

## Guiding Principles 91 to 97: Implementation<sup>1</sup>

Effective implementation of the right to education for all is the key to ensuring the full enjoyment of the right by each individual. Guiding principles 91-97 articulate the different avenues through which these Guiding Principles can be implemented, which include actions that may be taken by the state and its various institutions and multilateral organisations. Guiding Principles 91-97 provide steps in the implementation of these guiding principles including recognition awareness raising, monitoring, and enforcement.

### Guiding Principle 91: Implementation and the Separation of Powers

**States, including the legislative, judicial, and executive branches, should effectively implement these Guiding Principles by all appropriate means, including where necessary by adopting and enforcing the required legal and budgetary reforms. States should apply these Guiding Principles when designing and implementing domestic, regional, and global educational and development plans, laws, and policies, and dedicate the necessary human, technical and financial resources for their implementation.**

The right to education is achieved through the state's effective implementation of its human rights obligations to respect, protect and fulfill. However, the full realisation of the right to education has remained a far-off dream for millions of children. Challenges such as unequal access to education, and the commercialisation of education are major impediments to realisation of the right. Adamson, Dorsi, and Carmona have noted that achieving the right to education requires a political shift in states' education provisioning.<sup>2</sup> The authors observed that changes need to occur at multiple levels, with different actors responding to the commitments made under international law. The realisation of the right to education is a task that engages all arms of government (executive, legislation, and the judiciary). Once the legislative framework has been developed by the legislature, it is incumbent on the executive to ensure the realisation of the right to education through practical measures such as the provision of sufficient schools, transport where necessary, properly trained teachers, textbooks, and other materials, and a conducive environment for learning.<sup>3</sup> In a situation where the executive fails to perform its mandate, the judiciary

---

<sup>1</sup> Professor Ann Skelton is the UNESCO Chair in Education Law in Africa, at the Faculty of Law, University of Pretoria, South Africa, as well as a member of the UN Committee on the Rights of the Child. Dr. Perekeme Mutu is a post-doctoral research fellow with the UNESCO Chair in Education Law in Africa, in the Department of Private Law, University of Pretoria, South Africa.

<sup>2</sup> Frank Adamson, Delphine Dorsi, and Magdalena Sepulveda Carmona 'Strengthening the implementation of the Abidjan principle' in Frank Adamson, Sylvain Aubry, Mireille de Koning and Delphine Dorsi (eds) *Realizing the Abidjan Principles on the right to education: Human rights, public education and the role of private actors in education* (Edward Elgar 2021) 246.

<sup>3</sup> Ann Skelton 'The Role of the courts in Ensuring the Rights to a Basic Education in a Democratic South Africa: A Critical Evaluation of Recent Education Case Law' (2013) 46(1) *De Jure Law Journal* 1; Ann

may be activated through litigation to hold the executive to account for failing to fulfill its constitutional obligation. If the law itself is flawed, in constitutional democracies it may be possible to declare the law invalid, or even to fill the gaps in the law through interpretation or declarations. Guiding Principle 91 requires states to take positive action to facilitate and promote the enjoyment of the right to education and to regulate the role of private actors in education. This means that states have to implement legislative, administrative, budgetary, judicial, and other measures that conform to international treaties including the Abidjan Principles to ensure that the right to education is respected, protected, and promoted, through the regulation of private actors in education.’

Guiding Principle 91 serves to guide the executive when making policy and formulating or enforcing budgetary provisions to fulfill its obligations regarding education and the regulation of private actors in education. Guiding Principle 91 also serves as a resource for the judiciary when deciding issues relating to the right to education. The Principles are already serving as a reference point in education-related cases in national courts. For example, in the case between the *Initiative for Social Economic Rights v Attorney General of Uganda*, the High Court referred to the obligations the Abidjan Guiding Principles imposed on the state regarding the protection of the right to education, in particular where private actors are involved in education.<sup>4</sup> In paragraph 23 of the judgment, the court held that the Abidjan Principles are in sync with state obligations under the different international and regional treaties and can be safely relied upon.<sup>5</sup> The judgment focused on Principle 50 – which provides that

*where private provision of education is the result of the lack of availability of free, quality, public education States must take all measure to develop or restore universal access to free, quality, public education as effectively and expeditiously as possible.*

The Court declared that the government policy on public financing of secondary education infringed the right to education. Furthermore, the government was expressly directed to seek guidance from the Principles, and although Guiding Principle 91 was not referred to, this is an excellent example of the executive being directed by a judiciary to apply these Principles when designing and implementing domestic plans, laws, and policies, as required by Guiding Principle 91.

## Guiding Principle 92: Formal Accountability Mechanisms and Litigation

---

Skelton ‘How Far Will Courts Go in Ensuring the Right to a Basic Education’ (2012) 27 *Southern African Journal of Public Law* 394.

<sup>4</sup> *Initiative for Social Economic Rights v Attorney General of Uganda* Civil suit No.353 of 2016 (High Court).

<sup>5</sup> *ibid.*

**States should monitor and put in place effective accountability mechanisms for the implementation of these Guiding Principles as part of their efforts to respect, protect, and fulfill the right to education.**

Guiding Principle 92 encourages states to set up effective monitoring systems and provide access to accountability mechanisms for the implementation of the Principles as a means to guide its actions to respect, protect and fulfill the right to education. When states fail to guarantee the full implementation of the right to education, citizens can play a key role by mobilizing and advocating for legal, political, and practical changes. Human rights frameworks, including the Principles, can be used by citizens to strengthen their advocacy to hold the state accountable for their international human rights obligations. Monitoring and reporting have been identified as effective ways for citizens to support and motivate for the implementation of the Principles and the rights that they advance.

The requirement for monitoring progress towards the full realisation of economic, social, and cultural rights is viewed as a key obligation of states by the UN Committee on Economic, Social, and Cultural Rights (CESCR) in its first General Comment.<sup>6</sup> In relation to the right to education, the Committee has indicated that states are 'obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13(1)'.<sup>7</sup> The Committee has also emphasised the need for states to adopt 'a national educational strategy' which 'should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored'.<sup>8</sup> Reaffirming this commitment to monitoring and accountability, under the Incheon Declaration states commit themselves to 'develop comprehensive national monitoring and evaluation systems in order to ... ensure accountability'.<sup>9</sup> Under the Incheon Framework, states have the primary responsibility for monitoring and should build up effective monitoring and accountability mechanisms.<sup>10</sup>

Monitoring at the domestic level is important – as indicated by the Committee on the Rights of the Child (CRC Committee) in its General Comment No 1 on the aims of education, where it stressed 'the role of national-level monitoring which seeks to ensure that children, parents, and teachers can have an input in decisions relevant to education'.<sup>11</sup> States bear the primary responsibility to provide for adequate regulation, implementation, and monitoring mechanisms, to ensure that private educational

---

<sup>6</sup> CESCR, 'General Comment No 1: Reporting by States Parties' (1989) UN Doc E/1989/22 [2]-[6]. See also CESCR, 'General Comment No 3: The Nature of State Parties' Obligations' (1991) UN Doc E/1991/23 [11].

<sup>7</sup> CESCR, 'General Comment No.13: The Right to Education' (1999) UN Doc E/C.12/1999/10 [49].

<sup>8</sup> *ibid* [52]. See also CESCR, 'General Comment No. 11: Plans of Action for Primary Education' (1999) UN Doc E/1992/23 [8].

<sup>9</sup> UNESCO, 'Education 2030 Incheon Declaration: Towards Inclusive and Equitable Quality Education and Lifelong Learning for All' (UNESCO 2015) <<https://unesdoc.unesco.org/ark:/48223/pf0000245656>> [18].

<sup>10</sup> Incheon Declaration and Framework for Action for the Implementation of Sustainable Development Goal 4 'Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all' UN Doc ED-2016/WS/28 [97].

<sup>11</sup> CESCR, 'General Comment No 1: Reporting by States Parties' (1989) UN Doc E/1989/22 [2]-[6].

institutions provide an education of good quality that encompasses adequate infrastructure, safe school environment, and adequate teachers among other aspects to ensure that private service providers do not exclude or segregate children.<sup>12</sup> In its concluding observations to Chile in 2015, the CRC Committee made a range of recommendations pertaining to private education, including advice to develop and implement a regulatory and monitoring framework for the private educational sector ensuring respect for the principle of non-discrimination and promoting inclusion and respect for diversity.<sup>13</sup> The UN Human Rights Council adopted a resolution on the right to education in July 2015, which recognised the potential impact of the commercialisation of education on the enjoyment of the right to education and urged States to regulate and monitor private education providers.<sup>14</sup>

The former Special Rapporteur on the Right to Education, Kishore Singh, identified selected states as having good monitoring systems. For example, Algeria was identified as having a good monitoring mechanism that controls the establishment of private education.<sup>15</sup> Such private educational establishments are subjected to prior authorisation by the Minister of Education and the conditions of their operation are strictly controlled. The regulation also ensures that during initial registration and each subsequent year, such private educational establishments are required to reveal their sources of financing including gifts and legacies.<sup>16</sup> They are not allowed to receive any financing grants or donations from national or foreign organisations without prior approval from the Minister of Education. The regulation provides sanctions for failure to comply with these rules.<sup>17</sup>

Japan was also cited as a state with a strong monitoring mechanism that regulates the establishment of private education. The state's Private Education Schools Act established requirements for the management of private schools.<sup>18</sup> Private schools are sanctioned for non-compliance with the regulations.<sup>19</sup> Singapore's regulatory mechanism is another noteworthy example. The state's Private Education Act ensures that private educational establishments are registered and that they comply with stringent quality standards. They can be denied permission to operate if their operation is considered not to be in the public interest. The Act creates duties and management accountability and includes detailed provisions on inspection and enforcement of offenses contained in the Act.<sup>20</sup>

---

<sup>12</sup> Maria Ron Balsera, Delphine Dorsi, Andreu Termes, Xavier Bonal, Antoni Verger and Javier Gonzalez Diaz 'Private Actors and the Right to Education Compare' (2016) 46(6) *A Journal of Comparative and International Education* 976.

<sup>13</sup> CRC Committee, Concluding observations: Chile' (2015) UN Doc CRC/C/CHL/CO/4-5 [67] – [70].

<sup>14</sup> UN Human Rights Council, 'Resolution on the Right to Education' (2015) UN Doc A/HRC/29/L.14/Rev.1.

<sup>15</sup> UN Special Rapporteur on the right to education, 'Right to Development' (2015) UN Doc A/HRC/29/30. [83].

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid* [84].

<sup>19</sup> *ibid.*

<sup>20</sup> UN Special Rapporteur on the right to education, 'Right to Development' (n 15) [85].

Another means by which accountability can be achieved on the right to education is through litigation. Affirming the significance of litigation as an accountability mechanism, Adamson, Dorsi, and Carmona observed that when states fail to guarantee the full implementation of the right to education or when violations have exceeded the limits of social accountability, litigation can become the only means of holding the state accountable.<sup>21</sup> In similar vein, Singh reiterated the significance of accountability mechanisms in the protection of the right to education, and observed that ‘an independent judicial system and independent human rights mechanisms’ are essential in ensuring that the law and regulation are enforced or implemented.<sup>22, 23</sup> He also advocated for support for public interest litigation as an accountability mechanism to safeguard the right to education against forces of privatisation.<sup>24</sup> Singh pointed to several court rulings from different parts of the world which have established that private education actors can be held accountable through courts. The Supreme Court of Nepal found that fees charged by private schools were exacerbating inequality, and directed education authorities to regulate and curtail the number of private schools.<sup>25</sup> A historic decision of the Supreme Court of India held that when the government recognises the operation of any private educational institution, it is creating an agency that will be fulfilling the government’s obligations and that this enables its citizens to enjoy the right to education. The Court held that the charging of a capitation fee in order to be considered for admission into an educational institution is a blatant denial of the right to education of a citizen as guaranteed by the Constitution.<sup>26</sup> The role of the court in holding private education actors accountable was also demonstrated in Colombia. The Constitutional Court of Colombia held in 1997 that the exclusion of learners from schools based on their economic situation infringes the enjoyment of their right to education.<sup>27</sup> The Court further held that the fundamental nature of the right to education bound private schools to specific constitutional obligations. Courts have also been relied on in the United States of America to hold private education providers to account. In the case of *Louisiana Federation of Teachers v State of Louisiana*, the Supreme Court of Louisiana held that the use of public money to fund private schools’ tuition vouchers is unconstitutional and that such funds should instead be used for public schools.<sup>28</sup>

### Guiding Principle 93: Increasing Public and Institutional Awareness

**States should disseminate these Guiding Principles to all relevant authorities, and in particular educational institutions, in all relevant**

---

<sup>21</sup> Dorsi and others (n 2) *Realizing the Abidjan Principles on the right to education: Human rights, public education and the role of private actors in education* (Edward Elgar 2021) 255.

<sup>22</sup> UN Special Rapporteur on the right to education, ‘Right to Development’ (n 15) [92].

<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

<sup>26</sup> *Mohini Jain v State of Karnataka And Others*, 1858, 1992, SCR (3) 658.

<sup>27</sup> Colombian Constitutional Court, case T-211/95, 12 May 1995.

<sup>28</sup> *Louisiana Federation of Teachers v State of Louisiana*, 118 So. 3d 1033 (LA 2013).

**languages and formats to facilitate accessibility and implementation. States should also provide targeted training to relevant officials and educational institutions where appropriate.**

If the Abidjan Principles are to be effectively implemented, they need to be publicised. Guiding Principle 93 required the Abidjan Guiding Principles to be circulated among all actors involved in the provision of education. This includes states, civil society organisations, and private actors. This will enable duty bearers to fully comprehend the nature of their obligations, and how these can better be fulfilled. Lending voice to the need for institutional awareness-raising, Singh advocated for the need to widely publicise regulations and laws on private providers of education.<sup>29</sup> This is necessary to make them better known to parents, teachers, communities, organisations, judges, and government institutions. The UN Human Rights Council, in its 29<sup>th</sup> session, advocated for research and awareness-raising activities to ensure an increased understanding of the broad impact of the commercialisation of education on the enjoyment of the right to education.<sup>30</sup> Guiding Principle 93 was developed to advocate for the publication of the Principles by government departments, educational institutions, and other government departments in languages that can be accessed by everyone.

### **Guiding Principle 94: Role of National Human Rights Institutions and Other Actors**

**States should recognise, collaborate with, and promote the fundamental role of National Human Rights Institutions, acting in conformity with the United Nations Principles relating to the Status of National Human Rights Institutions, and civil society actors, in monitoring the implementation and dissemination of these Guiding Principles.**

Guiding Principle 94 is intended to urge states to recognise, collaborate, and promote the fundamental role of National Human Rights Institutions (e NHRIs), acting in conformity with the UN Principles relating to the Status of National Human Rights Institutions, in monitoring the implementation and dissemination of these Guiding Principles. It also requires States to recognise the role of civil society actors. Ratified international human rights instruments are expected to become part of or be recognised by the national legal system. States are required to take 'all appropriate steps' to realise the human rights contained in those instruments.<sup>31</sup> CESCR, in its General Comment No 10, observes that an appropriate step that can be taken is through the work of NHRIs.<sup>32</sup> NHRIs are key

---

<sup>29</sup> UN Special Rapporteur on the right to education', 'Right to Development' (n 15) [92].

<sup>30</sup> UN Human Rights Council, 'Resolution on the Right to education' (n 14) [2].

<sup>31</sup> Article 2(1) of the International Covenant on Economic Social, and Cultural Rights (ICESCR) (adopted 16 December 1966, entry into force 3 January 1976).

<sup>32</sup> CESCR, 'General Comment No 10: The Role of National Human Rights Institutions' (1998) UN Doc E/C.12/1998/25 [1].

partners in implementing international human rights obligations.<sup>33</sup> Principles relating to the status of NHRIs, known as the Paris Principles, were adopted by the United Nations General Assembly in resolution 4/138 of December 1993.

NHRIs that comply with the Paris Principles increasingly serve as ‘relay mechanisms between international human rights norms and the state’.<sup>34</sup> NHRIs are also major mechanisms to drive a strong and effective national human rights protection system monitoring compliance with national laws and practices with all international human rights norms; supporting governments to ensure implementation, addressing national human rights issues, and presenting alternative reports to regional and international human rights treaty bodies. Guiding Principle 95 highlights the role of NHRIs in the context of the increasing role of private actors in education, and serves to reaffirm this role.

The Paris Principles mandate states to give NHRIs broad mandates to promote and protect human rights.<sup>35</sup> These Principles spell out the role of NHRIs in the protection of international human rights law.

NHRIs should have the power to report on any matter that concerns the promotion and protection of human rights and they should be able to publicise their findings. They have the responsibility to draw the attention of the government to a situation in any part of the country where human rights are violated and to make proposals for the cessation and to remedy such violations and; where necessary express opinion on government reactions.<sup>36</sup> The responsibilities of NHRIs also include the promotion and harmonisation of national legislation, regulation, and practices with the international human rights instruments to which the state is a party, and to ensure their implementation. Given the broad mandate of the NHRIs in the protection of human rights, the Principles can be used by NHRIs to protect the right to education from being infringed by private actors. In carrying out their duties, NHRIs should cooperate with the UN and its related agencies, the regional institutions, and other competent NHRIs.<sup>37</sup>

## Guiding Principle 95: Ensuring Policy Coherence

**States should ensure coherence across policy areas affecting the enjoyment of the right to education, in particular by ensuring that all public departments, agencies, and other state institutions at all levels that have a**

---

<sup>33</sup> OHCHR, ‘National Human Rights Institutions: History, Principles, Roles and Responsibilities (2010) 5 <[https://www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/PTS-4Rev1-NHRI_en.pdf)> accessed 2 February 2023.

<sup>34</sup> *ibid*; Mortein Kjaerum *National Human Rights Institutions Implementing Human Rights* (Martinus Nijhoff 2003).

<sup>35</sup> UN General Assembly Resolution 48/134 ‘Principles Relating to the Status of National Institutions (The Paris Principles)’ (4 March 1994) UN Doc A/Res/48/134.

<sup>36</sup> *ibid* [3].

<sup>37</sup> *ibid*.



**role in education policies are aware of and observe the State's human rights obligations and these Guiding Principles when fulfilling their respective mandates.**

Guiding Principle 95 require states to ensure policy coherence across areas affecting the enjoyment of the right to education, in particular by ensuring that all public departments, agencies, and other state institutions at all levels that have a role in formulating education policies are aware of and observe the State's human rights obligations and these Guiding Principles when fulfilling their respective mandates. Policy coherence is viewed as a 'systematic promotion of mutually reinforcing policy actions across government departments, agencies creating synergies towards achieving the agreed objectives'.<sup>38</sup> The principle of 'policy coherence' is included in the UN Guiding Principles on Business and Human Rights. Guiding Principles 8 of the UN Guiding Principles on Business and Human Rights urges states to ensure that government departments, agencies, and other state institutions that shape business practices are aware and adhere to the human rights obligations of the states in fulfilling their respective mandates, including providing them with relevant information and training and support.<sup>39</sup> This can also be done through capacity building and awareness-raising through such institutions, thereby ensuring the enjoyment of the right to education. According to Fabien Tondel, the idea of policy coherence permeates the entire concept of Sustainable Development Goals (SDGs). The author submits that the idea of SDGs is anchored in multi-layers of development, which do not take place in silos but are affected, by several actors and policies.<sup>40</sup> Therefore, the successful implementation of SDGs is based on various governments taking an integrated approach to policy-making with policy coherence at the core. The development and implementation of education policy require governments to coordinate different actors in both the public and private sector; this includes private education providers to ensure coherent policy implementation that will ensure the protection of the right to education.

## **Guiding Principle 96: The Role of International Organisations**

**International organisations should meet the obligations related to the right to education under; inter alia, general international law and international agreements to which they are parties. They should ensure that their conduct is aligned with these Guiding Principles.**

---

<sup>38</sup> National Action Plans on Business and Human Rights 'Policy Coherence' (2017-2021) <<https://globalnaps.org/issue/policy-coherence/>> accessed 12 December 2021.

<sup>39</sup> OHCHR, Guiding Principles on Business and Human Rights (2011) <[https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)> accessed 7 February 2022.

<sup>40</sup> Fabien Tondel 'Implementing Policy Coherence: A Challenge Inherent to the 2030 Agenda' (2019) <<https://ecdpm.org/talking-points/implementing-policy-coherence-challenge-2030-agenda/>> accessed 12 December 2021.



The international human rights system generally places the obligation to protect human rights on the state. However, international organisations also play an essential role in the protection of human rights. International organisations provide guidance, assistance, monitoring, and backup in terms of the protection of human rights.<sup>41</sup>

Abidjan Principle 96 reaffirms the role played by international organisations to meet the obligations relating to the right to education under general international law and international agreements to which they are a party. International organisations are expected not only to ensure that their conduct is aligned with these Guiding Principles but they are also expected to implement or enforce these principles. International organisations are subject to international law, and enjoy limited functional powers. Article 22 of the International Covenant of Economic, Social and Cultural Rights is in sync with the demand of Guiding Principle 96, on the need for international organisations to play a role in the implementation of the right to education. This article urges the Economic and Social Council to bring to the attention of other 'organs of the United Nations, their subsidiary organs and specialised agencies concerned with furnishing technical assistance' any matters arising from this Covenant, which may help such bodies in deciding issues within its field of competence.<sup>42</sup> CESCR in General Comment No 2 provides more insight into the provision of Article 22 and highlights some of these international organisations and the role they could play in the protection of human rights, including the right to education. CESCR observes that this provision should be interpreted to include virtually all UN organs and agencies involved in any aspect of international development cooperation.<sup>43</sup> Such agencies and organisations include the Office of the High Commissioner for Human Rights (OHCHR), the Commission on Social Development, and the Commission on the Status of Women (CSW). Other bodies include United Nations Development Programme (UNDP), UNICEF, World Bank, International Monetary Fund, International Labour Organisation, Food and Agriculture Organisation, UNESCO, and World Health Organisation. Guiding Principle 96 requires these UN organs, agencies, and other international organisations to be involved in the implementation of international human rights instruments and to participate in the implementation of the Guiding Principles in the context of the regulation of private actors in the provision of education.

As part of the international human rights architecture, treaty bodies also play a crucial role in the protection of human rights. Treaty bodies do this primarily through the review of state parties' implementation of their international obligations, issuing concluding observations, and issuing of general comments. The issuing of views under the various communications procedures is an additional function. Treaty bodies have played an active role in ensuring that state parties fulfill their obligations towards the regulation of private education providers. For example, the CRC Committee, in its concluding

---

<sup>41</sup> Gerald Neuman 'International organisations and Human Rights- The Need for Substance' (2019) *Research Working Paper 2*; Also see Gudrun M Zagel 'International Organisations and Human Rights: The Role of the UN Covenants in Overcoming the Accountability Gap' (2018) 36(1) *Nordic Journal of Human Rights* 76.

<sup>42</sup> Article 22 of the International Covenant on Economic Social and Cultural Rights (n 31).

<sup>43</sup> CESCR, 'General Comment No 2: International Technical Assistance Measures'(1990) UN Doc E/1990/23.

observations concerning Morocco, expressed concern over the rapid expansion of private education, especially at the primary level, without the supervision required by international human rights law, resulting in the perpetuation of inequality in the enjoyment of the right to education.<sup>44</sup> CESCR has also sought information from Morocco about the development of private education and the impact of privatisation on the education system.<sup>45</sup> In October 2014, the CRC Committee asked Ghana to provide detailed information on the rationale behind the increase in private education, which limits access to quality education for children who cannot pay private school fees.<sup>46</sup> The CRC Committee took an innovative approach to extra-territorial effects of the commercialisation of education, when it raised concerns about the UK's funding of low-fee, private and informal schools run by for-profit business enterprises in recipient states.<sup>47</sup> The CRC Committee observed that the rapid increase in the number of such schools may affect the standard of education, leading to less investment in free and quality public schools, and deepening inequalities in the recipient country, as children who cannot afford to pay school fees, are left behind. The CRC Committee recommended that the UK should provide support through international cooperation to the recipient states to guarantee the right to free and compulsory primary education for all, by prioritizing free and quality education in public schools. The CRC Committee urged the UK to stop funding for-profit private schools and facilitating registration and regulation of private schools.

The Maastricht Guidelines on the Violations of Economic, Social, and Cultural Rights highlight the significant role played by international organisations in the realisation of economic, social, and cultural rights.<sup>48</sup> The Maastricht Principles observe that international organisations provide the necessary support for the implementation of international human rights instruments.<sup>49</sup> The Maastricht Guidelines advise specialised agencies and other international organisations working in the field of the economic, social, and cultural sphere, including financial institutions, not to adopt or implement policies and practices that might result in deprivation of economic, social, and cultural rights such as the right to education.<sup>50</sup>

### **Guiding Principle 97: Cooperation of International Organisations, Special UN and Regional Agencies**

**Specialised agencies of the United Nations, Regional Organisations, and other development actors are encouraged to support the implementation of these Guiding Principles, in addition to the human rights obligations they**

<sup>44</sup> CRC Committee, Concluding observations: Morocco (2014) UN Doc CRC/C/MAR/CO/3-4 [6].

<sup>45</sup> CESCR, 'Concluding observations: Morocco' (2015) UN Doc E/C.12/March/Q/4/Add.1.

<sup>46</sup> CRC Committee, 'List of Issues: Ghana' (2014) UN Doc CRC/C/GHA/Q/3-5 [14].

<sup>47</sup> CRC Committee, 'Concluding observations: UK' (2016) UN Doc CRC/C/GBR/CO/5.

<sup>48</sup> The Maastricht Guidelines on the Violations of Economic, Social and Cultural Rights <C:\WP51\Simspec.20\01CHAP (ipasa.co.za)> accessed 29 September 2021.

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

**may be subject to under international human rights law. Such support may include technical cooperation, financial assistance, institutional capacity development, and knowledge sharing**

Principle 97 encourages international and regional organisations to cooperate in the performance of their international law obligations regarding the implementation of international human rights norms and standards including the Principles. Guiding Principle 97 outlines the respective roles that international organisations are expected to play; these include technical cooperation, financial assistance, institutional capacity development, and knowledge sharing.

International cooperation as a means of implementing international human rights norms and standards is a well-established principle in international law. Article 55 and 56 of the Charter of the UN, encourages international economic cooperation.<sup>51</sup> All member states are urged to pledge to themselves jointly, and separately in cooperation with organisations to solve the problems of economic, social, and health-related matters, and cooperate in the area of international culture and education. The CESCR has also highlighted the significance of international cooperation in the realisation of the rights enshrined in the Covenant. For example, Article 2(1) of the ICESCR, encourages state parties to the Covenant to take steps individually or through international assistance cooperation, especially economic and technical cooperation to realise the rights in the covenant. Article 11 (1) of the ICESCR, also emphasises the importance of international cooperation in the realisation of the rights recognised in the Convention. This provision urges state parties to ‘take appropriate steps’ to ensure the realisation of the right in the Covenant. To this effect, the Covenant urges state parties to recognise the essential importance of international cooperation on the basis of free consent. Article 15(4) of the ICESCR, requires state parties to recognise the benefits that can be derived from the development of international contacts and cooperation in the field of science and culture. Guiding Principle 97 is in sync with the obligation imposed by other international human rights instruments. It requires the provision of technical assistance from UN special agencies to implement the n Guiding Principles in the protection of the right to education. Article 22 of ICESCR urges the Economic and Social Council to bring to the attention of other UN organs, subsidiary organs, and specialised agencies on issues relating to ‘furnishing of technical assistance’ on the advisability of international measures that will contribute to the effective implementation of the rights enshrined in the Covenant. Article 23 of ICESCR also provides that parties to the Covenant agreed that international action for the realisation of the rights contained in the Covenant will include methods such as ‘furnishing of technical assistance’ and holding of regional meetings and technical meetings for the purpose of consultation in conjunction with the Government concerned.<sup>52</sup>

The provisions of Articles 22 and 23 and the interpretation offered by the CESCR in General Comment No 2 are in tandem with the requirements of Guiding Principle 97. Article 4 of the Convention on the Rights of the Child (CRC) also highlights the

---

<sup>51</sup> Article 55 and 56 of the Charter of the United Nations.

<sup>52</sup> Article 23 of the International Covenant on Economic Social and Cultural Rights.

significance of international cooperation in the realisation of children's rights. Article 4 of the CRC requires state parties to undertake measures within available resources and 'within the framework of international co-operation to fulfil their obligation concerning economic, social, and cultural rights enshrined in the Convention. Similarly, Article 45(a) of the CRC encourages effective implementation of the Convention through international co-operation in the field covered by the Convention:

*The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.*

Principle 34 of the Maastricht Principles on Extraterritorial Obligations of State in the Area of Economic, Social, and Cultural Rights, also reinforces the significance of international assistance and cooperation in realising state obligations in the implementation of international human rights norms and standards.<sup>53</sup> The Principle provides that states are under an obligation to request international assistance and cooperation on mutually agreed conditions in situations where a state cannot, despite its best effort to protect economic, social, and cultural rights in its territory.<sup>54</sup> Maastricht Principle 33 ensures that as part of the general obligation of international cooperation, states that have the means must act separately or jointly, to provide international assistance to contribute to the realisation of economic, social, and cultural rights in other states.<sup>55</sup> International cooperation, as envisaged by Guiding Principle 97, could take the form of technical cooperation, financial assistance, institutional capacity development, and knowledge sharing. This aims to ensure that states have the required capacity to monitor and implement a regulatory framework on the provision of education by private actors.

Regional human rights structures have also played a significant role in the promotion and protection of human rights. This significant role has been acknowledged by the UN.<sup>56</sup> The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993 not only endorsed efforts to establish; strengthen and increase the effectiveness of these establishments, the Declaration also stressed the significance of

---

<sup>53</sup> Principle 34 of the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.

<sup>54</sup> *ibid.*

<sup>55</sup> Principles 97 of the Maastricht Principles (n 53).

<sup>56</sup> UN General Assembly Resolution 63/170 'Regional arrangements for the promotion and protection of human rights' (18 December 2008) UN Doc A/RES/63/170.

the cooperation of these regional establishments with the UN human rights structure. Regional human rights instruments such as treaties, conventions, and declarations help to localise international human rights norms and standards that reflect the particular human rights concerns of the region.<sup>57</sup> Currently, there are three well-established regional human rights systems, which are the Council of Europe, the African Union, and the Organisation of American States. Each of these regional systems has its internal human rights mechanisms and instruments that promote and protect human rights. The Guiding Principles are available to serve as a guide for these regional mechanisms and instruments when considering state obligations towards the right to education, specifically the regulation of private actors in the provision of education.

---

<sup>57</sup> Universal Rights Group 'A Rough Guide to the Regional Human Rights Systems' <<https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems/>> (accessed 12 December 2021).