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the Global Education Monitoring Report

Non-state actors in education

Human rights to evaluate evidence on non-state involvement in education

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ABSTRACT

This background paper provides both the rationale and the framework for re-centring a human rights' perspective in education sector analysis. It draws on international human rights law as specified in the recently adopted Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education, a landmark text for the interpretation of the right to education, in particular in the context of growing privatisation in and of education. The paper outlines how to use the Abidjan Principles to develop a tool to measure if and how States are implementing and individuals are enjoying those rights, with a specific focus on the role of non-State actors. We find that reframing education analysis through a human rights lens provides a sharp contrast to the narrow view of education as a human capital generator. Using the human rights framework of structures, processes, and outcomes, we not only detail questions which can guide future research and advocacy, but also demonstrate its use in evaluating data availability and sector plans in the United States and Côte D'Ivoire and re-evaluating existing conclusions from "The Role and Impact of Private Schools in Developing Countries" (Day Ashley et al., 2014).

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INTRODUCTION

*“Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the **school or college he attends**; the factory, farm, or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”*

-- Eleanor Roosevelt (emphasis added)

Social science analysis, and particular in education, insufficiently incorporates human rights perspectives (Moncada & Blau, 2005). Increasingly, however, international attention on equity and equality in education has re-centred human rights and the right to education for researchers and policy analysts alike (Nolan, O'Connell, & Harvey, eds., 2013). However, incorporating a human rights analysis requires a shift not only within the specific realms of criteria and indicators, but also a remembering and re-envisioning of the fundamental purposes of education, as articulated in international law. This paper provides both the rationale for reframing from a human rights perspective and a framework for its application, with special attention to non-State actors in education systems. At a fundamental level, this paper articulates the re-emergence of a post-World-War II human rights perspective that reflects a holistic view of human development as enshrined in international law.

Universal access to education -- whereby State actors function as providers of education -- has increased dramatically over a relatively short span in the modern era (GAO, 2015). Since the mid-1800's, the Prussian workforce training model of education has expanded and become globally institutionalized as a mechanism for national development (Boli, Meyer & Ramirez, 1985). In recent decades, international agencies have increasingly measured this national education progress through

international tests, such as the [“Trends in International Mathematics and Science Study”](#) (TIMSS) and the [“Programme for International Student Assessment”](#) (PISA), with countries and the public increasingly focusing on student achievement (Hanushek, 2019). This emphasis on outcomes is a narrow measure of state educational progress and one that stands in stark contrast to human rights agreements that stipulate, for instance, that “Education shall be directed to the full development of the human personality” (U.N. General Assembly, 1948). However, the paradigm of mass education rooted in a workforce development model differs substantially from a human rights frame in education, a distinction that lies at the root of this paper.

We unpack the human rights understanding of education by exploring how education researchers could use this framework to measure whether States are adequately implementing, and individuals are enjoying, the right to education, in particular in the context of the existing or potential involvement of non-State Actors. This paper presents a three-part analysis that illustrates how to use the intersection of human rights law and social science to evaluate the role of non-State actors in education. This work builds on the recently adopted *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* (hereafter “Abidjan Principles”). The paper specifically applies the *Abidjan Principles’* right to education framework to education research in the following steps: I) providing details about the right to education outlined in the Abidjan Principles, II) conceptually mapping differences between public and private education and how best to situate non-State actors, III) presenting a human-rights framework tool for evaluating educational systems, and IV) applying this tool in three case study examples.

We find that existing case studies seeking to assess the efficacy or impact of non-State (or private) actors omit aspects of education central to a human rights’ lens, even when they claim to do so. Furthermore, we note that using this framework to evaluate a State’s education sector helps to expand the research agenda beyond an outcomes-only basis to a systemic analysis at the legal (structural) level, while maintaining a coherent analytical frame based on agreed-upon and legitimate norms.

I. THE HUMAN RIGHTS FRAMEWORK AND THE ABIDJAN PRINCIPLES

A. Human Rights and Education

In 2015, the global community adopted sustainable development goals for 2030, including the Sustainable Development Goal (SDG) 4 on education — a commitment to inclusive, equitable learning opportunities for all. Yet the global community disagrees as to the role non-State actors should play in the production and distribution of this education (Satz, 2019). Human rights law is a useful and broadly accepted, but often under-used, lens for this debate. Human rights, or ‘universal norms that describe standards of behaviour that help protect everyone from political, legal, social and economic abuses’ (Nickel, 2017, p. 2) are formally recognised in international law, drawing from the *Universal Declaration of Human Rights*, adopted in 1948 under the auspices of the United Nations, which stipulates that ‘everyone has the right to education’.¹

Human rights perspectives centre on the individual and collective enjoyment of the right, or how well a State education system produces an environment in which its individuals fully enjoy the right to education. A rights conceptualisation links education with State obligations (Menashy, 2014). Within this framework, the objective of education is not to aggregate State economic growth with its requisite disproportional benefits to its citizens – although it is not opposed to that. Instead, it is the emancipation of State citizens individually and collectively by their real, equal access to quality education (Amin, 2012).

Human rights set the “rules on how the State should treat individuals” (Turnbill, 2020, p. 1). They create legally binding obligations for States that have ratified relevant treaties or adopted domestic laws. All States in the world are party to one or more international treaties protecting the right to education² -- in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), ratified by 171 States,³ and the Convention on the Rights of the Child (CRC, 1989),

¹ Article 26 of the Universal Declaration of human rights.

² All States except the US have ratified the Convention on the Rights of the Child and the US has ratified the Convention on the Elimination of All Forms of Racial Discrimination. Both Conventions guarantee the right to education. See Right to Education Initiative. International law webpage: <https://www.right-to-education.org/page/international-law>

³ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en

ratified by 196 States.⁴ The vast majority of States are also bound by other human rights treaties at international and regional level and have enshrined the right to education into their constitutions.

With States legally bound by this human rights framework, using it to assess non-State actors' involvement in education -- in light of States' obligation regarding the implementation of the right to education -- allows researchers and policy advocates to contribute substantively to increased monitoring and implementation of the right to education, and, where necessary, to accountability. The human rights framework we refer to in this paper derives from the international legal framework that includes the ICESCR and the CRC treaties mentioned above and reflected in the *Abidjan Principles*, discussed below.

B. The Abidjan Principles

On 13 February 2019, human rights and education experts gathered in Côte d'Ivoire unanimously adopted the *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*⁵. This moment marked the culmination of three years of participatory consultations and signified a landmark development for the right to education. Grounded in established human rights laws, norms, and standards, human rights principles such as the *Abidjan Principles* carry legal and political weight and are commonly used in legal practice and interpretation, having formed the basis for subsequent treaties and State legislation or international jurisprudence (Carmona, 2021).⁶ These Principles have been signed by 57 of the most qualified experts from around the world. This provides them with significant legitimacy as this type of expert opinion is recognised in international law as being a source of interpretation of the law, for instance at article 38 (d) of the Statute of the International Court of Justice.

The *Abidjan Principles* are not the first or only human rights framework for education, and they provide an updated compilation of standards that addresses the contemporary challenges, in particular the growth of non-State actors. One of the well-known framings of the right to education is the "4As" framework that former U.N. Special Rapporteur on the Right to Education, Katarina

4 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en
5 www.abidjanprinciples.org

6 For example, the Kampala Convention, adopted by the African Union, reflects the 'Guiding Principles on Internal Displacement' (IDP Principles) 8.

Tomasevski, initially coined and was largely used later. This “4As” framework notes that right-holders have the right to an education which must be available, accessible, acceptable, and adaptable, with corresponding obligations for States (UN Committee on Economic, Social and Cultural Rights, 1999). The Abidjan Principles incorporate this “4As” framework (see Guiding Principle 14) and further expands on it. Therefore, for this paper, we draw on the extensive coverage of *Abidjan Principles* and in particular its focus on non-State actors in education.

The *Abidjan Principles* consolidate and reassert the existing obligations of States regarding the right to education, as set out under human rights law and standards. They unpack and clarify the normative content of the right to education in the context of the involvement of non-state actors in education.⁷ Since their adoption, seven of the major human rights bodies at the global or regional levels⁸ have officially recognized the *Abidjan Principles*. Furthermore, national courts have used the *Abidjan Principles* and policy documents have cited them.⁹ Within two years of their adoption, the *Abidjan Principles* stand out among human rights principles for the broad support they received. Here, we model how researchers, policymakers, and other stakeholders can use the *Abidjan Principles* to evaluate education systems, which we demonstrate regarding the issue of non-State actors in education.

II. DEFINING PUBLIC AND PRIVATE IN EDUCATION

Within a human rights approach to education, the definition of what is public or private has particularly important implications. It impacts States’ legal liabilities, because, in human rights law,

⁷ As established, inter alia, by the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1989 Convention on the Rights of the Child.

⁸ By the African Commission on Human and People’s Rights, the European Committee of Social Rights, the United Nations (UN) Human Rights Council, and the Office of the UN High Commissioner for Human Rights, Ms. Michelle Bachelet, respectively in resolutions and statements addressing education. The Abidjan Principles have also been analyzed and referenced by the UN Special Rapporteur on the right to education and annexed to her report (UN Special Rapporteur on the Right to Education, 2019), the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights of the Organisation of American States (OAS), and the Independent Expert on the Effect of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of Human Rights. See: <https://www.abidjanprinciples.org/en/support/official-recognition>.

⁹ 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.

States have the obligation to ensure the realisation of the ‘right to free, quality, public education’ (Abidjan Guiding Principle 29). States comply with their obligation only if they have done everything possible to ensure that all individuals have access to public education of the highest attainable quality. Given their importance, we first clarify terms such as privatization and non-State actors used throughout this paper that situate it within the larger discussion.

As Ball and Youdell (2009) detail, education privatization may occur in two ways: endogenous (incorporating market-based ideals into public education) and exogenous (allowing private markets to assume provision of education). Though endogenous forms (e.g., performance-based funding) may be less visible than exogenous forms (e.g., charter schools or public-private partnerships (PPP’s)), marketization tends to precede explicit State privatization policies (Fallon & Poole, 2016; Ball & Youdell, 2009). This paper further specifies three main areas for the influence of non-State actors: funding, management, and ownership, detailed below.

Non-State educational providers are typically distinguished by their management, either governmental or extra-governmental (Menashy, 2016). UNESCO considers an educational institution as “non-State” if “it is controlled and managed by an NGO or if it has a governing body that primarily consists of members not selected by a public agency” (Steer et al., 2015, p.7). In this paper, we use the term non-State to refer to actors themselves, interchangeably with “private actors.” We use the term “education privatization” to refer to the phenomena itself.

A. Distinguishing Between Public and Private from an Education Perspective

Conceptually, the differences between “public” and “private” seem clear, but in practice, categorization defies simple dichotomies (Ball & Youdell, 2008). Historically, the term “public” is used in exchange for that overseen by, funded by, and provided for by the State; thus, early research contrasts “government” schools with private, religious schools (Lassibille & Tan, 2001). However, the rapid expansion of private, non-religious entities into the public education sphere since the 1980’s reconceptualized the role of the States, relegating it to “pragmatic stewardship” (Adamson, 2019, p. 4). For example, nearly all OECD States’ educational sectors have engaged in some form of public-private partnering in the past twenty-five years; twenty-five *OECD* States used public funds to finance

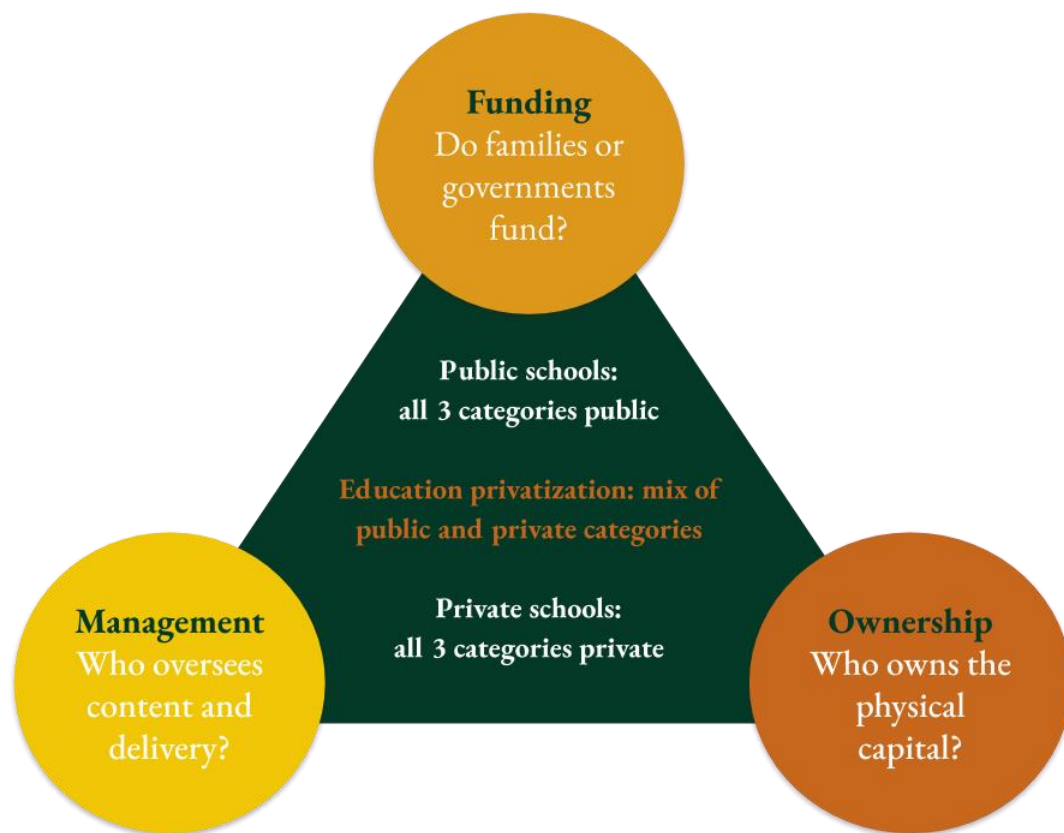
private school enrolments and thirteen did so for more than 10% of PISA-participating fifteen-year-olds in 2012 (Boeskens, 2016).

This comingling of private and public within education, or “education privatization,” takes many forms globally, further confounding definitions (Musset, 2012). Whereas “private” and “public” are classifications for individual institutions, “privatization” describes a process. Thus, many education researchers do not provide discrete definitions of “public” and “private,” choosing instead to model education systems as a continuum of Public Private Partnering (PPP’s) or simply noting the involvement of the “private” sector without clear definitions (Robertson & Verger, 2012; Moschetti et al., 2019).

Our conceptualization of the distinction between “public” and “private” classifies the terms by the categories of ownership, management, and funding (see Figure 1). These cumulative categories aggregate different key areas in which the influences outlined by Ball and Youdell (2008) operate. In this definition, “public schools” have all three of State ownership, management, and funding, while vice-versa, “private schools” have non-State, private ownership, management, and funding. Education privatization, therefore, occurs when one or more of these segments – management, ownership, or funding – includes both public and private interests.

For example, so-called “low-fee” private schools, for instance, are owned and managed by private companies; however, they often receive funding from a complex amalgam of State vouchers, private family tuition, and private donor funds. Charter schools or “academies” may be State funded and subject to State regulations regarding student access and curriculum, sometimes in buildings owned by the public authorities; however, they are often managed by private boards and entities. Therefore, these types of schools do not qualify under all three criteria in this definition of a “public” school.

Figure 1. Defining Private and Public Within Education Research



Some scholars concentrate on provision and funding, describing it as “a mechanism or system of mechanisms by which governments divest themselves from the provision of education and, therefore, from the outcomes of said provision. This results in public funding reallocated (directly or indirectly) to the private sector with oversight shared among extra and inter-governmental bodies” (Levin & Belfield, 2003). Scholars who emphasize provision and funding often centre their analysis on the effects of privatization, e.g., whether this reallocation results in increased student access and/or student achievement outcomes (Carnoy & McEwin, 2003; Estrin et al., 2009).

Other scholars highlight the management perspective of education privatization as:

the transfer of public-sector responsibility to privately owned or operated organizations or companies, for example non-governmentally run schools such as private or charter schools. Often, the result is that the public pays taxes to private or quasi-private organizations for services, but the organizations have little public accountability because they are not elected bodies or politicians (Adamson & Astrand, eds., 2016).

These private providers, whose inclusion in the provision of education is a well-established example of education privatization, “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, p. 200), each with different motives and relationships to the State (Robertson et al. 2012). Private school management, a lesser-studied example of privatization, has also been broadly adopted in several States; more than half of students in the Netherlands, Ireland, and Chile enrolled in this type of institution by 2009 (Musset, 2012).

Finally, the *World Bank* emphasizes property ownership as an important component of privatization, stating that “Privatization is the act of reducing the role of government or increasing the role of the private sector in an activity or the ownership of assets” (World Bank, 2001). The ownership argument, deriving from Milton Friedman (1955) and developed more recently by Feinberg and Lubienski (2008), is that of neoclassical economics; namely, that competition spurs innovation and efficiency. Thus, allowing private ownership of the physical capital (e.g., the school grounds, the building) reduces barriers for competitors to enter the market by decreasing the investment needed. Sweden, Chile, and some municipalities inside the United States have embraced private ownership within publicly funded school voucher programs.

Combining the above elements, one way to define education privatization is as the shifting of government responsibility for the management, provision, and funding of education to the private sector, thereby relegating States to a subsidiary role of allocating funds and monitoring outcomes (Scott & DiMartino, 2009). In doing so, States somewhat divest themselves of responsibility for education shortcomings, pointing instead at market imperfections or parental choice rather than government failure (Farrell, 2020). The private actor -- be it for-profit or non-profit, religious, or secular, fee-based or ostensibly free -- assumes responsibility for student outcomes and, in some instances, gains ownership of the physical capital of schools as well. It is worth noting here that “privatization” refers to a process in relation to the entirety of the educational system. As such, privatization is a spectrum and covers a continuum of mechanisms and policy arrangements (Verger et al., 2020). This working definition represents a cross-section of several elements from education research and policy; however, the Abidjan Principles slightly offers definitions of public education and privatization discussed below that form the basis of the analysis in this paper.

B. Distinguishing Between Public and Private in the Abidjan Principles

The human rights approach to education defines States' obligations in this area. The definition of what is public or private thus has particularly important implications, as it will impact on State's legal liabilities. It matters, firstly, because States have the obligation to ensure the realisation of the 'right to free, quality, public education' (Abidjan Guiding Principle 29). Only if everyone has access to, if they wish, a public educational facility (that also meets other criteria, like being quality), are States considered to have realised the right to education. From this perspective, defining what 'public' is has far-reaching implications. For instance, if a group of population only has a reasonable access to a school considered 'private', perhaps because it is privately managed (as in the example of charter schools mentioned above), then rights-holders in this area would be able to claim politically or in courts that the relevant authorities must build a public school. On the other hand, if this school is considered public – for instance, if such a charter school is considered public, because it is publicly funded and managed by genuine representatives of the students and families – then such claim is not possible anymore (at least not on the ground of the right to a *public* education), but it implies that the State has other obligations towards that school. This shows the legal importance of the definition of schools, such as charter schools - in addition to the symbolic value.

Secondly, the definition of public and private also matters as the obligations of States differ depending on the public or private nature of the institution. For private educational facilities, the State obligations lie essentially in regulating these schools - including monitoring and enforcing these regulations (Abidjan Principles, section III). The regulatory role does not diminish its importance: it involves the State setting several minimum standards, including for instance the governance of the institution, the minimum professional qualifications of staff, and rules regarding discipline and the prohibition of corporal punishment (Abidjan Guiding Principle 55). But the obligations of States with regard to private schools differ from their obligations regarding public institutions because they have no obligation to provide private education, but rather, an obligation to respect the liberty for parents to choose or set up such schools. While private schools may or not exist, that existence (or lack thereof) is not a State concern. The State's concern is that if private schools exist, it must ensure that these schools align with the right to education. On the other hand, the State *must* provide public schools.

As a result, the obligations of the State regarding public schools are higher, as they are meant to provide the bedrock of education for the country. For instance, in addition to ensuring similar standards in public schools as those listed for private schools, States ‘must ensure that public education is inclusive’ (Abidjan Guiding Principle 31). This means in particular that they ‘must ensure that public education accommodates to the greatest possible extent the cultural, linguistic, and other unique traits of different groups in society, such as minorities and indigenous peoples’, and that ‘must safeguard the possibility of pluralism in education; be culturally appropriate’. This obligation to ensure diversity through public education is a function of being public: it is the role of public education to ensure integration, not that of private (although private schools must not discriminate).

For an educational institution to be considered ‘public’ therefore involves some additional responsibilities. States have an obligation to ‘prioritise the provision of free, public education of the highest attainable quality, including by allocating adequate financial and other resources for the realisation of the right to education as effectively and expeditiously as possible’ (Abidjan Guiding Principle 34). A range of institutions that may be considered as ‘private’, and would under our education definition, increasingly claim the label of ‘public’ when they want to benefit from such funding. This case occurs for some charter schools in the United States (U.S.), organised as part of the ‘National Alliance for Public Charter Schools’. Another case in Uganda saw a private school arguing that they are public in nature to benefit from tax exemptions applicable to ‘educational institutions of a public character’. These examples reflect both the benefit of being associated with public education in the public discourse, and the different legal stipulations that public schools may benefit from, in particular regarding funding.

Considering an institution either public or private thus has concrete legal implications, and the Abidjan Principles provide an important frame to understand this definition in a context with legal impact. Human rights scholars have however long avoided this issue, remaining at the general level of considering States ‘as having principal responsibility for the direct provision of education in most circumstances’ (UN Committee on Economic, Social and Cultural Rights, 1999). The question became impossible to avoid however when conducting analysis to unpack the meaning of the State obligation to provide public education, as part of the research for the Abidjan Principles. As discussed by Benfield (2021) in her background paper for the Abidjan Principles, such an obligation to provide public education can only be defined if it is clear what ‘public’ means.

Drawing from this reflection, the Abidjan Guiding Principle 2 propose three criteria to determine that a school is 'public' (Figure 2, next page). They are the schools that are:

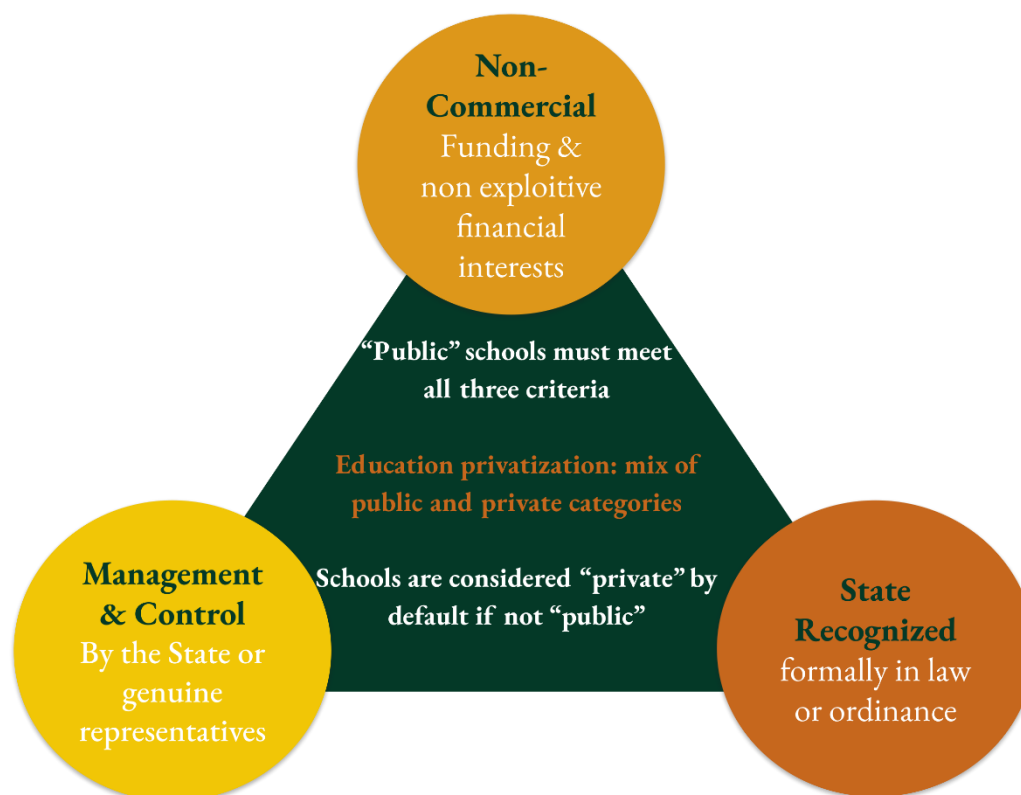
1. *recognised as such by the State as public educational institutions;*
2. *effectively controlled and managed by the State or genuine representatives of the population they serve; and*
3. *not at the service of any commercial or other exploitative interests that undermines learners' right to education.*

It is important to note that these criteria are cumulative: for a school to be 'public', it must meet all of these criteria, not just one or two of them.

The first criterion is common, and similar to the previous definitions: public schools are always recognised by the State. 'Recognition' here however is different from 'ownership', 'management' or 'funding'. What is understood is simply a recognition in law or other of the nature of school, but *not* any form of active implication of the State in the ownership, management, or funding.

The other two criteria make this clear. Criterion 2 offers two options for a school to be public. First, the school can be 'effectively controlled and managed by the State'. This would again be similar to the traditional approach and the definition mentioned above, meaning that the State manages the school. An important added nuance is 'effective': it means that the State management must be real, and presumably not indirect or superficial. Many charter schools might not meet this benchmark, for instance, depending on how much control and management over the private school the 'charter' effectively provides. Charters are contracts with the State and generally the way the public authorities retain a form of control over charter schools.

Figure 2. Defining Public and Private in the Abidjan Principles



The other option provided by criterion 2 is that the school be ‘effectively controlled and managed by... genuine representatives of the population they serve’. This may, in some cases, provide a departure from traditional understanding of public schools. The expression ‘genuine representatives’ can mean a potentially broader range of options than traditional public authorities, such as the State. It does include traditional democratically chosen formalised authorities, whether at the central level (the State) or various other forms of public authorities (countries, city councils, etc.). Public schools controlled and managed by municipal actors would, for instance, probably qualify for this criterion. While the final decision on whether an entity is a ‘genuine representative’ would occur in the court with jurisdiction, in practice, this stipulation, and particularly the word ‘genuine’, signal the democratic involvement of the public in determining that representative(s). For instance, a charter between the state and private entities would not qualify those representatives as genuine representatives of the state without some form of public input into the selection of the representative.

In addition, ‘genuine representatives of the population they serve’ may also refer to non-formalised authorities. This may include, for instance, communities, in particular indigenous groups, that may sometimes be remote or prefer to live separate from the formalised authorities, and *genuinely* control and manage an education institution. This opening to non-traditional forms of public provision was important to defining a right to *public* education that applies in a diversity of contexts. This could include remote aboriginal groups in Australia, or secluded indigenous communities in the Amazonia, where the people have the same rights, but the role of the traditional State differ (Benfield, 2021, in press).

Such an opening could be risky, as some unscrupulous private institutions may claim to be effectively controlled and managed by genuine representatives of the population they serve. One safeguard comes from the fact that the school must still meet criterion 1 and be recognised as ‘public’ by the State. Another safeguard arises from the additional criterion 3, that requires that the institution be ‘not at the service of any commercial or other exploitative interests’.

What ‘commercial and other exploitative interests’ means remains open to interpretation. It would seem to include profit, and could possibly include other self-interested motives, such as a faith motive, where it is predominant and to the benefit of some individuals or institutions. This raises an interesting question as to whether, for instance, some religious schools, such as some of the many religious schools that have long been receiving public funding and considered by the State to be part of the public system, as for example in Uganda, should really be counted as public. This issue could arise in many African countries, due to the colonial history in the region, and reshape the understanding of the reality of public education in some countries.

Another important feature of criterion 3 is that it does not consider just the formal nature of educational institutions, but their reality. Indeed, many schools may be registered as public, or private non-profit, but in practice act differently from their registered status by making profits indirectly or integrating commercial practice within supposedly public institutions. A human rights approach therefore requires review the practice of a school to define its nature. Such assessments can be difficult to do in practice and risk being subjective. However, assessing the practice of education is part of the task of empirical research and this area requires more attention for researchers - and could matter when doing research on public and private education, as discussed below.

It should be noted that the *Abidjan Principles* definition does not refer to funding or ownership of an institution to define its nature. This means that an educational institution that meets the above criteria and is funded privately, for instance through fees or donations, may still be considered as public. This addresses the case of many public schools and universities still largely or entirely funded by parents and students, as the State does not have the resources to fund them or fails to resource them adequately. Conversely, it also means that publicly funded institutions are not automatically public. The confusion between the nature of an institution and its source of funding is common, and the human rights framework could play an important role in clarifying this point. The *Abidjan Principles* deal with issues of funding elsewhere, in section IV for issues related to public funding to non-State actors, and in Guiding Principles 39 to 41 for matters related to private funding to public institutions.

Lastly, in this approach, a school is considered ‘private’ by default, if it is not public. Abidjan Guiding Principle 3 details that it includes ‘both private instructional educational institutions that directly deliver education services, and private institutions that play a non-instructional educational role in the delivery of education services’ and ‘both commercial and non-commercial actors.’

What can be retained from this analysis of the human rights understanding of the difference between public and private can be summarised as follows:

1. The criteria to determine whether an institution is public or private are important. In addition to the important political and symbolic ramifications, the distinction also has legal implications.
2. The *Abidjan Principles* propose criteria that can be summarised as follows: a public educational institution is one that is controlled by the public (criterion 2), for the public interest (criterion 3), and recognised by the State (criterion 1). It comes back to the essence of what ‘public’ is, away from formalist approaches, to look at the reality of the situation of the rights-holders’.
3. Determining public or private status could occur more often, by examining the reality of actual practice in schools. This area could require substantially more research.

III. A HUMAN RIGHTS MONITORING FRAMEWORK

Before we delve into how to apply a human rights framework to the specific issue of non-State actors, we must first explain the differences between human rights and education frameworks. Specifically, a human rights lens on the education sector encompasses a much broader field of reference than most education research. Human rights-based monitoring can be done assessing three dimensions - structures, processes, and outcomes - that do not correspond with how education researchers use those words. Thus, this section introduces the human rights framing and then translates it for application in education, creating common terms for use in evaluation in Part IV.

A. Human rights measurement of structures (commitments), processes (efforts), and outcomes (enjoyment)

When researchers assess education using a human rights framework, they measure both the enjoyment of the right to education by individuals (rights-holders) and the efforts made by the State (duty-bearers) to implement this right, including the development of law and policies as well as financial effort. In doing so, and considering challenges a State may face, they can assess the particular issues that may prevent individuals from fully enjoying the right to education and identify how States can address this prevention of rights enjoyment – and whether they made adequate efforts. For example, does the State lack laws or policies ensuring the right to education, or are they not enforced? Does lack of State resources function as a barrier or are resources present but misallocated?

Assessing the condition of education from a human rights perspective, including non-State actors' involvement in education, can be conducted by the production or collection of data based on human rights indicators. Human rights indicators can be categorised in three types: structure, process, and outcome.¹⁰ At a baseline level, structure indicators refer to the legal commitments of States, process indicators refer to the effort States make in the education sector, and outcomes refer to the

¹⁰ Office of the High Commissioner on Human Rights (OHCHR). 2012. Human Rights Indicators: A Guide to Measurement and Implementation, HR/PUB/12/5, OHCHR, available at: <https://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>; The Opera Framework used another typology referring to 'outcomes' and 'policy efforts'. See CESR (2012), The Opera Framework – Assessing compliance with the obligation to fulfil economic, social and cultural rights, CESR, available at: https://www.cesr.org/sites/default/files/the.opera_.framework.pdf

enjoyment of the right to education, by individuals (students) or groups. These indicators, taken as a whole, provide three distinct facets of a State's educational system of which privatisation may be a part.

Figure 3 (next page) shows how this paper adapts three categories of indicators from a traditional human rights categorisation – structures, processes, and outcomes – into an iterative process for analysing whether education systems are accounting for human rights. In layperson's terms, the questions posed in each area are: structures – 'What laws exist that guarantee the right to education?'; processes – 'How much effort is the State putting forth to meet its legal commitment? Does it ensure the implementation of the law?'; and outcomes 'How well is the state meeting its system-level obligation to the right to education and its individual-level guarantee of the enjoyment of the right to education?' While a researcher may start with any of the three components, this paper begins with a structural analysis.

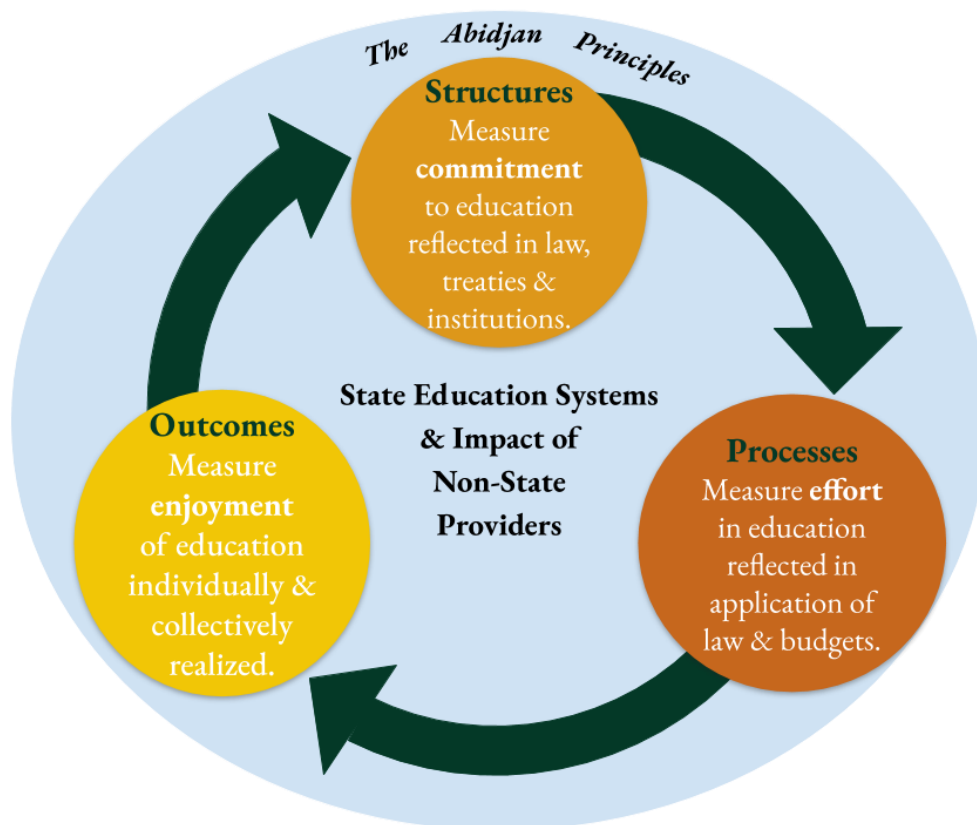
1. Structures: Measuring States' commitment to the right to education

Structural indicators measure the level of commitment of the State regarding the right to education. They include the acceptance of international treaties guaranteeing the right to education, the recognition of the right to education in the constitution, and the adoption of legal instruments and policies, such as a national educational plan, that guarantee and implement it. They also include the existence of institutions and mechanisms necessary for the realisation of this right, including judicial and quasi-judicial mechanisms allowing legal accountability.

2. Processes: Measuring States' efforts regarding the right to education

Process indicators measure the State's ongoing efforts to transform its commitment regarding the right to education into a greater realisation and enjoyment of this right on the ground. Process indicators "can be used to assess the quality, appropriateness, effectiveness, and efficiency of education laws and policies and their domestic implementation, as well as education inputs, such as teachers, learning materials, and school infrastructure." (RTE, UNESCO, 2019) They also include the education budget (amount, allocation, and source of funding), the processes in place to ensure participation and transparency in the development of education law and policies, the assessment of the functioning of the educational institutions, and the proportion of education complaints addressed by the States.

Figure 3. Proposed Inquiry Cycle of Human Rights Structures, Processes, and Outcomes



3. Outcomes: Measuring the enjoyment and realisation of the right to education

Outcome indicators measure the individual and collective attainments that reflect the state and level of enjoyment and realisation of the right to education in a given context.¹¹ They allow users to identify potential deprivations and inequalities in the enjoyment of the right to education. Analysis from the rights-holders' (individual) perspective is an essential step in assessing the field of education through a human rights lens, as individual people are at the heart of any human rights framework - and should be at the heart of any assessment and policy development in the field of education based on human rights.

In practice, structural, process and outcome indicators are interrelated. Structural indicators reflect State commitment to the right to education and their related obligations. Therefore, they inform the scope of enjoyment of the right to education (outcome indicators). Process indicators show how States have translated their legal commitments (structural indicators) into concrete measures and attempt to safeguard their implementation. Analysing outcome indicators can assist with articulating the situation on the ground (both individually and collectively) and identify any additional further initiatives as needed - in light of States' obligations and efforts (structural and process indicators). Furthermore, outcomes indicators are often seen as a measure of the impacts States' efforts produce (process indicators). Applying this framework can help education researchers identify possible deprivations or violations of the right to education and develop research that strengthens accountability-focused policy recommendations based on States' obligations.

Using a human rights monitoring framework for education research means that researchers take into consideration and use international human rights law in the framing of research, data collection, and analysis. This particular framing enriches a researcher's theoretical perspective in a number of ways, although we also envision its utility for policymakers and other education stakeholders. Perhaps most importantly, it expands a researcher's horizon beyond an outcomes-only basis to a systemic analysis at the legal (structural) level. In this way, the researcher focuses not only on access to education and/or student test scores but more broadly on whether the State is making sufficient commitments and efforts to safeguard the enjoyment of the right to education.

Building on this idea, in this paper we refer to a specific framework to monitor human rights generally and apply it to the right to education and specifically to non-State actors' involvement in

¹¹ Adapted from the definition of outcome indicators given by the Office of the High Commissioner on Human Rights (OHCHR). OHCHR. 2012. Human Rights Indicators: A Guide to Measurement and Implementation, HR/PUB/12/5. https://www.ohchr.org/documents/publications/human_rights_indicators_en.pdf

education. With the framework, as described in the paper, we monitor both the enjoyment of the right to education by right-holders and the States' legal commitment and efforts to realize it. This different perspective takes the accountability dimension into account and helps to identify specific gaps and ways to address them. We now turn to the question of how researchers can apply a human rights framework, rooted in the Abidjan Principles, to an evaluation of educational systems, with a particular focus on the role of non-State Providers.

A. Using a human rights framework to monitor and measure non-State Actors' involvement in Education

Applying the human rights lens to education is potentially an innovative and fruitful way of furthering the conversation surrounding the analysis of non-State actors in education. For instance, measuring quality education from a human rights perspective goes well beyond measuring learning outcomes such as numeracy and literacy, extending to the promotion of sustainable lifestyles, gender equality, promotion of a culture of peace and nonviolence, the development of life skills, as well as the teaching environment and the qualification of teachers (Right to Education Initiative, 2013).

When applying a human rights framework to assess non-State actors' involvement in education, researchers can measure the realisation of the right to education against established human rights principles provided in the *Abidjan Principles*. To demonstrate this process, we have identified three overarching principles (2, 3 and 4), we provide examples of some of their content, and put them into a framework combined with education research processes. While not a comprehensive review of the full framework of the Abidjan Principles relevant for non-State actors, Table 1 highlights examples for how a human rights lens can help shaping educational research (as presented in Section IV). The table highlights three dimensions from two of the Overarching Principles (of the ten presented in the *Abidjan Principles*), each discussed in turn below in conjunction with additional Guiding Principles (GPs) providing more details.

It is important to restate that the Abidjan Principles need to be read holistically, as all the Principles are interdependent and interrelated. The tables below are providing with examples, but they do not include all relevant obligations, and should not be used to interpret the Abidjan Principles in any particular way.

Table 1. Abidjan Principles' Example of State Obligations With Regard to the Right to Education

Overarching Principles	Examples of corresponding specific State's obligations
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Provide for all inclusive, free, quality, public education (GPs 29 to 33)
	Allocate the maximum available resources to education and prioritise the funding of free, quality public education (GPs 34 to 38 and 43 to 46)
	Ensure pluralism and inclusion in public education (GP 31)
Respect the liberty of parents regarding the education of their children (Overarching Principle 3)	States must respect the liberty of parents to choose an educational institution for their children other than a public educational institution, within a legal framework established by the State that can include limitations (GPs 47 and 48)
	States must respect the liberty of individuals or bodies to establish and direct private educational institutions, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human rights law (GPs 47 and 48)
Regulate non-State actors' involvement in	States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education. (GPs 51,52 and 53)

Overarching Principles	Examples of corresponding specific State's obligations
education (Overarching Principle 4)	States must define and enforce minimum standards applicable to private educational institutions (GPs 54 and 55)

Source: Abidjan Principles

1. Provide free, public education of the highest attainable quality to everyone

As modelled in the *OECD 2020 Education at a Glance Organizing Framework*, educational access and quality can be viewed as a product of both State resources and its policies (OECD, 2020). To fulfil their obligation to provide free, public education of the highest attainable quality to everyone, States must allocate the maximum of their available resources towards it, which should not fall below the level required by domestic or international education funding commitments, such as the percentage of gross domestic product set in the Sustainable Development goals (GP 15). For instance, the Incheon Declaration and 2030 Education Framework for Action recommend that States commit at least 4-6% of their Gross Domestic Product and /or at least 15-20% of their total public expenditure to education (Incheon Declaration and 2030 Education Framework for action, 2015, para 105). In some States, such as Brazil, Costa Rica and Indonesia, the national education budget is guaranteed by the constitution or legislation. In doing so, States can prioritise the provision of free, public education of the highest attainable quality.

Public education, to meet the inclusiveness requirement, must be culturally appropriate, enabling learners to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong, as well as those of other communities and societies (GP 31). They must also ensure that public education accommodates, to the greatest possible extent, the cultural, linguistic, and other unique traits of different groups in society, such as minorities and indigenous peoples, unless such accommodation conflicts with the aims of education or other standards guaranteed under international human rights law.

2. Respecting Parent Liberty

International human rights treaties recognise the liberty of parents to choose an educational institution other than a public educational institution for their children, and the liberty of bodies to establish and direct private educational institution, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human rights law (Overarching Principle 3).

Thus, education researchers using human rights could measure whether parents can enjoy this liberty - with respect to the right of the child (GP 48.b). This could be particularly relevant in some contexts where public schools do not meet inclusion requirements (which should in this case also be analysed) and non-State schools have a role to play for the preservation of native/indigenous languages and cultures. However, this liberty is not absolute and can be limited “in so far as those limitations are compatible with the nature of these liberties and solely for the purpose of promoting the general welfare in a democratic society and the realisation of any other human rights” (GP 48). Therefore, when evaluating State’s obligations related to parents’ liberty, researchers should assess whether any limitation to this liberty seek to ensure:

- that private educational institutions do not supplant or replace public education, but supplement it in a way conducive to the realisation of the right to education for all, with due regard for cultural diversity (GP 48.a)
- that the right to children to express their views freely is respected and that they are given due weight in the exercise of parental choice, in accordance with the age and maturity of the child, and their best interest (GP 48.b)
- that the exercise of theses liberties does not create any adverse systemic impact on the right to education (GP 48.c)

3. Regulate Non-State Actors

The liberty of individuals to select or establish a school is tempered with States’ duty to ensure non-State providers do not interfere with the realization of the right to education. It is therefore relevant to assess whether the State has adopted and is enforcing effective regulatory measures to ensure the realisation of the right to education where non-State actors are involved, including when non-

State actors conduct their activities without any State involvement or control, or when they operate informally or illegally (GPs 17.f, 51 and 52).

When assessing the impact of non-State actors' involvement in education, researchers should be careful to evaluate impacts at the local and school level as well as at systemic level. At a local level, this includes assessing private institutions': a) governance including the full and effective participation of children, parents, teachers, and other stakeholders (GP 55.a) b) costs (fees and indirect charges) (GP 55.v), c) staffing qualifications and rights (GP55.e.), and d) compliance with minimum quality standards (GP 50, 60).

Systemically, it extends to:

- a. that non-State educational institutions do not supplant or replace public education, but supplement it in a way conducive to the realisation of the right to education for all, with due regard for cultural diversity (GP 48.a);
- b. whether private actors generate or perpetuate education disparities for some groups in society such nullify or impair the enjoyment of the rights to equality and non-discrimination, such as desegregated system (GP 48.c.i);
- c. whether the existence or development of private actors adversely affects or create a foreseeable risk of adversely affects the capacity of the State to realize the right to free, quality, education (GP 48.c.ii);
- d. whether the existence or development of private actors undermine any aims of education guaranteed under international human rights law, such as the commercialisation of education¹² (GP 48.c.iii);
- e. whether private institutions are not in a position to unduly influence the educational system as a whole (GP53).

Additionally, researchers may also assess non-State actors' own responsibility to respect the right to education and other human rights in education (GP 49) – which means, their activities do not cause or contribute to adverse impacts on the right to education and that they address and provide remedies when such impact occurs.

¹² Guiding Principle 8 states: 'All forms of education must be directed to the aims and objectives of education guaranteed by international human rights law. These include the full development of the human personality and the sense of its dignity, and respect for all human rights and fundamental freedoms. Education must aim to enable individuals to effectively participate in society, to be tolerant, to live together, and to have the capacity and critical thinking to elaborate and realise their own or collective life plan in an autonomous way'.

C. Translating human rights frameworks into education frameworks

We now turn to considerations for the translation of this framework into systemic indicators which provide data points necessary to evaluate these principles in practice. Reflecting internationally agreed-upon values, the right to education framework clarifies epistemological questions underpinning empirical education research by outlining a broader scope for analysis. In particular, it reveals several specific issues for education research, in particular for studies centring non-State actors in education, for analysis to better understand the right to education. The section above functions as the theoretical foundation of this paper, with this section now mapping a conceptual framework. It combines the human rights frames of structures, processes, and outcomes with the stipulations articulated in the *Abidjan Principles* into a heuristic upon which we layer educational analyses.

1. Research and Evaluation Framework -- Applying Human Rights Obligations and Indicators

We note that even when pursuing the relatively novel approach of applying a human rights framework to education, no one template can be all encompassing regarding complex realities in State education sectors. Even during the process of writing this paper, we had to bridge different terminology across the education and legal fields. For instance, “outcomes” in education has come to often refer to the relatively narrow issues of test scores and education attainment. However, ‘outcomes’ in the human rights field refer more often to the entire outcome of an education system, from teacher training to curriculum delivery and beyond, measuring the overall ‘enjoyment’ of the right to education by individuals. As such, this effort is more of a beginning of the development and articulation of this evaluation framework rather than end. Nevertheless, we put forward a roadmap by which researchers and stakeholders may begin to view their States’ education system through structures, processes, and outcomes.

We present three tables which translate States’ human rights obligations regarding non-State actors’ involvement in education to potential research questions to guide further inquiry. By dividing the tables into the human rights categories of structures, processes, and outcomes, we highlight just how substantive the shift is in applying human rights framework to educational research. Tables 2-4 present the types of education research questions that apply to the different elements of the human rights framework: structures, processes, and outcomes, respectively. Table 2 identifies the legal

commitments (structures) made by States, proposing primarily legal research questions about how national law incorporates the international obligations as reflected in the *Abidjan Principles*. Table 3 turns to the question of processes, or the level of effort that States make in legal and policy arenas, with particular attention to resource allocation. The primary work of education researchers falls mainly in outcomes, covered in Table 4, and discussed before.

It is important to emphasise that these tables only provide examples of the types of indicators for development, with a potentially vast number of indicators possible for each of the Abidjan Principles.

Table 2. Translating the Human Rights Framework to Education, Structures

Overarching Principles	Examples of corresponding specific State Obligations	Structures (Legal commitments)
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Provide inclusive, free, quality, public education for all (GPs 29 to 33)	Do States or subnational jurisdictions legally guarantee the right to free, inclusive, quality education in alignment with the APs?
	Allocate the maximum available resources to education & prioritize free, quality public education (GPs 34 to 38 and 43 to 46)	Is education spending codified as essential, with amounts required, in State constitutions or policy frameworks? Does the law prohibit commercial and other exploitative motives for providers?
	Ensure pluralism and inclusion in public education (GP 31)	Do laws specifically protect groups from exclusion from education provision? Do laws and policies aim to prevent programmatic segregation within and across schools?

Overarching Principles	Examples of corresponding specific State Obligations	Structures (Legal commitments)
Respect the liberty of parents as regards the education of their children (Overarching Principle 3)	States must respect the liberty of parents to choose an educational institution for their children other than a public educational institution, within a legal framework established by the State that can include limitations (GPs 47 and 48)	Does the legal framework respect parents' liberty to choose education for their children, ensuring such choice is made through genuine preference not because of inadequate public provision?
	States must respect the liberty of individual or bodies to establish and direct private educational institutions, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human rights law (GPs 47 and 48)	Do laws limit non-State provision when they are seen to be undermining any of the aims of education guaranteed under international human rights law?
Regulate non-State actors' involvement in education (Overarching Principle 4)	States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education. (GPs 51,52 and 53)	Do States set in the law the mechanisms to monitor the systematic impact of non-State actors?

Overarching Principles	Examples of corresponding specific State Obligations	Structures (Legal commitments)
	States must define and enforce minimum standards applicable to private educational institutions (GPs 54 and 55)	<p>Do States have established minimum standards applicable to private educational institutions?</p> <p>Do States lay out in the law the mechanisms to follow in case an individual's right to education is violated at a private institution?</p>

Table 3. Translating the Human Rights Framework to Education, Processes

Overarching Principles	Examples of corresponding specific State Obligations	Processes (Efforts)
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Provide inclusive, free, quality, public education for all (GPs 29 to 33)	Do States take all necessary measures, such as provision of infrastructure and educators, to ensure inclusive, free, quality, public education? Are teachers paid a living wage and trained as professionals?
	Allocate the maximum available resources to education & prioritize free, quality public education (GPs 34 to 38 and 43 to 46)	Does spending as % of GDP and education funding represent the maximum use of available resource? Are funding levels and trade-offs transparent?
	Ensure pluralism and inclusion in public education (GP 31)	Is a consultative and/or monitoring process in place for curriculum design, which is representative of all stakeholders? Is curriculum representative, diverse, and respectful of multicultural, multi-ethnic, and multilingual backgrounds?
	States must respect the liberty of parents to choose an educational	Are there mechanisms in place ensuring that parents' "choice" is not synonymous with lack of public school plurality or quality?

Overarching Principles	Examples of corresponding specific State Obligations	Processes (Efforts)
Respect the liberty of parents as regards the education of their children (Overarching Principle 3)	institution for their children other than a public educational institution, within a legal framework established by the state that can include limitations (GPs 47 and 48)	
	States must respect the liberty of individual or bodies to establish and direct private educational institutions, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human	Are there transparent, non-discriminatory policies and procedures in place detailing how bodies may establish and maintain private school?

Overarching Principles	Examples of corresponding specific State Obligations	Processes (Efforts)
	rights law (GPs 47 and 48)	
Regulate non-State actors' involvement in education (Overarching Principle 4)	States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education. (GPs 51,52 and 53)	Do States routinely evaluate whether non-State actors contribute to stratification and/or segregation and take corrective action when found?
	States must define and enforce minimum standards applicable to private educational institutions (GPs 54 and 55)	Are the policies of non-State actors and their schools reviewed to ensure they do not charge excessive fees or enact rules which create barriers to universal access, in both the institution and programs within it?

Table 4 addresses the issue of outcomes in human rights law, which goes much further than outcomes such as test scores and attainment commonly found in education research. For instance, for the obligation to “provide inclusive, free, quality, public education for all,” a human rights outcome question asks whether the education system permits the “full development of the human

personality.” This broad outcome likely encompasses myriad different indicators that the education community has not truly attempted to envisage or measure in a serious way. Importantly, while equity is not measured separately but embedded throughout analyses by disaggregating indicators, it also remains a key outcome of the system from a human rights perspective. This reflects current trends in education research and policy stemming from the equity imperative of SDG 4. However, the human rights framework goes even further with its anti-discrimination and inequality approach.

Table 4. Translating the Human Rights Framework to Education, Outcomes

Overarching Principles	Examples of corresponding specific State Obligations	Outcomes (Enjoyment)
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Provide inclusive, free, quality, public education for all (GPs 29 to 33)	Do students have access to public education? Does this education permit the “full development of the human personality?”
	Allocate the maximum available resources to education & prioritize free, quality public education (GPs 34 to 38 and 43 to 46)	Does the level of funding result in school facilities which are safe, well-ventilated, up to date, and well-equipped? Does the level of funding result in universal access to qualified, competent teachers? Does the level of funding eliminate the need to collect fees from parents or students to maintain program quality?
	Ensure pluralism and inclusion in public education (GP 31)	Do net attainment rates disaggregated by marginalized or oppressed groups and school type reveal patterns of inequity?
Respect the liberty of parents as regards the education of	States must respect the liberty of parents to choose an educational institution for their children other	Is the saturation of private providers decoupled from the quality, inclusion, and universality of local, public institutions?

Overarching Principles	Examples of corresponding specific State Obligations	Outcomes (Enjoyment)
their children (Overarching Principle 3)	than a public educational institution, within a legal framework established by the state that can include limitations (GPs 47 and 48)	
	States must respect the liberty of individual or bodies to establish and direct private educational institutions, subject always to the requirement that such private educational institutions conform to standards established by the State in accordance with its obligations under international human rights law (GPs 47 and 48)	Do bodies establishing private educational institutions operate transparently, free from a commercial/exploitive motive and primarily for the purpose of safeguarding pluralism?

Overarching Principles	Examples of corresponding specific State Obligations	Outcomes (Enjoyment)
Regulate non-State actors' involvement in education (Overarching Principle 4)	States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education. (GPs 51,52 and 53)	Does the involvement of non-State actors in education harm the universal realisation of the right to education through sudden provider withdrawal or through a draining of public resources? Do net enrolment and attainment rates, disaggregated by marginalized or oppressed groups and school type, reflect universal enjoyment of the right to education or show inequalities and segregations?
	States must define and enforce minimum standards applicable to private educational institutions (GPs 54 and 55)	Does the regulation system ensure that all students, wherever they study, have access to the same quality of education and same opportunities, or are they difference depending on where family studies based on the nature of the institution, controlling for student characteristics?

One issue that highlights the intersection of these three areas - structures, processes, and outcomes - is that of school closures. When populations contract or demand for public institutions shift, closures of some public institutions (also “consolidation”) may become necessary to provide cost-effective and adequate education for remaining students (Lytton, 2011). Education sectors which allow for families to select into a myriad of non-State schools (“school choice”) may increase volatility in local demand, exacerbating the effects of population fluctuations. A particularly noteworthy example occurred in Sweden in 2013 when Axel’s JB Education-run schools abruptly shut down, network which served 10,000 students (Adamson, Astrand, & Darling-Hammond, eds., 2016). A human rights

framework necessitates that special attention be paid to the impacts of school closures on the enjoyment of education for all, as some research suggests closures disproportionately burden socioeconomically disadvantaged families (Lee & Lubienkski, 2017).

2. Prioritization Method for Data Analysis

Given the scope of the right to education, not all aspects can be measured in a single study. As outlined above, the ‘right to education’ is often understood restrictively to mean *only* or *mostly* access to education (sometimes with an understanding of ‘equity’), but it encompasses much more. This leads to two caveats for researchers interested in a rights-based approach. First, education researchers can better acknowledge the choices and constraints inherent in their research process. While generally the norm, researchers could more explicitly name aspects of the human rights framework that they do and do not research. For instance, studies measuring learning outcomes for language literacy and math as a proxy for education “quality” could, and should, from a human rights perspective, explicitly acknowledge that reading and math scores represent only a partial understanding of learning outcomes, and an even smaller portion of human rights outcomes. They could also discuss many other aspects of the right to education, beyond learning outcomes and beyond quality, that are not generally measured, such as discrimination.

For instance, a situation may occur in which research shows an increase in learning outcomes through a particular intervention but does not adequately measure inequalities in the application of the intervention and/or systemic inequalities resulting from an aggregation of resources focused on this particular intervention. Ignoring these issues makes it difficult to derive any lesson from a right to education perspective. Yet, in practice, different aspects of the right to education are often in tension: for instance, an intervention may increase learning, but at expense of the rights to equality and non-discrimination. This tension enriches policy debates about how to best allocate resources within a human rights paradigm, whereas presenting research on a small part of the object (e.g., learning outcomes) as an accurate reflection of the whole (the right to education) impoverishes the debate. While no study will cover the totality of the right to education, explicit acknowledgement of parameters and limitations can help align research with a human rights approach.

Secondly, researchers - and users of research - should be careful about claims of studies as *neutral* and solutions as *technical*. Given the diversity of aspects of the right to education, researchers constantly make necessary choices that are not neutral (Stevenson, 1989). In this respect, it would be relevant to question the dominant choices made in empirical research about public and private education and issues related to privatisation. For instance, many studies focus on comparing outcomes between public and private educational institutions. But from a human rights perspective, this policy-driven research choice covers only a slice of the scope of the right to education. While research decisions are legitimate, study authors should take care to surface them and consider how they add to the body of knowledge, particularly in a field currently dominated by outcomes-based research.

3. Trade-offs in Data Analysis Processes

Though the right to education is broad, focused research has a definitive role in this arena. We urge more educational researchers to adopt this human rights lens. However, given their breadth and complexity, authors should review critically their methodological choices and the interpretation of results from a right to education perspective. One good illustration of tensions that arise when assessing the right to education occurs in issues of private actors' involvement. Consider the situation of the introduction of free primary education following the adoption of the Millennium Development Goals in the early 2000's.

Imagine, for simplicity's sake, that this intervention largely increased access to school for the poorest. However, due to a lack of necessary financial effort, it was also accompanied in many contexts by a decrease in the quality of education, more difficult working conditions for educators, and increased segregation stemming from middle-class flight to fee-paying private schools that, as a result, then provided better results. How would one assess such a situation from a human rights perspective? The first step is to acknowledge the complexity of the problem and avoid an over-simplified analysis -- commonly found in policy discussions -- that would elevate the policy intervention because of increased access for the poor (which constitutes just one part of the right to education and ignores dimensions of inequalities and segregation), or that private schools improve the education system because they have better results (which ignores indicators related to inequalities).

Acknowledging this complexity enables us to identify the existence of trade-offs, where present, and study them. Once identified, researchers can address trade-offs in two ways. First, there will be situations where the **trade-offs are between an aspect of the right to education that is absolute**, and can never be derogated from, and one that is not. What is absolute or not may not always be clear and require further discussion. It may result from a context specific democratic process, for instance, of acceptable (or unacceptable) levels of inequalities or segregation. However, this heuristic will work for dimensions of the right related to the obligation to do no harm, which are immediate and do not require resources.

Take, for example, the prohibition of corporal punishment, an absolute requirement that does not require resources and can never suffer any exception. Another case occurs with strongly guaranteed and consensual universal standards, such as (at least) the minimum labour standards, in particular those protected in the core conventions of the International Labour Organisation. In such cases with a trade-off between such an *absolute* dimension of the right to education and another one, the recommendation and analysis, if it is based on human rights, should take this distinction into account.

To be specific, if research shows that learning outcomes improve by using some form of corporal punishment, or an intervention improves learning outcomes by deteriorating labour standards below minimum requirements, then the research should highlight this relationship and the conclusion, from a human rights perspective, should claim that the approach or intervention is failing. For example, French and Kingdom (2010) find positive effects for student cognitive achievement with increases in private schooling in rural India; however, the study notes that private schools there nearly uniformly employ unqualified teachers and pay them poorly. This allows private schools to reduce class sizes well below State schools average class sizes. This shows a trade-off between increases in learning outcomes at the expense of basic working conditions. To the extent these working conditions are indispensable to the model, i.e., illegal labour conditions as a necessary condition for the intervention to work and keep the costs low. Many studies use learning outcomes to measure quality of an intervention, yet fail to also investigate (even superficially) some dimensions of absolute right, such as minimum labour standards or systemic inequalities, and at least attempt to examine any possible trade-offs.

Finally, some aspects often discussed as ‘absolute’ are actually not, in the human rights framework. This situation typically occurs in the case of the liberty of parents to choose or establish a non-State school. This liberty, which exists and is explicitly recognised in international human rights law, is also explicitly conditional, with clear legitimate limitations that the State can put to it, as detailed in the Abidjan Guiding Principle 48. Claiming otherwise does not reflect a human rights approach.

Second, when the trade-offs involve aspects of the right to education that are not absolute, the tension should be resolved through a democratic and political process. This typically occurs, for instance, if an intervention improves quality at the expense of access, or vice-versa - and the limitation in available resources does not allow for fully addressing this trade-off, at least in the short term. It remains important to make these choices clear and apparent and to avoid the suggestion that only one option exists. This becomes particularly important in the debate about private involvement, where non-State actors are often presented as the only option, often due to lack of public funding. This option could have some benefits (e.g., broaden access quickly), but also has numerous downsides (see below) that create trade-offs and that researchers should examine and present and for which decision-makers should be accountable. Elected politicians have to make choices and bear responsibility for them, but researchers have a key role to play in presenting these trade-offs transparently to inform the public debate.

IV. Case studies: Applying the Human Rights Framework

We now apply the translated human rights framework regarding the involvement of non-State actors in education. In this section, we apply the above framework to three separate types of education research. First, we re-evaluate an existing case study using the human rights in education framework. Then, we investigate how readily a researcher could apply the human rights framework in the United States, a country with a large and varied set of non-State actors in education. In particular, we present the relevant data availability and transparency corresponding to the framework. Finally, we review an education sector plan to show the implication of using human rights to interpret and analyse education data on non-State actors.

A. Re-Evaluating an Existing Case Study

This section reviews “The Role and Impact of Private Schools in Developing Countries” by Day Ashley et al. (2014, hereafter “the study”).¹³ In doing so, we can see how a human rights framework may substantively shift the interpretation of collected data. The aim here is not to criticise this piece or any other research, but rather to create a complement to it that underscores for researchers the importance of framing with respect to interpreting data.

1. Study Selection Criteria

We identified this specific research study for three reasons. First, it presented a rigorous review of the evidence on the role and impact of private schools in developing countries (hereafter the literature review). Second, it was commissioned and published by the United Kingdom’s (UK) Department for International Development (DFID), at a time where the UK has decided to expand its support to private education and was considering the options and implications. As such, this study has not only an important political context and implications, but also a strong justification for alignment with the right to education, as DFID is legally bound to respect, protect, and fulfil the right to education, including through development cooperation. The UK has ratified a range of treaties including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

Third, the study received wide reference and citation since its publication in 2014, underscoring its scholarly contribution as a literature review on private involvement in the education sector. It also therefore enables a reflection not just on this particular literature review, but on a section of the education research field. A human rights reading of the study leads to comments on the conceptual framework and the interpretation of the results. Several relevant comments and criticisms have occurred on the methodology, but we aim instead here on illustrating what a right to education lens would bring to the discussion.

2. Analysis of the study

¹³ To read the original study, please visit: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10145.pdf>

The main question that the literature review poses is “Can private schools improve education for children in developing countries?”. To address this question, the authors formulated eight hypotheses across three themes: supply, demand, and enabling environment. They further disaggregated these hypotheses into 17 testable assumptions that form “the basis on which hypotheses are tested” (Day Ashley et. al 2014, 6). The assumptions thus correspond to the indicators used in the aforementioned human rights framework. The full logic of the research question, hypothesis, and assumptions are summarised in the following graph, excerpted from the study (p. 8, see Figure 4, next page).

As an illustration, we analyse hypotheses related to the measure of quality against the Abidjan Principles. We then turn to review the analysis of how this assessment of quality is considered in perspective with other indicators.

Examining Hypothesis 1. Quality: Private schools are better quality than state schools -

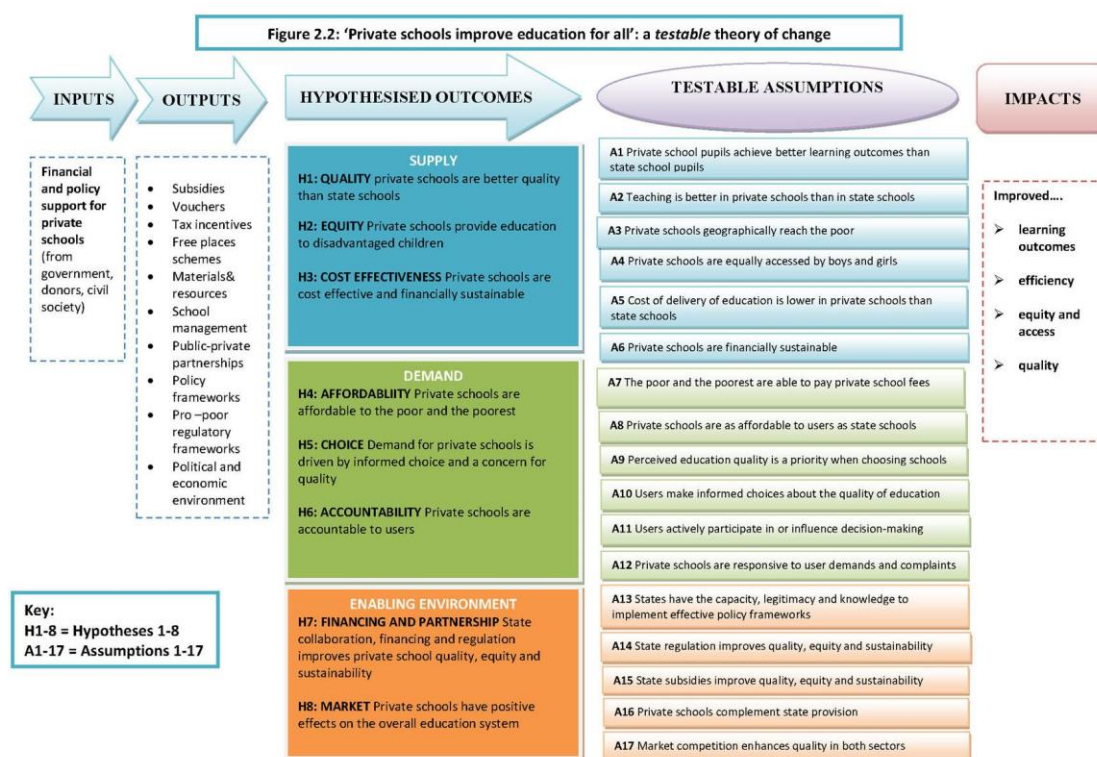
This hypothesis is measured through two assumptions.

Assumption 1: Private school pupils achieve better learning outcomes than pupils in state schools.

Assumption 2: Teaching is better in private schools than in state schools.

The overall approach of the hypothesis related to quality consists in comparing public and private education, with the particular ambition of identifying if private education can be better than public education. First, this approach is limited inasmuch as does not consider the systematic aspects of the quality in an education system. For instance, if a private school improves quality at the expense of public education, or vice-versa, the assessment will not capture the relative shift. Such an assessment is not always difficult to measure, as the indicators chosen here – learning outcomes – often exist at a broader level. Some of the studies may address this point by controlling for some factors, but the overall hypothesis approach does not seem to take it as a central issue. This is in contrast with the repeated requirement in the human rights framework to consider the overall systematic relationship (see for instance Abidjan Principles, GPs 48.c, 52.b, 65.f, 69).

Figure 4. Example Figure from Day Ashley et. al 2014, p. 8



Second, the focus on learning outcomes and teaching quality offers a limited understanding of quality. The inclusion of teaching quality is a noteworthy attempt to move beyond a focus on learning outcomes. However, many core elements of quality recognised in the human rights framework are not addressed. The Abidjan Principles (GP 14) summarises the four main elements of quality education in the right to education: availability (including sanitation facilities, infrastructures, number of teachers, information technology facilities, etc.), accessibility, acceptability (including teaching methodologies reviewed in regard to the aims and objectives guaranteed under international human rights law, the absence of stereotypes, etc.), and adaptability (including the response to the cultural needs of the learners). Most of these elements are not captured in the assessment elements of the study. Of course, many of those are difficult to measure, and it would be impossible to be comprehensive. But the study lacks a clear acknowledgement of these limitations to be used as a human rights tool. For instance, infrastructures commonly discussed as part of quality measurement, and for which data exist, were not included or discussed regarding this hypothesis. This thus is a clear choice to depart from a rights framework.

On the substance of the analysis, the study focuses essentially on one type of indicators: outcomes. It does not review the processes or structural indicators that would indicate the role and possible achievements or limitations of public authorities and policies. Without such an understanding of the efforts of the public authorities, or lack thereof, it is difficult to understand the right to education, in regard to quality. For instance, do the States adequately fund the public schools considered, to the maximum of their available resources? From this perspective, resources are not just an element to control between public and private schools, but a substantive element of the assessment. For instance, a failure of a State to adequately fund a public school in the first place would not only help put the learning outcome into context for these schools but also constitutes a violation of the right to education in the first instance.

This point is even more important since, as noted by the authors, “overall learning levels of children in rural areas in many countries remain worryingly low, whether at private or public schools. [...] [T]he private school effect is often calculated relative to incredibly low achievement levels in state schools, which ultimately questions the real measure of the advantage for children attending them.” (p. 18). It could thus be that all children considered – in both public and private schools - have their right to education violated. However, this issue only makes an ancillary appearance in the study as a caveat, whereas a human rights analysis would have made it a central element of the reflection.

Examining the trade-offs between quality and equity

Another way to analyse the perspective on quality of the study is to discuss the trade-offs at stake with other elements of the study. The study often either does not present elements of trade-offs as such or consider elements that cannot be derogated from on the same level as others. This issue is striking when looking at the analysis of assumption 2 on teachers. Among the caveats, the authors refer to the fact that low-fee private schools “keep costs low by exploiting labour markets for less qualified and less experienced teachers working on significantly lower salaries. From this perspective, greater teacher effort exerted by such teachers might be explained by more credible threats of dismissal given weaker job security combined with a lack of organisation as an effective pressure group/union.” This is an important element of nuance of the analysis that reflects core and non-derogable elements of the right to education.

The authors deal with this issue by referring to it in the study as “a potential unintended consequence” that “may be highlighted.” This consideration of teachers’ labour conditions as a consequence, rather than a principled element, is another choice of the study that departs from a human rights perspective. In addition, in a human rights framework, any trade-off between quality elements and core labour standards would be unacceptable, as labour standards are absolute elements. For instance, improving teachers’ working hours by using methods of pressure that are violating human rights, which may be for instance comparable to labour conditions in the garment factories in the 1990s and 2000s that made the headlines, would not merit discussion or consideration.

Another challenge appears is the application of “equity” and “quality.” As a starting point, “equity” is treated separately from other elements, whereas in a human rights framework, as discussed above, equity is better considered as a constitutive aspect of each measurement. The study does address this issue to some extent as the authors note that much of the literature reviewed does not account adequately for the “unobserved/unmeasurable differences in the socio-economic backgrounds of private and public school pupils. These unobservables, which include home educational environment, or the degree to which parents are educationally motivated, affect academic performance but cannot be easily adjusted for in a statistical study.” (p. 18). From a human rights perspective, such an element should not just be considered as a caveat of quality, as important as it is. Not only can differences in socio-economic background completely bias the measure of the outcomes, especially in a study making causal claims; they also serve as a crucial measure of potential inequality, discrimination, and/or segregation. Understanding quality without assessing potential trade-offs with inequalities does not adequately depict the human rights situation.

The analysis of hypothesis 2, on equity, attempts to partly deal with this issue. Assumption 3, “private schools geographically reach the poor”, could be a way to address socio-economic background. However, “geographical reach” represents a very limited way to measure inequalities and discrimination as understood in the human rights framework (Abidjan Principles, GPs 23 – 28). It is a very limited measure of forms of economic segregation or discrimination, including in particular “systemic disparities of educational opportunity or outcomes for some groups in society, including people living in poverty or in rural settings” (Abidjan Principles, GP 25).

To the extent equity is thus measured, the authors note that the need for further research, but that “most research cautions against assuming that this means they are increasingly accessible to the poor,” adding that “findings relating to improved equity and access were overwhelmingly negative and neutral” (p. 52). The study thus implies a trade-off between potentially slightly improved quality in LFPS and low access to the poor. This, in a human rights analysis, added to the lack of measurement of some central aspects such as systemic economic discrimination or segregation, would raise serious caution. However, it did not stop policymakers and analysts from using the study to justify an understanding that LFPS are positive for the right to education.

B. Analysing data for the United States

We have noted how a human rights framework shifts the scope of what a researcher seeks to evaluate and their interpretation of findings. Here, we apply this framework to the United States to spotlight the relevant data’s availability and transparency. The purpose here is to create both a reference point for further research and to emphasize how uncommon these questions are in educational research.

The United States represents an interesting case study for this analysis as many trace the popularity of the privatization movement to policies endemic to the U.S. and the U.K. in the 1980’s. During these years, both nation’s prominent leaders (Reagan in the U.S. and Thatcher in the U.K.) espoused and pursued anti-Keynesian policies. Unlike in Great Britain, however, U.S. economic policies merged with a re-emerging conservative Moral Majority popularized by religious leaders (Deeds, 1986). Therefore, in the U.S., policies of privatization tend to be entwined with nationalistic or moral ideals including freedom of choice, local control, and meritocracy.

Furthermore, the nation operates in a federalist structure within which states function under a national legal jurisdiction. Though the United States maintains a national Department of Education, the authority to manage schools, select curricular materials, and even set certification criteria for teachers is designated to the States. As a result, education’s structures, processes, and outcomes differ widely by location both across and within states. By necessity, we ask broad questions given this complex terrain, being as precise as possible and focusing on the involvement of non-State actors.

1. U.S. Structures

As structures refer to the State's commitments to education, they include legal recognition of education as a human right. In this regard, the United States differs from many countries in the Global North as it has ratified neither the International Covenant on Economic, Social and Cultural Rights nor the Convention on the Rights of the Child (Gardiner, 2017). In fact, the U.S. Constitution -- the nation's founding document -- does not protect the right to education or guarantee access to public education, an omission validated in the nation's Supreme Court ruling *San Antonio V. Rodriguez* (1974). However, most states in the nation do guarantee access to a free, appropriate public education in their state constitutions (Education Commission, 2016). However, the language establishing minimum provision varies -- and no federal mandatory minimums provide legal backstops -- as does whether funds can be diverted from public schools to private institutions.

Instead, at the national level, U.S. education law functions primarily as the mechanism to guarantee recognized minority or oppressed groups access to established public institutions (See Table 5). Notable federal legislation includes: 1) the Equal Opportunities Act (1974), prohibiting the denial of access to education on the basis of race, color, sex, or national origin; 2) Individuals with Disabilities Education Act (IDEA) at 20 U. S. C. Â§ 1401(3)(A)(9), codifying that all students have access to a "free and appropriate education" regardless of disability status; 3) the Elementary and Secondary Education Act (ESEA) (1965, current), implementing federal appropriations for low-income students (Title I) and encompassing the current compliance framework; and 4) Title IX (1974), making exclusion of females from programs and/or extracurricular activities illegal for any entity (including public and private institutions) which receives federal funds.

However, the United States does codify the mechanism by which states must safeguard parent liberty regarding education. Parents have the "fundamental right" to "direct the education of their child" including the right to opt out of public school instruction (*Meyer v. Nebraska*, 1920). Nevertheless, parents must provide access to "adequate" instruction via private schools or home-schooling or face fines or court charges for violation of compulsory education laws.

Table 5. Applying the Human Rights Framework to U.S. Education, Structures

Overarching Principles / State's obligations	Questions about Structures (Commitments)	Structures within the United States	Data Source(s) for Further Research
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Do States or subnational jurisdictions legally guarantee the right to free, inclusive, quality education in alignment with the APs?	Right to free and appropriate education established at the State but not national level. The nation has not ratified international treaties, except for one, establishing education as a human right in a legally binding way.	University of Minnesota Human Rights Library
	Is education spending codified as essential, with amounts required, in State constitutions or policy frameworks?	As education policy is largely regulated at the state level, funding varies widely by state and by school district. Nearly 90% of public school budgets are products of State and local allocations (Baker, Farrie & Sciarra, 2016).	F-33 school finance survey (available at IES) granular to state/district level.
	Do laws specifically protect groups from exclusion from education provision?	The nation establishes legal protections prohibiting discrimination based on race, color, sex, or national origin. It also provides special protection for students with	U.S. Department of Education, Laws and Guidance Overview

	Do laws and policies aim to prevent programmatic segregation within and across schools?	specific learning needs and disabilities. U.S. educational research findings at times highlight enacted policies have created de facto programmatic segregation especially regarding school tracking.	Civil Rights Data Collection, Educational Equity Reports
Respect the liberty of parents as regards the education of their children (Overarching Principle 3)	Does the legal framework respect parents' liberty to choose education for their children, ensuring such choice is made through genuine preference not because of inadequate public provision?	The U.S. Supreme Court, the highest court in the nation, established parent's right to choose private education (<i>Meyer v. Nebraska</i> , 1920). However, the same court has recently failed to safeguard the funding of public provision (<i>Espinosa v. Montana</i> , 2020).	National Conference of State Legislatures, Guide to School Choice Laws
	Do laws limit non-State provision when they are seen to be undermining any of the aims of education guaranteed under international human rights law?	California's AB1505 stipulates that denial of charter school renewal is authorized for schools "not serving all pupils who wish to attend".	California Legislature (2019)

Regulate non-State actors' involvement in education (Overarching Principle 4)	Do States set in the law the mechanisms to monitor the systematic impact of non-State actors?	It is a federal legislative intent (though not a mandate) that districts form an Advisory Committee for public input to review any proposed school closures.	U.S. federal <i>Education Code</i> Section 17387,8
	<p>Do States have established minimum standard applicable to private educational institutions?</p> <p>Do States lay out in the law the mechanisms to follow in case an individual's right to education is violated at a private institution?</p>	While outcomes rarely favor petitioners, parents and other stakeholders may sue to block school closures. Arguments centre on whether closures violate the U.S. Constitution's equal protection clause (14th amendment) by unfairly denying a group equal protection under the law.	Zais (2018) audit entitled "Nationwide Audit of Oversight of Closed Charter Schools,"

2. U.S. Processes

Given its federalist structure, the United States' processes widely differ by state and by school district within the state. Nationally, the United States generates ideals and standards which states and local school districts are required to meet or show progress toward; however, the funding of such policy and its processes for implementation are delegated to the states. Fundamental U.S. education legislation -- the Elementary and Secondary Education Act of 1965 (ESEA) -- aimed to "create greater equality among the citizens of the increasingly centralized state." Practically speaking, these ideals are implemented at the state and local level with differing degrees of fidelity (Glenn, 2012, p. 14) (See Table 6).

For example, the U.S. has no federal (national) minimum educational budgetary requirement; on average, the federal government supplies just 10% of total school operating budgets. The remaining 90% comes from state and local resources and fiscal policy (Baker et al., 2016). In 2018, per-pupil spending ranged from \$9,000 USD/student to over \$15,000 USD/student in non-cost-adjusted terms (NCES, 2020). As a result, local school districts in the U.S. are responsible for about 45% of their annual operating budget (which pay for teachers, staff, administration, materials, and facility maintenance and operations), but are responsible for 82% of their capital budget (which covers building new schools and renovating existing facilities) (Alexander & Lewis, 2014). Therefore, the responsibility to fulfil fundamental building blocks of human rights enjoyment is delegated to local communities. Unfortunately, multiple researchers have found these structures and processes have created an education system wherein the equity and quality of education is intertwined with family socioeconomic status (Baker et al, 2019; Adamson & Darling-Hammond, 2012).

Public schools (and private schools receiving any State funding) are subject to state and federal accountability. Parents or students who are recognized as adults may take a grievance to the civil court system if they are unable to resolve a complaint locally. The U.S. court system can clarify and interpret legislation, or, in rare cases, it may set aside legislation. Regarding education, important U.S. court cases include: *Brown V. Board of education* (1954), challenging the constitutionality of segregated schools; *Serrano V. Priest* (1971) challenging the constitutionality of the school finance system, and *Tinker V. Des Moines* (1969) challenging the suppression of student speech in K-12 schools. Private schools may not violate anti-discrimination law in refusing services to a protected class, but they may require tuition/fees, student religious avowal, and/or academic thresholds for admittance.

Public education at the local level is accountable to parents and taxpayers in two ways. 1) School board meetings must be publicly announced and open to the public unless a special session is convened to discuss a sensitive legal matter. 2) Public school board members are elected officials by a public ballot and are generally subject to residency laws to be eligible to run for this office. Local boards can also petition to enact additional levies or parcel taxes on local property, subject to approval by a public vote. These protections are not necessarily true for private and privatized schools, however, where boards may be appointed by private interests and voting members may have a profit-motive.

Table 6. Applying the Human Rights Framework to U.S. Education, Processes

Overarching principles/ State's obligations	Questions about Processes (Effort)	Processes within the United States	Data Source(s) for further Research
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Do states take all necessary measures, such as provision of infrastructure and educators, to ensure inclusive, free, quality, public education?	Infrastructure adequacy and educator qualifications are determined at the state level though the federal government establishes minimum standards. As much of funding is tied to local wealth and fiscal effort, processes vary greatly by location.	NCES, per pupil revenues and expenditures by State. CCD, district fiscal reports
	Are teachers paid a living wage and trained as professionals?	Teachers nationally face a pay-penalty ranging from 10.5% - 21.8% when compared with non-teaching professionals.	
	Does spending as % of GDP and education funding	Given the significant link between state and local wealth and tax policy and education spending,	NCES, per pupil revenues and expenditures by State. Individual state Departments of Education

Overarching principles/ State's obligations	Questions about Processes (Effort)	Processes within the United States	Data Source(s) for further Research
	<p>represent the maximum use of available resource?</p> <p>Are funding levels and trade-offs transparent?</p>	<p>processes for adequate funding are generally locally negotiated.</p> <p>States do require districts make per pupil spending levels publicly available; however, trade-offs are rarely articulated.</p>	<p>https://www.fundedinstead.org/</p> <p>Baker et al., 2019</p> <p>Hanushek et al., 2019</p>
	<p>Is a consultative and/or monitoring process in place for curriculum design, which is representative</p>	<p>There is no national U.S. curriculum as curriculum is approved at the state and local levels. Local districts (via school boards) have the authority to authorize individual texts/books in the context of meeting a course requirement. Choices are subject to</p>	<p>Johns Hopkins University's Best Evidence Encyclopedia, the U.S. Department of Education's What Works Clearinghouse, Curriculum Selection</p>

Overarching principles/ State's obligations	Questions about Processes (Effort)	Processes within the United States	Data Source(s) for further Research
	<p>of all stakeholders?</p> <p>Is curriculum representative, diverse, and respectful of multicultural, multi-ethnic, and multilingual backgrounds??</p>	<p>review by the state. As school boards make these decisions at public meetings, parents and other local citizens often can voice opinions on selected texts.</p>	
Respect the liberty of parents as regards the education of their children	Are there mechanisms in place ensuring that parents' "choice" is not synonymous with lack of public school plurality or quality?	Parents are free to select non-public schooling for their children; however, qualitative research finds U.S. parents are much more likely to do so when they perceive that the local, public school is of poor quality.	Brasington & Hite, 2012; Holme 2002

Overarching principles/ State's obligations	Questions about Processes (Effort)	Processes within the United States	Data Source(s) for further Research
(Overarching Principle 3)	Are there transparent, non-discriminatory policies and procedures detailing how bodies may establish and maintain private school?	Regulations surrounding establishing a private school differ by state but accreditation and registration are often optional unless receiving State funds (vouchers). Nearly 50% of privatized charter schools are authorized by the district, but not all states require this step.	U.S. Department of Education: State Regulation of Private Schools NAPCS: Charter School Authorizer by Type
Regulate non-State actors' involvement in education	Do States routinely evaluate whether non-state actors contribute to stratification and/or segregation and take	Charter school review panels exist at multiple levels (district, county, and state). However, oversight accounting for key issues of stratification and segregation does not always occur	California State Board decisions (2010-present). ¹⁴

¹⁴ California State Board of Education agendas and decisions on non-State actor regulation available at <https://www.cde.ca.gov/be/>.

Overarching principles/ State's obligations	Questions about Processes (Effort)	Processes within the United States	Data Source(s) for further Research
(Overarching Principle 4)	corrective action when found?		
	Are the policies of non-State actors and their schools reviewed to ensure they do not charge excessive fees or enact rules which create barriers to universal access, in both the institution and programs within it?	No. Private schools may charge tuition and fees; those receiving State funds (vouchers) may also charge more than the voucher amount in nearly all circumstances (Dynarski, M., & Nichols, A., 2017). Privatized schools (charters) may not charge tuition or fees; however, researchers have found they can and do erect de facto barriers to entry increasing stratification by race, socioeconomic status, and programmatic participation (Rezuli &	<u>State Regulations of Private Schools (PDF)</u> No data set exists which details processes for school and programmatic access by school type (public or charter), as data for charters is at times subsumed within its authorizing public school district.

Overarching principles/ State's obligations	Questions about Processes (Effort)	Processes within the United States	Data Source(s) for further Research
		Evans, 2005; Bergman & McFarlin, 2018)	

3. U.S. Outcomes

In 2001, sweeping federal legislation No Child Left Behind (NCLB) attempted to use publicly available school data (namely, student standardized test scores, teacher certification, and graduation rates) as a forcing mechanism for public accountability. This measure was largely re-enacted in ESSA (2015) and is still existent today under ESEA. However, researchers have demonstrated that NCLB eroded public satisfaction in schools and, in some cases, exacerbated the very inequality it aimed to conquer (Hursh 2007; Jacobsen, Saultz, & Snyder, 2013). Whether the federal level can still engender meaningful accountability and stakeholder engagement has also come under scrutiny (Ravitch, 2010; Katzman 2012).

Aggregate student outcomes are available at the national department of education, though these metrics remain generally limited to student aptitude on mathematics and reading comprehension standardized tests and aggregate graduation rates by state (See Table 7). No clear resource disaggregates information by school type attended (whether private, public, or privatized). U.S. students also may be selected to participate in its national testing (NAEP) or in less-frequent international testing (TIMMS or PISA); however, none of these assessments provide timely, meaningful feedback to parents and stakeholders. Instead, students and parents rely on state Departments of Education/Public Instruction to disseminate information on school-level testing scores, finances, teacher qualifications (measured by state certification standards) and in some instances, school climate and graduation rates. Protected/recognized groups with special status have additional safeguards and standards the state must enforce (Horne, 1991).

Given this dearth of data, education researchers in the past two decades have long concentrated their scope on whether privatization, net of selection biases, correlates with upticks in aggregate student outcomes. As the U.S. has widely embraced the charter school movement (over seven percent of U.S. students attend a charter versus 0.34 percent who attend vouchers), privatization research tends to centre on this mechanism (Adamson & Galloway, 2019). Across the national landscape, meta-analyses which control for empirical studies present mixed achievement outcomes in comparing charter and public schools.

A notable 2016 meta-analysis of 17 U.S. empirical studies on charter efficacy of student outcomes reports a small positive difference in math achievement, yet no difference in reading outcomes (Betts and Yang, 2016). Their follow-up meta-analysis expands this finding to higher outcomes in middle school for both math and reading, although the authors acknowledge variation within and across locations (Betts and Yang, 2019). A similarly designed 2015 lottery-based study (across 13 states) which targeted middle school effects found slightly negative, but not statistically significant, academic impacts for those attending a charter school (Clark et. al., 2015), replicating previous elementary school findings (Imberman, 2011). This null achievement effect is echoed by Braun, Jenkins, and Grigg, (2006), Zimmer et., al. (2009), and Gleason, Clark, Tuttle, and Dwyer (2010).

Furthermore, researchers have also focused on whether privatized (charter) schools, which may legally bar student admittance only when over-subscribed, generate or exacerbate student segregation and/or stratification through enrolment practices. The body of evidence overwhelmingly finds that they do as researchers have uncovered patterns of segregation by race/ethnicity and by income/class in national, state, and district-level studies (Logan & Burdick-Will, 2016; Frankenberg & Lee, 2003; Miron et al., 2010; Frankenberg et al., 2011; Whitehurst, 2017; Jankov & Caref, 2017; Jacobs, 2013).

Less robust research exists analysing whether privatization (vis-a-vis charter schools) also generates student segregation by reduced enrolment access for students who qualify for Special Education and English Language Learner services. However, both qualitative and quantitative studies have presented evidence that this may indeed be so (McLaughlin & Henderson, 1998; Drame, 2011; Rhim & O'Neil, 2013; Drame, 2010). While some research maintains that under-subscription is simply a product of fewer parent applications (Winters, 2015), a recent experimental study found that charter schools reduced responses to enrolment inquiries (significant at a $p < 0.01$ level) when the inquiry noted the student was designated as special needs (Bergman and McFarlin, 2018). Therefore, even if

privatization, net of selection bias, potentially improved student learning outcomes, it seems to have a trade-off effect in the education sector at large by increasing student segregation/stratification. These outcomes seem counter to human rights and sustainable development goals of “all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and nonviolence, global citizenship and appreciation of cultural diversity” (Sustainable Development Goals, 2030, Indicator 4.7).

Table 7. Applying the Human Rights Framework to U.S. Education, Outcomes

Overarching Principle/ State’s obligations	Questions about Outcomes (Enjoyment)	Outcomes within the United States	Data Source(s) for further Research
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Do students have access to public education? Does this education permit the “full development of the human personality” as intended by the UN’s 1948 treaty?	<p>In 2018, 24% of U.S. children aged three and older were enrolled in a school. Though rates of early-childhood education have increased in the last decade, states are not required to offer free, full-day education until first grade (generally six years old).</p> <p>No data exists regarding whether this education authentically develops the human personality.</p>	American Community Survey (ACS) Table B14001.

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within the United States	Data Source(s) for further Research
	<p>Does the level of funding result in school facilities which are safe, well-ventilated, up to date, and well-equipped?</p> <p>Does the level of funding result in universal access to qualified, competent teachers?</p> <p>Does the level of funding eliminate the need to collect fees from parents or students to maintain program quality?</p>	<p>Given the significant link between state and local wealth and tax policy and education spending, building adequacy can vary greatly by location.</p> <p>Repeated studies find U.S. students do not universally access high-quality, qualified teachers and the disparity in access is linked to funding inadequacies (Hanhel & Jackson, 2012; Burns et al., 2019).</p> <p>Private schools may collect tuition and fees from parents; however, public schools may not, except for costs related to special programs and/or transportation.</p>	<p>F-33 school finance survey (available at IES) granular to state/district level.</p> <p>The [Re]Build America's Basic Infrastructure Coalition (BASIC)</p> <p>IES Report for Teacher Certification Status and Experience, by Student Sub-Group</p>

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within the United States	Data Source(s) for further Research
	Do net attainment rates disaggregated by marginalized or oppressed groups and school type reveal patterns of inequity?	<p>The U.S. national government tracks student enrolment and achievement outcomes disaggregated by marginalized and oppressed groups using data sources from the American Community Survey (ACS) and the National Assessment of Educational Progress (NAEP). A report detailing its findings is publicly available and updated annually.</p> <p>No uniform database exists nationally that tracks the diversity and representation in U.S. school's curriculum. However, researchers and policy advocates have increasingly called for schools to diversify curriculum to mirror the diversity of student populations.</p>	<p>IES Status and Trends in the Education of Racial and Ethnic Groups</p> <p>U.S. School Health Profiles</p>

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within the United States	Data Source(s) for further Research
Respect the liberty of parents as regards the education of their children (Overarching Principle 3)	Is the saturation of private providers decoupled from the quality, inclusion, and universality of local, public institutions?	More research is needed in this area; however, several studies have found privatized schools (charters) are more likely to be in areas with more economically advantaged and higher-achieving students (Koller & Welsch, 2017; Renzulli, 2005, 2006).	
	Do bodies establishing private educational institutions operate transparently, free from a commercial/exploitive motive and primarily for the purpose of safeguarding pluralism?	Nearly all U.S. states ban privatised schools (charters) from operating as for-profit entities; however, approximately one-third of charters operate part of a large, conglomerate company (CMO/EMO). Private schools may operate as for-profit entities though not-for-profit status is much more common.	U.S. Department of Education Charter School Program Database

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within the United States	Data Source(s) for further Research
Regulate non-State actors' involvement in education (Overarching Principle 4)	Does the involvement of non-State actors in education harm the universal realisation of the right to education through sudden provider withdrawal or through a draining of public resources?	Further research is needed in this area; however, there is preliminary evidence that finds public school closures disproportionately target poor, non-White populations and result in net decreases in teacher quality.	Sunderman, G.L., Coghlan, E., & Mintrop, R., 2017; Hill & Jones, 2018
	Do net enrolment and attainment rates disaggregated by marginalized or oppressed groups, by school type, reflect universal enjoyment of the right to education?	Controlling for selection biases, researchers have found non-State providers are less likely to enrol students of greater need and who qualify for special education programs. Researchers are divided as to whether non-State providers produce equivalent or greater attainment for attending students.	Logan & Burdick-Will, 2016; Frankenberg & Lee, 2003; Miron; Urschel, Mathis & Tornquist, 2010; Frankenberg et al., 2011; Whitehurst, 2017; Jankov & Caref, 2017; Jacobs, 2013

4. U.S. Conclusion

In sum, we highlight several items from this case. Most notably, the United States has not recognised the main international human rights law protecting the right to education. This contrasts with nearly all other nations in the Global North. Also, we find that though the United States seems to provide for universal access to public education with structures and processes ensuring minimum quality standards, actual educational quality varies significantly. Through its federalist structure, the U.S. relegates much of the structures and processes (including funding structures) to individual states; therefore, it is unsurprising student outcomes also vary by state. For example, in 2012 and 2015 when the U.S. state of Massachusetts voluntarily participated in PISA testing as a “nation,” it outscored U.S. averages in all three domains and outscored OECD averages in literacy and reading domains (Massachusetts Department of Elementary and Secondary Education, 2016). One commonality in the U.S. is its lack of access to high-quality early-childhood education, a concern which contemporary scholars and policy makers have highlighted (Zigler et al., 2006).

The role of non-State actors in the U.S. similarly poses analytical challenges. Most states have embraced school privatisation in the form of charter schools which are privately managed but use public funds. Though parental liberty is expressly safeguarded in structures/process which prohibit discrimination or fees at charter schools, several above studies indicate a type of selection bias/de facto screening may be occurring, especially regarding students receiving Special Education services. Given this, we question whether the policies of marketization in the U.S. education system have or indeed can contribute toward human rights ideals.

C. Analysing an Education Sector Plan - The Case of Côte d’Ivoire

Since 2020, the Development Unit of UNESCO’s International Institute for Educational Planning (IIEP-UNESCO) has worked with UNESCO’s Section of Education Policy (mandated with the Right to education programme), the Right to Education Initiative, and the Global Initiative for Economic, Social and Cultural Rights, to develop Methodological Guidelines (IIEP-UNESCO, forthcoming).¹⁵ to ensure that education sector plans (ESP) and other planning documents reflect States’ international commitments for the implementation of the right to education. A list of 20 indicators based on

¹⁵ IIEP-UNESCO (forthcoming). Planning to fulfil the right to education: Methodological Guidelines. Aligning educational planning and programming documents with Human Rights Law. More information available at: development@iiep.unesco.org

international human rights law, and referring to the Abidjan Principles, has been developed to help educational planners, managers, decision-makers, and other pertinent stakeholders to systematically collect and analyse their efforts towards this aim as showcased in planning documents, such as ESP. The exercise brings light to different policy gaps in education and their subsequent challenges. The final goal is to mobilise the gathered information and analysis through a constructive dialogue with key national stakeholders. Côte d'Ivoire was chosen as a pilot country during the development of the Methodological guidelines.

The list of indicators developed for educational planning are slightly different from the tables proposed in this paper although they are both based on international human rights law. However, there are similarities and the information collected for the forthcoming IIEP-UNESCO analysis about Côte d'Ivoire (IIEP-UNESCO, forthcoming) has been reported where possible to the tables developed in this paper. As the 2016-2025 Education Sector Plan (ESP) of Côte d'Ivoire (2017) does not systematically mention the legal framework, references are also made to UNESCO's Observatory on the Right to Education¹⁶ where relevant. However, as the exercise here is to propose an analysis of an ESP from a human rights perspective based on selected questions highlighted as examples for this paper, we have stuck mainly to the information provided in the current ESP of Côte d'Ivoire which of course does not provide a comprehensive analysis on the education system in Côte d'Ivoire.

1. Côte d'Ivoire's Structures

Structures refer to the State's commitments to education as reflected for instance in its education laws. Any education strategic plan should be developed in accordance with national laws, which must be aligned with human rights treaties the State is part to.

The ESP of Côte d'Ivoire does not mention the legal framework that guarantee the right to education, which does not mean it does not exist. The 2016 Constitution recognises that everyone has the right to education and vocational training which is developed in the 1995 Education Act (Côte d'Ivoire, 1995) as modified by the 2015 Act (Côte d'Ivoire, 2015). Free quality public education is recognised (while the ESP does not mention free education). The 1995 Education Act as modified by the 2015

¹⁶ UNESCO Observatory on the right to education: <http://www.unesco.org/education/edurights/>

Act made it compulsory between 6 and 16 and forbid all discriminations. However, the Education Act states exception as regards free education referring to fees and indirect cost such as textbooks.

As regards inclusion, the ESP mentions the 1995 Education Act as modified by the 2015 Act which requires the development of education policies targeting out-of-school children to allow them to continue their education and lifelong learning. Although not mentioned in the ESP, the 1995 Education Act states that the State is committed to ensure vulnerable people access to education. The 1998 Act on person with disabilities recognise their right to education, including in ordinary schools.

To assess whether Côte d'Ivoire has developed a solid legal framework to guarantee the provision of free public education of the highest attainable quality to everyone (Overarching Principle 2), further research would be needed regarding for instance the legal guarantee of a minimum share of the national budget to education or the existence of laws and policies aiming at preventing segregation within and across schools.

Regarding the obligation of Côte d'Ivoire to respect the liberty of parents as regards the education of their children (Overarching Principle 3), there is no discussion in the ESP. Looking beyond the ESP, the 2016 Constitution recognises that institutions, the secular private sector, and religious community can also provide education, under the conditions established by the law. However, neither in the ESP nor in the 1995 Education Act, we could find legal provisions limiting non-State actors' involvement in education when they are seen to be undermining any of the aims of education guaranteed under international human rights law

Regarding the obligation of Côte d'Ivoire to regulate non-State actors' involvement in education (Overarching Principle 4), the education sector diagnosis part of the ESP recognises the weakness of the system authorizing the opening and monitoring of private training institutions. In this sense, the ESP includes various measures to control TVET's private offer. In addition, the plan indicates that there will be a monitoring at primary level to ensure that private institutions comply with the norms established by the State. The 1995 Education Act stipulates that the State establishes the conditions for opening a private institution but there is no mention as regards their closing in the case they will not comply with the law and there is no reference to the existence of such norms regulating non-

State actors' involvement in education. Additional legal research would be needed to identify whether such law exists and if so to analyse its content.

Table 8. Applying the Human Rights Framework to the Côte d'Ivoire's ESP, Structures

Overarching Principle/ State's obligations	Questions about Structures (Commitments)	Structures within Côte d'Ivoire as reflected in the ESP
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Do States or subnational jurisdictions legally guarantee the right to public, free, quality education in alignment with the APs?	<p>The ESP does not mention the legal framework that guarantees the right to education in Côte d'Ivoire.</p> <p>However, it is worth to note that the 2016 Constitution recognises that everyone has the right to education and vocational training which is developed in the 1995 Education Act as modified by the 2015 Act. Free quality public education is recognised (while the ESP does not mention free education). The 1995 Education Act as modified by the 2015 Act made it compulsory between 6 and 16 and forbid all discriminations. However, the Education Act states exception as regards free education referring to fees and indirect cost such as textbooks.</p>
	Is education spending codified as essential, with amounts required, in State	The ESP does not mention such legal provision neither UNESCO Right to

Overarching Principle/ State's obligations	Questions about Structures (Commitments)	Structures within Côte d'Ivoire as reflected in the ESP
	constitutions or policy frameworks?	Education Database ¹⁷ . The law could be checked, and the question raised to Côte d'Ivoire within the framework of an interactive dialogue.
	<p>Do laws specifically protect groups from exclusion from education provision?</p> <p>Do laws and policies aim to prevent programmatic segregation within and across schools?</p>	<p>The ESP mentions the 1995 Education Act as modified by the 2015 Act which requires the development of education policies targeting out-of-school children to allow them to continue their education and lifelong learning.</p> <p>Although not mentioned in the ESP, the 1995 Education Act states that the State is committed to ensure vulnerable people access to education. The 1998 Act on person with disabilities recognise their right to education, including in ordinary schools.</p> <p>There is no more detailed information and there is no mention of the segregation issue.</p>

¹⁷ UNESCO Observatory on the right to education, Côte d'Ivoire:
<http://www.unesco.org/education/edurights/index.php?action=countries&lng=en>

Overarching Principle/ State's obligations	Questions about Structures (Commitments)	Structures within Côte d'Ivoire as reflected in the ESP
		This question could be raised to the States within the framework of an interactive dialogue.
Respect the liberty of parents as regards the education of their children (Overarching Principle 3)	Does the legal framework respect parents' liberty to choose education for their children, ensuring such choice is made through genuine preference not because of inadequate public provision?	The ESP does mention this dimension of the right to education. The 2016 Constitution recognises that institutions, the secular private sector, and religious community can also provide education, under the conditions established by the law.
	Do laws limit non-State provision when they are seen to be undermining any of the aims of education guaranteed under international human rights law?	There is no mention either in the ESP or in the 1995 Education Act. These questions could be raised to Côte d'Ivoire within the framework of an interactive dialogue.
Regulate non-State actors' involvement	Do States set in the law the mechanisms to monitor the	The education sector diagnosis part of the ESP recognises the weakness of the system

Overarching Principle/ State's obligations	Questions about Structures (Commitments)	Structures within Côte d'Ivoire as reflected in the ESP
in education (Overarching Principle 4)	systematic impact of non-State actors?	authorizing the opening and monitoring of private training institutions. In this sense, the ESP includes various measures to control TVET's private offer.
	<p>Do States have established minimum standard applicable to private educational institutions?</p> <p>Do States lay out in the law the mechanisms to follow in case an individual's right to education is violated at a private institution?</p>	<p>At primary level, the plan indicates that there will be a monitoring to ensure that private institutions comply with the norms established by the State.</p> <p>The 1995 Education Act indicates that the State establishes the conditions for opening a private institution but there is no mention as regards their closing.</p> <p>There is not reference to the existence of such norms regulating private actors. These questions could be raised to Côte d'Ivoire with the framework of an interactive dialogue.</p>

2. Côte d'Ivoire's Processes

The ESP is a document that can reflect the efforts a State plan to do towards the realisation of the right to education in its country as it includes specific and costed measures to be implemented through policy and programmes.

Regarding the efforts of Côte d'Ivoire to provide free, public education of the highest attainable quality to everyone (Overarching Principle 2), the ESP indicates measures regarding the provision of quality public education. At pre-primary level, it includes for instance teachers training and the recruitment of additional educators as well as the building of new infrastructures, including the improvement of toilets blocks. The ESP also mentions the building of infrastructures at secondary and higher levels and indicates that additional teachers will be recruited, with specific campaigns to recruit women. Measures are planned against violence in schools. The ESP also provides for the free distribution of textbook. However, there is no information regarding teachers' salaries, indicating for instance if they are paid a living wage, either in the ESP or in the 1995 Education Act. That is an issue that would require further research, including through a dialogue with Côte d'Ivoire representatives.

Regarding the education budget, the ESP provides that 30% of the state budget will be allocated to education. However, 12% of the education budget is transferred to the private sector although the ESP plans the progressive elimination of this dependency. Although 30% of the state budget is allocated to education, there is a lack of information as regards their specific allocations to improve the quality of education, including for instance considering cultural and linguistic specificities. A question that could be raised is whether the share of the budget allocated to private education allow Côte d'Ivoire in parallel to ensure free quality public education. In addition, what specific measures will be taken to reduce the share of the budget allocated to private education. Also, it would be interesting to know if measures are planned to ensure the well allocation of resources and fight against corruption.

Regarding the development and content of the curriculum, the ESP indicates that measures are taken to ensure a participatory approach in the education system but there are no precisions about the actors representativity. A question that could be raised is whether efforts are made to integrate minorities groups, including in the governance system.

Regarding the obligation of Côte d'Ivoire to respect the liberty of parents as regards the education of their children (Overarching Principle 3), the ESP recognizes that some parents prefer traditional education systems and efforts are made to integrate them in the formal education system (e.g., Islamic private schools). There is also a monitoring to ensure private schools respect the norms established by the State. However, there is no explicit reference regarding the liberty of liberty of parents to choose for their children's educational institutions other than public educational institutions in conformity with the law. The ESP questioned the important share of private education

but does not mention existing limitations to ensure private education does not replace or supplant public education. In addition, there is no information regarding measures to ensure that private education does not undermine the State's capacity to realise free, quality, public education. A question that could also be raised is whether there is a regular, impartial, and efficient assessment of the integration of traditional education into the formal education system.

Regarding the establishment and maintenance of private schools, the 1995 Education Act provides that the State establish the conditions of the opening and functioning of private schools as well as their control by the State. The conditions include the relevance and quality of pedagogical projects, teachers, and infrastructures. The ESP indicates that there are procedures to register and authorize private schools. However, there is no information regarding the existence of procedure to ensure private schools respect the minimum norms established by Côte d'Ivoire. It is only mentioned that TVET institutions have a probatory period of 2 years to conform with the minimum norms but there are no precisions about the consequences in case of non-respect. It could be asked whether such procedure exists and whether there are penalties in case of non-respect.

Regarding the obligation of Côte d'Ivoire to regulate non-State actors' involvement in education (Overarching Principle 4), there is no information whether the State routinely evaluate whether non-State actors contribute to stratification and/or segregation in education and take corrective action when found.

Regarding the regulation of fees, the ESP recognises the high costs of private education. However, no information is provided regarding the limitations and control of their fees. A remaining question is whether specific measures are planned to abolish non legal fees families must pay to access compulsory education and condemn the ones charging excessive fees.

Table 9. Applying the Human Rights Framework to the Côte d'Ivoire' ESP, Processes

Overarching Principle/ State's obligations	Questions about Processes (Effort)	Processes within Côte d'Ivoire as reflected in the ESP
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	Do States take all necessary measures, such as provision of infrastructure and educators, to meet obligations of APs? Are teachers paid a living wage and trained as professionals?	<p>The ESP indicates measures regarding the provision of quality public education.</p> <p>At pre-primary level, it includes for instance teachers training and the recruitment of additional educators as well as the building of new infrastructures, including the improvement of toilets blocks.</p> <p>The ESP also mentions the building of infrastructures at secondary and higher levels.</p> <p>The ESP indicates that additional teachers will be recruited, with specific campaigns to recruit women.</p> <p>Measures are planned against violence in schools.</p> <p>The plan provides for the free distribution of textbook.</p> <p>There is no information regarding teachers' salaries either in the ESP or in the 1995 Education Act.</p>
	Does spending as % of GDP and education funding represent the maximum use of available resource?	The ESP provides that 30% of the state budget will be allocated to education. However, 12% of the education budget is transferred to the private sector although the ESP plans the progressive elimination of this dependency.

Overarching Principle/ State's obligations	Questions about Processes (Effort)	Processes within Côte d'Ivoire as reflected in the ESP
	Are funding levels and trade-offs transparent?	<p>Although 30% of the state budget is allocated to education, there is a lack of information as regards their specific allocations to improve the quality of education, including for instance considering cultural and linguistic specificities.</p> <p>A question that could be raised is whether the share of the budget allocated to private education allow them in parallel to ensure free quality public education. In addition, what specific measures will be taken to reduce the share of the budget allocated to private education.</p> <p>Also, it would be interesting to know if measures are planned to ensure the well allocation of resources and fight against corruption.</p>
	Is a consultative and/or monitoring process in place for curriculum design, which is representative of all stakeholders?	<p>The ESP indicates that measures are taken to ensure a participatory approach in the education system but there are no precisions about the actors representativity.</p> <p>A question that could be raised is whether efforts are made to integrate minorities groups, including in the governance system.</p>

Overarching Principle/ State's obligations	Questions about Processes (Effort)	Processes within Côte d'Ivoire as reflected in the ESP
	Is curriculum representative, diverse, and respectful of multicultural, multi-ethnic, and multilingual backgrounds?	
Respect the liberty of parents as regards the education of their children (Overarching Principle 3)	Are there mechanisms in place ensuring that parents' "choice" is not synonymous with lack of public school plurality or quality?	<p>The ESP recognizes some parents prefer traditional education systems and efforts are made to integrate them in the formal education system (e.g., Islamic private schools). There is also a monitoring to ensure private schools respect the norms established by the State. However, there is no explicit reference regarding the liberty of parents to choose for their children's educational institutions other than public educational institutions in conformity with the law.</p> <p>The ESP questioned the important share of private education but does not mention existing limitations to ensure private education does not replace or supplant public education.</p> <p>There is no information regarding measures to ensure that private education does not undermine the State's capacity to realise free, quality, public education.</p>

Overarching Principle/ State's obligations	Questions about Processes (Effort)	Processes within Côte d'Ivoire as reflected in the ESP
		<p>A question that could also be raised is whether there is a regular, impartial, and efficient assessment of the integration of traditional education into the formal education system.</p>
	<p>Are there transparent, non-discriminatory policies and procedures detailing how bodies may establish and maintain private school?</p>	<p>The 1995 Education Act provides that the State establish the conditions of the opening and functioning of private schools as well as their control by the State. The conditions include the relevance and quality of pedagogical projects, teachers, and infrastructures.</p> <p>The ESP indicates that there are procedures to register and authorize private schools. However, there is no information regarding the existence of procedure to ensure private schools respect the minimum norms established by the State. It is only mentioned that TVET institution have a probatory period of 2 years to conform with the minimum norms but there are no precisions about the consequences in case of non-respect.</p> <p>It could be asked whether such procedure exists and whether there are penalties in case if non-respect.</p>

Overarching Principle/ State's obligations	Questions about Processes (Effort)	Processes within Côte d'Ivoire as reflected in the ESP
Regulate non-State actors' involvement in education (Overarching Principle 4)	Do States routinely evaluate whether non-state actors contribute to stratification and/or segregation and take corrective action when found?	The sections on monitoring in the ESP do not mention the stratification and/or segregation issue
	Are the policies of non-State actors and their schools reviewed to ensure they do not charge excessive fees or enact rules which create barriers to universal access, in both the institution and programs within it?	<p>The ESP recognises the high costs of private education. However, there is no information provided regards the limitations and control of their fees.</p> <p>A question that could be asked is whether there are specific measures planned to abolish non legal fees families must pay to access compulsory education and condemn the ones charging excessive fees.</p>

3. Côte d'Ivoire's Outcomes

When measuring the outcomes of the commitments and efforts made by Côte d'Ivoire regarding the realisation of the right to education, we look at the level of enjoyment of the right to education by individuals and at the state of the education system. This information, analysed together with the

State's legal commitments and efforts, can indicate whether there is still some gaps or failure in the development and enforcement of law and policies, including as regards the education budget.

Regarding the obligations of Côte d'Ivoire to provide free, public education of the highest attainable quality to everyone (Overarching Principle 2), the question is to assess for example whether students have access to education and whether this education permit the "full development of the human personality". The ESP recognises that a huge majority of children access primary education. Yet, enrolment rates are limited in higher education and very low at primary and higher education. It also recognises important disparities between rural and urban areas and between families with low and high incomes, as well as the challenges girls face to access and stay at school. In addition, the ESP recognised that the barriers to access education includes high fees, child labour, the lack of birth certificate, parents' preference for traditional systems, gender representativity stopping girls' access to education or disabilities.

At primary and secondary level, the ESP indicates that violence persists despite the measures taken by the State to address it, including campaigns, programmes for peace education and the enforcement of the law to ensure the wellbeing and security of children at school. It would be relevant to assess more rigorously the impacts of such measures.

Regarding school facilities, the ESP recognises that most public schools do not have sufficient basic infrastructures such as electricity, drinking water, toilets, and canteens. Infrastructures in TVET and higher education are too old and do not respond to today's needs. We have seen above that the ESP plan for the building of infrastructures at the three levels. It would be worth to assess to which extend in deeper research.

Regarding teachers, the ESP recognises a lack of teachers and plans to recruit additional ones and allocate them better geographically.

Regarding the cost of education for the families, the ESP recognises the existence of non-legal fees but do not provide specific measures to address this issue though it suggests they could be abolished.

Regarding the enjoyment of the right to education by marginalised groups, the ESP does not provide desegregated data although it recognises for instance that girls and children with disabilities face

particular challenges. There is no information regarding minorities – linguistic, ethnic, or other. However, certain measures included in the ESP consider the linguistic diversity, particularly in rural area. In addition, there is a lack of information regarding how the curriculum is representative of the population's diversity. However, the ESP mentions that measures will be taken to eliminate stereotypes towards girls and other marginalised groups. While the ESP recognised the diversity of groups in the society, it is unclear if the public education system considers this diversity and if it facilitates the understanding of different values and cultural practices. As parents prefer traditional education, this raises the question of whether the form and content of the public education is sufficiently acceptable, reflecting the diversity of the population. As there is a wide diversity in the population, it would be relevant to assess whether public education facilitate a way of living together.

Regarding the enjoyment of the liberty of parents as regards the education of their children (Overarching Principle 3), the ESP indicates that private education has contributed to generally increase access to education. At secondary level it represents about 50%, 45% in higher education and in TVET 95%. The latest are mainly in urban areas limiting access to low-income families. Pre-school is also largely provided by private education, which limits the demand. The ESP adds that private education is largely dependent of State's allocation and recognised that it must be questioned regarding its complementarity in comparison to public education and also regarding its efficiency and relevance. However, there is no information regarding private education institutions operating transparently, free from commercial/exploitative motive and primarily for the purpose of safeguarding pluralism.

Regarding non-State actors' involvement in education there is no information in the ESP indicting that they could harm the universal realisation of the right to education through sudden provider withdrawal or through a draining of public resources. There is also no information regarding net enrolment and attainment rates disaggregated by marginalized or oppressed groups and by school type, that could allow to identify possible disparities and segregations. We could suppose that this information is not mentioned in the ESP because Côte d'Ivoire does not collect such data to be able to do such assessment. This would require further research.

Table 10. Applying the Human Rights Framework to the Côte d'Ivoire's ESP, Outcomes

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within Côte d'Ivoire as reflected in the ESP
Provide free, public education of the highest attainable quality to everyone (Overarching Principle 2)	<p>Do students have access to education?</p> <p>Does this education permit the “full development of the human personality?”</p>	<p>The ESP recognises a huge majority of children access primary education. Yet enrolment rates are limited in higher education and very low at pre-primary and higher education. It also recognises important disparities between rural and urban areas and between families with low and high incomes. Girls face challenges to access and stay at school.</p> <p>The ESP recognised that the barriers to access education includes high fees, child labour, the lack of birth certificates, parents' preference for traditional systems, gender representativity stopping girls' access to education. Children with disabilities also face challenges in accessing education.</p> <p>At primary and secondary levels, the State strengthens measures to address conflicts and violence at schools. However, violence persists, and the State has to develop campaigns and ensure the enforcement of the law.</p> <p>There are measures in place to ensure the wellbeing and security of children at school. There are also programmes for peace education.</p> <p>A question that could be asked is the impact of these measures, as for instance the 'club peace envoys'.</p>

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within Côte d'Ivoire as reflected in the ESP
	<p>Does the level of funding result in school facilities which are safe, well-ventilated, up to date, and well-equipped?</p> <p>Does the level of funding result in universal access to qualified, competent teachers?</p> <p>Does the level of funding eliminate the need to collect fees from parents or students to maintain program quality?</p>	<p>The ESP recognises that most public schools do not have sufficient basic infrastructures such as electricity, drinking water, toilets, and canteens. Infrastructures in TVET and higher education are too old and do not respond to today's needs.</p> <p>There is a lack of teachers. The ESP plans to recruit additional ones and to allocate them better geographically.</p> <p>The ESP recognize the existence of non-legal fees but do not provide specific measures to address this issue though it suggests they could be abolished.</p>
	Do net attainment rates disaggregated by marginalized or oppressed groups and	The ESP does not provide desegregated data although it recognises for instance that girls and children with disabilities face particular challenges. There is no information regarding minorities – linguistic, ethnic, or

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within Côte d'Ivoire as reflected in the ESP
	<p>school type reveal patterns of inequity?</p>	<p>other. However, certain measures included in the ESP take into account the linguistic diversity, particularly in rural area.</p> <p>There is a lack of information regarding how the curriculum is representative of the population's diversity. However, it mentions that measures will be taken to eliminate stereotypes towards girls and other marginalised groups.</p> <p>While the ESP recognised the diversity of groups in the society, it is unclear if the public education system takes into account this diversity and if it facilitates the understanding of different values and cultural practices.</p> <p>As parents prefer traditional education, this raises the question of whether the form and content of the public education is sufficiently acceptable, reflecting the diversity of the population.</p> <p>As there is a wide diversity in the population, it would be relevant to assess whether public education facilitate a way of living together.</p>
	<p>Is the saturation of private providers decoupled from the</p>	<p>The ESP indicates that private education has contributed to generally increase access to education. At secondary level it represents about 50%, 45% in higher education</p>

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within Côte d'Ivoire as reflected in the ESP
Respect the liberty of parents as regards the education of their children (Overarching Principle 3)	quality, inclusion, and universality of local, public institutions??	and in TVET 95%. The latest are mainly in urban areas limiting access to low-income families. Pre-school is also largely provided by private education, which limits the demand. It adds that private education is largely dependent of State's allocation and recognised that it must be questioned regarding its complementarity in comparison to public education and also regarding its efficiency and relevance.
	Do bodies establishing private educational institutions operate transparently, free from a commercial/exploitative motive and primarily for the purpose of safeguarding pluralism?	There is no reference about it in the ESP. Further research should be made and/or the question raised to the State.
Regulate non-State actors' involvement	Does the involvement of non-state actors in education harm the universal realisation of	There is no reference about it in the ESP. Further research should be made and/or the question raised to the State.

Overarching Principle/ State's obligations	Questions about Outcomes (Enjoyment)	Outcomes within Côte d'Ivoire as reflected in the ESP
in education (Overarching Principle 4)	the right to education through sudden provider withdrawal or through a draining of public resources?	
	<p>Do net enrolment and attainment rates disaggregated by marginalized or oppressed groups, by school type, reflect universal enjoyment of the right to education?</p> <p>Does the regulation system ensure that all students, wherever they study, have access to the same quality of education and same opportunities, or are they difference depending on where family studies based on the nature of the institution, controlling for student characteristics?</p>	There is no reference about it in the ESP. Further research should be made and/or the question raised to the State.

4. Côte d'Ivoire Conclusion

Analysing the 2016-2025 ESP of Côte d'Ivoire from a human rights perspective, using the proposed tables focusing on structural, process and outcome indicators, gives us an indication of the State's compliance with its obligations regarding the right to education and specifically for this paper as regards its obligations to provide free, public education of the highest attainable quality to everyone (Overarching Principle 2), to respect the liberty of parents as regards the education of their children (Overarching Principle 3) and to regulate non-State actors' involvement in education (Overarching Principle 4). As mentioned in introduction, the tables only provide examples of States' obligations with related questions to assess their compliance and the extend of the realisation of the right to education. The analysis made for this paper is therefore not comprehensive and only provides an example of how to assess non-States actors' involvement in education from a human rights perspective using the information available in the ESP.

As a conclusion, we can highlight that we noticed State's efforts in terms of law and policies to move forward the realisation of the right to education as for instance the plan to develop infrastructures and recruit teachers. However, considering the diversity of its population, the ESP of Côte d'Ivoire should provide an analysis of the enjoyment of the right to education by various groups, particularly the most marginalised ones. This would help to identify specific measures that would ensure that the education system reflect the diversity of its population being sufficiently acceptable and adaptable. Regarding the budget allocated to education, while the ESP indicates that 30% of the national budget is allocated to education, it would be useful to indicate how this education budget will be allocated to implement the different education policies. For instance, are there sufficient funds allocated to address the challenges faced by the marginalised groups to access education and to ensure the education system is inclusive? The ESP also indicates that 12% of the budget is allocating to private education indicating the will of the State to reduce this share. However, it does not explicit the measure taken to address it. Regarding the cost of education, the ESP recognises the high costs of private education but does not indicate specific measures planned to abolish non legal fees families have to pay to access compulsory education and condemn the non-state actors charging excessive fees.

Even if the exercise proposed in this paper is limited as it only assesses some aspects of the right to education, it shows how the human rights framework can be used to take another perspective suggesting questions to be deepened through academic research or in an interactive dialogue with the State.

CONCLUSION AND IMPLICATIONS

Using the Abidjan Principles, this paper provides a tool to measure States' implementation of their obligations regarding the right to education, with a specific focus on the role of non-State actors. Here, we emphasize three noteworthy items regarding our findings.

First, using a human rights framework to analyse education can expand researchers' perspectives beyond an outcomes-only basis to a systemic analysis of the efforts of the State – through its structural (in particular, the law) and procedural (looking in particular at budgets) levels. As we present in Figure 3, these sectors are interrelated, with each supplying a unique contribution to analysis. For this reason, we hope questions presented in Tables 2-4 are particularly useful for focusing future inquiry.

Second, as outlined above, the right to education is often understood restrictively to mean only or mostly access to education (sometimes with an understanding of 'equity'), but it actually encompasses much more. They have three types of obligations that are often under-regarded, yet especially relevant for the consideration of the role of non-State actors. 1) States must provide for public education of the highest attainable quality to all. This includes the removal of any barriers to access, the maximization of resources for public education, and the provision of plural and inclusive education. 2) States must respect parents' liberty in education under certain conditions. They can limit this exercise of this liberty if it undermines the realisation of the right to education 3) States must regulate non-State providers. When part of the education sector, non-State actors must not be permitted to infringe on the realisation of the right to education across the system or at an individual institution.

Third and finally, researchers - and users of research - should be careful about studies which claim to be neutral with technical solutions and those which obfuscate trade-offs, especially if those are used to inform a position informed by human rights (which should be the case for instance of all States using research to inform their development aid policy). By its nature, research requires authors to assume theoretical frameworks for interpreting findings. For example, if research studies issue

findings that non-State actors provide more efficient educational outcomes, the studies should identify which aspects of the human rights framework they have researched and which they have not (with the understanding that it will be extremely difficult to research everything). They should explain, for instance, whether they considered if providers achieve these efficiencies by employing less qualified (and less expensive) labour. Authors who fail to elucidate and elaborate on the assumptions and trade-offs they employ can undermine the study's credibility and utility for the purpose of the right to education.

As international attention on equity and equality in education recentres human rights and the right to education for researchers and policy analysts alike, this paper links a human rights vision of education to a framework for measuring if and how those rights are being implemented by States and enjoyed by individuals. The three-part analysis illustrates how to use the intersection of international human rights law and social science to evaluate the role of non-State actors in education.

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