

## 10 Human Rights Standards for Education Privatisation

February 2014

### INTRODUCTION

This factsheet on *10 Human Rights Standards for Education Privatisation* was prepared by the Right to Education Project (RTE) and is intended to serve as a tool for education and human rights advocates on the topic of the privatisation of education and the right to education. It provides basic information on the right to education as it relates to education privatisation, focusing on the most central international human rights legal standards that relate to privatisation. These standards are intended to serve as a quick reference guide to advocates and do not intend to provide a full explanation of the law or commentary on the application of the law in specific contexts. This document may be used to raise awareness among government officials, policy-makers, donors, teachers, private education providers, and other education stakeholders. Most importantly, these standards will aid civil society organisations in understanding education privatisation as a human rights issue and in developing a rights-based position.

### BACKGROUND

The right to education is a universally recognised human right in international law. As well as being a right in itself, it is an enabler of other rights, fostering empowerment, access to information, economic growth, creativity, and understanding among peoples and nations. The right to education is enshrined in a number of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. States are the primary duty-bearers, carrying the ultimate responsibility for ensuring that the right to education is upheld. Others, such as private actors, have responsibilities to ensure that they do not jeopardise human rights, but it is the State that must protect individuals and groups from potential violations.

Private education refers to education that is provided by non-State actors, including companies, religious institutions, NGOs, trusts or private individuals. Privatisation is a process of transferring education assets, management, functions or responsibilities previously owned or carried out by the State to private actors. This process may be the result of direct policies led by the State, but privatisation may also occur as a result of

unregulated practices, such as with unregulated expansion of private education. Whether intentional or not, privatisation may negatively impact the right to education in some instances.

## THE 4 As

The right to education goes beyond access to education, as it encompasses essential characteristics, which, according to law, must be exhibited in all forms of education. They are commonly referred to as the 4As:

- **Availability** - that education is free and available to all and that there is adequate infrastructure and trained teachers able to support education delivery
- **Accessibility** – that the education system is non-discriminatory and accessible to all and that positive steps are taken to include the most marginalised
- **Acceptability** – that the content of education is relevant, non-discriminatory, culturally appropriate, and of good quality; that the school itself is safe and teachers are professional
- **Adaptability** - that education can evolve with the changing needs of society and contribute to challenging inequalities, such as gender discrimination, and that it can be adapted locally to suit specific contexts.

These inter-related elements are each equally essential and should be holistically applied to all aspects of education provision. For more information on the 4As, see CESCR General Comment 13 on the Right to Education; *Right to Education Primer 3: Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* by Katarina Tomaševski; and [www.right-to-education.org](http://www.right-to-education.org). Elements of these 4 essential characteristics are reflected in the principles below.

## HUMAN RIGHTS STANDARDS

### STANDARD 1:

*The aims of education should be directed to the development of the individual's personalities, talents, and abilities to live a full and satisfying life within society with the best interests of the child as the primary consideration.*

The human rights standard that education should be directed to the full development of the individual is of central importance to all education stakeholders (e.g., teachers, parents, students, policy-makers, and private providers), as it should underpin all aspects of

education decision-making and education delivery. These aims are closely linked with the child's human dignity, rights, developmental needs and evolving capacities. They include:

(a) The full development of the child's personality, talents and mental and physical abilities

(b) The development of respect for human rights and fundamental freedoms

(c) The development of respect for the child's parents, cultural identity, language and values, as well as respect for the values of the child's country and other civilisations

(d) The development of the child's responsibilities in a free society, including understanding, peace, tolerance, equality, and friendship among all persons and groups

(e) The development of respect for the natural environment.

Laws, policies and education provision must be child-centred and support the best interests of the child, ensuring that children are free from private interests and that children are taught with a balance and diversity of values. This means that the child's best interests must serve as the central focus regarding policy decisions, including decisions regarding privatisation of education. States must also ensure that private education providers comply with these aims, and if the State feels that a potential provider of private education is not likely to uphold the aims of education, the State may prohibit or limit the activities of the potential provider from operating within the education system.

*Sources include:* International Covenant on Economic, Social and Cultural Rights (adopted 16/12/1966, entered into force 03/01/1976), 993 UNTS 3, article 13(1); Convention on the Rights of the Child (adopted 20/11/1989, entered into force 02/09/1990) 1577 UNTS 3, article 29; Committee on the Rights of the Child, General Comment 1: The Aims of Education, CRC/GC/2001 (2001).

## STANDARD 2:

*Primary education shall be compulsory and available free to all; secondary and technical / vocational education should be available and accessible and made progressively free.*

International human rights law states that primary education shall be compulsory and available free to all. The push for free education is based on the notion that real developmental change in a country can only occur when there is universal free education. It also challenges many of the barriers to education, ensuring that all children enjoy this right.

Secondary and technical / vocational education should be available and accessible and made progressively free. The drive to progressively achieve universal free secondary education is intended to help States transition from secondary education that is dependent on capacity to a means of developing the foundations for life-long learning and greater economic stability.

Private schools often rely on charging fees in order to cover costs and in some cases turn a profit. According to human rights law, private schools may charge fees. However, the State must ensure that free primary education that is of good quality is available to all and must also take steps to progressively introduce free secondary education. Thus, fee-paying education can be seen as an alternative choice to free education for parents. The establishment or expansion of fee-paying educational options should in no way threaten the existence of free, quality primary education for all or the progressive realisation of free, quality secondary education for all.

A fee-paying private school – even one that charges very low fees – is not a practical solution to filling education provision gaps. Many families cannot afford to pay fees (even very low fees), which affects the economic accessibility of education and in extreme cases may lead to disparities in educational opportunities based on socio-economic status.

*Sources include:* ICESCR article 13 (2); CRC article 28 (1); Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (Article 13), E/C.12/1999/10 1999.

### STANDARD 3:

*The right to education must be guaranteed without discrimination of any kind on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

The principle of non-discrimination covers all aspects of the right to education (e.g., access, teaching methods, learning materials, etc.). Discrimination includes any distinction, exclusion, limitation or preference that has the purpose or effect of nullifying or impairing equality of treatment in education.

Discrimination based on any of the above grounds may include, for example, the deprivation of access to education, providing education that is of an inferior standard, maintaining segregated educational institutions, or inflicting conditions which are incompatible with human dignity. Private education that caters to single sex or specific religious or linguistic groups is acceptable if it is not aimed at the exclusion of any group but is an alternative choice for parents and students.

States must ensure that extreme disparities between public and private education are not created, which should be regulated through the regular monitoring of both public and private schools.

*Sources include:* UNESCO Convention against Discrimination in Education, (adopted 14/12/1960, entered into force 22/05/1962); ICESCR, article 2 (2); CRC, article 2 (1); CESCR General Comment 13.

#### STANDARD 4:

*Parents have the liberty to choose schools other than public schools for their children, which conform to minimum educational standards laid down or approved by the State.*

The educational choice of parents and students is an important educational freedom. It ensures that families can choose education that is in line with their moral and religious convictions. States must respect this right by not interfering with individuals exercising this freedom, but States are not obliged to provide educational choices for parents and students. States may choose to facilitate the growth and expansion of educational choices through financial support to private education providers. However, under human rights law the State must prioritise the achievement of free and compulsory primary education, progressively free secondary and higher education, and the continuous improvement to the quality of education, which should be reflected in education policies.

Moreover, the State has the duty to protect students and families by monitoring the minimum educational standards that have been set nationally by regulating and inspecting private schools to ensure compliance with these standards. With an independent and effective monitoring and inspections mechanism in place, parents are better able to access independent information regarding educational choices and to make informed decisions about the educational options that are available to them regarding their child's education.

*Sources include:* ICESCR, article 13 (3); CESCR General Comment 13.

#### STANDARD 5:

*Individuals and bodies have the liberty to establish and direct educational institutions subject to the requirement that the education given in such institutions conforms to the minimum standards laid down or approved by the State.*

To support the liberty of parents to choose education for their children and to promote plurality in a democratic society, private actors have the liberty to establish and direct educational institutions. This means that private actors, such as religious institutions, non-governmental organisations, businesses, entrepreneurs, and individuals, may open schools and administer them according to their own educational philosophies. This liberty to establish private schools is subject to the requirement that they must conform to the minimum standards laid down or approved by the State for private providers (See Standard 6 for more detail).

States may put into place limitations on the educational freedom to establish and direct educational institutions in order to ensure that human rights standards, such as non-

discrimination, are maintained. States should take all necessary measures to prevent private education providers from operating outside of the established regulatory system, as sub-standard conditions or human rights abuses may go undetected in these unregulated and unmonitored educational institutions.

*Sources include:* ICESCR, article 13 (3) & (4); CRC, article 29 (2); CESCR General Comment 13.

#### **STANDARD 6:**

*The State must establish minimum standards for private education providers and maintain a transparent and effective system to monitor these standards.*

These minimum standards must be determined by individual States, according to the needs and circumstances of each country. Furthermore, States must ensure that the principles of non-discrimination, equal opportunity and effective participation are upheld through regular monitoring of private education and that these minimum standards comply with international human rights law. Minimum standards may relate to, for example, private school licensing, pupil admissions policies, curricula, school infrastructure requirements, teacher qualifications and pay, child protection measures, school governance, and more.

The State must conduct regular monitoring to ensure that private providers comply with these minimum standards, which should be carried out by an independent regulatory body. Regular and effective monitoring of private education providers is more likely to ensure, for example, that children are learning in a safe and healthy environment, that teachers are qualified and use appropriate learning methods, that private education providers adhere to labour regulations, that curricula is relevant and complies with national standards, that school finances are managed and used appropriately, and much more depending on the minimum standards that the State identifies. In addition to guaranteeing that private providers uphold minimum standards, periodic monitoring of private providers can also be used as a practical means of collecting important data which informs education planning and policies.

*Sources include:* ICESCR, article 13 (3) & (4); CRC, article 29 (2); CESCR General Comment 13; Committee on the Rights of the Child General Comment 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights, CRC/C/GC/16 (2013); Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, A/HRC/17/31 (2011).

#### **STANDARD 7:**

*States must take immediate, concrete and progressive steps towards fully realising the right to education, using the maximum of their available resources.*

Due to the varying degrees of development and available resources, States must ensure that the right to education is progressively realised. This means that States must take deliberate, concrete and progressive steps towards fully realising the right to education, using the maximum of their available resources. Any retrogression or backwards steps in taking steps towards achieving the full realisation of the right to education is strongly discouraged. Regardless of the limited availability of resources, some obligations pertaining to the right to education are immediately applicable. These minimum core obligations are intended to ensure that States are providing the minimum essential levels of the right to education, which includes for example, guaranteeing non-discrimination, maintaining national minimum standards for private providers and an effective regulation and inspections system, and prioritising universal free primary education.

Failure by States to take continuous steps towards implementing the full realisation of the right to education may lead to gaps in the provision of available education, stagnation in the continuous improvement of education quality, and growth of informal alternatives, such as unregulated private schools. Therefore, there is a direct relationship between the progressive realisation of the right to education, policies and practices concerning the financing of education, and the potential expansion or spread of unregulated private schools, which may impact various aspects of the right to education, such as the availability of free education.

*Sources include:* ICESCR, article 2 (1); CRC, article 4; CESCR General Comment 3: The Nature of States Parties' Obligations, E/1991/23 (1990); CESCR General Comment 13.

## STANDARD 8:

*All education – whether public or private – should be of good quality.*

According to human rights law, the right to education is not only the right to access education, but also the right to receive an education that is of good quality. States must strive to continuously improve the quality of all education, regardless as to whether it is public, private or a hybrid of the two. This should be achieved through effective monitoring and regulation of all education to ensure that the education provided adheres to the minimum standards laid down or approved by the State.

Education quality is a central policy concern for States, and there is growing evidence indicating that the quality of education in many parts of the world is insufficient. Increasing concerns regarding under-performing public schools have led some education actors, such as the World Bank, to focus attention on private school alternatives as a means of filling gaps when the State has failed to meet expectations and provide quality education for all. However, there is insufficient data to support such claims. Nevertheless, perceptions

regarding the quality of education are often drivers of educational choice for parents when choosing education for their children.

Although perceptions of quality are often important factors of educational choice, human rights law provides some insights on determining quality, which should help policy-makers to devise rights-based policies regarding education quality that supports both educational freedoms and the continuous improvements to public education that are required. These human rights standards that pertain to quality are largely focused on ensuring an adequate learning environment. Some key human rights standards for education quality include ensuring:

- Individuals develop the personalities, talents and abilities to live a full and satisfying life within society, in accordance with the Aims of Education
- Trained and qualified teachers receiving domestically competitive salaries with regular opportunities for continuing education
- Access to appropriate learning materials for both teachers and students
- Relevant and culturally appropriate curricula and child-centred teaching methods that adapt to the changing needs of society and respond to the needs of students within their diverse social and cultural settings
- Non-discrimination in education delivery that seeks to promote human rights principles, such as tolerance, dignity, equality and peace
- Adequate school infrastructure, including acceptable learning conditions, access to drinking water, sanitation facilities, protection from the elements, etc.
- Positive approaches to school discipline and a safe environment.

*Sources include:* ICESCR, article 13; CRC, article 28 (2) & (3) & article 29; CRC General Comment 1; CESCR General Comment 13.

#### **STANDARD 9:**

*The State must ensure that schools and the education system are transparent and accountable with effective mechanisms for encouraging and supporting parental and community participation.*

Participation is a key human rights principle that enables individuals and communities to actively participate in the decisions that affect their lives. For participation to be effective, a number of civil and political rights must be guaranteed, such as freedom of expression, freedom of assembly and association, access to information, etc.

An education system that supports community engagement and values participation from all education stakeholders is ultimately more likely to support a more positive learning environment and contribute towards a country's overall development. Students, parents, teachers, educationalists and community leaders should be empowered to participate in decision-making processes at the school level for both public and private schools, which is often achieved through governing bodies, management committees, parent's groups, student councils, and other similar bodies.

Participation helps to ensure greater accountability at the local school level but it also brings greater accountability of national educational policies and practices. Privatisation projects and initiatives that are carried out at the local / district, provincial, or national level and which are supported by the State should be open and transparent to communities and should include the participation of the affected community. The State is therefore obliged to ensure that communities are provided with the necessary information about privatisation initiatives, as well as the potential consequences, and to ensure that these decision-making processes are fair and transparent. This may be achieved through a number of different avenues, e.g., through public meetings, consultation processes with civil society organisations, distributing information on public policies and more. States should also take care to avoid creating imbalances of power between private actors and communities through experimental privatisation programmes.

*Sources include:* ICESCR, article 13 (1); CRC, article 12 (1); CRC General Comment 1; CRC General Comment 12; CESCR General Comment 13.

#### **STANDARD 10:**

*States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related human rights abuses occur those affected have access to an effective remedy.*

The right to an effective remedy is contained in numerous human rights treaties and generally refers to effective recourse to anyone who alleges a human rights violation through access to a competent and impartial court, tribunal or administrative body. States have a duty to protect individuals from human rights abuses committed by private bodies or individuals that carry out or deliver educational services. If such abuses take place, the State is obliged to take steps to investigate, punish and redress such abuses carried out by these private entities. If the State fails to do so, the State's ability to protect people from abuses may be weakened, and private entities that repeatedly commit violations may operate with impunity.

Access to an effective remedy requires certain procedural and substantive aspects. Grievance or complaints mechanisms should be aimed at counteracting or 'making good'

any human rights harms that have occurred, which may include for example, apologies, restitution, financial or non-financial compensation, punitive sanctions, etc., as well as preventative measures through injunctions, guarantees of non-repetition, etc. The grievance or complaints mechanism may be administered by the State or by an independent body on a statutory or constitutional basis, and the body may be judicial or non-judicial. Additionally, States must ensure access to the remedy by facilitating public awareness and understanding of these mechanisms and financial or other support when accessing them.

The regular monitoring of private enterprises that provide educational services, such as private education providers, may help to prevent human rights abuses from occurring. However, many monitoring and inspections mechanisms are not designed to address individual complaints. It is therefore essential that States ensure effective monitoring of private education in addition to access to an effective remedy.

*Sources include:* ICCPR, article 2 (3); Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, A/HRC/17/31 (2011).

## ADDITIONAL READING

[Bailey Grey \(2012\) \*Using Human Rights Standards to Assess Privatisation of Education in Africa\*](#)

[Right to Education Project \(2014\) \*Privatisation of Education: Global Trends of Human Rights Impacts\*](#)

[Privatisation in Education Research Initiative](#)

[Fons Coomans and Antenor Hallo de Wolf \(2005\) 'Privatisation of Education and the Right to Education' in Koen de Feyter and Felipe Gomez Isa \(eds\), \*Privatisation and Human Rights in the Age of Globalisation\*, Intersentia, Antwerp-Oxford](#)

## ABOUT THE RIGHT TO EDUCATION PROJECT

The Right to Education Project (RTE) promotes mobilisation and accountability on the right to education and builds bridges between human rights, development and education. RTE is housed at ActionAid International and works with partner organisations Amnesty International, the Global Campaign for Education, Save the Children and Human Rights Watch.