



OIDEL

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INDEX

HUMAN RIGHTS COUNCIL

Oral Statements

- Oral statement for the 2019 social forum (October 2019)
- ITEM 3- ID with the SR on Cultural Rights (40th session)
- World Programme for Human Rights Education and Target 4.7 of the SDGs (40th session)
- Déclaration orale – Débat annuel sur les droits de l'enfant « Autonomiser les enfants handicapés aux fins de la réalisation de leurs droits humains par l'éducation inclusive » (40th session)
- ITEM 3: Clustered Interactive Dialogue with the SR on the right to development (42th session)

Written Statements

- Agenda item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (40th session)
- Clarifications from a Human Rights perspective of the report “The implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education”(41th session)

UNESCO

Oral Statement

- 40th UNESCO general conference, 16th November. General policy debate.

Human Rights Council Oral statements

The Social Forum

The Social Forum is an annual meeting convened by the Human Rights Council providing a unique space for open and interactive dialogue between all stakeholders on a specific theme chosen each year. In 2019 the Social Forum will take place on 1 and 2 October in Room XX at the Palais des Nations in Geneva. In accordance with resolution [38/17](#) of the Human Rights Council it will focus on “the promotion and protection of the rights of children and youth through education”.



The title of this panel is reaching those being left behind and defending the right to education. I want to thank all the panellists for their magnificent presentations and I, as representative of OI DEL, would like to make a few commentaries.

No-one can deny the importance of the provision approach of the right to education to reach those left behind. An increase in the budgets to have better facilities, to prepare better professionals, to have access to better materials, and to ensure that all children have access to education is crucial. Nevertheless, focusing only on the provision approach of this right

would be too narrow. We are focusing here on the rights of the children, and children are not numbers. They are human beings rooted in a culture, living in a community, cohabiting with a family with a particular language and with their own convictions. It is not enough to provide a good public educational system for all. Education shall be directed to the “to the full development of the human personality (art. 13.1 ICESCR, art.26.2 UDHR)” and to ensure this human rights approach it is important that this education fully respect the cultural identity of these children as it is stated in the Universal Declaration on Cultural Diversity.

The world in which we live is becoming more plural and it is rapidly changing. It is becoming more and more difficult to a unique school model to acknowledge the pluralism of the world, and at the same time meet the rapidly changing needs and circumstances of this world. We have to start thinking seriously if the vertical model state school – citizen is what is in the best interest of the child, especially those in disadvantage situations. Even, the UNESCO document “Rethinking Education: Towards a global common good?” evokes the need to think of a paradigm that overcomes the notion of education as a public good. On this regard and specially in a context of privatization, as the former two special rapporteurs have said to guarantee the right to education we have to start thinking the role of the state not as the only education provider, but as the guarantor and regulator(par. 54) (SINGH, 2014)(BOLLY, 2017, par.59). We consider that two pillars are important on this context. First, focus on the importance of human rights education in order to strengthen the unity among citizens in a plural world. Second, governments not only should they be ensuring a high quality public education, but also supporting and enabling the existence of compulsory education in non-governmental

schools of whatever legitimate pedagogical option to satisfy the human right to education.

On this context, we have to acknowledge a new threat. The progressive loss of the human rights perspective in the educational landscape due to new commercialisation approaches. It is clear that the entrance of for-profit actors can suppose a threat at multiple levels, including the final goal of education. On this regard, the state has to play the role of guarantor we mentioned before. Nevertheless, on this context, it is important that we do not treat all the non-state actors similarly. It would not be fair to legally treat a faith-based school in an area of conflict, as an institution owned by an investment fund in a developing area. It would not be fair to treat an NGO or a civil society organisation focused on the provision of the right to education, as an institution whose main aim is to make profit. An unfair approach to this problem not only will leave actors that are part of the solution in demining situation, but also might affect the freedom and cultural approach of the right to education by limiting the freedom of parents and communities to choose the education that they want for their children.

- Nations Unis, Rapport de la Rapporteuse Spéciale sur le Droit à l'Éducation, K. BOLLY (2017) *Rapport de la rapporteuse spéciale : Le droit à l'éducation*, A/72/496, disponible sur : <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/303/25/PDF/N1730325.pdf?OpenElement>
- UNESCO (2015) *Repenser l'éducation? UNESCO*, Paris
- SINGH, K. (2014). *Report of the Special Rapporteur on the right to education, "Privatization and the right to education"*. Genève - New York: Assemblée générale - Nations Unis.

40th session (25 February / 22 March 2019)

ITEM 3- ID with the SR on Cultural Rights

Thank you Mr. President,

We thank the Special Rapporteur on Cultural Rights for her report for three main reasons. First, because her sincere efforts to show that the C of Economic, Social and Cultural rights is as important as the other two letters. Indeed, we joint our voice to the voice of the Special Rapporteur to recall that the right to belong, to have an identity and to develop a specific world vision is essential to safeguard the dignity of the human being. Second, we welcome the efforts of the special rapporteur to show the history and the current situation of the cultural right from the Special Rapporteur perspective. And third, the Special Rapporteur in its point 45 of the report hopes to see the creation of a civil society coalition for cultural right at the UN. We would love to contribute to this idea.

OIDEI considers that the right to education is a pillar of the cultural rights. As the General Comment n° 21 of the Committee on Economic, Social and Cultural Rights points “*States should recall that the fundamental aim of educational development is the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth. Thus, education must be culturally appropriate, include human rights education, enable children 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* (p. 26)”. We encourage the Special Rapporteur to consider the importance of the cultural approach of the right to education in its future reports. In a context of hate and violence the international community needs to hear how to deal with the right to have an identity in our educational systems. Alfred Fernandez, the

former director of OIDEI and strong defender of cultural rights, used to say that one of the main reasons of violence in our world is due to the feeling that our cultural background is disdained. This is the moment to talk about the cultural approach of the right to education so our children learn who they are, so their education is respectful with the communities they life and also that they learn to live within the diversity.

Thank you M. President,



40th session (25 February / 22 March 2019)

Item 3, General Debate.

Thank you Madame Vice President.

I speak on behalf of 17 organizations¹

The Plan of Action for the fourth phase of the World Programme for Human Rights Education is currently in its preparation phase in consultation with all stakeholders and will be submitted during the forty-second session of the Human Rights Council. In this regard, the NGO WG on HREL would like to emphasize the following points:

- 1) The implementation of the three previous phases of the World Programme should be an integral part of the Plan of Action.
- 2) Human rights education methodologies including specific tools and indicators to measure the impact and progress of human rights education at local and national level, also within the framework of target 4.7 of the SDGs should be further developed.
- 3) Adequate policies, including necessary resources and programmes to train educators with skills, knowledge and understanding of human rights to foster people that can be a model of human rights for young people should be prioritized.
- 4) National Human Rights Institutions (NHRI) and Parliamentarians play a key role for human rights education.
- 5) Young peoples' voices should adequately be reflected, taking in consideration the different needs that youth have to ensure an inclusive

¹ This statement reflects views of the NGO Working Group on Human Rights Education and Learning (NGO WG on HREL) of NGO Human Rights Committee of CoNGO, comprising 55 NGOs.

plan of action. Non-formal education plays a key role to enhance the aim of universal access for all youth to human rights education.

The NGO WG on HREL is fully willing to act as a bridge between the different actors in order to move towards a better implementation of human rights education.

40th session (25 February / 22 March 2019)

Déclaration orale – Débat annuel sur les droits de l'enfant

« Autonomiser les enfants handicapés aux fins de la réalisation de leurs droits humains par l'éducation inclusive »

Merci monsieur le président,

L'OIDEEL remercie le Conseil de se consacrer à ce sujet tout en rappelant son travail pour les résolutions 7/29 et 37/20. En effet, l'éducation est un axe primordial dans la réalisation des droits humains, par leur reconnaissance et leur diffusion, et contribue fortement à la lutte contre la discrimination et pour l'égalité des chances, notamment par une éducation inclusive.

Une éducation qui ne suit pas une approche culturelle peut rendre les enfants handicapés et ne faisant pas partie de la culture dominante sujets à une double discrimination. Elle doit bénéficier à tous les enfants, y compris ceux qui ne font pas partie de la culture dominante du pays où ils habitent. La résolution 7/29 sur les droits de l'enfant les liste ; les enfants de communautés autochtones, les enfants migrants, réfugiés ou déplacés, les enfants appartenant à des minorités nationales, ethniques, religieuses ou linguistiques. Toutes ces catégories rendent l'enfant potentiellement victime de racisme, d'intolérance, de discrimination et de xénophobie, c'est pourquoi des mesures spéciales doivent être prises afin de lutter contre ces pratiques inacceptables, notamment dans les programmes éducatifs (RES/7/29). L'éducation inclusive doit être pensée selon une approche culturelle et ceci inclut l'existence d'écoles alternatives. Une vision holistique du droit à l'éducation est nécessaire afin que tous les enfants puissent en jouir.

Les droits de l'enfant font partie intégrante des mécanismes du Conseil. La Convention relative aux droits de l'enfant est le traité le plus ratifié au

monde. Pourtant, la situation des enfants demeure critique. L'article 28 de la Convention garantit le droit à l'éducation sur la base de l'égalité des chances. En effet, accorder une éducation de qualité contribue à l'accès à d'autres droits. L'éducation de qualité est un outil essentiel pour l'apprentissage de la tolérance et du respect de son prochain. Il s'agit aussi d'apprendre aux enfants les erreurs du passé à ne pas répéter. Les enfants sont sujets de droit, mais ils sont aussi acteurs de ceux-ci.

Merci Monsieur le président,



ITEM 3: Clustered Interactive Dialogue with the SR on the right to development

Mr President,

APG23 and the co-signing NGOs welcome the report of the Special Rapporteur on the right to development, Mr Saad Alfarargi, and are very grateful to him for the finalisation of a set of useful guidelines that may contribute to the practical implementation of the right to development.

We consider it to be a great success after many years of deadlock in the debate especially within the Open Ended Intergovernmental Working Group where the discussion carried out on the criteria and operational sub-criteria and the set of standards for the implementation of this right were not finalised because of the high polarisation and politicisation among States and coalitions.

The guidelines are timely delivered in a crucial moment when the discussion on a legally binding instrument has began and the Chair rapporteur of the Open Ended Intergovernmental Working Group has been given the mandate to formulate a first draft of such an instrument and the Advisory Committee has been mandated to provide a study on the relevance of a legally binding instrument on RTD.

We support the idea of elaborating a legally binding instrument on the right to development because a legal approach is necessary to contribute to the realization of this right so as to leave no one behind and to enable individuals and communities to meaningfully pursue their right to development and to hold accountable the duty bearers. Moreover, a treaty on RTD will be a further important step towards the realisation of a new more humane and responsible social and international order.

We are glad that the guidelines presented by the Special Rapporteur on the right to development emphasize that the affected communities must have ownership over development agendas, budgets and processes, that States, in formulating development policies, should first conduct a human rights impact assessment and in the monitoring and evaluation of development projects should collect disaggregated data with a human rights based approach and that participation can only be effective if it is institutionalized and continuous.

Finally, we appreciate the fact that the guidelines tackle with clarity the responsibilities of development banks and investors, those non-state actors that have a key role in influencing whether the right to development is realized, given their power and resources.

Thank you!

Human Rights Council Written statements

40^{ème} session (25 February / 22 March 2019)

Agenda item 3

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

World Programme for Human Rights Education and Target 4.7 of the SDGs Implementation and follow-up in the next Plan of Action?

1. In its resolution 36/12, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to seek the views of States, national human rights institutions, civil society organizations and other relevant stakeholders on the target sectors, focus areas or thematic human rights issues for the fourth phase of the World Programme for Human Rights Education, bearing in mind possible synergies with the 2030 Agenda for Sustainable Development and other relevant initiatives on human rights education and training.
2. On this occasion, the Working Group on Human Rights Education and Learning (NGO WG on HREL) underlined the fundamental role Human Rights Education plays in building inclusive, just and peaceful societies and organized two side-events in 2018, co-sponsored by the States Platform on Human Rights Education and Training comprising 8 States (Brazil, Costa Rica, Italy, Morocco, the Philippines, Senegal, Slovenia and Thailand) and the UNESCO Liaison Office in Geneva. The aim was to collect the views of all stakeholders regarding the focus of the upcoming fourth phase (2020-2024) and also to find synergies among existing approaches on the implementation of human rights education, especially in relation to the World Programme in all its consecutive phases.
3. In its resolution A/HRC/RES/39/3 adopted on 27 September 2018, the

Human Rights Council decided to make youth the focus group of the fourth phase of the World Programme and to align the fourth phase with the 2030 Agenda and specifically with target 4.7 of the Sustainable Development Goals, as reflected in the OHCHR report (A/HRC/39/35). We welcome the focus of the fourth phase especially since, according to UN data, there are about

1.8 billion young people in the world today, the largest youth population ever, and that over a third of the 169 SDG targets highlight the role of young people and the importance of their empowerment, participation and well-being. Youth are crucial agents of change and a driving force for building just, peaceful and resilient societies.

4. In the same resolution, the HRC also requests the OHCHR to prepare a Plan of Action for the fourth phase, in consultation with all stakeholders, and to submit it for its consideration during forty-second session of the Human Rights Council in September 2019. Regarding the preparation of this plan of action, the NGO WG on HREL would like to underline the following points:

a) The implementation of the three previous phases of the World Programme should be an integral part of the plan of action, as it has not yet been completed. During recent panel discussions, experts from OHCHR, the NGO WG on HREL, and Member States addressed the need for an integrated framework where UN country teams, governments and OHCHR could effectively exchange information and experience on the implementation. In this regard, the capacity of national human rights institutions, which have a mandate to educate about human rights, should be strengthened in the area of human rights education through technical assistance and the establishment of networks allowing the exchange of experiences and academic research. It should not be forgotten that improvement of the human rights situation on the ground will depend on

the creation of a human rights culture which will be fed by human rights education of all national actors, from youth, men and women to law enforcement agencies.

b) The quality and extent of the implementation of human rights education should be reported by States and monitored through United Nations human rights mechanisms, such as the treaty bodies and the special procedures of the Human Rights Council. During the Universal Periodic Review, States under Review should also be encouraged to report back against a baseline and based on qualitative targets indicators how rights holders and duty bearers are educated about human rights and the progress made in the different aspects of human rights education. National mechanisms for Reporting and Follow-up should be sensitized on human rights education to monitor the progress made in the implementation of human rights recommendations and States' commitments. In this regard, we emphasize the importance for States to submit their national progress reports on a regular basis. The development of legally binding instruments in the area of human rights education and training might also be regarded as a way to strengthen existing commitments.

c) It is crucial to further develop human rights education methodologies and specific tools and indicators to measure the impact and progress of human rights education at local and national level, also within the framework of target 4.7 of the Sustainable Development Goals.

d) Developing policies, which include adequate resources and programmes to train teachers and educators with necessary skills, knowledge and understanding of human rights education to foster people that through their attitude and behaviour can be a model of human rights for young people.

e) Parliamentarians play a key role in human rights education. They can monitor the implementation of public policies related to human rights

education and ensure that adequate budgets are voted to implement the State human rights commitments.

f) Ensuring that young peoples' voices are adequately reflected, taking in consideration the different needs that apply to youth in relation to their countries of origin, sex, ages, abilities and economic status, cultural backgrounds and respecting their freedom of thought, belief and religion, to ensure an inclusive plan of action. In the same vein, access to education of all segments of society and of vulnerable and marginalized groups, including children with disabilities, will ensure that no one is left behind in the development of a country.

g) Gender equality should be an integral part of human rights education to contribute to end women's rights violations and discriminatory practices. The full participation of women and girls in defining laws and policies and their representation at all public and private decision-making levels is key to achieve SDG 5.

h) Non-formal education is essential in order to support and enhance the aim of universal access for all youth to human rights education. As emphasized also by the special rapporteur on the right to education, nonformal education programs provide flexible, learner-centered means that can reach learners in geographically remote areas, as well as students with disabilities, groups in vulnerable situations, and those in extreme poverty. Moreover, nonformal education settings, such as youth organizations, extracurricular school activities, cultural events, film and theatre, are all important contexts where young people can come together and learn about, for and through human rights and ultimately contribute to making a difference in people's values, attitudes and behaviors.

i) The fourth phase should effectively acknowledge and empower civil society entities working to promote the World Programme for Human Rights Education and the United Nations Declaration on Human Rights

Education and Training. It would therefore be an opportunity to highlight and disseminate information about local-level decisions that fostered human rights education and local human rights education initiatives, raising their visibility and legitimacy as part of global programmes.

The NGO WG on HREL is fully willing to act as a bridge between the different actors in order to move towards a better implementation of human rights education

41st session (24 June / 12 July 2019)

Clarifications from a Human Rights perspective of the report “The implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education”

This year the Special Rapporteur on the right to Education presents a report on “The implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education”. This report aims to tackle the problem of privatization, pursuing the action of the Former Special Rapporteur Kishore Singh (A/69/402, A/HRC/29/30, A/70/342). OIDEL celebrates the fact that the Special Rapporteur on the Right to Education focuses on this topic. On this regard, initiatives such as the Human Rights Guiding Principles are essential to safeguard the essential content of the right to education, including the freedom approach of the right to education. OIDEL acknowledges the efforts of the Special Rapporteur on this regard and aims with this written statement to raise some questions that would be interesting to clarify in order to clarify some of the given guiding principles. These are certain the main problematic points of this report that we consider that will need some clarifications:

- Variety of private schools. It does not makes a distinction of for-profit

and non-for-profit (par.14-15). As the former Special Rapporteur Kishore Singh mentioned on this report the phenomenon of privatization does not concern non-state actors, such as religious institutions, non-governmental organizations, community-based groups, foundations or trusts (par.1 A/HRC/29/30). Not making the distinction between for-profit schools and non-for-profit can lead to a scenario in which certain schools that are not part of the problem which can be unfairly treated.

This is specially critical when we think of education as a cultural right for cultural, religious and national minorities (par. 55 E/C.12/GC/21).

- Definition of public schools. When the document refers to public schools it provides a definition which is very wide and vague and potentially includes most of the non-profit non-governmental schools (par. 41-42).

“(a) Recognized by the State as a public educational institution; (b) Effectively controlled and managed by a State organ or genuine representatives of the population they serve; (c) Not at the service of any commercial or other exploitative interest that undermines learners’ right to education”. This could be problematic, especially in light with the examples provided by the report (par.42) because in certain states some non-governmental non-profit schools could be recognized as public, while in other states not. The problem is that this recognition will depend on the government discretion. Some clarification would be necessary; otherwise it could create situations of unfairness.

A good example is the case of faith-base schools in England and Spain, even-though that both institutions have the same relation with the state in terms on management and funding English faith based schools are considered public while Spanish ones are considered private.

- Lack of legal ground concerning public-private partnerships. The report should reconsider its position concerning public-private partnerships in the provision of education. The report recalls that the Target 17 of the Sustainable Development Goal 17 encourages public-private partnerships (par. 55). However, the report concludes that these partnerships cannot focus on school provisions (par.56). Similar provisions of the Abidjan Principles (principle 64) have weak legal support. The report, in its turn, of the Special Rapporteur supports this statement only by referring to the recommendation of the Committee on the Rights of the Child to Brazil. The legal base of the report in this regard is not only weak, but, in addition, it has to be understood in the concrete context of Brazil (par.57). This is especially problematic as it could have a negative effect on agreed binding norms of international law concerning the rights of parents and the rights of non-governmental schools. In addition, this can be specially problematic in order communities with a low income can benefit of an inclusive education provided by schools not managed by the government.

- Severe limitations to public funding of private schools. The report points out that the right to education prohibits nullification of the liberty to choose and establish private educational institutions (par.33) Also it recalls the obligations of the states to respect the liberty of parents to choose for their children schools other than those established by public authorities and to ensure the religious and moral education of their children in conformity with their own convictions as it is established in the international treaties (par.27). Nevertheless, it aims to limit various forms of public funding of non-governmental schools, in a way that can nullify the liberty to choose and establish private educational institutions and preserve such liberty as a privilege of high-income families.

In this regard, the report of the Special Rapporteur acknowledges part of

the Abidjan principles concerning the substantive requirements of funding of public-private partnerships (par.61). The report points out that “Substantive requirements (Guiding Principle 65) indicate in particular that any public-private partnership must be a “time-bound measure that the State can publicly demonstrate to be the only effective option to advance the realisation of the right to education”. It must also meet one of the following four objectives: (a) Ensure short-term access to education where public education is unable to do so; (b) Ensure respect for cultural diversity and the realization of cultural rights, which is particularly relevant, for instance, for minorities and indigenous peoples; (c) Facilitate the integration within the public education system of private institutions (which has been a common model in Europe, for instance in Belgium and the Netherlands); (d) Pilot a pedagogical approach”.

This paragraph could pose several threats for human rights:

- First, it could limit the liberty to choose and to establish private educational institutions to those families and institutions with enough economical resources. Freedom of education cannot be limited by the income of the families.
- Second, the statement that funding of non-governmental schools can only be a time-bound measure and is only applicable to those cases in which the state can demonstrate that public education system cannot cater for certain categories of learners, is not based on any human rights law.
- Third, this paragraph ignores national legislation of many states and the established judicial practice, including the jurisprudence of different Constitutional Courts (French Constitutional Court 23 Nov. 1977 and Spanish Court 5/1982 and 77/1985).

· Fourth, it goes against the recent Resolutions of the EU (such as the European Parliament resolution of 12 June 2018 on modernisation of education in the EU (2017/2224(INI) which states that “with regard to increasing inclusiveness and ensuring freedom of educational choice, the provision of adequate financial support for schools of all categories and levels, both state schools and not-for-profit private schools, provided the curriculum offered is based on the principles enshrined in the Charter of Fundamental Rights of the European Union and complies with the legal systems and rules and regulations regarding the quality of education and the use of such funds in force in the Member State concerned”).

· Fifth, this paragraph of the report may put at risk the allocation of public funds to non-governmental schools that will now depend on the states’ discretion and will be limited to those cases in which they consider that they are incapable to fulfil certain obligations. This approach does not have a solid legal footing in international human rights law and could jeopardize the rights of many families, especially representatives of non-mainstream culture.

· Sixth, when the report refers to the paragraph 65 it refers to any public-private partnership (PPP); nevertheless, the Abidjan principles in the article 65 do not make any reference to PPP, but to “any potential funding to an eligible instructional educational institution”. There are important nuanced differences between these two and which could lead to confusing and unfair scenarios.

Not all public-private partnerships in the field of education have been bad. Likewise, not all private schools are profit-oriented and disregard human

rights. Actually, many of them have served to increase social cohesion and to enhance democracy and human rights in the national context.

This report, as well as the Abidjan Principles, are essential and a cornerstone to deal with the problem of privatization. Nevertheless, without the clarification of the mentioned points this could lead to a scenario in which parents, civil society organizations, specially those traditionally discriminated, will have more problems to choose and education culturally inclusive.

UNESCO

Oral Statements. Clarifications from a Human Rights perspective of the report “The implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education”

Monsieur le Président,

Nous aimerions parler de l'ODD 4 « Assurer l'accès de tous à une éducation de qualité, sur un pied d'égalité, et promouvoir les possibilités d'apprentissage tout au long de la vie ».

Dans le contexte actuel, nous pouvons observer 2 réalités qui provoquent un grand défi pour l'état. La première réalité est celle d'un monde changeant rapidement. La deuxième réalité est la production à une cadence étourdissante de connaissances. Ces deux réalités provoquent un grand défi pour les États au moment d'accomplir l'ODD4. C'est presque impossible pour eux d'adopter une approche des droits de l'homme afin d'assurer cet objectif seulement à travers les institutions publiques. Le moment actuel dépasse les institutions gouvernementales et permet l'entrée d'acteurs qui visent davantage le but lucratif qu'une approche des droits de l'homme.

Afin de réussir l'ODD 4 nous suggérons deux piliers dans les nouvelles stratégies des gouvernements.

D'abord, c'est important d'encourager la participation des toutes les parties prenantes dans les politiques éducatives, spécialement les parents et les organisations de la société civil. C'est urgent de donner la priorité à

des stratégies qui permettent une plus grande participation de ces acteurs dans toutes les phases de la planification des politiques éducatives, incluant la provision de l'éducation. La société civile et les parents ont la capacité d'agir plus vite et de s'adapter plus rapidement à ces réalités.

Le deuxième pilier concerne le rôle de l'État. Le rôle principal de l'État ne peut pas être de fournisseurs, mais de garant. Au-delà d'assurer une offre de qualité d'écoles publiques, l'État doit garantir un cadre légal fondé sur une approche des droits de l'homme qui permet aux institutions non-gouvernementales, incluant des écoles, d'exister et être aussi une pilier pour l'accomplissement de l'ODD4. L'État doit assurer que l'action de ces acteurs soit en ligne avec les droits de l'homme, tout en fournissant une éducation de qualité et que l'accès à ces écoles bénéficie à toutes les familles, incluant les plus pauvres.

Merci Monsieur le Président





Previous Universal Periodic Review remarks:

In the last UPR of Sweden², the topic of the right to education was not the major topic of the discussion. Nevertheless, some mentions were made.

In this regard, some Permanent Missions such as Gabon or India³ commended the initiative to sensitize young people against xenophobia and other forms of intolerance in the field of education. Moreover, other Permanent Missions such as Sudan, Finland or Armenia⁴ encouraged Sweden to continue its efforts to raise public awareness and to include human rights education in the school curricula.

In addition, there were many Permanent Missions that showed concerns about the current situation of the right to education of minorities and foreign children in Sweden. In this line, the permanent mission of Bahrein⁵ asked about the plan to improve access to education by migrant families and the Permanent Mission of China⁶ cited concern over efforts to enhance anti-discrimination education and protect minority rights. The Permanent Mission of India⁷ encouraged Sweden to address the discrepancies in access to employment, housing, health care and education between native Swedes and foreign-born persons. Finally, the Permanent Mission of Canada⁸ suggested to take steps to prevent and respond to incidents of

² A/HRC/29/13. Second Cycle, 13 April 2015.

³ Paragraphs 107; 114

⁴ Recommendations 145.19; 145.20; 145.126.

⁵ Paragraph 84

⁶ Paragraph 95

⁷ Paragraph 114

⁸ Recommendation 145.89

violence and intimidation against members of minority religious groups, including through education and awareness campaigns and effective interventions by law enforcement officials.

Current context:

The Right to Education has been recognized as a human right in article 26 of the Universal Declaration of Human Rights. As stated in article 26.3 of the Universal Declaration of Human Rights, this right includes the obligation for the state to enable parents the liberty to choose an institution for their child other than the one provided by public authorities. Moreover, article 13 of International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to education and notes “*that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms*”. This idea is also contained in article 5 of the Convention Against Discrimination in Education.

Currently, in Sweden there is a freedom to establish schools and all schools that get permission are also guaranteed 100 % public funding, as stated in the Education Act (Skollagen) SFS nr: 2010:800. In relation to the funding of independent schools, this law establishes that the amount “*should be determined after the same principles that the municipality uses for allocation of resources for its own schools*”. Also, all schools have to follow the national curriculum and all other regulations and schools are not allowed to take any fees at all from the families. It is clear that Sweden shows a real interest on providing a quality educational system. However, serious concerns remain regarding the current situation of the right and freedom of education in Sweden.

One of the main differences between public and independent schools in Sweden is that the latter are allowed to have “confessional elements” but

these should be voluntary and carried outside the teaching. This is particularly important in a context where public school cannot reach all the religious particularities of the country. In comparison with other European countries, Sweden has extremely few faith-based schools. Less than 1 % of Swedish students attend religious schools. That can be compared to Belgium (56,8 %), the Netherlands (76,3 %), Great Britain (37,2 %) and France (20 %).⁹

Education as a cultural right under threat:

The last years, following a wave of immigration, the political language towards religious schools have become more hostile and in June, the government gave additional directives¹⁰ to a commissioner who is already examining “confessional elements in the educational system”. The commissioner will report to the government before 19 Dec 2019. These additional directives are:

- To give such legislative proposals that are necessary to implement a stop to establishments of independent schools with a confessional profile, and
- to analyse and report what eventual consequences these legislative changes might have, among other things with regard to the Swedish constitution, the EU regulatory framework and Sweden’s international obligations, and for the existing independent schools with a confessional profile

⁹ <https://timbro.se/integration/konfessionella-friskolor-samhallsproblem-eller-mansklig-rattighet/>

¹⁰ The Commission’s Directives:

- 2018:15: <http://www.regeringen.se/493c3e/contentassets/d14001b6b4e24e65ae4b94d1046f5258/kommittedirektiv-konfessionella-inslag-i-skolvasendet-pdf.pdf>
- 2019:25: https://www.riksdagen.se/sv/dokument-lagar/dokument/kommittedirektiv/tillaggsdirektiv-till-utredningen-om_H7B125

This is potentially damaging for families with a religious belief in Sweden. It will rule out the possibility for many parents to choose the kind of Education that should be given to their children and it will violate the liberty to establish and direct educational institutions as stated in article 13.4 of International Covenant on Economic, Social and Cultural Rights.

In addition to this framework, in March 2018, the Social Democrats, who were in the government together with the Green Party, announced an election promise to ban all religious schools¹¹. The Ministers imply that students at religious schools are not allowed to make their own decisions about what to believe, but are oppressed by the schools, and that these schools are not able to provide a science-based Education. This might be true in some schools but it is generalising and misleading to apply it to all these schools.

As we have pointed, this proposal could imply some threats to the right to education and does not respect article 26.3 and article 13 of International Covenant on Economic, Social and Cultural Rights. It's worth to remember that article 18 of Universal Declaration of Human Rights guarantees freedom of religion, which includes the freedom to manifest the religion or belief, individually and collectively, both in public and in private, by teaching. To ban faith-based schools goes against the statement of the Human Rights Committee that ensures in the General Comment no.22 that religious freedom is related to the guarantee of teaching a religion (CESRC, 1993, par.6¹²). This statement embodies the right to education as a cultural right, recognized in article 15 of International Covenant on Economic, Social and Cultural Rights. Moreover, education as a cultural right implies

¹¹ <https://www.socialdemokraterna.se/aktuellt/2018/forbud-mot-religiosa-friskolor/>

¹² General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) : 30/07/93. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. Available at: <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2022.pdf>

the protection of religious freedom and freedom to choose and set up educational establishments (CESCR, 2009, par.55.c). Indeed, as we have observed before Egypt already suggested in the previous UPR exam that Sweden had some room to improve education as a cultural right.

In this regard, forbidding the presence of religious schools would be a step back as it limits the right of parents to choose the kind of education they want for their children and the cultural rights of children. This issue is specially problematic in states with minority groups, such as Catholics in Sweden who do not represent event 4% of the population or the Jewish (0.1%) as well other Christian denominations.

In this sense, it should not be forgotten that state has the obligation not only to respect the different values and beliefs present in the society but also the duty to ensure its protection. The Human Rights Committee recalls this obligation in General Comment no.21: “ *The right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. (...) the obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant* ”¹³.

The state is a neutral and pluralistic institution. Indeed, as stated in article 2 of Regeringsformen SFS nr: 1974:152, “ *The public institutions shall combat discrimination of persons on grounds of gender, colour, national or*

¹³ General comment No. 21 : Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights). E/C.12/GC/21. available at: <https://www.refworld.org/docid/4ed35bae2.html>

ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the individual [...]"¹⁴. In this order, public authorities, in its attempt to form good citizens, have to make efforts to include the different values of minorities. We should keep in mind the role of "democratic citizenship education" as a way to preserve a plural society.

It is obvious that two legitimate elements of the democratic system face each other: on one hand, the right of parents to choose their children's education (art. 26.3) and on the other hand, the interest of the state in ensuring human rights education: "*Human rights education is primarily a State responsibility*"¹⁵ (33th session of HRC, A/HRC/30/20). It is incontestable that both bottoms must coexist in a state policies are based on a human rights approach. The solution should not lead to ban religious schools but to a scenario of cooperation between those faith-based schools and the state, making both compatible.

Not allowing religious schools can lead these groups to isolation and out of control by the state. By doing so we help reasonable religious people reform their religions by, for example, having their own schools that make their values compatible with democratic values.

Actually, the benefits of non-governmental schools, including confessional schools, are supported by many researches that suggest that religious schools do not create parallel societies. On the contrary, the research

¹⁴ the 1974 Instrument of Government, which contains the central provisions and corresponds most closely to the constitution of other countries

¹⁵The Role of Prevention in the Promotion and Protection of Human Rights. Report of the Office of the United Nations High Commissioner for Human Rights
See "The Right to Human Rights Education", a web resource which compiles relevant commitments made by States in international and regional intergovernmental forums, available from:
<http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/Listofcontents.aspx>.

shows that the majority of these schools have a diversity of nationalities and religions. The research summary also points out the risk that the debate is more characterized by preconceptions about religion and religious people than by actual facts about the religious schools. For instance, Gunnel Mohme shows that¹⁶ parents with Somali backgrounds place their children in Muslim schools as a reaction to the lack of respect and understanding they experience while attending the local municipal school, often because of religious and ethnic narrow-mindedness.

Many other studies on this topic, as the one carried by Jenny Berglund¹⁷, professor in Religious Education or Charles L. Glenn about Muslim Educators in American Communities lead to similar conclusions and encourage the need of non-governmental schools in order to preserve cultural diversity.

Recently, during 41st session of Human Rights Council, the report on the Right to Education and in particular, the role of private actors in the field of education has been discussed. During the Interactive Dialogue, the Special Rapporteur on the Right to Education, Ms. Bolly Barry clarified some points of her report. Ms. Bolly Barry emphasized the duty of the state to respect the freedom of the parents to choose other different school than the ones provided by the state, also concerning confessional schools. In this regard, she encouraged states to cooperate with non-governmental actors in the field of education, including faith-based actors, in order to offer a better educational system and to ensure protection of religious, philosophical and

¹⁶Mohme, Gunnel. Somali-Swedish Girls – The Construction of Childhood within Local and Transnational Spaces. Stockholm University, 2016
<https://www.skolporten.se/forskning/avhandling/somali-swedish-girls-construction-childhood-within-local-transnational-spaces/>

¹⁷ Jenny Berglund (2019) State-Funded Faith-Based Schooling for Muslims in the North, Religion & Education,46:2, 210-233, DOI: [10.1080/15507394.2019.1590943](https://doi.org/10.1080/15507394.2019.1590943)

pedagogical beliefs of parents and communities. The obligation [to provide an inclusive education](#) implies [the state's duty to collaborate with private schools](#) [that](#) can [offer an education](#) based on different values and beliefs of certain minorities.

In this way, Ms. Bolly Barry acknowledged the goodness of private institutions as religious schools. In particular, she praised some practices that have been launched in different countries, such as France where public-private partnerships between Catholic schools and the state have been very useful in order to guarantee a quality educational system. The so-called “*école sous contrat*” implies the possibility for private schools to benefit from an association contract with the state after five years of activity. [This](#) entails a [commitment for the private school to follow the school](#) [curricula of the National Education and for the state to fund the salaries of](#) teachers. In this particular case, both actors (state and catholic schools) have the same goal which is to offer a better education. This cooperation also allows to implement the obligation of the state to offer inclusive education and to preserve and protect the values of different groups of the society.

Important conclusions can be made from these researches. The first one is that facts do not support the thesis that religious schools in Sweden endanger integration. On the contrary, most of the religious schools have a diversity of nationalities and students and are successful in integrating students with foreign background. On the other hand, there are municipal schools that are extremely homogenous.

Moreover, there is a growing secular norm at Swedish schools as the 2010 School Act (2010:800), which is hostile towards religion and alienates students with a religious faith. Discrimination and abuse against religious people have been normalized to a degree where it is widely accepted. Several recent studies indicate that discrimination is growingly present in

the classrooms. Karin Kittelmann Flensner ¹⁸ shows in her research that in many classrooms, there is a permissive climate for dropping negative comments about religion and religious people. For instance, in March 2012, her field research revealed that in a school “religiosity was associated with mental illness and insanity”.

A ban on religious schools would impede the rights of parents to choose the kind of Education that should be given to their children (especially since home-schooling is not allowed) and it would violate the liberty to establish and direct educational institutions. This would involve a violation of the international law pointed above as article 26.3 Universal Declaration of Human Rights, articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights and article 5 of the Convention Against Discrimination in Education.

Recommendation:

We recommend Sweden to reconsider the law on education to ban religious schools in Sweden in order to realize the right to education from an holistic perspective including the cultural dimension of the right to education.

¹⁸ Religious Education in Contemporary Pluralistic Sweden, University of Gothenburg, 2015 https://gupea.ub.gu.se/bitstream/2077/41110/1/gupea_2077_41110_1.pdf