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Financing the Right to Education: Regional and International Contexts

Key Note Presentation

by

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National investment in education is one of the biggest challenges for the realization of the right to education. Overcoming inequities and universalizing access to education, meeting the exigencies of providing good quality education, 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 for devoting a full session of the III Meeting of the Mixed Network of Parliamentarians and Civil Society for the Human Right to Education in Latin America and the Caribbean to this theme of critical importance.

Education, of which both the individual and the society are beneficiaries, is of key importance for empowering individual and transforming societies. It is a foundation of human development. Education is also a public good. The experience shows that the growth in Human Development Index¹ is associated with growth in public spending on education. Education, therefore, deserves high priority in terms of public funding of education. Investment for the realisation of education as a human right is the best investment a country can make.

The right to education remains far from being realized. One of main reasons is the dearth of public resources devoted for this purpose. Widely prevalent disparities and inequities in education require up scaling investments in budget allocation for education substantially in order to overcome them. The right to education also suffers from deficiencies in quality of education provided and this owes again to meagre resources for quality requirements. Such a scenario indicates lack of full respect for legal and moral obligations of governments for ensuing public financing of quality education for all which flow from nature and importance of the right to education as an internationally

¹ Human Development Report 2012: The Rise of the South: Human Progress in a Diverse World, UNDP, New York, p. 78.

recognized right. Financing education is also a moral obligation of governments undertaken within the framework of the 2030 Sustainable Development Agenda, including its Goal 4 on education: SDG4 as well as under the Incheon Declaration (May, 2015).

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 as a public service. 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 with the excuse that private education is available. As a result, 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 and budget cuts for 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 authorities² and the International Organization of La Francophonie as well as a number of civil society organizations including the Global Partnership for Education and the Education International has expressed concern about the negative effects of

² See “State responsibility for regulating private providers of education and preserving education as a public good”, Report by the United Special Rapporteur on the Right to Education, (A/69/402), 24 September 2014, and “Regulating private providers in education and safeguarding education as a public good”, Report by the United Special Rapporteur on the Right to Education, (A/HRC/29/30), 10 June 2015.

privatization in education. This is a key issue in discussion on regional and international architecture for financing education. Safeguarding the right to education and public investment in education vis-à-vis forces of privatization necessitates strong public policy responses and stringent regulatory measures. ‘Edu-business’ has no place in a country’s education system, and under no circumstances, public authorities should give any subsidy or financial support to private providers of education.

State obligations for financing education under human rights law

The trend towards decreasing investment for education in several developing countries runs counter to governments’ engagement with and responsibility for education as a core public function. It denotes lack of full respect for international legal obligations of States for the realization for the right to education for all without exclusion or discrimination as well as political commitment by governments to the 2030 Education agenda, pledging to ensure universal access to good quality public education at least till secondary level.

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 Rights³ and the Committee 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 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

³ 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 parties obligations’ (Art. 2, para. 1) of the Covenant CESCR General Comment 3, 14 December 1990, Fifth session, 1990. (para. 11).

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 fulfilment 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 enjoyment of the right to education is all the more important, given that education is a core public function of the State.⁴

International instruments lay down broad norms as regards State responsibility for investing in education. The International Labour Organization (ILO)/United Nations Educational, Scientific and Cultural Organization (UNESCO) 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.⁵ In this respect, it is important to bear in mind stipulations in the Incheon Declaration which lays down that a minimum proportion of national budgets (15 to 20 per cent) or share of GDP (4 to 6 per cent) 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 is an important issue in discussions on regional and international architecture for financing education, especially the SDGs. As mentioned in the Addis Ababa Action Agenda for financing development, financing the SDGs

⁴ 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, Chapter 4, ‘Students Rights’, Law Journal Press, New York, 2002.

⁵ ILO/UNESCO Recommendation concerning the Status of Teachers, para. 10 (l).

is in the first place the responsibility of a country: “each country has primary responsibility for its own economic and social development”⁶ and for “setting nationally appropriate spending targets for quality investments in essential public services for all.”⁷ The Addis Ababa Action Agenda has underlined the need for “the enormous investment needs” 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...”⁸

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. Whereas in 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

⁶ The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (para. 9): <http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/2015/07/Addis-Ababa-Action-Agenda-Draft-Outcome-Document-7-July-2015.pdf>

⁷ The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (para. 12): <http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/2015/07/Addis-Ababa-Action-Agenda-Draft-Outcome-Document-7-July-2015.pdf>

⁸ The Addis Ababa Action Agenda of the Third International Conference on Financing for Development, (para. 13): <http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/2015/07/Addis-Ababa-Action-Agenda-Draft-Outcome-Document-7-July-2015.pdf>

necessarily involves collaborative arrangements with industry. Industry and entrepreneurs are key stakeholders as regards technical education system 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 should be an essential partner in financing of TVET by way, for example, of 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 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

State bears primary responsibility for education. However, education is also a social responsibility, involving non-state actors. Investing in education is also social responsibility. Corporate social responsibility (CSR) is a widely recognized concept and examples exist in some countries showing that education becomes beneficiary of the CSR. National legal and policy framework applicable to CSR must provide for greater accountability, taking due care to ensure that public interest remains inviolable.

Public investment in education can be enhanced by mobilizing additional resources from contributions of local bodies, private donors and communities through institutional mechanisms that supplement Government funding. Actions of governments, of all public entities,

partners and stakeholders in education should be inspired by social interest.

Philanthropy is another source of even greater importance for mobilizing resources for education. It is encouraging that the need for “philanthropy, i.e., voluntary activity by foundations, private citizens and other non-state actors, has significantly expanded in its scope, scale and sophistication.”⁹ 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 for-profit 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.”¹⁰ Careful consideration needs to be given to the appropriate use and structure for instruments for blended finance 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 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

⁹ Report of the Intergovernmental Committee of Experts on Sustainable Development Financing, A/69/315, 15 August 2014 para. 133.

¹⁰ Ibid. para. 135.

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 and the right to education 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 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 (...),”¹¹ public interest and education as a public good remaining central to the ‘common purpose’. 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.”¹²

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 architecture for financing education. The 2030 Sustainable Development Agenda contains commitments to mobilize the means required to implement it, based on a spirit of strengthened global solidarity and focused “in particular on the needs of the poorest and most vulnerable and with the participation of all

¹¹ The Resolution adopted by General Assembly: Towards global partnerships: a principle-based approach to enhanced cooperation between the United Nations and all relevant partners (A/RES/68/234, 7 February 2014).

¹² Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships, OECD, May 2012.

countries, all stakeholders and all people.”¹³ 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 Agenda, already mentioned, is a landmark development for advancing in that direction. The Joint Declaration of the G20 Education, Labour & Employment Ministers' (2018) also recognizes the needs 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.”¹⁴

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 the Parliamentarians in this respect. As public figures, they could raise public debate and engage themselves in dialogue with Governments with a view to giving shape to national, regional and global architecture for financing education, embracing a right to education

¹³ 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, held in Istanbul from 9 to 13 May 2011 (A/CONF.219/3/Rev.1), para. 74.2 (a) and 1 (c), and para. 72.1 (c).

¹⁴ Shaping a Human-Centered Future of Work G20 Labour and Employment Ministers' Meeting 2019 Ministerial Declaration: https://g20-meeting2019.mhlw.go.jp/labour/img/Ministerial_declaration_2019G20LEMM.pdf 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.”

perspective. The primary responsibility for funding education lies with national governments. International investment and funding is only complementary and when it is promoted tendentiously to foster private funding conducive to privatization in education, or when it comes with strings, education and the cause of 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 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, bears evidence to this. 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. The Declaration expresses the commitment by the Ministers of Education from all over the world 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 study¹⁵ 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

¹⁵ Ian Macpherson, Susan Robertson and Geoffrey Walford, eds. *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia* (Oxford, Symposium Books, (2014).

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. The Parliamentarians as custodian of laws can play 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 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 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 or regional 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 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 national budget or 4 to 6 percent GDP is devoted to education. Government should ensure that in addition to recurring expenditure, 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 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 or education. Corporate social responsibility and philanthropic contributions which are of key importance can be harnessed, along with schemes such as tax incentives, to support government efforts for the provision of public education.

6. Governments should map out and appraise themselves at the country level 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. Government 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 human right to education and should be withheld in 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 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 international architecture should be made integrally part of funds-in-trust of UNESCO with the objective of supporting public education system in developing countries.