



The Global Initiative
for Economic, Social and Cultural Rights

Summary Report

Eastern Africa Regional Consultation

Human Rights Guiding Principles on State obligations regarding Private Schools



Monday, September 5th - Wednesday, 7th September 2016

The Heron Portico Hotel, Nairobi, Kenya

Background

The last two decades have seen a dramatic increase in scale and scope of non-state actors in education, in particular in developing countries. The 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; private tutoring; 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. The Global Campaign for Education, as well as regional and national coalitions [have](#) produced several reports, as well as conducted workshops with partners and advocacy towards policy makers. Regional organisations such as the Asia South Pacific Association for Basic and Adult Education ([ASPBAE](#)) and the Latin American Campaign for the Right to Education ([CLADE](#)), have actively worked with their members across their regional and at the national level. Teachers' unions, coordinated through Education International, have also developed a [global response](#) to privatisation and commercialisation of education.

As a result of these collective efforts, [human rights norms and standards](#) related to the role of private actors in education have started to be developed, due to a [series of concluding observations](#) from human rights bodies and a series of [reports](#) by the UN Special Rapporteur on the right to education. Civil society's understanding of the role that private actors can play in education and its limitations, as well as of complex governance arrangements such as [public-private partnerships](#), has increased and allowed organisations to take more specific, nuanced, and decisive action. Dialogue and debates have been initiated in a number of countries, with various actors including ministers and government representatives, private sector actors, civil society organisations and the press, engaging in an open and informed discussion around the role of private actors in education.

This has been an attempt to surmount a previously absent, or largely divided and opaque, dialogue on the issue. Dialogue has also been initiated with international organisations and bi- and multi-lateral donors to reflect on the human rights impacts of their support to the private sector.

Building on this success, an international movement of civil society organisations, including teachers' organisations, international non-governmental organisations, and domestic and community-based organisations, as well as of academics and experts, is now actively working together to monitor the situation and put forward constructive,

principled and pragmatic solutions. These organisations are progressively organising themselves as part of an informal Consortium on privatisation in education and human rights. The work has been particularly active in Kenya and Uganda, where private actors have grown rapidly, in particular commercial private schools. Human rights bodies such as the UN Committee on Economic, Social and Cultural Rights (CESCR) have expressed [concerns](#) in Kenya and Uganda.

Much work remains to be done to ensure that private actors do not undermine human rights. Kenyan and Ugandan governments are only starting to address the issue, with the introduction of new [regulations](#) in Kenya and discussions on regulating private sector provision between civil society and the ministry of education in Uganda. Beyond East Africa, the global growth of commercial school chains such as [Bridge International Academies](#) in countries including India and Nigeria, the [outsourcing](#) of the public education system in Liberia, the support to a highly private education system in [Haiti](#), the development of PPPs in [Pakistan](#) and the [Philippines](#), and more recently the consideration to introduce vouchers in Nepal, are just some examples that have raised concern over the last years.

East Africa Consultation

The East African regional consultation was a part of the effort to build joint action on privatisation in education in the region. The purpose of the meeting was for education stakeholders to discuss the role of private actors in education in the region and provide inputs into the development of the global *Human Rights Guiding Principles on the Role of Private Actors in Education*.

These are global guidelines that seek to interpret international law and unpack principles on the role of private actors in education offering concrete direction on this topic. They are designed to give guidance on how to interpret human rights law in this area but also to be operational and adaptable to local contexts. They offer a non-binding framework for analysis but are nevertheless quasi-legal, providing an authoritative interpretation of the law that can be a powerful advocacy tool.

There is an on-going global effort to develop these principles through consultations with civil society, academics, legal experts, governments and other actors to ensure that they are as representative and reflective of a wide variety of contexts as possible.

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 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 a 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 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 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 human rights law and Guiding Principles related to the role of private actors in education.
- Conduct a series of regional, global and institutional face-to-face and on-line consultations with a broad range of stakeholders.
- Conduct advocacy in parallel to the development of the framework.

The development of the principles is currently being coordinated by a drafting committee led by Right to Education Project, who will synthesise the contributions and feedback from various consultations and suggest successive drafts incorporating

inputs. A steering committee and an expert panel will also help guide the development of these principles. The steering committee will include regional coalitions of the Global Campaign for Education, organised language networks, representatives from global organisations and academics. The expert panel will provide expert inputs on points of law and other issues throughout the process of the development of the principles.

Timeline for the development of the principles

Date	Activity
January – June 2016	Development of an initial draft
March 2016	Side-event pre-consultation during side-event CIES Conference 2016
March 2016 – June 2017	Development of expert background papers
April 2016 – April 2017	<ul style="list-style-type: none"> • Regional consultations in Asia-Pacific, Africa and Latin America • Informal consultations with States • Engagement of other stakeholders • National consultations organised partners
November 2016	Review of the first draft based on inputs from consultations Development of second draft
January 2017 – April 2017	Online consultations
March 2017	Expert consultation
March – April 2016	Consultation with the Global Partnership for Education, and other multi-lateral agencies
April – Mary 2017	Meeting of the expert group
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 (champion country), dissemination and advocacy

The East Africa regional consultation was held between the 5th and 7th of September, 2016 at the Heron Portico Hotel, Nairobi, Kenya. Over 80 participants attended the event from 20 different countries including 10 different countries in Africa. A full list of participants can be found in Annex 1.

The consultation was preceded by the launch of a report by the Global Campaign for Education *Private Profit, Public Loss: Why the push for low-fee private schools is throwing quality education off track*. The launch started in the Mathare community where community members were able to share their perspectives and engage in discussion on issues contained in the report. This was followed by a formal launch of the report to which journalists were invited.



Discussion with community members in Mathare.

The report can be downloaded from the Global Campaign for Education website from the 6th of October, 2016: <http://www.campaignforeducation.org/en/>

Eastern Africa Regional Consultation: Human Rights Guiding Principles

For this session participants were split into 4 groups. Each group was assigned a facilitator, a technical expert for support and a rapporteur. Groups were asked to read and respond to the draft *Human Rights Guiding Principles on the Role of Private Actors in Education*.

The principles will be updated in line with the feedback received from this and other consultations and a revised draft will be circulated and available for online feedback in early 2017.

Some of the key observations highlighted by the groups are documented below according to the sections contained in the principles.

General feedback

- Need to include a pre-amble to the document, to define the focus of the guidelines, purpose and the target audience. Perhaps this could utilise the 5-principle framework.
- Concern that some of the language actually legitimized the growth of private schools and that the focus/language should be orientated around strengthening public schools.
- Clarify a stance on early childhood education, as this is overlooked in the document, very important for African countries to also incorporate non-formal education settings currently attended by some 58 million adolescents in Africa.
- Clarify and simplify the language used throughout the document particularly around the 4A's. It is critical to ensure that the document is accessible to non-specific audience.
- Language needs to be more accessible to non-specialist audiences.
- Should the use of the term private schools be changed to private providers?
- Defining public and private more broadly throughout document outside of public v private education providers
- Changing 'must' to 'shall', 'can' to 'may' – simplifying and making language and sentence structure more consistent throughout.
- Tendency by states to disregard international law, a specific aspect needs to be included within the principles for non-compliance by states. Need to include penalties within the document, to ensure enforcement.
- Are these principles or guidelines? A lot of the assumptions need to be unpacked as some points are still rather general.
- Titles I and II are confusing as they seem similar – the structure of the document overall should be improved as the order is confusing
- The title of the document needs to be simplified.
- We should consider incorporating language of the SDGs, but try to frame it without the associated time limitation.
- There is a need to specifically address countries in conflict and crisis, perhaps we can borrow from other existing guidelines in these areas.

General principles

Definitions

- The definition of private schools includes all commercial, community based, faith based actors. This needs to be clarified about what this includes/excludes. Reality is more complex than what is reflected in the text.
- There is a need to include a definition on what we mean by 'basic education'. Need to ensure that the definition agreed upon is the same as that adopted in the key legal texts and agreements i.e. adopt the UNESCO definition of basic education.
- The definition of PPPs should be expanded to include other types of partnership arrangements

Scope

- Concern is that the focus of the text is on pre-primary, and secondary education, what about higher education and non-formal/alternative education? This along with ECD is an area currently overlooked within the document.

Interpretation

- Perhaps would be easier to simplify this interpretation as implementation of all human rights full stop. This because there will always be some rights missing, like for example the right to dignity.
- We should include 'in the best interests of the child' as this is not mentioned in the document.

States' obligations

- Shall we make the assertion that States are the 'only' duty bearers or shall we modify the language to 'primary' duty bearers.
- Language using 4 A's is too confusing.

Right to non-discrimination, inequality, and non-segregation

- This section needs to expand on definitions and factors of exclusion/discrimination/segregation (e.g. gender, ethnicity, disability etc.).
- Should there be an inclusion of geographic exclusion in the right to education?

General principles on private schools

- Concern over the use of "humanistic" as "Humanism" is a very specific western ideology.
- Principle 17: are we conceding that retrogression is ok in certain circumstances, even if it is technically within the law? Can we change to more positive language centred on progressive realisation.
- The definition of commercial schools is confusing – need more clarity on exactly what we mean as the distinction between private and commercial is not clear.

Obligation to provide resources to realise the right to education

- Suggestion to remove the sub-heading 'Lack of capacity'. There is a concern that this provides an escape clause for states to delegate responsibly to other actors.

Public-private partnerships

- Suggestion to remove the word 'free' as this is misleading, any publicly funded school should be publicly owned and managed.
- Prioritise the development of the public education sector, and explicitly state that PPPs should only be temporary in nature, and not a permanent feature of an education system.

Regulations and remedies

- We shouldn't put statements that aren't practically enforceable i.e. ban all commercial schools. We can amend this to regulate and enforce accountability mechanisms.
- Perhaps we can soften the provision from a ban on commercial schools to "States must prohibit public funding to commercial schools..."
- Perhaps we need to include something on closure (following non-adherence to law) and the State's obligations to relocate students

Community Visits

Participants were taken on guided tour of schools (public and private) in Mukuru Kwa Njenga and Mathare informal settlements situated in Nairobi. A discussion was held following the school visits which highlighted a number of key issues:

- How do we tackle advocacy in informal settlements? Do we advocate for legalisation/recognition of the communities. Do we take the government to court to insist they build more government schools in these communities.
- Importance of community engagement/mobilisation – communities need to be educated on their rights and empowered to act
- The issue of land – if the government is renting land to private providers why can they not provide education in the same locations free of charge? Governments often claim there is no land available for construction of public schools.
- The conditions of both the public and the private schools were extremely poor.
- Part of the appeal of private schools is that payments are flexible, and there are not large upfront admission fees, which is the case with some public schools. This is an issue that needs to be examined and advocated on.
- To recommend closure of private schools where state doesn't provide public schools actually infringes on human rights. Where will children go if schools are closed? We need to be guided by the best interests of the child.
- It's surprising that Kenyan government allows BIA to build schools of such low quality, people from abroad would not open such schools for themselves, we need to establish our own schools, all BIA offers is technology which we can provide ourselves.

Key Resources

Photos from the meeting can be found [here](#)

ANNEX 1 – Participant List

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