



Note
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Is the expression “the right to public education” coherent with human rights instruments?

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In different United Nations Forums certain actors have attempted to introduce the wording “the right to public education”. This has been a source of debate in different discussions, such as the informal negotiations of the 2015 Human Rights Council on the Right to Education. This expression concerns an important part of civil society and is perceived as an expression that could be used by certain governments to prevent the existence and support of non-profit civil society schools.

Having reached this point, we should ask the question: is the expression “the right to public education” coherent with human rights instruments?

Human rights instruments clarify that the realization of the right to education is not only deployed within state-run institution. In this regard, the Universal Declaration on Human Rights in its article 26.3 recognizes the important role of parents “*Parents have a prior right to choose the kind of education that shall be given to their children*”.

Moreover, the International Covenant on Economic, Social and Cultural Rights in its article 13 talks about the “*respect for the liberty of parents (...) to choose for their children schools, other than those established by the public authorities*” and “*liberty of individuals and bodies to establish and direct educational institutions*”. Also, the International Covenant on Civil and Political Rights (ICCPR) in its article 18, which concerns also the freedom of belief, thought and conscience, also stresses “*the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children*”. It is relevant to observe that education that goes beyond an exclusive vertical relation between the State and the Child is crucial for the realization of other rights such as freedom of belief, freedom of thought and freedom of conscience.

The United Nations Human Rights Council has never used the expression “the right to public education”, instead in two resolutions on the right to

education (2005 and 2015) it has recognized education as a public good (A/HRC/29/L.14/Rev.1).

Moreover, in 2015, the “Education 2030: Incheon Declaration and Framework for Action” was adopted by representatives from over 160 countries at the World Education Forum. This document reiterates that “*education is a public good, of which the state is the duty bearer*”. This document remarks that the main role of the state consists in setting and enforcing standards and norms (UNESCO, 2016). The wording “the right to public education” does not appear in this document.

The document “Global education monitoring report, 2021/2: non-state actors in education: who chooses? Who loses?” produced this year by the UNESCO Global Education Monitoring Report Team also refers to this very topic. The document recommends government to work with all educational institutions, state-run and non-state-run, as part of one united system. The document makes it very clear that there is no part of education in which non-state actors are not involved. Hence, it would be unrealistic to imagine the state as the only relevant actor to grant the right to education. Instead, the state must take the role of guarantor, more than the role of exclusive education provider (Global Education Monitoring Report Team, 2021).

In recent years, other UNESCO documents have pointed that the full realization of the right to education requires something more than a public good approach, namely, a common good approach. The increasing pluralism in society, the difficulties of differentiation between public and private, and the increasing call of civil society to contribute to the realization of the right to education, brought the UNESCO experts to conclude that the public good approach might be insufficient to tackle the educational challenges of the future. In 2015 UNESCO published the document “Rethinking education: towards a global common good?” claiming for this change of paradigm. (UNESCO, 2015). We have seen the reference to common good in many other UNESCO documents such as the “Global education monitoring report, 2021/2: non-state actors in education: Who chooses? Who loses?” More recently, the UNESCO report “Reimagining our futures together: a new social contract for education” refers to education as a common good, although there are also certain minor references to education as a public good (International Commission on the Futures of Education, 2021).

The Special Rapporteur on the Right to Education, Koumbou Bolly Barry in her report on digitalisation has used this expression (BOLY BARRY, A/HRC/50/32, 2022). Although this could be perceived as if the Special Rapporteur supports an eventual recognition that the right to education can be

only realized through state-run institutions, her previous work seems to contradict that.

The Special Rapporteur, Koumbou Boly Barry, in her report on education as a cultural right (BOLY BARRY, A/HRC/47/32, 2021), and also during the interactive dialogue of the presentation 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” clarifies that the right to education should be provided not only by state-run schools, but also by civil-society-run schools (BOLY BARRY, A/HRC/41/37, 2019). She mentioned that “(...) *private schools, such as religious schools, schools for minority groups and international schools, contribute to diversity in education, including in terms of the teaching provided*” (par.42) (BOLY BARRY, A/HRC/47/32, 2021).

Moreover, the Special Rapporteur has pointed the importance of granting public funding to certain non-state schools to grant the cultural approach of the right to education: “*Public action, respectful of educational freedoms, can, depending on the situation, take the form of any of a wide range of measures, from funding private schools*” (par. 57) (BOLY BARRY, A/HRC/50/32, 2022).

Furthermore, the Special Rapporteur has expressed that the role of the state in the realization of the right to education is not that of the provider, but that of the guarantor of the right to education (par.19) (BOLY BARRY, A/HRC/50/32, 2022).

The wording “the right to public education” has never been used in any UN binding documents before. Despite the good intentions of the Special Rapporteur using this expression, this could lead to misunderstandings. At the national level, OIDEL’s experience is that the states that use the expression “the right of public education” have used it to prevent and to limit the existence of non-state schools, including the existence of non-profit civil society schools. It is critical to recall again that the rights of parents to choose schools others than those run by public authorities are recognized in the article 26.3 of the UDHR and in article 13.3 of the CESCR. This right is especially relevant to ensure an education acceptable and adaptable for children belonging to minorities (CESCR, E/C.12/1999/10, 1999).

Therefore, we are afraid that the inclusion of this wording in UN documents could be used by certain public authorities to limit the right of families and communities – including minorities and indigenous people- to have diversity in their educational systems. We strongly recommend to avoid the expression as it is not compatible with the essential content on the right to education.

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