

RIGHTS-BASED RESPONSES TO NON-STATE EDUCATION PROVISION: A TENTATIVE TYPOLOGY AND SOME CRITICAL REFLECTIONS

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The role of the private sector in education has become a very hot issue internationally and it has tended to lead to generalised and polarised statements rather than nuanced debates. Attempts to debate the role of “non-State actors” in education often exacerbate the problem - as a huge range of different actors, roles and contexts get lumped together. The reality is more complex than many people (including myself) sometimes make it seem. This is my modest attempt to try to disaggregate the debate in a concise form and offer some quick reflections on how we might understand and respond (both practically and strategically) in different situations. The classification below of eleven types of non-State provision is far from perfect (many categories could be sub-divided) but I hope it helps to move the debate on. I do not pretend to be neutral. My starting point is a firm belief in a rights-based perspective and a conviction that education can and should be a powerful equalising force in society.

1. Community initiatives in rural areas where the State fails

There are some contexts such as in Pakistan where governments have failed to adequately extend public education provision to remote rural areas and sometimes in these contexts individuals within rural communities have set up their own schools. Usually it is local parents or teachers themselves who have taken the initiative and they charge modest fees to cover their costs. Most operate independently, though sometimes they gather together in local associations for mutual support / learning and some receive support for aspects of their operations from NGOs or from the State.

An **immediate or practical response** in this context might be to engage with such schools to ensure that they are able to meet reasonable minimum standards, for example in terms of the training and capacity of teachers, the breadth of their curriculum, the extent to which they are accessible to the poorest and their safety (both from hazards and in respect of child protection). It would be appropriate to help the school and parents make connections, to seek recognition from the government system (which in many cases will be their own aspiration) or to make the case to district, provincial or national government for investment in public education in the area. Equally it makes sense to support district education offices to monitor and inspect these schools to ensure they comply with the law and meet minimum standards – which can help to facilitate the journey towards recognition.

A longer term **strategic response** might involve campaigning for the deployment of more teachers in rural areas and the provision of incentives to support teachers to work in the most remote locations. Ultimately this will depend on making the case for greater government spending on education and for a prioritisation of spending on remote rural communities (to ensure compliance with human rights frameworks). In the case of Pakistan the government (despite a constitutional amendment in 2010 guaranteeing education as a fundamental right) spends a shockingly low 2.4% of its GDP on education against the 6% benchmark of good practice (as referenced in the Incheon Framework for Action 2015). Key to this will be supporting national campaigns by civil society to get education higher up domestic budget priorities and to ensure that the budget is accountably and transparently spent where it is needed. This might include looking at both expanding the domestic tax base as well as expanding that share of spending on education.

2. Community initiatives in marginal urban areas where the State is absent

In many marginal urban areas there has been a significant growth of private providers of education – for example in some of the slums of Nairobi or Lagos. In many cases there are very few government schools in spontaneous squatter settlements or even in some of the more well-established slums which are on illegally occupied land. These private community schools are usually set up by local residents in response to local demand and in the absence or non-responsiveness of the State.

An important **immediate or practical response** is to map the children who are eligible for schools in such contexts (including those not in school) and to document the coverage by private providers, to be able to show the scale of the need / demand to government. There is also a value to identifying those practices and innovations amongst the local providers that have been most successful in promoting enrolment, retention and achievement. In the process of collecting data it is important to include the conditions / qualifications of teachers and the state of infrastructure, for example, documenting whether minimum safety standards are met. There have been too many horrendous stories of schools that violate the right to a safe infrastructure leading to children dying in fires or earthquakes. In this context government offices might also helpfully be reminded of their obligation to regulate and monitor all schools (public or private) to ensure minimum standards are met.

The most important **strategic response** should be to support local claims by the slum dwellers either for legal recognition of the schools (where they meet minimum standards) or for the government to assume responsibility to provide education as a public service, opening new schools. Often this will have to be linked to wider struggles for legal recognition of the slum as a whole, as most governments cannot legally provide services where they do not legally recognise a settlement. However, sometimes exceptional arrangements can be found to recognise schools (where they meet minimum standards / norms), giving them a quasi-legal status that enables governments to allocate trained teachers and other resources, as steps towards progressively integrating them into the national education system. In most cases getting the government to assume responsibility for providing public schools and other basic services is a central aspiration of slum dwellers and once this is done the demand for private schools diminishes or disappears.

3. English medium schools where governments schools do not teach in English

There are many contexts where parents desire an education for their children in a language other than that used in government schools. For example in some government schools in India children will learn first in their mother tongue (if it is a recognised one), then in their official regional / State language, then may progressively move to learn Hindi and English (and this can in some cases involve 4 different alphabets). Increasingly parents, even from modest backgrounds, are seeing English as the 'language of power' – the high status language and the best passport to employment for their children. This has led to a huge spread of fee-charging English medium schools.

An **immediate / practical response** to this phenomenon is to ensure that there is reasonable regulation in place to ensure that parents are not being conned. Some English medium schools are of a shockingly poor quality, with untrained teachers whose own English is very limited. Children may in fact struggle to learn the basics when confronted with a teacher they do not understand. There is important awareness raising work to be done with parents – to clarify that children will learn basic literacy best in their own mother tongue and will struggle to learn in a language they do not speak. Strengthening bilingualism / multilingualism and the teaching of English in government schools may also help.

A **strategic response** to this is more complex as this has implications far beyond the education system – impacting over time on national culture and identity. For example, if all schools in a linguistically diverse country were to move towards being English medium this would have a devastating impact, potentially leading to both mass drop out from schools (it is very hard to learn in a language you do not know) and to the extinction of other languages over the following decades – leading to a dramatic loss of cultural diversity. Language policies are a matter for broad national dialogue. There is a case for research and advocacy to make education systems sensitive to the value of progressive bilingualism / multilingualism and more effective at transitioning (at appropriate stages) from learners’ mother tongues to other languages. In human rights terms, this is an important part of ensuring schools are adaptable and acceptable.

4. NGO-initiated community schools / NFE centres / Philanthropic schools

Many NGOs and philanthropic donors set up and run their own non-formal education centres or community schools, sometimes with their own resources and sometimes as sub-contractors for delivery of donor projects, for example from USAID. These will often target the poorest or most excluded communities, are free at the point of use and may introduce a range of innovations to make learning more child-centred and relevant / adaptable to the needs of specific communities. There is a wide range within this category, particularly between simple NFE centres under thatched huts that focus on the basics and more ambitious NFE centres that more closely resemble a full primary school. There are also specific examples of schools that may target certain populations (ethnic minorities or dalits or pastoralist communities).

Perhaps the most important **immediate engagement** with NFE centres is to encourage their progressive compliance with national norms / standards and specifically for them to develop sustainability plans. As NGOs tend to be a short or medium term presence there are serious questions about how to sustain efforts in the longer term (the profound lack of sustainability was the key reason that ActionAid stopped supporting such schools in the 1990s). Most NFE centres end up recognising the need for integration with the government system and it is important to lay foundations for this from the start – making constructive relationships and ensuring compliance / convergence with core government standards to facilitate this integration. This is true even for apparently large scale providers such as BRAC in Bangladesh (which at one point ran 35,000 single room NFE centres – though even then that covered less than 8% of Bangladeshi children) – the long term sustainability depends on connecting with the government system rather than supplanting it. In the case of the smaller NFE centres one option is to look at how they can become recognised satellites, connected to a focal primary school which supports them.

A **strategic response** to this is to look at taking innovations from NFE into the public education system so that government schools are more flexible and responsive. Where there are innovations the challenge is to incorporate these into the wider system rather than to preserve them in small islands. This may be particularly true where NFE centres have been set up based on specific innovative pedagogies (e.g. Montessori or Steiner) or where schools cater for particular communities (e.g. migrant workers or indigenous people) as these can have a lot to offer public education systems, helping them to become more adaptable. Nevertheless supporting government to put in place enforceable regulation of all NFE centres / community schools is also important – to avoid abuses and to encourage better planning.

5. Inclusive / special schools for children with disabilities

Children with disabilities often remain excluded from most mainstream schools and there are particular arguments to be made for innovative or special provision as steps towards building a fuller

vision of an inclusive education system. Many disability-focused NGOs (sometimes with corporate partnerships) support schools which provide innovative solutions to the challenges of inclusive education. These can help model good practice, informing and influencing policy makers and mainstream schools.

Given the scale of exclusion of children with disabilities, supporting such innovations can be an important **immediate / practical response**. To make the most of this, innovations need to be low cost (to facilitate replication), carefully documented and as connected as possible with government schools / systems to foster mainstreaming. There are particular child-protection issues that warrant attention as children with disabilities are at a higher risk of human rights violations – so training and sensitisation of teachers, carers and the wider community will be a priority. Mapping the scale of the need can also be an important intervention as this is often hidden or poorly understood. Disaggregated data on the range of disabilities and what it will take to ensure schools are genuinely accessible, available, acceptable and adaptable can be transformative.

The **strategic response** here lies in the mainstreaming of innovations – influencing national policy reform and practice to ensure all schools are fully inclusive. The 2006 UN Convention on the Rights of Persons with Disabilities (CRPD) was a milestone in this regard. The CRPD established inclusive education as the key mechanism to deliver the right to education for children with disabilities. It should not depend on NGOs or corporates to fund the education rights of some of the most disadvantaged groups. Specific attention may be needed to challenge the norm of school funding models being premised on standard per-capita allocations, with the recognition that effective integration of children with disabilities will cost more per capita. Equitable financing of education means spending more per child on those who need more support to secure their right in practice.

6. Faith-based schools

Most education systems have diverse providers and faith-based organisations (whether churches, mosques or temples) are often significant. In many cases faith-based provision of schools started outside of the public system (often pre-dating mass public education) and they have become progressively integrated, with teachers and materials paid for by the state, with a convergence in using the national curriculum, textbooks and exams, but typically with governance of the schools remaining within the faith community. In the majority of cases faith-based schools are free at the point of use (following national standards in this regard). Most issues for how to balance independence and integration have been resolved over time and these can in fact act as example for integration of other providers into a coherent public education system.

In most cases **practical engagement** with these schools will be no different to engagement with any public school. However this may vary and particular attention may need to be paid to the right to non-discrimination as, in some respects, faith-based schools have an immediate tendency to be discriminatory (in favour of their own faith). In some contexts it may be necessary to ensure that faith-based schools are accessible to all children, even to children from other faiths (especially if there are no credible alternative providers locally). Ensuring that all faith schools encourage tolerance of other faiths can also be important – and there should be clear guidelines against proselytization. Ensuring schools take on the full national curriculum can be a challenge where faith schools have started with a much narrower focus (e.g. Koranic schools or fundamentalist church schools that prioritise creationism over science).

At a **strategic level** it is important to work towards clear national policies to define minimum standards and regulations for faith based schools – ensuring that all significant faith groups within the country are treated equally and that all schools comply with human rights standards. There may

be value to stimulating national debate and policy consensus around how to address the right to non-discrimination in the context of faith-based schools – what standards must be met if faith schools are to be recognised and receive public funds. Particular efforts may be needed to ensure sufficient monitoring capacity is in place to prevent religious fundamentalism being fostered in schools or discipline methods being used that violate the rights of children.

7. Commercial for-profit providers of low fee private schools

There is a relatively new phenomenon of commercial chains of for-profit low cost private schools such as Bridge International Academies (in Kenya and Uganda and spreading) and Omega (in Ghana). These charge modest, but not necessarily affordable, fees (perhaps \$10 to 20 per month), usually making profits by recruiting untrained teachers (paying them perhaps a third of a teacher salary) and standardising processes (e.g. giving scripted lessons). They claim to be extending access (though most take children previously in government schools) and improving learning outcomes (though the evidence base for this is marginal once allowing for socio-economic status).

An **immediate / practical response** to this phenomenon might be to ensure these schools comply with existing government regulations and standards (e.g. on teacher training) – as sometimes they fly under the radar of district education offices and go unchecked. Advocating for new laws and policies to effectively regulate this new phenomenon may also be important - to avoid abuse by those who may be more focused on making profit than providing education. Calling for a freeze on expansion until regulations are fully in place (as happened in 2015 in Kenya with Bridge schools) can make good sense. It may also be helpful to document the enrolment in such schools, particularly looking at what the impact is on equity (do they reach the poorest / girls / those previously out of school – as present evidence suggests they do not) and the impact they have on neighbouring government schools (do they take the better off and more able students and then negatively impact those remaining in the under-funded government school – as evidence presently suggests is the case). It may also be worth mapping the geographic spread of the commercial for-profit chains - as they tend to operate more in urban, peri-urban or accessible rural areas rather than extending access to those more difficult to reach communities (they rarely contribute to actually extending access yet often in their rhetoric they claim they are doing so).

A **strategic response** to these low quality for-profit private schools may come in various forms. In some contexts it may be appropriate to call for a national law that prevents profit-making from provision of basic education (this does not mean outlawing private provision but insisting private schools are set up on a not-for-profit basis as is the norm in many countries). In other contexts the more modest call for an end of all state subsidies (e.g. tax breaks) to all for-profit providers will make sense – as it is clearly inappropriate for public money to be subsidising private profit. In all cases it will be important to support a comprehensive set of regulations relating to for-profit providers (including ensuring they comply with human rights standards) – backed by the capacity to monitor and enforce such regulations. Where it is not realistic for a government to do this then it may be better to call for the outlawing of for-profit providers as there are inherent dangers with introducing the profit motive into education systems – and of course it is necessary to ensure that if such a ban is put in place it is monitored and enforced.

8. Private schools for the middle class and rich

It has long been a reality that the wealthy elite of almost every country send their children to elite private schools that charge high fees. These are often boarding schools and the children who graduate will often then be supported, at high cost, to go to universities overseas. Increasingly there are now middle-range private schools that target middle class parents – often attracting children

whose parents are politicians, government employees, NGOs workers or private sector professionals. It is a sad reflection on the state of public schools that public sector employees, including some teachers, will send their own children to private schools. This reality can make people in NGOs feel compromised when they are advocating for public education. One consequence is that the pressure for reform of public education is diminished because those who could most effectively hold the public system to account have opted out.

One **immediate response** to this is to engage actively with the middle class in a public debate about the role of public education and the challenges of their increasing dependency on private provision. Many people feel they are exploited by the rising fees in private schools – which often spiral upwards very rapidly, becoming unaffordable. Documenting such trends can be helpful. The middle classes may also become resentful when they are paying significant taxes but are not getting a decent public education system in return. It is often clear that the best way to stop the spiralling costs of private schools is to ensure that there is an improvement in the quality of public schools (that can offer an alternative) – and that in the absence of such improvement there will be no end to the upwards trend in private school fees. Data about the exam results achieved by private schools should also be critically analysed and put in the context of the socio-economic background of the children enrolled. It is not unusual to find that a middle class child with supportive parents would do just as well in a government school. An informed and critical debate with the middle classes will often serve to galvanise them to call for more investment in a reformed public education system – and to see this as serving both their own self-interest as well as altruistic purposes.

A **strategic response** to mid and high fee private schools may come in various forms. Reservation of a percentage of free or highly subsidised spaces for the most disadvantaged groups in every private school is one option (as is the case in India) – but this needs careful monitoring and enforcement to avoid abuse. Another option is to advocate for a law that requires all politicians and government employees to send their own children to public schools. Another approach is to reserve highly desirable places in public universities or government positions / jobs for those who have been through the public education system (or at least reserving a substantial quota of such positions). Such moves can rapidly increase the weight of demands for serious improvements in the quality of public education as the middle classes are drawn back in. More modest strategic actions include ensuring that there are no public subsidies for any dimension of the elite private schools – including removing tax breaks that in effect act as a significant subsidy. In some contexts requiring cooperation agreements between elite private schools and local public schools offers a way to ensure facilities, resources and innovations are shared. The intention of all such interventions should be to work towards creating a fairer, more equal and better quality education for all.

9. Private supplementary tutoring

It is impossible to avoid the growing phenomenon of private supplementary tutoring which in some countries is now very widespread. Private tutoring may take place at weekends or at the start or the end of the school day. It may take place in a separate location or even in the same school and same classroom where children learn during the day – and it may involve a specialist private tutor or the child's same teacher, giving extra, fee-charging lessons after school. The effect is to give an advantage to those parents who can afford to pay, exacerbating inequalities. There are particularly worrying consequences where the teacher is the same teacher in the same classroom – as it can create a situation where the teacher has an incentive to “under-teach” during the day in order to create a greater demand for their private tuition classes. The not very subtle subtext is that, if your child wants to get good grades you have to pay for extra classes. This phenomenon may be particularly acute where teachers are so underpaid as to not be able to survive without earning additional sums. It is important not to confuse this fee-charging private tuition with the provision of

free after school classes for children needing extra support (for which teachers should be properly paid by the State).

A **practical / immediate response** to this might be to raise awareness of parents and school management committees and to improve supervision of schools in order to prevent the worst abuses (where teachers deliberately under-perform to create demand) – ensuring that all children receive an education of a decent standard, that covers the full syllabus. Teacher unions can also be proactive allies in this, including in campaigns to prevent teachers offering private tuition to their own students or to prevent schools from forcing teachers to work extra hours. Some attention may be needed to ensure there is no cheating for those who pay for extra tuition (for example by teachers giving away upcoming exam questions). Another alternative is to ensure that the poorest children are not excluded by insisting on the reservation of some free (no fee) places in any after-school private classes.

A **strategic response** might involve passing laws or regulations against government teachers being able to offer private tuition to their own students. In some cases the logical strategic response might be to advocate for increases in teacher salaries so that all teachers earn at least a living wage, removing the need (if not the desire) for them to take additional work. There is a strong case for the State to ensure that it monitors the size and shape of this sector, not least to ensure that all private tutors are properly declaring their income for tax purposes – so that at least some public revenue is raised from this growing industry. Some governments might look at prohibition of private tutoring (apart from in exceptional cases e.g. where it involves support for those with learning difficulties) on the basis that it deepens inequalities or undermines a meritocratic society. However, this is unlikely in most contexts and the real alternative is to invest in ensuring that the mainstream education system is of sufficient quality that excessive demand for or dependency on private tutoring is diminished.

10. Voucher-based models to give parents a choice

Under the argument that parents should be able to choose the schools their children go to, some governments have introduced voucher systems so the money goes with the child (via their parents) rather than going to the school. This intends to stimulate competitions, driven by choice and a diversity of providers, encouraging good schools to grow and forcing bad schools to go out of business. In most cases this seems to have created more of an illusion of choice than a reality (not least because it is largely a one-off choice – it is not good for children to keep moving between schools) and there has been a worrying impact on equity (e.g. in Chile). School choice sounds good in theory but in practice the best schools get over-subscribed and end up choosing which children / parents to accept. Middle class parents tend to learn how to play the system and poorer parents often lose out. Rich parents who choose to send their children to high-fee paying schools end up getting part of the costs covered which is a questionable use of public money.

A **practical response** to a voucher model if one is in place might be to empower poorer parents to better understand the system with the hope that they can make it work. This is unlikely to work in practice and so documenting the impact on equity will be important – showing how better off parents / children benefit disproportionately from such a system and the poorest parents end up with their children going to the worst schools. It is also worth ensuring that there is full transparency across all providers about their compliance with minimum standards / human rights obligations – and it is worth investigating any cases where there may be evidence of discrimination.

A **strategic response** might be to collect evidence about the unintended consequences on equity and to call for an end to voucher models (as has happened in Chile when the impact on rising inequality

within the education system was clearly established). There may also be useful research conducted about the overall costs of the model to ensure that this does not end up being a more expensive for the government in the medium term. There is a value to ensuring that the national debate on education remains focused on the quality of education being the goal rather than the extent of choice or competition (which is sometimes presented as if it is a goal in itself). It does not help if people have a wide choice between a series of bad and worse providers. The State's obligation is to provide free good quality education for all rather than to provide the right to choose.

11. Public Private Partnerships (PPPs)

There is a huge range of things covered by the generic term PPPs and so in some senses it becomes unhelpful. In some respects almost every education system involves PPPs. Textbooks used in schools now tend to be produced by private publishers and the examination boards are usually run by private companies. School building is sometimes contracted out; furniture and equipment are sourced from a wide range of private companies. Sometimes even teacher training or professional development has been outsourced (which can become more problematic). Charter schools in the US and academies in the UK are schools that have private actors taking on a governance or leadership role. So called Free Schools (in Sweden / UK) take this even further – where schools are still State funded but are fully free of oversight by local government authorities and are allowed to employ untrained teachers.

Each of these situations might warrant a different **immediate and strategic response** but there may be some common elements. Monopolistic supply by any one company should be actively discouraged – with a limit perhaps set on what percentage of any particular good or service can be provided by any one company – to encourage diversity and ongoing competition. Advertising or excessive branding by a company within schools should be actively discouraged or made illegal – as children may be particularly vulnerable to manipulation. Any private provider should be made fully aware of human rights obligations in relation to education and commit to ensure that these are respected, protected and fulfilled (bearing in mind the right to a well-trained teacher - as articulated under the Convention on the Rights of the Child, General Comment 1). There needs to be a sufficiently strong capacity to regulate all activities of private providers, with the right of the government always reserved to terminate contracts / remove any private provider who violates basic terms. All contracts should be open to periodic review and transparent processes for renewal. It is important for the government to be regularly calculating the full costs incurred in PPPs and their impact in contributing to the progressive realisation of all dimensions of the right to education.

12. Concluding Reflections

Most education systems are diverse, with multiple actors and providers whether government, NGO, philanthropic, faith-based or private sector providers. The State has a clear obligation to act as a guarantor of the right to education across all these providers, ensuring that each child is able to have their right to education respected, protected and fulfilled. Whilst tolerance of a diverse system is important, it is equally crucial that clear standards are set for all providers and that there is a credible capacity to monitor compliance with these standards. These standards should be consistent with core human rights commitments – such as the right to free education, to non-discrimination, to adequate infrastructure, to quality trained teachers, to a safe and non-violent environment, to a relevant education based on a broad curriculum and to transparent and accountable schools (see [Promoting Rights in Schools](#) for elaboration on these). There are tipping points and trade-offs to be conscious of. Sometimes it will be cheaper and more effective for the State to be a direct provider than to invest in a huge regulatory and enforcement framework to monitor compliance by others.

Some States may want to take strong principled positions against people or companies making profits out of basic education (as is the case in different ways in countries as diverse as China, Ecuador and Australia) – insisting that all providers must be not-for-profit. However, the term not-for-profit might also need to be carefully defined as it can mask very elitist and exploitative situations. Alternatively laws might be passed to prevent any public money (directly or indirectly) subsidising for-profit providers – especially in States that are struggling to finance public education. Other States may go further and insist that all education must be free at the point of use – or at the very least that all children should have good access (within a reasonable distance from their home) to a school that is of good quality and genuinely free at the point of use.

One thing we need to be very wary of is arguments that suggest that public education systems are destined to fail, that they are the “past” and that competitive private provision is the inevitable future. Every country that has achieved universalisation of education access has done so through strong, coordinated government action and consistent investment in a predominantly public education system. Yes, there are crises in public education systems in many countries but these are often related to years of chronic underfunding – either owing to very low tax intakes (low tax to GDP ratios), inadequate shares of the national budget being spent on education (the 20% benchmark of national budgets should be a minimum for low income countries), poor allocation of budgets (e.g. prioritising tertiary over basic education) or poor utilisation of budgets (owing to corruption / lack of transparency / weak institutional capacity). All of these can be and need to be addressed to rebuild people’s confidence in the role of the public sector in education. Whilst we should recognise that no national education system will be made up only of government schools, a system that is based predominantly on public provision is likely to be the best option for full realisation of the right to education. Non-State provision might supplement but should not supplant the role of the State.

The human rights obligations that fall on States do not disappear when other providers of basic education step in. The State retains the responsibility to ensure that all core obligations are respected, protected and fulfilled. This means there are some powerful non-negotiables that all States must put in place to regulate and actively monitor diverse providers. At the heart of these is non-discrimination – because whilst diversity of providers might be important there is a real danger of an overly fragmented system contributing to deepening inequality. The quality of education children receive should never be stratified, dependent on their parent’s social status or their ability to pay. We need to build diverse but equitable education systems if we want education to act as an equalising force within society.

I welcome feedback on this article to stimulate wider discussion and understanding

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