and taking into consideration the opportunities and challenges in governance in education, the Special Rapporteur offers the recommendations set out below.**

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

**111. Every Member State of the United Nations but one has ratified one or more of the international treaties which provide for the right to education. The global consensus to the Sustainable Development Goals and the related Agenda have reaffirmed the global commitment to promoting a human rights-based approach to education. All States should review their education-related governance systems, including all laws, policies, institutions, administrative procedures and practices, monitoring and**

accountability mechanisms, and judicial procedures, to ensure they are compliant with the right to education and the SDGs.

112. A human rights-based approach to education should be applied to education programming. The 4 “A”s are an important framework that can be applied to education programming to ensure it is promoting the right to education.

113. States must prioritize participatory forms of governance to ensure the voices of all stakeholders are incorporated.

#### **Norms and Values**

114. As importantly, States must ground their governance systems in human rights norms and values.

#### **Participation**

115. Dialogue and participatory space must be created to address the underlying issues which lead to demonstrations, strikes and violence by and against students. Participatory mechanisms must be created at all levels of governance, from national laws and policy-making to individual school management.

116. Teachers and teachers’ unions should have official roles in governance mechanism, and must be empowered to provide inputs into reforms and annual policymaking.

117. Particular emphasis should be made to include the perspectives of women, youth and vulnerable groups in laws, policies and governance mechanisms.

#### **Transparency**

118. States must ensure all aspects of governance structures, mechanisms and processes are published and conducted transparently. Laws, policies and practices must be published and accessible, and governance structures and administrative practices must be recorded and made available to the public.

#### **Accountability and justiciability**

119. Having first ensured that governance structures are based on a rights-based approach, States must establish accountability mechanisms for actors at every level of the education system, and must ensure that the right to education is made justiciable in national legislation. Administrative and legal accountability mechanisms should be established both to address violations to the right to education, but also to prevent ongoing or future violations.

#### **Norms and values**

120. Governance mechanisms must be based on, and promote, human rights values, and be consistent with the values contained in the Sustainable Development Goals and other international commitments.

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

121. States must ensure that all actors and stakeholders in education governance systems receive human rights training appropriate to their requirements. This must address national education and training programs, but also must be provided for existing professionals. Recognizing the significant cost and time requirements, a plan should be established for a progressive implementation, and regular and ongoing public information campaigns, in cooperation with civil society and the media, should be included.

#### **International solidarity**

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

123. States must hold themselves and each other accountable for their international support commitments, including meeting pledges to raise official development assistance to 0.7% of gross national income.

**Privatization**

124. States must regulate the privatization of education to ensure that such education remains rights-based, and in compliance with the State's obligations. Any such delegation must comply with the same rights-based governance frameworks as any government school.

---