

Mandate of the Special Rapporteur on the right to education

REFERENCE:
OL OTH 34/2019

7 June 2019

Dear Members of the Board of Directors of the Global Partnership for Education,

I have the honour to address you in my capacity as Special Rapporteur on the right to education, pursuant to Human Rights Council resolution 26/17.

In this connection, I would like to bring to the attention of the Board of Directors of the Global Partnership for Education (GPE) information I have received concerning the draft GPE Private Sector Engagement Strategy, which is to be discussed at the next meeting of the GPE Board, from 11 to 13 June 2019 in Stockholm, Sweden.

According to the information received:

One important point that will be under discussion at the Stockholm meeting of the Board of Directors relates to the possibility for for-profit private sector actors in education to be eligible to GPE funding.

I. Eligibility of for-profit actors providing core education services to GPE funding

The Board of Directors has before it two options. The first option, which is supported by the Strategy and Impact Committee of the Board, proposes that private sector actors in education, except for-profit actors providing core education services, be eligible for funding.

The second option, for its part, would allow such GPE funding to for-profit actors providing core services (except internationally owned network – chain – actors), subject to close scrutiny by the Secretariat and the Grants and Performance Committee.

In this regard, I would like to underline that the position adopted by the Strategy and Impact Committee is a step in the good direction, and the most in line with international standards relating to the right to education, which are referred to in more details below.

I would like to share with you my serious concern regarding option 2, which, even with exceptions and planned safeguards, will contribute to the on-going massive and unprecedented changes in the structure of education systems, whereby commercial private actors take a stronger role in many countries. Those changes create a real risk of negatively affecting many elements of the right to education and Sustainable Development Goal 4. These developments further enhance the

fragility of public education systems, which need to be supported and reinforced in many countries.

In a number of United Nations reports, Human Rights Council resolutions on the right to education, treaty body recommendations and observations from the African Commission on Human and Peoples' Rights, concerns have been raised about the impact of the rapid growth in private schools, in particular commercial schools, in terms of educational content, quality, segregation and social inequalities. I have also devoted my forthcoming thematic report to the Human Rights Council on this matter, which I attach to this letter (A/HRC/41/37, also available at <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/AnnualReports.aspx>).

II. Eligibility of for-profit actors providing ancillary services to GPE funding

Both options 1 and 2 proposes that private sector actors providing ancillary services in education, such as for-profit investors and commercial banks, be eligible for GPE funding.

I would like to express my concern that development aid be directed to supporting private actors such as national and international commercial banks, rather than reinforcing public education institutions. Furthermore, as many actors providing core education services also develop their delivery of ancillary services, the distinction between the two is becoming more and more difficult.

III. The definition of for-profit and not for-profit actors

The draft strategy provides some elements of definition of providers of “core education services”, as organizations running schools or other educational institutions. They can be divided along two axes, depending on their legal identity (i.e. for-profit; not for-profit) and their practice (i.e. fee-charging; not fee-charging).

I am concerned that such definition remains too vague, and does not provide sufficient safeguards to ensure that commercial actors will not receive GPE funding. In particular, I am concerned that many for-profit institutions have registered under a not-for-profit status, which does not correspond to their real practice whereby they actually do make profit. For this reason, I wish to draw your attention to the language used in my above-mentioned report, as well as by the Human Rights Council (resolutions 29/7, 32/22, 35/2 and 38/9) and the European Parliament (resolution 2018/2081), referring to “commercialization” or “commercial actors”.

IV. Place of the private sector in education governance

Amongst its seven objectives, the draft Strategy aims at (1) supporting and accelerating the co-creation by Developing country partners of private sector solutions to education systems bottleneck; and (2) harnessing private sector expertise and voice in country policy and planning processes.

I wish to stress that issues at stake are not the lack of support by private actors to public authorities, but rather the fact that powerful national or multinational companies today are able to influence national educational policies in total opacity, for the sake of their own interests. I am concerned that such objectives, without appropriate safeguards, may lead to situations of corruption and conflict of interests, in total contradiction with the GPE's rules and policies, as well as human rights.

In connection with the above alleged facts and concerns, I would like to refer the Board of Directors of the GPE to article 13 of the International Covenant on Economic, Social and Cultural Rights, related to the right to education, as well as to Sustainable Development Goal 4, which seeks to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. According to the Committee on Economic, Social and Cultural Rights, article 13 of the Covenant regards States as having the principal responsibility for the direct provision of education in most circumstances, and States have an enhanced obligation to fulfil (provide) the right to education (General comment No. 13 – 1999 – on the right to education, para. 48).

As mentioned in my report to be presented to the Human Rights Council on 26 June 2019, an essential condition for meeting Sustainable Development Goal 4 targets is for States to allocate the maximum of their available resources to ensuring free, quality, public education for all, as required by international human rights law. (A/HRC/41/37, para. 7).

While the human rights legal framework sets up a delicate balance between the State obligation to deliver education and the freedom of private actors in the realization of the right to education, it also includes the obligation of States to protect education systems against commercialization. United Nations and regional human rights mechanisms, as well as national and regional courts, have repeatedly expressed concern about the commercialization of education and underlined the crucial role of States in realizing the right to education. The Human Rights Council has consistently recognized the significant importance of investment in public education, to the maximum of available resources. The public dimension is also central to the reaffirmation by States in the Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4 that “education is a public good”. (A/HRC/41/37, in particular paras. 28, 29 and 38).

I would also like to refer the Board of Directors to the recommendation I make in my report that “States providing international cooperation funds do not provide resources

to international and regional financial institutions and investors that finance commercial providers of education or that foster the growth of private education, such as the Education Outcomes Fund. States should review the policies of institutions such as the International Development Association and the Global Partnership for Education, to ensure they are aligned with their own human rights obligations before considering providing them with funding. If alignment is not the case, States should seek policy change or developments before providing funding, or consider other forms of funding that are in line with their human rights obligations.” (A/HRC/41/37, para 96)

I would also like to refer the Board of Directors of the GPE to the Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education, adopted on 13 February 2019 by a group of eminent experts. They constitute the most up-to-date rigorous analysis of *existing* standards on the right to education that would apply to GPE and member States. In particular, Guiding principle 29 states that: “States must respect, protect and fulfil the right to free, quality, public education.” Guiding Principle 64 recalls that: “States must prioritize the funding and provision of free, quality, public education”. More specifically, Guiding Principle 73 further detail conditions under which States may still fund private actors and list the type of actors that may be eligible for funding. Importantly, institutions that are “commercially-orientated or pursue other commercial benefits, or excessive personal gains” should not receive funding. Obligations with regard to the right to education also apply to international assistance and cooperation, such as the funds provided through the GPE, as recalled in the 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.”

I wish to express concern that option 2 set out in the draft GPE Private Sector Engagement Strategy runs counter to the international human rights standards mentioned above, as well as to numerous recommendations made by human rights mechanisms relating to the right to education. I strongly recommend that implementation of option 1 be framed in a manner ensuring consistency with international standards relating to the right to education, in particular in relation to the necessary regulation of private actors, including not-for-profit private actors (A/HRC/41/37, paras. 46-53 and 85-88).

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on how the GPE will ensure that its Private Sector Engagement Strategy will be compatible with international human rights standards relating to the right to education.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your organization will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge the Board of Directors of the GPE to take into account the concerns raised and to avail of any technical assistance that I may be able to provide in order to ensure the full promotion and protection of the right to education. I fully recognize and welcome the fact that the GPE has proclaimed its full adherence to human rights law and international agreements, in particular the International Covenant on Economic, Social and Cultural Rights and the Incheon Declaration and Framework for Action, and I hope that these commitments will translate into the policies and practice of the GPE.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Organization to clarify the issue/s in question.

Please accept the assurances of our highest consideration.

Koumbou Boly Barry
Special Rapporteur on the right to education