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“Call for Contributions: The right to education, advances and challenges”

Responds to: II.9 “What are the crucial issues to address, nationally as well as internationally, to ensure the realization of the right to education?”

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A Cultural Approach to the Right to Education in a Rapidly Changing World

1. Introduction

In the International Agenda, the right to education has always played an essential role to guarantee the dignity of human beings, the Universal Declaration of Human Rights being one example. Recently, the International Community has enshrined education as objective four of the Sustainable Development Goals under the following formula “*ensure inclusive and equitable quality education and promote lifelong learning opportunities for all*”.

Despite the consensus on the importance of education, disputes on certain features of the right to education continue. One crucial and controversial issue is the role of parents and the obligations of the State towards them. At the international level, the Abidjan Principles (ABIDJAN PRINCIPLES, 2019), endorsed by the Special Rapporteur on the Right to Education (BOLLY BARRY, 2019), are a good example of the controversy around this subject. These Principles have been perceived as problematic by certain non-state actors as they ultimately only allow affluent families to choose the education for their children. Also at the national level, we have observed heated debates around the role of the parents in the upbringing of their children, with Spain (COFAPA, 2021) and Sweden (HERNROTH- ROTHSTEIN, 2018) only being two examples. It is thus necessary to bring clarity to the role of parents and State in the realization of the right to education. This paper aims to contribute to this issue.

We will first explore the liberties of parents in the field of education as understood by the main human rights instruments and define those notions that are relevant to the discussion, mainly the cultural dimension of the right to education and the obligations of the State. We will then address the related current main challenges, focusing on Agenda 2030 and COVID-19.

2. The role of parents in the realization of the right to education

2.a Universal Declaration of Human Rights (UDHR)

In 1948, the International Community approved the Universal Declaration of Human Rights (UDHR). In this historical document, cemented in the enormous political consensus, education was recognized as a pillar of human dignity. The UDHR recognizes parental rights under the following formula "Parents have a prior right to choose the kind of education that shall be given to their children" (art.26.3). It states clearly that parents have a "right" and that this right consists in choosing "the kind of education that shall be given to their children". The development of the UDHR, a political text, into juridical texts has first taken place in the contraposed International Covenant on Economic Social and Cultural Rights and International Covenant on Civil and Political Rights. We will now turn to those two covenants.

2.b. International Covenant on Economic Social and Cultural Rights (ICESCR)

The ICESCR understands educational pluralism in the following way:

(3)The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

Although the interpretative body of the treaty explained the meaning of this article in more detail, the scope of the expression "the respect of the liberty of parents" remained unclear. The CESCR's General Comment nº13 on the Right to Education points out that the obligation of respect "requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education" (CESCR, 1999, GC.13, PAR.46) (COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1999). In addition, the Committee also points in the same document that "A State party has no obligation to fund institutions established in accordance with article 13(3) and (4)" (CESCR, 1999, GC.13, par. 46) (COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1999). This comment has given many stakeholders a reason to reject any positive obligations of the public authorities toward educational pluralism. This conclusion is based on a partial reading of the CESCR. To get a holistic understanding of the CESCR's approach to actors in educational pluralism and their obligations, we first must define educational pluralism.

2.b.a Educational Pluralism

Article 15.1 the ICESCR recognizes cultural rights:

"The States Parties to the present Covenant recognize the right to education: To take part in cultural life".

This article gives life to the cultural dimension of the right to education. And only when we understand that cultural dimension, we can start to understand the meaning of educational pluralism and the meaning of “the respect of the liberty of parents”.

2.b.a.i. What is culture?

The CESCR defines culture as “*a broad, inclusive concept encompassing all manifestations of human existence*” (CESCR 2009, GC.21, par. 11) (COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 2009). Moreover, the Committee understands culture as a dynamic, living, and evolving process, with a past, a present, and a future (CESCR 2009, GC. 21, par. 11). Culture is a way through which human beings express their existence and “*build their world view representing their encounter with the external forces affecting their lives (...). Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities*” (CESCR 2009, GC.21, par. 13).

The CESCR provides a list of elements that “make” culture: “*ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food clothing and shelter and the arts, customs and traditions*” (CESCR 2009, GC.21, par. 13).

Now that we have defined culture, we can examine the relationship between cultural rights and education.

2.b.a.II. The cultural approach of the right to education

The CESCR has stressed the connection between cultural rights and the right to education on multiple occasions, including to General Comments on the Right to Education (CESCR 1999, GC.11, par.2 and CESCR 1999, par. 13) (COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1999). For example, the CESCR points out that “*the right of everyone to take part in cultural life is also intrinsically linked to the right to education (art.13 and 14) through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values*” (CESCR 2009, GC. 21, par. 2). In the same General Comment, the Committee mentions “*States should recall that the fundamental aim of educational development is the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth*” (CESCR, 2009, GC. 21, par. 26). If “States should recall...” then what obligation does this create for public authorities?

2.b.b. Obligations of the State

As we have seen previously, one sentence that sounds shocking is “*A State party has no obligation to fund institutions established in accordance with article 13 (3) and (4)*” (CESCR 1999, GC.13, par. 54). At first sight it seems that the State is exempt from any positive obligation towards parental rights. But now that we have established the interrelation between the right to education and cultural rights, let us see what the Committee says concerning the obligations of the states concerning cultural rights.

The CESCR establishes clearly that the realization of cultural rights requires both negative (i.e., non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive obligations (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods) (CESCR 2009, GC.21, par. 6). The definition of the CESCR of “respect”, “protect” and “fulfill” when referring to cultural rights (CESCR 2009, GC.21, par. 48) is almost identical to the one that refers to the right to education previously observed (CESCR 1999, GC.13, par. 47). When the CESCR writes, *“The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone”* (CESCR 2009, GC.21, par. 49), it introduces a nuance to the word “respect”. In this sentence alone we can perceive that the State might have more than exclusively negative obligations.

It is not hard to imagine that, in an increasingly plural world, more and more communities and families will feel disrespected and discriminated against due to the impossibility of drafting culturally appropriate education curriculums. This could be because their culture is simply excluded from the curriculum or because of the incapability of the school system to transmit to children of certain communities the tools they need to deepen the understanding of their culture. This is especially problematic for discriminated minorities.

In this regard, the Committee confirms that the State has *“To respect and protect the right of everyone to engage in their own cultural practices, while respecting human rights which entails, in particular, respecting (...) freedom to choose and set up educational establishments”* (CESCR 2009, GC.21, par. 55.c). When we read this together with the obligations of the state parties *“to facilitate the right of everyone to take part in cultural life by taking a wide range of positive measures, including financial measures”* (CESCR 2009, GC.21, par. 51), we get context to the obligation of the States. The respect for the liberty of parents does not entail a global obligation of funding all the educational options parents might desire. Nevertheless, since parents are the best advocates for ensuring the transmission of cultural practices (language, religion, etc.), giving parents educational choices is essential to guarantee the cultural approach of the right to education.

In summary, States have no explicit obligation to fund non-governmental schools. Nevertheless, it is clear that the State must fulfill positive obligations to guarantee cultural rights and the right to education for those minorities whose culture might be neglected in state-run schools. Without the State supporting non-governmental schools, it is hard to imagine a scenario in which all communities are receiving an education that is acceptable and adaptable to their culture (CESCR 2009, GC.21, par. 16 and CESCR 1999, GC. 13 par. 5).

2.c. International Covenant on Civil and Political Rights (ICCPR):

In 1966, along with the ICESCR, the ICCPR was adopted. Interestingly, it also refers to the word “respect” when referring to the liberty of parents.

Article 18.4 states, *“The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”* The ICCPR and the Center for Civil and Political Rights (CCPR) do not explicitly require positive obligations of the State for respecting the liberty of parents. Nevertheless, the Committee recognizes the importance of respect for freedom of religion. Moreover, it recognizes that this liberty could be exercised by

granting parents the freedom to choose teachers and to establish religious schools (CCPR, 1993, GC.22, par.4). Wouldn't it be discriminatory if public funding provides exclusively for state-run schools? Certain religious or cultural communities would become *de facto* excluded from the possibility of choosing the schools due to discrimination in the funding of the school system. To avoid such discrimination positive action from the State might be required.

Here, it is interesting to recall the recent jurisprudence of the US Supreme Court which stated that banning aid to religious schools imposes "*a heavy burden on people on faith and their ability to educate their children in that faith*" (Espinoza v. Montana Department of Revenue, 2020). Moreover, in line with the way in which discrimination is understood in the UNESCO Convention against Discrimination in Education (1960), the State not only has negative obligations but also positive obligations to promote equality among different actors. We thus can affirm, in line with article 2 of the CCPR, that "respect", also when referring to the liberty of parents to ensure religious and moral education, implies positive obligations.

Also the cultural approach to the right to education is pertinent for the interpretation of "respect". Article 27 states: "*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language*". By specifically referring to "rights", the article acknowledges that granting cultural rights does not ask exclusively for negative obligations, but for positive ones.

The Human Rights Committee endorses positive State obligation when it points out, "*a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party*" (CCPR, 1994, GC.23, par.6.1). The Committee reaffirms this when stressing that "*positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion*" (CCPR, 1994, GC.23, par.6.2). As does the CESCR, the Committee acknowledges the need for positive obligations of the State in the realization of cultural rights. We thus can affirm that "respect" of the liberty of parents to ensure the religious and moral education of their children implies positive obligations.

New developments have put educational pluralism and the role of parents back at the center of the discussions around the right to education. We will abort two of them: Agenda 2030 and COVID-19.

3. Current main challenges of educational pluralism

3.a Agenda 2030

In 2015 United Nations launched the Sustainable Development Goals (SDGs) to grant a more decent humanity for 2030. SDG 4 reads "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all" and has 10 targets encompassing many different aspects of education. Seven targets concern expected outcomes and three targets define means to achieving those outcomes. For instance, "*By 2030, ensure that all girls and*

boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.” (Target 1) or *“By 2030, ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy”* (Target 6). In 2015, UNESCO launched Education 2030 to provide guidelines and indications for the implementation of SDG 4.

Education 2030 recalls the role of the State as a guarantor of the realization of the right to education. The document underlines, *“Education is a shared societal endeavor, which implies an inclusive process of public policy formulation and implementation.”* (UNESCO, 2015, p. 28). Here UNESCO attributes an important role to civil society, communities, and families – among other stakeholders – in the realization of the right to education. Education 2030 considers that civil society is essential to guarantee the participation of all actors in the realization of the right to education. One function that is ascribed to civil society is to *“develop innovative and complementary, approaches that help advance the right to education, especially for the most excluded groups”* (UNESCO, 2015, p. 58). In the same way, *“Strengthen the efficiency and effectiveness of institutions, school leadership and governance through greater involvement of communities, (...) people and parents, in the management of schools”* (UNESCO, 2015, p. 37). We thus have to acknowledge the important role of civil society in the provision of education by developing *“innovative and complementary, approaches that help advance the right to education”*. It is difficult to imagine such approaches without the existence of non-governmental schools. If we want to take seriously the importance of communities and parents in the development and management of schools, we have to allow them to choose a school that is aligned with their religious, moral, and, philosophical convictions, as well as respectful of their cultural heritage. Consequently, SDG 4 can only be realized when States assume their responsibility to actively support all communities and parents equally.

3.b. Educational Pluralism during COVID-19

The COVID-19 pandemic has been a cathartic event that, at some point, left more than 90% of children deprived of attending school (ZEWDE & AZOULAY, 2020). And, as brought up by the Director of UNESCO, no educational system was prepared for this kind of crisis at the beginning of the pandemic (RIVIÈRE & FEBVRE, 2020). Even though today COVID-19 is not yet fully in our past, we already can draw some learnings from this period of history.

First, we were made aware that we live in a world that is increasingly uncertain and in constant movement and transformation. Especially in this context of change, pursuing SDG4 *“ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”* is crucial. So, how can we ensure an education that can adapt rapidly to the changes of this world? In a research conducted by OIDEL at the beginning of the COVID crisis, we discovered that non-governmental schools were more likely to be flexible enough to confront this sort of crisis (OIDEL, 2020).

Second, this crisis has shown that education cannot be a constant battlefield of governmental schools against non-governmental schools. Organizations such as UNESCO or the OCDE have evoked a common good approach to overcome the big challenges COVID-19 presented us with. Both have included parents and the whole educational community in their approach.

Third, we have seen Article 18 of the Convention on the Rights of the Child in a new and brighter light. It states, *“Parents (...) have the primary responsibility for the upbringing*

and development of the child". Due to pandemic-related school closures, parents around the world have stepped up to ensure the learning process of their children. That means that the community has stood the responsibility to ensure education on the shoulders of parents. And there is no reason why we should now stop taking parents seriously for the realization of the right to education in the future.

4. Conclusion

As shown, parents are keepers and transmitters of culture. It is their cultural right to educate their children in line with their cultural values. To grant this right, States have positive obligations to facilitate non-state schools and to make them as accessible for all as state schools. We thus encourage the SR on the right to education to address the following issues in her mandate:

- Acknowledging parents as crucial actors in the realization of the right to education
- Acknowledging and deepening the cultural approach to the right to education

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