

Summary Report - Europe and North America Regional Consultation
Human Rights Guiding Principles on State obligations regarding Private Schools
Paris, March 13-14, 2017



Europe and North America Consultations

On March 13-14th UNESCO hosted the [Europe and North America Regional Consultation on the Human Rights Guiding Principles on State obligations regarding private schools](#). This was the third in a series of regional consultations, part of a broad consultative process to develop the Guiding Principles involving a range of stakeholders including civil society organisations, State representatives, human rights organisations and experts in the fields of education and law, academics, international and regional organisations and other actors. To obtain a comprehensive and comparative review of the draft text and taking into account the cumulative effect of the consultation process, the group reviewed a version of the Guiding Principles updated following previous regional consultations in [Bangkok](#) (August 2016) and [Nairobi](#) (September 2016).

The two-day consultation was attended by over 50 participants including UNESCO country representatives, civil society actors, international law experts, student union representatives, private school managers and representatives from philanthropic organisations from over 12 different countries across Europe and North America.

Dr Francesc Pedró, Chief of the Section of Education Policy, opened the meeting. He stated that UNESCO supports the development of normative instruments such as Guiding Principles to lay down international legal obligations for the right to education. These instruments promote and develop the right of every person to enjoy access to education of good quality, without discrimination or exclusion. A core pillar of UNESCO's

work supports governments to fulfil their obligations both legal and political in regard to providing quality education for all and to implement and monitor more effectively education strategies.

Complementary remarks were delivered by the United Nations Special Rapporteur on the right to education, [Dr Koumbou Boly Barry](#). Dr Barry noted the proliferation of private actors in education over the last two decades specifically within Sub-Saharan Africa. Dr Barry stated that global, regional and local research has increasingly shown that there are clear gender inequalities around access to education that often see girls excluded or discriminated against within the education system and the growth of private education can exacerbate these trends. Unregulated private schools represent a major challenge to equitable access that ensures that all children, regardless of their gender benefit from a quality education. The work on developing human rights guiding principles on states' obligations regarding private schools therefore presents an opportunity to address glaring gender gaps both in terms of policy and practice and to ensure that education systems, public and private, deliver on the right to education.

The subsequent [presentations](#) delivered by experts in the field outlined key global trends in the scale and scope of privatisation and clarified the purpose of the Guiding Principles on private schools and the regional consultation process guiding their development as summarised below.

Background to the Guiding Principles

The last two decades have seen a significant increase in the scale and scope of non-state actors in education, particularly in developing countries. This expansion includes the rapid growth of low-cost private schools targeting poor households, large-scale commercial investments in private school chains, private tutoring, public-private partnerships, 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. The potential benefits or negative impacts of the growth of private schools on inequalities and social justice are highly debated. Different stakeholders may have different views about which practices are acceptable and unacceptable in a particular context. What is currently missing from this debate is a broadly accepted normative framework against which to assess the implications of the growing involvement of private-sector actors in education.

The Human Rights Guiding Principles on State obligations regarding private schools (“Guiding Principles”) intend to address this gap. They will provide a universally accepted and legally binding normative framework that will help reflect on the role and limitations of private schools with a view to guaranteeing human dignity. The proposed framework is anchored in the understanding that private schools should:

- Not be a source of segregation, discrimination and inequalities;
- Provide an alternative to and not affect access to free, quality, publicly-supported education;
- Preserve the humanistic nature of education;
- Conform to minimum education standards established and adequately enforced by the State;

- Be regulated by norms that are developed following due process, including participation of all education stakeholders.

The Guiding Principles on state obligations regarding private schools will be a set of global guidelines that are intended to be operational in and adaptable to different contexts. The Guiding Principles will unpack, clarify and compile existing human rights law as it relates to private actors in education. As such, they will reflect already legally binding law, rather than creating new standards, and will therefore be directly applicable to hold States accountable for their obligations to fulfil and protect the right to education. They intend to promote education systems governed by the rule of law, accountability, transparency and participation.

The purpose the Guiding Principles and the process to development them is to: 1) provide guidance to States, inter-governmental organisations and other education stakeholders on policies related to private education, including donor States funding education in third countries; 2) stimulate an informed debate on the role and impact of private schools; 3) consolidate the existing normative framework to support assessment of the involvement of private schools in education from a social justice and rights perspective by researchers and other stakeholders; and, 4) support civil society organisations to undertake informed and constructive analysis of the involvement of private schools in education and empower them to take action when relevant.

The Guiding Principles are intended to be used at the local, national regional and international level and as a basis for constructive discussion, advocacy, law and 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. The consultations for their development include a range of stakeholders from the region including civil society, ministry of education representatives, experts in the fields of education and law, academics, inter-governmental organisations, private sector representatives and other actors. Key constituency groups in education, including teachers, parents and students are especially encouraged to input into the development of the principles.

A detailed concept note on the Guiding Principles including a timeline for development is available [here](#).

The format for the remainder of the consultation consisted of plenary discussions and group sessions to input into the Guiding Principles themselves. The main feedback points and common issues identified are summarised below. The key points summarised below do not fully capture the richness and nuances of the debates within the group deliberations. These have been captured in separate group reports, available on request. A new version of the Guiding Principle taking into account all the inputs provided, and a document detailing key changes and how they are related to the inputs provided in each regional consultation will be made available in the third quarter of 2017.

Regional consultation key feedback points and common issues

- The Guiding Principles were noted as timely and important in the context of the continued growth and influence of private actors in educational systems, especially those in crisis-affected and fragile contexts in which a state's ability to monitor and regulate private actors may be severely compromised.

- Several participants thought that the Guiding Principles should be narrower in scope, and the main crux of the document should be focused on protecting the right to free, compulsory and basic education. The document should lay out clearly that whilst different forms of education provision may co-exist and which offer choice within systems, the existence of private schools should not undermine or impede the primary role of the state in fulfilling the right to education.
- Participants felt that the draft preamble was trying to cover too much, and should focus on setting out a shared vision for a system of free public education situated within the context of the growth of private actors and the need for better regulation around their role and influence within education systems.
- The preamble should state that the Guiding Principles are contextually relevant and adaptable; the preamble should not say what the Principles do not do as this undermines their validity and impact.
- The Guiding Principle's should use the same definitions (where applicable) and language as existing human rights frameworks to ensure their complementarity and to speed up the process of endorsement. This would include greater alignment with the existing UN Guiding Principles on Business and Human Rights produced in 2011.
- The preamble should set out that the framework specifically applies to basic education, but this should not exclude applicability of the Guiding Principles to other levels. In addition, the Guiding Principles should apply to both State and non-state schools to ensure transparency and accountability across all systems of education.
- Greater attention needs to be given to the definitions provided within the document, and a note should be included around the contentious nature of the themes addressed within the document.
- It was suggested that the terminology of profit and not for profit schools (as opposed to public and private) should be used. Participants felt that this better identified the primary concern with private schools i.e. the commodification of education and how this is seen to be at odds with the humanistic nature of education.
- Participants suggested that a legal commentary was urgently required to accompany the document, or a separate version of the Principles text containing illustrative examples of the situations described. This will help to clarify specific issues covered in each principle their legal basis, and will refer to journal articles or primary sources of the obligations cited. In addition to setting out general legal principles, the commentary can also provide useful analysis in areas where the law is complex or unclear.
- Some participants stressed the value of some private actors in education systems, particularly in supporting and facilitating innovation within resource constrained contexts, and that the Guiding Principles should not limit those schools that play a positive role. The principles should not exclude private actor's involvement in education in instances where they guarantee human dignity and promote the right to education.
- Participants identified a need for the Principles to address extra territorial obligations of states, which may support the growth of private schools via overseas development assistance. The document should address how these states can be held accountable if their direct support (funding) violates the human right to education as defined by the Guiding Principles.

Next Steps in Guiding Principles development process

A next draft of the Guiding Principles incorporating feedback from the Paris consultation will be shared with participants in Spring 2017. Participants were informed that additional national and regional consultations have been planned for Southern Africa (August 2017), and West Africa (dates tbc), and options are being considered for other regions. Participants were also invited to contact the Drafting Secretariat if they would like to host a national consultation on the Guiding Principles. The drafting Secretariat confirmed a set of background reports will be commissioned to examine key issues/concepts referenced in the text including understanding and questioning choice in education.

Finally, the participants were informed that an online open consultation for the Guiding Principles will be held in late 2017, the online forum will maximize inclusiveness within the consultation process and allow new stakeholders to engage in the drafting process. It is envisaged that the Guiding Principles will be launched in mid-2018.

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