

Summary Report | Asia Pacific Regional Consultation

Human Rights Guiding Principles on State obligations regarding Private Schools

Bangkok, August 30-31, 2016



Overview

This report summarises the *Asia Pacific Regional Consultation on Human Rights Guiding Principles on State Obligations regarding Private Schools* (hereafter 'regional consultation) hosted by the Asia South Pacific Association for Basic and Adult Education (ASPBAE) in Bangkok on August 30-31, 2016. The purpose of the regional consultation was to share the process for the development of, and for participants to input into, a set of Human Rights Guiding Principles on State obligations regarding private schools ('Guiding Principles'). The Guiding Principles are a set of global guidelines that clarify human rights law related to private actors in education and are intended to be operational in and adaptable to different contexts.

ASPBAE invited a diverse group of more than 50 participants representing a broad range of stakeholders from 17 countries in the Asia Pacific region. Participants included representatives of national education coalitions in the Asia Pacific region, international and Thai-based civil society organisations, human rights organisations and experts, academics and UN institutions.

The format of the regional consultation was a combination of plenary presentations and discussions and group sessions to input into the Guiding Principles.

Key feedback points and common issues emerging from the group sessions are compiled in this report. Detailed reports from each session are not included. Also recapped in this report are the background and process for the development of the Guiding Principles, including a timeline of next steps.

Background

The last two decades have seen a dramatic increase in scale and scope of private actors in education, in particular in developing countries. The resulting privatisation of education includes not only an increase in the number of traditional private schools catering to the elite, but also the rapid expansion of low-cost profit-making schools targeting poor households; large-scale commercial investments in private school chains; privatisation of education services such as testing; increased education provision and funding through public private partnership arrangements; donor support for private education expansion; the adoption of private sector management techniques in the public education sector; and the growth of community and faith-based schools.

Civil society organisations have achieved considerable progress in addressing the issue in recent years. Research has been conducted in a dozen countries to assess the growth of private actors against human rights, including in Pakistan, Nepal, the Philippines and Mongolia in Asia Pacific. As a result of these collective efforts, human rights norms and standards related to the role of private actors in education are emerging. A better understanding of the role of private actors in education and its limitations from a human rights perspective, and of increasingly complex governance arrangements such as public-private partnerships, has also allowed for the consideration of more nuanced, specific and concrete policy actions.

In this context, a precise and rigorous interpretation of international human rights law to guide public policies and to assess both practice and evidence against may contribute to advancing a reflection on private involvement in education, and to prevent and remedy human rights abuses that may result from education privatisation. International human rights law offers guidance on how to assess the role of private actors in education through its protection of the right to education. Nonetheless, as with other human rights, the norms relative to right to education are spread out in many conventions, court decisions, and other legal texts. In addition, the application of the human rights framework to privatisation in education is not straightforward as it contains [two dimensions that may conflict](#) with each other: (1) the right to free, quality, education without discrimination, and (2) the liberty of parents to set up and/or choose for their children non-State schools.

Hence, there is a need to clarify what the existing international legal framework as it applies to the role of private actors in education exactly entails, in order to analyse policies and reality from a human rights perspective. The project to develop a set of Human Rights Guiding Principles on State obligations regarding private schools ('Guiding Principles') intends to fill this conceptual gap on the state of the international law on private schools. The Guiding Principles are designed to give guidance on how to interpret human rights law in this area but also to be operational and adaptable to national and specific contexts. They are intended to be an authoritative interpretation of human rights instruments that are legally binding on States.

It is intended that the Guiding Principles are used at the local, domestic, regional and international level to provide a basis for advocacy, policy development, and litigation. They may be used in courts as a legal tool and act as a powerful advocacy tool for a broad range of stakeholders.

More information on the background of and process for the development of the Guiding Principles can be found in the concept note [here](#).

Why are a set of Guiding Principles needed?

1. To stimulate an informed debate on the role and limitations of private education by gathering key information related to the state and application of human rights law related to private education.
2. To clarify the normative framework with which to assess privatisation in education from a human rights and social justice perspective.
3. To facilitate the analysis of concrete manifestations of privatisation in /privatised education by civil society organisations, and empower them to take action when relevant.
4. To provide guidance to States and inter-governmental organisations on the complex topic of private education, including donor States funding education in third countries, at a time when the pace of privatisation in education is outstripping analysis.
5. To inform the reflection of private actors that have set up or are considering setting up private schools.

Objectives of the work

- Develop an authoritative and rigorous set of Guiding Principles analysing existing international law applicable to the role of private actors in education.
- Garner broad support for the Guiding Principles.
- Raise awareness about the Guiding Principles.

Expected outcomes

The work should:

- Provide a normative reference point on States' obligations related to the involvement of private actors in education.
- Provide a practical tool to help stakeholders analyse situations of privatisation in or privatised education.
- Develop a network of partners and allies supporting the Guiding Principles.
- Raise awareness with States and other key stakeholders about the Guiding Principles and related issues.

Key activities

- Review, analyse and unpack existing international human rights law and develop Guiding Principles States' obligations regarding private schools.
- Conduct a series of regional, global and institutional face-to-face and on-line consultations with a broad range of stakeholders.

Process for development

The development of the Guiding Principles is coordinated by a secretariat (composed of the Global Initiative for Economic Social and Cultural Rights, the Right to Education Project and the Open Society Foundations Education Support Program). The secretariat synthesises inputs and feedback from various consultations and organises and facilitates consultations. The Secretariat will support an Expert Group, made up of education and law experts acting in their personal capacity, who will discuss, input into, and validate successive drafts of the Guiding Principles. The Secretariat will also support a Steering Committee, made up of individuals representing their organisations and constituting a broad geographical spread and stakeholders, who will guide and take decisions regarding the process for the development of the Guiding Principles.

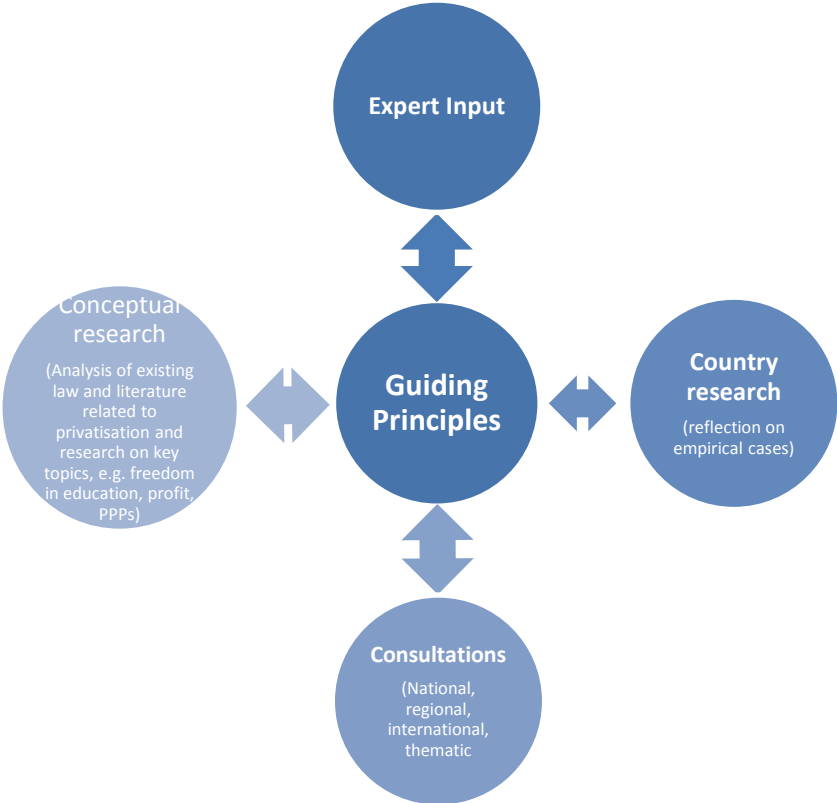
The Guiding Principles will be developed with the support of a group of experts who will provide an interpretation of existing States’ obligations and will lend the principles legal legitimacy. A consultation process and potential broad and global endorsement of the Guiding Principles is intended to provide political legitimacy to the Guiding Principles. As such, the final Guiding Principles will be adopted by individual experts and endorsed by organisations and States. It is the combination of these processes and sources of legitimacy that makes the Guiding Principles a useful instrument.

Consultations with civil society and other stakeholders

A key feature of these Guiding Principles is their development through a broad consultative process with a range of stakeholders to ensure that they take into account a wide variety of perspectives. These stakeholders include civil society, experts in the fields of education and law, academics, States, inter-governmental organisations and other actors. In order to enable their feasible implementation, the Guiding Principles will be drafted in such a way that they can be applied to diverse contextual realities. These requirements entail that the Guiding Principles are developed in a collaborative and participatory manner through multiple consultations.

A series of in person regional, national and thematic group consultations are planned to take place over the course of 2016 and 2017. Online consultations are planned for 2017 (see timeline below) and interested civil society organisations are encouraged to organise national consultations.

The below figure depicts the process for the development of the principles:



Regional consultation key feedback points and common issues

The following section highlights some of the key observations and common points arising from the group discussions on the Guiding Principles during the Asia Pacific Regional Consultation.

During the consultation, participants were split into three groups. Each group was assigned a facilitator from the ASPBAE secretariat, a technical expert to provide support and a rapporteur. Groups were asked to read and comment on the draft *Human Rights Guiding Principles on State obligation regarding private schools*. The version of the principles the groups examined can be found [here](#).

Overall comments

- The Guiding Principles were noted as a timely and important initiative given the global trend towards the increased involvement of private actors - in particular for profit companies - in education. Safeguards and frameworks are needed at the international level that are used and enforced such that these trends do not undermine the right to education. The Guiding Principles articulate in a clear and practical way how international law may guide policy decisions at the national level.
- Several participants suggested that the Guiding Principles should align with the Sustainable Development Goals and internationally agreed goals, targets and timelines.
- All groups agreed that regional diversity and country specificities should be better reflected in the Guiding Principles, as contexts and dynamics vary and concepts/terminology are understood differently.
- The Guiding Principles should make clearer who the principles are for, why they are needed, and how they may be used.
- The Guiding Principles should capture different levels of state obligation and duty (i.e. decentralized government) and consider the role of donors in other countries and the relationship between donor and recipient countries.
- The Guiding Principles should include a section on responsibilities of other actors apart from the State, in particular private providers and NGOs (also community schools). A section on the obligation of donors should also be added (must respect national priorities and not promote commercial schools). It should be made clearer whether the focus is on the role of the state or the role of private providers.
- 'Commercial school' should be better clarified and explain the difference from for-profit school (e.g. schools that are not for profit may have commercial motives)
- Better explain tension between inequality (e.g. effect of private schools) and freedom (to have private schools) in education
- Emphasize that the Guiding Principles do not in any way legitimize privatisation or public private partnerships. The Principles should also leave no doubt that publicly funded education is the preferred approach to education provision.
- Clarify that the Guiding Principles can set strict conditions or limit private schools (but not ban them). Commercial for-profit providers should, however, not be introduced.
- The section on PPPs was considered controversial by several participants. It was noted that several countries in the region are experimenting with PPPs and this should be further explored. The suggestion was that there should not be a separate section on PPPs but individual principles related to PPPs incorporated into other sections.
- Several recommendations were made on the structure, including the reorganisation of sections and individual principles, the inclusion of a preamble and suggestions for the commentary that will complement the principles.

- The section on regulations should include support for teachers and it should be made clear that it applies to all schools (including public)
- Scope of principles should be clarified, whether the principles are limited to primary and secondary education or education systems in the wider sense.
- Terminology needs to be clear, including, for example, ‘commercial’, ‘public service mission’, ‘humanistic education’

Areas for further research

- Document examples of privatisation and public private partnerships in different contexts
- Look into different types and capacities of states, e.g. Authoritarian, conflict affected, limited capacity

Next Steps in Guiding Principles development process

A next draft of the Guiding Principles incorporating feedback from the consultation will be shared with participants in October 2016. Participants are encouraged to consult on the draft in their organisations and countries.

Several participants expressed interest in holding events with a diversity of stakeholders at the national level (including in Pakistan, the Philippines, Nepal and Bangladesh). There were suggestions to organise sub-regional consultations (e.g. possibly in the Pacific Islands) or across countries with similar education governance systems or who are facing similar types of private involvement (such as Korea, Australia and Japan).

The structure for the development of the Guiding Principles will be clarified by December 2016. ASPBAE will be invited to nominate a member representing the Asia Pacific region on the Steering Committee.

The following table sets out a timeline for the development of the Guiding Principles. Please note that these dates may be subject to change.

Date	Activity
January – June 2016	Development of an initial draft
March 2016	Pre-consultation during side-event at Comparative International Education Society (CIES) Conference in Vancouver, Canada
March 2016 – June 2017	Development of expert background papers on key issues/themes
April 2016 – September 2017	<p>Series of regional, national, thematic and informal consultations (the following include consultations planned or confirmed so far):</p> <ul style="list-style-type: none"> • Regional consultations (planned thus far): <ul style="list-style-type: none"> ○ Asia-Pacific (August 2016, potentially August 2017) ○ East Africa (Nairobi, September 2016) ○ Southern Africa (2017) ○ Western Africa + Francophone countries (2017) ○ Latin America (2017) ○ Europe (Paris, 2017; hosted by UNESCO) ○ Middle East (tbc)

	<ul style="list-style-type: none"> ○ Eastern and Central Europe (tbc) • Consultations with thematic groups: <ul style="list-style-type: none"> ○ Geneva stakeholders ○ CIES (Atlanta (USA), March 2017) ○ DC stakeholders/World Bank/GPE/North America ○ EU delegation • National consultations organised by partners: <ul style="list-style-type: none"> ○ Pakistan (January/February 2017; hosted by FOSI-Pakistan) • Informal consultations with States • Engagement of other stakeholders
October – December 2016	Review of the first draft based on inputs from consultations Establishment of Guiding Principles Steering Committee and Expert Group Development of second draft with experts
January 2017 – April 2017	Online consultations
April – May 2017	Meeting of the expert group (<i>tbc</i>)
May – September 2017	Review of second draft Development of third draft
October – November 2017	Expert review and feedback
November – December 2017	Consolidation of the drafts Validation at expert meeting
2018	Launch, dissemination, and advocacy

Participants' contact details will be added to email list for sharing information about the process for and further opportunities to input into the Guiding Principles, including through online consultations.