



## **SouthViews**

**No. 226, 3 September 2021**

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### **Issues in Financing Education as a Human Right: Central principles for public policy responses<sup>1</sup>**

*by Kishore Singh*

**The realization of the right to education requires adequate financing of education. Public policy responses to the need and importance of financing education remain inadequate. And now there is a trend towards decreasing public investment in education. Not only should States shoulder the primary responsibility for education under human rights law, but non-State actors should also invest in education because of corporate social responsibility. Besides, the need and importance of preserving education as a public good and public interest in education should be kept in the forefront as regards multi-stakeholders and provision of education through public-private partnerships. The role devolves upon the parliamentarians in shaping regional and global architecture. In the conclusion, the author proposes ten central principles for a Global Alliance to do the task of world-wide advocacy in support of the architecture for financing education.**

The right to education is an internationally recognized right.<sup>2</sup> It lays down a legal framework of *entitlements* to education at all levels, from early childhood to tertiary level of education, enjoining upon the State the obligation to provide good quality education free of costs in public educational institutions. However, the realization of the right to education is beset with several limitations and constraints. Meagre resources devoted to education are one of the reasons for this. Disparities and inequities in education are widely prevalent today. Children from poor families remain victims of educational deprivation. Education provided also leaves much to desire as regards standards and quality. Overcoming inequities and universalizing access to education, meeting the exigencies of quality, empowering the poor through education for poverty eradication, promoting skills development and lifelong learning, etc. all require adequate financing of education. I would, therefore, like to congratulate the organizers of the III Meeting of the Mixed Network of

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<sup>1</sup> This is the author's keynote presentation during the III Meeting of the Mixed Network of Parliamentarians and Civil Society for the Human Right to Education in Latin America and the Caribbean, held in San Salvador, El Salvador, on 15-17 October 2019. While the analysis was produced before the COVID-19 crisis, it contains important insights and recommendations for the long-term financing of education as a human right.

<sup>2</sup> Established under various international human rights conventions, notably, the United Nations Educational, Scientific and Cultural Organization's Convention against Discrimination in Education, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, the right to education lays down obligations for the State to respect, fulfill and safeguard it.

Parliamentarians and Civil Society for the Human Right to Education in Latin America and the Caribbean for addressing this theme of critical importance.

### **Trend towards decreasing public investment in education**

Public policy responses to the need and importance of financing education remain inadequate. One witnesses stagnation or even budget cuts in education. Governments seem to be abdicating their *core responsibility* for the provision of education and its financing, relying on private providers of education. In some countries, public authorities support and even provide subsidies to private schools and educational establishments. Privatization thus works as a dissuasive force and governments devote lesser resources to education under the pretext that private education is available. As a result, the public education system is shrinking. Quality of education in public schools is adversely affected due to scant resources and inadequacy of funds for necessary quality infrastructural facilities and quality imperatives are not met for want of adequate resources.

As a result of mushrooming of private providers in education, the phenomenon of ‘edu-business’ is getting entrenched in many developing countries. Individual proprietors or profit-seeking corporate houses are building in-roads in education at all levels, running private education establishments for lucrative purposes. Privatization of education and its commercialization is assuming alarming proportions, with scant control by public authorities.<sup>3</sup> This has evoked widespread concern. The International Organization of the Francophonie as well as a number of civil society organizations including the Global Partnership for Education, OXFAM and Education International have expressed the need to contain this phenomenon and save education as an essential public service. Safeguarding the right to education and public investment in education vis-à-vis forces of privatization is a key issue in discussion on regional and international architecture for financing education. It necessitates strong public policy responses and stringent regulatory measures. ‘Edu-business’ has no place in a country’s education system, and under no circumstances should public authorities give any subsidy or financial support to private providers of education.

### **State obligations for financing education under human rights law**

The trend towards decreasing public investment in education in several developing countries denotes non-fulfillment of State obligations for financing education under human rights law. It runs counter to governments’ responsibility for provision of education as a core public function and for the realization for the right to education for all without exclusion or discrimination. It also shows that governments are not assuming their moral responsibility in keeping with their political commitment to the 2030 Education Agenda, pledging to ensure good quality public education free of charges for all at least till secondary level. Commitments by governments to the 2030 Education Agenda also carry their responsibility to provide necessary resources.

State obligations to ensure the provision of adequate resources to overcome constraints on the realization of the right to education consistently figure in the work of the United Nations human rights treaty bodies. The Committee on Economic, Social and Cultural Rights<sup>4</sup> and the Committee

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<sup>3</sup> See United Nations General Assembly, Right to education, Note by the Secretary-General. Report of the Special Rapporteur on the right to education, Geneva, 24 September 2014 (A/69/402) and Human Rights Council, Report of the Special Rapporteur on the right to education, Kishore Singh. Protecting the right to education against commercialization, Geneva, 10 June 2015 (A/HRC/29/30).

<sup>4</sup> The United Nations Committee on Economic, Social and Cultural Rights has emphasized that even where the available resources are demonstrably inadequate, the obligation *remains* for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. See The Nature of States

on the Rights of the Child have often expressed concern about declining educational standards due to lack of State investment in education and have recommended that the resources allocated to the education sector should be increased. The Committee on the Elimination of All Forms of Discrimination against Women has also systematically urged States to increase investment in education as a fundamental human right and as a basis for the empowerment of women. The State responsibility to devote maximum resources for the realization of human rights has thus been expounded by the United Nations human right treaty bodies. Besides, the recommendations resulting from the Universal Periodic Review of the Human Rights Council for the provision of increased resources to education further confirm the wide recognition of financing education for the fulfillment of human rights obligations. These obligations have special significance as regards the right to education which is an overarching right, indispensable for the exercise of all other human rights.

Providing maximum resources for the realization of the right to education is all the more important, given that education is a core public function of the State.<sup>5</sup> Education deserves high priority in terms of public funding for several reasons. Both the individual and the society are beneficiaries of education, which is of key importance for empowering the individual and transforming societies. Education is a foundation of human development. It is also a public good. The experience shows that the growth in the Human Development Index<sup>6</sup> is associated with growth in public spending on education. Investment for the realization of education as a human right is the best investment a country can make.

International instruments lay down broad norms as regards State responsibility for investing in education. The Recommendation concerning the Status of Teachers (1966) recognizes the need for high priority to be given in all countries to setting aside, within the national budget, an adequate proportion of national investment for the development of education.<sup>7</sup> In this respect, it is important to bear in mind stipulations in the Incheon Declaration, adopted by the Ministers of Education from all over the world in May 2015, which lays down that a minimum proportion of national budgets (15 to 20 percent) or share of gross domestic product (GDP, 4 to 6 percent) should be dedicated to education. These provisions are important in terms of the 'soft-law' for financing education as a public good.

### **National legal framework for financing education**

National policy framework for financing education in keeping with the State obligations and political responsibility of governments is an important issue in discussions on regional and international architecture for financing education, especially the Sustainable Development Goal 4 on Education – SDG4 - of the 2030 Agenda for Sustainable Development. As mentioned in the Addis Ababa Action Agenda for financing development, financing the SDGs is in the first place the responsibility of a country: “each country has primary responsibility for its own economic and social development”<sup>8</sup> and for “setting nationally appropriate spending targets for quality

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Parties' Obligations (Art. 2, Para. 1, of the Covenant), General Comment 3, adopted by the Committee on Economic, Social and Cultural Rights on 14 December 1990, Fifth session (para. 11).

<sup>5</sup> The Supreme Court of the United States of America ruled that: “Providing public schools ranks at the very apex of the function of a State”, and that “Education is perhaps the most important function of State and local governments.” *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct.686, 98 L.Ed.873 (1954), as cited in *Education Law*, Education Series (New York, Law Journal Press, 2002), Chapter 4.

<sup>6</sup> United Nations Development Programme, *Human Development Report 2013: The Rise of the South: Human Progress in a Diverse World* (New York, 2013), p. 78.

<sup>7</sup> International Labour Organization and United Nations Educational, Scientific and Cultural Organization, Recommendation concerning the Status of Teachers (1966), para. 10 (l).

<sup>8</sup> The Addis Ababa Action Agenda of the Third International Conference on Financing for Development, para. 9.

investments in essential public services for all.<sup>9</sup> The Addis Ababa Action Agenda has underlined the need for “the enormous investment needs”<sup>10</sup> for the benefit of the vast majority of poor living in rural areas and for “cohesive nationally owned sustainable development strategies, supported by integrated national financing frameworks...”<sup>11</sup>

In accordance with the State obligations under human rights instruments as well as political commitments by governments for financing education, it is incumbent upon them to ensure that these are reflected in national legal system. Provisions for financing education in a country’s constitution, national legislation and educational policies provide an enduring legal basis for public funding of education. The adoption of a national legal framework for financing education in a country indicates the importance and priority given to the right to education.

In considerations pertaining to integrated national financing frameworks, a distinction should be made between general, basic education and technical education including technical and vocational education and training (TVET). A differentiated approach is required as regards the arrangement for financing TVET. In the case of general, basic education, it is incumbent upon public authorities to assume full responsibility for the provision of public education and ensure adequate funding. As regards the TVET, a differentiated approach is more appropriate since this stream of education necessarily involves collaborative arrangements with industry and entrepreneurs who are key stakeholders for developing competencies and skills needed in a country in order to meet the challenges of an increasingly globalized economy and the rising aspirations of youth and this in a broader perspective on lifelong learning. Industry is an essential partner in financing of TVET for providing infrastructural facilities and equipment and collaborating with public authorities and giving grants or financial support to vocational students for their training in enterprises. Thus, in the national legal framework for financing education, it is necessary to provide for specific modalities of funding TVET, involving industry in conjunction with public funding under the overall coordination of education authorities. This is especially necessary for financing skills development programmes.

### **Non-State actors and resource mobilization for education**

The State bears primary responsibility for education. However, education and investment in education is a social responsibility as well, involving non-State actors. Thus, reflections on investment in education should also relate to Corporate Social Responsibility (CSR) which is a widely recognized concept. By virtue of CSR, it is expected of the enterprises in a country to contribute to social development. In this, special consideration can be given to education and the enterprises can be encouraged to contribute resources for expanding opportunities of public education. Education can, thus, become a beneficiary of CSR. However, it is necessary to ensure that CSR remains genuine and is not allowed to be manipulated to surreptitiously benefit personal or business interests. National legal and policy framework applicable to CSR must provide for greater accountability, taking due care to ensure that social interest remains inviolable in CSR *modus operandi*.

Schemes of incentives by way of exemption from taxation on income donated for education or invested in education are also an important modality of mobilizing resources for education. Moreover, public investment in education can be enhanced by mobilizing additional resources from contributions of local bodies, private donors and communities through institutional

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<sup>9</sup> The Addis Ababa Action Agenda of the Third International Conference on Financing for Development, para. 12.

<sup>10</sup> The Addis Ababa Action Agenda of the Third International Conference on Financing for Development, para. 13.

<sup>11</sup> The Addis Ababa Action Agenda of the Third International Conference on Financing for Development, para. 9.

mechanisms that supplement government funding. Actions of governments, of all public entities, partners and stakeholders in education should be inspired by social interest and education as a foundation of human development.

Philanthropy is yet another source for mobilizing resources for education. “Philanthropy, i.e., voluntary activity by foundations, private citizens and other non-state actors, has significantly expanded in its scope, scale and sophistication.”<sup>12</sup> Policymakers have recently shown considerable interest in a class of development financing opportunities called “blended finance” that pool public and private resources and expertise like structured public-private funds and innovative “implementing partnerships” between a wide range of stakeholders — including governments, civil society, philanthropic institutions, development banks and private institutions. “It is important to note, however, that poorly designed public private partnerships and other blended structures (that pool public and private resources and expertise) can lead to high returns for the private partner, while the public partner retains all the risks.”<sup>13</sup> Careful consideration needs to be given to the appropriate use and structure of instruments for blended financing as well as policy framework for ensuring that the philanthropic contributions are genuinely devoted to public interest and for preventing any lucrative business gains in the name of philanthropy.

### **Multi-stakeholders, public-private partnerships and issues in financing education**

The need and importance of preserving education as a public good and public interest in education should be kept in the forefront as regards multi-stakeholders and provision of education through public-private partnerships. Such arrangements do not change the nature of the right to education or the State obligations for devoting maximum possible resources to education and for the SDG4. Human rights are not a matter of provision of services under contractual arrangements and subject to payment and market forces. The right to education as a human right should not be compromised in arrangements bringing on board multi-stakeholders and provision of education through public-private partnerships. Such arrangements should, in all situations, be underpinned by social responsibility in education, where public interest is of paramount importance. This should be an overriding consideration with respect to the United Nations Initiative for Global Partnerships which stipulates that “partnerships are voluntary and collaborative relationships between various parties, both public and non-public, in which all participants agree to work together to achieve a common purpose (...).”<sup>14</sup> The concept of education as a public good and as a foundation of human development should remain central to the ‘common purpose’. This is of critical importance as the multi-stakeholder partnerships carry potential risks for education to be unduly shaped by corporate interests and can pave way for its commercialization. Public policy must ensure that multi-stakeholders and all public-private partnerships are harnessed to broader public interest, with “strong public institutions” and a “sound regulatory framework”<sup>15</sup>, as recommended by the Organisation for Economic Co-operation and Development (OECD).

### **Human rights-based approach to international cooperation and development assistance**

International cooperation and development assistance for overcoming obstacles encountered by developing countries in the implementation of SDG4 is an important consideration in the

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<sup>12</sup> United Nations General Assembly, Report of the Intergovernmental Committee of Experts on Sustainable Development Financing (15 August 2014), para. 133.

<sup>13</sup> Ibid., para. 135.

<sup>14</sup> United Nations General Assembly, Towards global partnerships: a principle-based approach to enhanced cooperation between the United Nations and all relevant partners (A/RES/68/234).

<sup>15</sup> The Organisation for Economic Co-operation and Development, *Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships* (Paris, 2012).

architecture for financing education. This calls for earnest promotional measures to be taken in favor of hundreds of millions of children who are victims of poverty along with schemes of social protection - “in particular on the needs of the poorest and most vulnerable and with the participation of all countries, all stakeholders and all people.”<sup>16</sup> The international principle of solidarity underlying the Agenda provides a basis for financial support and assistance to developing countries which can offset the investment deficit in education and sustain funding over the long term. Any regional or international architecture for financing education must lay emphasis on the need to ensure that international cooperation - bilateral or multilateral – should be respectful of the human rights law and international legal framework for the right to education and not compromise or result in its violation.

### **Shaping regional and global architecture for financing education: role of the Parliamentarians**

Global architecture for financing education is a key issue today. The Addis Ababa Action Agenda, already mentioned, is a landmark development for advancing in that direction. The Joint Declaration of the Group of Twenty (G20) Education, Labour & Employment Ministers (2018) also recognizes the need for “appropriate funding” and the “vital importance” of “adequate levels of domestic and international investment in education” in order “to achieve inclusive, equitable and quality education as well as lifelong learning opportunities for all.”<sup>17</sup>

Edification of such architecture would wield enormous influence as regards regional and national architecture and the issues involved deserve to be looked at critically. An important role devolves upon parliamentarians in this respect. As public figures, they can raise public debate and engage themselves in dialogue with governments with a view to giving shape to a national, regional and global architecture for financing education, embracing the cause of the right to education. The primary responsibility for funding education lies with national governments. International investment and funding are only complementary and when they are promoted tendentiously to foster private funding conducive to privatization in education, or when they come with strings, education and the cause of human-rights based development in a broader perspective must be safeguarded against such hidden agenda. This must remain a key consideration in the architecture for financing education. The issues involved are visible in the push given to ‘for-profit’ education recently by the “Global Partnership for Education (GPE) Private Sector Engagement Strategy Paper: engaging the private sector to support the delivery of GPE 2020”, and are a matter of deep concern. This GPE Strategy argued that: “While governments must make basic education available free at the point of use, this does not render fee-charging education illegal, nor does it preclude the use of public funds to subsidize for-profit education providers.” This position is blatantly misleading and absolutely ill-founded as regards governments’ commitment to SDG4 or obligations of States for the right to education under human rights law. Attempts for legitimizing “for-profit” education are absolutely contrary to the letter and spirit of the 2030 Education Agenda, formulated in the Incheon Declaration. This Declaration expresses the collective commitment by

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<sup>16</sup> United Nations General Assembly, Transforming Our World: the 2030 Agenda for Sustainable Development (A/RES/70/1). See also, Programme of Action for the Least Developed Countries for the Decade 2011-2020, adopted by the Fourth United Nations Conference on the Least Developed Countries, Istanbul, 9-13 May 2011 (A/CONF.219/3/Rev.1), paras. 74.2 (a) and 1 (c), and para. 72.1 (c).

<sup>17</sup> Ministerial Declaration, G20 Labour and Employment Ministers’ Meeting 2019, Matsuyama, Ehime, Japan, September 2, 2019. This Ministerial Declaration acknowledges the “role of existing and potential international mechanisms for financing education” with “spaces for increased dialogue between different agents in the international architecture for financing education, including the private sector, social partners and civil society” and commends “the endeavour of creating conditions for the emergence of innovative instruments for financing education in line with the 2030 Agenda.”

the Ministers of Education to “ensure the provision of 12 years of free, publicly funded, equitable quality primary and secondary education.” As such, it is incumbent upon governments to discharge their financial obligations fully for providing good quality public education free of costs to everyone at least till secondary level as an inalienable human right.

A recent in-depth study<sup>18</sup> has thrown light on how education as a sector is increasingly being opened up to profit-making and trade, and to agenda-setting by private, commercial interests that conceptualize the learner as a consumer and education as a consumer good. The GPE may still make a renewed attempt to introduce the idea of ‘for-profit’ education to give free hand for the prevalence of ‘edu-business’. It is critically important to take a determined position against the advocacy for pushing in the direction of ‘for-profit’ education, commercializing education and making it a commodity. Any such move must be opposed vehemently as it is an affront to the right to education as a human right. Parliamentarians as custodian of laws can play a leading role in such endeavours so that international norms and principles for the right to education are not compromised and governments remain respectful of their legal obligations and moral responsibility in terms of human rights law as regards the architecture for financing education.

### **Concluding remarks**

In conclusion, may I propose that it will be opportune if an initiative is taken with a view to forging a Global Alliance of Parliamentarians, Intellectual Community and Civil Society Organizations for the advocacy of a global architecture and framework for financing of education which is fully respectful of the right to education. Such a Global Alliance would have the task of world-wide advocacy in support of the architecture for financing education, centered around 10 Principles:

1. Human rights law enjoins upon governments the obligation to devote maximum resources for the realization of human rights, all the more so as regards education which as a human right is essential for the exercise of all other human rights.
2. Any international, regional or national architecture for financing education should be fully in conformity with the international legal framework of the right to education and norms and principles established by international human rights conventions. National legislation should lay down human rights-based conditions for accepting financial assistance from any external source – public or private.
3. In keeping with their responsibility under human rights law, governments should adopt a national legal framework for financing education, reflecting the stipulations in the Incheon Declaration (May 2015) adopted by Education Ministers from all over the world, that at least 15 to 20 percent of the national budget or 4 to 6 percent of GDP is devoted to education. Governments should ensure that in addition to recurring expenditure, the national budget for education as a matter of norm also meets quality requirements.
4. National budget allocations for education must not be decreased under any circumstances. Both the individual and society are beneficiaries of education which is a foundation for human development. It is also the future of a country.
5. In mobilizing national resources for education, public authorities should devise modalities of raising public funds, with schemes such as tax incentives for education. Corporate Social

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<sup>18</sup> Ian Macpherson, Susan Robertson and Geoffrey Walford, *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia* (Oxford, Symposium Books, 2014).

Responsibility and the philanthropic contributions which are of key importance can be harnessed to support government efforts for the provision of public education and its financing.

6. Governments should map out and appraise themselves at the country level on the scale of financial resources required for progressively realizing the right to education as well as the implementation of SDG4 rather than depending upon any external estimate of funds required as these can tendentiously show the need for inevitable dependence on global private partnerships to the detriment of national capacity.

7. Education is a public good and a core responsibility of governments and under no circumstances governments should allow 'for-profit' education, nor should the phenomenon of 'edu-business' engendered by private providers of education have any place in a country.

8. In arrangements bringing on board multi-stakeholders and provision of education through public-private partnerships, it must be ensured that education is not made subservient to private interest. Governments must ensure that public interest and social responsibility in education are not undermined.

9. It is expected of developed countries to extend financial support to developing countries, especially to least developed countries and enhance bi/multilateral aid for education as part of Official Development Assistance. This should be fully respectful of protecting the human right to education and should be withheld in the case of privatization of education, undermining education as a fundamental human right and harnessing education to private interest to the detriment of public interest.

10. Global Partnership for Education (GPE) should be brought under the umbrella of the United Nations Educational, Scientific and Cultural Organization (UNESCO) which is the United Nations agency with principal role and responsibility in the field of education. Any other new international instance or structure for financing education purportedly as part of the international architecture should be made integrally part of funds-in-trust of UNESCO with the objective of supporting the public education system in developing countries.

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