



The Global Initiative
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Summary of events on Privatisation in Education and the Right to Education Geneva, 12 June 2014

1 Introduction

In June 2014 the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), together with the Privatisation in Education Research Initiative (PERI) held a series of events in Geneva focusing on privatisation and the human right to education. The events were intended to foster discussion and engagement, as well as to raise awareness about this key emerging issue, which is having a profound impact on the realisation of the right to education globally. These events brought together experts, advocates, academics, national education practitioners and international education advocates, both in order to share some of the research and advocacy efforts conducted so far on privatisation in education, as well as to strengthen the analysis of the application of human rights standards to the issue through the involvement of new and varied stakeholders.

- Human Rights Council 26th Session Side Event – Thursday 12 June
- Expert Meeting on Privatisation in Education – Thursday 12 June

We are pleased that these events have sparked new interest and engagement with this issue and have fostered new collaborative efforts to refine the human rights analysis, advance national and international advocacy, and further the research agenda in this area. The following is a summary of the events and the themes that emerged (see # 4). Copies of most of the presentations and podcasts can be found here [Right to Education Project](#) and here [Global Initiative for ESCRs](#).

2 Human Rights Council 26th Session Side Event

The side event, entitled ‘Privatization and the Human Right to Education’ was very well attended by a range of stakeholders including States, UN agencies, NGOs, OHCHR staff, treaty body committee members (CRC, CESCR¹) and Secretariat staff (CEDAW²). The Portuguese Mission to the UN, Geneva co-sponsored the event and Mr Nuno Cabral welcomed participants and made opening remarks about the importance of this gathering to discuss privatisation in education and Portugal’s continuing support for initiatives on the right to education.

¹ Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights

² Committee on the Elimination of Discrimination Against Women



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The Special Rapporteur on the Right to Education, Mr Kishore Singh gave introductory remarks in which he stressed that education must be safeguarded as a public good and he raised concerns about the human rights impacts of education privatisation. He encouraged States to make education a priority in the post-2015 agenda and highlighted the importance of ensuring that the right to education was justiciable. He went on to outline the legal



obligations of states to respect, protect and fulfil the right to education and noted that private education should only supplement that of the State, which should remain the primary provider of education services. In addition, Mr Singh referred to the risk that private actors pose to education quality, including through the de-professionalisation of teachers and

warned of the potential for privatisation in education to reinforce discrimination on the grounds of socio-economic status.

Mr Singh also highlighted the need to strengthen state accountability and capacity to deliver public education services and indicated that he takes a particular interest in privatization in education and intends to address the topic in his next report.

We then heard from 5 panellists who offered different perspectives on the issue. Mr Toni Verger³ provided a very useful overview of the global trend towards privatisation in education, and an analysis of the many different drivers and models. He emphasised the complexity of the issue, particularly in the area of public-private partnerships (PPPs), but also the common impacts and concerns. He challenged in particular some of the common rationales for privatisation in education; for example, the claims of 'parental choice,' which in the context of inadequate, poor quality or inappropriate public education, as he pointed out, is not really a 'choice' at all. He also raised the important question of whether profit generation is legitimate in education systems with very scarce resources, and highlighted market failings which are leading to segregation in education.

Ms Iracema Nascimento⁴ explained the particularities of the privatisation model in Brazil which includes low cost private schools (mainly in early childhood education and, interestingly, higher education), PPPs and a huge diversion of public funds to the private sector through tax exemptions and the purchase of standardised private education systems

³ Senior researcher and lecturer at the Department of Sociology of the Universitat Autònoma de Barcelona.

⁴ Executive Coordinator of the Brazilian Campaign for the Right to Education.



and services to be used in public basic education. The latter in particular has led to a reduction of the State's capacity to provide new enrolments in the public system and has weakened the capacity of the State to establish a strong management and technical body in order to directly implement and maintain the provision of quality public education, causing dependence on the private sector. She pointed to the lack of consultation with civil society and lack of transparency in the policy design and formulation, and she raised concerns that privatisation in Brazil's education system is reinforcing socio-economic and other inequalities.

Privatization and the Human Right to Education

The right to education guarantees that everyone should enjoy a quality education, free from discrimination and exclusion. However, the global education landscape is rapidly changing. One of the most notable changes is the growing trend of privatization in education in many countries.

Privatization poses many challenges from the standpoint of human rights. Wealth inequalities between those who can afford to pay for private education and those who cannot, as well as exclusion across gender and ethnic lines, are often exacerbated by privatization. These consequences are pushing already vulnerable groups deeper into poverty and deepening social divisions, calling into question the State's core obligation to provide quality public education for all. States must stick by their core obligation to provide quality public education for all, and safeguard education as a public good.

Please join us for a discussion of these urgent issues, in which we will debate different experiences of privatization in education from across the globe, with a view to examining what the international human rights community can do to take action.

Welcome Committee:
Ambassador Pedro Pablo Kuczynski
Permanent Representative of Portugal to the United Nations in Geneva

Chairperson:
Ms Hugh McLean
Open Society Foundations

Speakers:
Mr Kishore Singh
Special Representative for the Right to Education

Mr Tsao Yung
Centre for Globalization, Education, Justice and Policy, Singapore University of Technology

Ms Anjela Taneja
Global Campaign for Education

Ms Michelle Tokman
Education International

Mr Isaac Navarrete del Solar
Special Representative for the Right to Education

Ms Sylvia Aubry
Human Rights Consultant conducting a research project on education

PLEASE RSVP to: hr@globalinitiative-eccr.org

12:00 noon on 12 June 2014 (Thursday)
Room IX, Palais des Nations

****Lunch will be provided****

Ms Anjela Taneja spoke about the Indian context where private actors provide 60% of education services through a mix of public-private partnerships, private locally supported schools and Charter schools. She noted some State regulation of the private providers, including statutory enrolment quotas for poor children via the 2009 Right to Education Act. Ms Taneja also highlighted safety problems and poor teacher working conditions in private schools and the negative impact of privatisation in education on access for girls, Dalit children and minorities.

Mr Sylvain Aubry⁵ presented his research on Morocco where there is a strong framework for the protection of the right to education. In the past 14 years there has however been a swift and significant move to privatisation, whereby many public schools have become private and new private schools have been established, mostly in

middle-class and affluent urban areas. Mr Aubry drew attention to the widening gaps between rich and poor and urban and rural, in terms of access and educational outcomes which appear to have been exacerbated by the boom in private education in Morocco. He then provided a human rights analysis of the situation in Morocco, identifying a number of violations of the right to education and calling on the government to halt any increases in

⁵ Human rights consultant focusing on economic, social and cultural rights. He is currently doing research and advocacy on the impact of privatisation in education on the right to education in Morocco with the Global Initiative on Economic Social and Cultural Rights and local partners.



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privatisation in the education system until a human rights impact assessment can be undertaken.

Ms Mireille de Koning⁶ brought the perspective of teachers to the discussion and provided an analysis of the commodification and deprofessionalisation of education such that teachers have become, in many contexts, service providers rather than highly skilled professionals. Like other panellists, Ms de Koning also emphasised concerns about the flexibilisation of teachers' working conditions in many private schools and the circumvention of State regulation, including unionisation rights, by private education providers. She also noted that privatisation policies often seek to reduce teachers' professional autonomy over the teaching-learning process.

Discussion then turned to the policy implications of privatisation and how States should respond with regard to education policy formulation including monitoring and regulation of private actors. There was general consensus amongst panellists and interveners from the floor that privatisation in education results in complex impacts, and the State's obligation to respect, protect and fulfil the right to education includes an obligation to assess and mitigate the human rights impact of its policies. States must also ensure that civil society has the opportunity to participate fully in the discussion about education policy. However, the reality in most countries is the opposite, with decisions about privatisation in education being made behind closed doors and the allocation of privatisation contracts lacking transparency.

The fundamental importance of a well-functioning, accessible and quality public education system was stressed. In many countries where public education is inaccessible and/or unacceptable, low-fee private schools have arisen to 'fill the gap' with and without State support and usually with little to no attention paid to the consequences such as families prioritising the education of boys over girls (or example, when they can't afford to pay for all of their children to go to school). A number of panellists emphasised that the State retains the obligation to ensure that all children have access to quality education and to eliminate structural discrimination such as that experienced by girls.

3 Expert Meeting on Privatisation in Education and the Right to Education

The expert meeting brought together 25 academics, policy makers, civil society representatives, UN agencies and the Special Rapporteur on the Right to Education, to share their experience and knowledge on education privatisation and to identify approaches to strengthen research, promote awareness and advocate around this important human rights

⁶ Research Coordinator at Education International.



concern. 12 different countries were represented at the round-table discussion which was intended to be informal and exploratory. All participants were encouraged to contribute freely to the discussion on the basis of non-attribution of comments.

Initial discussions focused on the current trends and dynamics driving privatisation and how education privatisation manifests itself in a variety of forms. Private education can be



defined as education that is provided by non-state actors, including companies, religious institutions, NGOs, trusts or private individuals.⁷ However, in some cases private schools are partially funded and regulated by the State. It includes non-profit and for-profit models, and privatisation in both the provision of education and the financing of education. It is very clear that

privatisation is growing rapidly in many parts of the world, particularly in early childhood and primary education, but the adverse impacts of this phenomenon are not being monitored by States.

The different pathways to privatisation were discussed: Nordic social-democratic welfare States; a lack of public education offered or poor quality schools create the space for private actors to step in, often with a profit motive; neo-liberal restructuring of the role of the State; historical PPPs (often involving contracting-out to religious institutions); scaling up of privatisation (such as Charter schools in the US); and post conflict or natural disaster (Haiti, Iraq, New Orleans). However, privatisation is also being actively promoted by some education actors (governments and donors) as a solution to the lack of sufficient public resources for education and underperforming public schools. These processes are linked to market orientated reforms, which have led to increased privatisation in other sectors also, such as water, housing, health and resource management.

The second topic considered was the impacts. Again, the complexity and differing impacts in different contexts was emphasised. Many participants noted the further degradation of the public education system as families move from the public system to the private system and the resulting loss of the 'peer effect,' as well as the inevitable segregation along socio-

⁷ Although this definition is increasingly recognised to be problematic as private for profit educational institutions and private not for profit educational institutions, such as NGOs, religious schools and philanthropy schools, are differently motivated and have different policy implications.



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economic lines. This has been described as the 'pauperisation effect' on public schools. A number of participants confirmed that the losers in this scenario are commonly, girls, children from poor families, and other minority or marginalised groups.

Strong criticism was levelled at the low-fee private school model, which is lauded by some as the answer to under-resourced State education systems, but is also one of the most problematic models. The impacts include: gender inequality in terms of access due largely to household prioritisation of boys over girls for for-fee education; failure to ensure quality teaching due to the hiring of under-qualified teachers and by failing to ensure domestically competitive salaries; significant reduction in family resources for food, health, housing costs due to school fees of up to 30% of their household income for private schools where the quality is questionable; and a lack of accountability and regulation of private actors in many countries.

Participants cited research undertaken by the Privatisation in Education Research Initiative (PERI) demonstrating gender inequality in enrolment is particularly apparent in the lowest-income groups because boys are seen as future breadwinners for the family. Participants also emphasised that the net number of children in schools is rarely improved by the introduction of low-fee private schools. This goes counter to the human rights imperative of improving the situation of the most disadvantaged first and foremost. A further impact that was identified was that because the government officials responsible for education policy generally send their children to private schools, there is a reduced understanding of the problems and a reduced impetus to improve the public education system.

The third topic focused on a human rights analysis of privatisation in education. The discussion commenced with consideration of State obligations to ensure universal, free and compulsory primary education, and to ensure that secondary and technical vocational education and higher education are generally available, accessible and progressively free. States must also develop an education system with continuous improvement of the material conditions of teaching while enhancing equality of educational access for individuals from disadvantaged groups. States must also formulate a strategy for the implementation of the right to education, covering all levels, and prioritising free and compulsory primary education. As the duty bearer, the State carries the ultimate responsibility for ensuring the right to education is protected, respected and fulfilled.

States also have obligations to monitor and regulate the operations of non-state actors and uphold a set of minimum standards to ensure that private education providers operate in compliance with both national and international law. Therefore, if privatisation is creating or exacerbating discrimination, States have a duty to take measures to eliminate the



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discrimination, including for example by providing free quality education so that low-income families are not forced to choose between sending their sons and daughters to school.

Discussion continued to identify potential violations such as: structural discrimination on the grounds of gender and socio-economic status (and race/ethnicity in many contexts); the compatibility of State financial support (including via tax or regulatory concessions) for for-profit enterprises, with a State's obligation to use the maximum available resources in fulfilling the right to education; and in the case of demonstrated inadequate State resources, State failure to develop and implement a plan of action to progressively fulfil the right to education. Meeting participants also considered States' obligations when providing bi-lateral development assistance, or acting as part of an international financial institution such as the World Bank or regional development banks providing funding for education. There is growing international human rights law jurisprudence acknowledging the extra-territorial human rights obligations of States, including in the context of development assistance and corporate entities operating abroad.

Many participants underlined that regulation of the private sector, whilst an important factor, was not the best strategy to address the human rights impacts of privatisation. This is true particularly in the area of structural discrimination, as regulation alone does not address the underlying systemic issue of the State abdicating its primary obligation to provide a system of free quality public education. Additionally, a focus on regulation tacitly endorses and supports private and non-state provision, distancing and detracting attention to root causes driving privatisation. The theme of education as a common good that needs safeguarding by the State was returned to on a number of occasions.



Inputs from participants linked the proliferation of privatisation to a fall in overseas development assistance (ODA), the broader development agendas of multilateral funders, globalisation and the direct transfer of 'pro-private' education systems piloted in the Global North with no consideration to resource and governance constraints and the diverse needs of the receiving population. Attention was also drawn to State financing for education. Participants asserted that increased funding is only part of the solution and action must be taken to address the gross mismanagement and corruption present in many public education systems.



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Finally, discussion turned to how to utilise international human rights mechanisms to address privatisation in education and priorities for research, analysis and advocacy around this topic. Participants described their existing areas of work within these fields, and how these may complement advocacy at both national and international levels. There was general consensus that there is an urgent need to undertake additional research on the human rights impacts of privatisation and to report them to international human rights monitoring mechanisms. Secondly, participants felt that it was necessary to raise awareness of the impacts of privatisation of education amongst civil society organisations and to strengthen work with local communities to advocate for rights based education policies. In addition, there is also a need to upscale national level advocacy strategies and lobby governments to establish clear national minimum standards for education providers and effective monitoring and redress mechanisms.

4 Key Themes and Outcomes

- a. Privatisation in education is a complex phenomenon involving a variety of models, actors, drivers and impacts. It is increasing at a significant rate, particularly in developing countries.
- b. Education is a public good and its status as such must be safeguarded by States. Education is fundamental for sustainable human, socio-economic and political development and a key element to achieving a peaceful, cohesive society. It is a powerful tool in developing the full potential of everyone and in promoting individual and collective wellbeing. There is a corresponding danger of any policies that undermine education as a public good, for instance by exacerbating stratification and inequality in society.
- c. States have the obligation to respect protect, and fulfil the right to education which includes regulating and monitoring private actors in the education system.
- d. There are a number of negative human rights impacts that can result from privatisation and it is critical that States and donors undertake a human rights impact assessment as part of their policy formulation process.
- e. There is a tendency for privatisation in education to create or reinforce systemic discrimination against girls, poor children, minorities and excluded groups. States must support policies that eliminate, rather than exacerbate, structural discrimination. In the case of the structural barriers to girls, poor children, minorities and excluded groups accessing education in the context of for-fee private schools, the availability of quality free education is key.



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- f. There is a lack of transparency and consultation with civil society and of participation in government decision-making about education policy, including government decisions to support privatisation in education.
- g. There is concern about the role of influential donors such as international financial institutions (World Bank, International Finance Corporation, regional development banks) in promoting privatisation, including in the context of the post-2015 development agenda, without having considered the adverse impacts on human rights.
- h. The importance of preserving and strengthening quality public education for all cannot be over-stated, as it enables States to avoid the adverse impacts of privatisation and fully exploit and benefit from the transformative and empowering nature of education.

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July 2014