10. Strengthening the implementation of the Abidjan Principles

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“Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development.”
Kofi Annan, 2016

INTRODUCTION

In this epigraph, Kofi Annan reminds us of the transformative capacity of education and its importance for individual and collective wellbeing. Unfortunately, the opportunity for free quality public education remains unavailable to many students globally. Over the past half-century, States have ratified treaties committing to the human right of education (outlined by Carmona in Chapter 2 and Härmä in Chapter 6). The Abidjan Principles aggregate this treaty language on the right to education, providing a new resource and an important step towards realizing Annan’s vision. Meanwhile, States and international organizations have created systems that do not deliver on these guarantees. Instead, many policymakers have recently turned to market-based models and private actors instead of investing in public education systems. In this chapter, we present different avenues for the implementation of the Abidjan Principles to address the legal right to education and results of the empirical evidence on private actors in education, which show their limited effectiveness.

Understanding how the Abidjan Principles can advance the realization of the right to education for all requires some context regarding the historical trajectory leading up to the Principles. In the aftermath of the Second World War, the United Nations (UN) itself began as an international response to global social fracture. Countries then adopted

and ratified multiple UN treaties legally recognizing different types of human rights, including the right to education intrinsic to every human being. However, other multilateral institutions begun in that era, such as the World Bank, the International Monetary Fund (IMF), and the International Finance Corporation (IFC), have a checkered history in building State capacity to realize the human right to education. World Bank and IMF lending programs have restricted government education expenditures. Furthermore, the lending model itself – controlled by countries benefiting from centuries of colonial extraction of labor and resources – has created debt servitude among many countries in the Global South that impinges on their capacity to provide free, high-quality public education.

Instead of helping the public systems charged with this mandate, many multilateral and bilateral aid agencies now champion market-based approaches instead of investing in the States to help them deliver on the right to education. For instance, the IFC pursues this agenda by hosting biannual global conferences on the privatization of education. This perspective of changing education from a public service to a commodity has led to the saturation of public agencies, both national and international, by actors promoting private interests and education as an individual good. Unfortunately, as the empirical chapters of this volume show, that approach is associated with increased inequality and segregation, thus creating possible human rights violations. Also, multinational and bilateral institutions pursuing or enforcing these strategies despite these results are thus preventing States from realizing the right to education by creating the conditions for, and potentially committing, human rights violations themselves.

On the seventy-fifth anniversary of the genesis of the UN, a half-century after the adoption of the International Covenant on Economic, Social, and Cultural Rights, and three decades after the adoption of the Convention on the Rights of the Child, the human right to education remains systematically denied to millions of students. We use the word systematically because the global system has had the intervening time between these treaties and the current moment to deliver on its treaty obligations. While some progress has been made, annual reports from multiple international agencies document the overall failure of States to provide free quality public education for all (UNESCO, 2020; World Bank, 2018). It remains difficult to disentangle the responsibility for this inadequacy – international institutions blame States and vice versa. But the failure and responsibility lie across governance institutions, which is why civil

society members decided to engage in the long and intense process of drafting the Abidjan Principles in the first place.

The Abidjan Principles were created as an essential tool providing an authoritative account of existing human rights obligations, or exactly what States have committed to regarding the human right to education. But, given the gap between commitment and reality, the principles remain insufficient. More than simply words on the page, ameliorative action on the part of all stakeholders – governments, civil society, international donors, and impacted communities, to name a few – must occur in order for the right to education to manifest as reality. This chapter articulates some of the processes for continuing the realization of these rights, especially for those whose right to education is currently violated. In particular, it articulates several related pathways for the application and implementation of the Abidjan Principles for different stakeholders in the progressive realization of the global education vision that the international community has already promised to future generations.

IMPLEMENTING THE ABIDJAN PRINCIPLES

The individual enjoyment of the right to education, based on the rights to equality and non-discrimination, is essential for both the full development of the human personality and for the expansion of fair and inclusive societies. In an ideal world, States would have the will and capacity to implement the right to education for all. However, as described above, full realization remains far from reality and faces challenges such as persistent inequality and the transformation of education from a human right into a commodity. At a fundamental level, achieving the right to education requires a political shift in state education provision. However, because States do not operate in isolation, changes also need to occur at multiple levels, with different actors considering and responding to the commitments made under human rights law.

The Abidjan Principles provide guidance on the necessary changes in law, policy, and practice for the protection and realization of the right to education for all. This includes both the provision of free quality public education and the regulation of private actor involvement in education. The processes for the actual implementation of the Abidjan Principles include different avenues, such as broad awareness of the human right to education, State capacity building to meet this obligation, and social, political and legal accountability mechanisms if States or multilateral organizations prevent or fail to realize the right. In the following sections,

we highlight these different steps that collectively aim towards creating better education systems that benefit everyone and the society as a whole.

We have organized the steps according to their relative level of contention, from the straightforward first steps of recognition and awareness raising about the principles and the right to education to the final step of expensive and time-consuming litigation. Unfortunately, recent history reveals that despite treaty promises made, the latter endeavors of civil society mobilization and legal action are required for some States to realize the right to education. We hope that the Abidjan Principles contribute to a world with a diminishing need for resources devoted to receiving something that has already been promised, so that our global resources can instead be deployed in service of the hard, yet fruitful, work of providing the highest quality education possible to our children. Before that moment arises, the steps for realizing the Abidjan Principles include:

- 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.

Increasing Institutional Recognition of the Abidjan Principles

In the first year after adoption in February 2019, key actors in the education and human rights field have rapidly and widely recognized the Abidjan Principles and started to implement them in various ways that illustrate their usefulness. This recognition not only solidifies their legitimacy as an authoritative legal interpretation of the right to education under international law but also reflects how this legal tool can help address current education challenges. They have been mentioned or used as a reference text at national, regional, and international fora by various types of actors, with some key acknowledgments outlined below.

The first mention of the Abidjan Principles occurred at regional level in a resolution of the African Commission on Human and Peoples' Rights that addresses the role of private actors in health and education, adopted in May 2019 (ACHPR 2019; RTE 2019a). This is particularly symbol-

ically relevant because the growing development of private actors over the past decades has raised particular concerns on the African continent (as discussed in Chapters 8 and 9). In another resolution adopted in 2020, the African Commission cites the principles as a reference to guide the development of norms on States' obligations to regulate private actors' involvement in the provision of social services (ACHPR 2020; RTE 2020d). At regional level on other continents, the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA & IACHR 2019; Right to Education Initiative 2020a) of the Inter-American Commission on Human Rights (IACHR), and the European Committee of Social Rights (ECSR 2020; RTE 2020f) have recognized the Abidjan Principles.

At the international level, the UN Special Rapporteur on the Right to Education, Dr. Boly Barry, presented a report to the UN Human Rights Council on the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education in July 2019 (Boly Barry 2019), providing an analysis incorporating the Abidjan Principles. She recommended that all States should develop and implement adequate regulations for the involvement of private actors in education, as articulated under Guiding Principle 55. During the dialogue, States overwhelmingly expressed support for the Abidjan Principles and largely committed to provide quality public education and regulate private involvement in education in accordance with them (Boly Barry 2019; RTE 2019b). In the Resolution on the Right to Education adopted during the same session, the UN Human Rights Council also recognized the Abidjan Principles (UNHRC 2019a; RTE 2019c).

In October 2019, at the UN Human Right Council Social Forum on the right to development Ms. Michelle Bachelet, UN High Commissioner on Human Rights, in a panel on "Transformative Power of Education", discussed the principles in her speech (UN Web TV 2019). Then, in early 2020, the UN Independent Expert on the effect of foreign debt, Juan Pablo Bohoslavsky, mentioned the principles in his report on private debt and human rights reminding stakeholders that "States must take steps to ensure that no individual is excluded from any public educational institution on the basis of the inability to pay and must take all effective measures to prevent the risk of overindebtedness for learners and their families" (Bohoslavsky 2020; RTE 2020b). At UNESCO, a document presented to the Executive Board in Fall 2019 mentioned that UNESCO will explore how to promote the Abidjan Principles within its mandate

(UNESCO 2019). In addition, the new Global Partnership for Education private sector engagement strategy, adopted in June 2019, recognized the Principles (GPE 2019). And, in November 2019, the Paris Peace Forum selected the Abidjan Principles as one of the most promising governance projects (RTE 2019e).

Importantly, within the legal domain, a judgement of the High Court of Uganda directed the government to regulate private actor involvement in education, quoting the Abidjan Principles (High Court of Uganda, Civil Division 2019; RTE 2019d). Furthermore, the Abidjan Principles were published in the June 2019, Volume 8 – Issue 1 of the *International Human Rights Law Review*, one of the most reputable peer-reviewed journals on international human rights law (International Human Rights Law Review 2019). This further affirms the value accorded to the Abidjan Principles by the legal community and establishes their status as an essential legal tool on the right to education. However, beyond this significant recognition, the Abidjan Principles will only be meaningful if implemented through the adoption of law, policies, and practices that address the current education challenges and lead to tangible positive impacts on the enjoyment of the right to education by everyone, particularly the millions currently left behind.

Expanding Public and Stakeholder Awareness

For the Abidjan Principles to be implemented, a first essential step is their circulation among all actors involved in education, including States, civil society organizations, and private actors. The duty-bearers need to better understand their obligations regarding the right to education and how they must deliver them in the current context. The right-holders, and the ones who act on their behalf, need to understand the scope of the right to education and States' obligations in order to claim their right if they cannot enjoy it. To facilitate this process, a website (www.abidjanprinciples.org) provides, in four languages: the text of the Abidjan Principles, the list of signatories, background information, and updates about their implementation and resources. The Abidjan Principles themselves have been already translated in Arabic, French, Spanish (to be published) and Russian (to be published). In addition, an infographic provides summary information and videos provide additional commentary.

In addition to these direct resources, Table 10.1 presents the different types of events in which different stakeholders increase their awareness and understanding of the principles. These include international

meetings, regional workshops, academic conferences, and State-level capacity building training. For instance, in October 2019, the UN Special Rapporteur on the Right to Education, Dr. Boly Barry, presented the principles at the World Bank Annual Meeting, calling on the World Bank to use them in their assessment of education project funding (GI-ESCR 2019f). At the UN Annual Parliamentary Hearing on SDG 4 in February 2020, stakeholders discussed how the principles can help assess private sector engagement, especially regarding the strengthening and financing of public systems (UN Web TV 2020).

Building Capacity and Providing Technical Assistance to Support States

States have the obligation and the power to ensure the realization of the right to education for everyone. Therefore, they are the first entities needing to understand the Abidjan Principles in order to apply them accordingly. Building the capacity of States – including for legislators, ministries of education, judges and other decision-makers at the national level – and providing technical assistance are key vehicles to supporting States' compliance with the Abidjan Principles. To help build this capacity, the Institute of International Education Planning (UNESCO-IIEP) is developing an analytical table to review national education strategic plans, together with States, in light of the Abidjan Principles. In addition, the International Commission of Jurists is organizing training workshops for judges in several African countries to explain the Abidjan Principles.

Capacity building processes have already begun within certain countries. In Uganda, in June 2019, the Initiative for Social and Economic Rights (ISER) provided a workshop on the Abidjan Principles to a Ministry of Education directorate, focusing on how to use the principles in education sector reviews and planning, public–private partnership policy, regulations of private actors, and policy on financing of education. In Nepal, the National Campaign for Education Nepal (NCE-Nepal) engaged with local governments as they planned for delivering the right to education and regulating private education institutions. NCE-Nepal advocated for the application of the Abidjan Principles to local education policies, resulting in some guiding principles included in the draft policies. Finally, in Saudi Arabia, the Office of the United Nations High Commissioner for Human Rights Technical Cooperation Project and the Saudi Human Rights Commission brought together officials from the Ministry of Education and the National Center for Privatization to discuss

Table 10.1 Events increasing awareness of the Abidjan Principles

Event type	Event topic	Location and time
International meetings	Panel session: <i>Private Provision of Education through PPPs: rights, equality and the role of the World Bank and GPE</i> (GI-ESCR 2019c)	World Bank, Washington DC, April, 2019
	<i>Meeting with World Bank senior staff, including Jaime Saavedra, Global Director for Education</i>	World Bank, Washington DC, April, 2019
	UN Human Rights Council side event: <i>Implementing SDG 4 in accordance with the right to education and the Abidjan Principles</i> (GI-ESCR 2019e)	Geneva, June 2019
	Panel session: <i>Emerging challenges to the right to education, alternative solutions and the role of World Bank with the UN Special Rapporteur on the Right to Education and CSO experts from Ghana and Sierra Leone</i> (GI-ESCR 2019f)	World Bank Civil Society Policy Forum, Washington DC, October, 2019
	IIEP UNESCO strategic debate: <i>How to take the right to education seriously</i> (IIEP UNESCO 2019)	Paris, October 2019
	Paris Peace Forum: <i>Shine Bright: a better future with innovation in education</i> (Paris Peace Forum 2019; GI-ESCR 2019h)	Paris, November 2019
	<i>Education as a key to peace and sustainable development: toward the implementation of SDG 4 – 2020 Annual Parliamentary Hearing at the UN</i> (UN Web TV 2020)	New York, February 2020
	<i>RTE Forum's National Council</i> (RTE Forum India 2019)	India, July 2019
Workshops	<i>Regional Consultation on Building National Capacity on the Right to Education and the Abidjan Principle</i> (ASPBAE 2019)	Bangkok/ Thailand, October 2019
	<i>National workshop on right to education and Abidjan Principles dissemination</i> (GI-ESCR 2019g)	Nepal, October 2019
	<i>GNECC Sensitization workshop for its members and stakeholders in Takoradi on the "Abidjan Principles"</i> (Ghana News Agency 2020)	Ghana, March 2020
	<i>The Abidjan Principles – Regulating private involvement in education</i> (GI-ESCR 2019a)	Colombia University Teachers College, New York, April 2019

Event type	Event topic	Location and time
Academic Meetings	CIES 2019: <i>Designing and implementing the human rights guiding principles on obligations of States regarding private actors in education</i> (GI-ESCR 2019b)	San Francisco, April 2019
	<i>Round table discussion on the implementation of the Abidjan Principles on State in obligations regarding private actors in education</i> (University of Ottawa 2019; GI-ESCR 2019d)	University of Ottawa, Canada, May 2019
	<i>The 2019 Guiding Principles on the Right to Education: The drafters' perspective</i> (Oxford Human Rights Hub 2019)	University of Oxford Faculty of Law, UK, August 2019
	2019 HDCA: <i>Private education, inequalities and human rights guiding principles on States' obligations regarding private actors' involvement in education</i> (HDCA 2019)	London, September 2019
	UKFIET 2019: <i>The effects of privatisation on the right to education. A multi-country study using the Abidjan Principles on States' obligations regarding private actors' involvement in education</i> (UKFIET 2019)	Oxford, UK, September 2019
	<i>Breakfast meeting celebrating the first anniversary of the Abidjan Principles</i> (ActionAid 2020)	UCL Centre for Education and International Development, London, February 2020
	<i>Privatisation, education and human rights</i> (University of Nottingham 2020)	University of Nottingham, February 2020
	CIES 2020: <i>The Abidjan Principles on the right to education: A practical tool to address global challenges to the provision of quality education for all to ensure future peaceful societies and life on earth</i> (RTE 2020e)	Online CIES, April 2020

the impacts of privatization on the right to education and the relevant human rights standards, including the Abidjan Principles (GI-ESCR 2020). These workshops and tools, either proposed by civil society organizations or inter-governmental agencies, or initiated by States themselves, are essential for the ongoing implementation of the Abidjan Principles.

Conducting Research on Issues Raised in the Abidjan Principles

Academics play a key role in ensuring the implementation of the Abidjan Principles by delivering evidence-based and solution-oriented research to the public, decision-makers, and other stakeholders. Such publications increase in usefulness by including proposals for solutions and drawing recommendations that decision-makers and stakeholders can address. ActionAid International first used the Abidjan Principles for research in two reports in 2020: *Multi-country research on private education compliance with the right to education, a study of Ghana, Kenya and Uganda* (ActionAid 2019); and *Private education and compliance with the Abidjan Principles, a study of Malawi, Mozambique, Tanzania and Nigeria* (ActionAid & Norad 2020). The success of this research initiative led additional anglophone and francophone researchers to further consider how to apply the Abidjan Principles to their research, including reflecting on how to apply a legal framework in non-legal disciplines (ReFPE 2020; Unterhilter et al. 2020). This intersectional consideration represents a unique contribution of the Abidjan Principles in bringing together legal and non-legal experts (including in this volume) to ensure that the principles remain rooted in educational realities.

Academics can also contribute to the debates regarding future education policies by highlighting how the right to education, as defined under international human rights law, applies to key educational decisions. For example, Ann Skelton, chair of the Abidjan Principles' drafting committee, contributed to a UNESCO publication on the humanistic futures of learning, making the argument that innovation can be incorporated into public education without having to commercialize it (Skelton 2020). Looking ahead, the next challenge is continuing data collection, research, and analysis to expand the evidence base on the impact of the private providers of education and the delivery of high-quality public education within and across contexts. A related challenge includes cultivating the nexus between research and advocacy to create better applied research that informs policymaking.

Promoting Social Accountability Initiatives: Monitoring, Reporting, and Advocacy

When States fail to ensure the full implementation of the right to education, citizens can play a key role in mobilizing and advocating for legal, political, and practical changes by identifying issues and making

recommendations based on their everyday realities. Using human rights frameworks, including the Abidjan Principles, supports and strengthens their advocacy in holding States accountable for their committed obligations. A wide variety of such initiatives includes tracking surveys, social audits, citizen report cards, and participatory budgeting. Social accountability strategies can have a powerful impact and the potential to empower vulnerable and disadvantaged people in claiming their rights.

An effective way for citizens to support and push for the implementation of the Abidjan Principles and the right to education occurs through monitoring and reporting at the UN level. When human rights treaty bodies examine State reports on the implementation of human rights, civil society organizations can submit alternative reports that share their own information and perspective. Both the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights have raised particular concerns regarding the growing involvement of private actors in education and its impact on the right to education (GI-ESCR 2017). Furthermore, in the review, UN treaty bodies can assess whether States are complying with their obligations underpinning the Abidjan Principles.

Since their adoption, several civil society organizations have submitted reports to UN treaty bodies that cite the Abidjan Principles, with observations and recommendations pending. In 2020, for instance, 13 organizations submitted a report to the Committee on Economic, Social and Cultural Rights (CESCR) on France's investment in Bridge International Academies using the Abidjan Principles (RTE 2020c). The *Mouvement L'école* ensemble in Canada also submitted a report to the CESCR using the Abidjan Principles to analyze data in the province of Québec (Mouvement l'école ensemble 2020). As a result, the Committee issued serious questions about the issues of a two-tiered education system and the need to organize a strong public system for all in Québec, requiring a government response in writing. Finally, in 2020, in preparation for Kenya's peer-reviewed Universal Periodic Review (UPR), the East African Centre on Human Rights (EACHRights) presented an alternative report on the challenges presented by the growth of private actors in education and advised the Government of Kenya to utilize the Abidjan Principles in their recommendations. In their review, several States recommended that Kenya strengthen efforts to ensure that all Kenyans enjoy access to education without discrimination, including its efforts to improve public services such as education (UNHRC 2019b).

Pursuing Formal Accountability Mechanisms and Strategic Litigation

When violations of the right to education persist past the point of social accountability, litigation can become the only way to hold States accountable (RTE 2017). Potentially long and costly for everyone involved, litigation should be a last resort avenue; however, it can have positive impacts. Indeed, according to a Right to Education Initiative report, “courts can play an important function in giving persons belonging to marginalized groups, particularly those living in poverty, a ‘voice’ in democratic systems that may otherwise neglect their interests” (RTE 2017). The report continues to note that “litigation – even just the threat of it – can also offer an important avenue to publicise human rights violations and attract media attention, which may lead to accountability and change in the future” (RTE 2017).

At the national level, several lawsuits already cite the Abidjan Principles. For instance, the Equal Education and Equal Education Law Center referenced them in a submission made to the South African Constitutional Court in a matter involving the lawfulness of an independent school’s decision to terminate its contract with the parents of two of its learners and to prevent the learners from continuing to attend the school. The submission referred explicitly to Guiding Principle 55, stating:

the recently developed Abidjan Principles include a very expansive list of issues that States must address when dealing with minimum standards. This expansive list includes the governance of private educational institutions which includes requirement for the full and effective participation of children and learners amongst other stakeholders; protection of the rights of learners to freedom of association and speech, suspension and expulsion of learners requiring “due process and that any such suspension or expulsion be reasonable and proportionate.” (Equal Education 2019)

In its judgment given on June 17, 2020, the Constitutional Court ruled that independent (private) schools must hear parents’ and learners’ voices regarding decisions to terminate a contract with the school and whether it serves the best interests of the children concerned. The Constitutional Court also ruled that independent schools do provide basic education and have an obligation not to impair this right. Moreover, independent schools assume a positive obligation to maintain standards not inferior to that of public schools (Equal Education Law Center 2020). While not an

optimal use of scarce educational resources, the outcome in this and other cases has led to increased adherence by States to the right to education.

CONCLUSION

As the world faces multiple crises, from pandemics to climate chaos, the commodification of education and culture, and global protests about social and racial inequality, we must remember why the UN and other international institutions were created and the original reasons for naming education as a human right. The fracturing of society in the Second World War gave rise to institutions designed to quell any recurrences, but only the realization of the human rights guaranteed by States through the UN bodies and treaties will prevent a repeat performance. Put simply, in order for all of these issues to be addressed, everyone needs high-quality education, and the Abidjan Principles provide the guidelines needed to ensure this provision.

Any institutions at the international, national, or subnational level that impinge on the realization of the right to education should be investigated for possible human rights violations. This possibility represents a very serious implication of the Abidjan Principles with potentially dramatic repercussions for the accused parties. However, we are at a time in which responsible decisions must be taken for the future of education and of humanity. The Abidjan Principles provide necessary guidance and solutions to address these current challenges, but it is up to all global stakeholders to realize the human right to education collectively.

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