1. Developing human rights guiding principles on State obligations regarding private education

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A NEW REFERENCE ON THE RIGHT TO EDUCATION

In 2019, civil society observers from around the world gathered in Ivory Coast as the human rights and education experts seated in front of them raised their hands and began to applaud, smiling and visibly relieved. Following two days of meticulous review and impassioned debate of nearly one hundred principles detailing the obligations of States to provide public education and regulate private involvement in education, their clapping signalled the unanimous adoption of the *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* (hereafter referred to as the “Abidjan Principles”). This moment, on 13 February 2019 in Grand Bassam (near Abidjan, in Ivory Coast), marked the culmination of three years of participatory consultations, rigorous background research, and successive drafts involving hundreds of people and organizations globally. It signified a landmark development for the right to education, with implications for education policies and delivery. In the context of new and increasingly complex governance arrangements and processes in education and with the growing involvement of various private actors and interests in the provision, management, and funding of education in particular, the Abidjan Principles offer a reference point and a much-needed tool to address the organization of education systems.

The days immediately following the adoption conference, hosted by the Ministry of Education of Ivory Coast, with the presence of the

United Nations (UN) Special Rapporteur on the right to education and former Minister of Education of Burkina Faso, Koumba Boly Barry, saw a heightened sense of momentum as the news travelled around the world. In the months that followed, the Abidjan Principles were recognized by the African Commission on Human and People's Rights (ACHPR, 2020) and the UN Human Rights Council respectively in resolutions addressing education (2019), analysed by the UN Special Rapporteur on the right to education and annexed to her report (UN Special Rapporteur on the right to education, 2019). A year later, further human rights bodies have recognized the Abidjan Principles, such as the Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights, and they have begun informing significant global policy decisions, including the Global Partnership for Education's (a multi-stakeholder partnership and funding platform) private sector engagement strategy. In Uganda, a landmark High Court judgement faulting the government's policy on public financing for secondary education advised the State to seek guidance from the Abidjan Principles in developing its education policies. Within a year of their adoption, the Abidjan Principles stood out among human rights principles for the broad support they received, from experts¹ and human rights bodies alike.

Rigorous research laid the groundwork for the development of the Abidjan Principles. This volume brings together a suite of chapters based on background papers originally commissioned and used as internal references by the drafting committee for the process by the Open Society Foundations Education Support Program, in collaboration with the five organizations that served as a secretariat supporting the process to develop the guiding principles, including Amnesty International, the Equal Education Law Centre, the Initiative for Social and Economic Rights, the Global Initiative on Economic Social and Cultural Rights, and the Right to Education Initiative. These background papers did not comprehensively cover all topics or geographies; rather, they sought to unpack and clarify some of the most difficult and underexplored concepts and questions integral to the right to education and the involvement of private actors in education from the fields of social science and law. They were written to inform the Abidjan Principles and, as such, formed part

¹ The text was signed by over 50 eminent experts, including some of the most authoritative individuals in international human rights law.

of the internal process for their development. Importantly, they were not the only literature consulted by the drafters and are not exclusive to other points of view. This volume synthesizes their findings into chapter form to serve as a standalone resource for readers interested in education policy issues, whether from a legal, social sciences, or operational perspective.

This introductory chapter explains the rationale and logic behind this book. In doing so, it provides the background to the Abidjan Principles, why and how they were developed, and the significance of the process.² It delves into the topics covered by the background research and discusses how the chapters respond to key questions in relation to State obligations for the provision of public education and the regulation of private involvement in education, including liberties in education, the right to public education, and public-private partnerships (PPPs), among others.

HOW THE ABIDJAN PRINCIPLES CAME ABOUT

The growing involvement of private actors in education has expanded globally over the last decades, particularly since the neoliberal reforms of the 1980s and 1990s, accelerating in some regions during the 2000s (Verger et al., 2016; Srivastava 2016). This significant increase in the scale and scope of private involvement, and concomitant changes in the management, funding, and provision of education, has, in many places, transformed the State role and the governance and regulation education systems (Ball 2012). While private actors have increasingly come to dominate policy spaces, these decision-making processes almost entirely exclude those on the receiving end – including teachers, parents, and students. In many cases, whether as a result of commercial interests or inadvertently, these decisions have led to segregation and inequalities in education, poor labour conditions, and little recourse to accountability.

Private actors are involved in many different aspects of education. Increasingly, they not only deliver services contracted and subsidized

² The Abidjan Principles are available in their full form at <https://www.abidjanprinciples.org>. The annex in this volume includes the ten Overarching Principles. (The drafting committee worked throughout the process on the full Abidjan Principles, open to consultation and comments. Towards the end of the process, the committee summarized the full Abidjan Principles into ten Overarching Principles to make them more accessible. The Overarching Principles should not, however, be read as capturing the full content and nuance of the full Abidjan Principles.)

by the State, but also insert themselves as key partners in shaping and implementing education policies, policy discourse, and practices. Arrangements involving the private sector range from the introduction of quasi-market mechanisms through, for example, voucher schemes and charter schools (both forms of PPPs in education), to modalities such as performance-related management and pay. The type of private actors involved has also become increasingly complex. The last decade has seen a rapid expansion of a range of new actors, from small local providers to transnational for-profit commercial school chains.

Private providers “may be for-profit or charitable, fee charging or free, driven by companies and entrepreneurs or by communities and non-governmental organizations, formal or informal, supported by the State or totally independent” (Aubry & Zondani, 2017: 200), each with different motives and relationships to the State (Robertson et al., 2012). In countries in the Global South, the rapid and *de facto* increase in private delivery has largely occurred in the form of low-fee private schools (LFPS) targeting poor households (Srivastava 2013; Verger et al., 2016), increasingly supported through PPP arrangements (Srivastava 2016), such as in Pakistan, Uganda, and Liberia. More recent expansions include private funding and investments by corporations, private foundations, social entrepreneurs, think tanks, consultancy firms, and other actors in the provision of schooling or education services (Fontdevila et al., 2019; Srivastava & Read 2019).

Various factors have driven these changes. Underpinning these developments is the idea that education systems will be more efficient and effective if they operate like free markets and are reorganized using principles of choice and competition (Ball 2012), the assumption that private education is better than publicly provided education, and the conception of education as primarily an individual good that contributes to forming human capital (Adamson et al., 2016). In developing countries, a key driving factor behind education privatization over the last decade has been the support for private schooling through development aid and private investments. Ultimately, these changes have led to the opening up of education sectors to “profit-making, trade and agenda setting by private, commercial interests” (Macpherson et al., 2014: 9), promoted and supported – through funding, technical assistance, and research – by key multilateral and bilateral organizations and agencies as fundamental to economic growth and competitiveness.

Intense policy debates have surrounded the impact of the growth of private involvement in education, abetted in particular by increased

empirical evidence scrutinizing the phenomenon. Numerous studies have documented the rise of different forms of private provision and involvement in different contexts around the world, attempting to engage and address the complexity of the issues, in terms of definition and forms, motivations and logics, and the contested meaning of dimensions being assessed, one obvious one being “quality”. One initiative that sought to “contribute to a better understanding of the nature and effects of privatization in and of education” (Macpherson et al., 2014: 22) was the Privatisation in Education Research Initiative (PERI) that ran from 2010 to 2015. This initiative offered an open platform for experts, civil society, private actors, government, education practitioners, and other education stakeholders to provide and critically debate evidence on the private involvement in education. Through regional conferences, civil society workshops, summer schools, and research in developing countries, PERI sought to examine and discuss the social justice implications of the changes in the governance, provision, and funding of education services.

Building on PERI’s work and findings raising major concerns about the impacts of education on equity, a number of civil society organizations from the education and human rights fields and other actors endeavoured from 2013 to strengthen the human rights perspective to the debate. A large part of the work initially entailed unpacking the scope of the right to education and determining what it means in practice. One of the main assumptions behind this approach is that, while open to interpretation, the nearly universally ratified and legally binding nature of human rights law related to education provides a broadly uncontested framework to address what Aubry and Dorsi (2016) term the “normative privatisation debate” to determine under what conditions private involvement in education may be acceptable or not. To do so, civil society organizations and researchers undertook reviews of case law, national law, and other sources of interpretation of the law, such as General Comments and resolutions, relevant to private actors in education.

In parallel, these organizations also conducted empirical research – through the review of laws, policies, and secondary literature – in over a dozen countries in the Global South to test and refine the human rights assumptions and assess the impact of the rapid expansion of LFPS, commercial school chains and various PPPs on the right to education. This research was presented, alongside State reports, to regional and UN human rights bodies, who provided their own analysis and recommendations. These quasi-legal interpretations, considered within the scope of international law, have in turn contributed to better understanding

of applicable human rights standards. At that time, the former United Nations Special Rapporteur on the Right to Education, Kishore Singh, also produced three landmark reports addressing education privatization (UN Special Rapporteur on the right to education, 2014, 2015a, 2015b), and the UN Human Rights Council started addressing the issue in its annual resolution on the right to education.

This body of work has enabled a deeper understanding of how human rights standards apply to issues of private involvement education and shaped an evolving human rights analysis framework (Aubry & Dorsi 2016), called the “Privatisation in Education Assessment Framework” (PAF). Developed jointly by the Global Initiative for Economic, Social and Cultural Rights and the Right to Education Initiative, this assessment tool sets out the legal criteria or conditions that the involvement of private actors in education should not negatively affect. Specifically, where private actors are involved in education, States should ensure that, in order to meet human rights standards, such private actors should: (1) not be a source of segregation, discrimination and inequalities; (2) provide an alternative and not undermine access to free quality education; (3) preserve the humanistic nature of education; (4) conform to minimum standards established and enforced by governments; and (5) be regulated by norms developed following due process and participation in education decision making. While this assessment framework provided an initial grounding, it was considered insufficiently comprehensive and rigorous, and lacked the political weight and legitimacy of a legal text that could be used, for example, in litigation. As such, in 2015 a process was initiated to develop a set of human rights guiding principles, with the aim of solidifying the initial unpacking of the human rights framework and developing a tool that could be implemented in practice (Aubry, 2018). This process would yield the Abidjan Principles.

WHAT ARE THE ABIDJAN PRINCIPLES?

The Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education – or the Abidjan Principles – consolidate and reassert the existing obligations of States to guarantee the right to education, as set out under human rights law and standards. Specifically, they aim to unpack and clarify the normative content of the right to education in the context of the involvement of private actors in education. The obligations of States to realize the right to education for all is set out in the 1948 Universal

Declaration of Human Rights and further elaborated in the legally binding 1966 International Covenant on Economic, Social and Cultural Rights. Further treaties, conventions, judicial and quasi-judicial decisions, and other legal sources refer to and elaborate on the right to education, and many national constitutions protect the right to education. In recent years, courts and human rights mechanisms have increasingly referred to – and expressed concern about – the challenges and implications of growing private sector involvement in education and have highlighted the obligations of States to protect education systems against commercialization. These include, among others, UN and regional human rights treaty bodies and UN Human Rights Council resolutions. Together these have contributed to providing clarity on how the right to education applies to particular situations and complex dynamics that affect its implementation, through General Comments, concluding observations, resolutions, and reports (GI-ESCR, 2017).

The Abidjan Principles bring this vast body of human rights law together and offer reference points or guidance – set out in 97 principles – on how the right to education should be realized in the context of the challenges posed by changing contextual realities in education, including the growth of private provision. In particular, the Abidjan Principles offer a way to navigate potential tensions between different dimensions of the right to education protected under the human rights framework at the heart of the current policy debates on education privatization. One of these is a tension that may exist between States' obligations to ensure the provision of free quality education for all without discrimination and segregation and the liberty of parents to choose or establish a private school separate from the State – which are both recognized under human rights law.

Human rights principles can carry considerable political and legal weight. As a text reflecting existing provisions contained in various sources of international law already binding on States, the Abidjan Principles apply to all governments legally bound by the right to education under domestic or international law – virtually almost all States in the world. As the UN Special Rapporteur on the right to education (2019: para. 35), Dr Boly Barry, put it, the Abidjan Principles “constitute a significant new tool” to guide States in the implementation of the right to education. Communities, education providers, multilateral organizations, human rights bodies and courts, and other stakeholders can also use them to advocate for the reform of laws, policies and practices, to claim

rights, and to hold States to account, as detailed by Adamson, Dorsi, and Carmona in the concluding chapter of this volume.

What Do the Abidjan Principles Say?

The 97 Guiding Principles that comprise the Abidjan Principles offer States and other actors a reference frame for addressing tensions that may emerge from changes in the governance of education and in the context of growing privatization and commercialization of education. Organized in six sections, they reassert State obligations to respect, protect, and fulfil the right to education. Section I covers general provisions, including offering a definition of public and private actors (Guiding Principles 2 and 3). Section II recalls the general State obligations with regard to the right to education, including regarding equality and non-discrimination (section II.B). Two particularly important sub-sections (II.C and II.D) outline the right to public education and related financing obligations. As discussed further in this chapter, the clarification of States' obligations to provide free, public education of the highest attainable quality is a major contribution of the Abidjan Principles.

Section III is at the core of the Abidjan Principles and it contains the Principles related to private sector involvement in education, including States' obligations to regulate the private involvement in education. This includes a noteworthy list of the minimum standards that States should address in the regulatory framework (Guiding Principle 55).

Section IV addresses financing issues related to private actors. It is arguably one of the most crucial parts of the Abidjan Principles, as it addresses an issue with deep implications for power relationships in education: the transfer of funds between public and private actors. It delineates landmark substantive, procedural, and operational requirements for any State that wishes to support private actors, which must be met.

Lastly, sections V and VI include the guiding principles related to accountability and monitoring, and to the implementation of the Abidjan Principles themselves. Importantly, the Abidjan Principles also apply in instances of international and bilateral aid and cooperation.

THE SIGNIFICANCE OF THE PROCESS

The development process of the Abidjan Principles was unique in its simultaneously rigorous and broadly participatory approach. From 2015 to 2018, a series of participatory regional, thematic, community, and

online consultations were convened involving hundreds of stakeholders from around the world, including policy makers, civil society, teachers, private sector providers, international organizations, human rights lawyers and education experts, and, crucially, affected communities. The drafting committee prepared a first iteration of the Guiding Principles based on material from these consultations and other research (including the background papers that informed the chapters) that a group of independent experts reviewed and finalized.

In facilitating the process for their development, the secretariat engaged a diversity of experts from various backgrounds and disciplines, and with different points of view, to try to ensure the balance and quality of the text. Several of the experts involved, including the drafting committee members, have intimate knowledge of the challenges that private schools face, experience in running such schools, and a deep understanding of the changes in education governance and implications for the delivery of free, quality education in various contexts. This diversity is important especially for these Guiding Principles as they address a highly complex issue involving a multiplicity of actors, dynamics, and relationships that play out disparately in different contexts. Important to note is the leadership for this process from the Global South, reflected in the secretariat organizations, the drafting committee, and the experts who adopted the text.

The consultation process intentionally sought to capture a variety of perspectives, positions, and experiences and to ensure that the text was reflective of different contextual realities. It tried to create a space for debate and critical reflection on a highly contentious and divisive topic by bringing different stakeholders together in dialogue with each other (de Koning, 2018) and to provide an opportunity for those who normally do not participate in policy decisions to weigh in on a tool that could help to affect their education. The consultation process also contributed to building some level of consensus among a diversity of actors, as well as ownership of the concepts in the text among these actors. This approach was critical for the contextual relevance of the Abidjan Principles and to support their implementation.

This methodology – involving multidisciplinary dialogue, the connection between empirical and normative reflections, encouraging diversity, and including the voices of those not often consulted or heard in policy spaces – rests upon an important assertion, from a legal perspective, that human rights law is made to be used in practice and in context, and to serve everyone equally. It is also the assumption behind this book.

PROVIDING THE FOUNDATION AND BACKGROUND TO THE ABIDJAN PRINCIPLES

The Methodological Approach

The chapters in this volume reflect not only the significance of the Abidjan Principles for education policy and delivery, by tackling some of the most pertinent dimensions of the debate on the growing involvement of private actors in education, but also the rigour of the process for the development of the Guiding Principles, in particular the depth of the conceptual and normative deliberations that informed their substance.

The diversity of the background papers behind the chapters of this book is also significant in at least three respects. First, this book is a truly multidisciplinary effort, across disciplines that rarely produce academic work together. Four of the chapters (Carmona; Mowbray; Zinigrad; and Fredman) were produced by authors in the legal field, while the other four were written by researchers in social sciences (Härmä; Verger, Moschetti, and Fontdevila; Oduor-Noah; and Lange).

The legal chapters propose a normative perspective on the issue unearthed by the empirical research, by exposing legal reasoning and analysis. They help understand what is acceptable or not under the existing legal framework. The social science chapters provide the empirical grounding to the work; the contextual realities that the normative framework should address. They synthesize existing literature, offering insights into some of the challenges within education systems today that human rights law could participate in responding to. They add to existing literature reviews that were also consulted as part of the development of the Abidjan Principles (e.g. Day Ashley et al., 2014; Aslam et al., 2017).

This multidisciplinary approach mirrors the Abidjan Principles process itself. The group of experts that adopted the Abidjan Principles, although mostly made up of lawyers to ensure the legal rigour and legitimacy of the text, also included non-legal education experts who provided inputs and advice to the drafter during the process and participated in the adoption. Their participation helped ensure that the education issues were addressed, that all the standards included were realistic, and that the language could be accessible to education policy makers and stakeholders.

As productive and essential as the collaboration between these two broad fields – social sciences and law – is, it is never easy. Collaboration and dialogue between disciplines requires participants to come out of

their comfort zone, to challenge themselves with new concepts, ideas, and approaches and to embrace new terminology and definitions. Readers of this book will themselves likely use one approach more often than another. The cross-analysis of issues of privatization in this book offers unique insights that may help further this dialogue.

Second, the chapters also reflect the geographical diversity sought out by the process for the development of the Abidjan Principles. The social science chapters review the situation in a range of contexts, including geographies with a dearth of evidence. Lange's chapter on the growth of private actors' involvement in francophone countries is, in this regard, a significant contribution to the field otherwise largely informed by evidence from anglophone countries and researchers. The authors themselves come from a diversity of countries and regions, including Kenya, South Africa, Israel, Chile, Argentina, Australia, and Europe.

Third, the chapters, as do the Abidjan Principles, seek to find a balance between perspectives on the issue of private involvement in education. Some of the authors work directly with or assist some private schools (such as Härmä), or to research and support parental freedom in education (Zinigrad). Others advocate directly for the improvement of public education (Oduor-Noah), or have extensively examined and critiqued market approaches in education (Verger et al.), while some of the authors are deeply involved in these debates (Fredman, Mowbray). The chapters in this volume explore a range of contradicting arguments, and, as such, this book offers a variety of perspectives across the chapters as well debates within them.³ This balance is an integral and crucial part of this book, and of the human rights approach to this issue.

Choosing Topics for Further Study

In this context with a large amount of extant literature, the choice of the topics for these chapters was based on two criteria: (1) addressing information or analysis gaps to better inform the drafters of the Abidjan Principles; and (2) examining the most complex issues that the Abidjan Principles seek to address and that require further reflection.

Carmona's chapter on the history and process of human rights principles offers a valuable reflection on the process for the development of

³ The full composition of the Drafting Committee can be found on: <https://www.abidjanprinciples.org/en/support/drafting-committee>.

the Abidjan Principles on the basis of a set of determining factors that may contribute to strengthening the legitimacy and implementation of human rights principles. The background paper behind the chapter was seminal for the secretariat and the drafting committee in informing and reflecting on the process. The chapters by Oduor-Noah (on the situation in East Africa) and Lange (on francophone countries) also largely respond to the first criterion. They provide a helpful synthesis of the situation on the ground and existing studies in those two regions. The five remaining chapters largely address the second criterion and help grapple with complex issues, such as parental rights, covered in the Abidjan Principles. The book is organized into two sections with the legal chapters in Part 1 and the empirical education chapters in Part 2. We describe each chapter's contribution briefly below to orient the reader.

PART I: THE CONTOURS OF THE HUMAN RIGHT TO EDUCATION

Chapter 2 on the Process and Legitimacy of the Abidjan Principles

Carmona's chapter explains and validates the legitimacy of the development process for the Abidjan Principles. Education stakeholders are often not familiar with guiding principles as an accepted legal tool within the field of human rights. Often referred to as non-binding "soft law", guiding principles are not treaties themselves, although they do contain treaty language, often drawing from multiple treaties. Furthermore, many outside the legal profession may not understand that principles can be crafted by different types of organizations. Carmona discusses how institutions such as the UN can commission guiding principles projects or, in this case, legal experts can adopt a set of principles independent of treaty bodies. Both examples are valid approaches with precedent. In the latter case, the chapter details how drafting bodies often present the guiding principles for recognition and use by formal UN and other international bodies, as has already happened with the Abidjan Principles.

Specifically, the chapter explains that the concept of legitimacy "exerts a pull toward compliance on those addressed" when they believe that an institution "operates in accordance with generally accepted principles of right process" (Carmona, Chapter 2, p. 34). She identifies five key elements on which the legitimacy of a guiding principles process depends:

1. independence and expertise of the drafters and signatories;

2. diversity of the drafters and signatories;
3. rigour and persuasiveness of the human rights principles;
4. practicality of the human rights principles; and
5. validation of the human rights principles (Carmona, Chapter 2, p. 34)

For each of these elements, she discusses how the Abidjan Principles have fulfilled, in some cases more than other guiding principles processes and documents, the requirements of these key areas. After outlining some critical decisions about the crafting of the text, Carmona foresees the possibility for endorsement of the Abidjan Principles by different stakeholders based on the comprehensive and long-view approach of the secretariat and the drafting committee.

Chapter 3 on State Obligations for Providing Public Education

Mowbray's chapter provides a ground-breaking contribution, from a legal point of view, on the relationship between human rights and public education. The legal community has long tiptoed around the question of whether a right to public services exists. Mowbray's breakthrough contribution draws from impressive and extensive research into the drafting history of human rights treaties and leaves little doubt that no other way exists to interpret human rights treaties than requiring that States provide, for everyone who wishes, a quality public education. Mowbray's chapter begins by "asking whether States have any obligation, under international human rights law, to provide public education". She concludes that this obligation does exist and that, because of laws of non-discrimination, States must make public education available to all. Mowbray makes this determination by questioning the understanding of "public" to include a range of institutions recognized by the State, run by the public, for the public interest. This enables inclusion of community schools, or schools run by local authorities, as well as the traditional schools run by the State. This analysis provided the backbone for the definition of public education (Guiding Principle 2) and understanding of the scope of the right to free, quality, public education (Guiding Principles 29 to 33) in the Abidjan Principles.

Furthermore, this obligation exists for States regardless of the presence of private actors, as described in her analyses of five different components of international law. Limitations exist, however, as States cannot require private schools to be free, nor interfere when they coordinate admission and provision towards certain types of students, such as those

of a particular linguistic background. Yet, because of these liberties of private institutions, a “purely private State education system would, according to the evidence, violate rights to equality and non-discrimination” (Mowbray, Chapter 3, p. 67). Because States also have “obligations not to take retrogressive steps with respect to enjoyment of the right to education” and States have public systems already in place, a shift towards a privatized system would likely represent a retrogression and therefore be “impermissible” (Mowbray, Chapter 3, p. 70). Overall, this chapter contributes an extremely important finding that States have a human rights obligation to provide free public education to all.

Chapter 4 on Parental Roles in Education

The increasing international focus on the right to education in this volume also requires a re-examination of the right of parents to influence the pre-tertiary education of their children, who are not fully entrusted with educational choices. International law splits this control between the parents and the State, as long as neither violates the child’s right to education. For instance, the 1966 International Covenant on Economic, Social and Cultural Rights recognized:

the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. (UNGA, 1966: 13.3)

The scope, meaning, limitations, and articulation with other human rights obligations of this principle was also a crucial question the drafters had to address. Zinigrad’s chapter on parental rights in education makes critical contributions in this regard, proposing ways to balance different dimensions of the right to education. This chapter played a crucial role for the understanding of Guiding Principles 47 to 60.

In particular, Zinigrad’s chapter analyses the parental side of the triangular relationship between parents, the State, and international law, addressing how parental interests or “choice” balances against the other two. He explains that parental rights can be interpreted in two main ways – as a *negative claim* and as a *limited positive claim*. As a negative claim, States “may, but are in no circumstances obligated, to realize the parental educational choices” (Zinigrad, Chapter 4, p. 81). As a limited

positive claim, States must provide “parents’ children the education of their choice” for “protected minority groups, and especially so to indigenous peoples” (Zinigrad, Chapter 4, p. 84). This designation is especially important to protect the rights of minority groups. However, Zinigrad points out that the substantive parental right does not mean that the public system must include religious education favoured by the family and any private schools must conform to the State’s educational standards.

Zinigrad concludes that, if the core education aim can include the parental prerogatives, then that choice receives precedence, unless the parents “oppose the promotion of tolerance, respect of rights, or basic civic virtue”, in which case the parental right is limited (Zinigrad, Chapter 4, p. 101). Situated within the larger education debate about parental “choice”, Zinigrad’s analysis shows that the State must allow for and even facilitate it in some cases, but with strict guidelines about who receives it and how it is provided, as reflected in the Abidjan Principles.

Chapter 5 on State Responsibilities Regarding Private Education

Two chapters in this volume address the much espoused and contested phenomenon of PPPs. This particularly important area involves potential reallocation of resources from the public to the private sector. Global education and training expenditures are expected in some cases to reach US\$10 trillion by 2030 (Holon IQ, 2018). A large part of education funding, especially at the primary and secondary levels, still comes from public sources, representing a potential important source of financing for private actors. In Chapter 5, Fredman analyses the legal standards at stake, while in Chapter 7, Verger, Moschetti and Fontdevila review the literature on education PPPs from a political economy perspective. As complementary perspectives, the chapters by Fredman and Verger, Moschetti, and Fontdevila are a particularly crucial contribution to this politically sensitive debate, and help understand the logic behind Abidjan Guiding Principles 64 to 73.

In Chapter 5, Fredman examines the role of private actors in education, addressing the complex legal relationship between the State and private education. She explains that while the State must *permit* private education, the State is not required to *fund* it. However, the State is also not *prohibited* from funding private education and might actually be required to do so if not funding private education would create discrimination. Given that the State can fund private education, she then engages the question of *under what conditions* the State might fund private education.

To help determine the State role, she identifies the three-fold duty of the State to respect, protect, and fulfil the right to education.

Fredman writes that *respect* means the State cannot “obstruct the enjoyment of the right to education” while States also must *protect* “individuals from violations of their rights by third parties” (Fredman, Chapter 5, p. 119). Finally, States must also *fulfil* the right by ensuring the availability of education. She cites the comprehensive international guidelines that include providing a school system, physical infrastructure, curricula, and teachers. In addition, the State duty to *fulfil* includes provisions that it cannot discriminate in funding, cannot allow funding to contribute to other types discrimination, and must be transparent in funding decisions. While States must permit private education, they still must ensure that private actors abide by human rights stipulations, especially considering many possible types of discrimination (geographic, economic, gender, disability, etc.), and especially when the State actively funds these private actors.

PART II: WHAT EDUCATION RESEARCH REVEALS

The second part of this volume turns to research from the education field on different aspects of the role of private actors, including school choice, PPPs (or charter schools in the USA), and LFPS. Taken as a whole, this research reveals that private actors in education are currently operating in ways that contradict, at various levels and in different ways, human rights law and the obligations laid out in Part I of this volume. The conclusion of this volume then addresses strategies for bridging the current gap between international law and education practice.

Chapter 6 on Evidence about School Choice from a Human Rights Perspective

This chapter, by Joanna Härmä, explores the notion of school choice from a human rights law perspective, and with a practical, rather than a theoretical, approach, drawing on evidence about countries’ experiences with school choice in its various forms. The chapter begins by outlining the seven decades of international treaty law establishing education as a human right, complemented by reaffirming commitments by the international community in Jomtien (1990), Dakar (2000), and Incheon (2015). However, instead of governments being the “guarantor, funder,

provider, and regulator”, some have proposed market-based systems and school choice as a way to outsource these roles to private actors, a theory notably promulgated by economist Milton Friedman. Härmä clarifies that the assumptions underlying a true market approach – interchangeable options (no monopolies), clear information for parents, and low transaction costs – often do not exist in education marketplaces, undermining the internal logic of markets.

Härmä then examines the extent of market-based approaches to education globally, the evidence of their application, and contrasting findings from countries taking a public investment approach. She distinguishes between planned school choice deriving from policy, and unplanned, or *de facto*, school choice, arising when governments fail to fulfil their right to education obligation. The first type includes countries like Sweden and Chile, which have produced highly stratified and segregated schools systems with “disappointing learning outcomes”. In the latter situation, families in many countries in the Global South are “choosing” LFPS, although Härmä (Chapter 6, p. 147) describes this as “school choice out of desperation – a coerced choice, rather than the positive exercise of a human right”, due to the lack of free, quality public schools. Finally, Härmä cites the cases of Ontario, Canada, and Finland, both of which have used public investment models to create high-quality, equitable school systems that come close to fulfilling the obligations outlined in the Abidjan Principles.

Härmä’s chapter addresses school choice and profit-making in education from both social science and normative perspectives. Her critical analysis of the limitations of school choice and profit in education helped shaped the use and understanding of the term “commercial” (which also largely stemmed from the human rights and policy field, including in particular UN Special Rapporteur on the right to education, 2014). Indeed, the Abidjan Principles recognize and distinguish “both commercial and non-commercial” private actors in education (Guiding Principle 3.a), and they establish the prohibition of the “commercialisation” of education (Guiding Principles 39.d, 48.c.iii, and 65.d). Significantly, and related to the previous area, they recall States’ prohibition to fund or support any private instructional educational institution that “is commercial and excessively pursues its own self-interest” (Guiding Principle 73.b). These clauses could have far-reaching implications, and Härmä’s chapter provides some of the insights that guided the reflection on this issue.

Chapter 7 on the Global Impacts of Public–Private Partnerships

This chapter by Verger, Moschetti, and Fontdevila addresses the question of how policy options moderate the effects of PPPs in education across several dimensions, with an overarching focus on learning outcomes and equity. These PPPs form the primary mechanisms of the school choice debate discussed by Härmä in Chapter 6. The authors conduct a scoping review of 199 studies from 1992 to 2018 on different PPP modalities, including vouchers, charter schools, and subsidies. They further classify different subtypes for each approach, including profit and student selection allowed or not (all three types); add-ons allowed or not (vouchers and subsidies); targeted or universal programmes and differential or uniform impacts (vouchers); and independent or organizational management (charters). The depth and rigour of this study addresses the often “generic” PPP debate that “fails to adequately differentiate the extent to which PPP modalities work, for whom, and in which sense” (Verger et al., Chapter 7, p. 158).

The authors evaluate each subtype using four possible directions of impact – positive, negative, neutral, or mixed – while acknowledging the need for more robust causal analysis. They find that PPP modalities generally increase segregation and school segmentation and that learning/outcome gains, while present, are largely explained by student sorting and peer effects as opposed to instructional innovations. The authors conclude that:

if the aim of educational policy is to promote inclusion and equity, the implementation of most of the PPP programmes analysed in this chapter would not be advisable. If educational equality for all is the goal, most PPP programmes, by undermining equity, do a disservice to the aggregated effectiveness of the educational system. (Chapter 7, p. 183)

Furthermore, the authors propose different potentially successful strategies to school improvement, such as “teacher training and professional development, school cooperation networks or distributed leadership” (Verger et al., Chapter 7, p. 183). Given their global scale, these findings raise questions about how private actors interact with the equity-focused stipulations of the Abidjan Principles.

Chapter 8 on Private Actors in East African Education

This chapter addresses trends and key challenges emerging in East Africa and related to the growth of private actors in primary and secondary education, specifically focusing on Kenya, Uganda, Tanzania, Ethiopia, Rwanda, and South Sudan. East Africa, in particular, has been at the forefront of education privatization in recent years with various modalities of private involvement, including the unregulated expansion of commercial school chains. For a region well covered by social science literature (in particular Kenya and Uganda), Linda Oduor-Noah's review provides a deep insight into the evolving education dynamics, involving a range of governance approaches, private actors, and private involvement types that help explain the education context.

Beginning from an historical perspective, Oduor-Noah outlines the impact of Structural Adjustment Policies that restricted education spending by governments. She then charts multiple waves of universal primary education that governments did not or could not adequately fund and subsequent Western pressures for Global South countries to "liberalize" their governments through deregulation and privatization, often to meet unrealized demand for education. In East Africa, the primary mechanisms for this approach in education are LFPS and PPPs, which have grown in number.

Oduor-Noah identifies several key factors driving the growth of private actors, including barriers to public investment in education, perceived declines to quality of public education, national policy orientation, weak regulatory policy environs, and donor influence (discussed above). The impact of this growth on the right to education mirrors the international evidence presented by Verger et al. in Chapter 7 – mixed and inconclusive results for outcomes accompanied by issues of widening stratification and equity, revealing a questionable value for money of LFPS. Oduor-Noah (Chapter 8, p. 207) concludes by noting the public sector challenges and "cyclical nature of the policy mistakes ... in the haphazard rolling out of education reforms" leading to increased private actor involvement while recommending increased attention to evidence and regulation of private actor involvement as a policy remedy.

Chapter 9 on Private Actors in Francophone Country Education Systems

In her chapter examining the under-researched phenomenon of private actor involvement in francophone countries, Marie-France Lange illustrates the complex political and cultural legacy of colonialism in French-speaking countries. Other literature reviews, such as Day Ashley et al. (2014), have almost exclusively consulted studies in English, resulting in a focus primarily on anglophone countries. Lange's chapter fills an important information gap that considers a major and largely understudied part of the world. She includes 17 countries from Sub-Saharan Africa and Haiti, while omitting those no longer primarily using French, such as in Southeast Asia. The chapter details several important education factors, potentially underrecognized by the anglophone reader, including religious and linguistic differences between Muslim, Christian, and indigenous groups, differences between French and Belgian colonial legacies, and differences between stable and fragile States (due to poverty, conflict, etc.). Within these contexts, Lange focuses on primary and secondary trends and forms in the growth of education privatization.

Similar to findings from Oduor-Noah's East African analysis, Lange identifies that "the actual role of aid-dependent States is reduced due to loan and grant conditions" to multilateral institutions, as well as accommodation of international agendas. Within countries, Lange discusses a "choice" strategy, also discussed by Härmä in Chapter 6, deployed by socioeconomically advantaged families to avoid public schools, increasing stratification and further disenfranchising schools with families who cannot afford different options. Her class analysis reveals that private schools target "very privileged social classes" with "quality private institutions", the middle classes with less successful, but "more affordable" schools, and "the most disadvantaged social classes" with "schools that do not enable knowledge transfer or the passing of exams" (Lange, Chapter 9, p. 240). Importantly, Lange (Chapter 9, p. 240) also notes that "the privatisation of education can also increase gender inequalities in terms of schooling, with parents making choices in favour of boys if school fees are too high." Despite the lack of awareness of privatization (some States do not even know how many private schools exist), much less a strong research and evidence base, Lange nevertheless describes a situation of unregulated, rapid growth of private actors across many francophone countries.

Chapter 10 on Current and Future Applications of the Abidjan Principles

This concluding chapter by Frank Adamson, Delphine Dorsi, and Magdalena Sepúlveda Carmona addresses the “what next?” question. It situates the Abidjan Principles within historical legal and education contexts as a starting point. It then identifies a series of pathways forward for the Abidjan Principles, including:

- increasing institutional recognition of the Abidjan Principles;
- expanding public and stakeholder awareness;
- building capacity and providing technical assistance to support States;
- conducting research on issues raised in the Abidjan Principles;
- promoting social accountability initiatives: monitoring, reporting, and advocacy;
- pursuing formal accountability mechanisms and litigation; and
- collaborating with other actors and movements.

It describes the various organizations and institutions that have already begun substantively referencing and using the Abidjan Principles. Finally, it situates the very emergence of the Abidjan Principles within the larger global project of preventing repetition of world wars by using the multinational institutions formed in their wake to guarantee human rights to everyone, including the right to education.

Taken together, the chapters in this volume offer insightful and original contributions that not only provide a glimpse of the richness of the debates and considerations behind the Abidjan Principles, but also deepen the reflection on some of the most important discussions in education governance. They push us to question how education systems could be governed and organized so that everyone can enjoy their right to education. Such reflection is important given the rapid growth of private involvement in education since the early 2000s particularly in the Global South, and it will remain crucial in the coming decade.

The crisis engendered by the Covid-19 pandemic in 2020 revealed the fragility of education systems, the dependency on and the limitations of private solutions to such crises, and the need to develop sustainable, resilient approaches that guarantee the fulfilment of the right to education for all and social justice in a changing world. There are reasons to fear that similar crises will occur again in the years to come, driven in particular by the ecological breakdown. By taking a multidisciplinary perspective,

empirical and normative, that tries to deal with complexity and propose concrete policy options, this book could provide an essential avenue to address this rapidly evolving context.

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