

# THE ABIDJAN PRINCIPLES



Guiding Principles  
on the human rights  
obligations of States to  
provide public education and  
to regulate private

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# Introduction

There is a global consensus regarding the importance of the right to education. States have an obligation to realise the right to education for all by providing free, inclusive, quality, public education. This obligation is grounded in the Universal Declaration of Human Rights of 1948 and elaborated in the International Covenant on Economic, Social and Cultural Rights of 1966. It is further referred to and elaborated upon in the UNESCO Convention against Discrimination in Education of 1960, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, the Convention on the Rights of the Child of 1989, and the Convention on the Rights of Persons with Disabilities of 2006. It is also provided for in many regional human rights treaties, such as the African Charter on Human and Peoples' Rights of 1981, the Charter of the Organisation of American States of 1948, and Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1952, as well as in most domestic legal systems, through national constitutions and legislation. Moreover, Sustainable Development Goal 4 reinforces States' commitments to ensure inclusive and equitable quality education, including by requiring that all boys and girls complete 12 years of free, equitable and quality primary and secondary education.

Human rights treaties consistently frame education as integral to the full development of the human personality and a sense of dignity and self-worth, as well as being indispensable to the promotion of peace, democracy, environmental sustainability, citizenship, and for realising other human rights. The right to education is based on the premise that a “well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence”, while recognising that education is also an enabler and multiplier right serving as “the primary vehicle by which socially and economically marginalised adults and children can lift themselves out of poverty” (UN Committee on Economic, Social and Cultural Rights, General Comment 13, para. 1). This powerful and inclusive vision of education as an equalising force in society is dependent on States building equitable public education systems.

As with other human rights, the norms relevant to the right to education appear in many treaties, judicial and quasi-judicial decisions, and other legal sources. The changing realities and growing challenges of private education are often referred to by UN human rights treaty bodies in general comments and concluding observations, UN Special Rapporteurs have submitted several reports on the topic, and there is a growing relevant regional and domestic jurisprudence. It can be challenging to interpret this vast body of human rights law, especially where potential tensions between different dimensions of the right to education emerge. In particular, the application of the human rights framework to private involvement in education contains a potential tension between State obligations to ensure the provision of free quality education to all without discrimination, and the liberty to choose and establish a private school. This and other tensions often surface in education policy debates, in particular in the context of growing privatisation and commercialisation of education, where private interests and profit-making are sought over and above respecting, protecting, and fulfilling the right to education.

The Abidjan Principles provide States with a way of addressing these tensions and offer clear reference points to resolve them, founded on a clear reassertion of the well-established State obligations to respect, protect, and fulfil the right to education. Many dimensions of the right to education require

immediate action; and even those dimensions of the right subject to progressive realisation require States to devote the maximum of their available resources towards fulfilling the obligation, and to avoid retrogression. The Abidjan Principles clarify that, in adhering to these obligations, States must not permit the freedom to set-up or attend private schools to infringe on either the right to free, equitable, and inclusive education for all, or the rights to equality and non-discrimination; and provide a frame of reference for the resolution of other tensions which may emerge in the context of growing privatisation and commercialisation of education. They clearly recall States' obligations to establish free, quality, public education systems for all. They also set out and clarify the State's obligation to regulate private actors, to limit supplementary private provision which infringes on the right to education, and to guarantee that all participants involved in education are aligned towards the common aim of realising the right to education.

In an ever more complex world, the Abidjan Principles offer robust reference points, of value both for those States striving to comply with their obligations to realise the right to education, and for those who wish to hold States accountable for doing so.

### Process

Since 2015, various education stakeholders have worked together to support the development of the Abidjan Principles through an open, transparent, and widely consultative process with a view to including a variety of perspectives and to reflect different contextual realities. Between 2016 and 2018, a series of regional, national, and thematic consultations, as well as a global online consultation, have been convened around the world, bringing together a range of stakeholders. A secretariat facilitated the consultative process, made up of Amnesty International, the Equal Education Law Centre, the Global Initiative for Economic, Social, and Cultural Rights, the Initiative for Social and Economic Rights, and the Right to Education Initiative.

The process for the development of the Abidjan Principles has included inputs from all interested stakeholders and involved people from various backgrounds - including human rights lawyers, education specialists and practitioners, and affected communities - and various geographic regions.

In addition to the consultations, conceptual and empirical research was conducted to inform the Abidjan Principles. Among other inputs, the experts have been able to draw from:

- A large body of empirical research examining the impact of different forms of education governance models on the right to education;
- A review of human rights bodies' concluding observations related to involvement of private actors in education;
- Four UN Human Rights Council resolutions;
- A summary of the case-law related to private actors in education;
- Academic articles, including seven background papers which were produced by experts, several of whom were members of the drafting committee, and which discuss some of the most difficult concepts in the Abidjan Principles.

The content of the Abidjan Principles was defined and finalised by a group of eminent independent experts from around the world during 2018, and was adopted at a final conference in Abidjan on 13 February 2019. A drafting committee of nine members prepared a first draft, based on the materials

from the various consultations and other research, before the adoption. The drafting committee members are listed below.

Other non-legal experts were also consulted to ensure that the text responds to the reality on the ground and draws from the knowledge of various disciplines.

### Acknowledgements

The *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* were developed with the input and expertise of communities, parents, children, academic experts, and States, and respond to their lived experiences. The experts adopting these Principles developed them with the active participation and consultation of many stakeholders, whose role was critical in shaping the understanding of the issue. Efforts were made to reach out to key actors in education, including civil society, parents, children, teaching and non-teaching staff, private actors, and States, all of whom have experienced the impact of private actors on the realisation of the right to education and the role that the State can play in delivering public education.

The process has been steered by the following people, who organised the consultations, synthesised the inputs, conducted background research, and provided intellectual inputs:

- Sylvain Aubry, Global Initiative for Economic, Social and Cultural Rights
- Delphine Dorsi, Right to Education Initiative
- Daniel Linde, Equal Education Law Centre
- Salima Namusobya, Initiative for Social and Economic Rights
- Solomon Sacco, Amnesty International

The text has also benefited from the research conducted by Zsuzsanna Nyitray (consultant) on the commentary and sources, with the support of Ashina Mtsumi (Global Initiative for Economic, Social and Cultural Rights).

The text has further benefited from the inputs from seven background papers, including by Sandra Fredman, Joanna Härmä, Jacqueline Mowbray, Linda Oduor-Noah, Magdalena Sepúlveda, and Roman Zinigrad.

The process has benefited from the inputs, expertise, and support for hosting meetings from UNESCO and the Institut de la Francophonie pour l'éducation et la formation of the Francophonie Organisation.

The copy-editing was done by Tom Lowenthal.

The French translation and copy-editing were done by Constance Du Bois and Hélène Tran.

### More information

For more information and materials, see <https://www.abidjanprinciples.org/>

## Signatures

### Drafting Committee

A drafting committee of nine internationally-renowned legal human rights experts led the drafting process, building on the comments from the consultations, in coordination with other experts. These experts act in their individual capacity as members of the drafting committee facilitating the elaboration of the Abidjan Principles. The institutions listed with the names of the experts are for the purpose of identification rather than any endorsement of the Abidjan Principles by these institutions.

- Professor Ann Skelton [chair of the Committee] (South Africa; UNESCO Chair for Education Law in Africa; Professor, University of Pretoria; Member, UN Committee on the Rights of the Child)
- Professor Aoife Nolan (Ireland; Professor of International Human Rights Law, University of Nottingham; Member, Council of Europe European Committee of Social Rights)
- Dr Jacqueline Mowbray (Australia; Associate Professor, University of Sydney Law School; external legal adviser, Australian Parliament's Joint Committee on Human Rights)
- Jayna Kothari (India; independent; Co-founder and Executive Director, Centre for Law and Policy Research; Counsel, Karnataka High Court & Supreme Court of India)
- Dr Magdalena Sepúlveda (Chile; independent; former UN Special Rapporteur on Extreme Poverty; member of the Independent Commission for the Reform of International Corporate Taxation)
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- Sandra Epal Ratjen (France; independent; International Advocacy Director, Franciscans International)

### Signatories

On 13 February 2019, at a gathering convened in Côte d'Ivoire, a group of eminent experts in international law and human rights adopted the *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. In addition to the drafting at the final meeting, experts have contributed to the Abidjan Principles in various ways, through background research, reviews, or comments. The experts come from universities and organisations located in all regions of the world and include current and former members of international human rights treaty bodies, including regional human rights bodies, members of the judiciary, and former and current Special Rapporteurs of the United Nations Human Rights Council.

These experts act in their individual capacity. The institutions listed with the names of the authors are for the purpose of identification rather than endorsement of the commentary given by these institutions.

Based on rigorous legal research, the undersigned experts adopted the Abidjan Principles:



For the most up to date list of signatories, see  
<https://www.abidjanprinciples.org/en/support/signatories>

	<b>First name</b>	<b>Surname</b>	<b>Role and institution</b>	<b>Country of nationality</b>
<b>1.</b>	Frank	Adamson	Assistant professor of Education Leadership and Policy Studies, California State University, Sacramento	United States of America
<b>2.</b>	Philip	Alston	UN Special Rapporteur on extreme poverty and human rights; John Norton Pomeroy Professor of Law, New York University School of Law	Australia
<b>3.</b>	Boly	Barry Koumba	UN Special Rapporteur on the right to education	Burkina Faso
<b>4.</b>	Lelio	Bentes Correa	Justice, Superior Labour Court of Brazil; Member of the Committee of Experts in the Application of Conventions and Recommendations of the International Labour Organization	Brazil
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<b>7.</b>	Iain	Byrne	Lawyer and researcher on economic, social and cultural rights; Fellow, Human Rights Centre, Essex University	United Kingdom
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<b>44.</b>	Ian	Seiderman	Legal and Policy Director, International Commission of Jurists	Switzerland

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# The Ten Overarching Principles

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

**Overarching Principle 1.** States must respect, protect, and fulfil the right to education of everyone within their jurisdiction in accordance with the rights to equality and non-discrimination.

**Overarching Principle 2.** States must provide free, public education of the highest attainable quality to everyone within their jurisdiction as effectively and expeditiously as possible, to the maximum of their available resources.

**Overarching Principle 3.** States must respect the liberty of parents or legal guardians to choose for their children an educational institution other than a public educational institution, and the liberty of individuals and bodies to establish and direct private educational institutions, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human rights law.

**Overarching Principle 4.** States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education where private actors are involved in the provision of education.

**Overarching Principle 5.** States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, of land concessions, international assistance and

cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements.

**Overarching Principle 6.** International assistance and cooperation, where provided, must reinforce the building of free, quality, public education systems, and refrain from supporting, directly or indirectly, private educational institutions in a manner that is inconsistent with human rights.

**Overarching Principle 7.** States must put in place adequate mechanisms to ensure they are accountable for their obligations to respect, protect, and fulfil the right to education, including their obligations in the context of the involvement of private actors in education.

**Overarching Principle 8.** States must regularly monitor compliance of public and private institutions with the right to education and ensure all public policies and practices related to this right comply with human rights principles.

**Overarching Principle 9.** States must ensure access to an effective remedy for violations of the right to education and for any human rights abuses by a private actor involved in education.

**Overarching Principle 10.** States should guarantee the effective implementation of these Guiding Principles by all appropriate means, including where necessary by adopting and enforcing the required legal and budgetary reforms.

# The Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education

*The original versions of this text are in English and French.*

## Preamble

The right to education is not only a human right in itself, but also an empowerment, multiplier, and transformative right. It includes a right *to* education, rights *in* education, and rights *through* education. Education plays an essential role in advancing individuals' physical, mental, spiritual, moral, and social development, and for parents, families, and communities to transmit social and cultural values and practices, while respecting human rights. Education also contributes to achieving the public good and developing and maintaining healthy, open, transparent, tolerant, just, non-discriminatory, and inclusive societies that provide an environment conducive to the realisation of human rights. It is particularly important for vulnerable, marginalised, and disadvantaged groups, including indigenous peoples, girls and women, minorities, persons with disabilities, and persons living in poverty.

International human rights law requires States to provide quality, public education, and it leaves room for private actors to offer educational alternatives. States are however required strictly to regulate private involvement in education by making sure that the right to education is not undermined. They must ensure that private education conforms to educational standards, that its existence does not jeopardise the State's role as educational guarantor, that it is not exploited to increase inequality or injustice, and that the recipient of private education is its principal beneficiary. States are also required to reinforce public education systems and not to segment them by generating material inequalities.

However, the State's role in providing quality, public education and regulating private actors is being increasingly challenged, sometimes under the pressure of international financial institutions, while the involvement of private actors in education continues to grow.

Private actors involved in education are diverse. Private providers range from small faith-based or community schools to large providers, and, increasingly, transnational enterprises. There are also other private actors, such as institutions offering ancillary services, tests and curricula, or education financing services. These actors have different impacts on the right to education, in different contexts. Some may play a positive role, supporting the State in developing quality, public education and helping to fulfil the right to education. Others, in particular commercial actors, which treat education as a market good, threaten the fulfilment of the right to education.

In response to these challenges, human rights bodies and courts have clarified how the right to education

should be realised in the context of changing realities. These Guiding Principles intend to assist States and other actors in navigating this evolving context in accordance with human rights instruments. They are an authoritative statement that consolidates the developing legal framework and reaffirms the existing obligations of States in guaranteeing the right to education as prescribed under human rights law. They seek to promote quality education systems that guarantee equality, human dignity, and social justice, and should not be read in any way as endorsing the involvement of private actors in education, or suppressing genuine liberty in education.

## **I. GENERAL PROVISIONS**

### **a. Scope, definitions, application, interpretation**

#### *Scope*

1. These Guiding Principles outline human rights law and standards applicable in the context of the involvement of private actors in education.

#### *Definitions*

2. Public education systems will differ from one context to another. For the purpose of this text, public educational institutions refer to institutions which are:
  - a. recognised by the State as public educational institutions;
  - b. effectively controlled and managed by the State or genuine representatives of the population they serve; and
  - c. not at the service of any commercial or other exploitative interests that undermines learners' right to education.
3. Educational institutions not meeting these cumulative conditions are "private" for the purpose of this text. This includes:
  - a. both private instructional educational institutions that directly deliver education services, and private institutions that play a non-instructional educational role in the delivery of education services; and
  - b. both commercial and non-commercial actors.

#### *Application and interpretation*

4. These Guiding Principles are intended to be applied and interpreted in the context of States' obligations to respect, protect, and fulfil all human rights, including civil, cultural, economic, political, and social rights, both within their territories and extraterritorially.
5. The fulfilment of States' obligations with respect to the right to education must be complemented by the fulfilment of their other human rights obligations, as well as other applicable international legal obligations, including those arising from international humanitarian law, international refugee law, and international criminal law.
6. These Guiding Principles should not be interpreted or applied in a manner that would serve to limit, restrict, or otherwise undermine the rights recognised under international human rights law and standards, or any domestic law rights that are consistent with international human rights law.
7. Nothing in these Guiding Principles should be interpreted as limiting, restricting, or undermining any

of the respective obligations or responsibilities that States, international organisations, and private actors, such as transnational corporations and other business enterprises, may have under human rights law and standards, whether these are contained in international (including regional), constitutional, or other national laws; or standards which are in conformity with international human rights law.

**b. Nature and scope of the right to education**

8. All forms of education must be directed to the aims and objectives of education guaranteed by international human rights law. These include the full development of the human personality and the sense of its dignity, and respect for all human rights and fundamental freedoms. Education must aim to enable individuals to effectively participate in society, to be tolerant, to live together, and to have the capacity and critical thinking to elaborate and realise their own or collective life plan in an autonomous way.
9. The right to education applies from birth and throughout one's life. Everyone has the right to available, accessible, acceptable, and adaptable lifelong education at all levels and in all forms, including pre-primary, primary, secondary, and higher education; technical and vocational education and training; adult education; and formal and non-formal education. This includes a right to free education, which must be realised in accordance with States' obligations under international human rights law.

**II. OBLIGATION TO RESPECT, PROTECT, AND FULFIL THE RIGHT TO EDUCATION TO THE MAXIMUM OF AVAILABLE RESOURCES**

Overarching Principle 1. States must respect, protect, and fulfil the right to education of everyone within their jurisdiction in accordance with the rights to equality and non-discrimination.

**a. Obligations imposed by the right to education**

10. States must respect, protect, and fulfil the right to education of everyone within their jurisdiction in accordance with the rights to equality and non-discrimination.
11. States retain their obligations to respect, protect, and fulfil the right to education in all circumstances, including where private actors are involved in education.
12. The right to education must be guaranteed even in times of public emergency and armed conflict.
13. States must ensure that all educational institutions, public and private, are inclusive and are at least of adequate quality.
14. Education, in all its forms and at all levels, must exhibit the following interrelated and essential features, which are all attributes of quality education:
  - a. Availability. This requires *inter alia*:
    - i. functioning educational institutions and programmes available in sufficient quantity;



- ii. sufficient numbers of teaching and other staff who have the necessary skills, qualifications, and training, and who receive domestically competitive salaries;
    - iii. adequate curricula, and pedagogical material, methodologies, and practices;
    - iv. adequate sanitation facilities;
    - v. safe drinking water;
    - vi. safe, adequate, and maintained infrastructure;
    - vii. safe and protective learning environments;
    - viii. where appropriate, library, computer facilities and information technology; and
    - ix. decent employment, working conditions, and social protection for staff.
  - b. Accessibility. Educational institutions and programmes have to be accessible to everyone within the jurisdiction of the State without discrimination of any kind. Accessibility includes physical, economic, and information accessibility.
  - c. Acceptability. This requires *inter alia* that the form and substance of education, including curricula and teaching methods, are acceptable to students and, in appropriate cases, parents or legal guardians; and are directed towards the aims and objectives guaranteed under international human rights law. The curriculum should be human rights compliant, including being free from stereotypes.
  - d. Adaptability. This requires *inter alia* that education be flexible so that it can adapt to the needs of changing societies and communities, and respond to the needs of students within their diverse social and cultural settings.
15. States must allocate the maximum of their available resources towards ensuring free, quality education, which must be continuously improved. The maximum available resources should not fall below the level required by domestic or international education funding commitments, such as the percentage of gross domestic product set in development goals.
16. Available resources include all resources at the disposal of the State, or those that may be mobilised through:
- a. primarily domestic sources, such as fair and progressive taxation and other domestic income-generating mechanisms; expansion of the revenue base; reallocation of public expenditure; elimination of illicit financial flows, corruption, tax evasion, and tax avoidance; the use of fiscal and foreign exchange reserves; the management of debt by borrowing or restructuring existing debt; the development and adoption of an accommodating macroeconomic framework; or
  - b. international assistance and co-operation.
17. States have the obligation to realise the right to education including by prioritising:
- a. the provision of free, quality, public pre-primary education;
  - b. the provision of free, quality, public primary and secondary education for all;
  - c. access to education for youth and adults who require it, especially those who did not reach sufficient proficiency levels for full and effective participation in their societies and in the labour market;

- d. the elimination of discrimination and the guarantee of equality in education, including by guaranteeing reasonable accommodation to ensure that no persons, including individuals with disabilities, are excluded from education;
  - e. the requirement of compulsory education for at least nine years;
  - f. the adoption and enforcement of effective regulatory measures regarding private actors involved in education; and
  - g. the adoption and implementation of a detailed national education strategy, which includes provision for free, quality, public education at all levels.
18. States must meet, at the very least, their core obligations. In order for a State to be able to attribute its failure to meet its core obligations with regard to the right to education to a lack of available resources, it must publicly demonstrate that every effort has been made to use all resources that are at its disposal in an effort to meet, as a matter of priority, those core obligations.
19. States must guarantee education as a public service, including by imposing public service obligations on private instructional educational institutions.
20. States must apply the principles of human dignity, participation, equality and non-discrimination, inclusivity, transparency, and accountability to the delivery and the governance of education.
21. States must devise and adopt a detailed national education strategy for the realisation of the right to education at all levels and for all ages. This obligation is of immediate effect. The national education strategy should:
- a. at a minimum, include indicators, targets, and benchmarks; specify the proposed means to achieve them and a time-frame for their achievement; identify those responsible for implementation; and be fully costed and budgeted. The targets and benchmarks must be consistent with States' obligations with regards to the maximum use of their available resources; their core obligations; their other human rights obligations; and, where applicable, they should be at least consistent with their international commitments;
  - b. be developed in a transparent and participatory manner, with full and effective participation of all stakeholders; including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations;
  - c. give special priority to assessing and addressing the level of enjoyment of the right to education by vulnerable, marginalised, and disadvantaged groups within society;
  - d. be gender sensitive, responsive to the needs of girls and women, and transformative for all; and
  - e. detail which measures will be taken as part of the process of any systemic reform needed to end exclusion and segregation and guarantee the right to inclusive education for everyone, including the inclusion of all persons with disabilities in regular schools, with a timeframe, benchmarks, and indicators.

*International organisations*

22. As members of an international organisation, States remain responsible for their own conduct in relation to their human rights obligations. A State that participates in or transfers its competencies to an international organisation, including an international financial institution, or a global fund,

must take all reasonable steps to ensure that the relevant organisations behave consistently with the international human rights obligations of that State. Such steps include:

- a. closely monitoring the conduct of the international organisation, including the policies, omissions, and other acts, to ensure that it does not nullify or impair the enjoyment of the right to education, in accordance with these Guiding Principles;
- b. refraining from imposing or voting for, and where necessary taking all effective steps to avoid, policies that would nullify or impair the capacity of a recipient State to meet its human rights obligations, including those reflected in these Guiding Principles. These may include the imposition of privatisation against human rights standards, the introduction of fees, deregulation policies, or the limitation of the capacities of a recipient State to provide education; and
- c. promoting policies within the organisation that meet States' obligations to respect, protect, and fulfil the right to education, including the obligations reflected in these Guiding Principles, such as the obligation to develop a system of free, quality, public education.

#### **b. Equality and non-discrimination in education**

##### *The right to equality*

23. States must ensure the realisation of the right to equality in the enjoyment of the right to education, which includes four dimensions:

- a. a fair redistributive dimension to address socio-economic disadvantages;
- b. a recognition dimension to combat stigma, stereotyping, prejudice, and violence, and to recognise the dignity of human beings and the intersectionality of different grounds of discrimination;
- c. a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and
- d. a transformative dimension to accommodate difference as a matter of human dignity and institute systemic change.

##### *The right to non-discrimination*

24. States must eliminate all forms of discrimination in the enjoyment of the right to education on grounds such as: age; birth; caste; colour; descent; disability; documentation; ethnicity; civil, family or career status; gender identity; health status, or genetic or other predisposition toward illness; language; migration status; national or social origin; nationality; political or other opinion; parental status; pregnancy; property; race; religion; sex; sexual orientation; socio-economic disadvantage; statelessness; or other status. The obligation to prohibit all forms of discrimination includes direct and indirect discrimination, harassment and denial of reasonable accommodation, as well as multiple, intersectional, associative, and perceptive discrimination.

##### *States' obligations*

25. States must ensure that their laws, policies, or practices do not directly or indirectly discriminate in education. They must also address any situation breaching the rights to equality and non-discrimination with regards to the right to education, whether or not such situation results from their acts, including:

- a. systemic disparities of educational opportunity or outcomes for some groups in society, including people living in poverty or in rural settings; or
  - b. segregation in the education system that is discriminatory on any prohibited ground, in particular socio-economic disadvantage.
26. States must take positive action to eliminate and prevent all forms of discrimination and ensure equality in the enjoyment of the right to education, including to correct historic discrimination and inequalities, and systemic and persistent disadvantage through the way in which resources are allocated. Such action must be reasonable, objective, and proportionate, and must include measures to:
- a. identify and prevent discriminatory practices;
  - b. protect individuals from discrimination from third parties, including private educational institutions;
  - c. ensure that everyone has equal access to quality inclusive education, without any discrimination on any ground; and
  - d. organise their education system, including public and private institutions, so as to prevent discrimination and ensure equality.
27. When discrimination in education exists in violation of international human rights law, States must immediately put in place all effective measures in education and other related areas to ensure its elimination as rapidly as possible. This duty applies regardless of whether or not such discrimination has been directly caused by the State.

*Reasonable accommodation*

28. States must ensure that there is reasonable accommodation in education for individuals' different capabilities relating to one or more prohibited grounds of discrimination, including with regard to the curriculum, the learning environment, in-class communication, pedagogical materials, and evaluations. The failure to guarantee reasonable accommodation constitutes discrimination, and the obligation to provide reasonable accommodation is immediately applicable.

Overarching Principle 2. States must provide free, public education of the highest attainable quality to everyone within their jurisdiction as effectively and expeditiously as possible, to the maximum of their available resources.

a. **The right to free, quality, public education**

29. States must respect, protect, and fulfil the right to free, quality, public education. They must provide free, public education of the highest attainable quality to everyone within their jurisdiction as effectively and expeditiously as possible, to the maximum of their available resources. The involvement of private educational institutions does not in any way impair or nullify this obligation.
30. Standards in public education must guarantee the highest attainable quality, and be at least as protective of human rights as the standards applicable to private instructional educational institutions listed under Principle 4. States must continuously raise standards in public education

in accordance with their obligation to progressively realise the right to education to the maximum of their available resources.

31. States must ensure that public education is inclusive. They must ensure that public education accommodates to the greatest possible extent the cultural, linguistic, and other unique traits of different groups in society, such as minorities and indigenous peoples, unless such accommodation conflicts with the aims of education or other standards guaranteed under international human rights law. Public education must safeguard the possibility of pluralism in education; be culturally appropriate; and enable learners to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong, as well as those of other communities and societies. The information or knowledge included in the curriculum must be conveyed in an objective, critical, and pluralistic manner.
32. States must ensure that public education is accountable, participatory, inclusive, and transparent. In particular, they must put in place a participatory educational governance system that is representative of all stakeholders, including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations.
33. States must take all effective measures to address the determinants of access to quality public education, to ensure that individuals have equal access to public education without discrimination or segregation. This includes adopting all effective measures to respect, protect, and fulfil other rights such as the rights to work, social security, food, housing, health, water, and sanitation. Such measures may include desegregating housing policies; infrastructure planning; appropriate public transportation systems; access to adequate food; social protection and employment programmes; legislation that sets the minimum age of marriage at 18 years; child labour prevention policies; measures to modify the social and cultural patterns that lead to stereotypes and prejudices; and measures to ensure the individual's highest attainable standard of physical and mental health.

#### b. Financing of public education

34. In allocating their maximum available resources for education, States must prioritise the provision of free, public education of the highest attainable quality, including by allocating adequate financial and other resources for the realisation of the right to education as effectively and expeditiously as possible. States must ensure that any reallocation or expenditure of their education budgets to areas other than the direct provision of free, quality, public education does not impair the delivery of such education.
35. States must include human rights-compliant education funding to public education within their regular domestic budgetary laws or policies, as appropriate. States' national education strategies must operationalise their obligation to provide free public education of the highest attainable quality, including by:
  - a. being sufficiently specific and concrete, including targets and benchmarks for achievements in public education, and indicators of progress within a given timeframe;
  - b. addressing the barriers and impediments to access to quality public education for all, including through taking positive action; and
  - c. fully costing and funding the identified priorities to improve public education.

36. While progressively realising their obligations to provide free, public education of the highest attainable quality at all levels as effectively and expeditiously as possible, States must immediately take steps to ensure that no individual is excluded from any public educational institution on the basis of the inability to pay, and must take all effective measures to prevent the risk of over- indebtedness for learners and their families.
37. In a situation of limited resources, States must prioritise the continued provision of quality, public education.

*International assistance and cooperation*

38. International assistance and cooperation for education must prioritise supporting the recipient State to meet its core obligations. In particular, it must prioritise free, quality, public pre-primary, primary, and secondary education for all, especially vulnerable, disadvantaged, and marginalised groups, and move as effectively and expeditiously as possible towards free, quality, education in public educational institutions at other levels.

*Provision of private resources to public institutions*

39. Public educational institutions may accept private resources, including sponsorship to support public education, provided that such support does not have any adverse impact on the realisation of human rights, including on the right to education, including by:
  - a. affecting the governance of the institution or the education system;
  - b. affecting the content of the curriculum or the pedagogical material, methodologies, and practices;
  - c. interfering with the entitlement to register at the instructional educational institution on a non-discriminatory basis;
  - d. leading to the commercialisation of public education, including the presence of advertising and marketing materials or activities on instructional educational institution premises, or the targeting of such materials or activities at children; or
  - e. providing the funder or sponsor with any financial or any other benefit from the public authorities, or creating any conflict of interest.
40. Voluntary community contribution to public educational institutions should comply with the above conditions.
41. Any private funding or sponsorship to support public education should:
  - a. be conducted transparently and all parameters are publicly disclosed; and
  - b. reinforce the entire educational system and not segment it by generating material inequalities between educational institutions.
  - c. **Governance**
42. States have an immediate obligation to take all measures to address ineffective governance, the lack of transparency, the lack of accountability, or corruption, which may adversely affect the realisation of the right to free, quality, public education.

- d. **Non-retrogression**

43. In order for a State to be able to attribute its failure to provide free, quality, public education to all to a



lack of available resources, it must:

- a. publicly demonstrate that every effort has been made to use all resources that are at its disposal in an effort to meet, as a matter of priority, this obligation;
  - b. publicly reassess, on a regular basis, its capacity gaps in light of all existing and potentially available resources; and
  - c. provide a detailed timeline in its national education strategy, including specific targets, for how it will address the capacity gap in the shortest possible time and provide free, quality, public education in accordance with its obligations.
44. Lack of will is distinct from a lack of capacity, and cannot justify a State's failure to provide free, quality, public education in accordance with its obligations under international human rights law.
45. There is a strong presumption that retrogressive measures taken in relation to the right to public education are impermissible. If, in exceptional circumstances, retrogressive measures are taken, the State has the burden of proving that any such measure is in accordance with applicable human rights law and standards. Any such measure:
- a. should be temporary by nature and in effect, and limited to the duration of the crisis causing the situation of fiscal constraint;
  - b. should be necessary and proportionate, in that the adoption of any other policy alternatives or the failure to act would be more detrimental to the enjoyment of economic, social and cultural rights, with the possibility of taking any alternative measures comprehensively examined;
  - c. should be reasonable;
  - d. should not be directly or indirectly discriminatory;
  - e. should accord particular attention to the rights of vulnerable, disadvantaged, and marginalised individuals and groups, including their right to free, quality, public education, and ensure that they are not disproportionately affected. Children must be the last affected by such measures;
  - f. should identify the minimum core content of the right to public education and other affected economic, social and cultural rights, and ensure the protection of this core content at all times;
  - g. should involve full and effective participation of affected groups, including children and other learners, in examining the proposed measures and alternatives; and
  - h. should be subject to meaningful review procedures at the national level.
46. States that are providing international assistance and cooperation must not adopt, support, or require impermissible retrogressive measures with regard to the right to public education.

### **III. OBLIGATIONS TO RESPECT, PROTECT, AND FULFIL THE RIGHT TO EDUCATION IN THE CONTEXT OF PRIVATE INVOLVEMENT**

Overarching Principle 3. States must respect the liberty of parents or legal guardians to choose for their children an educational institution other than a public educational institution, and the liberty of

bodies to establish and direct private educational institutions, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human rights law.

47. States must respect the liberty of parents or legal guardians to choose for their children an educational institution other than a public educational institution, and the liberty of individuals and bodies to establish and direct private educational institutions, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human rights law.
48. The respect for these liberties is subject to limitations determined by law only in so far as those limitations are compatible with the nature of these liberties and solely for the purpose of promoting the general welfare in a democratic society and the realisation of any other human rights. These limitations are justifiable if they seek to ensure:
- a. that private educational institutions do not supplant or replace public education, but supplement it in a way conducive to the realisation of the right to education for all, with due regard for cultural diversity;
  - b. that the right of children to express their views freely is respected, and that they are given due weight in the exercise of parental choice, in accordance with the age and maturity of the child, and their best interests;
  - c. that the exercise of these liberties does not create any adverse systemic impact on the right to education, including by:
    - i. leading to or maintaining disparities of educational opportunity or outcomes for some groups in society which nullify or impair the enjoyment of the rights to equality and non-discrimination, such as a segregated education system;
    - ii. adversely affecting or creating a foreseeable risk of adversely affecting the capacity of the State to realise the right to free, quality, public education;
    - iii. undermining any of the aims of education guaranteed under international human rights law, such as through the commercialisation of education;
    - iv. adversely affecting transparency, the rule of law, public accountability, or full and effective participation in education; or
    - v. nullifying or impairing the enjoyment of any other human rights, in particular the rights of the staff working in educational institutions.
49. Private actors have a responsibility to respect the right to education and other human rights in education, including by:
- a. avoiding causing or contributing to adverse impacts on the right to education through their own activities, and addressing and providing reparation when such impacts occur;
  - b. seeking to prevent or mitigate adverse impacts on the right to education that are directly linked to their operations, products, or services, even if they have not directly contributed to those

impacts.

50. Where private provision of education is the result of the lack of availability of free, quality, public education, States must take all effective measures to develop or restore universal access to free, quality, public education as effectively and expeditiously as possible. As they do so, they must concomitantly require private instructional educational institutions to meet the minimum standards set by the State, and bring them into compliance, or, following due process, close down those private instructional educational institutions that fall below these standards.

Overarching Principle 4. States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education where private actors are involved in the provision of education.

51. States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education where private actors are involved in the provision of education. This includes situations in which private actors conduct their activities without any State involvement or control, or when they operate informally or illegally.
52. States should impose public service obligations on private actors involved in education to ensure that such private actors contribute to the realisation of the right to education in such a way that:
- a. at the level of the institution, education delivered in all private instructional educational institutions is consistent with applicable human rights law and standards relating to the right to education; and
  - b. at the systemic level, there are no adverse effects of private educational institutions on the enjoyment of the right to education.
53. States must establish effective regulation of private educational institutions which must be in line with applicable human rights law and standards. Such regulation must ensure adherence to the set of minimum standards as described in the Guiding Principles 54 to 57 below, and should also ensure, *inter alia*:
- a. that no private educational institution or organised group of private educational institutions is in a position to unduly influence the education system, including where necessary by considering capping the number of private instructional educational institutions or the share of private provision, in so far as it is compatible with the liberty to choose and establish private instructional educational institutions;
  - b. that there are no conflicts of interest for any public official who is in a position to influence private actors involved in education; and
  - c. that marketing, advertising, or other practices by private educational institutions are not misleading.

*Minimum standards applicable to private instructional educational institutions*

54. As part of their regulatory efforts to protect the right to education, States must define and enforce minimum standards applicable to private instructional educational institutions.

These standards should be designed and adopted through a participatory process involving all stakeholders, including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, other civil society organisations, and the private instructional educational institutions. These standards must not be used for any purpose inconsistent with the obligation to respect, protect, and fulfil the right to education.

55. The minimum standards should address the following dimensions:

- a. the governance of the private instructional educational institution, including:
  - i. the process for registration and licensing, and the conditions for their withdrawal;
  - ii. reporting requirements to the State, such as financial and operational or quality information;
  - iii. full and effective participation of children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations;
  - iv. the management of education resources;
  - v. where necessary, the level of fees and other direct and indirect charges, paying particular attention to the risk of over-indebtedness and the State's obligation to ensure that education is accessible;
  - vi. transparency of and access to information about the private instructional educational institutions, including their domestic and, where applicable, international administrative and financial structure; all potential fees and other charges for the learners; the use of education resources; the curriculum and pedagogical methodologies and practices; the conditions of enrolment; the institution's legal status and origin; and other policies of the institutions; and
  - vii. conditions and transparency of learners' certification.
- b. respect for academic and pedagogical freedoms;
- c. protection for the rights of learners to freedom of association and speech;
- d. protection for learners against all forms of discrimination in the enjoyment of the right to education, to guarantee equality and inclusive education for all learners, including by ensuring that the conditions of enrolment, admission, and learning are not directly or indirectly discriminatory; and paying particular attention to their impacts on the rights to equality and non-discrimination of vulnerable, marginalised, or disadvantaged groups. Such protection must guarantee the existence of and re-entry into inclusive education for pregnant girls, young mothers, and married girls under 18 years of age, by enabling them to remain in or return to school without delay;
- e. minimum professional qualifications of staff; training; labour rights including working conditions, terms and conditions of employment and salary, and freedom of association and collective bargaining; and the status of instructional educational institution leaders, teachers and other staff, which must conform at least to applicable human rights law and standards;

- f. the curriculum, and pedagogical methodologies and practices, with due regard for applicable human rights law and standards, particularly the right to freedom of thought, conscience, and religion, the rights of minorities and indigenous peoples, cultural rights, and academic and pedagogical freedom. The form and substance of education should be acceptable, adaptable, and in accordance with the aims of education, as set out in Guiding Principle 8. States should ensure in particular that appropriate time and expertise are allocated within the curriculum for children to learn, participate in, and generate cultural, physical, and artistic activities, while respecting the right of the child to rest, leisure, play, and engage in recreational activities;
  - g. strict limitations to the suspension and expulsion of learners, ensuring due process and that any such suspension or expulsion be reasonable and proportionate;
  - h. discipline and the prohibition of corporal punishment;
  - i. the protection of learners' rights in the context of failure or delay in the payment of fees;
  - j. standards for secure and safe learning environments, and infrastructure that is adapted for all learners, including girls, women, and learners with disabilities, taking into account such factors as learning space sizes and maintenance, sanitary and kitchen facilities, furniture, equipment, and disaster risk management, as well as learning materials such as textbooks and teaching or learning aids;
  - k. minimum requirements regarding accessibility, including access for persons with disabilities in line with the obligation to guarantee reasonable accommodation, and ensuring that institutions do not directly or indirectly charge additional fees to any learner;
  - l. the physical and mental health, safety and welfare of learners, including by providing for standards regarding psychosocial support; health and hygiene; and the protection of learners from violence, abuse, and sexual harassment;
  - m. protection from threatening, shaming, and bullying for learners or their families, in particular to protect those that may not meet the academic standards expected by the institution and those who may raise concerns about the institution;
  - n. protection of the learners, in particular children, against excessive marketing or advertising by the institution at which they are enrolled;
  - o. privacy and data protection, ensuring in particular respect for the rule of law and ethical practices with regards to personal data. States must also ensure that no personal, including biometric data, be collected or retained without consent, or be shared with third-parties without express consent and for purposes other than education, including for commercial, immigration, or security purposes;
  - p. the maximum acceptable teacher/learner ratio in terms of ensuring quality education; and
  - q. any other standard necessary for the protection of human rights.
56. States must progressively raise the requirements set out in the minimum standards applicable to private instructional educational institutions in accordance with their obligation to progressively realise the right to education.
57. The minimum standards are subject to States' obligations related to non-retrogression.

*Non-instructional and non-educational private actors*

58. States must regulate non-instructional and non-educational private actors which may affect the realisation of the right to education, such as providers of learners' accommodation, financial institutions providing educational loans, and land-owners providing space for public institutions, so as to ensure that their activities do not lead to the nullification or impairment of the right to education.
59. States should ban commercial advertising and marketing in public and private instructional educational institutions, and ensure that curricula and pedagogical methodologies and practices are not influenced by commercial interests.

*Enforcement*

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

*Extra-territorial application*

61. States must take all effective measures to ensure that private actors involved in education, which the States are in a position to regulate, do not nullify or impair the enjoyment of the right to education wherever they operate. Measures may include administrative, legislative, investigative, adjudicatory, or any other measures.
62. States that are in a position to influence the conduct of private actors involved in education, even if they are not in a position to regulate such conduct, such as through their public procurement system or international diplomacy, should exercise such influence, in accordance with the Charter of the United Nations and general international law, in order to protect the right to education.
63. Where necessary for the realisation of the right to education, international assistance and cooperation for education should also aim to strengthen the regulation of private actors involved in education in accordance with the recipient States' human rights obligations.

## **IV. FINANCING**

Overarching Principle 5. States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, land concessions, international assistance and cooperation, or other forms of indirect



comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements.

64. The right to education does not entail an obligation for the State to fund private instructional educational institutions. States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, land concessions, international assistance and cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all the substantive, procedural, and operational requirements identified below.

*Substantive requirements*

65. Any potential public funding to an eligible private instructional educational institution should meet all the following substantive requirements:

- a. it is a time-bound measure, which the State publicly demonstrates to be the only effective option to advance the realisation of the right to education in the situation in question in order to either:
  - i. ensure short-term access to education for individuals where the State publicly demonstrates that there is no other immediate option which would realise the right to free, quality education;
  - ii. promote respect for cultural diversity and ensure the realisation of cultural rights, where it is in accordance with the right to an inclusive education;
  - iii. facilitate the integration within the public education system of private instructional educational institutions that have previously operated independently; or
  - iv. respond to the demand for or to pilot a diversity of pedagogical approaches and content, which the State publicly demonstrates not to be rapidly achievable in public educational institutions.
- b. it does not create a foreseeable risk of adverse effect on or delay to the most effective and expeditious possible development of a free public education system of the highest attainable quality in accordance with States' obligations to realise the right to education to the maximum of their available resources;
- c. it does not lead to a diversion of public resources that would constitute an impermissible retrogressive measure, in particular by lowering standards in the public education system;
- d. it does not constitute or contribute to the commercialisation of the education system;
- e. it does not create a foreseeable risk that the funded private instructional educational institution could exercise an undue influence on the education system or account for such a substantial part of the education system that it risks undermining the right to education; and
- f. it does not create a foreseeable risk of any other systemic impact on the right to education, paying particular attention to obligations related to non-discrimination, equality, and non-segregation.

### *Procedural requirements*

66. Any potential allocation of public funding to an eligible private instructional educational institution should meet all of the following procedural requirements:
- a. before the funding is considered, there is an adequate regulatory framework put in place addressing the due process, rules and modalities for such funding, including regulations for b. to d. below;
  - b. before the funding is determined:
    - i. there is a participatory, inclusive, transparent, and accountable consultation process involving a meaningful opportunity for full and effective participation by all stakeholders, including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations;
    - ii. the State publicly demonstrates that such public funding meets all of the substantive, procedural, and other requirements; and
    - iii. the State assesses and publicly demonstrates its capacity and intent to continuously monitor and regulate the private instructional educational institution's ability to meet the applicable standards;
  - c. the process for allocating funding is transparent and not discriminatory; and
  - d. the funding is set up in such a way that it is possible in practice to reverse it or to transfer the role of the private instructional educational institutions to the State.

### *Operational requirements*

67. If an eligible private instructional educational institution receives public funding, the standards and regulations applying to that institution must impose at least the same educational, labour, and other relevant standards as are imposed on public educational institutions, including the effective protection of working conditions and terms of employment, labour, and union rights.
68. States must take all effective measures to overcome as effectively and expeditiously as possible the inability to deliver or manage any aspect of the provision of education services which justified funding a private instructional educational institution. In so doing, States should ensure that the funding reinforces and is regularly re-assessed against State capacity to meet their obligations to realise the right to education. This should include from its inception a plan to phase out such funding as the State's incapacity that justified this funding is rectified.
69. Any public funding of an eligible private instructional educational institution must be subject to *ex-ante*, on-going and *ex-post* human rights impact assessments, which are made public, and are used to continually re-evaluate the contribution of the funding to the realisation of the right to education, and if necessary, change or terminate the funding. The assessment should measure both the individual and systemic effect of each institution, in the short and long term, and involve all stakeholders, including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations.
70. States should make the continued provision of funding conditional on fulfilment of the required standards, and ensure that all contracts permit the State to withdraw from the funding without prejudice if the standards are not met, while ensuring the continued enjoyment of the right to education. They

must withdraw any public funding if the impact of the funding is to substantially nullify or impair the realisation of the right to education, including the development of a public education system.

71. The cost of the human rights impact assessment, regulation, and other requirements on the States should be considered as part of the evaluation of the cost of the arrangement for funding, with due consideration given to the State's obligation to deliver free education of the highest attainable quality for all to the maximum of its available resources.
72. States should ensure that all private instructional educational institutions receiving public funding make all proprietary data and material that could help to improve the education system available without a licence, within a reasonable time defined by law, to the relevant public authorities. This includes both technology used in the classroom and management systems. This must be done with due respect for the right to privacy, in particular of the learners and the teachers, and the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which they are the author.

#### *Ineligible institutions*

73. States must not fund or support, directly or indirectly, any private instructional educational institution that:
  - a. abuses the rights to equality and non-discrimination, including by being selective; or expelling or sorting learners, whether directly or indirectly, on the basis of the socio- economic disadvantage, whether of the learner, family, or community, gender, disability, or any other prohibited ground;
  - b. is commercial and excessively pursues its own self-interest;
  - c. charges fees that substantially undermine access to education;
  - d. does not meet any minimum standard applicable to private instructional educational institutions, or any other applicable human rights law or standards, or is not of adequate quality;
  - e. does not comply with all of its domestic or international financial obligations; or
  - f. contributes to an adverse systemic impact on the enjoyment of the right to education or undermines the realisation of human rights in any other way.

#### *Non-instructional educational private institutions*

74. States must respect regulations governing procurement and other applicable regulations to ensure that contracting with any private non-instructional educational institutions does not adversely affect the enjoyment of the right to education.

Overarching Principle 6. International assistance and cooperation, where provided, must reinforce the building of free, quality, public education systems, and refrain from supporting, directly or indirectly, private educational institutions in a manner that is inconsistent with human rights.

75. International assistance and cooperation, where provided, must reinforce the building of free, quality, public education systems, in consultation with the concerned rights-holders and in partnership with the

recipient country. Every effort should be made at each phase of a development project to ensure that human rights are respected, protected, and fulfilled. To this end, an impartial and independent evaluation process should be in place.

76. States and relevant international organisations providing international assistance and cooperation in education must refrain from supporting, directly or indirectly, private educational institutions in a manner that is inconsistent with human rights.
77. Private actors have a responsibility to refrain from conduct which nullifies or impairs the enjoyment of the right to education. Those providing assistance in education have a responsibility to ensure that the support they provide is consistent with applicable human rights law and standards, including child protection policies. States must regulate them to ensure that any educational assistance provided by private actors within their jurisdiction does not nullify or impair the realisation of human rights.
78. If States, international organisations, or other actors, through international assistance and cooperation or other forms of assistance, have previously encouraged, contributed to, or coerced a recipient State to act inconsistently with that State's human rights obligations, including to take impermissible steps, such as the introduction or raising of fees or defunding of public or free education, they should seek to remedy this situation in the shortest possible time.
79. If the development of private educational institutions in a recipient country has an adverse impact on the enjoyment of the right to education, States providing international assistance and cooperation to that recipient State must take all effective steps to remedy the situation. This may include measures to develop or restore access to free, quality, public education as effectively and expeditiously as possible in the recipient State, while supporting that State to enforce standards and regulations related to private involvement in education which are in accordance with applicable human rights law and standards. This is without prejudice to the obligations of the recipient State to respect, protect, and fulfil the right to education domestically.

## V. ACCOUNTABILITY, MONITORING, AND REMEDIES

Overarching Principle 7. States must put in place adequate mechanisms to ensure they are accountable for their obligations to respect, protect, and fulfil the right to education, including their obligations in the context of the involvement of private actors in education.

80. States must put in place adequate mechanisms to ensure they are accountable for their obligations to respect, protect, and fulfil the right to education, including their obligations in the context of the involvement of private actors in education. Accountability should be ensured through:
  - a. judicial means, including criminal, civil, or administrative liability and enforcement at the national, regional, or global level; and
  - b. quasi-judicial or non-judicial means, including parliamentary oversight, monitoring by National

Human Rights Institutions operating in accordance with the Paris Principles, civil society organisations, or other domestic, human rights-compliant quasi-judicial mechanisms.

Overarching Principle 8. States must regularly monitor compliance of public and private institutions with the right to education and ensure all public policies and practices related to this right comply with human rights principles.

81. States must regularly monitor compliance with the right to education, including compliance with human rights principles such as those of participation, transparency, access to information, inclusivity, and non-discrimination.

82. The results of such monitoring must be public and must lead to the necessary improvements in laws, policies, and practices in cases where gaps in human rights compliance have been identified.

*Monitoring of public education*

83. States must assess public education for compliance with their domestic and international human rights obligations, including by putting in place an effective, impartial, and adequately resourced monitoring system. They must also provide the necessary information to the public to guarantee transparency in public education, and full and effective participation in decision-making regarding public education.

*Monitoring in the context of private involvement*

84. States must establish, maintain, and adequately resource effective monitoring and enforcement mechanisms, to ensure private actors involved in education comply with applicable standards and regulations, including the minimum standards set out in the Guiding Principles 54 to 57, and meet their responsibility to respect the right to education.

85. As part of their monitoring, States must regularly gather and analyse data in order to assess the impact of private instructional educational institutions on the enjoyment of the right to education. Such assessment should measure both:

- a. the systemic effect of the private instructional educational institutions in the short and long term, assessing actual and potential impact on the enjoyment of the right to education; and
- b. the impact on the realisation of human rights which private instructional educational institutions may cause or contribute to through their activities.

86. Such assessment should be:

- a. regular, recognising that the impacts on the realisation of the right to education may change over time as the private instructional educational institutions' activities and operating context evolve;
- b. participatory and involve all stakeholders, including children and other learners, parents or legal guardians, communities, teaching and non-teaching staff, education unions, and other civil society organisations; and
- c. publicly available.

87. The findings of this assessment must inform the policies and /regulations put in place by the State in order to ensure that the involvement of private instructional educational institutions supports,

and does not nullify or impair, the realisation of the right to education. The State should publish regular reports, setting out how it has addressed or will address adverse impacts.

Overarching Principle 9. States must ensure access to an effective remedy for violations of the right to education and for any human rights abuses by a private actor involved in education.

88. States must ensure access to an effective remedy for violations of the right to education, including in the case where a State fails:
  - a. to fulfil its obligations to provide free, quality, public education; or
  - b. to prevent private actors from interfering with the enjoyment of the right to education.
89. States must ensure the availability of prompt, accessible, effective, procedurally fair and independent grievance and redress mechanisms, including where necessary, judicial remedies, enabling any rights-holder or, where possible, other relevant stakeholders such as public interest groups, to be equipped with the capacity to claim rights and to seek remedies for any human rights abuses by a private actor involved in education. They should ensure that these grievance and redress mechanisms are provided both by the private actor and the State, within their respective competencies. Private actors which have abused the right to education should be required to contribute to the reparation.
90. Where there are adverse impacts arising from the involvement of private actors in education and the State fails to address them adequately, the State must ensure that there are remedies available to enable a complaint against the State.

## VI. IMPLEMENTATION AND MONITORING OF THE GUIDING PRINCIPLES

Overarching Principle 10. States should guarantee the effective implementation of these Guiding Principles by all appropriate means, including where necessary by adopting and enforcing the required legal and budgetary reforms.

91. States, including the legislative, judicial, and executive branches, should effectively implement these Guiding Principles by all appropriate means, including where necessary by adopting and enforcing the required legal and budgetary reforms. States should apply these Guiding Principles when designing and implementing domestic, regional, and global educational and development plans, laws, and policies, and dedicate the necessary human, technical and financial resources for their implementation.
92. States should monitor and put in place effective accountability mechanisms for the implementation of these Guiding Principles as part of their efforts to respect, protect, and fulfil the right to education.

93. States should disseminate these Guiding Principles to all relevant authorities, and in particular educational institutions, in all relevant languages and formats to facilitate accessibility and implementation. States should also provide targeted training to relevant officials and educational institutions where appropriate.
94. States should recognise, collaborate with, and promote the fundamental role of National Human Rights Institutions, acting in conformity with the United Nations Principles relating to the Status of National Institutions, and civil society actors, in monitoring the implementation and dissemination of these Guiding Principles.
95. States should ensure coherence across policy areas affecting the enjoyment of the right to education, in particular by ensuring that all public departments, agencies, and other State institutions at all levels that have a role in education policies are aware of and observe the State's human rights obligations and these Guiding Principles when fulfilling their respective mandates.

*International organisations*

96. International organisations should meet the obligations related to the right to education under, *inter alia*, general international law and international agreements to which they are parties. They should ensure that their conduct is aligned with these Guiding Principles.
97. Specialised agencies of the United Nations, regional organisations, and other development actors are encouraged to support the implementation of these Guiding Principles, in addition to the human rights obligations they may be subject to under international human rights law. Such support may include technical cooperation, financial assistance, institutional capacity development, and knowledge sharing.