

MODULE – PRIVATISATION AND THE RIGHT TO EDUCATION

RATIONALE

Privatisation of education is a complex topic that is often supported or denounced based on ideological grounds rather than clear, objective evidence. There is an over-arching trend across many areas of public policy to move towards greater privatisation of public services, including education. As with other human rights issues, there are concerns that some privatisation initiatives may hinder steps towards fully realising the right to education and in some cases privatisation efforts may lead to violations of the right to education. International human rights law provides an objective frame of analysis to help guide policy-makers and civil society actors to assess education privatisation and to formulate strategies for protecting the right to education and ensuring that students and teachers are at the centre of education policies. This training module seeks to uncover how the right to education may be impacted by privatisation and explores methods for challenging privatisation that negatively impacts education rights.

LEARNING OBJECTIVES

At the end of this session participants will have gained an awareness of:

1. Develop an understanding of the right to education
2. Become familiar with the key State obligations concerning the right to education that may be affected by privatisation
3. Gain and understanding of education privatisation, including the forms and processes that may impact the right to education
4. Practically apply the right to education to scenarios and consider the implications
5. Explore strategies for applying a human rights based approach to education privatisation

SESSION OUTLINE

Session Title	Time*	Activity
A. Opening and Introductions	15 minutes	Introductions and review

		of agenda
B. Introduction to the Right to Education	25 - 30 minutes	Presentation
C. What is Privatisation?	25 – 30 minutes	Presentation and discussion
D. The Obligations of the State	2 hours	Presentation, group exercise and discussion
E. Applying Human Rights: Situation Analysis	1.5 hours	Group exercise
F. Privatisation in Your Community	1.5 hours	Discussion
G. A Human Rights Response to Privatisation	1 hour	Presentation and discussion or group exercise
H. Conclusions and Wrap-Up	15 minutes	Discussion
<i>Total Time:</i>	<i>7.5 hours</i>	

* Please note that the times are approximate and sessions may be shortened or extended.

Notes to Facilitator

The times for each session of the module are flexible, as they may be shortened or extended according to the needs of the participants. Discussions will be richer if sessions are extended and participants are allowed more time for discussion. However, this module is designed to cover the minimum amount of content required to cover the topic adequately. The training design works best as a two-day training, though it may be delivered in 1.5 days. As a recommendation, Session E (Situation Analysis) can be a good stopping point for Day 1, as the group discussion may take place in the afternoon of Day 1 and the presentations to the wider group from that exercise may serve as the first session of Day 2. It is recommended that a short recap session is held at the start of Day 2 to help participants remember key points from Day 1.

The module is intended to be participatory and flexible to ensure that the facilitator adapts it to the learning needs of participants. However, it is important to note that training modules that cover the substantive content of human rights law will require a certain amount of presentation in order to review the relevant legal standards and mechanisms for addressing human rights issues, so that the law can then be applied to specific contexts. The presentations in this module are deliberately short and include general discussion questions to introduce interactive elements. However, the facilitator may wish to include additional discussion questions to build in further interactive components, depending on the expectations and needs of the participants. It may also be helpful to assign pre-course reading to improve the quality of the discussions and to provide participants with background materials on human rights law. Suggested readings are provided in the section below on Preparation.

This document serves as the facilitator's main module notes. It contains a session-by-session breakdown of activities, including presentations, discussion questions, and group exercises. The presentation slides are prepared in the PowerPoint presentation. The notes of the presentation (i.e., the content and substance of the presentation) are provided in this Word document, which combines the information which may be read to participants as a presentation or adapted by the facilitator. The content of the presentation is numbered according to the corresponding PowerPoint slide. This document also contains discussion questions and group exercises, which may also be adapted according to the needs of the participants.

Although this module is designed to be delivered by non-legal education experts, it is strongly advised that the facilitator reads all of the materials in advance of delivering the training, as the facilitator may wish to make some adjustments and deepen their understanding of the topic. Some suggested pre-course readings and additional resources are provided below, but if the facilitator has questions on the topic in advance of delivering the module, the Right to Education Project (RTE) may be contacted at info@right-to-education.org to provide technical support.

PREPARATION. MATERIALS AND RESOURCES

Preparation:

Before delivering this module, the facilitators should familiarise themselves with a few key human rights legal sources to gain a better understanding of the right to education. Recommended reading includes:

- [International Legal Standards on the Right to Education](#)
- [UN Committee on Economic, Social and Cultural Rights, General Comment 13](#)
- [UN Committee on the Rights of the Child, General Comment 1](#)
- [RTE \(2014\), 10 Human Rights Standards for Education Privatisation](#)
- [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](#)
- [Bailey Grey \(2012\) *Using Human Rights Standards to Assess Privatisation of Education in Africa*.](#)

Facilitators should review all slides and notes and decide if any of the sessions should be adjusted.

Materials:

- Session PowerPoint slides with laptop / projector
- Session hand-outs
- Flip chart paper and markers

The session hand-outs are:

- A. [International Legal Standards on the Right to Education](#)
- B. [UN Committee on the Rights of the Child, General Comment 1](#)
- C. [UN Committee on Economic, Social and Cultural Rights, General Comment 13](#)
- D. Case Study – Lagos, Nigeria (which is located at the end of this document)

It may be helpful to assign pre-course reading to participants to familiarise them with the topics and legal tools that they will be using in the training. The following list is ranked in order of importance:

1. [RTE \(2014\), 10 Human Rights Standards for Education Privatisation](#)
2. [UN Committee on Economic, Social and Cultural Rights, General Comment 13](#)
3. [International Legal Standards on the Right to Education](#)

These suggested pre-course reading pieces may also serve as valuable hand-outs during the training.

Additional Resources:

- [Right to Education Project \(2014\) Privatisation of Education: Global Trends of Human Rights Impacts](#)
- [Right to Education Project webpage on privatisation](#)
- [Privatisation in Education Research Initiative website](#)

LIST OF ACRONYMS

CESCR	Committee on Economic Social and Cultural Rights
CRC	Convention on the Rights of the Child
ICESCR	International Covenant on Economic, Social and Cultural Rights
PERI	Privatisation of Education Research Initiative
RTE	Right to Education Project
UN	United Nations

A. OPENING AND INTRODUCTIONS

15 minutes

1. Introduction

2. Objectives

After a round of participant introductions, read Slide # 2 on Objectives and go over the agenda with participants.

B. INTRODUCTION TO THE RIGHT TO EDUCATION

25 – 30 minutes

Note to Facilitators: *This session as well as session # D covers some technical legal information on the right to education. Although these sessions may seem to be written in ‘legalese’ (or with legal jargon), it is crucial to understanding how to use a human rights based approach. However, one of the great strengths of human rights is that it is and remains **a shared and binding language**, where great importance is attached to standardised definitions and universal norms.*

*The module has been developed to introduce basic and essential information on the right to education and to be aimed at and delivered by non-legally trained education actors. Although there is a minimum amount of presentation, much of the following sessions will draw from learning in this section. All of the informational **hand-outs** (i.e., those that are not exercises) should be available to the participants throughout the module as a reference. It may be useful to assign pre-course reading to participants, which may lead to richer discussions.*

3. What Are Human Rights?

Optional: Ask participants to answer the question what are human rights before putting up the slide and engage with them in some discussion (for 5-10 minutes) about what human rights are and where they come from. Do not be too worried about accuracy or historical facts. It helps participants to explore their own national histories to explain the origin of rights and to talk about the spirit and intentions of human rights.

Then read the slide and explain that these legal standards are set out in treaties and other legal documents. It is important to note that although these standards are widely accepted, there continues to be political resistance in implementing human rights at the national level. A number of barriers exist – such as political will, limited resources, limited understanding, etc. It is, therefore, up to us as active citizens to hold States accountable through our activism, campaigning & policy work.

There are several common principles to human rights. All human rights are:

- **Universal** – that means that human rights apply to all human beings, as they are inherent to us from birth
- **Indivisible** – which means that all rights have equal status and cannot be put into a hierarchy or implemented in part
- **Inter-related and Inter-dependent** – which means that all rights have a relationship with one another. For example, you cannot talk about the right to vote without considering the right to education or the right to life without the right to health. The right to education is related to all rights since it is necessary to enjoy the right to education in order to learn about other rights.

4. Equality and Non-Discrimination

All human rights are subject to the principle of non-discrimination, which prohibits any distinction, exclusion or limitation based on the listed grounds. States guarantee these rights 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. This list is flexible (e.g., 'other status') and will vary at the national level.

Optional Discussion Question: What are the marginalised groups in your country that are not listed on the slide?

Non-discrimination is not a free-standing right – it is read into other substantive rights. So, if a girl is being denied access to education, we say it is a violation of the right to education on the grounds of gender. It is important to note which marginalised groups exist in your country and to be aware of the multiple layers of discrimination (i.e., when individuals experience discrimination on multiple grounds). Often, when an individual or group fits into multiple categorisation grounds, then the more extreme the marginalisation tends to be.

Note on understanding the difference between non-discrimination / equality and equity: The socio-political term 'equity' is often confused with equality and non-discrimination within the education and development sector. Equity is not a legal term. It is a socio-political term that is generally used to refer to a sense of fairness and concern for marginalised groups. Sometimes, because it is not a standardised or legal term, it can be used in a deliberately reductive way to emphasise equality of opportunity rather than substantive de facto

equality and the reduction of disparities of outcome, which are the primary concerns from a human rights perspective. Therefore, equity often means fairness in the distribution of benefits and opportunities; whereas, equality refers to the substantive equality of both opportunity and results with full protection under the law. Non-discrimination is the prohibition of distinctions based on impermissible grounds that have the effect or purpose of impairing the enjoyment of rights. When using a human rights based approach, it is preferable to use the legal terms of equality and non-discrimination, since these terms are standardised.

5. The Right to Education in Law

The right to education is a widely accepted human right which can be found in a number of international and regional human rights treaties, as well as in many national constitutions. Some of the core international treaties that protect international law include:

- International Covenant on Economic, Social and Cultural Rights
- Convention on the Rights of the Child
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of Persons with Disabilities
- UNESCO Convention against Discrimination in Education

Most States have ratified either the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the Convention on the Rights of the Child (CRC) or both. These two treaties serve as the main instruments in law for the right to education. In addition, it is protected by a number of regional treaties. Some examples include:

- African Charter on Human and Peoples Rights
- African Charter on the Rights and Welfare of the Child
- Protocol to the American Convention on Human Rights, Protocol of San Salvador
- Revised European Social Charter
- Protocol 1 to the European Convention for the protection of Human Rights and Fundamental Freedoms

For a more complete list, please refer to [Hand-out A: International Legal Standards on the Right to Education](#)

6. What Is the Right to Education?

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 encompasses all levels of education – including primary, secondary and technical / vocational, higher and fundamental education and stresses the importance of lifelong learning. The right to education at each level includes:

- Everyone has the right to free and compulsory primary education.
- Secondary and technical /vocational education should be available and accessible and progressively free to all.
- Higher education should be equally accessible based on capacity and progressively made free.
- Fundamental education, aimed at those who did not have access to or did not complete primary education, should be encouraged.
- Finally, the State must develop a system of education (usually through a ministry of education) that ensures that the material conditions of teaching are continuously improved and that the equality of educational access for individuals from disadvantaged groups is enhanced.

7. What Are the Aims of Education?

The Convention on the Rights of the Child sets out a number of principles with regards to the Aims of Education (or the purpose of education) which must enable individuals to develop the personalities, talents and abilities to live a full and satisfying life within society. These aims include:

- The full development of the child's personality, talents and mental and physical abilities
- The development of respect for human rights and fundamental freedoms
- 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
- The development of the child's responsibilities in a free society, including understanding, peace, tolerance, equality, and friendship among all persons and groups
- The development of respect for the natural environment.

The right to education, therefore, encompasses a broad and comprehensive understanding of education. The Aims of Education have a direct link to the delivery of quality education, as these aims must be embedded in the curricula and teaching methods. In addition, the Convention on the Rights of the Child further stipulates that the best interests of children must be the primary concern in making decisions that affect them. For a deeper

understanding of the Aims of Education, please see [Hand-out B – UN Committee on the Rights of the Child, General Comment 1.](#)

8. The 4As

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.

9. Educational Freedoms

Private provision of education is protected in international law as an educational freedom. Private actors have the liberty to establish and direct educational institutions. This means that private actors may open schools and administer them according to their own educational philosophies. This is subject to the requirement that these private providers meet the minimum standards that are laid down by the State. These minimum standards are deliberately left open for States to individually determine. However, States must ensure that these standards comply with international human rights law. So, the State is ultimately required to ensure that the right to education is realised for all, even if a portion of the education provision is provided by private or non-State actors.

Parents also have the freedom to choose schools other than public schools for their children if they wish to do so. 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 but they are not obliged to provide educational choice for parents and students. There is a direct relationship between

these educational freedoms, as parents and students must rely on the State to ensure that private educational institutions are meeting minimum standards.

Note: Human rights law does not dictate who the provider of education should be. Human rights law, however, acknowledges that the State is likely to be the direct provider in most circumstances. Human rights law recognises and acknowledges that education may be provided by a number of providers but the State has the responsibility to ensure that education provision complies with international law.

C. WHAT IS PRIVATISATION?

25 – 30 minutes

10. Definitions

Before discussing privatisation in detail, there are a few definitions that require clarification. *Read the definitions on the slide to the participants.*

States have the duty to respect, protect and fulfil rights, which includes ensuring access to certain services, such as education. Although the State must ensure access to services, international law does not require that governments must own or directly provide the service. Nor does international law say that human rights are best achieved through a particular economic or political system. As discussed with slide # 9, private education is protected in human rights law. Though human rights law acknowledges that the State is likely to be the direct provider of education in most circumstances, privatisation – i.e., the process – is left open. In other words, the act of privatising may be acceptable in human rights law, as long as States continue to fulfil their obligations. However, this process of privatising raises a number of human rights concerns which will be explored throughout this training.

Discussion questions: In small groups, discuss the following questions (10 - 15 minutes). This session may be extended to allow more discussion time, if needed:

- What is the relationship between private education, which is protected in law, and the privatisation process?
- What are some of the human rights concerns with privatisation?

11. Human Rights Concerns

The responses from the discussion can be compared to some of the concerns listed on Slide # 11, but participants may have identified many concerns that are not listed on this slide. Some general concerns about privatisation of services from a human rights perspective, include:

1. **Protecting rights** – All policies, including privatisation policies, must protect rights and be aimed at the constant improvement of the people with their active and free participation. The basic elements of rights, including access to basic services, should not be compromised.
2. **Regulation** – The State must regulate the conduct of the industry or service through a clear and transparent regulatory framework.
3. **Ensuring access is maintained** – States must fulfil rights progressively. Failure to do so may lead to informal alternatives, including unregulated private sector expansion
4. **Ensuring non-discrimination** – States must ensure non-discrimination in both access and outcome of privatised services and intervene if necessary
5. **Assessing impact** – States must assess the human rights impact if services are to be privatised.
6. **Transparency** – Privatisation processes must be open, fair and transparent
7. **Best interests of the child** – The best interests of children should be the primary concern when decisions are made that affects them, including budgetary and policy decisions.

12. How is Education Privatised?

Education may be privatised through the direct policies taken by the State, e.g., if the government hires a private company to take over the management of a public school. In some cases, privatisation may be less a result of policy but may be due to a lack of clear policy regarding private sector expansion, such as with the expansion of unregulated private schools in neighbourhoods that are under-serviced or do not have access to nearby public schools.

There are many different types of private schools and types of arrangements that play a role in privatisation, and perhaps there are far too many to list. However the Privatisation in Education Research Initiative (PERI) lists several 'models' on their website:

1. **For Profit Schools** – Schools designed to return a profit to shareholders or owners
2. **Public Private Partnerships (PPP)** – Flexible governance and financial arrangements between governments and private sector to provide public services
3. **Low Fee Schools** – Fee-based education provided by either large or small entrepreneurs, which is either profit-making or not profit-making
4. **Private Tutoring** – Ancillary or additional lessons privately provided outside of normal school hours
5. **Philanthropy Schools** – Private initiatives in education that aim to work for the public good that are led by self-funded philanthropic organisations

At this point the facilitator may ask for more examples from the participants to deepen the discussion, but bear in mind that the module will explore the ways in which privatisation is occurring at the local level later in the programme.

D. WHAT ARE THE STATE'S OBLIGATIONS?

2 hours

13. The Nature of State Obligations

The State is the primary duty-bearer, 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.

The State is obliged to respect, protect and fulfil rights, according to international law:

- **Respect** – Respecting rights means that the State does not interfere with the exercise of rights, e.g., States must not limit access to education or impose discriminatory practices.
- **Protect** – Protecting rights means that the State must ensure that others do not interfere with the exercise of rights, primarily through effective regulation and legal guarantees, e.g., monitoring private schools or ensuring teachers have qualifications
- **Fulfil** – Fulfilling rights means that the State must take positive action to facilitate the enjoyment of rights. This means that the State must promote rights, facilitate access to rights and provide for those who cannot do so for themselves, e.g., responding to the marginalised, facilitating community engagement, and developing an education plan.

14. Progressive Realisation

Progressive realisation is a central aspect of all economic and social rights, including education, which is based on the recognition that not all States can fully realise all aspects of economic and social rights due to the limited availability of resources. Progressive realisation, therefore, is a means of ensuring States fulfil their obligations to fully realise rights over time and take appropriate measures in light of resource limitations.

Progressive realisation is achieved by:

- **Taking** immediate, deliberate, concrete and progressive **steps** using the maximum of available resources. A lack of resources does not mean that States can postpone the implementation of the right to education. Rather, they must demonstrate that

they are making every effort to utilise existing resources, including through tax policies and international aid opportunities.

- Ensuring **minimum core obligations** regardless of resources. These are the essential levels of the right to education, which includes free and compulsory primary education, the allocation of resources in a non-discriminatory manner, developing a national education plan, and ensuring national minimum standards.
- Avoiding retrogressive or **backwards steps** in realising rights, e.g., if a State has implemented free secondary education for all and later rescinds this progressive step, then this would be a retrogressive step. International law strongly prohibits retrogression in the realisation of rights.

Group Exercise:

Understanding Human Rights Standards

1 hour (30 minutes in groups; 30 minutes of feedback but more time can be added, if necessary)

This exercise will introduce participants to human rights legal sources and provide an opportunity to identify human rights standards from legal sources.

Background Information: Before the participants begin this exercise, the hand-out for this exercise may need to be explained to the participants:

CESCR General Comment 13 is a piece of international human rights law on the right to education. It was developed by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), which is a monitoring body of the UN made up of independent experts. A general comment provides further detail and explanation of international law – in this case, the right to education. The general comment provides additional guidance to States and explains, in this case, a particular provision of the International Covenant of Economic, Social and Cultural Rights. The general comment explains the normative definition of the right to education, some legal obligations of States in relation to the right to education and guidance on identifying violations. Altogether, this information outlines human rights standards for the right to education.

In groups of 4 – 5, participants will identify human rights standards in a section of [Hand-out C – UN Committee on Economic, Social and Cultural Rights, General Comment 13](#).

Participants should be divided into groups of 4 – 5 and assigned a section of the hand-out to review (suggested divisions of the hand-out are below):

Group 1 – paragraphs 4 – 10 (*Note: this group has the 4As, so when reviewing the 4 As, be sure to not just list the 4As themselves, but try to break down the definitions of each A into a list of standards or requirements of the State*)

Group 2 – paragraphs 11 – 20 (*Note: if there are only four groups, then Group 2's reading can be dropped in order to maintain the reading for Groups 3 – 5*)

Group 3 – paragraphs 21 – 30

Group 4 – paragraphs 31 – 42

Group 5 – paragraphs 49 - 57

Participants should begin the assignment by silently reading their section of the hand-out and discuss what they have read in groups. They should try to identify as many of the human rights standards as they can. *To identify these standards, try to think about what the State must do or what the State must ensure based on what is written in the general comment.* Each group should note the standards from their section of the hand-out in a bulleted list on flip chart paper. The groups will need approximately 30 minutes to meet and discuss in groups. After the groups identify the human rights standards from their sections, each group should share the standards that they identified with the larger group of participants. Comments on the standards can be made during the group presentations.

15. Free Education

Discussion question: Before putting up slide # 13, ask participants to identify standards from the group exercise that they felt related to privatisation. This can be done as a wider group discussion (5 – 10 minutes, or longer for a deeper discussion). Participants are likely to identify some of the human rights standards covered in this session, such as free education, non-discrimination, quality, monitoring, financing, etc.

There are several human rights standards that cover the issue of free education, which are broken down according to the education level:

- **Primary education** must be free and compulsory to all. The push for free primary education is based on the notion that real developmental change in a country can only occur when there is universal free education. Free education challenges many of the barriers to education and ensures that every child is provided with equal opportunities. For those States that have not yet achieved universal free primary education, access to free universal primary education that is of good quality must be the priority.
- **Secondary 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.

- **Higher education** should be accessible and made progressively free. Although access to higher education is based on capacity and not everyone should necessarily attend higher education, there is a strong push for the elimination of fees. Education is seen as a public good and fees are likely to create barriers and disparities, particularly along socio-economic lines.

Private schools often rely on charging fees in order to cover costs and in some cases make a profit. According to human rights law, private schools may charge fees, as long as free primary education that is of good quality is available and steps are being taken to progressively introduce free secondary education. Thus, fee-paying education is an alternative choice for parents.

16. Equality and Non-Discrimination

As discussed earlier, non-discrimination prohibits any distinction, exclusion or limitation based on the listed grounds that were covered at the start of this training. Discrimination includes any distinction, exclusion, limitation or preference that has the purpose or effect of nullifying or impairing equality of treatment in education. Some examples of discrimination include 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 a specific religious or linguistic group is considered to be 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 education and private education are not created.

17. Monitoring and Regulation

The State must establish minimum standards for private education providers and maintain a transparent and effective system to monitor these standards. These minimum standards, which are set by States at the national level, must comply with international human rights standards.

An effective monitoring system will ensure that all private schools are registered and held accountable for minimum standards, which may include regulations regarding admissions, teaching, curricula, learning outcomes, non-discrimination, child protection, labour standards, school infrastructure, and school governance. Through a monitoring system, data can be collected on private schools, which can be used to inform national and local policies and plans. Monitoring can also be used to identify potential violations of the right to education, such as extreme disparities in education opportunities for some groups that

may otherwise go undetected. Through a transparent and independent monitoring system, parents may have access to more accurate and unbiased information regarding private schools, which will aid in making decisions when choosing education for their children. Most importantly, monitoring creates a culture of accountability and an opportunity for parents, teachers and students to raise concerns that are not being adequately addressed by the private school providers themselves.

18. Education Financing

There is a lot of pressure on States to increase access to education and to improve learning outcomes and the quality of education more generally. Over the last decade, significant increases in access to education have been largely due to increased State funding and international aid directed towards investing in public education. However, many States fall short of UNESCO's recommended education targets (6% of GDP and 20% of the budget), and issues concerning access and quality remain high on the global policy agenda.

States must ensure that they maintain their minimum core obligations (e.g., universal free primary education) and continue to take progressive steps to fully realise the right to education (e.g., introducing free secondary education or making improvements to quality). Failure by States to take continuous steps towards implementing the full realisation of the right to education may lead to informal alternatives, such as unregulated private schools or shortfalls in increasing provision or quality education targets. In addition, policy-makers may seek solutions to unmet education targets through private sector provision. Therefore, there is a direct relationship between education financing and privatisation.

19. Continuous Improvements to Quality

Proponents of privatisation often state that private education is better quality than public education, and in fact, many parents choose private schools because they feel that private schools are able to offer better quality of education. The debate over quality between public and private schools is one that should be scrutinised carefully, particularly concerning the reliability of data being used to make such claims.

However, all education – whether public or private – must be of good quality, according to international human rights law. Therefore, the education quality debate should focus more on ensuring that both public and private schools are meeting minimum standards.

According to human rights law, these standards focus heavily on the material conditions of teaching, rather than on outcomes. This is achieved through effective monitoring and regulation of all education. Some key human rights standards for education quality include ensuring:

- **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**

20. Participation and Transparency

The right to education includes a strong element of participation, as education prepares children for the responsibilities of life in a free society and serves as a vehicle through which children learn about civic participation. 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. 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. Participation helps to ensure greater accountability of educational policies and practices.

Privatisation programmes should be open and transparent and should include the participation of the affected community. States should take care to avoid creating imbalances of power between private actors and communities through experimental privatisation programmes.

21. Effective Remedies

The right to an effective remedy forms part of the human rights framework, and States must ensure that effective remedies are available in order to address violations. This includes the right to access a national court or tribunal but also extends to reparations, which may include compensation. The right to education should be incorporated into national legal domestic systems, including the national constitution, legislation, and the judicial system. Consequently, any violations on the right to education pertaining to private education can be addressed through the national or sub-national (provincial) legal system.

E. APPLYING HUMAN RIGHTS

1.5 hours (1 hour in groups; 30 minutes of feedback but the timing can be adjusted, if necessary)

Group Exercise:

Situation Analysis

The case study is a direct excerpt from a Save the Children publication and it provides some facts obtained through research concerning privatisation. Hand-out D: Case Study –Lagos, Nigeria (which can be found at the end of this document) provides a summary of key findings of data collected through detailed surveys that were undertaken by Save the Children in two large slum communities in Lagos, Nigeria, concerning low-cost private schools. Each group will work on the same case study; however, facilitators may consider using additional case studies from their own experiences.

In groups of 4-5 participants will review the assigned case study and discuss the following questions: (Note: participants may wish to use General Comment 13 to help identify relevant human rights standards)

- a) Based on the evidence provided in the case study, what are the key human rights standards that are impacted or affected by privatisation (i.e., the transfer of services from public to private) in this case study?
- b) Are there pre-existing human rights issues / concerns (e.g., poor public education provision) that may not be a result of privatisation but that should be raised in the context of privatisation? Participants may need to make some assumptions on this question about the existing conditions in Lagos.
- c) In order to formulate rights-based advocacy arguments, what further information could be researched? (i.e., what additional information is needed to strengthen a human rights case?)

Groups should write their answers to these questions on flip chart paper. Once the groups have completed the assignment, each group should provide a brief summary of the case study and share their answers with the wider group.

F. PRIVATISATION IN YOUR COMMUNITY

1.5 hours (1 hour in groups; 30 minutes of feedback but the timing can be adjusted, if necessary)

Group Discussion:

Privatisation in Your Community

In small groups (or alternatively this discussion can be facilitated by the trainer and carried out as one large group discussion), participants will discuss the following questions:

- a) How is privatisation taking place in your country / community? (Note: participants may wish to revisit Slide # 12, which lists some models highlighted on the PERI website, as a reference or starting point; also, the facilitator may wish to review the definition of privatisation to remind participants of the difference between private education and privatisation)
- b) What are the specific policy measures or practices by the government (in lieu of explicit policies) on education privatisation? What is the government's position on privatisation?
- c) What are the human rights impacts or concerns? Based on observation or existing data, where is the State failing to protect the right to education in the context of increasing privatisation? (Note: be sure to link these impacts to human rights standards)
- d) What research or evidence is required to back up and demonstrate these concerns?

The discussion should lead participants to consider what type of research is required to uncover the human rights impacts of privatisation and help to highlight how organisations can focus their resources and attention to address privatisation that may be negatively impacting the right to education. The responses to the questions should be recorded, as this discussion can be used to plan next steps for action.

G. A HUMAN RIGHTS RESPONSE TO PRIVATISATION

1 hour (the timing can be adjusted, if necessary)

22. Gathering Evidence

In this final session, we explore human rights based responses to privatisation of education and consider some actions that civil society can take to challenge the negative impacts of privatisation, which can be used in planning future actions.

In the first instance, it is essential to gather the evidence of the negative impacts of privatisation on the right to education. This can be achieved by utilising existing data or research and applying human rights analysis or in some cases it requires gathering data from the field.

Another good starting point is to analyse government policy documents that support and promote privatisation using human rights standards to check that the policies are human

rights compliant. This approach focuses less on impact, but it can be very effective as a starting point for discussion with policy-makers. Also, it requires fewer resources. Another possibility is to influence or encourage others, such as academics or research institutes, to conduct research.

23. Gathering Evidence: Example

Human rights research typically involves an examination of quantitative data for educational outcome indicators against the policy measures taken and the international human rights standards to ascertain the human rights violations or deprivations. This type of research could draw a direct line between the effects of privatisation and the responsibilities of the State. It requires identifying the outcome and policy indicators as well as the corresponding human rights standards. This slide shows an example of this type of research covering the topic of teacher salaries and teacher qualifications and comparing between the outcomes (i.e., the actual salaries and level of qualifications of teachers), the policies (i.e., the State requirements for both public and private school teachers), and the corresponding human rights standards (i.e., more specifically, the remuneration and qualification standards for teachers).

24. Inquiry

Many organisations have not engaged on the topic of privatisation and in fact some governments have not published policy positions regarding the privatisation of education. Therefore, activities to seek information and to inquire about the government's privatisation policies and the impacts of these policies can be a good way to open up the dialogue with the government and raise awareness about the issue. In addition, it may help to establish civil society's role as a key stakeholder in decisions regarding privatisation, as many governments have not opened up dialogue outside of the private business sector.

25. Developing a Campaign

There are many ways to develop a rights-based campaign to challenge privatisation, and this training module will not go into great detail on campaign strategies. However, through a well-considered campaign plan, civil society can have a significant influence over government policies and practices. Effective campaigning begins with good planning and the basis of most campaign plans includes identifying:

1. **Objectives** – What is the change that you want to make?
2. **Targets** – Who are the decision-makers on this issue? Who else can influence the decision-makers as secondary targets?
3. **Messages** – What is the message aimed at your targets?

4. **Tactics** – What tactics will you use to bring about change, e.g., direct lobbying, media, etc.?

With rights-based campaigning, it's important to ensure that your messages are clearly linked with human rights standards and that rights-holders and affected communities play an active role in claiming their rights.

Group Discussion / Exercise:

Taking Action to Challenge Privatisation

In small groups (or as one large group) discuss the following questions about taking action to challenge privatisation:

- What are the first steps as civil society that we need to take to challenge privatisation that threatens the right to education?
- What are some of the main challenges to engaging on this topic? How can we overcome these challenges?
- What are the main priorities for protecting the right to education in the face of increasing privatisation? Who should be involved and in what ways?
- How can we hold the government accountable for its human rights obligations in relation to education privatisation?

Consider adding further discussion questions or altering the session to serve as a campaign planning session. Alternatively, the participants may be divided back into the groups used for the situation analysis exercise and can devise a campaign strategy answering the questions on slide # 25 for their assigned case study.

H. CONCLUSIONS AND WRAP-UP

This session should be tailored according to the needs of the participants and the facilitator's experience and style. It may be helpful to reflect on what participants have learned and what they will take from this training module and apply in their work, as a means of encouraging next steps. The facilitator may also share additional resources on the topic for further research, which are listed on the final slide.

All excerpts below taken directly from: *The Potential of Low-Cost Community Private Schools to Boost Children's Education in Lagos*, Save the Children, May 2013

Summary of key findings¹

Context

Despite having the second highest GDP of any African country, Nigeria has 10 million children out of school (UNESCO, 2012). Although policy commitments and education planning frameworks have improved in recent years, State investment in education is low, with only 8.3% of the national budget allocated to education, against the 26% recommended by UNESCO (Abayomi, 2012). In recent years, indications of a private school sector in urban areas of Nigeria and other middle income African countries, which is apparently thriving in comparison to the government school sector, have led to speculation that investing in private education may produce faster progress towards reaching Education for All targets than focusing only on government schools would.

Poverty

- 70% of people surveyed were living on less than 77 US cents a day in overcrowded conditions.
- Water and sanitation and early childcare and development support were major gaps in families' lives.

Access to education

- 74% of children were not being served by government schools.
- Demand for preschool, primary and secondary education was extremely high across parents and children.
- The majority of children were in private pre- or primary school, although it was not possible to reliably determine how many were out of school.
- High numbers of low-cost, unapproved private schools are operating – approximately one per 60 children.

¹ This research is based on data collected through detailed surveys that were undertaken in two large slum communities in Lagos, Nigeria.

- Girls were found to have equal presence in private schools with boys; but there were indications that boys had better access to government schools.
- Access of children with disabilities to school appeared very low.
- Only 7% of children 14 or under were in government secondary school.

Cost of education

- 62% of parents were charged an average four cents a day in tuition fees by private schools, with 26% paying more than 83 cents a day. School food fees were also charged across private and government schools, taking the average charge to \$1.30 USD per day.
- A household with two school-age children was being charged on average 30% of its income for school fees, outside any other costs such as books. Some parents reported prostitution and going without food to pay school fees.
- Head teachers reported that the majority of parents had not paid fees.
- Up to half of parents were estimated to be subsidising the school fees of other parents.

Quality of learning environments

- Very little evidence of good quality physical environments or teaching was found in private or public schools. A very small minority of private schools was reaching basic standards of education provision.
- Class sizes in government schools were on average 34 students, with 25 students in private schools. Private school class sizes ranged from two to more than 100.
- A severe lack of sanitation and light, poor child protection and very limited supply of reading and learning materials were widespread across private schools. Water and sanitation was a major challenge in all types of school.
- The space in most private schools was very small, and did not fit the number of children.
- Supply of books was low, and access to other learning aids was extremely poor.
- Parents, children and teachers had clear and consistent views of what made good quality teaching and learning.
- Across all schools, teachers used a limited number of methods, with wide variations in performance across private schools.
- The teaching standards observed in private schools fell much lower than those observed in government schools. Teachers in government schools showed more

signs of active teaching, but were observed to pay less attention to the majority of children.

- Teachers' lack of confidence in working with children with disabilities suggests that inclusion should be a key focus of efforts to improve teaching quality.

Safety and protection

- Parents and children consistently raised corporal punishment as a problem. 20% of teachers were observed to routinely use the threat of corporal punishment, with several of them beating children in the presence of observers.
- Only 25% of private schools provided access to toilets, handwashing and drinking water. 72% of private schools had toilets, against 92% of government schools. (In government schools, handwashing and drinking water were not in evidence.)
- 11% of private schools were observed not to monitor children (often as young as four) exiting the building, raising safety concerns.

Accountability

- Reported parental engagement in private schools was strong. Despite this, parents' reported dissatisfaction on corporal punishment and access to books suggested that more support is needed to help families secure the education they want from schools.
- Poor trust in government teachers was consistently reported by parents, particularly in relation to strikes.
- Parents were split between those who valued private schools' greater responsiveness, versus those who felt government schools gave better teaching at lower cost.
- Lack of access to examinations and certification of achievements is a key feature of families being forced to use informal low-cost private schools.

Management of private schools

- Wide variations in space per child, class sizes, materials, teaching activity and pupil/teacher ratios indicated that no consistent professional standards were applied.
- Teachers in private schools reported relatively good salaries.
- Senior government officials reported willingness to provide low-cost private schools with teacher training, materials, networking and management support.

Prospects for future support to low-cost private schools

- Private school owners and teachers were making efforts to provide some of the conditions for quality education. This suggests that, given greater resources and technical support, private schools may have the capacity to improve their performances.
- A range of stakeholders identified major problems with expanding the capacity of government schools to serve the poorest slum areas.
- Government stakeholders were positive about extending greater support to private schools in slum areas, particularly in terms of technical and material inputs.
- Relatively good private teacher motivation indicated that there is a pool of teachers available who could benefit from increased training.
- Expansion in government secondary school capacity is likely to become an urgent demand in slum areas.