



# General Assembly

Distr.: General  
27 June 2023

Original: English

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## Human Rights Council

### Fifty-third session

19 June–14 July 2023

Agenda item 3

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

## **Securing the right to education: advances and critical challenges**

### **Report of the Special Rapporteur on the right to education, Farida Shaheed\***

#### *Summary*

The present report of the Special Rapporteur on the right to education, Farida Shaheed, is submitted on the occasion of twenty-fifth anniversary of the establishment of the mandate on the right to education. In her report, the Special Rapporteur presents a review of achievements in the field, how the right to education is understood and the obligations it entails, as well as contemporary and emerging issues that need to be considered in order to ensure the right to education for all, today and in the future.

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\* The present report was submitted after the deadline in order to reflect the most recent information.



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## Contents

	<i>Page</i>
I. Introduction .....	3
II. Legal and monitoring frameworks .....	4
A. Universal acceptance of the right to education, a norm of international customary law .....	4
B. Education as a public common good .....	5
C. Need to reinforce implementation, accountability and monitoring processes .....	5
III. Content of the right to education .....	6
A. Aims of education: the right to learn .....	6
B. Right to lifelong learning .....	8
C. Right to free quality education .....	9
D. From an equal right to education to the right to equitable and inclusive education .....	10
E. Right to participate in educational life .....	11
F. Right to public education .....	12
G. Right to educational freedoms .....	12
H. Education should not be reduced to schooling .....	13
I. Right to be safe in education .....	13
IV. Legal obligations for realizing the right to education .....	14
A. Fully implementing the right to education .....	14
B. Financing education .....	15
C. Regulating private actors .....	16
D. Enforcing the 4As scheme .....	17
E. Controlling the digitalization of education .....	19
F. Recognizing the role of teachers .....	20
V. Conclusions and recommendations .....	21

## I. Introduction

1. The present report of the Special Rapporteur on the right to education, Farida Shaheed, submitted pursuant to Council resolutions 8/4 and 44/3, identifies key achievements and challenges in the field. Submitted on the twenty-fifth anniversary of the establishment of the mandate on the right to education, this is the first report of the current Special Rapporteur.
2. The year 2023 marks the seventy-fifth anniversary of the Universal Declaration of Human Rights and the thirtieth anniversary of the Vienna Declaration and Programme of Action,<sup>1</sup> the latter reiterating the universality, inalienability, indivisibility and interdependence of human rights and the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms, including the right to education.
3. Over the years, a widening consensus has been achieved on the right to education as an empowering right to lifelong learning for all and on the importance of learning spaces as platforms for child protection, inclusion, physical and mental health, psychosocial support, improved nutrition, the delivery of social services and the overall well-being and development of children, their families and communities.
4. Realizing the right to education confronts many challenges, however. In 2021, worldwide, 244 million children aged 6 to 18 were out of school.<sup>2</sup> In addition, educational sectors were hard hit by the coronavirus disease (COVID-19) pandemic, whose fallout further jeopardized the achievement of Sustainable Development Goal 4, to ensure inclusive and equitable quality education and promote lifelong learning for all.<sup>3</sup> In many places, educational systems face a range of challenges resulting from emergency situations, conflicts and environmental disasters. Globally, an estimated 222 million crisis-affected children and adolescents need education support,<sup>4</sup> while 773 million adults, mostly women, are illiterate;<sup>5</sup> poverty and inequality remain striking, with often weak mobilization of domestic financial resources; and school access does not always result in effective learning or empowerment. In many countries, increased societal polarization around cultural diversity, history teaching, the decolonization of curricula, critical race and gender theories and comprehensive sexual education, compounded by insufficient protection of academic freedoms, affect the functioning of educational systems.
5. A renewed social contract for education, anchored within a human rights framework, is vital, as called for by the Secretary-General in his report entitled “Our Common Agenda”,<sup>6</sup> and by the International Commission on the Futures of Education led by the United Nations Economic, Social and Cultural Organization (UNESCO). In its landmark report,<sup>7</sup> the Commission underscored that this new social contract must be firmly grounded on two foundational principles: (a) an expanded vision of the right to education throughout life; and (b) a commitment to education as a public societal endeavour and a common good.<sup>8</sup> This new social contract is necessary at the global, national and local levels.
6. The principles underpinning the recommendations of the International Commission concur with the vision developed by successive mandate holders. The report reviews the achievements around the right to education and the contemporary understanding of the obligations it entails to better address critical emerging and persistent issues.

<sup>1</sup> A/CONF.157/24 (Part I), chap. III.

<sup>2</sup> See UNESCO, Global Education Monitoring Report, press release (September 2022) (<https://www.unesco.org/gem-report/en/articles/244m-children-wont-start-new-school-year>).

<sup>3</sup> *The Sustainable Development Goals Report 2022* (United Nations publication, 2022), pp. 34–35.

<sup>4</sup> See Education Cannot Wait, “Crisis-affected children and adolescents in need of educational support: new global estimates and thematic deep dives” (2023) ([ecw\\_222million\\_study\\_advocacypaper.pdf](https://www.educationcannotwait.org/ecw_222million_study_advocacypaper.pdf) ([educationcannotwait.org](https://www.educationcannotwait.org))).

<sup>5</sup> UNESCO Institute for Statistics, Literacy (<http://uis.unesco.org/en/topic/literacy>).

<sup>6</sup> A/75/982, para. 19.

<sup>7</sup> UNESCO, *Reimagining Our Futures Together: a New Social Contract for Education – Report from the International Commission on the Futures of Education* (2021).

<sup>8</sup> *Ibid.*, pp. 11 and 146.

7. The Special Rapporteur is grateful to the numerous States, public authorities, national human rights institutions and other national bodies, non-governmental organizations (NGOs) and experts for their valuable contributions to the report. Although it was not possible to reference all contributions, they substantially informed the report.<sup>9</sup>

## II. Legal and monitoring frameworks

### A. Universal acceptance of the right to education, a norm of international customary law

8. Considerable evidence supports the right to education as a norm of international customary law based on the universality of treaty provisions, practice at the national level and States' engagement with monitoring mechanisms. Indeed, "there may be no better case for recognition of a fundamental human right as a matter of customary international law than the right to education".<sup>10</sup>

9. The right to education is enshrined in the International Covenant on Economic, Social and Cultural Rights, ratified by 171 Member States, and in the Convention on the Rights of the Child, ratified by 196 Member States. Many other international and regional human rights instruments protect the right to education, including for specific categories of people. An important body of interpretation and jurisprudence on the right has been developed.

10. Sustainable Development Goal 4 and the Education 2030 Framework for Action further demonstrate the commitment of States to the right to education. These instruments should be considered as guides for the implementation of the right and applied in a human rights-compliant manner, an approach adopted by the General Assembly, the Human Rights Council, a number of treaty bodies and UNESCO.<sup>11</sup>

11. The Special Rapporteur welcomes the UNESCO initiatives, following up on the report of the International Commission on the Futures of Education. The initiatives facilitate discussion on the "Futures of Education", that is, on how to understand the evolving right to education in the light of existing human rights standards, changing contexts and new demands placed on education. Consensus on the right to education is continuously evolving through commitments made in international living instruments and interpretations of the right by monitoring mechanisms specifically created by States for this purpose.

12. Evolving norms relate, inter alia, to the protection of the right to education in times of conflict, when human rights norms continue to apply. The right to education suffers no derogation under the International Covenant on Economic, Social and Cultural Rights. The Special Rapporteur welcomes the endorsement by 117 countries, as of 8 May 2023, of the Safe Schools Declaration, an intergovernmental commitment to protect education during armed conflict, and its related Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.

13. The Safe Schools Declaration, urging parties to armed conflict to avoid using educational facilities for any purpose related to military efforts, is a crucial step in this regard. The International Committee of the Red Cross stressed that recommended actions, which go beyond what is required under international humanitarian law, are "not at odds with international humanitarian law", as "avoiding that education facilities become military objectives and therefore liable to attack goes a long way in ensuring the safety of civilians – students and education personnel – and in preserving the civilian character of schools and their corresponding protection from attack, so that they can continue to safely operate during

<sup>9</sup> Responses are available on the website of the Special Rapporteur, at: <https://www.ohchr.org/en/calls-for-input/2023/call-contributions-right-education-advances-and-challenges>. Some are referred to directly in footnotes.

<sup>10</sup> William A. Schabas, *The Customary International Law of Human Rights* (Oxford, Oxford University Press, 2021), p. 312.

<sup>11</sup> A/HRC/41/37, paras. 4–6.

armed conflict.<sup>12</sup> This also contributes to rebuilding post-conflict societies. Many reports demonstrate the use and destruction of educational facilities in Ukraine, the Syrian Arab Republic and elsewhere, making the endorsement and implementation of the Safe Schools Declaration and its guidelines crucial. Importantly, good practices are emerging.<sup>13</sup>

14. The establishment of the Geneva Global Hub on Education in Emergencies is additional proof of international commitment to uphold the right to education under all circumstances. As a member of the Geneva Global Hub since 2022, the Special Rapporteur looks forward to building on the work of her predecessors, including by stressing the obligation of States to ensure the inherent right of each individual to education, including in emergency situations.<sup>14</sup>

## **B. Education as a public common good**

15. States have recognized their primary responsibility for the provision of education as a public good, including their central role as custodians of the efficient, equitable and effective management and financing of public education that is accessible to all.<sup>15</sup>

16. Further recognition of education as a common good is crucial for a renewed social contract, the aim of which goes beyond guaranteeing adequate sustainable public funding to recognizing education as both an individual and co-creative activity that contributes to the enjoyment of humanity's shared cultural heritage and ensures that education is governed in common, at all levels, in an inclusive and participatory way.<sup>16</sup>

## **C. Need to reinforce implementation, accountability and monitoring processes**

17. Realization of the right to education requires more than an acceptance of established norms. International instruments must be robustly worded and sufficiently detailed. Guidance tools for States and other stakeholders must be made available, including through technical assistance and strong monitoring mechanisms.

18. An added value of the education mandate is its capacity to engage with States and other stakeholders and to ensure accountability based on international human rights law – albeit with inadequate resources. Overall, international monitoring of the right to education, which remains poor, must be reinforced to inform policy plans and reform efforts.

19. Since the establishment of the mandate, 31 country or other visits have been conducted. The Special Rapporteur thanks stakeholders who have provided post-visit updates<sup>17</sup> and intends to follow up on the recommendations made by her predecessors.

20. From December 2010 until April 2023, the right to education mandate has been involved in approximately 139 communications, well distributed across regions, with a generally good response rate. The highly diverse issues addressed in the communications included: discrimination in access to education, including for children with disabilities;

<sup>12</sup> International Committee of the Red Cross, “[The Safe Schools Declaration and the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict](#)”, December 2018. See also Global Coalition to Protect Education from Attack, “[Practical Impact of the Safe Schools Declaration: Fact Sheet](#)” (January 2022) and “[Commentary on the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict](#)” (2015).

<sup>13</sup> Submissions from Global Coalition to Protect Education from Attack, paras. 19–28; and Hala Systems and Starling Lab.

<sup>14</sup> [A/HRC/8/10](#), para. 37; see also [A/66/269](#).

<sup>15</sup> UNESCO, Brussels Declaration, adopted at the Global Education Meeting, Brussels, 3–5 December 2018, para. 15; see also <https://www.un.org/en/transforming-education-summit/digital-learning-all>.

<sup>16</sup> International Commission on the Futures of Education, *Reimagining Our Futures Together*, pp. 12, 13 and 149; and UNESCO, *Rethinking Education: Towards a Global Common Good?* (2015).

<sup>17</sup> Submissions from Ecuador; United Nations Children's Fund (UNICEF); Kazakhstan; Qatar; and National Convention of the Rights of Persons with Disabilities Monitoring Mechanism of the German Institute for Human Rights.

respect for cultural rights and diversity, including minority language instruction; child protection in relation to harassment, early-age and forced marriage, labour, exploitation and abduction; curriculum-related issues; arbitrary restrictions on academic freedom, freedom of expression and peaceful assembly of learners and educational staff; banning NGOs and attacks against human rights defenders promoting the right to education; military attacks on schools and physical blockades limiting access to educational institutions; restricting comprehensive sexual education, education on LGBTIQI+ rights and gender studies; detained minors; forced evictions affecting access to education, including indigenous and peasant communities; the impact of privatization on education; budget cuts targeting basic services, including education; and lack of access to education in informal settlements.

21. Regrettably, limited resources have prevented the mandate from responding to all allegations received and ensuring comprehensive follow-up. The Special Rapporteur intends to develop this aspect of the mandate and welcomes the Right to Education Monitoring Guide of the Right to Education Initiative,<sup>18</sup> which facilitates the invaluable contribution of civil society actors to the monitoring process.

22. Effective implementation and monitoring of the right to education require reliable data. Lack of education-related data undermines the ability of States and other bodies to effectively address inequalities, and can even reinforce them.<sup>19</sup> Particular concern has been expressed about missing or unreliable data, as well as failures to take intersectionalities into account,<sup>20</sup> for example, with regard to children with visual impairments, as well as forcibly displaced, asylum-seeking and refugee children worldwide. Efforts to harmonize data collection methodologies in emergencies and protracted crises must be encouraged.<sup>21</sup>

### III. Content of the right to education

#### A. Aims of education: the right to learn

23. Since the adoption of the Universal Declaration of Human Rights, States have reiterated in numerous instruments that:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.<sup>22</sup>

24. These aims, centred around both individual and collective development, are continuously refined as new commitments are adopted, for example through article 29 of the Convention on the Rights of the Child, Sustainable Development Goal target 4.7, the Incheon Declaration (para. 5) and the Education 2030 Framework for Action (para. 6), as well as through initiatives to develop human rights education, global citizenship education and education for sustainable development. The right to education must empower people to reach their fullest potential, not only as individuals but also as members of communities and societies through meaningful social, cultural, economic and political participation. In addition:

<sup>18</sup> See <https://www.right-to-education.org/monitoring/>.

<sup>19</sup> See UNESCO Institute for Statistics, Network for international policies and cooperation in education and training, 3 July 2019; and Moira V. Faul, Patrick Montjouridès and Arushi Terway, “Education and the new inequality divides”, Geneva Graduate Institute, March 2021.

<sup>20</sup> See <https://www.norrag.org/missing-data-project/>.

<sup>21</sup> See [https://www.educationcannotwait.org/sites/default/files/2022-06/ecw\\_222million\\_study\\_advocacypaper.pdf](https://www.educationcannotwait.org/sites/default/files/2022-06/ecw_222million_study_advocacypaper.pdf); and Network for international policies and cooperation in education and training, “New INEE Reference Group to drive reforms and set global standards for EiE data by ECW, FHI 360, INEE, NORRAG, and UIS”, 17 December 2020.

<sup>22</sup> See also Convention against Discrimination in Education, art. 5; International Covenant on Economic, Social and Cultural Rights, art. 13; and Convention on the Rights of the Child, art. 29.

The new social contract for education must aim to unite us around collective endeavours and provide the knowledge, science, and innovation needed to shape sustainable futures for all anchored in social, economic, and environmental justice. It must redress past injustices while preparing us for environmental, technological, and social changes on the horizon.<sup>23</sup>

25. These aims should be read in conjunction with proposals made by the International Commission on Education for the Twenty-first Century, *Learning: The Treasure Within*, in which it was proposed that lifelong education be centred on four key pillars: learning to know; to do; to live together; and to be.<sup>24</sup> In this regard, the Special Rapporteur warns against any potential confusion arising from the expression “learning poverty” based on criteria about the inability of 10-year-olds to read and understand a simple text. What data reveal is useful: latest estimates suggest that globally 64.3 per cent of 10-year-olds cannot.<sup>25</sup> However, this statistic only relates to one of the four essential features of the right to education as a right to learn: the right to know. It also inadvertently suggests that the problem lies with learners rather than with educational systems.

26. The education mandate has contributed to discussions about the aims of education, emphasizing that its widely recognized objectives are: peace, acceptance, the participation of all in the development of society, knowing and understanding the “other”, the recognition of cultural diversity and an education that is adequate and adapted to the specific needs of people in their own context.<sup>26</sup> Furthermore, understanding the right to education as a cultural right means that each person has the right to: access all of the cultural resources necessary to freely follow a process of identification; experience mutually rewarding lifelong relations; deal with the crucial challenges facing the world; and engage in practices that make it possible to take ownership of, and contribute to, cultural resources.<sup>27</sup> Beyond the transmission of cognitive learning and knowledge, education must always promote the “ABCDE Framework”: acceptance, belonging, critical thinking, diversity, and empathy.<sup>28</sup> Education must be free of propaganda and must always imply a focus on the free development and exercise of critical thinking, which is at the core of the right to learn.<sup>29</sup> The Special Rapporteur also notes the increasing recognition of the vitality of socio-emotional learning.<sup>30</sup>

27. The right to education includes access to information and learning about issues essential to the aims of education, in particular human rights education, which should be systematically and holistically integrated.<sup>31</sup> The United Nations Declaration on Human Rights Education and Training (2011) specifies that everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training.

28. The right to learn about important issues includes accessing comprehensive sexual education, as noted in the 2030 Framework for Action (para. 63) and Sustainable Development Goal indicator 4.7.2. In 2023, the Special Rapporteur on the right to education and other special procedures mandate holders published a Compendium on Comprehensive Sexuality Education, in which they recalled international standards obliging States to ensure the right to comprehensive sexual education, without discrimination.<sup>32</sup> The mandate regularly receives allegations regarding the failure of States to respect and protect this element of education.

29. Curricula, pedagogy and achievements must align with the objectives of education as a human right and the leave-no-one-behind principle. In 2014, the mandate expressed concern

<sup>23</sup> International Commission on the Futures of Education, *Reimagining Our Futures Together*, p. 11.

<sup>24</sup> [A/71/358](#).

<sup>25</sup> Submission from UNICEF, para. 6.

<sup>26</sup> [A/74/243](#), para. 20.

<sup>27</sup> [A/HRC/47/32](#), para. 52.

<sup>28</sup> [A/74/243](#), para. 68.

<sup>29</sup> *Ibid.*, para. 36.

<sup>30</sup> UNESCO Mahatma Gandhi Institute of Education for Peace and Sustainable Development, *Guidelines for Implementing Social and Emotional Learning in Schools* (New Delhi, 2022).

<sup>31</sup> Committee on the Rights of the Child, general comment No. 1 (2001), paras. 15–16 and 19.

<sup>32</sup> [A Compendium on Comprehensive Sexuality Education OHCHR](#).

that prevalent international assessments of the performance of students were premised upon a rather instrumental role of education, driven by the concept of development in mere economic terms, overemphasising learning outcomes in mathematical and language skills, to the detriment of other skills and talents, for example, in the creative arts and other non-academic pursuits. Such a narrow approach is contrary to the objectives assigned to education internationally. Assessments should embody in full measure the key objectives of the right to education.<sup>33</sup>

30. Overall, education systems are not meeting the objectives of education and often not genuinely pursuing them or, worse, moving in the opposite direction. The previous mandate holder expressed regret that some education systems are perpetuating discrimination, exclusion and segregation, as well as assimilation, with reductive objectives, ill-suited to the needs of multicultural societies.<sup>34</sup> As mentioned by the International Commission on the Futures of Education, some educational systems wrongly instil a belief that short-term prerogatives are more important than longer-term sustainability, emphasizing values of individual success, national competition and economic development, to the detriment of solidarity, understanding interdependencies and caring for each other and the planet. Moreover, there is a need to “learn to unlearn” and to critically examine established dominant knowledge.<sup>35</sup> Some contributors reported that the aims of education remain at the unfettered discretion of ministries of education, without any mechanism for monitoring or evaluation.<sup>36</sup> The Special Rapporteur considers that these issues are crucial in efforts to address current and future challenges.

## B. Right to lifelong learning

31. As previously emphasized by the mandate<sup>37</sup> and reasserted, inter alia, in the Agenda 2030 Framework, the right to education is a right to lifelong learning, that is, learning that is not limited to school-age children and youth. In many circles, emphasis is placed on accessing primary and sometimes secondary education in order to attain Sustainable Development Goal 4. While these dimensions are crucial; they are insufficient for the realization of the right to education as a universal human right. Everyone has a right to a fundamental education, early childhood care and education, technical and vocational education, training/retraining and higher education, regardless of age or other factors, and to access the transformative possibilities of education at all stages of life, within a system that links formal, informal and non-formal education,<sup>38</sup> including opportunities for older adults.

32. Early childhood care and education lays the foundation for the right to lifelong education, as highlighted by the reports of the mandate.<sup>39</sup> However, only half of States provide free pre-primary education; other States provide such education at a prohibitive cost.<sup>40</sup> In this regard, the adoption of guidelines for implementing early childhood care and education would be a useful step, as proposed by experts and civil society groups.

33. The right to higher education is jeopardized in many ways.<sup>41</sup> Institutional models perpetuate structural inequalities. The worldwide vertical stratification of higher education systems and the impact of concepts of “merit” or “capacity” that sustain, justify and

<sup>33</sup> [A/HRC/26/27](#), para. 43.

<sup>34</sup> [A/HRC/47/32](#), para. 9. See also submission from Belarusian Helsinki Committee, paras. 2 and 15.

<sup>35</sup> International Commission on the Futures of Education, *Reimagining Our Futures Together*, p. 54.

<sup>36</sup> Submission from Cypriot Commissioner for Children’s Rights, p. 3.

<sup>37</sup> [A/71/358](#), para. 41.

<sup>38</sup> *Ibid.*; and International Commission for the Futures of Education, *Reimagining Our Futures Together*, pp. 12, 117 and 152.

<sup>39</sup> [A/77/324](#); and Rajakumari Michaelsamy and Silke D’Helft, “[Early childhood care and education as a gateway to inclusive education: an analysis of UN Special Rapporteurs’ Reports](#)” (Right to Education Initiative, 2022).

<sup>40</sup> UNESCO, “[Why early childhood care and education matters](#)”, 10 November 2022.

<sup>41</sup> See submissions from European Students’ Union; Fédération des Étudiants Francophones; and Unione degli Universitari.

legitimize inequalities are of particular concern. Based on social justice principles, “merit” should reflect different pathways into higher education and reward individual capacities.<sup>42</sup>

34. The UNESCO Revised Recommendation concerning Technical and Vocational Education (para 2 (c)) advocates an understanding of technical education as “an aspect of lifelong learning and a preparation for responsible citizenship”. At the juncture of the right to education and the right to work, technical and vocational education and training is integral to lower, upper and post-secondary through to tertiary education and across all educational sectors. Therefore, States should ensure that technical and vocational education integrate broader education goals, including the development of social skills and critical thinking, in addition to technical occupational requirements.<sup>43</sup>

### C. Right to free quality education

35. The right to education cannot be fulfilled if it is not of quality, meaning that it must be available, accessible, acceptable and adaptable at all levels.<sup>44</sup>

36. International human rights law specifies the right to compulsory, free primary education and the progressive implementation of free secondary and higher education (International Covenant on Economic, Social and Cultural Rights, arts. 13 and 14; and Convention on the Rights of the Child, art. 28).

37. Although the education mandate and treaty bodies have repeatedly recommended ensuring free education at all levels, and Sustainable Development Goal target 4.1 commits States to ensure that all girls and boys complete free, equitable and quality primary and secondary education by 2030, there are proposals to expressly state a right to free education at the pre-primary and secondary levels of education through an international instrument.<sup>45</sup> As this element of the right to education is far from being implemented, with costs remaining an important obstacle to accessing education in many countries, reaffirming such commitments in a clear and detailed legal instrument could be useful.

38. Many States already recognize the right to free education before and after the primary level, including up to higher education.<sup>46</sup> However, student unions regret the absence of the progressive introduction of free education and about increasing costs, which effectively block access to education for people from disadvantaged backgrounds. Some consider that tuition for higher education remains acceptable when financial support mechanisms are provided for students who cannot afford the fees. The Special Rapporteur stresses, however, that such schemes are often available only for a restricted number of people and are accompanied by specific merit requirements that further entrench existing barriers.

39. When education is compulsory, it must be free. International law only requires compulsory primary education. However, national laws often extend the compulsory aspect to secondary education, sometimes up to 18 years of age.

40. The mandate and treaty bodies have highlighted that providing free education includes not only removing fees but also removing indirect costs, including the cost of: books; school materials; uniforms; transportation; examination fees; utilities; security; parent-teacher association fees; payment of volunteering teachers; boarding-school costs when parents have no other choice; and, increasingly, digital devices and Internet connection costs. Free lunches, particularly for those unable to pay, should also be provided for. Contributions also stressed

<sup>42</sup> Submission from UNESCO, International Institute for Higher Education in Latin America and the Caribbean, paras. 42 and 45.

<sup>43</sup> [A/67/310](#), paras. 25, 31 and 89; and [A/71/358](#), para. 67.

<sup>44</sup> Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education, principles 9 and 14; and [A/HRC/20/21](#).

<sup>45</sup> Submission from Human Rights Watch, p. 2. See also Tashkent Declaration and Commitments to Action for Transforming Early Childhood Care and Education, commitments 2 (V) and 3 (VIII); and Michaelsamy and D’Helft, “Early childhood care and education as a gateway”, p. 4.

<sup>46</sup> See, for example, submissions from Ecuador and Djibouti.

the importance of financial assistance for students with economic difficulties or social assistance schemes as a way to achieve free education and ensure accessibility.

41. There are other, less tangible, costs. The mandate has previously warned that children and families bear the costs of the digitalization of education through, for instance, the mining of their personal data and violations of their right to privacy.<sup>47</sup> Commercial advertising and marketing in education settings are other hidden costs that should be banned.<sup>48</sup> Ending the hidden costs of corruption would help overcome inequalities and improve governance.

#### **D. From an equal right to education to the right to equitable and inclusive education**

42. Removing direct and indirect discrimination in education as well as de jure and de facto barriers are now well-established States obligations. The necessity of intersectional approaches is also widely accepted, as is the requirement for States to go beyond prohibiting discrimination by ensuring that the principle of equal opportunity fully translates into a concrete reality.<sup>49</sup>

43. The mandate has underlined that States must pursue inclusive and equitable approaches to education. This is echoed in Sustainable Development Goal 4 and the Education 2030 Framework for Action. Sustainable Development Goal target 4A further requires the building and upgrading of educational facilities so that they are child, disability and gender-sensitive, safe, non-violent, inclusive and effective learning environments for all.

44. Non-discrimination, equality, equity and inclusion are essential conditions for ensuring the right to education for all. Equity means ensuring that individual learners, particularly those with specific educational needs, receive the support they require to succeed, according to their individual circumstances. Exclusion must be redressed through inclusive education, which is the best guarantee of equity, enabling all learners, regardless of background, physical and mental abilities or other characteristics, to learn in an adapted and supportive environment.<sup>50</sup>

45. The right to inclusive education developed as an international legal norm for persons living with disabilities, based on the 2007 report of the mandate,<sup>51</sup> the Convention on the Rights of Persons with Disabilities (art. 24) and Committee on the Rights of Persons with Disabilities general comment No. 4 (2016).<sup>52</sup> Many contributions noted both achievements and further efforts required in developing a robust system of screening, ensuring that learners get appropriate educational intervention on time, and the need to launch public advocacy efforts to reduce stigma and misconceptions.

46. Using the approach developed for persons living with disabilities, the right to inclusive education should be applied to all marginalized groups. Inclusion is not integration, however. Integration places everyone in mainstream educational institutions, necessitating individuals to adapt; inclusion means modifying educational content, teaching methods, approaches, structures and strategies so that all students enjoy an equitable learning experience in an appropriate environment.<sup>53</sup> It also requires intercultural education, an approach increasingly adopted in many parts of the world.<sup>54</sup>

47. Contributions demonstrate that despite commitments, discrimination, inequality, inequity and exclusion remain common, including increased segregation. Many groups still lack equitable opportunities, concerning which the mandate has repeatedly made

<sup>47</sup> [A/HRC/50/32](#), paras. 4 and 97 (d).

<sup>48</sup> [A/69/286](#), paras. 69 and 104 (e).

<sup>49</sup> [A/72/496](#), para. 20; and [A/HRC/17/29](#) and [A/HRC/17/29/Corr.1](#).

<sup>50</sup> [A/72/496](#), paras. 19 and 110.

<sup>51</sup> See [A/HRC/4/29](#); and submission from Inclusion International.

<sup>52</sup> Committee on the Rights of Persons with Disabilities, general comment No. 4 (2016), para. 10 (a); see also [A/HRC/25/29](#) and [A/HRC/25/29/Corr.1](#).

<sup>53</sup> Committee on the Rights of Persons with Disabilities, general comment No. 4 (2016), para. 11.

<sup>54</sup> [A/HRC/47/32](#), paras. 4, 5 and 32–41; and submission from El Salvador.

recommendations.<sup>55</sup> As noted in a number of contributions, such groups include: pregnant and married girls, or girls who are mothers; out-of-school refugee children; girls in conflict-affected countries; stateless or displaced children; minorities, including Roma; people living in poverty; people living in remote, rural or indigenous areas; migrant and working children; children with disabilities; and chronically ill children. Laws against discrimination, where they exist, do not always explicitly mention sex, sexual orientation, gender identity and expression in a manner that applies to education. Issues have been raised regarding prohibitive tuition fees for foreign students in European countries, students in detention, discrimination based on political or religious grounds and the compounding impact of school districting and local funding systems. Furthermore, plans proposing differentiated approaches for various groups lack concrete guidelines and indicators.

## E. Right to participate in educational life

48. Inclusivity means recognizing the right of all stakeholders to participate in educational life, based on active interpersonal relationships between students, educators, organizations and other associated actors and the sharing of cultural resources as vectors of “identity, values and meaning”.<sup>56</sup> Many contributions highlighted the need to adopt a child-centred and child rights-based approach, allowing for the meaningful participation of children in decision-making.<sup>57</sup>

49. Challenges resulting from divergent views within countries and communities need to be addressed. Cultural resources must be used to enable informed debate and to gather contributions in order to ensure full participation from all and to provide representative perspectives.<sup>58</sup> However, cultural resources may be misunderstood from a prejudiced point of view. Some may also be used to justify discrimination and restrictions on freedoms. The Special Rapporteur recalls the vital importance of ensuring cultural rights while guaranteeing that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law or to limit their scope.<sup>59</sup> She also stresses the work of the Special Rapporteur in the field of cultural rights on, *inter alia*, the writing and teaching of history.<sup>60</sup>

50. The right to education is the right of learners, not their families or communities. The responsibilities, rights and duties of parents or family or community members to provide appropriate direction and guidance are to be respected, but the best interests of children, which must remain the main concern, must be ensured. This includes fully respecting their rights to education, information, freedom of expression, thought, conscience and religion, and to express their views freely in matters affecting them, in accordance with their capacity.<sup>61</sup> Demands from parents and communities that children be barred from certain educational content (for example, sports, arts, human rights education, comprehensive sexual education and science) are at odds with the right to education.<sup>62</sup>

51. Decolonial and intersectional perspectives provide a vocabulary with which to examine the quality of inclusion. These perspectives entail, *inter alia*: changing curricula to include historically excluded stories; human rights education and rebuilding trust in institutions; changing “chalk-and-talk” teaching rather than punishing those who do not respond well to such methods; bringing students’ identity vectors into the classroom; and recognizing diverse knowledge systems, such as those of indigenous and traditionally marginalized populations. Without such actions, pupils may be formally included in educational systems that exclude their needs, contributions and contexts.<sup>63</sup>

<sup>55</sup> Notably, [A/72/496](#), [A/76/158](#), [A/73/262](#), [A/HRC/14/25](#) and [A/HRC/14/25/Corr.1](#), [A/HRC/11/8](#) and [E/CN.4/2006/45](#).

<sup>56</sup> [A/HRC/47/32](#), paras. 53–59 and 82. See also submission from UNESCO, Culture Sector.

<sup>57</sup> For example, submission from Cypriot Commissioner for Children’s Rights.

<sup>58</sup> [A/HRC/47/32](#), para. 55.

<sup>59</sup> UNESCO, Universal Declaration on Cultural Diversity, art. 4.

<sup>60</sup> [A/68/296](#).

<sup>61</sup> [A/HRC/47/32](#), para. 79 (h)

<sup>62</sup> On an emblematic court case, see submission of Portuguese Ombudsman Institution.

<sup>63</sup> Faul, Montjouridès and Terway, “Education and the new inequality divides”.

## F. Right to public education

52. As underscored by the mandate, the right to education requires States to deliver free, quality, public education for everyone. This position is supported by the wording of relevant legal provisions (for instance, parents' freedom to choose private schools for their children other than those established by the public authorities is meaningless without universal access to public schooling) and by international and domestic mechanisms, reflecting international consensus. Public education remains the main conduit for delivering education in a large majority of States and is often constitutionally protected. The Human Rights Council has recognized the critical importance of investing in public education.<sup>64</sup>

53. The Special Rapporteur reiterates the recommendation made by the previous mandate holder that States utilize the Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education.<sup>65</sup>

## G. Right to educational freedoms

54. Educational freedoms are essential. Under article 13 of the International Covenant on Economic, Social and Cultural Rights, parents have the liberty to choose schools for their children and to ensure that their education is in conformity with their own convictions; and individuals and bodies have the liberty to establish and direct educational institutions. These liberties include the right to opt out of religious education, including one's own religion,<sup>66</sup> thus allowing for diversity in education, without absolving public education systems from their obligations to protect cultural diversity.<sup>67</sup>

55. Measures that impinge on cultural pluralism or the rights of indigenous or minority groups in education in favour of assimilation, whether in the name of nationalism, secularism or social cohesion, are contrary to the obligations of States. The rights of minorities and indigenous people to establish and operate their own educational services, in their own languages and according to their cultural methods of teaching and learning, are recognized in article 27 of the International Covenant on Civil and Political Rights, article 30 of the Convention on the Rights of the Child, articles 3 and 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities<sup>68</sup> and article 14 of the United Nations Declaration on the Rights of Indigenous Peoples.

56. The right to education implies respect for academic freedom, to be understood as the freedom of individuals, as members of academic communities (including faculty, students, staff, scholars, administrators and community participants), or in their own pursuits, to conduct activities involving the discovery and transmission of information and ideas with the full protection of human rights law.<sup>69</sup> The mandate regularly receives worrying information indicating an increasing number of violations of academic freedom in many parts of the world. Student unions, in particular, report the shrinking civic space for student engagement in higher education governance.<sup>70</sup> This needs further development based on the work of the Committee on Economic, Social and Cultural Rights<sup>71</sup> and the Special Rapporteur on freedom of opinion and expression.<sup>72</sup> The Special Rapporteur supports the process leading to

<sup>64</sup> A/HRC/41/37, paras. 31, 38–40 and 80.

<sup>65</sup> Ibid., para. 77.

<sup>66</sup> Human Rights Committee, general comment No. 22 (1993), para. 6; and OHCHR, #Faith4Rights toolkit, module 12, available at <https://www.ohchr.org/sites/default/files/Documents/Press/faith4rights-toolkit.pdf>.

<sup>67</sup> A/HRC/47/32, para. 24.

<sup>68</sup> See also Special Rapporteur on Minority Issues, "Language rights of linguistic minorities: a practical guide for implementation" (Geneva, OHCHR, 2017), p. 21, available at [https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf).

<sup>69</sup> A/75/261, para. 8.

<sup>70</sup> Submission from European Students Union.

<sup>71</sup> General comment No. 13 (1999), paras. 38–40.

<sup>72</sup> A/75/261.

the draft Principles for Implementing the Right of Academic Freedom, which can provide useful guidance to United Nations mechanisms, States and other stakeholders.<sup>73</sup>

57. A specific challenge at the intersection between the rights to an inclusive education and academic freedom concerns concepts, colloquially known as “wokeism” and “cancel culture”. Legitimate efforts to review curricula to include historically excluded narratives, be they of women or other marginalized groups in various contexts, have led to instances of teaching staff being threatened and intimidated and to calls for the censoring of books in school libraries. This is of great concern, given the importance of encouraging debate while safeguarding the right to education, freedom of expression and academic freedoms. The Special Rapporteur intends to address this matter further.

## H. Education should not be reduced to schooling

58. Schools must be protected as spaces where students encounter challenges and possibilities not available elsewhere. The pandemic underscored the central and multiple roles schools play in implementing the right to education and many other rights. Formal and physical educational facilities are irreplaceable.<sup>74</sup>

59. Education should not be reduced to schooling, however. Learning must be recognized regardless of where and how it is achieved. Numerous other spaces, including cultural centres, libraries, families and communities participate in education, and need support. As reported by the International Commission on the Futures of Education, a major task “is to broaden thinking about where and when education takes place, expanding it to more times, spaces and stages of life”, relying on what can be called “educational ecosystems” that connect natural, built and virtual learning sites.<sup>75</sup>

60. The mandate has long recommended that non-formal education be acknowledged as an important means for realizing the right to education. It can provide “second chance” education to out-of-school children and adult learners by expanding educational opportunities beyond mainstream public school systems, as well as providing multiple other benefits. Within lifelong learning, it is essential to recognize, validate and accredit learning, wherever it may have occurred. As in all forms of education, human rights considerations must be integrated into the design and oversight of non-formal education programmes. Education systems should be reformed to allow for a fluid transition between non-formal and formal programmes.<sup>76</sup>

61. Under article 13 of the International Covenant on Economic, Social and Cultural Rights, it is primary education, not schooling, that is compulsory. Home-schooling may therefore be considered as part of educational freedom, with families retaining the liberty to ensure the education of their children at home. Nevertheless, the same guarantees must apply to the right to education in all dimensions.

## I. Right to be safe in education

62. Every learner has the right to physical, psychological and emotional safety and security in pursuing education.<sup>77</sup> An estimated 246 million children experience violence in education,<sup>78</sup> measures are required to: prohibit corporal punishment and bullying in schools; prevent threats to (and by) learners, teachers and other school staff; and stop violence on the way to school, in class, on the playground and online.

63. States must adopt safety regulations, ensure emergency preparedness for crisis response and guarantee that all educational settings are in compliance. Useful tools include

<sup>73</sup> See <https://www.scholarsatrisk.org/principles/>.

<sup>74</sup> [A/HRC/44/39](#); and International Commission on the Futures of Education, *Reimagining Our Futures Together*, p. 152.

<sup>75</sup> *Ibid.*, pp. 152 and 153.

<sup>76</sup> [A/HRC/35/24](#).

<sup>77</sup> [E/CN.4/2004/45](#), paras. 50–52; and [A/CN.4/2005/50](#), paras. 119–124.

<sup>78</sup> See <https://www.end-violence.org/safe-to-learn>.

the [Minimum Standards in Education handbook](#) issued by the Interagency Network for Education in Emergencies and the Comprehensive School Safety Framework of the Global Alliance for Disaster Risk Reduction and Resilience in the Education Sector.

64. As stressed in many contributions, children’s safety is at greatest risk during periods of armed conflict. In 2020 and 2021, over 5,000 reported attacks and instances of military use of educational facilities were documented in 84 countries, with systematic patterns of such use in 28 countries. Over 9,000 students and educators were abducted, arrested, injured or killed. Globally, this is an increase compared to the 2018–2019 period, which has continued through 2022. The damaging effects of such attacks on the right to education and the lives of learners are devastating.<sup>79</sup>

65. The content and orientation of education is often instrumentalized during and after conflicts for political ends. This includes changing historical narratives in textbooks, introducing hate speech and war propaganda in educational material, militarizing education, disrupting minority language education, banning or destroying schoolbooks, punishing political expression and segregating students according to national and/or ethnic origin or religion.<sup>80</sup>

66. The impact of climate change on the right to education and the impact of education on climate change are both crucial. In the absence of an international protection framework,<sup>81</sup> it is predicted that one billion children are at “extremely high risk” of being affected by climate change<sup>82</sup> and that people displaced by the effects of climate change will risk being deprived of an adequate education. To address climate change, education systems should introduce system-wide environmental education, currently lacking in many countries.

## IV. Legal obligations for realizing the right to education

### A. Fully implementing the right to education

67. It is widely accepted that States must respect, protect and fulfil the right to education of everyone within their jurisdiction. This entails taking steps, including the full use of the maximum available resources of States parties, nationally and through international assistance, to progressively achieve the full realization of the right to education by all appropriate means (International Covenant on Economic, Social and Cultural Rights, art. 2). Various obligations have immediate effect, however, such as obligations to respect and protect, including through the guarantee of non-discrimination and the obligations to take deliberate, concrete and targeted steps towards the full realization of the right to education and to move as expeditiously and effectively as possible in that direction. In addition, there are core obligations in relation to the right to education and a “strong presumption of impermissibility of any retrogressive measures”.<sup>83</sup>

68. The notion of progressive implementation to the maximum of available resources has led to de facto non-implementation of the right to education and has been used as an easy excuse for failure to take action. The International Covenant on Economic, Social and Cultural Rights was adopted more than half a century ago. Hence, many States may be considered to be in violation of their obligations regarding the right to education, as efforts to mobilize domestic financial resources and address inequalities, prioritizing most marginalized people, are still falling well below achievable objectives. The progressive implementation and non-retrogression principles require that States demonstrate that any failure to meet their obligations is demonstrably attributable to inadequate resources, rather than the result of political expediency to choose not to mobilize them. Any retrogression must be temporary, proportionate, limited in time and adequately monitored and must ensure that

<sup>79</sup> Submission from Global Coalition to Protect Education from Attack, para. 37.

<sup>80</sup> [A/68/296](#).

<sup>81</sup> Submission from UNESCO, Education Sector.

<sup>82</sup> Submission from UNICEF, para. 20.

<sup>83</sup> Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999), paras. 43–45 and 57.

the core obligations of non-discrimination, accountability, transparency and participation are respected.

69. Progressive implementation is not an obstacle to the enforceability and justiciability of the right to education. As noted by a previous mandate holder, international, regional and national jurisprudence has demonstrated the right to education to be legally enforceable through adjudicative mechanisms, including domestic courts. Such justiciability should be publicly recognized and endorsed by Governments and enacted through the national constitution and domestic legislation.<sup>84</sup>

70. Many contributions validated the full enforceability and justiciability of the right to education in respective countries. This is further supported by the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Some contributors reported, however, that justiciability is limited to access issues. Furthermore, court decisions are not always implemented in a satisfactory manner and in a number of countries there is no provision for a collectivized student union approach to protect students' rights.

71. Remedies and adjudication should be included as necessary elements of good governance in asserting the right to education. Accessible, free or inexpensive mechanisms enabling students, parents and other stakeholders to challenge and redress alleged violations of their rights range from regular parent-teacher and school board meetings, adjudication by appeal bodies and recourse to national human rights institutions and national courts. Guidance must be provided to the judiciary and legal profession on how the right to education should be understood.<sup>85</sup>

72. The Special Rapporteur also considers that confirmed violations of the right to education should result in tangible reparations, including access to free quality education for those to whom it has been denied (for example through basic education and adult education). She also notes that education may be considered as a form of reparation in other cases, for example for victims of conflict-related sexual violence and other serious human rights violations,<sup>86</sup> an issue that the Special Rapporteur is interested in addressing further.

## **B. Financing education**

73. Financing education is a legal obligation under international law. However, systemic issues in national and global education funding mean that certain groups of children and youth are falling further behind. UNICEF estimates that in one out of 10 countries, learners from the richest 20 per cent of households benefit from four or more times the amount of public education spending than the poorest.<sup>87</sup>

74. At the Transforming Education Summit, Governments were called upon to increase the fiscal space for education at the national level and to commit to ring-fencing funds for social protection and education systems. The Incheon and Paris Declarations call upon Governments to allocate at least 4 per cent to 6 per cent of gross domestic product (GDP) and at least 15 per cent to 20 per cent of total public expenditure to education and to protect public education budgets from the fiscal constraints resulting from the COVID-19 pandemic and global economic crises. Further, Governments should commit to reaching an adequate tax-to-GDP ratio through ambitious and progressive tax reforms, with linked commitments to the financing of educational investment.<sup>88</sup> Progressively realizing the right to education using maximum available resources means going beyond the resources currently at governmental disposal; it includes resources that could potentially be mobilized, in particular through progressive taxation.<sup>89</sup>

<sup>84</sup> A/HRC/23/35, para. 81.

<sup>85</sup> A/HRC/38/32, paras. 95–97.

<sup>86</sup> Submission from Global Survivors Fund.

<sup>87</sup> Submission from UNICEF.

<sup>88</sup> See <https://www.un.org/en/transforming-education-summit/financing-education>, (see “More investment”).

<sup>89</sup> Submission from TaxEd Alliance.

75. Resources must reach the poorest and the most marginalized. In the Transforming Education Summit, Governments were also called upon to establish specific goals regarding “the percentage of educational investment going to the 40 per cent and 20 per cent of families with lowest income, to those living in rural or distant areas, children with disabilities or those especially vulnerable”.<sup>90</sup> The Special Rapporteur stresses the milestone benchmark, adopted by UNICEF, of at least 15 per cent of public education resources going to the poorest 20 per cent of learners.<sup>91</sup>

76. Although Governments are the largest funders of education in all countries, where needed, development assistance is also important. As called for at the Transforming Education Summit, the international community should support, complement and stimulate national efforts in educational investment; fulfil the established benchmark 0.7 per cent of donor gross national income for official development assistance; increase the proportion of such aid going to education to 15 per cent to 20 per cent of total official development assistance and allocate such funds to the countries where the need is greatest.

77. Such international assistance must not lead to undue influence by international actors or other States on domestic educational policy concerns, particularly with respect to austerity measures and the privatization of the educational sector. Austerity measures exacerbate inequality, including in education, and predictably lead to an exponential increase in the privatization and commercialization of education. As specified in article 15 of the Maastricht Principles on Extra-Territorial Obligations of States in the Area of Economic, Social and Cultural Rights, all States have extraterritorial obligations to respect, protect and fulfil economic, social and cultural rights, including as members of international organizations. A State that transfers its competence to or participates in an international organization must take all reasonable steps to ensure that the relevant organization acts consistently with the international human rights obligations of that State.

### C. Regulating private actors

78. The role of non-State actors in education has grown exponentially in recent years in many countries, assuming a growing share of education provision.<sup>92</sup>

79. Human rights provide a solid framework of legally binding obligations regarding the role of States and private actors to guide the implementation of Sustainable Development Goal 4. A major challenge is respecting educational freedoms within the framework of education conceived as a public and a common good, while preventing systemic negative impacts of the growth of private actors, particularly commercial actors, on the right to education. For example, eliminating private educational institutions, such as universities, for political or ideological reasons under the guise of stringent regulation, would be at odds with international standards. The growth of commercial school chains that can undermine human rights and social cohesion is, however, of concern, with the increasing use of digital technologies in education and the influence of educational technology adding urgency. The education mandate has dedicated four reports to the issue,<sup>93</sup> warning about the danger of privatization “supplanting public education instead of supplementing it”.<sup>94</sup>

80. States must prioritize the funding of free, high-quality public education and ensure that it is truly inclusive. While there is no State obligation to fund private schools, the protection and promotion of cultural diversity, and particularly the protections due to minorities, strongly support such measures. Free, community-run schools merit consideration too.<sup>95</sup> However, support given to private educational institutions must comply with the

<sup>90</sup> See <https://www.un.org/en/transforming-education-summit/financing-education> (see “More equitably”).

<sup>91</sup> Submission from UNICEF.

<sup>92</sup> UNESCO, *Global Education Monitoring Report 2021/22: Non-State Actors in Education: Who Chooses? Who Loses?* (Paris, 2021), p. 32.

<sup>93</sup> [A/HRC/41/37](#), [A/70/342](#), [A/HRC/29/30](#) and [A/69/402](#).

<sup>94</sup> [A/69/402](#), para. 38.

<sup>95</sup> Submission from International Organization for the Right to Education and Freedom of Education.

prohibition on discrimination.<sup>96</sup> State funding must meet certain requirements, especially with regard to respecting minimum human rights standards.

81. The Special Rapporteur welcomes the shifts by the World Bank International Finance Corporation and the Global Partnership for Education, which have resolved not to provide funding to fee-charging or for-profit private education providers.<sup>97</sup> The previous mandate holder was contact with the Board of Directors of the Global Partnership for Education on this issue.<sup>98</sup>

82. Under their obligation to protect, States must establish minimum educational standards and ensure they are implemented by both public and private educational institutions in a manner that ensures the right to education, the rights of the child and educational freedoms. The Human Rights Council has urged States to put into place a regulatory framework for education providers, including those operating independently or in partnership with States, guided by international human rights obligations, that establishes, inter alia, minimum norms and standards for the creation and operation of educational services, addresses any negative impact of the commercialization of education and strengthens access to appropriate remedies and reparation for victims of violations of the right to education.<sup>99</sup>

83. The Guiding Principles on Business and Human Rights and the Abidjan Principles provide important guidance in this respect. The Abidjan Principles stress that States should impose public service obligations on private actors in education to ensure they contribute to the realization of the right to education so that: (a) institutions deliver education consistent with applicable human rights law and standards; and (b) there are no adverse effects of private educational institutions on the enjoyment of the right to education or other rights.

84. Education as a common public good means that all stakeholders, including non-State providers, where applicable, must meaningfully participate in decision-making on the basis of fair access. However, the increased commercialization of education shifts decision-making powers away from democratic, albeit flawed, structures to unaccountable and often powerful corporate actors. Powerful corporations increasingly influence educational policies and the use of public resources in ways that benefit corporate interests. Civil society is increasingly concerned about closed-door, non-transparent decision-making and the disproportionate voice increasingly accorded to big donors and private actors in international forums. Allowing consumerism to overshadow human rights considerations, and even allowing human rights language to be instrumentalized to enhance profit, negatively impacts all stakeholders, including students, teachers, other staff and parents, as well as the wider communities and society at large.

#### **D. Enforcing the 4As scheme**

85. In the first report of the mandate, the following 4As framework was proposed: making education available, accessible, acceptable and adaptable.<sup>100</sup> The approach has been adopted by the Committee on Economic, Social and Cultural Rights<sup>101</sup> and is now the most common analytical framework used for interpreting and understanding the normative content of the right to education. The framework, systematically used in the reports under the mandate, has been extended to other rights and is widely used by other mechanisms and stakeholders, including UNESCO and a number of States. Based on existing practice, a useful summary of the 4As scheme is set out below.

<sup>96</sup> Special Rapporteur on minority issues, “Language rights of linguistic minorities”, pp. 22 and 23.

<sup>97</sup> Joint submission from Global Initiative for Economic, Social and Cultural Rights, ActionAid, Amnesty International, Coalition for Transparency and Accountability in Education, East African Centre for Human Rights, Initiative for Social and Economic Rights, the Mouvement ivoirien des droits humains and Oxfam International.

<sup>98</sup> See communication OTH 34/2019, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24663>.

<sup>99</sup> Human Rights Council resolution 47/6, para. 12.

<sup>100</sup> E/CN.4/1999/49, chap. II; and E/CN.4/2000/6.

<sup>101</sup> General comment No. 13 (1999), para. 6.

86. Within the 4As framework, availability requires, inter alia:

- (a) Functioning educational institutions and programmes available in sufficient quantity;
- (b) Sufficient number of teaching and other staff with the necessary skills, qualifications and training, receiving domestically competitive salaries;
- (c) Adequate curricula and pedagogical materials, methodologies and practices;
- (d) Adequate sanitation facilities;
- (e) Safe drinking water;<sup>102</sup>
- (f) Safe, adequate and maintained infrastructure;
- (g) Safe and protective learning environments;
- (h) Libraries, computer facilities and information technology, where appropriate;
- (i) Decent working conditions and social protections for staff.

Arrangements necessary to construct, maintain and manage service delivery in relation to educational infrastructure and equipment are also necessary.<sup>103</sup>

87. As education is not reducible to schooling, one aspect the Special Rapporteur intends to address is how far the concept of availability must be broadened to include, inter alia, the availability of books, as well as digital technologies, not just in educational institutions but in homes, community centres and libraries. The “right to read” for example,<sup>104</sup> should be expanded beyond school walls.

88. Accessibility, which includes physical, economic and information accessibility, requires that educational institutions and programmes be accessible to everyone without discrimination. Information refers to the right to seek, receive and impart information concerning education issues and is linked to the right to participate in decision-making processes that may affect rights.<sup>105</sup> This also includes information necessary for learners, education staff and families and communities on how to use, maintain and repair educational infrastructure and equipment, including digital equipment.

89. The Committee on Economic, Social and Cultural Rights specified that the accessibility element can also be fulfilled through the use of modern technology and distance learning programmes, particularly in emergencies. However, most accessible approaches to distance learning may be low-tech, or no-tech.<sup>106</sup> Furthermore, digital technology should not be used as a justification for the unavailability of schools or campuses for all learners, it should rather aim to support, and not replace, schools and teachers.<sup>107</sup> Internet shutdowns are also problematic for accessibility as they can, for example, close access to online classes and information needed for studies and prevent registration for exams.

90. Acceptability requires, inter alia, that the form and substance of education, including curricula and teaching methodologies, are acceptable (that is, relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents or legal guardians and are directed towards the aims and objectives guaranteed under international human rights law. Curricula should be human rights-compliant, including being free from stereotypes. This condition involves the recognition of cultural rights within education systems in order to ensure their relevance.<sup>108</sup> It also requires, for example, having discussions about the possible

<sup>102</sup> See also [A/75/178](#).

<sup>103</sup> [A/HRC/47/32](#), para. 61; and [A/75/178](#), para. 24.

<sup>104</sup> Lea Shaver, *Ending Book Hunger: Access to Print Across Barriers of Class and Culture* (New Haven, Connecticut, Yale University Press, 2019).

<sup>105</sup> See, for example, [A/75/178](#), para. 36; and [A/HRC/50/32](#), paras. 25–26.

<sup>106</sup> [A/HRC/44/39](#), paras. 33 and 84 (e).

<sup>107</sup> [A/HRC/50/32](#), para. 24.

<sup>108</sup> [A/HRC/47/32](#), para. 63.

effects of the digitalization of education, such as student isolation and health, students' development, respect for the right to privacy and data protection.<sup>109</sup>

91. Adaptability, a continuous system-wide and ever-evolving requirement, means that education should be flexible so that it can adapt to the needs of changing societies and communities and the needs of students in diverse sociocultural settings, taking into consideration, in particular, migration and refugee flows, new conflicts, environmental disasters and climate change, as well as crises such as the COVID-19 pandemic. For example, Ukraine reported on efforts made to ensure the continuation of education, including for learners forced to relocate abroad.<sup>110</sup> Adaptation necessitates measures to develop multiple talents and literacies – digital, scientific, textual, ecological and mathematical – enabling individuals to enhance their agency in face of the rapid spread of misinformation and disinformation and their ability to identify true from false information.<sup>111</sup>

92. Implementing the 4As framework demands the involvement of numerous ministries in addition to ministries of education (for example the ministries of water and transport), as well as close cooperation among institutions, teachers, families and communities to ensure that the needs of learners and their families are understood and incorporated. This is at odds with certain authoritarian and top-down attitudes reinforced in times of crisis, as witnessed in many parts of the world during the COVID-19 pandemic.<sup>112</sup>

93. The Special Rapporteur notes that, in addition to the original 4As framework, there has been an evolution towards adding accountability as a fifth dimension as a way to better understand the status of the right to education and to encourage States to adopt and implement solid legal and policy frameworks protecting this right.<sup>113</sup>

## E. Controlling the digitalization of education

94. The impact of the digitalization of education on the right to education is a central concern of the mandate. The Special Rapporteur agrees with her predecessors that digital technology opens new learning pathways but also brings serious challenges. A rigorous stock-taking on “techno-solutionism” is yet to take place, particularly on lessons learned during the COVID-19 pandemic. It is well known that students from already disadvantaged backgrounds suffered the most through lack of access to good teaching and social isolation. Online learning opportunities were hampered by a lack of access to digital devices and poor Internet connectivity. Usage must not exacerbate educational inequalities in contexts where the gender digital divide is increasing, nor lead to human rights violations within education, in particular violations of the right to freedom of opinion and expression, information, privacy, health and cultural rights, including academic freedoms.<sup>114</sup> Online safety, digital literacy, accessible learning platforms and mental health support are also critical in the development of future policy on the right to education.

95. A critical emerging issue is artificial intelligence, the impact of which remains little understood while it can have important consequences for human creativity, acquiring knowledge, intellectual and cultural property rights and gauging learning. The subject needs urgent attention, as investments in the technology are rapidly expanding. The Special Rapporteur welcomes the UNESCO Recommendation on the Ethics of Artificial Intelligence, and notes precautionary measures already adopted by some States. Italy is reported to have recently banned the use of an artificial intelligence software owing to privacy concerns.<sup>115</sup> Further, it is important to examine who populates digital spaces, in which languages, with which cultural backgrounds and to secure the protection of cultural diversity in such context.<sup>116</sup> Algorithms are not neutral, they are developed using metadata that exclude

<sup>109</sup> [A/HRC/50/32](#), para. 32.

<sup>110</sup> See submission from Ukraine.

<sup>111</sup> International Commission on the Futures of Education, *Reimagining Our Futures Together*, p. 149.

<sup>112</sup> [A/HRC/44/39](#), para. 15.

<sup>113</sup> See submission from UNESCO, Education Sector.

<sup>114</sup> [A/HRC/32/37](#) and [A/HRC/50/32](#).

<sup>115</sup> Shiona McCallum, “[ChatGPT banned in Italy over privacy concerns](#)”, BBC News, 1 April 2023.

<sup>116</sup> See submission from New Humanity, p. 4.

information on marginalized groups and are therefore unrepresentative or biased. Separately, civil society organizations have called for a ban on biometric recognition systems that enable mass surveillance. The Special Rapporteur notes reports that data protection authorities in France and Sweden have rejected consent as a legal basis for facial recognition systems in schools, given the power imbalance between students and schools, and have directed schools to use less intrusive means to track attendance or provide access to school buildings.<sup>117</sup> So-called enhancement technologies are another type of emerging technology that can potentially impact the right to education.<sup>118</sup>

96. Another aspect of the digital discussion is whether, and to what extent, a right to Internet connectivity should be recognized as one aspect of the right to education. Several elements must be considered. Firstly, States should support everyone's right of access to and use of information and communications technology in self-determined, empowering ways, notably through ensuring basic services, including electricity and telephone and computer/Internet connections.<sup>119</sup> Further, the understanding of the right to education should be broadened to include digital competencies and access to the Internet as a means of supporting the right to education, the right to information and cultural rights.<sup>120</sup> Additionally, while access to quality education may be progressively realized, the right to non-discrimination is immediately applicable. In this regard, the right to education guarantees access to the Internet insofar as it is necessary to ensure equitable access and equal participation.<sup>121</sup> As stated in the UNESCO Rewired Global Declaration on Connectivity for Education, "Connectivity initiatives should be guided by an ethic of inclusion and begin with those facing disadvantage".<sup>122</sup>

97. These issues must be addressed while understanding the profit-driven agenda of digital technology companies. The digitalization of education should be focused on adding significant value to improving implementation of the right to education for all. The best interest of the student should always be the primary consideration, and, with regard to their age and maturity,<sup>123</sup> understood through their meaningful and representative participation.

## F. Recognizing the role of teachers

98. Teachers play a pivotal role in ensuring the right to education and therefore our collective future, although their role is undervalued and undercompensated. One study indicates that educators were earning, on average, 48 per cent below the local average cost of goods and services across 100 countries surveyed, with teachers living below the poverty line, even in high income countries.<sup>124</sup>

99. Restrictions are also imposed on teachers' human rights, particularly their academic freedom, trade union rights and their right to participate in decision-making. In conflict or politically fractious environments, teachers are on the frontline, being punished for expressing their views or for not supporting prevailing narratives, being subjected to threats and coercion, dismissed, demoted, unpaid, arbitrarily detained even attacked and killed.

100. The mandate continues to insist on the importance of teachers' rights and recognition of their invaluable contribution to the right to education, including during the COVID-19 pandemic.<sup>125</sup> As new demands are placed on educators to adapt to ever-evolving demands, technologies and contexts,<sup>126</sup> it is crucial that they benefit from support and training as lifelong learners themselves. This requires sound relationships to be established among

<sup>117</sup> See submission from Access Now, paras. 17 and 18.

<sup>118</sup> See submission from New Humanity, p. 4.

<sup>119</sup> A/HRC/50/32, paras. 13 and 14.

<sup>120</sup> International Commission on the Futures of Education, *Reimagining Our Futures Together*, p. 34.

<sup>121</sup> See submission from Access Now, para. 4.

<sup>122</sup> See <https://unesdoc.unesco.org/ark:/48223/pf0000380598/PDF/380598eng.pdf.multi>.

<sup>123</sup> A/HRC/50/32, paras. 93–95.

<sup>124</sup> See <https://www.teachingabroadirect.co.uk/blog/teaching-salary-index>.

<sup>125</sup> A/HRC/44/39, chap. III.D.

<sup>126</sup> A/HRC/50/32, paras. 83–84 and 98.

Governments, educators, learners, parents and communities.<sup>127</sup> The Special Rapporteur will devote her next report to the role of teachers in ensuring the right to education.

## V. Conclusions and recommendations

101. Over the 25 years since its establishment, the mandate of the Special Rapporteur on the right to education has substantially contributed to an evolving understanding of the right to education and the obligations it entails, catalysing and reflecting developments and progress achieved at the national level and by other human rights mechanisms.

102. Reflections on the evolving right to education initiated by UNESCO following the Transforming Education Summit and the report of the UNESCO-led International Commission on the Futures of Education must continue. The intention is to identify what significant in-depth changes are required in the way education is conceptualized and delivered. To that end, it is necessary to have a foot in the past and the future. A foot in the past is needed to address the continued exclusion of many people from quality education systems and the failure to ensure effective and relevant learning outcomes for diversely situated people; reasons which, in themselves, are sufficient to justify rethinking models and approaches. A foot in the future is needed to address emerging challenges, such as increased polarization in societies accompanied by democratic backsliding, climate change and the digital revolution, including the emergence of artificial intelligence.

103. The right to education as collectively understood today, must be considered the backbone of rethinking education models. It is important to carefully assess what to reiterate, keep, strengthen, adapt and adjust, and what needs to be changed significantly. It is important to remain open to positive changes while resisting forces detrimental to education, particularly voices calling for change under the guise of human rights language but pursuing other agendas, such as ensuring that education systems become marketable products and services. An approach based on the right to education can guide actions for transforming education towards more efficient systems, responsive to new challenges. Considering education as a public and as a common good further opens new ways of ensuring participation of all relevant stakeholders in educational life, including at the local level, and reinforces the interrelationship between education, science and culture. The right to education, understood as a right to lifelong learning, in a system that links formal, non-formal and informal spaces for education, must be at the centre of all reflections leading to a new social contract on education at the local, national and international levels. At stake is the promise made after the COVID-19 pandemic to build back better, rather than pursuing business as usual.

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<sup>127</sup> [A/HRC/44/39](#), para. 84 (s); see also submission from El Salvador.